

Appendix V-3: Fisheries Compensatory Mitigation Plan

Coastal Virginia Offshore Wind Commercial Project



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APPENDIX V-3 FISHERIES COMPENSATORY MITIGATION PLAN REVISION LOG			
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ACRONYMS AND ABBREVIATIONS

BOEM	Bureau of Ocean Energy Management
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
COP	Construction and Operations Plan
CVOW	Coastal Virginia Offshore Wind
CZM Program	Coastal Zone Management Program
DEIS	Draft Environmental Impact Statement
Dominion Energy	Dominion Energy Virginia
FCF	Fisherman's Contingency Fund
FCMP	Fisheries Compensatory Mitigation Plan
FCP	Fisheries Communication Plan
FEIS	Final Environmental Impact Statement
FLO	Fisheries Liaison Officer
FMP	Fishery Management Plan
JAMS	Judicial Arbitration and Mediation Services
NEPA	National Environmental Policy Act
O&M	operations and maintenance
OCSLA	Outer Continental Shelf Lands Act
Project	Dominion Energy Virginia Coastal Virginia Offshore Wind Commercial Project
ROD	Record of Decision
VMRC	Virginia Marine Resources Commission

V-3.1 PURPOSE AND OVERVIEW

The purpose of this Fisheries Compensatory Mitigation Plan (the FCMP) is to provide an approved process and methodology to compensate the local fishing industry for potential adverse impacts as a result of the Virginia Electric and Power Company doing business as Dominion Energy Virginia (Dominion Energy) Coastal Virginia Offshore Wind (CVOW) Commercial Project (the Project). This FCMP was developed in accordance with relevant guidance issued by the Bureau of Ocean Energy Management (BOEM) and feedback from consultation with representatives of the fishing industry and the Virginia Marine Resources Commission (VMRC). As described further below and in Appendices V-1 and V-2, Dominion Energy has undertaken and will undertake a range of measures to assess, avoid, minimize, and mitigate impacts to fisheries and fishery-related businesses, and to communicate with relevant stakeholders. Dominion Energy's objective is first to avoid, minimize, and mitigate potential adverse fisheries impacts. This FCMP is intended as the final step in the fisheries mitigation process by providing a framework to enable compensatory mitigation for those impacts that are not otherwise avoided, minimized, or mitigated. The FCMP establishes three distinct compensation mechanisms: the Gear Loss Compensation Program, the Compensatory Mitigation Fund, and the Surfclam Compensatory Mitigation Fund.

- **Gear Loss Compensation Program:** The purpose of this program is to provide as-needed compensation for loss of or damage to commercial fishing gear occurring within the Lease Area or the Offshore Export Cable Route Corridor (Offshore Project Area) and related to the construction, operation, or decommissioning of the Project. Dominion Energy will fund and administer this program in accordance with the schedules and parameters set forth below and in Construction and Operations Plan (COP) Appendix V-1, Attachment D (Fisheries Communication Plan [FCP], Fishing Gear Damage or Loss Claim Procedure).
- **Compensatory Mitigation Fund:** The purpose of this fund is to provide compensation for adverse economic impacts to fishery-related businesses resulting from the Project for both direct and indirect (shoreside) claims related to commercial and for-hire recreational fisheries. Dominion Energy will provide up to \$40,000,000 to this fund in accordance with the schedules and parameters set forth below.
- **Surfclam Compensatory Mitigation Fund:** The purpose of this fund is to provide compensation for adverse economic impacts to Atlantic surfclam (i) commercial fishing businesses or (ii) related indirect (shoreside) businesses. Dominion Energy will provide up to \$3,000,000 to this fund in accordance with the schedules and parameters set forth below.

Dominion Energy has developed the above programs in a rigorous and conservative manner that is designed to meet and exceed relevant BOEM guidance. Funding levels for the Compensatory Mitigation Fund were based on maximum-impact scenarios and include inflation adjustments. The Gear Loss Compensation Program also is designed to be compliant with current best practices. In addition, these programs are designed with the future in mind and retain flexibility to transition to a future-enacted state, regional, or federal program, as appropriate.

V-3.2 FISHERIES ENGAGEMENT AND MITIGATION

Fisheries Communication and Fisheries Mitigation & Monitoring are integral components of the COP and are further detailed in:

- COP Appendix V-1, Fisheries Communication Plan; and
- COP Appendix V-2, Fisheries Mitigation and Monitoring Plan.

