

November 19, 2010

Mr. David A. Nicholas
Attorney at Law
20 Whitney Road
Newton, Massachusetts 02460

Re: Response to the November 5, 2010 letter

Dear Mr. Nicholas:

NextEra™ Energy Maine Operating Services, LLC submits this letter on behalf of FPL Energy Maine Hydro, LLC and Merimil Limited Partnership. NextEra is in receipt of your November 5, 2010 letter and has thoroughly reviewed its contents. NextEra wishes to briefly respond your (NGO) allegations, and provide some clarity to the situation.

NextEra is Working with NGOs on the Atlantic Salmon DPS Issue

On September 22, 2010 NextEra and its consultant met with the NGO's to update them on NextEra's ongoing ESA efforts and to discuss plans for the HCP/ITP process. At that meeting, NextEra and the NGOs discussed that under regulation the formal Section 10 ESA process provides for public input only after the HCP and ITP are formally filed with NMFS. However, recognizing that the NGOs have a strong interest in Atlantic salmon restoration efforts, NextEra and the NGOs also discussed what the NGOs could contribute to the HCP/ITP process, and how that might occur. NextEra felt the meeting went well and expressed a desire at the meeting to continue the dialog with the NGOs. We later discussed inviting the NGOs to participate in the process and contemplated calling them soon to set up an initial meeting to be held before the end of 2010. As NextEra was actively engaging the NGOs in dialog about the HCP/ITP process and was working with NMFS to create an appropriate role for NGO involvement in the HCP/ITP process, it was with great surprise that we received your November 5, 2010 letter. Nonetheless, NextEra still plans to call the NGOs soon and invite them to this meeting.

NextEra is in Compliance with its FERC license conditions:

FERC issued a letter dated July 23, 2010 (see attached) stating that after reviewing NextEra's May 11, 2010 annual fish passage report, including the responses to the issues raised by the NGOs in their February 1, 2010 letter to FERC, and taking into consideration NextEra's consultation under the ESA to protect Atlantic salmon, "we have determined that NextEra is complying with the salmon protection requirements of the Lockwood, Weston, and Shawmut Project licenses."

Compliance with Endangered Species Act requirements:

Atlantic salmon were listed as an endangered species on July 20, 2009. NextEra immediately met with National Marine Fisheries Service (NMFS) on July 21, 2009 to discuss the listing and to gather information on how to proceed with endangered species act (ESA) requirements. In a July 30, 2009 letter to NMFS (see attached), NextEra informed NMFS that it planned to continue to perform ongoing salmon protection efforts as committed to under the KHDG Agreement, other prior agreements, and to also work with NMFS through applicable provisions of the ESA (Section 10 or Section 7) to secure the required Incidental take permits (ITP's) for the Lockwood, Shawmut, Weston and Brunswick projects. NMFS, in an August 21, 2009 letter to NextEra (see attached), outlined the processes by which NextEra could secure ITPs. In a 5-21 10 letter to NMFS (see attached) NextEra indicated that it would initiate formal consultation with NMFS via the Section 10 process of the ESA to secure the required ITPs.

In August of 2010, NextEra hired a team of consultants (Longview Associates, Normandeau Associates and Mid Columbia Consultants) to help it navigate the HCP process and assist in securing ITPs. On August 19, 2010 NextEra and its consultants conducted a conference call with NMFS to initiate the HCP process and on September 23, 2010 NextEra and its consultants met with NMFS to discuss the specifics of the HCP process. NextEra and its consultants subsequently conducted a conference call with NMFS on November 1, 2010 to further advance the HCP process, draft a schedule, and begin work on collecting information required for the HCPs. NextEra and NMFS are presently working on finalizing the schedule, preparing an HCP outline, and further identifying existing data and other information needed for the process.

In short, NextEra has already initiated the HCP process, as required by NMFS under Section 10, that will culminate with the filing of the ITP applications for each of the five hydro projects. In so doing, NextEra is in compliance with the requirements of the ESA. In their November 5, 2010 letter, the NGO's state that NextEra has not even applied for the ITP. As outlined above, under Section 10 of the ESA, the formal ITP application gets filed after the HCP is completed. Since the HCP/ITP application process has been initiated, this NGO comment is not accurate.

