

## **PRELIMINARY DRAFT DISCLAIMER**

The document that follows reflects an initial, working draft protocol for the Coastal Virginia Offshore Wind Fisheries and Surfclam Compensatory Mitigation Programs. *This draft is not final* and is intended to elicit further stakeholder feedback. The final version of the protocol may change materially from this initial draft.

Stakeholders interested in providing feedback on this draft protocol should contact the program administrator through the website or email address shown below by August 28, 2025. The final protocol will launch on September 15, 2025.



### **Provide Your Feedback**



[www.CVOWFisheriesCompensation.com/Home/ContactUs](http://www.CVOWFisheriesCompensation.com/Home/ContactUs)



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**COASTAL VIRGINIA OFFSHORE WIND  
COMPENSATION PROGRAM PROTOCOLS**

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## **I. INTRODUCTION**

[Appendix V-3](#) of the BOEM approved Coastal Virginia Offshore Wind (“CVOW”) [Construction and Operations Plan](#) (the “COP”) established a three-part Fisheries Compensatory Mitigation Plan, providing the process and methodology to compensate the local fishing industry for potential adverse impacts resulting from the Dominion Energy Virginia (“Dominion Energy”) CVOW Commercial Project (the “Project”). First, the CVOW Fisheries Compensatory Mitigation Fund (the “Fund” or the “Program”) provides up to \$40 million in monetary compensation to eligible commercial fishing businesses, for-hire recreational fishing businesses, and shoreside commercial fishing support businesses that experience documented economic losses resulting from the construction, operations and maintenance, or decommissioning of the Project. Second, the CVOW Surfclam Compensatory Mitigation Fund (the “Surfclam Fund” or the “Surfclam Program”) provides up to \$3 million in monetary compensation to eligible commercial Atlantic surfclam fishing businesses and shoreside commercial Atlantic surfclam fishing support businesses that experience documented economic losses resulting from the construction, operations and maintenance, or decommissioning of the Project.<sup>1</sup> Third, the CVOW Gear Loss Compensation Program (the “Gear Loss Program”) provides as-needed compensation for loss of, or damage to, commercial fishing gear occurring within the Lease Area (as defined in the COP), or the Offshore Export Cable Route Corridor (as defined in the COP, collectively with the Lease Area, the “Offshore Project Area”), and related to the construction, operation, or decommissioning of the Project.

The COP mandated that Dominion Energy retain a neutral third-party administrator that is agreeable to both Dominion Energy and the Virginia Marine Resources Commission (“VMRC”) to “receive claims, make claims determinations, and pay or deny claims, as appropriate” for the Program and the Surfclam Program. COP, App. V-3, §§ 3.7.2 & 3.8.3. With VMRC’s assent, Dominion Energy contracted with BrownGreer PLC to perform these functions and serve as the “Program Administrator” for both funds. Dominion Energy is self-administering the Gear Loss Program.<sup>2</sup>

These CVOW Compensation Program Protocols described in this document (collectively referenced hereafter as the “Protocol”) set out the requirements for participation in, and compensation from, the Fund

<sup>1</sup> The Fund is capped at \$40 million, and the Surfclam Fund is capped at \$3 million. If claims reach these levels, no further claims will be paid.

<sup>2</sup> Details on the Gear Loss Program, including eligibility and claims process requirements, are not covered by this Protocol. Information on the Gear Loss Program may be found in the COP at [App. V-1, Attachment D](#), and [App. V-3, Section V-3.6](#).

and the Surfclam Fund, as detailed in the COP and refined through engagement with affected stakeholder communities.

## **II. CVOW FISHERIES COMPENSATORY MITIGATION FUND**

### **A. OVERVIEW.**

The Program accepts claims from the following business and claimant types:

<b>BUSINESS TYPES</b>	<b>CLAIMANT TYPES</b>
Commercial Fishing	<ul style="list-style-type: none"> <li>• Vessel Owner</li> <li>• Vessel Lessee</li> <li>• Crew</li> </ul>
For-Hire Recreational Fishing	<ul style="list-style-type: none"> <li>• Vessel Owner</li> <li>• Vessel Lessee</li> <li>• Crew</li> </ul>
Shoreside Commercial Fishing Support	Business Owner

For each business and claimant type, a claimant will have to establish that the claimant (1) is eligible to participate in the Program, and (2) experienced a compensable, documented economic loss. Details on eligibility and other requirements specific to each business and claimant type follow in Sections (II)C, D, and E, below. Double-recovery is not allowed (*i.e.*, if a Vessel Lessee files a claim the Vessel Owner cannot also recover for the same losses, but may file a claim for distinct eligible economic losses).

### **B. CLAIM FILING TIMELINES.**

The following timelines apply to all business and claimant types:

1. **Loss Period.** The Fund covers qualified claims for economic losses experienced from October 30, 2023, through December 31, 2059, subject to the overall Fund limit.
2. **Claims Period.** Claims to the Fund must be filed within two calendar years of the year of claimed loss (*i.e.*, claims for 2024 are due by December 31, 2026). The filing deadline for all claims is December 31, 2061.

Claimants may file only one claim for qualifying losses experienced within a single calendar year from January 1<sup>st</sup> through December 31<sup>st</sup>. A single claim constitutes all qualifying losses

experienced by the claimant in any given calendar year. Claimants who experience losses in more than one calendar year may file a new claim for each year in which a qualifying loss occurred.

## **C. COMMERCIAL FISHING BUSINESSES.**

### **1. Vessel Owners/Vessel Lessees.**

#### **(a) Claimant Eligibility.**

##### **(1) Eligibility Definition.**

To be eligible to submit a claim, commercial fishing vessel owners and vessel lessees must have used lawfully:

- a. The Offshore Project Area for similar fishing purposes as those claimed to be impacted by the Project (*i.e.*, use of similar gear and similar target species) within the three-year period of October 30, 2020, through October 30, 2023; or
- b. For claims of economic loss caused by increased competition as a result of displacement of fishing activity from the Offshore Project Area, nearby non-Lease areas (*i.e.*, within 3 nautical miles (NM) of the Offshore Project Area) for similar fishing purposes as those claimed to be impacted by the Project (*i.e.*, use of similar gear and similar target species) within the three-year period of October 30, 2020, through October 30, 2023.