Dominion Energy's commitment to coexistence with commercial and for-hire recreational fishing includes a robust plan for engagement and clear communication with the fishing industry. Dominion Energy has assembled and will maintain a fisheries communications team, inclusive of Fisheries Liaison Officers (FLOs), for the duration of the Project. The FCP (COP Appendix V-1) is central to the Project's fisheries engagement strategy and will be foundational to the company's efforts to develop and implement best practices and build effective relationships with the fishing community. Dominion Energy has and will continue to use the FCP to guide outreach and engagement with fishermen and fishing businesses throughout the region, while maintaining an adaptive approach to ensure that regular feedback and guidance from fisheries stakeholders is carefully considered throughout all Project phases.

With knowledge of specific, though complex, fisheries interests within the Offshore Project Area, the FCP establishes communication strategies that seek to ensure effective and constructive interactions between parties. Led and facilitated by the FLO team, effective communications will employ consistent electronic and print notices about the Project (including for those at sea), updated and accurate mapping/charting of activities and infrastructure, regular public meetings, engagement with agencies and fishery management councils, and maintaining a 24-hour phone line for addressing real-time conflicts or safety issues. Dominion Energy prioritizes accuracy, efficiency, and transparency in these communications to ensure Project awareness and mariner safety. These priorities also will aid in obtaining and sharing the diverse knowledge base of commercial and recreational fishing communities while providing an avenue for stakeholders to voice concerns, raise questions, and provide meaningful feedback.

Dominion Energy also has developed a Fisheries Mitigation and Monitoring Plan (COP Appendix V-2) to characterize and monitor important fishery resources within the Offshore Project Area. Based on initial investigations and feedback from the fishing industry, it was determined that the black sea bass and whelk (also known as conch) fisheries have demonstrated commercial activity in or near the Lease Area, and a nearby potential Atlantic surfclam resource that may be fished in upcoming years. With this knowledge and in consultation with the National Marine Fisheries Service, VMRC, and BOEM, Dominion Energy has initiated fishery-specific monitoring and survey programs. These programs aim to gather information and data on the currently existing fisheries in the Offshore Project Area, and to perform fishery resource surveys using commercial-style fishing gear. Survey results will enable assessment of baseline conditions to which post-construction monitoring can be compared to infer potential impacts of the Project on those fisheries. Throughout these monitoring efforts, Dominion Energy is collaborating with fishing industry members who will contribute fishing trip data and provide vessel platforms for field surveys.

Importantly, the Fisheries Mitigation and Monitoring Plan (COP Appendix V-2) includes specific measures that Dominion Energy has proposed to avoid, minimize, and mitigate potential effects of the Project on fishermen and fishing resources. Measures are proposed for each identified potential impact to fisheries at

all stages of the Project, including pre-construction design, construction, operations and maintenance (O&M), and decommissioning. Such measures include, but are not limited to, the avoidance of important fish habitat areas, installation of navigation safety features on offshore structures, arrangement of turbines that allows for safe navigation and use by fishermen, use of underwater noise attenuation technologies, and proper maintenance of submarine cable. Additionally, thorough marine operational planning will avoid or minimize spatial and temporal overlaps and related conflicts with ongoing fishing activities. With these measures in place, Dominion Energy will continue its active engagement with fisheries stakeholders throughout the life of the Project. Dominion Energy intends to build and foster these and other collaborative relationships with fisheries agencies, representatives, and stakeholders to best inform monitoring and mitigation efforts going forward.

V-3.3 COMPLIANCE WITH EXISTING LEGAL AUTHORITY, GUIDANCE, AND BEST PRACTICES

The December 12, 2022, Draft Environmental Impact Statement (the DEIS) issued by BOEM for the Project recommended that Dominion Energy adopt, in relation to the Project, a compensation program for lost income for commercial and for-hire recreational fishermen, and other eligible fishing interests. (DEIS, Appendix H, page H-74). BOEM also recommended creation of a gear loss compensation policy. This FCMP provides for these measures, which are intended to account for impacts that could result during construction, O&M, and decommissioning of the Project.

BOEM has approval authority over the Project's COP. BOEM's approval of the COP, including this FCMP, is enforceable through the Record of Decision (the ROD) and supporting Final Environmental Impact Statement (the FEIS). As such, this FCMP was designed in consideration of the following legal requirements and best practices:

- BOEM's Draft *Guidelines for Mitigating Impact to Commercial and Recreational Fisheries on the Outer Continental Shelf Pursuant to 30 CFR Part 585*, June 23, 2022 (the "Fisheries Compensation Guidance").¹
- Outer Continental Shelf Lands Act (OCSLA): 43 U.S.C. § 1337(8)(p)(4).
- National Environmental Policy Act (NEPA): 42 U.S.C. §§ 44321 *et. seq.*
- Council of Environmental Quality (CEQ) NEPA Regulations: 40 Code of Federal Regulations (CFR) § 1508.1(s).
- Fisherman's Contingency Fund (FCF) for oil and gas activities: 50 CFR Part 296.

