

allegations in Paragraph 3.

4. Defendants lack sufficient information to form a believe as to the veracity of the allegations in Paragraph 4.

5. Defendants lack sufficient information to form a belief as to the veracity of the allegations in Paragraph 5.

6. Admit.

7. Admit.

8. The allegations in Paragraph 8 purport to describe the contents of the Endangered Species Act, a statute which speaks for itself and provides the best evidence of its contents. Defendants deny any characterization or allegations in Paragraph 8 that are inconsistent with the plain language or meaning of the statute.

9. The allegations in Paragraph 9 purport to describe the contents of the Endangered Species Act, a statute which speaks for itself and provides the best evidence of its contents. Defendants deny any characterization or allegations in Paragraph 9 that are inconsistent with the plain language or meaning of the statute.

10. The allegations in Paragraph 10 purport to describe the contents of the Endangered Species Act, a statute which speaks for itself and provides the best evidence of its contents. Defendants deny any characterization or allegations in Paragraph 10 that are inconsistent with the plain language or meaning of the statute.

11. The allegations in Paragraph 11 purport to describe the contents of the Administrative Procedure Act and, the Endangered Species Act, and the regulations implementing the Endangered Species Act, statutes and regulations which speak for themselves

and provide the best evidence of their contents. Defendants deny any characterization or allegations in Paragraph 11 that are inconsistent with the plain language or meaning of the statutes or regulations.

12. The allegations in Paragraph 12 purport to describe the contents of the Endangered Species Act, a statute which speaks for itself and provides the best evidence of its contents. Defendants deny any characterization or allegations in Paragraph 12 that are inconsistent with the plain language or meaning of the statute.

13. In response to the allegations in the first sentence of Paragraph 13, Defendants admit that the rule designating the Gulf of Maine distinct population segment of salmon as an endangered species (“the listing rule”) states that “[t]he Gulf of Maine DPS includes all naturally reproducing remnant populations of Atlantic salmon from the Kennebec River downstream of the former Edwards Dam site, northward to the mouth of the St. Croix River” and that “[t]he DPS includes both early- and late-run Atlantic salmon.” 69 Fed. Reg. 69459, 69459 (Nov. 17, 2000). Defendants deny that Plaintiffs’ allegations properly define “distinct population segment,” and aver that the policy on distinct populations segments, which explains how this term is to be interpreted in ESA listing decisions is set forth at 61 Fed. Reg. 4711 (Feb. 7, 1996). In response to the allegations in the second and third sentences of Paragraph 13, Defendants admit that a status review for the Gulf of Maine salmon DPS states that:

The annual historic Atlantic salmon adult population returning to U.S. rivers has been estimated to be between 300,000 (Stolte 1981) and 500,000 (Beland 1984). The largest historical salmon runs in New England were likely in the Connecticut, Merrimack, Androscoggin, Kennebec, and Penobscot Rivers (DeRoche 1967, Baum 1983).

See Status Review for Anadromous Atlantic Salmon (*Salmo salar*) in the United States at 22-23,

<http://www.nmfs.noaa.gov/pr/pdfs/statusreviews/atlanticsalmon.pdf> (visited July 22, 2008).

Defendants admit the allegations in the fourth sentence of Paragraph 13.

14. Defendants admit the allegations in the first through third sentences of Paragraph 14. In response to the allegations in the fourth and fifth sentences of Paragraph 14, Defendants aver that the NOAA announced the availability of the completed status review report after it had been peer reviewed and peer review comments had been addressed on September 22, 2006 (71 FR 55431). Defendant denies the allegations in the sixth sentence of Paragraph 14 and avers that the Status Review estimates the likelihood of extinction ranges from 19% to 75% within the next 100 years for the Gulf of Maine salmon DPS.

15. The allegation in the first sentence of Paragraph 15 is a conclusion of law to which no response is required. Defendants admit the allegation in the second sentence of Paragraph 15. Defendants deny the allegations in the third sentence of Paragraph 15.

16. The allegations in Paragraph 16 are conclusions of law to which no response is required.

17. The allegations in Paragraph 17 are conclusions of law to which no response is required.

18. In response to the allegations in Paragraph 18, Defendants admit that they received plaintiffs' letter more than 60 days before plaintiffs filed the complaint. Defendants further aver that the letter and signed receipts by the Secretaries' offices speak for themselves and provide the best evidence of their contents.

19. Defendants lack sufficient information to form a belief as to the veracity of the allegations in Paragraph 19.

Relief Requested

The remaining allegations in the Complaint set forth Plaintiffs' prayer for relief to which no response is required. To the extent a response is required, Defendants aver that Plaintiffs' are entitled to no relief on any of their claims.

General Denial

To the extent any allegation of Plaintiffs' complaint is not expressly admitted in any of the foregoing paragraphs, such allegation is denied.

Respectfully submitted on this 22nd day of July 2008.

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s/ Lisa Lynne Russell

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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of July 2008, I caused a true and correct copy of the foregoing ANSWER to be served on the following counsel of record by filing such with the District of Maine's electronic case filing system:

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