

UNITED STATES OF AMERICA
Before the
U.S. Fish and Wildlife Service and
National Marine Fisheries Service

Request for Comments on the Proposed)	Proposed Endangered Status for the Gulf of
Rule and 12-Month Petition Finding)	Maine Distinct Population Segment of Atlantic
)	Salmon

COMMENTS OF THE NATIONAL HYDROPOWER ASSOCIATION
ON THE PROPOSED LISTING OF THE GULF OF MAINE DISTINCT POPULATION
SEGMENT OF ATLANTIC SALMON

I. BACKGROUND AND INTRODUCTION

On September 3, 2008, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (Services) issued a proposed rule to list the Gulf of Maine (GOM) Distinct Population Segment (DPS) of Atlantic salmon as threatened or endangered under the Endangered Species Act.¹ The listing proposal was followed on September 5, 2008 by a proposed critical habitat designation for the GOM DPS.²

The National Hydropower Association (NHA or Association)³ appreciates the opportunity to comment on the Services' proposal. These comments are informed by the input of NHA's member companies in Maine, which include several hydropower owners and operators such as Brookfield Renewable Power, FPL Energy Maine Hydro LLC, PPL Maine LLC, the Independent Energy Producers of Maine and others. With this background, NHA respectfully submits the following general comments and directs the Services to the individual comments of local hydropower companies for

¹ 73 Fed. Reg. 51,415 (Sept. 3, 2008).

² 73 Fed. Reg. 50,000 (Sept. 5, 2008).

³ NHA is a non-profit national association dedicated exclusively to advancing the interests of the U.S. hydropower industry, including new water power technologies, such as ocean, tidal and instream hydrokinetic power. NHA's

more specific details on the proposed listing, the critical habitat designation, and the impact of these on the industry to produce clean, climate-friendly renewable power for Maine and for the region at large.

II. ESA Listing

As a general practice, the National Hydropower Association does not take positions on the listing of individual species under the Endangered Species Act. The Association, in the past, has commented on the scientific information available to agencies making ESA listing decisions and to ensure that decisions are based on science and not arbitrary political considerations. NHA has left comments on proposed endangered or threatened status listings to local NHA member companies who have the best knowledge, expertise, experience and data to respond.

However, in this case, NHA takes note of the extraordinary consensus that is developing in Maine with regard to the listing of the GOM DPS between state regulators and industry. The State of Maine Department of Marine Resources has stated its belief that the GOM DPS should be listed as “threatened” as opposed to “endangered.” Supporting the state’s “threatened” assessment is a coalition of hydroelectric owners and operators, pulp and paper industrial facilities, municipal wastewater dischargers and others. The reasoning behind this consensus – a threatened listing provides more flexibility for these groups to work jointly and cooperatively within both a regulatory and adaptive management framework to provide additional protection for the Atlantic salmon.

It is NHA’s understanding that state and federal resource management agencies, industry, local communities, environmental NGOs, tribes and the public have made substantial progress in coming to

membership consists of more than 150 organizations including public utilities, investor owned utilities, independent power producers, project developers, equipment manufacturers, environmental and engineering consultants and attorneys.

agreement on various restoration efforts and programs for the Atlantic salmon. The Penobscot River Restoration Project (PRRP) and the Kennebec Hydro Developers Group Agreement (KHGD Agreement) are two prime examples of this success. These efforts have resulted in significant amounts of funding for fish restoration efforts on both the Penobscot and Kennebec Rivers. In fact, the PRRP has been hailed by river advocates as one of the most important river restoration efforts the country has ever seen.

NHA has a long history of supporting these types of collaborative processes that bring divergent interests together to achieve successful outcomes for all. If the State of Maine and participants in these efforts believe a “threatened” status listing for the GOM DPS is appropriate, NHA supports that determination, in the hope it prevents any undermining of these programs that would adversely affect restoration results.

III. Inadequacy of Existing Regulatory Mechanisms

In the petition finding, the Services assert that a lack of regulatory structure exists to adequately take into account and mitigate for potential impacts of hydropower facilities on the Atlantic salmon. To this assertion, NHA strongly disagrees, particularly for those hydropower dams that are regulated through the licensing process at the Federal Energy Regulatory Commission (FERC). To demonstrate the length to which hydropower facilities specifically are regulated in Maine, and across the country, NHA provides the following background and impact of the hydropower licensing process.

Hydropower is one of the most highly regulated energy industries in the State of Maine and the country. The following is a list of statutes that govern or play a significant role in the licensing

process: the Federal Power Act, the Clean Water Act, the National Environmental Policy Act, the Endangered Species Act, the Coastal Zone Management Act, the National Historic Preservation Act, the Federal Land Policy and Management Act, the Wild and Scenic Rivers Act and others including state NEPA laws, hydropower licensing programs, and natural resource laws.

The list of authorities involved in the hydropower licensing process includes: FERC, the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, the Forest Service, state Section 401 certifying agencies, state natural resource agencies and others, such as tribal authorities. Finally, the process is an open one that allows private parties to actively participate including: river advocates, species advocates, whitewater rafting enthusiasts, upstream and downstream landowners, and the public at large.

As a result of the intensive open public process, relicensing of existing hydropower facilities takes into full consideration public comments, agency recommendations and prescriptions, and natural resource protection and enhancement measures. This multi-year process involves, at a minimum, 26 steps that include up to a dozen opportunities for comment from, and meetings with, interested parties. In NHA's experience, our member companies take seriously their environmental stewardship responsibilities and work cooperatively and collaboratively with all of the participants and stakeholders as they navigate the licensing process.

In addition, more companies are entering into settlement agreements with federal and state regulators and other participants in advance of final license issuance to ensure that mitigation and restoration needs are met. FERC, in its 2006 Policy Statement on Hydropower Licensing Settlements,

reiterated its support for settlements in hydropower licensing proceedings. The Commission works diligently to include settlement items as part of the final terms and conditions of licenses. The KHDG is a prime example with several items developed out of that collaborative incorporated into hydropower licenses.

Because of the intensive process, hydropower owners and operators spend a significant amount of funds on the licensing of their facilities alone. Depending on the project, licensing transaction costs can run into the millions of dollars, and this is before even any funds are spent on environmental mitigation efforts, which themselves consistently cost millions to tens of millions of dollars per project. NHA commends those industry members who, like in Maine, are stepping up beyond the licensing process to participate in collaboratives like the PRRP, KHDG and others.

In the end, hydropower, like any energy resource – renewable or otherwise – has impacts. Our industry is working diligently to address and mitigate those impacts and is doing so within a coordinated and comprehensive regulatory regime that incorporates all levels of government from federal to local, and involves all manner of interests. For the Services to assert in their petition finding that the regulatory mechanisms for dams are inadequate, particularly those used as a part of licensed hydropower facilities, is a disservice to the extremely hard work that the industry, public and regulators themselves are conducting.

IV. Conclusion

Hydropower is a clean, climate-friendly, renewable energy resource. In fact, it is the largest source of renewable energy in the U.S. providing 8% of the electricity generated across the country. Its

benefits include low cost power, a lower carbon footprint, grid reliability and a host of other non-power benefits including water supply, irrigation, natural resource management, recreation, navigation and others.

NHA believes healthy rivers and a healthy hydropower industry are compatible.

The Association supports the Services as they rightfully look to address concerns over Atlantic salmon populations in Maine. However, NHA and our members hope that as the process to list the Atlantic salmon continues, the Services do so in a manner that recognizes the benefits associated with hydropower production and minimizes, to the extent possible, the impact on those benefits.

Respectfully submitted,
NATIONAL HYDROPOWER
ASSOCIATION

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

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