Dominion Energy further acknowledges Virginia's interest in the structure and scope of this FCMP and its conformity with the goals of the Virginia Coastal Zone Management Program (the CZM Program). Accordingly, Dominion Energy has consulted with VMRC during the development of this FCMP.

¹ Updated draft or final guidelines published by BOEM after the submission of this Appendix V-3 also will be taken into account.

V-3.4 PROGRAM OVERVIEW

Based on (1) applicable requirements, recommendations, and guidelines, and (2) additional best practices identified by Dominion Energy in consultation with BOEM, VMRC, and representatives of the fishing industry, this FCMP includes, as further mitigation of impacts to commercial and for-hire fisheries, three distinct funding programs: (1) an updated Gear Loss Compensation Program, (2) the Compensatory Mitigation Fund, and (3) the Surfclam Compensatory Mitigation Fund. Each program was designed to compensate different categories of potential economic impacts resulting from the Project's construction, O&M, and decommissioning. These programs are summarized in Table V-3-1.

Table V-3-1. Scope and Overview of the Three Funding Programs

Program	Scope and Overview
Gear Loss Compensation Program	Response to specific claims made by commercial fishermen for the direct damage or loss of fishing gear that is attributable to the Project.
Compensatory Mitigation Fund	Response to specific claims made by commercial or for-hire recreational fishermen and fishery-related shoreside businesses, in relation to income loss due to construction closures or presence of Project structures resulting in: <ul style="list-style-type: none"> • reduced trips (including due to lost/damaged gear); • reduced catch; • increased fuel expenses; • increased transit time; • lost business shoreside; or • other compensable direct or indirect impacts.
Surfclam Compensatory Mitigation Fund	Response to specific claims made by Atlantic surfclam commercial fishing businesses or related shoreside businesses, in relation to income loss due to construction closures or presence of Project structures.

V-3.5 LIMITATIONS ON SCOPE

This FCMP is designed to provide the three layers of compensatory mitigation described above during Project construction, O&M, and decommissioning phases. Within that context, certain limitations on funding shall apply. Specifically:

- Dominion Energy will accrue no compensatory obligations under this FCMP until the FCMP is approved by BOEM through the ROD and the Project commences construction activities.
- The Gear Loss Compensation Program, Compensatory Mitigation Fund, and Surfclam Compensatory Mitigation Fund will commence at or prior to construction of the Project. However, if the Project does not achieve the O&M phase, Dominion Energy will have no further obligation to fund or administer the Gear Loss Compensation Program, the Compensatory Mitigation Fund, or the Surfclam Compensatory Mitigation Fund, exclusive of any claims accruing during Project construction and any decommissioning obligations.

This FCMP is also designed to enable transition to a future-created federal, regional, or state program. If at any point during the life of the Project a state, regional, or federal compensation program is created, then the provisions of the Gear Loss Compensation Program or the Compensatory Mitigation Fund may be transferred to and administered by that central program as appropriate and following consultation with BOEM and VMRC. In such event, Dominion Energy will cease direct administration of the Gear Loss Compensation Program or Compensatory Mitigation Fund.

V-3.6 GEAR LOSS COMPENSATION PROGRAM

V-3.6.1 Overview and Purpose

The Gear Loss Compensation Program is intended to provide compensation for real and traceable physical gear damage and loss that may occur in relation to the Project, despite other Project mitigation measures. Commercial fishing vessels that experience damage or loss of gear that is directly attributable to physical contact with (1) Project structures or (2) vessels connected with construction or O&M of the Project may file a claim for gear repair or replacement.

V-3.6.2 Claims Process

Dominion Energy will establish² a process and structure for administering claims for lost or damaged fishing gear that aligns generally with the Fishermen's Contingency Fund established by 50 CFR Part 296, as that program exists as of the date of the ROD. Dominion Energy will administer the Gear Loss Compensation Program directly.

The Gear Loss Compensation Program will address only the direct costs incurred in relation to the repair or replacement of lost or damaged fishing gear. Any additional claims related to lost income or other economic losses must be submitted separately through the Compensatory Mitigation Fund, and in accordance with that program's requirements, which are set forth below. The communications and claims procedures relevant to the Gear Loss Compensation Program are contained in COP Appendix V-1, Attachment D (Fisheries Communication Plan, Fishing Gear Damage or Loss Claim Procedure).

