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ROLAND D. MARTIN
COMMISSIONER

October 11, 2005

Dr. Jerry Pell
Office of Electricity Delivery and Energy Reliability
OE-20
US Department of Energy
Washington, DC 20585

Dear Dr. Pell:

These comments are in reference to the Bangor Hydro Electric Company's proposed Northeast Reliability Interconnect (NRI) transmission line from Baileyville, Maine to Orrington, Maine.

MDIFW-1 Appendix D, Table D-4, page D-39 contains incorrect or outdated information about the distribution of the Sedge Wren (*Cistothorus platensis*), a state listed Endangered Species. The table reports that Sedge Wren distribution is limited to "[s]cattered reports from the southern two-thirds of the State," and that records of Sedge Wren within the project area are from the 1990s. In fact, breeding Sedge Wrens were documented in August 2003 in Great Works Stream, approximately 2.4 kilometers from the Modified Consolidated Corridors Route of the proposed NRI corridor. Sedge Wrens were also observed in Sunkaze Meadows National Wildlife Refuge in July 2005, approximately 4.5 kilometers from the Modified Consolidated Corridors Route.

MDIFW-2 The text of section 4.5.2.1.8, page 4-26 states that, "This section evaluates the potential impacts on…species considered of special concern in Maine." However, the accompanying Table 4.5-4 does not list any birds, mammals, amphibians, reptiles or invertebrates considered by the State of Maine to be Species of Special Concern. The Modified Consolidated Corridors route crosses the Machias River in an area with known occurrences of Brook Floater mussels (*Alasmidonta varicosa*), a state Species of Special Concern (see Figure B.1-1j, page B-16). Additionally, the

MDIFW-3 Modified Consolidated Corridors route passes within approximately 1 kilometer of a documented occurrence of the Ebony Boghaunter (*Williamsonia fletcheri*) in Baileyville (see Figure B.1-1n, page B-20). Ebony Boghaunter is a damselfly that is a state Species of Special Concern.

Thank you for your consideration of these issues.

Sincerely,

Richard Bard
Asst. Regional Wildlife Biologist

Response to MDIFW-1:

Table D-4 (Appendix D, page D-39) of the Draft EIS has been revised to incorporate the recent sedge wren observations in the project area.

Response to MDIFW-2:

Tables 4.5-4 (page 4-27 through 4-34) and D-4 (Appendix D, pages D-30 through D-41) of the Draft EIS have been modified to include animal species listed as species of special concern that may occur in the project area.

Response to MDIFW-3:

The modifications made to Tables 4.5-4 and D-4 of the Draft EIS, mentioned in the response to MDIFW-2, include the addition of the Brook Floater and the Ebony Boghaunter.

United States Department of the Interior

OFFICE OF THE SECRETARY
Office of Environmental Policy and Compliance
408 Atlantic Avenue – Room 142
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October 31, 2005

ER 05/764

Dr. Jerry Pell
Office of Electricity Delivery and Energy Reliability (OE-20)
U.S. Department of Energy
Washington, DC 20585

Dear Dr. Pell:

The U.S. Department of the Interior (Department) has reviewed and provides the following comments on the Draft Environmental Impact Statement (DEIS) for the Bangor Hydroelectric Company (BHE) Northeast Reliability Interconnect to Amend Existing Presidential Permit to allow Construction Along the Modified Consolidated Corridors Route, Hancock, Penobscot, Washington Counties, Maine. The Presidential Permit PP-89 (issued January 22, 1996) authorized Bangor Hydro-Electric Company to construct a 345-kV electric transmission line that would cross the United States International Border in the vicinity of Baileyville, Maine. This letter provides the response of the U.S. Department of Interior's Fish and Wildlife Service (Service) pursuant to Section 7 of the Endangered Species Act (ESA), as amended (16 U.S.C. 1531-1543), and the Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661-667d). The Service is a cooperating agency in the preparation of this DEIS.