##### **(2) Proof of Eligibility.** Commercial fishing vessel owners and vessel lessees must provide the following:

- a. A completed Claim Form;<sup>3</sup>
- b. Proof of authority to fish commercially (*e.g.*, a valid fishing license and/or permit);
- c. Proof of vessel ownership/lease (*e.g.*, valid title);
- d. Proof of authority to operate vessel (*e.g.*, valid vessel registration);
- e. Proof of authority to conduct business (*e.g.*, valid business license);
- f. Proof of fishing location history (*e.g.*, VMS/VTR/AIS data, harvester/personal logbooks, chart plotter records, proof of homeport, etc.);

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<sup>3</sup> All Claim Forms referenced in this Protocol may be submitted electronically through, or downloaded from, the Program Administrator's website, [www.CVOWFisheriesCompensation.com](http://www.CVOWFisheriesCompensation.com), or may be requested by email to the Program Administrator at [Contact@CVOWFisheriesCompensation.com](mailto:Contact@CVOWFisheriesCompensation.com).

- g. Documentation of species type and state or federal permits required, when applicable;
- h. Authorization(s) requested by the Program Administrator for access to claimant's fishing history data held by government or other entities; and
- i. List of names and contact information of crew employed for 12 months or more from October 30, 2020, through October 30, 2023, noting the dates of, and reasons for, any crew terminations or other departures (voluntary, medical, etc.).

**(b) Economic Loss Claim Eligibility.**

**(1) Eligibility Definition.** To receive compensation from the Fund, eligible commercial fishing vessel owners and vessel lessees must have experienced documented economic losses resulting from the construction, operations and maintenance, or decommissioning of the Project. Valid claims may include:

- a. Reduction in the number of trips a vessel can make due to Project-related closures and ensuing reduction in catch;
- b. Impacts to targeted fishery species;
- c. Increased expenses owing to construction closures or presence of Project structures;
- d. Displacement of fishing activities from the Offshore Project Area, or impacted vessel lanes;
- e. Other losses caused by the Project; and/or
- f. Third-party costs associated with preparing claims.

**(2) Proof of Economic Loss.** For demonstrating proof of negative economic impacts caused by the Project, eligible commercial fishing vessel owners or vessel lessees must provide the following:

- a. Proof of level of effort,<sup>4</sup> fishing location, landings, and revenue from commercial fishing in the Offshore Project Area or nearby non-Lease area for calendar years 2020, 2021, 2022, and 2023 (*e.g.*, profit/loss statements, harvester/personal logbooks, dealer reports, receipt of sales, tax documents, etc.);

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<sup>4</sup> "Proof of level of effort" is a demonstration of the resources used to harvest fish, which may include the number of vessels, the frequency, consistency, and/or duration of fishing trips, the count and expertise of crew, fishing methods employed, etc. Relevant data points will be captured on the Claim Form but also should be supported or supplemented by documentation. Reduced fishing effort, if not caused by the Project, would not reflect a compensable economic loss in this Program.

- b. Proof of level of effort, fishing location, landings, and revenue from commercial fishing in the Offshore Project Area or nearby non-Lease area for the calendar year of the claimed economic loss;
- c. Sworn written statement explaining why, in claimant's view, any economic loss experienced was caused by the Project;
- d. As needed, sworn written statement attributing demonstrated revenues to commercial fishing.

## 2. Crew.

### (a) Claimant Eligibility.

- (1) **Eligibility Definition.** To be eligible to submit a claim, commercial fishing crew must have been employed within the three-year period of October 30, 2020, through October 30, 2023, for at least 12 months by a commercial fishing vessel owner or lessee otherwise eligible for compensation under Section II(C)(1) of this Program.
- (2) **Proof of Eligibility.** Commercial fishing crew must provide:
  - a. A completed Claim Form;<sup>5</sup>
  - b. Proof of employment for at least 12 months within the period of October 30, 2020, through October 30, 2023, by Program-eligible commercial fishing vessel owner or vessel lessee;<sup>6</sup> and
  - c. A coinciding documented economic loss to the vessel owner or vessel lessee caused by the Project, or a sworn written statement explaining why employment was unavailable to claimant because of the Project.

### (b) Economic Loss Claim Eligibility.

- (1) **Eligibility Definition.** To receive compensation from the Fund, eligible commercial fishing crew must have experienced documented economic losses resulting from the

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<sup>5</sup> See Footnote 3.

<sup>6</sup> Commercial and for-hire fishing crew members must attest on their Claim Forms that they were employed by a Program-eligible commercial fishing vessel owner or vessel lessee, and submit documentation supporting this attestation. Examples of documents that may serve as proof of a crew member's employment with a Program-eligible commercial fishing vessel owner or vessel lessee include, but are not limited to, employment contracts, a sea service letter or confirmation of employment on company letterhead, a copy of the vessel's crew list, pay records indicating the income source, or a sworn affidavit from the vessel owner. If the owner of a vessel on which a crew member worked does not submit a vessel owner claim with the Program, the crew member will have to establish to the fullest extent reasonably possible that the vessel's fishing history and activities would qualify the vessel's crew for potential compensation. Inability to attribute crew service to *eligible* commercial fishing and/or for-hire recreational fishing businesses may result in reduction or denial of crew compensation.

construction, operations and maintenance, or decommissioning of the Project.<sup>7</sup> Valid claims may include:

- a. Reduction in the number of trips a crew member can make on a vessel due to Project-related closures and ensuing reduction in income or wages;
- b. Reduction in crew income due to impacts to targeted fishery species, increased expenses to vessel owner or vessel lessee owing to construction closures or presence of Project structures, or displacement of fishing activities from the Offshore Project Area, or impacted vessel lanes;
- c. Other losses caused by the Project; and/or
- d. Third-party costs associated with preparing claims.

