



- Paragraph 2 of the Complaint. Defendants deny the allegations contained in the second sentence of Paragraph 2 of the Complaint.
3. The first and second sentences of Paragraph 3 contain conclusions of law to which no response is required. Defendants further state that the certifications speak for themselves. To the extent a response is required, Defendants deny the allegations in the first and second sentences of Paragraph 3. Defendants deny the allegations in the third sentence of Paragraph 3. With respect to the fourth sentence of Paragraph 2 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth of Plaintiffs' assertions regarding what they believe and otherwise deny the allegations contained in the fourth sentence of Paragraph 3.
  4. Defendants deny the first sentence of Paragraph 4 of the Complaint. The second sentence of Paragraph 4 contains conclusions of law to which no response is required.
  5. Denied.

**Parties**

6. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 of the Complaint.
7. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 of the Complaint.
8. Defendants admit the second sentence of Paragraph 8 to the extent that it alleges that The Merimil Limited Partnership owns the Lockwood dam. Defendants otherwise deny the allegations in Paragraph 8 of the Complaint.
9. Defendants deny the first two sentences of Paragraph 9 of the Complaint. Defendants admit the third sentence in Paragraph 9.

- 9a. Admitted.
- 10. Admitted.
- 11. Denied.

**Jurisdiction and Venue**

- 12. Paragraph 12 contains conclusions of law to which no response is required. To the extent a response is required, Defendants deny the first sentence of Paragraph 12 and admit the second sentence of Paragraph 12.
- 13. Defendants admit the first and second sentences of Paragraph 13 of the Complaint. Defendants admit that copies of the notice letter were mailed to Defendants' registered agents, but are otherwise without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the third sentence of Paragraph 13. The fourth sentence of Paragraph 13 contains conclusions of law to which no response is required.
- 13a. Defendants admit the first and second sentences of Paragraph 13a of the Complaint. Defendants admit that copies of the notice letter were mailed to FPL Energy's registered agent, but are otherwise without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the third sentence of Paragraph 13a. The fourth sentence of Paragraph 13a contains conclusions of law to which no response is required.

**Facts**

- 14. Admitted.

15. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 15. To the extent a response is required, Defendants deny the allegations in Paragraph 15.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the unnumbered paragraph located between Paragraphs 15 and 16 of the Complaint. To the extent a response is required, Defendants deny the allegations in unnumbered Paragraph located between Paragraphs 15 and 16.

16. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 16 of the Complaint.

17. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 17 of the Complaint.

### **Count I**

18. Defendants reallege and incorporate herein by reference their answers to Paragraphs 1 through 17 of the Complaint as if fully set forth herein.

19. Paragraph 19 of the Complaint contains conclusions of law to which no response is required. To the extent that Paragraph 19 contains statements that are not conclusions of law, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 19. To the extent a response is required, Defendants deny the allegations in Paragraph 19.

20. Paragraph 20 of the Complaint contains conclusions of law to which no response is required.

21. Defendants admit that the Services promulgated a rule concerning the Gulf of Maine Distinct Population Segment of the Atlantic Salmon in 2000 and state that the rule

speaks for itself. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the third through fifth sentences of Paragraph 21 of the Complaint. Defendants admit that the Services promulgated a proposed rule in 2008 and a final rule in 2009 and state that the proposed and final rules speak for themselves. Beyond what's published, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the sixth and seventh sentences of Paragraph 21. To the extent a response is required, Defendants deny the allegations in the sixth and seventh sentences of Paragraph 19.

22. Defendants admit that the Services promulgated a proposed rule in 2009 designating critical habitat for Atlantic Salmon and further state that the rule speaks for itself.

The unnumbered paragraph between Paragraphs 22 and 23 of the Complaint contains conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations in the unnumbered paragraph.

23. Paragraph 23 contains conclusions of law to which no response is required.

24. Paragraph 24 contains conclusions of law to which no response is required.

25. Paragraph 25 contains conclusions of law to which no response is required.

26. Paragraph 26 contains conclusions of law to which no response is required.

27. Paragraph 27 contains conclusions of law to which no response is required.

The unnumbered paragraph between Paragraphs 27 and 28 of the Complaint contains conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations in the unnumbered paragraph.

28. Paragraph 28 contains conclusions of law to which no response is required. Further responding, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 28 of the Complaint. To the extent a response is required, Defendants deny the allegations in Paragraph 28.
29. Defendants admit the allegation in the first sentence of Paragraph 29 of the Complaint to the extent that it alleges that Defendants do not currently have an incidental take permit or an incidental take statement. To the extent that the first sentence of Paragraph 29 alleges that Defendants have committed a “take” under the Endangered Species Act (“ESA”), it contains conclusions of law to which no response is required. To the extent a response is required, Defendants deny all allegations in the first sentence of Paragraph 29 other than the absence of an ITP/ITS. The second and third sentences of Paragraph 29 contain conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations in the second and third sentences of Paragraph 29.
30. Defendants state that the Services’ listing decision speaks for itself. To the extent a response is required, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 30 of the Complaint.

