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June 10, 2005

Lydia Munger
Fishery Management Plan Coordinator
Atlantic States Marine Fisheries Commission
1444 Eye Street, NW, Sixth Floor
Washington, DC 20005

Re: Comments of the National Hydropower Association (“NHA”) Concerning ASMFC’s PID for Potential Changes to the Interstate Fishery Management Plan for American Eel

Dear Ms. Munger:

NHA appreciates this opportunity to comment on the Atlantic States Marine Fisheries Commission’s (“ASMFC”) Public Information Document (“PID”) for Potential Changes to the Interstate Fishery Management Plan for American Eel (“FMP”) approved by ASMFC on November 10, 2004 and issued on February 8, 2005.

NHA is the national trade association committed exclusively to representing the interests of the hydroelectric power industry. Our members represent 61 percent of domestic, non-federal hydroelectric capacity and nearly 80,000 megawatts overall in North America. NHA’s membership consists of more than 140 organizations including; public utilities, investor-owned utilities, independent power producers, equipment manufacturers, environmental and engineering consultants and attorneys. NHA has a strong interest in the PID and its recommendations as many NHA member companies own and operate hydroelectric projects on rivers where American eel are present. As such, the Association offers the following comments.

The stated purpose of the PID (at page 2) is “to inform the public of the intent of the ASMFC to gather information concerning the American eel fishery and provide for the public to identify major issues and alternatives relative to the management of the American eel.” The PID requests “general comments on the American eel population or American eel management” as well as comments on the specific issues listed.

Before commenting on the specifics of the PID, NHA believes it is important to recognize that hydropower projects are and continue to be responsible stewards of the nation’s rivers. In this context, a number of NHA members are currently working closely with federal and state officials to conduct extensive studies on eel movement and eel populations. However, NHA believes much more work needs to be done and additional data developed before ASMFC takes any action to modify or revise the FMP (see comments below).

1. Action by ASMFC at this time should be focused on facilitating data collection before consideration of any other modifications to the Fishery Management Plan for American eel (either through an Addendum or an Amendment).

As documented in the PID (at page 4), ASMFC recognizes that “a compilation of all available information on eel fisheries and biology suggests that the data are fragmented and/or incomplete.” ASMFC concludes (PID at page 7) “[c]urrent stock status for the American eel is poorly understood due to limited and non-uniform stock assessment efforts and protocols across the range of this species.” This conclusion appears to be based on the *2004 Review of the Atlantic States Marine Fisheries Commission Fishery Management Plan for American Eel* (“2004 Review” at page 2) which confirms the lack of data and protocols. The *2004 Review* (at pages 6-7) documents at least 22 areas of research and review which are needed “to further understand the species’ life history, behavior and biology.” Included in this list are the identification of appropriate stock assessment methods and then carrying out a reliable stock assessment; the assessment of recruitment by life stage and limiting factors; the effects of contaminants on a long-lived species that spends a significant amount of time in the sediments; and implications and effects of oceanic changes on spawning success and migratory routes.

As further acknowledged in the PID (at page 4), “[p]lanning and regulatory activities require information, specifically, the abundance and status of the species and its habitat.” Information and data is being collected through a Young of the Year survey protocol approved in 2000. Based on those data, NHA understands that ASMFC’s Stock Assessment Subcommittee plans to “determine the applicability of the results to a coast wide benchmark stock assessment in 2005.” (PID at 6).

NHA believes the information outlined above and additional data collection is critical before making any decisions regarding changes to the American eel FMP. As such, the Association encourages ASFMC to make thorough data collection its top priority with respect to the American eel.

2. The recommendations by the American Eel Technical Committee relative to increased requirements imposed on hydroelectric facilities (as described in *Issue 5. Habitat*) of the PID are premature and should not be adopted until (i) further data collection demonstrates that there is a decline in the American eel population, and (ii) detailed studies demonstrate that the operation of dams/hydroelectric projects are directly responsible for any documented decline in population.

The PID, under the habitat section (*Issue 5*), lists several recommendations proposed by the Technical Committee that would have significant effects on hydroelectric project operations and owners. In that section, ASMFC requests comments on what are the “primary habitat issues” and what is recommended for addressing those habitat issues. In the context of the PID, ASMFC appears to consider “habitat” to include “sources of mortality other than fishing.” (PID at page 10). However, in this section of the PID, ASMFC cites only to five recommendations of the Technical Committee, four of which involve the potential impact of hydroelectric project operations on eel populations.

