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Green Groups Sue Maine Dam Operators Over Salmon

By **Bibeka Shrestha**

Law360, New York (February 1, 2011) -- Two conservation groups have sued NextEra Energy Resources Inc. and other hydroelectric dam operators on the Kennebec and Androscoggin rivers in Maine, accusing them of harming the endangered Atlantic salmon population by allowing the fish to pass through turbines.

Friends of Merrymeeting Bay and Environment Maine filed four complaints on Monday against NextEra, Brookfield Renewable Power Inc., Topsham Hydro Partners Limited Partnership, Miller Hydro Group, Merimil Limited Partnership and several affiliates in the U.S. District Court for the District of Maine, alleging violations of the Endangered Species Act and the Clean Water Act.

The lawsuits target the owners and operators of four dams on the Kennebec River and three dams on the Androscoggin River, alleging these dams are killing or injuring migrating salmon that try to pass through spinning turbine blades, and are otherwise impeding the salmon's ability to travel upstream and downstream on the rivers.

The dam operators have violated the Endangered Species Act by preventing Atlantic salmon from reaching a significant amount of spawning and rearing habitats and significantly impairing the salmon population's essential behavior patterns, according to the complaint.

Merimil, NextEra, Brookfield and their affiliates are also violating the Clean Water Act by not conducting a required study to prove that allowing downstream-migrating adult salmon to pass through their dams' turbines is safe, the complaint said.

These companies are allegedly violating water quality certifications, which require them to conduct site-specific quantitative studies in consultation with the the U.S. Fish and Wildlife Service or the National Marine Fisheries Service to show that passage through the turbines does not result in significant injury or death.

Atlantic salmon were officially designated as endangered under the Endangered Species Act in June 2009, the same month the NMFS designated the Kennebec and Androscoggin rivers as critical habitats, according to the complaint.

The rivers, which share a common estuary at Merrymeeting Bay, historically enjoyed the largest Atlantic salmon runs in the country, estimated at more than 100,000 adults

annually, according to the groups.

In 2010, however, 10 adult salmon returned to the Androscoggin and five adult salmon returned to the Kennebec, the groups said.

"These dams are pushing an iconic Maine fish to the brink of extinction," said Emily Figdor, director of Environment Maine, in a statement Tuesday. "With the number of Atlantic salmon perilously low, the need for action to protect the fish and their habitat is urgent."

The groups are asking the court to order the dam owners and operators to conduct a biological assessment to determine whether their actions are adversely affecting the salmon population.

They also hope to block the dam owners and operators from allowing salmon to swim through operating turbines unless they receive authorization through an incidental take permit or incidental take statement, which would require them to minimize and mitigate the impacts of harming the endangered fish to the "maximum extent possible," the complaint said.

The groups claim the dam owners can implement simple measures, such as installing effective devices to divert salmon from turbines and stopping the turbines during salmon migration season.

"The salmon population is nearly extinct, and the dam owners and operators need to take immediate steps to implement measures to protect the salmon," said David Nicholas, an attorney representing the conservation groups, on Tuesday. "If they don't, we're facing an extinction possibility."

NextEra declined to comment on the lawsuit on Tuesday.

Attorneys or representatives for Miller, Topsham and Brookfield did not immediately respond to requests for comment on Tuesday.

The environmental groups are represented by Joshua R. Kratka and Charles C. Caldart of the National Environmental Law Center and David A. Nicholas and Bruce M. Merrill of Law Offices of Bruce Merrill PA.

Nancy Skancke of Law Offices of GKRSE is representing Miller and Topsham.

Counsel information for the other defendants was not immediately available Tuesday.

The cases are Friends of Merrymeeting Bay and Environment Maine v. Miller Hydro Group, case number 2:11-cv-00036; Friends of Merrymeeting Bay and Environment Maine v. NextEra Energy Resources Inc. et al., case number 2:11-cv-00038; Friends of Merrymeeting Bay and Environment Maine v. Topsham Hydro Partners Limited

Partnership, case number 2:11-cv-00037; and Friends of Merrymeeting Bay and Environment Maine v. Brookfield Renewable Power Inc. et al., case number 1:11-cv-00035, all in the U.S. District Court for the District of Maine.

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