V-3.6.3 Funding and Limitations on Claims

The Gear Loss Compensation Program will be funded on a per incident, as-needed basis. There will be no funds held in escrow for this purpose. Individual gear loss claims shall be limited to the real and actual repair or replacement costs incurred, and shall not exceed the total replacement value of the lost or damaged gear. Gear loss claims may also include reasonable costs and expenses associated with documenting the gear loss claim.

V-3.6.4 Claims Eligibility and Process

Dominion Energy will not pre-screen commercial fishermen or fishing vessels for eligibility. Eligibility for each individual claim will require a demonstration by the fishermen or fishing vessels of each of the following elements, at a minimum:

- The individual or fishing vessel is engaged in permitted commercial fishing activities;
- The permitted individual or fishing vessel fished in the Offshore Project Area, with a similar type of gear as that lost or damaged, in one or more of the 3 years prior to the date of the ROD;
- The location of the loss;

² Dominion Energy has an existing gear loss program; the program described in this FCMP will expand upon and improve the existing gear loss program.

- Specific gear lost or damaged;
- A reasonable basis to conclude that the claimed gear loss or damage is related to the Project structures, vessels, or operations;
- Costs associated with repair or replacement of lost or damaged gear are commercially reasonable (i.e., repair costs do not exceed the replacement value of the fishing gear involved);
- The loss or damage was not caused intentionally or through the negligence or fault of the claimant (including repeat losses in the same location); and
- Claims must be filed within 90 calendar days of the date the claimant (or the claimant's agent) first became aware of the damage or loss (excluding extenuating circumstances, when the claims deadline may be extended for good cause).

The application process and procedures outlined in the Fishing Gear Damage or Loss Claim Procedure, Attachment D to the Fisheries Communication Plan at Appendix V-1 of the COP, provides further detail of these and other claims requirements.

Eligibility for repair or replacement of fishery gear will be assessed on a claim-by-claim basis. Duplicate claims are prohibited, inclusive of any claims made through other programs. Dominion Energy will create and publicize an Incident Report Form, Claim Form, and claims procedure in accordance with COP Appendix V-1, Attachment D (Fisheries Communication Plan, Fishing Gear Damage or Loss Claim Procedure). Dominion Energy also will develop an updated claims review process that aligns with the FCF claims process and is designed to fairly and expediently administer gear loss and damage claims. Approved claims will be directly paid by Dominion Energy. Disapproved claims may be submitted to the dispute resolution process described below.

V-3.6.5 Claims Dispute Resolution

Appeals of denied gear loss claims may be mediated or submitted to binding arbitration in the Commonwealth of Virginia and in accordance with the laws of Virginia. Denied claims may be appealed by the claimant, or the claimant's agent, to a mutually agreeable and neutral third-party arbitrator retained by Dominion Energy in consultation with VMRC. Arbitration will be handled in accordance with the Judicial Arbitration and Mediation Services (JAMS) Comprehensive Arbitration Rules and the JAMS Optional Expedited Arbitration Procedures. A single arbitrator approved by JAMS will manage the appeal and issue a final, non-appealable decision that is binding on the parties involved. Dominion Energy will pay costs imposed by JAMS. The claimant will bear its own costs of appeal, but if the appeal is successful, Dominion Energy will reimburse the claimant for such costs, including reasonable attorney's fees.

V-3.6.6 Transfer

Dominion Energy will administer the Gear Loss Compensation Program. If at any point a comparable federal, state, or regional program is created for gear loss claims in relation to offshore wind projects and infrastructure, then Dominion Energy may transition this Gear Loss Compensation Program into that federal, state, or regional program, as appropriate. Such transition shall occur only following consultation with BOEM and VMRC. Continued funding or direct payment of claims by Dominion Energy shall be based on the context and requirements of the new federal, state, or regional gear loss program. The method

and timing of transfer of existing claims and relevant claims history will be determined in partnership with the new gear loss program.

V-3.7 COMPENSATORY MITIGATION FUND

V-3.7.1 Overview and Purpose

Dominion Energy will establish a Compensatory Mitigation Fund for the Project as described below. The Compensatory Mitigation Fund will adhere to the *Fisheries Compensation Guidance* as of the date of the ROD and applicable requirements. The purpose of the Compensatory Mitigation Fund is to provide monetary compensation to commercial fishing businesses, for-hire recreational fishing businesses, and impacted shoreside businesses in relation to documented economic losses resulting from the construction, O&M, or decommissioning of the Project.