Background and General Project Description

Bangor Hydro-Electric Company (BHE) previously received approval from the DOE to construct a 345-kV electric transmission line that would extend eastward approximately 85 miles from BHE's existing Orrington, Maine substation to the United States-Canada border near Baileyville, Maine. At the border, the proposed transmission line was to connect to similar facilities to be built by New Brunswick Power, a Crown corporation of Canada's Province of New Brunswick. The project was never constructed.

Currently, BHE is seeking approval to build a modified version of the previously authorized transmission line route. The project, now known as the Northeast Reliability Interconnect (NRI), proposes to construct a 345-kV transmission line along the Modified Consolidated Corridors Route between the Orrington Substation and Baileyville, Maine. The purposes of the NRI are to: 1) improve the reliability and stability of the electric transmission systems of both the Maritimes area of Canada (New Brunswick, Nova Scotia, and Prince Edward Island) and New England; 2) increase the import-export transmission capacity between Maine and New Brunswick; and 3) reduce costly transmission line losses.

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Comments on the DEIS

Summary, Pages S-5-6:

USFWS-1 The Service is correctly identified as a cooperating agency in the preparation of this DEIS. However, the DEIS incorrectly states that the Service has **no** decisions to make based on this document. Because there are species listed under the ESA that occur within the area of the proposed NRI project, the Service must decide if it concurs with the conclusions of the DOE regarding impacts to ESA-listed species.

Chapter 2, Proposed Action and Alternatives:

The Modified Consolidated Corridors (MCC) Route would be approximately 85 miles long, and would consist of 15 miles of new right-of-way (ROW), 58 miles adjacent to the Maritimes & Northeast Pipeline natural gas pipeline and/or the Stud Mill Road, and 12 miles adjacent to the Maine Electric Power Company existing 345-kV transmission line.

During 2004 and 2005, the Service participated in a stakeholder's group sponsored by BHE to explore alternative corridors for the NRI project. Based on the discussion of the multiple factors involved in choosing a route for the new transmission line as provided in the DEIS, the Service concurs with BHE and DOE's choice of the MCC Route as the preferred alternative.

USFWS-2 Section 2.4.1 (*Mitigation Practices to be Used for Pre-Construction Activities, pages 2-37 to 2-38*) lists the need to conduct an aerial survey in the spring of 2006 to identify any new or unknown bald eagle nests in the vicinity of the proposed ROW. Recent discussions have been held between the Service, the Maine Department of Inland Fisheries and Wildlife (MDIFW), and BHE and their environmental consultant (TRC Solutions) to clarify the details of the necessary pre-construction surveys for eagle nests. One survey in the spring of 2006 will not be adequate for determining the presence of new or unknown nests. For additional details on this issue, please see the comments later in this letter on **Appendix F: Biological Assessment for the Bangor Hydro-Electric Company Northeast Reliability Interconnect**.

USFWS-3 Section 2.4.2 lists mitigation measures that will be using during construction. It is not clear which streams fall into the proposed category for the Atlantic Salmon stream buffer, where only those trees capable of growing into the 15 foot clearance zone in the next three to four years would be topped or removed. We recommend that this buffer zone apply to all permanent streams within the Gulf of Maine Distinct Population Segment (DPS) watersheds, regardless of whether or not the stream itself provides habitat for salmon. Protecting these streams to the maximum extent possible (e.g., by minimizing the loss or riparian vegetation) will afford better overall ecological health of the DPS watersheds.

USFWS-4 Furthermore, it is very important that refueling or maintenance of equipment, including chain saws, does not occur with the buffer area of any streams in the DPS watersheds.

USFWS-5 Section 2.4.5 provides mitigation practices for use during ROW maintenance. BHE will maintain a "sensitive area" database to assist in future maintenance work. This database should note the location of all DPS stream crossings and highlight the appropriate stream buffers that need to be maintained.

Response to USFWS-1:

The last sentence of Section S.3.1 (pages S-5 and S-6), as well as the last sentence of Section 1.3.1 (page 1-6) of the Draft EIS, has been changed to acknowledge USFWS's concurrence responsibilities under DOE's responsibilities to consult with the USFWS under Section 7 of the ESA. DOE will complete the consultation process before issuing its ROD.

