



February 3, 2012

**ELECTRONICALLY FILED**

Kim Damon-Randall  
Assistant Regional Administrator  
National Marine Fisheries Service  
National Oceanic and Atmospheric Administration  
Northeast Regional Office  
55 Great Republic Drive  
Gloucester, MA 01930

**RE: RIN 0648-XA739 - National Hydropower Association's Comments in Response to 90-Day Finding on a Petition to List Alewife and Blueback Herring as Threatened Under the Endangered Species Act**

Dear Ms. Damon-Randall:

On November 2, 2011, the National Marine Fisheries Service ("NMFS") announced that it was seeking comments on a 90-Day Finding on a Petition to List Alewife and Blueback Herring ("river herring") as Threatened Under the Endangered Species Act ("ESA"). The National Hydropower Association ("NHA") is pleased to submit comments in response to the 90-Day Finding.

**I. Introduction**

NHA is a national non-profit association dedicated exclusively to advancing the interests of the U.S. hydropower industry, including conventional, pumped storage, and new marine and hydrokinetic technologies. NHA's membership consists of more than 180 organizations, including consumer-owned utilities, investor owned utilities, independent power producers, project developers, equipment manufacturers, environmental and engineering consultants, and attorneys. NHA's members own and operate hydroelectric facilities along the Eastern Seaboard.

Hydropower is a clean and renewable source of energy and provides hundreds of thousands of good paying domestic jobs. NHA's members and hydroelectric owners and operators are stewards of the rivers that their facilities are located on, and we value our river resources and a diverse aquatic ecosystem. Every year, the industry spends millions of dollars on environmental mitigation and protection measures.

## II. Existing Hydroelectric Regulatory Mechanisms are Adequate to Protect River Herring

Under Section 4(a)(1) of the ESA, a species may be determined to be threatened or endangered as a result of any one of five factors.<sup>1</sup> The Natural Resources Defense Council's ("NRDC") petition claims, among other factors, that hydroelectric facilities are significantly impacting river herring populations by obstructing access to spawning grounds and foraging habitats, turbine entrainment, and changes in water temperature and quality, to name a few.<sup>2</sup> However, it is well documented that the river herring populations thrived for decades after hydroelectric facilities were built on East Coast rivers. In fact, commercial landings of river herring enjoyed record numbers between 1950 and 1970,<sup>3</sup> suggesting dams and hydroelectric facilities are not a significant factor impacting river herring populations.

NHA believes that existing and future regulatory measures will continue to protect and restore river herring populations to abundance, especially when individual regulatory mechanisms are viewed as part of a larger comprehensive program to protect aquatic species. Therefore, listing the river herring under the ESA at this time is not necessary. The portfolio of regulations includes:

- Regulatory actions by local and regional fishery management councils and commissions;
- Licensing, compliance and other mechanisms taken by the Environmental Protection Agency ("EPA") and the U.S. Army Corps of Engineers under the Clean Water Act ("CWA") Section 402 (National Pollution Discharge Elimination System Permits) and Section 404 (Dredge and Fill Permits);
- Hydroelectric licensing provisions under the Federal Power Act ("FPA"), specifically the authority granted to NMFS and the U.S. Fish and Wildlife Service under Section 18 of the FPA, and the authority granted to the states in granting water quality certifications under Section 401 of the CWA; and
- Hydroelectric license requirements imposed by the Federal Energy Regulatory Commission under Sections 4(e) and 10(a) of the FPA.

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<sup>1</sup> 16 U.S.C. § 1533(a)(1). Factors: 1) Present or threatened destruction, modification, or curtailment of habitat or range; 2) over-utilization for commercial, recreational, scientific, or educational purposes; 3) disease or predation; 4) inadequacy of existing laws; or 5) other natural or manmade factors affecting its continued existence.

<sup>2</sup> Petition to List Alewife (*Alosa pseudoharengus*) and Blueback Herring (*Alosa aestivalis*) as Threatened Species and to Designate Critical Habitat (August 1, 2011) at 49-67.

<sup>3</sup> *Id.* at 16.

The suite of regulatory mechanisms provide for an open and holistic public process, with licensees working with local stakeholders in developing study plans and on-going engagement through multiple consultations on scoping documents, adaptive management strategies, environmental assessments and environmental impact statements. This has resulted in the installation of new and improved upstream and downstream fish (including river herring) passage at numerous eastern seaboard hydroelectric facilities, and the funding and implementation of numerous studies, reports and data points on fish passage, which show increasing survival rates.

### **III. Conclusion**

The hydropower industry provides clean and renewable energy and is a leader among renewables in providing hundreds of thousands of domestic jobs. As policy makers continue to address climate change and work towards reducing greenhouse gas emissions, the benefits of hydropower and its importance in reaching our clean energy and climate goals must be considered as part of the solution, and not part of the problem.

NHA appreciates the opportunity to submit comments on this 90-Day Finding, and we commit to working with the NMFS and other stakeholders to ensure river herring are protected and restored to abundance. NHA understands that some of our East Cost members are submitting comments on this 90-Day Finding, and we support and direct you to those comments.

Respectfully submitted,

A handwritten signature in cursive script that reads "Linda Church Ciocci".

Linda Church Ciocci  
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