Downstream fish passage at the identified projects:

Regarding comments in the NGO November 5, 2010 letter about downstream fish passage, the following provision in Exhibit B of the 1998 Lower Kennebec River Comprehensive Hydropower Settlement Accord was specifically cited:

"In the event that adult shad and/or adult Atlantic salmon begin to inhabit the impoundment above the project, and to the extent that Licensee desires to achieve interim downstream passage of out-migrating adult Atlantic salmon and/or adult shad by means of passage through turbine(s), Licensee must first demonstrate, through site specific quantitative studies designed and conducted in consultation with the

resource agencies, that passage through turbine(s) will not result in significant injury and/or mortality (immediate or delayed)."

In addition the letter concludes that "Commission records show that none of the licensees for these projects have conducted "site-specific quantitative studies designed and conducted in consultation with the resource agencies, that passage through turbine(s) will not result in significant injury and/or mortality (immediate or delayed)" for adult Atlantic salmon".

The Lockwood Project does not plan to provide permanent downstream passage of out-migrating adult Atlantic salmon and American shad via the turbines as the primary method. As described in the 2009 annual report, NextEra installed a new downstream passage facility in 2009. The facility consists of a new 10-foot-deep floating guidance boom leading to a new surface sluice gate that discharges to the river. This facility is designed to guide fish away from the turbines and back into the river. This new guidance device is presently being evaluated.

Weston and Shawmut Projects also do not plan to provide permanent downstream passage for out-migrating adult Atlantic salmon and American shad via the turbines as the primary method.

At Weston, NextEra is presently designing a floating guidance boom leading to the existing log sluice. The log sluice is being resurfaced this year as part of required maintenance, and this resurfacing will also enhance fish passage. The new boom is presently scheduled to be installed in 2011, with passage evaluations to follow. NextEra will consult with resource agencies on boom design and develop draft study plans (for agency review and comment) to assess downstream passage effectiveness.

At Shawmut, NextEra is presently designing a new, fixed, full depth, one-inch angled bar rack structure and new surface sluice. NextEra presently plans to design and permit it in 2010-2011 and install it in 2011-2012 with passage evaluations to follow. NextEra will consult with resource agencies on angled rack and sluice design and develop draft study plans (for agency review and comment) to assess downstream passage effectiveness.

At Brunswick, NextEra is presently designing a floating guidance boom leading to a new surface sluice. The new boom and surface sluice is presently scheduled to be installed in 2011, with passage evaluations to follow. NextEra will consult with resource agencies on boom design and develop draft study plans (for agency review and comment) to assess downstream passage effectiveness.

Conclusion:

NextEra is presently working with NMFS on HCP development with the intent of securing ITPs for the affected projects as required by the ESA regulations. NextEra plans to invite the NGOs to participate in the HCP development process, if they are interested. NextEra is also actively developing plans for the installation of improved downstream fish passage facilities at Shawmut, Weston and Brunswick. In short, we

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Mr. David Nicholas
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believe that good progress is being made on all fronts in support of Atlantic salmon restoration and protection efforts.

If you have any questions, please contact Robert Richter, at (207) 242-5001
Robert.Richter@nexteraenergy.com.

Sincerely,



Kirk Toth
General Manager

CC

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Augusta, Maine 04330

Environment Maine
142 High Street Suite 421
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Administrator Lisa Jackson
U.S. Environmental Protection Agency
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FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

OFFICE OF ENERGY PROJECTS

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REGULATORY COMMISSION

- Project No. 2574-069 --Maine
Lockwood Project
Merimil Limited Partnership
- Project No. 2322-054 --Maine
Shawmut Project
- Project No. 2325-077 --Maine
Weston Project
- Project No. 2284-038 --Maine
Brunswick Project
FPL Energy Maine Hydro LLC

July 23, 2010

Mr. Kirk Toth
General Manager
NextEra Energy Maine Operating Services LLC
26 Catherine Drive
Hallowell, ME 04347

Subject: Protection of Federally-Listed Atlantic salmon; Progress reporting

Dear Mr. Toth:

We are reviewing your efforts to protect Atlantic salmon at the Lockwood, Shawmut, and Weston Projects on the Kennebec River in Maine, and the Brunswick Project on the Androscoggin River in Maine. Atlantic salmon that use these rivers are part of the Gulf of Maine (GOM) Distinct Population Segment (DPS), which has been listed as endangered under the Endangered Species Act (ESA). The salmon's Critical Habitat includes the reaches where these projects are located.