Response to USFWS-2:

The last bullet on page 2-37 (Section 2.4.1) of the Draft EIS has been modified to state that the applicant would conduct aerial surveys for bald eagle nests after leaf fall, but before ROW clearing, in 2005 and again in the spring of 2006 and 2007.

Response to USFWS-3:

As discussed in the response to EPA-6, BHE's first priority of ROW management is to protect the conductors to ensure the reliability of electric power transmission. Thus, BHE believes that it is necessary to remove or top all capable species of trees (i.e., only those trees capable of growing to a height within 15 ft [4.6 m] of a conductor within the next 3- to 4-year maintenance cycle) that are 8 to 10 ft (2.4 to 3.0 m) or taller for reliability requirements. The applicant would alter this maintenance procedure at streams and rivers known to contain or potentially contain Atlantic salmon habitat by siting support structure locations as close to the edge of the salmon stream buffers as possible to create a conductor height that would allow for higher vegetation requiring minimal trimming. The closer the support structure is to the stream, the higher the conductor would be over the streams and therefore the taller the vegetation could be. This would result in taller buffers that provide maximum shading (and cooling) of the salmon habitat streams. In one instance (a tributary to Fletcher Brook), it would not be possible to locate the support structure near the edge of the salmon stream buffer, so the applicant would use a taller structure.

As described in Section 3.5.4.1 (page 3-24) of the Draft EIS, only nine streams or rivers that would be crossed by the NRI have been identified by the USFWS and BHE as containing salmon habitat or potential salmon habitat: Narraguagus River, two tributaries to Fifth Machias Lake, a tributary to Fletcher Brook, Machias River, a tributary to Dead Stream, Lanpher Brook, Huntley Brook, and Joe Brook. As described in Section 2.4.2 (page 2-41) of the Draft EIS, only trees capable of growing within 15 ft (4.6 m) from the conductors within the next 3- to 4-year maintenance cycle would be topped or removed within these stream buffers.

In addition, BHE would apply similar vegetation maintenance restrictions described above at all perennial streams located in the Narraguagus, Machias, and East Machias River watersheds. Accordingly, within these waterbody buffers, only those trees capable of growing to a height within 15 ft (4.6 m) of the conductors within 3 to 4 years would be topped or removed (in addition to any dead or danger trees). The applicant believes that the potential for additional height along these streams should minimize potential warming that might otherwise result from

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maintaining adjacent vegetation at 8 to 10 ft (2.4 to 3.0 m) tall. Atlantic salmon DPS streams located in the Penobscot River watershed (Cove Brook watershed) would receive the standard maintenance procedure (i.e., top all capable species of trees 8 to 10 ft [2.4 to 3.0 m] or taller) as the location of the NRI crossings of these streams are already "open" habitat (e.g., either fields or emergent or scrub-shrub wetlands).

Routine vegetation maintenance of the ROW for the NRI would require compliance with New England Power Pool Vegetation Maintenance Standards to maintain the integrity and functionality of the transmission line, to maintain access in case of emergency repairs, and to facilitate safety inspections. Thus, BHE would reserve the right to top or remove vegetation that could potentially affect the reliability of the transmission line between the 3- to 4-year maintenance cycle and, in some cases, may remove vegetation that may not have the potential to encroach within 15 ft (4.6 m) of the conductors before the next maintenance cycle.

The applicant believes that trying to maintain this taller vegetation height at all stream crossings would be unduly complicated and increase line reliability risks. Nevertheless, BHE would establish buffers at all stream crossings, although the vegetation would not be as tall as that at the nine salmon streams previously discussed. DOE believes that the ROW management approach developed by the applicant considers Atlantic salmon impacts to the extent practicable.