**(2) Proof of Economic Loss.** For demonstrating proof of negative economic impacts caused by the Project, commercial fishing crew must provide (1) a sworn written statement explaining why, in claimant's view, any economic loss experienced was caused by the Project; and (2) documentation of compensation – from an eligible vessel owner or vessel lessee – from commercial fishing in the Offshore Project Area or nearby non-Lease area for (a) calendar years 2020, 2021, 2022, and 2023, and (b) the calendar year of the claimed economic loss. Such proof may include:

- a. Paycheck stubs and/or other employer records documenting actual amounts paid for qualifying fishing activity;
- b. Other payment documentation, as needed, to demonstrate bank records showing income deposits and supporting documentation indicating the source of those deposits;
- c. Receipts or records from check cashing or payday loan services and supporting documentation indicating the source of those funds;
- d. Contracts for employment accompanied by documentation establishing that wages or other amounts to be paid pursuant to the contract, if applicable, were in fact paid;
- e. Tax documentation; and/or
- f. Pay period earnings detail submitted under oath and included in court filings (for example, documentation provided in connection with divorce, child support, or wage garnishment proceedings).

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<sup>7</sup> The Project must be the cause of the economic loss or unavailability of employment; reductions or cessation in employment (such as voluntary departures, permanent or temporary departures for medical or personal reasons, etc.) not caused by the Project are not compensable.

- g. As needed, sworn written statement attributing demonstrated income to commercial fishing.

#### **D. FOR-HIRE RECREATIONAL FISHING BUSINESSES.**

##### **1. Vessel Owners/Vessel Lessees.**

###### **(a) Claimant Eligibility.**

**(1) Eligibility Definition.** To be eligible to submit a claim, for-hire recreational fishing vessel owners and vessel lessees must have used lawfully:

- a. The Offshore Project Area for similar fishing purposes as those claimed to be impacted by the Project (*i.e.*, use of similar gear and similar target species) within the three-year period of October 30, 2020, through October 30, 2023; or
- b. For claims of economic loss caused by increased competition as a result of displacement of fishing activity from the Offshore Project Area, nearby non-Lease areas (*i.e.*, within 3 nautical miles (NM) of the Offshore Project Area) for similar fishing purposes as those claimed to be impacted by the Project (*i.e.*, use of similar gear and similar target species) within the three-year period of October 30, 2020, through October 30, 2023.

**(2) Proof of Eligibility.** For-hire recreational fishing vessel owners and vessel lessees must provide the following:

- a. A completed Claim Form;<sup>8</sup>
- b. Proof of authority to take charters (*e.g.*, a valid charter boat license and/or permit);
- c. Proof of vessel ownership/lease (*e.g.*, valid title);
- d. Proof of authority to operate vessel (*e.g.*, valid vessel registration);
- e. Proof of authority to conduct business (*e.g.*, valid business license);
- f. Proof of fishing location history (*e.g.*, VMS/VTR/AIS data, harvester/personal logbooks, chart plotter records, proof of homeport, etc.);
- g. Documentation of species type and state or federal permits required, when applicable;
- h. Authorization(s) requested by the Program Administrator for access to claimant's fishing history data held by government or other entities; and

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<sup>8</sup> See Footnote 3.

- i. List of names and contact information of crew employed for 12 months or more from October 30, 2020, through October 30, 2023, noting the dates of, and reasons for, any crew terminations or other departures (voluntary, medical, etc.).

**(b) Economic Loss Claim Eligibility.**

**(1) Eligibility Definition.** To receive compensation from the Fund, eligible for-hire recreational fishing vessel owners and vessel lessees must have experienced documented economic losses resulting from the construction, operations and maintenance, or decommissioning of the Project. Valid claims may include:

- a. Reduction in the number of trips a vessel can make due to Project-related closures and ensuing reduction in catch;
- b. Impacts to targeted fishery species;
- c. Increased expenses owing to construction closures or presence of Project structures;
- d. Displacement of fishing activities from the Offshore Project Area, or impacted vessel lanes;
- e. Other losses caused by the Project; and/or
- f. Third-party costs associated with preparing claims.

**(2) Proof of Economic Loss.** For demonstrating proof of negative economic impacts caused by the Project, an eligible for-hire recreational fishing vessel owner or vessel lessee must provide the following:

- a. Proof of level of effort,<sup>9</sup> fishing location, and revenue from for-hire recreational fishing in the Offshore Project Area or nearby non-Lease area for calendar years 2020, 2021, 2022, and 2023 (*e.g.*, profit/loss statements, personal logbooks, tax documents, etc.);
- b. Proof of level of effort, fishing location, and revenue from for-hire recreational fishing in the Offshore Project Area or nearby non-Lease area for the calendar year of the claimed economic loss;
- c. Sworn written statement explaining why, in claimant's view, any economic loss experienced was caused by the Project;
- d. As needed, sworn written statement attributing demonstrated revenues to for-hire recreational fishing.

**2. Crew.**

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<sup>9</sup> See Footnote 4.

(a) **Claimant Eligibility.**

- (1) **Eligibility Definition.** To be eligible to submit a claim, for-hire recreational fishing crew must have been employed within the three-year period of October 30, 2020, through October 30, 2023, for at least 12 months by a for-hire recreational fishing vessel owner or lessee otherwise eligible for compensation under Section II(D)(1) of this Program.
- (2) **Proof of Eligibility.** For-hire recreational fishing crew must provide:
  - a. A completed Claim Form;<sup>10</sup>
  - b. Proof of employment for at least 12 months within the period of October 30, 2020, through October 30, 2023, by a Program-eligible for-hire recreational fishing vessel owner or vessel lessee;<sup>11</sup> and
  - c. A coinciding documented economic loss to the vessel owner or vessel lessee caused by the Project or a sworn written statement explaining why employment was unavailable to claimant because of the Project.