Based on ASMFC’s acknowledgement (in the PID, as discussed above) of the clear need for more information on the eel, its biology and its habitat, NHA believes that before ASMFC considers or includes any of the recommendations from the Technical Committee in the FMP, ASMFC should ensure that more data is collected and research conducted on the status of eel populations, what eel habitats may affect those populations, and what aspects of eel habitats and other limiting factors have an adverse impact on the populations.

Further, NHA believes that any consideration by ASMFC of the recommendations of the Technical Committee, at a minimum, should be delayed until the stock assessment for the American eel is

completed and until an objective and extensive peer reviewed study demonstrates a direct causation between a verified decline in eel population and the operation of hydroelectric projects. Currently, there is no clear evidence that the operation of hydroelectric projects is solely or directly responsible for the perceived decline in the eel population. The majority of hydropower facilities have been in existence for many decades, and a large number for close to 100 years or more. As such, NHA questions the rationale that hydropower projects along the East Coast are a primary factor in the apparent decline of the American eel since the 1970s.

ASMFC acknowledges (PID at page 4) that there are a number of potential other factors that may play a role in the decline of American eel populations and habitat, including pollution, near shore habitat destruction, oceanic changes, and the biology of the eel itself (*e.g.*, slow sexual maturation, and the species' particular migration process). However, the extent of the role of each of these factors on the apparent decline of eel populations remains unknown and needs more examination before the management plan is amended.

NHA believes that these and other factors need more vigorous evaluation and study by ASMFC member states. The goal of the PID, and any future changes to the FMP, is to protect and enhance the abundance of the American eel. However, this goal will not be reached unless all issues contributing to the perceived decline of the eel are first examined on a scientific basis.

Without the analysis of all potential impacts on the eel population (as outlined in the *2004 Review*, discussed above), hydro owners and operators may be faced with significant regulatory requirements based on broad management practices that impose on them the obligation to mitigate for adverse impacts that are clearly out of their control and/or unrelated to the operations of the hydroelectric projects. Not only is this unfair and unjustified, and will impose significant costs on the industry, but most importantly it may prove ineffective in meeting the Commission's goal for the eel population.

3. ASMFC's stock assessment should be scientifically sound and based on comprehensive data.

NHA supports ASMFC in its decision to conduct and complete the American eel stock assessment (PID at page 7). As stated above, the assessment will provide necessary information for ASMFC to consider regarding any future amendments to the FMP.

At this time, there is considerable uncertainty regarding the status of eel populations. The PID references several studies that find that eel stocks are declining. However, recent anecdotal evidence from eel fishermen indicates that some eel populations are healthy and increasing. The stock assessment will help clarify the status of eel populations.

NHA believes a scientific, statistically sound, comprehensive assessment is a critical and fundamental element in ASMFC's process for moving forward on any eel issues, particularly in consideration of future changes to the FMP. Without this information, NHA believes that ASMFC will not have clearly defined the problem, thereby hampering an appropriate plan for revising management practices to address it.

4. ASMFC should support federal and state funding for hydropower research and development to help address the information needs regarding the American Eel.

NHA believes that further research and study on needed in order to provide ASMFC with the complete picture on the status of American eel populations. For example, one of the recommendations contained in the habitat section of the PID is for the inclusion of upstream and downstream passage for eels as a

condition of relicensing hydro projects (PID at page 10). At this time, however, the behavior and biology of downstream migrating eels is poorly understood and the technology for downstream eel passage has yet to be fully developed and tested.

A number of NHA members are already conducting extensive studies on eel movement and eel populations. Furthermore, NHA has member companies who are willing to test potential downstream passage technology, such as upgraded turbine units. However, there is no federal or state program to assist them in this endeavor. In fact, the U.S. Department of Energy has recently slashed the budget for its hydropower research and development program. By October 2006 the budget for the program will be eliminated completely.

NHA encourages ASMFC to support hydro R&D funding on both the federal and state levels in order to assist in the data collection that will facilitate a reasoned and scientifically supported end result. If such funds were available, the industry could work with the ASMFC to test new technologies that may assist in the management of the eel population, without resorting to more restrictive practices – a win/win situation for all parties.

Once again, NHA would like to thank ASMFC for providing this opportunity to comment on the PID. The Association will continue to remain engaged in this effort and monitor ongoing developments. NHA staff is also prepared and willing to work with ASMFC to address any of the comments raised in this letter. For additional information, please feel free to contact NHA's Linda Church Ciocci or Jeffrey A. Leahey, Esq. at 202.682.1700.

Sincerely,

A handwritten signature in cursive script that reads "Linda Church Ciocci". The signature is written in black ink on a light-colored background.

Linda Church Ciocci
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