Response to USFWS-4:

No refueling or maintenance of equipment would be performed in any of the streams or stream buffers located in Atlantic salmon Gulf of Maine DPS watersheds. A text change has been made to the first complete mitigation measure on page 2-42 (Section 2.4.2) of the Draft EIS to stress this point.

Response to USFWS-5:

The applicant's vegetation management plan would include a listing of all sensitive areas, including those that are Atlantic salmon Gulf of Maine DPS stream crossings along the ROW. As discussed in the response to USFWS-3, appropriate stream buffers would be established at all stream crossings that would minimize potential impacts on Atlantic salmon to the extent practicable.

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Chapter 3, Affected Environment:

USFWS-6 Page 3-21 states that Atlantic salmon currently do not spawn in the immediate vicinity of the project (or any of the alternatives), but that **potential** spawning habitat occurs in many of the streams crossed by the preferred and alternative routes. In fact, there is **known** (and mapped) Atlantic salmon spawning in some of the rivers crossed by the project, including the Machias and Narraguagus rivers. The Narraguagus River, for example, contains mapped spawning habitat starting about one mile below the proposed crossing near the Stud Mill Road and extending for several miles downstream. The Machias River has mapped spawning habitat both above Second Machias Lake and below First Machias River. The proposed crossing occurs on a stretch of the river between First Machias and Second Machias lakes. We recommend that DOE revise this section to more accurately reflect the presence of known, rather than just potential, salmon spawning habitat in the watersheds crossed by the project.

USFWS-7 The second sentence in section 3.5.4.1 should be modified to read "Watersheds that are used by this population segment include the Sheepscot, Ducktrap, Narraguagus, Pleasant, Machias, East Machias, and Dennys rivers and Cove Brook."

USFWS-8 We recommend that DOE re-examine both the preferred alternative and the other alternatives evaluated in the DEIS related to stream crossings in the lower Penobscot River watershed. As explained elsewhere in this letter, the Gulf of Maine Distinct Population Segment of Atlantic salmon includes the Penobscot River and its tributaries below the site of the Bangor Dam, including but not limited to Cove Brook. Based on recent discussions with BHE's environmental consultants, it appears that these waterbodies may not have been considered part of the DPS.

Appendix F: Biological Assessment for the Bangor Hydro-Electric Company Northeast Reliability Interconnect:

DOE has prepared a Biological Assessment (BA) to consider the impacts of the NRI project on two species listed under the ESA, the bald eagle and the Gulf of Maine DPS of the Atlantic salmon. Both of these species occur in the general project area and could be affected by the proposed transmission line.

Bald Eagle

USFWS-9 Based on the most current information available to the Service, there are no known bald eagle nests, either within the proposed ROW or within 1320 feet (1/4 mile or 402 meters) of the outside edges of the ROW. However, bald eagles do occur in the general project area, building large stick nests in tall trees and foraging for fish, waterfowl, and other prey primarily over large water bodies, such as the Narraguagus and St. Croix rivers and Pocomoonshine Lake. The proposed ROW and adjacent forest lands provide appropriate habitat that could support a new eagle nest location in the near future.

At a meeting with the Service, MDIFW, BHE, and TRC Solutions on January 20, 2005, we discussed the need to conduct thorough searches for new or unknown eagle nest locations along the ROW before construction begins. Based on those discussions, the Service assumed that if construction were to begin in 2005, including ROW clearing, a nest survey would be conducted during the spring of 2005 (as documented in meeting minutes provided by TRC Solutions on February 12, 2005). For reasons not clear to us, a survey was not conducted in spring 2005.

Response to USFWS-6:

The last paragraph of Section 3.5.2 (page 3-21) of the Draft EIS has been modified to incorporate the information provided by the USFWS in its comment.

Response to USFWS-7:

The second sentence of Section 3.5.4.1 (page 3-23) of the Draft EIS has been modified, as suggested.

