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November 5, 2010

BY CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Herbert A. Miller
President
Miller Hydro Group
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Charles Lucas
Topsham Hydro Partners Limited Partnership
11900 Wayzata Blvd. Suite 232
Minnetonka, Minnesota 55305

Barry E. Welch
President and Chief Executive Officer
Atlantic Power Corporation
200 Clarendon Street
Boston, Massachusetts 02117

Dear Sirs:

This letter is written on behalf of Friends of Merrymeeting Bay, Douglas Watts, and Environment Maine (collectively, "Citizens"). It supplements a letter sent by Friends of Merrymeeting Bay and Mr. Watts (along with Ed Friedman) to Miller Hydro Group and Topsham Hydro Partners Limited Partnership on August 27, 2010.

It is the Citizens' understanding that Miller Hydro Group owns and operates the Worumbo dam on the Androscoggin River at Lisbon Falls. It is also the Citizens' understanding that Topsham Hydro Partners Limited Partnership owns and operates the Pejepscot dam on the Androscoggin River at Topsham, and that Atlantic Power Corporation is a 50% owner of the Pejepscot dam. Citizens write this letter to notify Miller Hydro Group, Topsham Hydro Partners, and Atlantic Power Corporation that at these dams they are violating the "take prohibition" provision of the Endangered Species Act ("ESA"), 16 U.S.C. § 1538(a)(1)(B).

The Gulf of Maine Distinct Population Segment (“GOM DPS”) of Atlantic salmon is on the Endangered Species List because it is in danger of becoming extinct. The Atlantic salmon population in the Androscoggin River is part of the GOM DPS and thus is protected under the ESA. The portions of the Androscoggin River where the Worumbo and Pejepscot dams are located are so important to the recovery of Atlantic salmon that the U.S. Fish and Wildlife Service (“USFWS”) and the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration (“NMFS”) included them in the area designated as “critical habitat” for the salmon. 74 Fed. Reg. 29,300 (June 19, 2009).

“Take” is defined in the ESA as follows: “The term ‘take’ means to harass, harm, pursue, hunt, shoot, kill, trap, or collect, or to attempt to engage in any such conduct.” 16 U.S.C. § 1532(19). By USFWS regulation,

Harass in the definition of “take” in the Act means an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering.

50 C.F.R. § 17.3. Also by USFWS regulation,

Harm in the definition of “take” in the Act means an act which actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

Id. Further, NMFS has defined “harm” to include habitat modification when a causal link is established between the habitat modification and the injury or death of listed species. 40 C.F.R. § 222.102. In publishing that rule, NMFS gave examples of activities that may cause harm and thus a take:

1. Constructing or maintaining barriers that eliminate or impede a listed species’ access to habitat or ability to migrate;

* * *

4. Removing or altering rocks, soil, gravel, vegetation or other physical structures that are essential to the integrity and function of a listed species’ habitat;

* * *

5. Removing water or otherwise altering streamflow when it significantly impairs spawning, migration, feeding or other essential behavior patterns;

* * *

7. Constructing or operating dams or water diversion structures with inadequate fish screens or fish passage facilities in a listed species habitat...

64 Fed. Reg. 60,727, 60,730 (Nov. 8, 1999).

Miller Hydro Group's Worumbo dam and Topsham Hydro Partners' and Atlantic Power's Pejepscot dam harass, harm and kill - and thus take - Atlantic salmon in a number of ways. Among these are the following:

1. The dams' turbines kill and injure salmon when the salmon attempt to pass through them.
2. The dams severely limit passage of salmon, preventing access to significant amounts of spawning and rearing habitat.
3. Passage facilities cause delays resulting in incremental losses of salmon smolts, pre-spawn adults, and adults.
4. The dams are barriers to migration of other diadromous species whose presence is necessary for the salmon to complete their life cycle.
5. The dams adversely alter predator-prey assemblages, and negatively affect predator detection and avoidance.
6. The dams create slow-moving impoundments in formerly free-flowing reaches. These altered habitats are less suitable for spawning and rearing of salmon and contribute to the dams' significant impairment of essential behavior patterns. In addition, these conditions may favor non-native competitors at the expense of the native salmon.
7. The dams result in adverse hydrological and geomorphological changes, interruption of natural sediment and debris transport, and changes in water temperature, all of which contribute to the dams' significant impairment of essential behavior patterns.

In their decision to include the Androscoggin River population of Atlantic salmon on the Endangered Species List, the USFWS and NMFS (collectively, the "Services") emphasized the role of dams in imperiling the salmon. The Services stated: "The National Research Council stated in 2004 that the greatest impediment to self-sustaining Atlantic salmon populations in Maine is obstructed fish passage and degraded habitat caused by dams...Dams are known to typically kill or injure between 10 and 30 percent of all fish entrained at turbines [cite omitted]. With rivers containing multiple hydropower dams, these cumulative losses could compromise entire year classes of Atlantic salmon...Thus, cumulative losses at passage facilities can be significant...Dams remain a direct and significant threat to Atlantic salmon." 74 Fed. Reg. at 29362. Similarly, the Services stated: Dams are among the leading causes of both historical declines and contemporary low abundance of the GOM DPS of Atlantic salmon [cite omitted]. The Services also stated that the "effects [of dams] have led to a situation

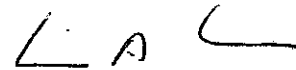
where salmon abundance and distribution has been greatly reduced, and thus the species is more vulnerable to extinction...Therefore, dams represent a significant threat to the survival and recovery of the GOM DPS.” 74 Fed. Reg. at 29366-29367.

The ESA allows the Services, under certain circumstances, to permit “any taking otherwise prohibited by 16 U.S.C. 1538(a)(1)(B)...if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.” 16 U.S.C. § 1539(a)(1)(B). Neither Miller Hydro Group, Topsham Hydro Partners nor Atlantic Power has such a permit for their dams, nor even applied for one yet.

The take prohibition in the ESA is enforceable in the United States District Court by citizens. 16 U.S.C. § 1540(g)(1)(A). Citizens intend to file suit to secure appropriate relief for your violations of the ESA’s take prohibition at the Worumbo and Pejepscot dams.

If you believe any of the above information is in error, or if you believe you are in compliance with the Endangered Species Act, or if you have any questions concerning this letter or the described violations, please contact me as soon as possible. In addition, the Citizens are available to meet to discuss the issues raised in this letter on November 17, 19, 23, and November 30-December 3.

Sincerely,



David A. Nicholas

Additional Legal Counsel

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