The Compensatory Mitigation Fund will not narrowly prescribe the types of losses eligible for compensation. Generally, such losses may result from a reduction in the number of trips a vessel makes and ensuing reduction in catch, impacts to targeted fishery species, increased expenses owing to construction closures or presence of Project structures, or other displacement of fishing activities from the Offshore Project Area, or impacted vessel lanes, to the extent any of the foregoing result from the Project. Claims may also be made for quantified shoreside economic impacts.

V-3.7.2 Administration

If at any point a substantially similar federal, state, or regional fisheries compensation program is created that provides coverage for economic loss claims in relation to offshore wind projects and infrastructure, then Dominion Energy may transition this Compensatory Mitigation Fund into that federal, state, or regional program, as appropriate. Such transition shall occur only following consultation with BOEM and VMRC. Following any such transition, this Compensatory Mitigation Fund shall cease to operate (except to address claims arising before the transition date) and will not be further funded by Dominion Energy. Continued funding by Dominion Energy shall be based on the context and requirements of the new federal, state, or regional fisheries compensation program.

Absent transition to a regional or governmental program, the Compensatory Mitigation Fund will be administered by a neutral third-party administrator retained by Dominion Energy and mutually agreeable to both Dominion Energy and VMRC. The third-party administrator will receive claims, make claims determinations, and pay or deny claims, as appropriate. Appeals of denied claims may be submitted to arbitration for final and binding resolution, as further detailed below.

In consultation with VMRC, Dominion Energy will make a good faith effort to retain the mutually agreeable third-party administrator prior to commencement of construction of the Project, and will retain the third-party administrator no later than one year from the start of construction of the Project. Notwithstanding the foregoing sentence, construction of the Project is not contingent on retention of the third-party administrator, and any delay or failure to retain a third-party administrator shall not be cause to delay or cease construction of the Project. In addition to the funding levels provided below, Dominion Energy will bear any costs associated with the third-party administration of the Compensatory Mitigation Fund.

Dominion Energy will administer the Compensatory Mitigation Fund until the third-party administrator is retained.

V-3.7.3 Funding

The total funding of the Compensatory Mitigation Fund is based on a revenue exposure analysis that estimates the maximum economic impact in a case where no fishing activity occurred within the Lease Area. Data for party/charter vessels and Other Impacted Fishery Management Plans (FMPs) derives from National Oceanic and Atmospheric Administration data for the Lease Area and includes fishing activities regardless of state of origin. Assessment of the Most Impacted FMPs was conducted using data for the black sea bass fishery. Landings for the whelk fishery within the Lease Area were derived from the Atlantic Coastal Cooperative Statistics Program data for whelk landings reported in Virginia. Dominion Energy also considered additional, conservative economic exposure analyses conducted by VMRC with respect to relevant commercial species within the Offshore Project Area.

Based on BOEM's revenue exposure guidance, a factor of 0.02 has been applied to the total exposure to account for potential losses to shoreside business impacts. Dominion Energy then applied a 2.5 percent annual inflation factor to these totals, over each Project phase, and used that total to derive average annual economic exposure estimates. Dominion Energy then adjusted its resulting exposure analysis further upwards based on analysis provided by VMRC. This conservative approach is intended to provide a sufficient buffer between anticipated and actual economic loss exposure and related claims made against the Compensatory Mitigation Fund. As a result, the funding levels provided below are based on that worst-case assessment of Project impacts on commercial fishing, for-hire recreational fishing, and relevant shoreside businesses.

Based on this analysis, Dominion Energy will fund the Compensatory Mitigation Fund as presented in Table V-3-2.

Table V-3-2. Funding Levels for Compensatory Mitigation Fund

Phase	Total Years	Anticipated Years	Funding Level
Construction	3 years	2024-2026	For the first four years of the Project, \$5,000,000 per year, up to a maximum fund level of \$20,000,000. The first \$5,000,000 will be funded within 60 days of final project approval from BOEM. Beginning four years after the first year of construction (year five of the Project), and continuing through the Decommissioning phase, no annual contribution will be made or required if \$5,000,000 or more remains in the Compensatory Mitigation Fund. If the annual starting balance is below \$5,000,000 during any relevant year, then additional funding for that year shall equal an amount sufficient to restore the Compensatory Mitigation Fund balance to \$5,000,000, subject to the below maximum life-of-fund contribution. Total contributions to the Compensatory Mitigation Fund (including during Construction, O&M, and Decommissioning phases) shall not exceed \$40,000,000 during the life of the fund.
O&M	30 years	2027-2056	
Decommissioning	3 years	2057-2059	
		Total (maximum):	\$40,000,000

Dominion Energy will make deposits to the Compensatory Mitigation Fund in accordance with the above table on or before January 31 of each relevant calendar year. Absent transition to a regional or governmental

program, funds for the Compensatory Mitigation Fund will be separately held in an appropriate account or trust that is mutually agreeable to both Dominion Energy and VMRC.