Allegations Regarding Atlantic Salmon Protection

On February 1, 2010, Friends of Kennebec Salmon and Friends of Merrymeeting Bay (together, Friends) filed a letter with the Commission regarding effectiveness studies of downstream salmon passage at the Lockwood, Shawmut, and Weston Projects. Friends asserted that site-specific, quantitative studies of downstream passage through the turbines had not been conducted at these projects pursuant to the May 27, 1998 Lower Kennebec River Comprehensive Hydropower Settlement. Licensees who are party to the Settlement who desire to achieve downstream passage of adult salmon using project turbines are required to conduct quantitative studies of turbine passage. An order

approving the Settlement, issued September 16, 1998,¹ requires the licensees to provide the Commission with annual reports on fish passage operation and effectiveness studies.

In a March 25, 2010 letter to the project licensees, we discussed the issues raised by Friends, and indicated that the next annual reports filed pursuant to the September 16, 2008 order should clearly address the status of downstream fish passage and effectiveness at the identified projects, and provide information that may be relevant to the issues raised by Friends. You filed your 2009 annual fish passage report on May 11, 2010, which we acknowledged in a letter issued June 24, 2010. In your report, you wrote that you believe the issues raised by Friends regarding the Lockwood Project are moot, because downstream passage using the turbines is not desired. You indicated that a downstream passage facility to guide fish away from the turbines has been installed at Lockwood, and you included a copy of an agency-approved plan to study the facility's passage of salmon smolts, for which you have received an ESA Section 10 permit. You reported that the resource agencies have agreed that a study of post-spawn adult salmon downstream passage be delayed until smolt passage is better understood. You wrote that the issue is also moot for the Weston and Shawmut Projects, because NextEra does not desire to achieve downstream passage using the turbines there, and as noted in the 2009 annual report, NextEra is preparing to study downstream passage at both projects.

After reviewing the May 11, 2010 annual fish passage report, including the responses to the issues raised by Friends, and taking into consideration NextEra's consultation under the ESA to protect Atlantic salmon (as reviewed below), we have determined that NextEra is complying with the salmon protection requirements of the Lockwood, Weston, and Shawmut Project licenses.

Endangered Species Act Consultation on Atlantic Salmon

We have reviewed copies of correspondence between NextEra and the National Marine Fisheries Service (NMFS) regarding consultation on the protection of GOM Atlantic salmon at the Lockwood, Shawmut, and Weston Projects on the Kennebec, and the Brunswick Project on the Androscoggin. In a May 21, 2010 letter addressed to the NMFS and copied to the U.S. Fish and Wildlife Service (together, Services), NextEra formally requested technical assistance in initiating consultation under Section 10 of the ESA. The goal of the consultation would be authorization of incidental take of listed species resulting from otherwise lawful, non-federal activities. The licensees would submit an application for an Incidental Take Permit to the Services containing a Habitat

¹ Order Approving Settlement, Transferring License, and Amending Fish Passage Requirements, 84 FERC ¶ 61,227 (1998).

Conservation Plan, prepared with technical assistance from the Services. In closing the letter, NextEra wrote that it wished to arrange a meeting with NMFS personnel to begin Section 10 consultation, and develop a schedule for necessary consultation steps.