## **Count II**

United States District Judge Singal granted Defendants’ motion to dismiss regarding defendants NextEra Energy Resources, LLC and NextEra Energy Maine Operating Services, LLC with respect to Count II of the Amended Complaint. The Answer with respect to Count II is made on behalf of the remaining defendants only.

31. Defendants reallege and incorporate herein by reference their answers to Paragraphs 1 through 30 of the Complaint as if fully set forth herein.

The unnumbered paragraph between Paragraphs 31 and 32 of the Complaint contains conclusions of law to which no response is required.

32. Defendants state that the text of the Clean Water Act speaks for itself. Further responding, Defendants state that Paragraph 32 contains conclusions of law to which no response is required.

33. Paragraph 33 contains conclusions of law to which no response is required.

34. Paragraph 34 contains conclusions of law to which no response is required.

35. Paragraph 35 contains conclusions of law to which no response is required.

The unnumbered paragraph between Paragraphs 35 and 36 of the Complaint contains conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations in the unnumbered paragraph.

36. Defendants state that the Water Quality Certifications and KHDG Settlement Agreement speak for themselves. To the extent a response is required, Defendants deny the allegations in Paragraph 36.

37. Defendants admit that salmon have been transported by truck from below the Lockwood Dam to the Sandy River since 2006. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 37 of the Complaint. To the extent a response is required, Defendants deny the allegations in Paragraph 37.

38. Denied.

39. Denied.

40. Denied.

41. Denied.

The unnumbered paragraph between Paragraphs 41 and 42 of the Complaint contains conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations in the unnumbered paragraph.

42. No response is required to Paragraph 42 of the Complaint. To the extent a response is required, Defendants deny the allegations in Paragraph 42 of the Complaint.

43. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 43 of the Complaint. To the extent a response is required, Defendants deny the allegations in Paragraph 43.

44. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 44 of the Complaint. To the extent a response is required, Defendants deny the allegations in Paragraph 44.

45. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 45 of the Complaint. To the extent a response is required, Defendants deny the allegations in Paragraph 45.

46. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 46 of the Complaint. To the extent a response is required, Defendants deny the allegations in Paragraph 46. Defendants specifically deny any implication that they have violated the ESA or the water quality certifications contained in the FERC licenses for the dams.

Defendants deny any implication in the unnumbered paragraph between Paragraphs 46 and 47 to the effect that they have not complied with the ESA and their Clean Water Act water quality certifications.

47. No response is required to Paragraph 47 of the Complaint. To the extent a response is required, Defendants deny the allegations in Paragraph 47 of the Complaint.

48. Paragraph 48 contains conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 48.

49. Paragraph 49 contains conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 49.

50. Defendants deny any implication in Paragraph 50 to the effect that they have violated the ESA or the water quality certifications contained in the FERC licenses for the dams. Defendants are otherwise without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 50 of the Complaint. To the extent a response is required, Defendants deny the allegations in Paragraph 50.

51. Defendants admit that applying for and obtaining an incidental take permit (“ITP”) is one statutorily permitted way to comply with the ESA and that development of a habitat conservation plan, or HCP, is necessary to obtaining an ITP. Further answering, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 51 of the Complaint concerning the Plaintiffs’ beliefs and Defendants otherwise deny the remaining allegations in Paragraph 51.

**FIRST DEFENSE**

Plaintiffs lack standing to bring a claim under the citizen suit provision of the Endangered Species Act or the Clean Water Act.

**SECOND DEFENSE**

Plaintiffs' complaint fails to state a claim on which relief can be granted.

**THIRD DEFENSE**

Application of the doctrine of Primary Jurisdiction requires that this Court dismiss or stay this case pending administrative resolution of the incidental take permit process currently underway with respect to the dams.

**FOURTH DEFENSE**

Plaintiffs' claims must be dismissed as not ripe for adjudication.

Respectfully submitted,  
NEXTERA ENERGY RESOURCES, LLC  
NEXTERA ENERGY MAINE OPERATING  
SERVICES, LLC  
FPL ENERGY MAINE HYDRO LLC  
THE MERIMIL LIMITED PARTNERSHIP  
By their attorneys,

Dated: September 23, 2011

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**Certificate of Service**

I hereby certify that on this 25th day of August, 2011, I electronically filed the within document with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following: David A. Nicholas, 20 Whitney Road, Newton, MA 02460; Bruce M. Merrill, 225 Commercial Street, Suite 501, Portland, ME 04101; and on the attorneys for the National Environmental Law Center: Joshua R. Kratka and Charles C. Caldart, National Environmental Law Center, 44 Winter Street, 4th Floor, Boston, MA 02108.

/s/ Seth D. Jaffe  
Seth D. Jaffe (MA BBO No. 548217)