The total amount held by the Compensatory Mitigation Fund at any one time shall not exceed twenty million dollars (\$20,000,000). Subject to Section V-3.5 of this FCMP, Dominion Energy will provide initial contribution of five million dollars (\$5,000,000) to the fund within sixty (60) days of final project approval from BOEM. If the Compensatory Mitigation Fund drops below five million dollars (\$5,000,000), it shall be restored to five million dollars (\$5,000,000) in accordance with the foregoing annual funding mechanism, and subject to a forty million dollar (\$40,000,000) total life-of-fund contribution cap. Inclusive of Construction, O&M, and Decommissioning phases, Dominion Energy is not obligated to contribute more than forty million dollars (\$40,000,000) to the Compensatory Mitigation Fund.

The foregoing funding levels will exceed the maximum anticipated annual and total potential economic exposure to commercial fishing businesses, for-hire recreational fishing businesses, and impacted shoreside businesses resulting from the construction, O&M, or decommissioning of the Project.

V-3.7.4 Claims Eligibility, Documentation, and Processing

Dominion Energy will not require pre-screening for eligibility. The Compensatory Mitigation Fund is generally available to three groups of fishery-related businesses:

- Commercial and for-hire fishing vessels or businesses with a demonstrated use of Offshore Project Area for similar fishing purposes within the 3 years prior to the date of the ROD, and who can document negative economic impacts resulting from the construction, O&M, or decommissioning phase of the Project;
- Shoreside businesses with a demonstrated support of commercial and for-hire fishing businesses within the 3 years prior to the date of the ROD and who can document negative economic impacts resulting from the construction, O&M, or decommissioning phase of the Project (e.g., reduced fish processing volume, reduced marina sales); and
- Commercial and for-hire fishing businesses with a demonstrated use of nearby non-Lease areas within the 3 years prior to the date of the ROD, and who can document negative economic impacts resulting from increased competition as a result of displacement of fishing activity from the Offshore Project Area.

Claims to the Compensatory Mitigation Fund will be due within 2 calendar years of the year of claimed economic impact (i.e., claims for 2023 would be due by December 31, 2025). Claims may be filed by any fishery-related business or individual that generally aligns with the above three categories, or their agent. Claimants must provide documentary evidence sufficient to demonstrate the claimed economic losses based on a comparison with similar pre-Project activities. Reasonable third-party costs associated with preparing claims (such as accounting services) are also eligible for reimbursement by the Compensatory Mitigation Fund. Claimants also should make reasonable efforts to quantify economic benefits attributable to the Project and to offset economic loss claims proportionally (e.g., increases in abundance of one species due to the presence of structure may offset losses related to another species). Duplicate claims are prohibited, inclusive of any claims made through other programs.

In consultation with the third-party administrator and VMRC, Dominion Energy will develop and release detailed Compensatory Mitigation Fund program documentation (the “Compensatory Mitigation Program Documents”). The Compensatory Mitigation Program Documents will incorporate the above general elements and will further detail and provide:

- Claims forms;
- Nature and scope of information required;
- Process for requesting additional information on a claim or claims;
- Claim submittal and review process and timelines;
- Claim payment process and timelines; and
- Claim denial procedures and appeals process.

The Compensatory Mitigation Program Documents may be revised from time to time to reflect best practices based on experience gained through administering the Compensatory Mitigation Fund, further guidance from BOEM, or input from VMRC. Dominion Energy will work with the third-party administrator to ensure that the Compensatory Mitigation Program Documents are publicly available, accessible online, and provided through the FCP.

Until retention of the third-party administrator, Dominion Energy will review and determine each claim on a per claim basis, and in accordance with the Compensatory Mitigation Program Documents. Following retention of the third-party administrator, the third-party administrator will review and determine each claim on a per claim basis, and in accordance with the Compensatory Mitigation Program Documents, subject to transfer of the program to a substantially similar federal, state, or regional fisheries compensation program in accordance with Section V-3.7.2.