(b) **Economic Loss Claim Eligibility.**

- (1) **Eligibility Definition.** To receive compensation from the Fund, eligible for-hire recreational fishing crew must have experienced documented economic losses resulting from the construction, operations and maintenance, or decommissioning of the Project.<sup>12</sup> Valid claims may include:
  - a. Reduction in the number of trips a crew member can make on a vessel due to closures and ensuing reduction in income or wages;
  - b. Reduction in crew income due to impacts to targeted fishery species, increased expenses to vessel owner or vessel lessee owing to construction closures or presence of Project structures, or displacement of fishing activities from the Offshore Project Area, or impacted vessel lanes;
  - c. Other losses caused by the Project; and/or
  - d. Third-party costs associated with preparing claims.
- (2) **Proof of Economic Loss.** For demonstrating proof of negative economic impacts caused by the Project, for-hire recreational fishing crew must provide (1) a sworn written statement explaining why, in claimant's view, any economic loss experienced was caused by the Project and (2) documentation of compensation – from a Program-eligible

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<sup>10</sup> See Footnote 3.

<sup>11</sup> See Footnote 6.

<sup>12</sup> See Footnote 7.

vessel owner or vessel lessee – from for-hire recreational fishing in the Offshore Project Area or nearby non-Lease area for (a) calendar years 2020, 2021, 2022, and 2023 and (b) the calendar year of the claimed economic loss. Such proof may include:

- a. Paycheck stubs and/or other employer records documenting actual amounts paid for qualifying fishing activity;
- b. Other payment documentation, as needed, to demonstrate bank records showing income deposits and supporting documentation indicating the source of those deposits;
- c. Receipts or records from check cashing or payday loan services and supporting documentation indicating the source of those funds;
- d. Contracts for employment accompanied by documentation establishing that wages or other amounts to be paid pursuant to the contract, if applicable, were in fact paid;
- e. Tax documentation; and/or
- f. Pay period earnings detail submitted under oath and included in court filings (for example, documentation provided in connection with divorce, child support, or wage garnishment proceedings).
- g. As needed, sworn written statement attributing demonstrated income to commercial fishing.

## **E. SHORESIDE COMMERCIAL FISHING SUPPORT BUSINESSES.**

### **1. Claimant Eligibility.**

**(a) Eligibility Definition.** To be eligible to submit a claim, shoreside businesses must have lawfully supported through direct, first-transaction sales to, or purchases from, commercial fishing businesses and/or for-hire recreational fishing businesses – eligible to submit a claim under Sections II(C)(1) and I(D)(1) of this Program – within the three-year period of October 30, 2020, through October 30, 2023.<sup>13</sup>

**(b) Proof of Eligibility.** Shoreside businesses must provide the following:

- (1) A completed Claim Form;<sup>14</sup>

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<sup>13</sup> Shoreside businesses must attest on the Claim Form that they support eligible commercial fishing businesses and/or for-hire recreational fishing businesses. Documents that shoreside businesses may submit to demonstrate they supported eligible commercial fishing businesses and/or for-hire recreational fishing may include, but are not limited to, business banking statements, accounting records, sales receipts and invoices, dealer slips or compilation reports, or a sworn statement from the commercial fishing businesses and/or for-hire recreational fishing businesses confirming support. Inability to attribute sales to, or purchases from, *eligible* commercial fishing and/or for-hire recreational fishing businesses may result in reduction or denial of shoreside business compensation.

<sup>14</sup> See Footnote 3.

- (2) Proof of authority to conduct business (*e.g.*, valid business license);
- (3) Proof of business location (*e.g.*, utility bills);
- (4) List of commercial fishing businesses and for-hire recreational fishing businesses supported through direct, first-transaction sales to, or purchases from, during the period of October 30, 2020, through October 30, 2023.

## 2. **Economic Loss Claim Eligibility.**

(a) **Eligibility Definition.** To receive compensation from the Fund, eligible shoreside fishing support businesses must have experienced documented economic losses resulting from the construction, operations and maintenance, or decommissioning of the Project. Valid claim types may include:

- (1) Reduced fishing processing volume;
- (2) Reduced marina sales;
- (3) Other losses caused by the Project; and/or
- (4) Third-party costs associated with preparing claims.

(b) **Proof of Economic Loss.** For demonstrating proof of negative economic impacts caused by the Project, a shoreside fishing support business must provide the following:

- (1) Proof of level of effort<sup>15</sup> and revenue from first-transaction sales to, or purchases from, eligible commercial fishing businesses and/or for-hire recreational fishing businesses for calendar years 2020, 2021, 2022, and 2023 (*e.g.*, logbooks of dates of operation, profit/loss statements, receipt of sales, tax documents, etc.);
- (2) Proof of level of effort and revenue from first-transaction sales to, or purchases from, commercial fishing businesses and/or for-hire recreational fishing businesses for the calendar year of the claimed economic loss;
- (3) Sworn written statement explaining why, in claimant's view, any economic loss experienced was caused by the Project; and
- (4) As needed, sworn written statement attributing portions of pooled revenues to first-transaction sales to, or purchases from, eligible commercial fishing and/or for-hire recreational fishing businesses.

## F. **LOSS CALCULATION.**

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<sup>15</sup> "Proof of level of effort" is a demonstration of the resources used, such as consistent operating hours and efforts made to continue business, and attract business, in the ordinary course. Relevant data points will be captured on the Claim Form but also should be supported or supplemented by documentation. Reduced purchase/sales effort, if not caused by the Project, would not reflect a compensable economic loss in this Program.