Requested Actions

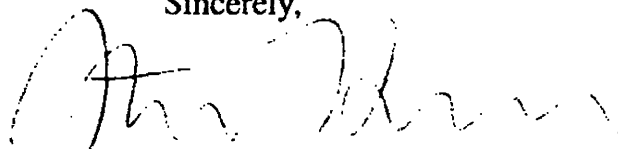
We wish to remain informed of issues concerning the protection of Atlantic salmon at NextEra's projects in Maine. Please assist us in this matter by ensuring that the annual reports you file pursuant to the Commission's September 16, 2008 order clearly address Atlantic salmon protection issues at NextEra's Kennebec River projects. Please include in the reports chronologies and brief summaries of your progress in ESA consultation with the Services, identification of any difficulties that arise, and copies of any schedules relevant to consultation that are developed.

In order to keep us informed of Atlantic salmon protection issues at the Brunswick Project on the Androscoggin River, please begin filing with the Commission, by March 31 of each year, annual reports on Atlantic salmon protection at the project. These reports should contain chronologies and brief summaries of your progress in consultation, identification of any difficulties that arise, and copies of any schedules relevant to consultation that are developed.

Finally, please inform us as soon as possible of any issues that arise involving protection of federally-listed Atlantic salmon at any of the projects with which NextEra is involved, as well as any immediate issues that arise during ESA consultation that the Commission should be aware of. This includes, but should not be limited to, issues that may involve compliance with the licenses for the Lockwood, Shawmut, Weston, and Brunswick Projects, and identification of measures that may necessitate amendments of project licenses.

We appreciate your work to comply with the ESA and to protect Atlantic salmon at these projects. If you have any questions regarding this letter, please contact B. Peter Yarrington at (202) 502-6129 or peter.yarrington@ferc.gov.

Sincerely,



Steve Hocking
Chief, Biological Resources Branch
Division of Hydropower Administration
and Compliance

cc: **Mary Colligan**
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Robert Richter
NextEra Energy Maine Operating Services LLC
26 Catherine Drive
Hallowell, ME 04347



July 30, 2009

Mary Colligan, Assistant Regional Administrator
National Marine Fisheries Service
Northeast Regional Office
Protected Resource Division
55 Great Republic Drive
Gloucester, MA 01930-2237

Re: Atlantic salmon endangered species listing and critical habitat designation

Dear Ms Colligan:

NextEra™ Energy Maine Operating Services, LLC (“NextEra”, formerly FPL Energy Maine Operating Services, LLC) submits this letter on behalf of FPL Energy Maine Hydro, LLC (“FPL Energy”) and the Merimil Limited Partnership (“MLP”).

As described in the June 19, 2009 final rule published in the Federal Register (74 FR 29344), the National Marine Fisheries Service (NMFS) and United States Fish and Wildlife Service (USFWS), collectively referred to as the Services, have determined that naturally spawned and conservation hatchery populations of anadromous Atlantic salmon (*Salmo salar*) whose freshwater range historically occurred in the watersheds from the Androscoggin River northward along the Maine coast to the Dennys River, including those that were already listed in November 2000, constitute a distinct population segment (DPS) and hence a “species” for listing. The Services have determined that the Gulf of Maine (GOM) DPS warrants listing as endangered under the Endangered Species Act (ESA). This rule became effective on July 20, 2009.

Also as described in a June 19, 2009 final rule published in the Federal Register (74 FR 29300), NMFS designated critical habitat for the GOM DPS. This includes 45 specific areas occupied, or accessible, by Atlantic salmon at the time of listing that comprise approximately 19,571 km of perennial river, stream, and estuary habitat and 799 square km of lake habitat within the range of the GOM DPS and in which are found those physical and biological features essential to the conservation of the species. The entire occupied range of the GOM DPS in which critical habitat is designated is within the State of Maine. NMFS excluded approximately 1,256 km of river, stream, and estuary habitat and 100 square km of lake habitat from critical habitat pursuant to section 4(b)(2) of the ESA. This rule became effective on July 20, 2009.

FPL Energy owns, or indirectly partially owns, five hydroelectric projects on the Kennebec River within the described historic range of the GOM DPS, including three (Lockwood, Shawmut and Weston) within the designated critical habitat. On the Androscoggin, FPL Energy owns three hydroelectric projects (including 4 dams) within the historic range of the GOM DPS, including one (the Brunswick Project) within the designated critical habitat. FPL Energy does not own any projects on the Penobscot River.