V-3.7.5 Recoverable Claims Levels

BOEM’s *Fisheries Compensation Guidance* recommends compensation for economic losses for 5 years of operations, noting that “[c]ompensatory mitigation beyond 5 years post-construction may be necessary and should be evaluated based on the activities proposed in the COP.” The *Fisheries Compensation Guidance* further recognizes that “there is an adjustment period for fisheries post construction”, and accordingly, recommends a declining percentage-based payment structure for compensatory claims, as follows: “100 percent of revenue exposure for the first year after construction, 80 percent of revenue exposure 2 years after construction, 70 percent of revenue exposure 3 years after construction, 60 percent after four years, and 50 percent after five years post construction.” Dominion Energy has designed the Compensatory Mitigation Fund described in this FCMP to exceed BOEM recommendations.³

The Compensatory Mitigation Fund will pay a percentage of claims as presented in Table V-3-3.

Table V-3-3. Percentage of Claims to be Paid from Compensatory Mitigation Fund

Phase	Total Years	Anticipated Calendar Years	Percentage of Claim Payable
Construction	3	2024-2026	100%
O&M	1	2027	100%

³ If the Compensatory Mitigation Fund transitions to a regional or governmental program this structure may be adjusted to comport with such program.

Phase	Total Years	Anticipated Calendar Years	Percentage of Claim Payable
O&M	1	2028	80%
O&M	1	2029	70%
O&M	1	2030	60%
O&M	26	2031-2056	50%
Decommissioning	3 years	2057-2059	100%

The above table, and the funding mechanisms provided above, provide for payment of economic loss claims from the Compensatory Mitigation Fund during construction, 30 years of O&M, and decommissioning phases. The longevity of the Compensatory Mitigation Fund well exceeds BOEM recommendations.

Claims will be limited to and paid in accordance with the above percentages, excluding administrative costs that will remain fully recoverable. For example, an approved claim for \$1,000 made in year three of the O&M phase, with \$150 in associated administrative costs, would be paid as follows: $(70\% * \$1,000) + \$150 = \$850$.

Exclusive of decommissioning obligations, Dominion Energy's financial obligations under the Compensatory Mitigation Fund will terminate upon reaching 30 years of O&M. Any funds remaining in the Compensatory Mitigation Fund following the O&M phase shall be applied towards funding the decommissioning phase of the Compensatory Mitigation Fund. Following decommissioning, any funds remaining in the Compensatory Mitigation Fund (subject to the administration of then-pending or accrued claims) shall be returned to Dominion Energy.

V-3.7.6 Claims Dispute Resolution

Appeals of denied Compensatory Mitigation Fund claims may be mediated or submitted to binding arbitration in the Commonwealth of Virginia and in accordance with the laws of Virginia. Denied claims may be appealed by the claimant, or the claimant's agent, to a mutually agreeable and neutral third-party arbitrator selected by Dominion Energy or by the third-party administrator upon retention in consultation with VMRC. Arbitration will be handled in accordance with the JAMS Comprehensive Arbitration Rules and the JAMS Optional Expedited Arbitration Procedures. A single arbitrator approved by JAMS will manage the appeal and issue a final, non-appealable decision that is binding on the parties involved. Dominion Energy will pay costs of the arbitrator. The claimant will bear its own costs of appeal but, if the appeal is successful, Dominion Energy will reimburse the claimant for such costs, including reasonable attorney's fees.

V-3.8 SURFCLAM COMPENSATORY MITIGATION FUND

V-3.8.1 Overview and Purpose

Although the Atlantic surfclam is not actively fished in the Offshore Project Area, Dominion Energy created the Surfclam Compensatory Mitigation Fund to supplement BOEM-recommended compensation programs to address regional concerns related to Atlantic surfclam fisheries and related businesses.

V-3.8.2 Claims Eligibility

Dominion Energy will not require pre-screening for eligibility. The Surfclam Compensatory Mitigation Fund is generally available to two groups of Atlantic surfclam businesses:

- Commercial fishing vessels, businesses, or individuals with demonstrated history of Atlantic surfclam fishing anywhere within Virginia coastal waters or federal waters offshore from Virginia or North Carolina (such fishing need not have occurred within the Offshore Project Area) and who can document negative economic impacts resulting from the construction, O&M, or decommissioning phase of the Project; and
- Shoreside businesses with a demonstrated history of supporting commercial Atlantic surfclam fishing and who can document negative economic impacts resulting from the construction, O&M, or decommissioning phase of the Project (e.g., reduced fish processing volume or marina sales).

