

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

OFFICE OF ENERGY PROJECTS

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SECRETARY OF THE
COMMISSION
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FEDERAL ENERGY
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

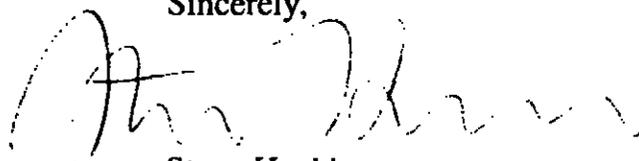
We wish to remain informed of issues concerning the protection of Atlantic salmon at NextEra's projects in Maine. Please assist us in this matter by ensuring that the annual reports you file pursuant to the Commission's September 16, 2008 order clearly address Atlantic salmon protection issues at NextEra's 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**
National Marine Fisheries Service
Northeast Regional Office
55 Great Republic Drive
Gloucester, MA 01930-2276

Jeff Murphy
National Marine Fisheries Service
Northeast Regional Office
55 Great Republic Drive
Gloucester, MA 01930-2276

Frederic G. Seavey
U.S. Fish and Wildlife Service
1168 Main Street
Old Town, ME 04468

Norm Dube
Maine Department of Marine Resources
21 State House Station
Augusta, ME 04333-0021

Robert Richter
NextEra Energy Maine Operating Services LLC
26 Catherine Drive
Hallowell, ME 04347