Response to USFWS-8:

As stated in the response to USFWS-3, the Atlantic salmon DPS streams located in the Penobscot River watershed (Cove Brook watershed) would receive the standard maintenance procedure (i.e., top all capable species of trees 8 to 10 ft [2.4 to 3.0 m] or taller), since the locations of the NRI crossings of these streams are already "open" habitat (e.g., either fields or emergent or scrub-shrub wetlands). Also, the geographic range of the Atlantic salmon Gulf of Maine DPS, as described in the comment letter, has been added to Section 3.5.4.1 (page 3-23) of the Draft EIS.

Response to USFWS-9:

Section F.5.1 of the Draft EIS has been modified to include a discussion of the surveys that would be conducted for bald eagle nests after leaf fall, but before construction, in 2005, and again in the spring of 2006 and 2007. Information has also been added to Section F.5.1 of the Draft EIS to clarify that DOE would reinitiate consultation with the USFWS if any new nests are identified after any of the surveys. Similar discussion has been added to Sections 2.4.1 (page 2-37) and 4.5.2.1.8 (page 4-35) of the Draft EIS.

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Although a fall survey will be conducted before ROW clearing begins in the late fall/early winter 2005 (see details below), such a survey is not as likely to identify a new nest location. The very visible presence of adult bald eagles (i.e., their white heads and tail feathers) during the nesting season, either on the nest or in the vicinity, is one of the best visual clues leading to the discovery of a new nest location.

Based on recent discussions among the Service, MDIFW, BHE, and TRC Solutions, the following protocols will be followed for fall 2005 and spring 2006/2007 bald eagle nest surveys:

1. Fall Survey:

a. The survey will be conducted using standard low altitude aerial surveillance techniques from an aircraft. The survey will be conducted using at least one observer experienced in low altitude location and identification of bald eagle nests in riparian and other terrestrial habitats in Maine.

b. The survey will be conducted **after** leaf-fall but **before** any ROW clearing commences.

c. The fall survey needs to encompass only the foot print of the ROW where clearing is proposed, since bald eagles are not actively engaged in nesting activities during this time of year. Ideally, the footprint of the entire length of the ROW should be surveyed. Alternatively, if the entire ROW cannot be surveyed in the fall of 2005, the extent of the fall survey can be limited by focusing on those portions of the ROW that cross or are near major water bodies such as rivers, streams, lakes, ponds, flowed wetlands or wetland complexes. To accomplish this more limited survey, the entire ROW footprint should be surveyed in those locations where either 1) the ROW crosses within ½ mile (2,640 feet or 805 meters) of a major waterbody; or 2) the ROW lies within 1.1 mile (5,808 feet or 1,770 meters) of a major waterbody.

USFWS-9 (cont.)

d. If a new eagle nest is located within the ROW, the DOE[1] will consult (i.e., reinitiate Section 7 consultation) with the Service **before** any clearing activities begin.

2. Spring Survey(s):

a. The survey(s) will be conducted in the spring of 2006 and the spring of 2007 if construction is not yet completed on the project.

b. The survey(s) will be conducted using standard low altitude aerial surveillance techniques from an aircraft. The survey will be conducted using at least one observer experienced in low altitude location and identification of bald eagle nests in riparian and other terrestrial habitats in Maine.

c. The survey(s) will be conducted during the annual spring nest survey period used by the Service and MDIFW (generally March through May), preferably during the last week in April. The most appropriate timing of the survey, however, can be variable depending on

[1] Please note that since the DOE is the federal action agency, it is DOE's responsibility to comply with Section 7 of the ESA, not BHE's. Page 2-37 of the DEIS notes that if any new bald eagle nests are identified, BHE will consult with the Service. While it is certainly appropriate for discussions to occur between BHE and the Service should new nests be found, the DOE maintains the ultimate responsibility for Section 7 consultation and needs to be involved with this dialogue.

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weather conditions and the chronology of a given year's eagle nesting season. The specific timing of each year's spring survey should be coordinated with the Service and MDIFW beforehand.