V-3.8.3 Administration and Claims Process

The Surfclam Compensatory Mitigation Fund will be administered by a neutral third-party administrator retained by Dominion Energy and mutually agreeable to both Dominion Energy and VMRC. The third-party administrator will receive claims, make claims determinations, and pay or deny claims, as appropriate. Appeals of denied claims may be submitted to arbitration for final and binding resolution, as further detailed below.

In consultation with VMRC, Dominion Energy will make a good faith effort to retain the mutually agreeable third-party administrator prior to commencement of construction of the Project, and will retain the third-party administrator no later than one year from the start of construction of the Project. Notwithstanding the foregoing sentence, construction of the Project is not contingent on retention of the third-party administrator, and any delay or failure to retain a third-party administrator shall not be cause to delay or cease construction of the Project. In addition to the funding levels provided below, Dominion Energy will bear any costs associated with the third-party administration of the Surfclam Compensatory Mitigation Fund. Dominion Energy will administer the Surfclam Compensatory Mitigation Fund until the third-party administrator is retained.

Claims to the Surfclam Compensatory Mitigation Fund will be due within 2 calendar years of the year of claimed economic impact (i.e., claims for 2023 would be due by December 31, 2025). Claims may be filed by any Surfclam-related business or individual that generally aligns with the above two categories, or its agent. Claimants must provide documentary evidence sufficient to demonstrate the claimed economic losses based on a comparison with similar pre-Project activities (there is no requirement to demonstrate prior fishing within the Offshore Project Area). Reasonable third-party costs associated with preparing claims (such as accounting services) also are eligible for reimbursement by the Surfclam Compensatory Mitigation Fund. Duplicate claims are prohibited, inclusive of any claims made through other programs (including without limitation the general Compensatory Mitigation Fund provided for herein). Subject to the life-of-fund maximum in Section V-3.8.4 below, 100 percent of valid claims will be payable from the Surfclam Compensatory Mitigation Fund during the construction, O&M, and decommissioning phases of the Project.

In consultation with the third-party administrator and VMRC, Dominion Energy will develop and release detailed Surfclam Compensatory Mitigation Fund program documentation (the “Surfclam Compensatory Mitigation Program Documents”). The Surfclam Compensatory Mitigation Program Documents will incorporate the above general elements and will further detail and provide:

- Claims forms;
- Nature and scope of information required;
- Process for requesting additional information on a claim or claims;
- Claim submittal and review process and timelines;
- Claim payment process and timelines; and
- Claim denial procedures and appeals process.

The Surfclam Compensatory Mitigation Program Documents may be revised from time to time to reflect best practices based on experience gained through administering the Surfclam Compensatory Mitigation Fund, further guidance from BOEM, or input from VMRC. Dominion Energy will work with the third-party administrator to ensure that the Surfclam Compensatory Mitigation Program Documents are publicly available, accessible online, and provided through the FCP.

Until retention of the third-party administrator, Dominion Energy will review and determine each claim on a per claim basis, and in accordance with the Surfclam Compensatory Mitigation Program Documents. Following retention of the third-party administrator, the third-party administrator will review and determine each claim on a per claim basis, and in accordance with the Surfclam Compensatory Mitigation Program Documents.

V-3.8.4 Funding

The Surfclam Compensatory Mitigation Fund will be funded up to a total maximum of three million dollars (\$3,000,000), which shall encompass the construction, O&M, and decommissioning phases of the Project. There will be no funds held in escrow for this purpose. Dominion Energy will have no obligation to pay any claims above the three-million-dollar (\$3,000,000) life-of-fund cap. The foregoing life-of-fund cap well exceeds the maximum anticipated annual and total potential economic exposure to the Atlantic surfclam industry resulting from the construction, O&M, or decommissioning of the Project.

V-3.8.5 Claims Dispute Resolution

Appeals of denied Surfclam Compensatory Mitigation Fund claims may be mediated or submitted to binding arbitration in the Commonwealth of Virginia and in accordance with the laws of Virginia. Denied claims may be appealed by the claimant, or the claimant’s agent, to a mutually agreeable and neutral third-party arbitrator selected by Dominion Energy. Arbitration will be handled in accordance with the JAMS Comprehensive Arbitration Rules and the JAMS Optional Expedited Arbitration Procedures. A single arbitrator approved by JAMS will manage the appeal and issue a final, non-appealable decision that is binding on the parties involved. Dominion Energy will pay costs of the arbitrator. The claimant will bear its own costs of appeal but, if the appeal is successful, Dominion Energy will reimburse the claimant for such costs, including reasonable attorney’s fees.