The purpose of this letter is to inform the Services that FPL Energy and MLP plan to continue to perform their ongoing salmon protection efforts with the Services as contemplated by prior agreement, and to also work with the Services via either Section 10, Section 7 or other applicable provisions of the ESA to secure the required permits.

On the Kennebec River, the ongoing salmon protection efforts include continuing to follow the obligations under the 1998 Lower Kennebec River Comprehensive Hydropower Settlement Accord. The parties to the Agreement include the Kennebec Hydro Developers Group (KHDG), of which FPL Energy and MLP are members, the Kennebec Coalition, the State of Maine, the National Marine Fisheries Service, and the U.S. Fish and Wildlife Service. The agreement in part requires the following:

- Members of the KHDG contribute \$4.75 million to the State of Maine to be used for diadromous fisheries (including Atlantic salmon) restoration efforts in the Kennebec River basin. These efforts include but are not limited to, the removal of Edwards Dam, trap and truck operations, shad hatchery operations, upstream and downstream fishway monitoring, spawning surveys and reporting. (The majority of these funds have already been contributed.)
- Members of the KHDG provide both upstream and downstream fish passage measures and conduct passage effectiveness studies at the projects in accordance with the KHDG Agreement (which is part of the Accord).

On-going fish passage operations and studies at the Kennebec and Androscoggin River projects are described in annual reports reviewed by the resource agencies and submitted to FERC. Currently, MLP operates a fishlift and associated trap, sort and truck facility at the Lockwood Project (installed in 2006) in close cooperation with Maine Department of Marine Resource (MDMR) personnel. MLP captures adult Atlantic salmon at this facility and MDMR personnel collect biological information from the fish and currently transport them to upstream spawning habitat in the Sandy River upstream of the Lockwood, Hydro-Kennebec, Shawmut and Weston Projects. We are conducting these activities under Federal Fish and Wildlife Permit TE697823. In addition, MLP is presently installing a new downstream fish passage facility at Lockwood which is scheduled to be operational in late August 2009. Quantitative downstream passage effectiveness studies for Atlantic salmon smolts and kelts at Lockwood is scheduled for 2010. As part of this process, MLP will be consulting with the Maine Resource Agencies and the Services during study plan development and execution of these studies.

Regarding the Shawmut and Weston projects, the KHDG Agreement outlines upstream and downstream fish passage obligations. Upstream Atlantic salmon passage for these projects is

occurring via the Lockwood trap and truck facility as described previously. MDMR recently (April 29, 2009 comment letter on the 2008 Kennebec River Diadromous Fish Passage annual report) indicated that they would like to see study plans for the assessment of downstream passage for smolts and kelts developed for both the Shawmut and Weston projects. MDMR indicated that they released the largest number of adults above the Kennebec dams in 2008, and the first cohort of wild smolts and some smolts originating as stocked fry will be leaving this year. In its response to this comment, NextEra Energy companies committed to consult with resource agencies and develop draft study plans by September 30, 2009 (for agency review and comment) to assess downstream passage for smolts and kelts at Shawmut and Weston.

On the Androscoggin River, the Brunswick Project includes a vertical slot fishway and associated trap, sort and truck facility that was installed in 1983 and is owned and maintained by FPL Energy. MDMR personnel operate the fishway, capture Atlantic salmon and collect biological information. The fish are then released back into the upstream end of the fishway so they can continue their migration. We are conducting these activities under Federal Fish and Wildlife Permit TE697823. The Brunswick Project also has a downstream fishway which was installed in 1983 and consists of a surface sluice and associated pipe which discharges fish into the tailrace.

In closing, FPL Energy and MLP are committed to working cooperatively with the Services to continue their management and protection measures for GOM DPS Atlantic salmon on the Kennebec and Androscoggin Rivers. We appreciate the introductory meeting the Services conducted with State and members of the hydro community on July 21, 2009. NextEra Energy would also like to arrange a meeting with the NMFS personnel within the next few weeks to discuss our specific projects and discuss how to proceed with securing the required permits via either Section 10, Section 7 or other applicable provisions of the ESA.