Each Program claim must assert a specific amount of economic loss caused by the Project and support that amount with required documentation. For all business and claimant types discussed in Section II, if the Administrator determines that a claimant is eligible and a claim qualifies for compensation, claims will be paid out according to the following schematic:

1. For approved claims attributed to construction (2024-2026) and the first year of operation (2027), 100% of the claim will be awarded.
2. For approved claims attributed to the second year of operation (2028), 80% of the claim will be awarded.
3. For approved claims attributed to the third year of operation (2029), 70% of the claim will be awarded.
4. For approved claims attributed to the fourth year of operation (2030), 60% of the claim will be awarded.
5. For approved claims attributed to the fifth through twenty-sixth years of operation (2031-2056), 50% of the claim will be awarded.
6. For approved claims with demonstrated losses attributed to decommissioning (2057-2059), as compared to income or revenues earned in 2054, 2055, or 2056, 100% of the claim will be awarded.

Reasonable third-party costs associated with preparation of an approved claim, regardless of claim year, will be awarded at 100%.

As part of the claims review process, the claimant, the Administrator, and other stakeholders may identify alternative causes for (*e.g.*, fishing quotas, closed fisheries, climate change, natural disaster, voluntary crew resignation or termination for cause, service-related shoreside loss, etc.) or offsets to (*e.g.*, abundance of one species due to structures in the Offshore Project Area, partial payment made from a different program, etc.) claimed losses. Any alternative causes and/or offsets will be factored into the final claim valuation, as needed.

All payments are subject to the monetary limitations of the Fund.

## **G. CLAIMS ADJUDICATION AND APPEALS PROCESS.**

1. **Initial Claims Evaluation.** The Administrator will review a claim submission within 180 days of receipt of a complete claim package, with discretionary 60-day extensions, in which case notice will be given to the claimant. The Administrator will review the claim package for Program eligibility and sufficiency of documented economic loss. After this review, the Administrator will issue a determination, with notice to claimant, (1) approving the claim, in whole or in part, and indicating the amount a claimant will receive, (2) denying the claim, in whole or in part, and providing the basis for such denial, or (3) identifying deficiencies in the submission.

2. **Opportunity to Cure.** Claimants whose initial submissions were deemed deficient have 60 days to submit additional materials and/or information to cure the deficiency. The Administrator will evaluate additional materials submitted in the same manner as initial claims, provided above. The opportunity to cure is only available once per claim, *i.e.* once per claimant in each calendar year.
3. **Reconsideration.** Claimants who disagree with the Administrator’s determination have 60 days following issuance of notice of either (a) initial claim determination or (b) post-deficiency cure determination to submit, to the Administrator, a written request for reconsideration of that determination and provide any additional information/materials in support of their argument. The Administrator will evaluate requests for reconsideration and additional materials submitted in the same manner as initial claims, provided above.
4. **Appeal.** Appeals of reconsidered claims may be mediated or submitted to binding arbitration in the Commonwealth of Virginia and in accordance with the laws of Virginia. Within six months of notice of determination after reconsideration, claimant, or the claimant’s agent, may file a written notice of appeal with the Administrator and submit the appeal to [JAMS approved neutral third-party arbitrator to be named]. [Arbitrator] 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.

#### **H. PAYMENT.**

1. **Award Acceptance.** Claimants with eligible claims must accept their award and execute the release agreement appearing as Exhibit 2 to this Protocol to receive payment.
2. **Payment Method.** Claimants will have made their payment method election on their completed Claim Form at the time they submitted their claim.
3. **Payment Schedule.** Payments will issue on approximately a rolling, monthly basis, within 60 days after both a final determination and expiration of any reconsideration or appeal deadlines.

#### **I. PROTOCOL MODIFICATIONS.**

This Protocol may be modified at any time for any reason to add, remove, or edit provisions as circumstances may warrant.

### **III. SURFLAM COMPENSATORY MITIGATION FUND**

#### **A. OVERVIEW.**

The Surfclam Program accepts claims from the following business and claimant types:

<b>BUSINESS TYPES</b>	<b>CLAIMANT TYPES</b>
-----------------------	-----------------------

Commercial Atlantic Surfclam Fishing	<ul style="list-style-type: none"> <li>• Vessel Owner</li> <li>• Vessel Lessee</li> <li>• Crew</li> </ul>
Shoreside Commercial Atlantic Surfclam Fishing Support	Business Owner

For each business and claimant type, a claimant will have to establish that the claimant (1) is eligible to participate in the Surfclam Program and (2) experienced a compensable, documented economic loss. Details on eligibility and other requirements specific to each business and claimant type follow in Sections (III)(C) and (D) below. Double-recovery is not allowed (*i.e.*, if a Vessel Lessee files a claim the Vessel Owner cannot also recover for the same losses, but may file a claim for distinct eligible economic losses).

**B. CLAIM FILING TIMELINES.**

The following timelines apply to all business and claimant types:

1. **Loss Period.** The Surfclam Fund covers qualified claims for economic losses experienced from October 30, 2023, through December 31, 2059, subject to the overall Surfclam Fund limit.
2. **Claims Period.** Claims to the Surfclam Fund must be filed within two calendar years of the year of claimed loss (*i.e.*, claims for 2024 are due by December 31, 2026). The filing deadline for all claims is December 31, 2061.

Claimants may file only one claim for qualifying losses experienced within a single calendar year from January 1<sup>st</sup> through December 31<sup>st</sup>. A single claim constitutes all qualifying losses experienced by the claimant in any given calendar year. Claimants who experience losses in more than one calendar year may file a new claim for each year in which a qualifying loss occurred.

**C. COMMERCIAL FISHING BUSINESSES.**

1. **Vessel Owners/Vessel Lessees.**

(a) **Claimant Eligibility.**

(1) **Eligibility Definition.**

To be eligible to submit a claim, an Atlantic surfclam fishing vessel owner or vessel lessee must have a demonstrated pre-Project history of lawful 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, operation and maintenance, or decommissioning phase of the Project.