USFWS-9 (cont.)

d. The spring survey should include the entire ROW (although a new nest would generally not be expected in those portions of the ROW already cleared) plus a ¼ mile (1320 foot or 402 meters) wide swath measured from both outside edges of the corridor.

e. If a new eagle nest is located within the survey area, the DOE will consult (i.e., reinitiate Section 7 consultation) with the Service **before** any further clearing or construction activities take place.

We concur with DOE that electrocution of bald eagles should not be a threat from this project because the distance between the conductors and between the conductors and the shield wires is greater than the wing span of an eagle. The proposed NRI project, however, may affect the bald eagle because of the threat posed by collisions with the transmission lines. Such collisions can result in either the death of or serious injury to an eagle.

USFWS-10

To minimize the threat posed to bald eagles from collisions with the transmission line, the DEIS states that BHE will install either colored spheres (i.e., aviation marker balls) or bird flappers/diverters to increase the visibility of the line to bald eagles. Since the DEIS was published, BHE has provided additional information related to flappers, indicating that these markers are not appropriate for the NRI transmission lines due to concerns about icing, wire abrasion, and the need to periodically replace moving parts on the flapper. Therefore, the most current proposal is to use only aviation marker balls to mark lines in those areas that pose a risk to bald eagles. Marker balls will be installed during construction of the transmission lines at the following locations: 1) the St. Croix River; 2) Great Works Stream; 3) Narraguagus River; and 4) Machias River. The Service agrees with this approach for marking the transmission lines, as long as DOE and BHE continue to coordinate with the Service as the specific details for the size, color, and spacing of the marker balls are developed.

USFWS-11

DOE's BA concludes that the proposed project may affect, but is not likely to adversely affect, the threatened bald eagle. As currently written in the BA, the Service cannot concur with this determination. In particular, the proper ROW surveys to look for new or unknown bald eagle nests must be included in the BA.

Atlantic Salmon

USFWS-12

As mentioned in our December 1, 2004 scoping comment letter, the proposed 345-kV transmission line would cross through the range of the endangered Gulf of Maine Distinct Population Segment of the Atlantic salmon. The draft recovery plan for the Atlantic salmon is expected to be finalized in the near future, so we recommend that DOE check on the status of the plan before finalizing the EIS (i.e., it may be possible to report the publishing of a final recovery plan).

USFWS-13

On page F-15, Cove Brook, a tributary of the Penobscot River, should be added to the list of watersheds currently known to support a remnant, wild population of endangered Atlantic salmon. Furthermore, we recommend that the last sentence in the first paragraph of this section, which contains some inaccuracies, be replaced with an accurate physical description of the geographic range of the Gulf of Maine DPS as follows: "The Gulf of Maine DPS encompasses

Response to USFWS-10:

Section F.5.1 of the Draft EIS has been modified to indicate that only marker balls rather than marker balls and/or flappers would be used at select areas to minimize the potential for bald eagles to collide with the transmission line. Similar changes have been made to Sections S.5.5 (page S-35), 2.4.4 (page 2-43), 2.5.5 (page 2-50), 4.5.2.1.4 (page 4-22), and 5.5 (page 5-2) of the Draft EIS.

Response to USFWS-11:

See the response to USFWS-9.

Response to USFWS-12:

The draft recovery plan for the Atlantic salmon has not been finalized as of this writing.

Response to USFWS-13:

Section F.5.2 of the Draft EIS has been modified to incorporate the information provided in the comment. A similar modification has been made to Section 3.5.4.1 (page 3-23) of the Draft EIS.

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USFWS-13 (cont.)

all naturally reproducing remnant populations of Atlantic salmon from the Kennebec River downstream of the former Edwards Dam site, northward to the mouth of the St. Croix River. The Penobscot River and its tributaries are only included downstream from the site of the Bangor Dam." These same comments also apply to page 3-23 in the DEIS, where the Gulf of Maine DPS is not accurately described.