If you have any questions regarding this letter, please contact Robert Richter, at (207) 877-8386 ext 10 or Robert.Richter@nexteraenergy.com.

Sincerely,



Christopher L. Allen
General Manager, Maine Generation

cc: NMFS, Dan Kircheis
NMFS, Rori Saunders
NMFS, Kevin Collins, Esq.
USFWS, Lori Nordstrom
MDMR, Patrick Keliher
NMFS, Jeff Murphy
USFWS, Fred Seavey

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UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
NORTHEAST REGION
55 Great Republic Drive
Gloucester, MA 01930-2276

August 21, 2009

Mr. Robert Richter
NextEra Energy Maine Operating Services, LLC
160 Capitol Street, Suite 8
Augusta, Maine 04330

Re: Gulf of Maine Distinct Population Segment of Atlantic Salmon

Dear Mr. Richter:

Thank you for your recent inquiry regarding the endangered Gulf of Maine Distinct Populations Segment (DPS) of Atlantic salmon. I also want to thank you for setting up a meeting with our staff in Orono, Maine last week to discuss the recent listing of Atlantic salmon and critical habitat in the Kennebec River. We understand that you are seeking information concerning appropriate instruments under the Endangered Species Act (ESA) of 1973 that are available to owners of federally-licensed hydroelectric projects in order to comply with Section 9 (Prohibited Acts) of the ESA. As NextEra's hydroelectric projects on the Kennebec River are located within the geographic range of endangered Atlantic salmon and designated critical habitat, it is possible that operation of the projects are impacting the species and its critical habitat. Section 9 of the ESA prohibits the "take" of endangered species. The term take is defined to include harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Given the circumstances, we appreciate your interest and willingness to work with the National Marine Fisheries Service (NMFS) to minimize any impacts and further seek exemption from Section 9 prohibitions for any remaining unavoidable impacts to the species.

As we explained during the July 21, 2009 meeting, NMFS and the U.S. Fish and Wildlife Service (USFWS) have divided responsibility for ESA implementation for Atlantic salmon. NMFS has responsibility for working with interested parties to address the impact of dams on salmon and their habitat. USFWS continues to have responsibilities under the Fish and Wildlife Coordination Act and the Federal Power Act, so we will be coordinating closely with USFWS. NMFS will serve as your primary point of contact for ESA compliance on dam related matters.

Attached to this letter is an overview of two processes available under the ESA for persons seeking to comply with the provisions of the ESA. The first process (Section 10 Habitat Conservation Planning) allows NMFS to authorize the incidental take of ESA-listed species resulting from otherwise lawful, non-federal activities. The second process (Section 7 Consultation) allows NMFS to work with other federal agencies to ensure that

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their actions are not likely to jeopardize the continued existence of listed species or destroy or adversely modify critical habitat. As NextEra's hydroelectric projects are licensed by the Federal Energy Regulatory Commission (FERC), with the agreement of FERC, you could seek authorization for incidental take of listed Atlantic salmon through the Section 7 process. The overview attached contrasts and explains each of these processes.

Either of these processes is acceptable for complying with the ESA, and either one will require a significant commitment of time and resources from you. Ultimately, the choice of which process to pursue is yours. Of course, if you choose to pursue the Section 7 consultation path then you will need to seek the agreement of FERC, who serves as the federal action agency in that consultation. As indicated in the table below, a Section 7 consultation can often be completed more expeditiously than a Habitat Conservation Plan.

Once you choose which path to pursue, the first step is the preparation of a species protection plan (Section 7 consultation path) or a habitat conservation plan (Section 10 path). The attached table provides an outline of the content of those plans. As we noted in our July 21st meeting, existing permits and license conditions as well as any agreements should be incorporated into the plan so that the protective measures already in place can be fully considered. NMFS is committed to working with you to recover the endangered Atlantic salmon. Please do not hesitate to call me (978-281-9116) or Jeff Murphy (207-866-7379) if you have any further questions. Thank you for contacting us for our assistance.