- (2) **Proof of Eligibility.** Commercial fishing vessel owners and vessel lessees must provide the following:
- a. A completed Claim Form;<sup>16</sup>
  - b. Proof of authority to fish commercially (*e.g.*, a valid fishing license and/or permit);
  - c. Proof of vessel ownership/lease (*e.g.*, valid title)
  - d. Proof of authority to operate vessel (*e.g.*, valid vessel registration);
  - e. Proof of authority to conduct business (*e.g.*, valid business license);
  - f. Proof of fishing location history (*e.g.*, VMS/VTR/AIS data, harvester/personal logbooks, chart plotter records, proof of homeport, etc.);
  - g. Proof of Atlantic surfclam fishing and landing;
  - h. Authorization(s) requested by the Program Administrator for access to claimant's fishing history data held by government or other entities; and
  - i. List of names and contact information of crew employed for 12 months or more before October 30, 2023, noting the dates of, and reasons for, any crew terminations or other departures (voluntary, medical, etc.).

**(b) Economic Loss Claim Eligibility.**

- (1) **Eligibility Definition.** To receive compensation from the Surfclam Fund, eligible Atlantic surfclam commercial fishing vessel owners and vessel lessees must have experienced documented economic losses resulting from the construction, operations and maintenance, or decommissioning of the Project. Valid claim types may include:
- a. Reduction in the number of trips a vessel can make due to Project closures and ensuing reduction in Atlantic surfclam catch;
  - b. Impacts to the quantity or quality of Atlantic surfclams and ensuing reduction in revenues;
  - c. Increased expenses owing to construction closures or presence of (1) Project structures or (2) other vessels displaced by the Project;
  - d. Other losses caused by the Project; and/or
  - e. Third-party costs associated with preparing claims.

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<sup>16</sup> See Footnote 3.

(2) **Proof of Economic Loss.** For demonstrating proof of negative economic impacts caused by the Project, a commercial Atlantic surfclam fishing vessel owner or vessel lessee must provide the following:

- a. Proof of level of effort,<sup>17</sup> fishing location, landings, and revenue from commercial Atlantic surfclam fishing before October 30, 2023 (*e.g.*, profit/loss statements, harvester/personal logbooks, dealer reports, receipt of sales, tax documents, etc.);
- b. Proof of level of effort, fishing location, landings, and revenue from commercial Atlantic surfclam fishing for the calendar year of the claimed economic loss;
- c. Sworn written statement explaining why, in claimant's view, any economic loss experienced was caused by the Project;
- d. As needed, sworn written statement attributing demonstrated revenues to commercial Atlantic surfclam fishing.

## 2. Crew.

### (a) Claimant Eligibility.

(1) **Eligibility Definition.** To be eligible to submit a claim, commercial Atlantic surfclam fishing crew must have been employed before October 30, 2023, for at least 12 months by a commercial Atlantic surfclam fishing vessel owner or lessee otherwise eligible for compensation under Section III(C)(1) of this Program.

(2) **Proof of Eligibility.** Commercial Atlantic surfclam fishing crew must provide:

- a. A completed Claim Form;<sup>18</sup>
- b. Proof of employment for at least 12 months before October 30, 2023, by a Program-eligible commercial Atlantic surfclam fishing vessel owner or vessel lessee;<sup>19</sup> and
- c. A coinciding documented economic loss to the vessel owner or vessel lessee caused by the Project or a sworn written statement explaining why employment was unavailable to claimant because of the Project.

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<sup>17</sup> See Footnote 4.

<sup>18</sup> See Footnote 3.

<sup>19</sup> Commercial surfclam fishing crew members must attest on their Claim Forms that they were employed by a Program-eligible commercial surfclam fishing vessel owner or vessel lessee, and submit documentation supporting this attestation. Examples of documents that may serve as proof of a crew member's employment with a Program-eligible commercial surfclam fishing vessel owner or vessel lessee include, but are not limited to, employment contracts, a sea service letter or confirmation of employment on company letterhead, a copy of the vessel's crew list, pay records indicating the income source, or a sworn affidavit from the vessel owner. If the owner of a vessel on which a crew member worked does not submit a vessel owner claim with the Program, the crew member will have to establish to the fullest extent reasonably possible that the vessel's fishing history and activities would qualify the vessel's crew for potential compensation. Inability to attribute crew service to *eligible* commercial fishing and/or for-hire recreational fishing businesses may result in reduction or denial of crew compensation.

**(b) Economic Loss Claim Eligibility.**

- (1) Eligibility Definition.** To receive compensation from the Surfclam Fund, eligible commercial Atlantic surfclam fishing crew must have experienced documented economic losses resulting from the construction, operations and maintenance, or decommissioning of the Project.<sup>20</sup> Valid claims may include:
- a. Reduction in the number of trips a crew member can make on a vessel due to Project-related closures and ensuing reduction in income or wages;
  - b. Reduction in crew income due to impacts to Atlantic surfclam populations, increased expenses to vessel owner or vessel lessee owing to construction closures or presence of (1) Project structures or (2) other vessels displaced by the Project;
  - c. Other losses caused by the Project; and/or
  - d. Third-party costs associated with preparing claims.
- (2) Proof of Economic Loss.** For demonstrating proof of negative economic impacts caused by the Project, commercial Atlantic surfclam fishing crew must provide (1) a sworn written statement explaining why, in claimant's view, any economic loss experienced was caused by the Project and (2) documentation of compensation – from an eligible vessel owner or vessel lessee – from commercial Atlantic surfclam fishing anywhere within Virginia coastal waters or federal waters offshore from Virginia or North Carolina (a) before October 30, 2023 and (b) the calendar year of the claimed economic loss. Such proof may include:
- a. Paycheck stubs and/or other employer records documenting actual amounts paid for qualifying Atlantic surfclam fishing activity;
  - b. Other payment documentation, as needed, to demonstrate bank records showing income deposits and supporting documentation indicating the source of those deposits;
  - c. Receipts or records from check cashing or payday loan services and supporting documentation indicating the source of those funds;
  - d. Contracts for employment accompanied by documentation establishing that wages or other amounts to be paid pursuant to the contract, if applicable, were in fact paid; and/or
  - e. Pay period earnings detail submitted under oath and included in court filings (for example, documentation provided in connection with divorce, child support, or wage garnishment proceedings).