USFWS-14

Page F-15 states that the NRI would not cross any Atlantic salmon spawning and rearing areas (Table 3.5-8 in the DEIS). DOE should clarify how it reached this conclusion. While the Maine Atlantic Salmon Habitat Atlas was probably used, at least in part, DOE should be aware that these maps do **not** include all segments of available Atlantic salmon habitat, particularly habitat for juvenile salmon in smaller streams. For example, both Joe Brook and Huntely Brook, in the upper reach of East Machias River watershed north of Crawford Lake, have been identified in the field by the Service and the MEASC as providing suitable habitat for juvenile Atlantic salmon, particularly as cold water refugia during the summer months. However, neither one of these brooks is currently included in salmon habitat atlas. As currently proposed, it appears that the NRI would cross both of those streams in areas that could be used by juvenile Atlantic salmon, particularly during the summer months when fish are seeking cold water. This could be the case for other streams within the DPS, as well. So, while it appears that the NRI does not cross any salmon spawning habitat, there are certainly crossings over streams that provide juvenile habitat.

USFWS-15

Page F-16 lists several factors contributing to the endangered stauts of the DPS, including "its small spawning range in the rivers". This factor has not been identified as contributing to the listing of the Atlantic salmon as endangered, so we recommend deleting this phrase. Page F-16 gives the estimated adult returns to the entire DPS for the year 2002 as less than 50 adults (the actual number is 37 estimated adult returns). The final EIS should include the most recent data from 2003 (76 estimated adult returns) and 2004 (82 estimated adult returns). The return estimates for 2005 are not likely to be available before a final EIS is published by DOE.

USFWS-16

The DEIS and BA identify 117 streams and rivers that would be crossed by the NRI project, including both intermittent and permanent streams. Table G-3 lists all of these stream crossings, while Table 3.5-8 states that 31 Gulf of Maine DPS waterbodies and 67 Essential Fish Habitat waterbodies would be crossed by the project. However, we cannot find a list of the 31 streams within the DPS that are crossed by the project. Because there can be confusion over the definition of the Gulf of Maine DPS, we recommend that DOE provide a list of the 31 streams to the Service for confirmation. For example, Felts Brook, a tributary of the Penobscot River, is within the geographic range of the DPS and contains mapped salmon spawning and rearing habitat in the lower reach of the river. Felts Brook, however, does not currently contain a known remnant population of naturally reproducing salmon.

USFWS-17

The BA discusses mitigation measures that would be used during construction and maintenance of the project to minimize potential impacts on Atlantic salmon. The BA, however, does not thoroughly discuss how the project would affect Atlantic salmon and their habitat. In order for the Service to determine whether or not the proposed mitigation measures are sufficient to protect Atlantic salmon and, ultimately, for the Service to concur with DOE's conclusion that the project is not likely to adversely affect Atlantic salmon, the BA needs to clearly discuss how the project would impact salmon and how the proposed mitigation measures address those impacts. Some of this discussion could be taken from the Essential Fish Habitat (EFH) Assessment in Appendix G of the DEIS, which discusses project effects on Atlantic salmon EFH, as well as from Chapter 4, Environmental Consequences.

Response to USFWS-14:

Section F.5.2 of the Draft EIS has been modified to incorporate the information provided in the comment.

Response to USFWS-15:

Section F.5.2 of the Draft EIS has been modified to incorporate the information provided in the comment. A similar modification has been made to Section 3.5.4.1 (page 3-24) of the Draft EIS.

Response to USFWS-16:

A table that includes the list of the 37 crossings of Atlantic salmon Gulf of Maine DPS streams has been added to Section F.5.2 of the Draft EIS.

Response to USFWS-17:

A discussion of how the proposed project would affect the Atlantic salmon has been added to Section F.5.2 of the Draft EIS. This discussion was taken from the Essential Fish Habitat Assessment (Appendix G) of the Draft EIS, as suggested in the comment.

