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FEDERAL ENERGY  
REGULATORY COMMISSION



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

P-2911  
P-2574  
P-2322  
P-2325

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 (KHGD), 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 KHGD 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 KHGD provide both upstream and downstream fish passage measures and conduct passage effectiveness studies at the projects in accordance with the KHGD 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 KHGD 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](mailto:Robert.Richter@nexteraenergy.com).

Sincerely,



Christopher L. Allen  
General Manager, Maine Generation

cc: NMFS, Dan Kircheis  
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