Sincerely,



Mary A. Colligan
Assistant Regional Administrator

Cc: Lori Nordstrom, USFWS
Murphy - F/NER4
Ec: Crocker, Scida, Damon-Randall - F/NER4

Overview of Habitat Conservation Planning vs. Section 7 Consultation for Federal Activities Affecting Threatened or Endangered Species

ELEMENT	HABITAT CONSERVATION PLANNING	SECTION 7 FORMAL CONSULTATION
<i>Purpose</i>	To authorize the incidental take of ESA-listed species resulting from otherwise lawful, non-federal activities.	To ensure federal actions are not likely to jeopardize the continued existence of listed species or destroy or adversely modify critical habitat.
<i>Applicant's Role/Responsibilities</i>	<p>Submit application for Incidental Take Permit (ITP) to U.S. Fish and Wildlife Service or National Marine Fisheries Service (Services). Permit must contain:</p> <ul style="list-style-type: none"> • Permit Application Form • Fee (USFWS only) • Habitat Conservation Plan (HCP) developed with technical assistance from Services. The HCP must: 1) Identify project impacts to listed species; 2) Determine anticipated take levels and types of takes; 3) Identify effects of takes on the species; 4) Address effects to Critical Habitat; 5) Identify ways to monitor, minimize and mitigate impacts; 6) Identify alternative actions considered and reasons why not used; 7) Specify funding to 	<p>Federal action agency requests consultation under Section 7 of the Endangered Species Act (ESA). Federal action agency must submit consultation initiation package which describes:</p> <ul style="list-style-type: none"> • Proposed project/action • Listed species in action area • Effects to listed species/critical habitat • Measures to avoid, reduce, or eliminate adverse affects to listed species/critical habitat • Determination of effect to listed species/critical habitat

ELEMENT	HABITAT CONSERVATION PLANNING	SECTION 7 FORMAL CONSULTATION
<p><i>Service's Role/Responsibilities</i></p>	<p>implement proposed mitigation and monitoring.</p> <ul style="list-style-type: none"> • Implementation Agreement (Optional) <p>Upon receipt of ITP application, the Services must:</p> <ul style="list-style-type: none"> • Review Application and HCP • Issue EA/EIS • Conduct Section 7 Consultation • Place Notice of Application in Federal Register to commence 30-day public comment period. • Issue Record of Decision responding to public comments • Issue Signature Package (Biological Opinion, Set of Findings, Implementing Agreement, NEPA Decision Document, ITP). • Issue/Deny ITP 	<p>Upon receipt of consultation initiation package, the Services must:</p> <ul style="list-style-type: none"> • Determine whether package is complete • If complete, formulate Biological Opinion with Incidental Take Statement, Reasonable and Prudent Measures, Terms and Conditions, and Conservation Recommendations.
<p><i>Unforeseen/Extraordinary Circumstances</i></p>	<p>No Surprises Policy</p> <ul style="list-style-type: none"> • If unforeseen circumstances arise, the Services will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources so long as HCP is implemented in good faith. 	<p>Reinitiate Section 7 consultation</p>

ELEMENT	HABITAT CONSERVATION PLANNING	SECTION 7 FOIA
	<p>HCP Amendments</p> <ul style="list-style-type: none"> • Required if Applicant wishes to modify project, activity, or conservation program. 	
<i>Time Frames</i>	<ul style="list-style-type: none"> • HCP Development Phase: Flexible (typically 1-2 years) • Permit Application Processing including preparation of EA/EIS and Biological Opinion: 1 year • Permit Duration: Flexible • Post Issuance Phase (e.g. monitoring, conservation actions): Duration of Permit 	<ul style="list-style-type: none"> • Federal Agency Initiation Package: less than 1 year • Services issue Biays.



May 21, 2010

Mary Colligan, Assistant Regional Administrator
National Marine Fisheries Service
Northeast Regional Office
Protected Resource Division
55 Great Republic Drive
Gloucester, MA 01930-2237

Re: Atlantic salmon endangered species listing Section 10 consultation

Dear Ms Colligan:

NextEra™ Energy Maine Operating Services, LLC (“NextEra”, formerly FPL Energy Maine Operating Services, LLC) submits this letter on behalf of FPL Energy Maine Hydro, LLC (“FPL Energy”) and the Merimil Limited Partnership (“MLP”).