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USFWS-18 Page F-17 lists one of the mitigation measures as placing support structures as close to the stream buffer as possible at salmon stream crossings to maximize the conductor height and, therefore, minimize the required clearing of vegetation. This mitigation measure, however, would not apply at the Narraguagus and Machias river crossings. We assume that the reason for these exceptions is because the stream channels are quite wide at the Narraguagus and Machias crossing locations, and the existing vegetative buffer does not completely shade the stream channel anyway. This was discussed at a January 19, 2005 meeting between BHE, the Service, and the MEASC. The BA should explain why the Narraguagus and Machias river crossings are excluded from the standard for placement of support structures near salmon streams.

USFWS-19 Another mitigation measure to minimize impacts to Atlantic salmon is to conduct construction activities, including clearing, during winter when the ground is frozen, as feasible. We strongly recommend that BHE carefully schedule and prioritize their clearing and construction activities, so that all work within DPS watersheds can occur during frozen ground conditions to minimize the impacts of erosion and sedimentation on streams. Careful attention to sediment and erosion control practices is particularly crucial near all stream crossings within the Gulf of Maine DPS.

USFWS-20 Based on recent experience with the Maritimes & Northeast natural gas pipeline in eastern Maine, all-terrain vehicles (ATV) in and near streams along a maintained ROW can cause serious sedimentation problems, damage riparian vegetation, and destroy instream habitat (e.g., cause the stream channel to become wider and shallower than it is naturally). While we don't necessarily expect ATV use to be a problem at all stream crossings along the proposed project, we recommend that DOE assess the potential of such impacts within the DPS and propose possible mitigation techniques for excluding or controlling ATV use.

DOE's BA concludes that the proposed project may affect, but is not likely to adversely affect, the endangered Atlantic salmon. As currently written in the BA, the Service cannot concur with this determination. When the above comments have been addressed, the Service will reconsider DOE's conclusion regarding Atlantic salmon and advise the DOE whether or not further Section 7 consultation is necessary.

Conclusion

USFWS-21 As discussed above, the Service cannot concur at this time that the proposed project is not likely to adversely affect the threatened bald eagle and the endangered Atlantic salmon. When the BA is appropriately revised to incorporate our comments, the Service will reconsider DOE's conclusion related to listed species. Of particular note, if a new or unknown bald eagle nest is discovered during the required bald eagle nest surveys, DOE must re-initiate Section 7 consultation with the Service. This contingency should be clearly spelled out in the revised BA.

General questions and those specific to the endangered Atlantic salmon should be directed to Wende Mahaney in the Service's Maine Field Office at 207-827-5938, extension 20. Questions specific to the threatened bald eagle should be directed to Mark McCollough in the Maine Field Office at 207-827-5938, extension 12.

Response to USFWS-18:

A footnote has been added to Section F.5.2 of the Draft EIS to explain that the support structures at the Narraguagus and Machias Rivers would be located farther away from the rivers in order to minimize visual impacts at these Outstanding River Segments. The footnote goes on to state that as the existing vegetation does not completely shade the rivers, no thermal warming of the rivers would be expected due to having the support structures located farther away from these rivers.

Response to USFWS-19:

To the extent practicable, BHE would conduct clearing and construction activities at the DPS watershed crossings during winter. It is important to stress that no instream disturbances would be associated with NRI clearing and construction and that buffers would be maintained at all stream crossings. Therefore, when combined with the applicant's sedimentation and erosion control practices (as summarized in Section 2.4 of the Draft EIS), no adverse impacts on Atlantic salmon or their habitat would be expected.

Response to USFWS-20:

Essentially no damage has occurred from all-terrain vehicle (ATV) use in eastern Maine associated with the M&N gas pipeline (McLachlan 2005). The applicant does not currently have any specific mitigation measures in place to control ATV use. Maintaining woody species, to the extent and height practicable, at NRI stream crossings would minimize the tendency for ATVs to cross streams and rivers at the NRI ROW, particularly where co-located with the M&N gas pipeline and/or Stud Mill Road.

Response to USFWS-21:

See the response to USFWS-9.

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Thank you for the opportunity to review and comment on this DEIS. Please feel free to contact me at (617) 223-8665 if I can be of further assistance.

Sincerely,

Andrew L. Raddant /s/
Regional Environmental Officer