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<sup>20</sup> See Footnote 7.

- f. As needed, sworn written statement attributing demonstrated income to commercial surfclam fishing.

#### **D. SHORESIDE COMMERCIAL SURFLAM FISHING SUPPORT BUSINESSES.**

##### **1. Claimant Eligibility.**

- (a) **Eligibility Definition.** To be eligible to submit a claim, shoreside commercial Atlantic surfclam fishing support businesses must have lawfully supported through direct, first-transaction sales to, or purchases from, commercial Atlantic surfclam fishing businesses – eligible to submit a claim under Sections III(C)(1) of this Program – before October 30, 2023;<sup>21</sup> and
- (b) **Proof of Eligibility.** Shoreside businesses must provide the following:
- (1) A Completed Claim Form;<sup>22</sup>
  - (2) Proof of authority to conduct business (*e.g.*, valid business license);
  - (3) Proof of business location (*e.g.*, utility bills);
  - (4) List of commercial Atlantic surfclam fishing businesses supported through direct, first-transaction sales to, or purchases before October 30, 2023.
- (c) **Economic Loss Claim Eligibility.**
- (1) **Eligibility Definition.** To receive compensation from the Surfclam Fund, eligible shoreside Atlantic surfclam fishing support businesses must have experienced documented economic losses resulting from the construction, operations and maintenance, or decommissioning of the Project. Valid claims may include:
- a. Reduced Atlantic surfclam fishing processing volume;
  - b. Reduced marina sales;
  - c. Other losses caused by the Project; and/or
  - d. Third-party costs associated with preparing claims.

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<sup>21</sup> Shoreside businesses must attest on the Claim Form that to the best of their knowledge, they support eligible commercial Atlantic surfclam fishing businesses. Documents that shoreside businesses may submit to demonstrate they supported eligible commercial Atlantic surfclam fishing businesses may include, but is not limited to, business banking statements, accounting records, sales receipts and invoices, dealer slips or compilation reports, or a sworn statement from the commercial Atlantic surfclam fishing business confirming support. Inability to attribute sales to, or purchases from, eligible commercial Atlantic surfclam fishing businesses may result in reduction or denial of shoreside business compensation.

<sup>22</sup> See Footnote 3.

- (2) **Proof of Economic Loss.** For demonstrating proof of negative economic impacts caused by the Project, a shoreside Atlantic surfclam fishing support business must provide the following:
- a. Proof of level of effort<sup>23</sup> and revenue from first-transaction sales to, or purchases from, eligible commercial Atlantic surfclam fishing businesses before 2023 (*e.g.*, logbooks of dates of operation, profit/loss statements, receipt of sales, tax documents, etc.);
  - b. Proof of level of effort and revenue from first-transaction sales to, or purchases from, eligible commercial Atlantic surfclam fishing businesses for the calendar year of the claimed economic loss;
  - c. Sworn written statement explaining why, in claimant's view, any economic loss experienced was caused by the Project; and
  - d. As needed, sworn written statement attributing portions of pooled revenues to first-transaction sales to, or purchases from, eligible commercial Atlantic surfclam fishing businesses.

#### **E. LOSS CALCULATION.**

Each Surfclam Program claim must assert a specific amount of economic loss caused by the Project and support that amount with required documentation. For all business and claimant types discussed in Section III, if the Administrator determines that a claimant is eligible and a claim qualifies for compensation, claims will be paid out according to the following schematic:

1. For approved claims attributed to construction (2024-2026) and the first year of operation (2027), 100% of the claim will be awarded.
2. For approved claims attributed to the second year of operation (2028), 80% of the claim will be awarded.
3. For approved claims attributed to the third year of operation (2029), 70% of the claim will be awarded.
4. For approved claims attributed to the fourth year of operation (2030), 60% of the claim will be awarded.
5. For approved claims attributed to the fifth through twenty-sixth years of operation (2031-2056), 50% of the claim will be awarded.
6. For approved claims attributed to decommissioning (2057-2059), 100% of the claim will be awarded.

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<sup>23</sup> See Footnote 15.

Reasonable third-party costs associated with preparation of an approved claim, regardless of claim year, will be awarded at 100%.

As part of the claims review process, the claimant, the Administrator, and other stakeholders may identify alternative causes for (e.g., fishing quotas, closed fisheries, climate change, natural disaster, voluntary crew resignation or termination for cause, service-related shoreside loss, etc.) or offsets to (e.g., abundance of one species due to structures in the Offshore Project Area, partial payment made from a different program, etc.) claimed losses. Any alternative causes and/or offsets will be factored into the final claim valuation, as needed.

All payments are subject to the monetary limitations of the Surfclam Fund.