As described in the June 19, 2009 final rule published in the Federal Register (74 FR 29344), the National Marine Fisheries Service (NMFS) and United States Fish and Wildlife Service (USFWS), collectively referred to as the Services, have determined that naturally spawned and conservation hatchery populations of anadromous Atlantic salmon (*Salmo salar*) whose freshwater range historically occurred in the watersheds from the Androscoggin River northward along the Maine coast to the Dennys River, including those that were already listed in November 2000, constitute a distinct population segment (DPS) and hence a “species” for listing. The Services further determined that the Gulf of Maine (GOM) DPS warranted listing as endangered under the Endangered Species Act (ESA). This rule became effective on July 20, 2009.

Also as described in a June 19, 2009 final rule published in the Federal Register (74 FR 29300), NMFS designated critical habitat for the GOM DPS. This includes 45 specific areas occupied, or accessible, by Atlantic salmon at the time of listing that comprise approximately 19,571 km of perennial river, stream, and estuary habitat and 799 square km of lake habitat within the range of the GOM DPS and in which are found those physical and biological features essential to the conservation of the species. The entire occupied range of the GOM DPS in which critical habitat is designated is within the State of Maine. NMFS excluded approximately 1,256 km of river, stream, and estuary habitat and 100 square km of lake habitat from critical habitat pursuant to section 4(b)(2) of the ESA. This rule became effective on July 20, 2009.

FPL Energy owns, or indirectly partially owns, five hydroelectric projects on the Kennebec River within the described historic range of the GOM DPS, including three (Lockwood, Shawmut and Weston) within the designated critical habitat. On the Androscoggin, FPL Energy owns three hydroelectric projects (including 4 dams) within the historic range of the GOM DPS, including one (the Brunswick Project) within the designated critical habitat. FPL Energy does not own any projects on the Penobscot River.

The purpose of this letter is to formally inform the Services that FPL Energy and MLP would like to request technical assistance from NMFS and initiate Endangered Species Act (ESA) Section 10 Habitat Conservation Planning consultation with NMFS so that NMFS can authorize the incidental take of ESA-listed species resulting from otherwise lawful, non-federal activities. As part of this process, it is anticipated that FPL Energy and MLP would submit an application for an Incidental Take Permit (ITP) to the Services and the permit application would contain the following:

- Permit Application Form
- Fee
- Habitat Conservation Plan (HCP) developed with technical assistance from Services. The HCP must: 1) Identify project impacts to listed species; 2) Determine anticipated take levels and types of takes; 3) Identify effects of takes on the species; 4) Address effects to Critical Habitat; 5) Identify ways to monitor, minimize and mitigate impacts; 6) Identify alternative actions considered and reasons why not used; 7) Specify funding to implement proposed mitigation and monitoring.

It is our understanding that upon receipt of the ITP application, the Services would:

- Review the Application and HCP
- Issue an Environmental Assessment (EA)
- Conduct Section 7 Consultation
- Place a Notice of Application in the Federal Register to commence 30-day public comment period.
- Issue the Record of Decision responding to public comments
- Issue a Signature Package (Biological Opinion, Set of Findings, Implementing Agreement, NEPA Decision Document, ITP).
- Issue/Deny ITP.

In closing, FPL Energy and MLP are committed to working cooperatively with the Services regarding ESA requirements for the GOM DPS Atlantic salmon on the Kennebec and Androscoggin Rivers. NextEra Energy would like to arrange a meeting with the NMFS personnel within the next few weeks to initiate consultation and begin the process of developing a schedule for completion of all necessary steps under Section 10 of the ESA.

If you have any questions regarding this letter, please contact Robert Richter, at (207) 242-5001 or Robert.Richter@nexteraenergy.com.

Sincerely,

Nancy Z Bladow for

Christopher L. Allen
General Manager

cc:

MDMR, Patrick Keliher

NMFS, Jeff Murphy

USFWS, Fred Seavey

FERC, Peter Yarrington