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Fish fans pan dams

By Darcie Moore, Times Record Staff

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BRUNSWICK — Two nonprofit organizations have submitted 60-day notices of their intent to sue the owners of three dams on the lower Androscoggin River for what they characterize in the notice as "illegal 'take' of Atlantic salmon protected under the Endangered Species Act."

The owners of one of the dams counter that federal regulators have already determined that similar measures in place at other Maine dams it owns complies with salmon protection requirements.

According to a release issued Tuesday by Ed Friedman of Friends of Merrymeeting Bay and Douglas Watts of Friends of Kennebec Salmon, the 60-day notices are required under citizen suit provisions by both the Endangered Species and Clean Water acts to give all parties time to seek a resolution.

According to a copy of the notice addressed to Miller Hydro Group, owner of the Worumbo Dam in Lisbon; Hydro Partners, owners of the Pejepscot Dam; and FPL/Next Era, owners of the Brunswick Dam — the Aug. 27 letter aims "to provide ... 60 days notice of our intent to file suit against you for violations of the U.S. Endangered Species Act at the Worumbo, Pejepscot and Brunswick dams on the Androscoggin River in Lisbon, Topsham and Brunswick, Maine."

Watts, president of The Friends of Kennebec Salmon, wrote in the letter, "We believe credible evidence already exists which shows your dams are now causing a 'take' of Atlantic salmon under the ESA by failing to provide them with safe and effective downstream passage around the turbines of your dams."

The release further points to Section 10 of the ESA, which allows for incidental take permits, but states, "the dam owners have requested they be allowed multi-year studies before beginning the permit application process. Unfortunately, the few remaining salmon don't share this schedule."

Friedman said Tuesday that none of the three dam owners issued letters Friday have incidental take permits because they were not a requirement until the Atlantic salmon were listed as endangered. The U.S. Fish and Wildlife Service and National Oceanic and Atmospheric Administration's Fisheries Service extended endangered species protections to Atlantic salmon in the Penobscot, Kennebec and Androscoggin rivers and their watersheds in June 2009.

As part of the listing process, Friedman said the NOAA and U.S. Fish and Wildlife Services agencies can issue incidental take permits, but there is a process for that. Friedman argued that the dam owners must "come up with a plan that basically says, 'We can't avoid killing a few fish and we're gong to do everything within our power to minimize the harm we do to them.' So until they do that, they are essentially taking. And what we're saying is, that process can't go on forever."

The intent of filing the 60-day notice, Friedman said, is, "to keep the fish out of the turbines. ... None of the three facilities have adequate downstream passage — safe and effective downstream passage — and so that is what we would like to see happen."

A successful downstream passage system would consist of some sort of bar grate or a perforated punch plate somewhere above the turbines, which would physically keep fish from getting into the turbines, and provide them with an alternative way through the dam.

Six weeks ago, the two nonprofit groups filed similar notices to four dam owners along the lower Kennebec River for "violating Atlantic salmon and American shad provisions of their Clean Water Act licenses."

Friedman said representatives of Hydro Kennebec, which owns a dam on the Kennebec River, have responded and indicated they are interested in talking to FOMB and FOKS. He emphasized that the 60-day notice is a step required before formal legal action, but "nothing in the letter says we have to file suit in 60 days."

Steve Stengel, spokesman for NextEra Energy Resources, which owns the Brunswick Dam, issued a response Wednesday to

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the notice of intent: "After this organization sent a similar letter in May, the Federal Energy Regulatory Commission reviewed the claims and responded '... we have determined that NextEra is complying with the salmon protection requirements of the Lockwood, Weston, and Shawmut Project licenses.'

"We are currently working with the National Oceanic and Atmospheric Administration on mitigation efforts to address the endangered Atlantic salmon," Stengel continued. "It is important for NextEra Energy Resources to proceed with the guidance and approval of all government agencies involved in this new process. NextEra Energy Resources intends to continue to work with all the appropriate agencies of government to minimize environmental impacts while preserving a clean, reliable, and renewable energy resource for the citizens of the state of Maine."

Stengel also added, "It is our hope that members of the public will allow these governmental agencies an appropriate opportunity to design and implement the best program possible for the Atlantic salmon that achieves the environmental, economic and energy goals of all concerned."

Mark Isaacson, vice president of Miller Hydro Group which owns the Worumbo Dam in Lisbon, said Wednesday: "We've been working with the National Marine Fisheries Service on an interim protection plan. We will be continuing that process," regardless of whatever action these two organizations take.

The interim protection plan is not the same thing as an incidental take permit, but it is connected, Isaacson said. He added, "We operate a fish friendly facility at Worumbo. We are a Low Impact Hydropower Institute certified facility. We were the first in Maine and second in New England to be certified."

"What we'd like to see is an understanding on the part of the dam owners that it's going to cost them more in legal fees probably to fight this, than it would to put up a screen in front of their turbines," Friedman said. "It's going to happen, sooner or later, and we'd like to see it happen sooner, while there's still a few fish around."

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