

C. FISH PASSAGE AND PROTECTION

The Fish Passage and Protection Criterion is designed to ensure that, where necessary, the facility provides effective fish passage for riverine, anadromous and catadromous fish, and protects fish from entrainment. For riverine, anadromous and catadromous fish, a certified facility must be in compliance with both recent mandatory prescriptions regarding fish passage and recent resource agency recommendations regarding fish protection. If anadromous or catadromous fish historically passed through the facility area but are no longer present, the facility will pass this criterion if the Applicant can show both that the fish are not extirpated or extinct in the area due in part to the facility and that the facility has made a legally binding commitment to provide any future fish passage recommended by a resource agency. When no recent fish passage prescription exists for anadromous or catadromous fish, and the fish are still present in the area, the facility must demonstrate either that there was a recent decision that fish passage is not necessary for a valid environmental reason, that existing fish passage survival rates at the facility are greater than 95% over 80% of the run, or provide a letter prepared for the application from the U.S. Fish and Wildlife Service or the National Marine Fisheries Service confirming the existing passage is appropriately protective.

Fish studies conducted by the U.S. Army Corps of Engineers (the Corps) and the Pennsylvania Fish & Boat Commission (PAFBC) have documented the presence of 48 different fish species in the project area. In the summer of 2007, MCHC conducted fish surveys in the project area and found a total of 39 fish species, all of which are included in the list of 48 species identified by the Corps and PAFBC studies. None of the observed species are listed as state or federally threatened or endangered, and all commonly occur in the Ohio River watershed. In addition, there are no historic records of Catadromous or Anadromous fish movement through the project area.

Agencies have had an opportunity to recommend fish passage prescriptions. Condition 21 of the Limited Power Permit (LPP) issued by the Commonwealth of Pennsylvania states: "The permittee agrees in accepting this permit, to install, upon the request of the PAFBC, such fishway or fishways as the said [PAFBC] may require."

Although no fishway prescriptions were issued, the Federal Energy Regulatory Commission (FERC) license article 403 required that MCHC prepare and file for FERC approval a plan showing the proposed intake structure design for limiting fish

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entrainment. As required, the intake design plan was submitted to FERC for approval prior to commencement of construction. Subsequently, FERC issued a Notice to Proceed.

The Mahoning Creek Hydroelectric Project facility is not subject to Mandatory Fish Passage Prescriptions for upstream and downstream passage of anadromous and catadromous fish issued by Resource Agencies, as there are no historic records of movements of this fish through the Facility area. Similarly, Resource Agencies have not had the opportunity to issue a Mandatory Fish Passage Prescription.