## **F. CLAIMS ADJUDICATION AND APPEALS PROCESS.**

1. **Initial Claims Evaluation.** The Administrator will review a claim submission within 180 days of receipt of a complete claim package, with discretionary 60-day extensions, in which case notice will be given to the claimant. The Administrator will review the claim package for Surfclam Program eligibility and sufficiency of documented economic loss. After this review, the Administrator will issue a determination, with notice to claimant, (1) approving the claim, in whole or in part, and indicating the amount a claimant will receive, (2) denying the claim, in whole or in part, and providing the basis for such denial, or (3) identifying deficiencies in the submission.
2. **Opportunity to Cure.** Claimants whose initial submissions were deemed deficient have 60 days to submit additional materials and/or information to cure the deficiency. The Administrator will evaluate additional materials submitted in the same manner as initial claims, provided above. The opportunity to cure is only available once per claim, *i.e.* once per claimant in each calendar year.
3. **Reconsideration.** Claimants who disagree with the Administrator's determination have 60 days following issuance of notice of either (a) initial claim determination or (b) post-deficiency cure determination to submit, to the Administrator, a written request for reconsideration of that determination and provide any additional information/materials in support of their argument. The Administrator will evaluate requests for reconsideration and additional materials submitted in the same manner as initial claims, provided above.
4. **Appeal.** Appeals of reconsidered claims may be mediated or submitted to binding arbitration in the Commonwealth of Virginia and in accordance with the laws of Virginia. Within six months of notice of determination after reconsideration, claimant, or the claimant's agent, may file a written notice of appeal with the Administrator and submit the appeal to [*JAMS approved neutral third-party arbitrator to be named*]. [*Arbitrator*] 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.

## **G. PAYMENT.**

1. **Award Acceptance.** Claimants with eligible claims must accept their award and execute the release agreement appearing as Exhibit 2 to this Protocol to receive payment.
2. **Payment Method.** Claimants will have made their payment method election on their completed Claim Form at the time they submitted their claim.
3. **Payment Schedule.** Payments will issue on approximately a rolling, monthly basis, within up to 60 days after both a final determination and expiration of any reconsideration or appeal deadlines.

## **H. PROTOCOL MODIFICATIONS.**

This Protocol may be modified at any time for any reason to add, remove, or edit provisions as circumstances may warrant.

## **Exhibit 1:**

### **Diagram of Program Lease Area, Export Cable Route Corridor, and Non-Lease Area**

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*The purple shading illustrates the approximate three nautical mile nearby non-Lease area:*

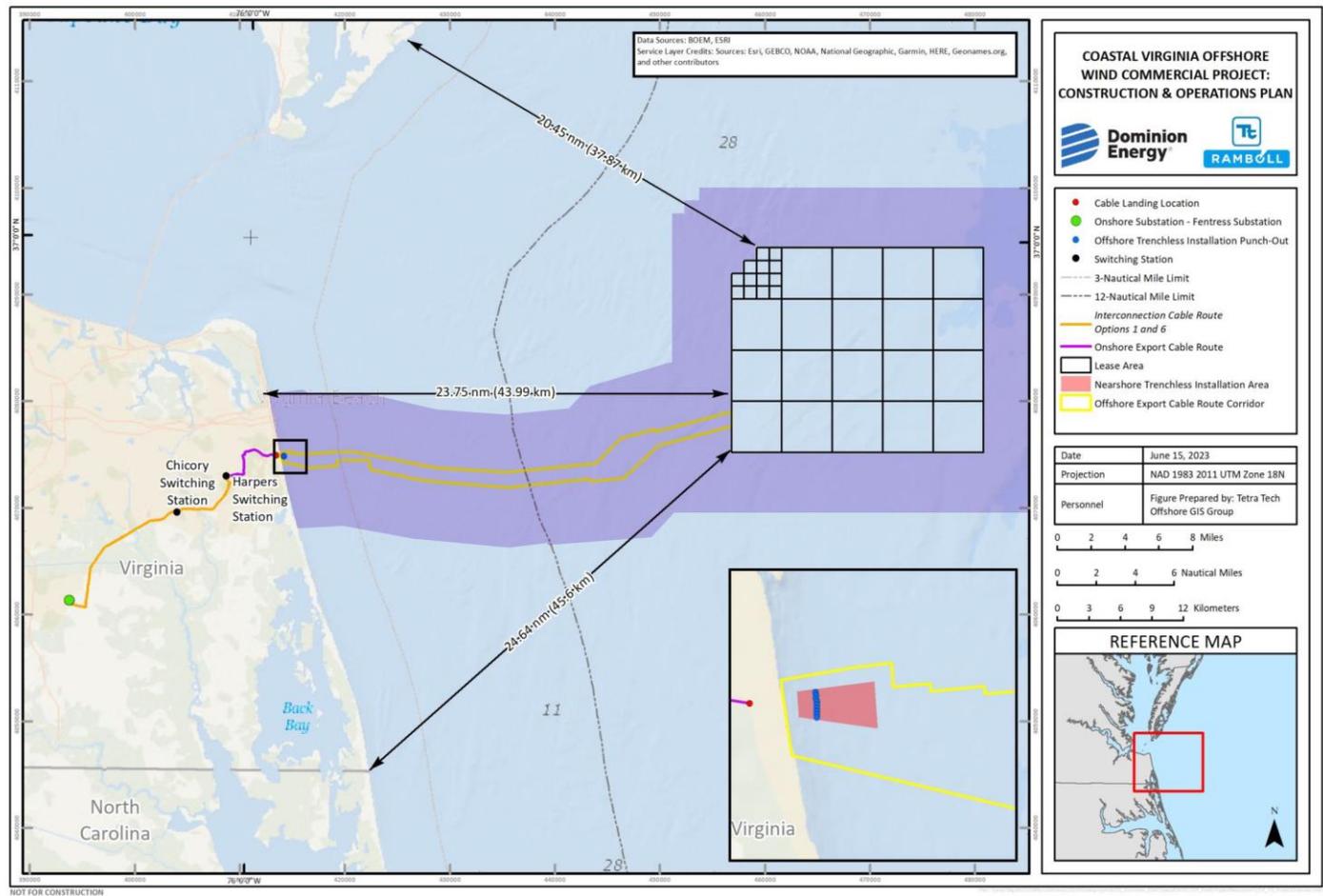


Figure 3.1-1. CVOW Commercial Offshore Project Area Overview

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## **Exhibit 2:**

### **Release Agreement**

*[In Development]*

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