

## **THREATENED AND ENDANGERED SPECIES**

24. Section 7(a)(2) of the Endangered Species Act of 1973,<sup>13</sup> requires federal agencies to ensure their actions are not likely to jeopardize the continued existence of federally listed threatened and endangered species, or result in the destruction or adverse modification of their designated critical habitat.

25. Although there is potential Indiana bat non-hibernation habitat located at the project, it is located across the creek from the site of project construction. In the EA,<sup>14</sup> staff concluded that the project is not likely to adversely affect the Indiana bat. The U.S. Fish and Wildlife Service (FWS) concurred with this finding by letter filed May 10, 2010.

## **NATIONAL HISTORIC PRESERVATION ACT**

26. Under section 106 of the National Historic Preservation Act (NHPA)<sup>15</sup> and its implementing regulations,<sup>16</sup> federal agencies must take into account the effect of any proposed undertaking on properties listed or eligible for listing in the National Register (defined as historic properties) and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking. This generally requires the Commission to consult with the SHPO to determine whether and how a proposed action may affect historic properties, and to seek ways to avoid or minimize any adverse effects.

27. To satisfy these responsibilities, the Commission executed a Programmatic Agreement (PA) with the Pennsylvania State Historic Preservation Officer and invited Mahoning Hydro to concur with the stipulations of the PA. Mahoning Hydro did not respond. The PA requires the licensee to prepare and implement an HPMP for the term of any new license issued for this project. Execution of the PA demonstrates the Commission's compliance with section 106 of the NHPA. Article 406 requires the licensee to implement the PA and to file the HPMP with the Commission within one year of license issuance.

## **RECOMMENDATIONS OF FEDERAL AND STATE FISH AND WILDLIFE AGENCIES PURSUANT TO SECTION 10(j) OF THE FPA**

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<sup>13</sup> 16 U.S.C. § 1536 (a) (2006).

<sup>14</sup> See EA at section 3.3.4 page 34.

<sup>15</sup> 16 U.S.C. § 470 *et seq.* (2006).

<sup>16</sup> 36 C.F.R. Part 800 (2010).