167 FERC ¶ 61,045
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, Richard Glick,
and Bernard L. McNamee.

Sappi North America, Inc. Project Nos. 2897-048
2932-047
2941-043
2931-042
2942-051

ORDER APPROVING SURRENDER OF THE SACCARAPPA PROJECT LICENSE AND AUTHORIZING DECOMMISSIONING OF PROJECT FEATURES; AND AMENDING THE MALLISON FALLS, LITTLE FALLS, GAMBO, AND DUNDEE PROJECT LICENSES

(Issued April 18, 2019)

1. On March 23, 2018, Sappi North America, Inc. (Sappi)[1] filed an application to surrender its license for the Saccarappa Project No. 2897. Concurrently, on March 23, 2018, Sappi filed an application to amend its licenses for the four projects immediately upstream of the Saccarappa Project. These four projects are, moving upstream, the Mallison Falls Project No. 2932, Little Falls Project No. 2941, Gambo Project No. 2931, and Dundee Project No. 2942.[2] The five projects (collectively,

[1] On August 29, 2018, S.D. Warren Company filed a notice with the Commission that it had changed its name to Sappi North America, Inc. Commission staff issued an order amending S.D. Warren Company's licenses to reflect the name change on October 12, 2018. *S.D. Warren Co.*, 165 FERC ¶ 62,032 (2018).

[2] The applications were supplemented on June 14, June 25, July 5, and July 30, 2018, in response to a May 24, 2018 Commission staff request for additional information.

the Presumpscot Projects) are located on the Presumpscot River in Cumberland County, Maine.

2. As discussed below, we approve Sappi's proposed license surrender and license amendments, subject to certain conditions.

I. Background

3. On October 2, 2003, Commission staff issued subsequent licenses for the Saccarappa, Mallison Falls, and Little Falls Projects, and new licenses for the Gambo and Dundee Projects, all with license terms of 40 years.[3] The Maine Department of Environmental Protection (Maine DEP) issued a joint water quality certification for the Presumpscot Projects, which Commission staff incorporated into each license. The licenses also included fishway prescriptions from the U.S. Fish and Wildlife Service (FWS) pursuant to section 18 of the Federal Power Act (FPA).[4] The licenses, water quality certification, and fishway prescriptions for the Presumpscot Projects include fish passage requirements that are triggered by the installation of fish passage at the downstream, non-jurisdictional Cumberland Mills Dam. Within two years of fish passage being provided at Cumberland Mills Dam, upstream and downstream passage must be provided at the Saccarappa Project. After fish passage facilities are operational at the Saccarappa Project, and once certain passage criteria for American shad, blueback herring, and Atlantic salmon are met, fish passage is required at the four upstream Presumpscot Projects, beginning with the Mallison Falls and Little Falls Projects.

II. Project Descriptions

4. The Saccarappa Project No. 2897 is located one mile upstream of the Cumberland Mills Dam, at approximately river mile (RM) 11, where the river is bisected by a small island, creating an eastern and western river channel. Project facilities consist of a 322-foot-long diversion dam formed by two concrete overflow structures that are separated by the island. The eastern spillway is 220 feet long and 10 feet high, and the western spillway is 102 feet long and 12 feet high. The crest elevations of the spillways

[3] *S.D. Warren Co.*, 105 FERC ¶ 61,013 (2003) (Saccrappa); *S.D. Warren Co.*, 105 FERC ¶ 61,011 (2003) (Mallison Falls); *S.D. Warren Co.*, 105 FERC ¶ 61,012 (2003) (Little Falls); *S.D. Warren Co.*, 105 FERC ¶ 61,010 (2003) (Gambo); *S.D. Warren Co.*, 105 FERC ¶ 61,009 (2003) (Dundee). The October 2, 2003 Saccarappa license order includes a description of the multi-project proceeding in which the five projects were evaluated, as well as a discussion of issues common to some or all of the five projects.

[4] 16 U.S.C. § 811 (2012).

vary from 69.8 to 70.0 feet.[5] Natural falls exist immediately below the two spillways and are referred to as the "upper falls." There are two free-flowing bypassed reaches, one on each side of the island, measuring 475 and 390 feet long, extending from the respective spillways to the end of the tailrace channel.

5. In the western river channel, project facilities include: (1) a 380-foot-long, 36-foot-wide intake canal into bedrock; (2) a 60-foot-long headgate structure; (3) an 80-foot-long concrete-lined forebay; (4) a 49-foot-wide by 71-foot-long powerhouse; (5) three horizontal Francis turbine-generator units, each with an installed capacity of 450 kilowatts (kW) for a total project installed capacity of 1.35 megawatts (MW); and (6) a 345-foot-long tailrace channel formed by a 33-foot-high concrete guard wall. Natural falls exist at the bottom of the combined bypassed reaches, above the confluence with the tailrace, and are referred to as the "lower falls." Other project works include: (1) a transformer that connects the generators to the local utility distribution system;[6] and (2) an approximately 5-mile-long impoundment, extending from the diversion dam upstream to the tailwaters of the Mallison Falls Project, with a surface area of approximately 87 acres.

6. Approximately five miles upstream from the Saccrappa Project is the Mallison Falls Project No. 2932, located at RM 16. The Mallison Falls Project includes: (1) a 358-foot-long, 14-foot-high reinforced concrete, masonry, and cut granite diversion dam, consisting of a 113.5-foot-long cut granite spillway section, a 174.5-foot-long reinforced concrete spillway section, and a 70-foot-long canal headgate structure; (2) a 0.5-mile-long impoundment, extending from the Mallison Falls Dam upstream to the tailwaters of the Little Falls Project, with a surface area of approximately 8 acres; (3) a 675-foot-long, 41-foot-wide, and 6-foot-deep bedrock-lined intake canal; (4) a 33-foot-wide by 51-foot-long reinforced concrete and masonry powerhouse; (5) two vertical Francis turbine-generator units, each with an installed capacity of 400 kW for a total project installed capacity of 800 kW; (6) a 675-foot bypassed reach; and (7) an 11-kilovolt (kV) transmission line tied into the Gambo Project transmission line.

7. Less than a mile upstream from the Mallison Falls Project is the Little Falls Project No. 2941, located at RM 17. The Little Falls Project includes: (1) a 332-foot-long, 14-foot-high reinforced concrete and masonry dam, consisting of a 160-foot-long spillway section, a 101.5-foot-long spillway and sluice gate section, and a 70.5-foot-long intake structure; (2) a 1.7-mile-long impoundment, extending from the Little Falls Dam

[5] Unless otherwise stated, all water surface elevations are in U.S. Geological Survey datum.

[6] The generators were previously connected to a one-mile-long transmission line. The licensee took the transmission line out of service in July 2015 and installed the transformer, which ties the project directly into the local utility distribution system.

upstream to the Gambo Project, with a surface area of approximately 29 acres; (3) a 25-foot-wide by 95-foot-long masonry powerhouse, which is integral to the dam; (4) four vertical Francis turbine-generator units, each with an installed capacity of 250 kW for a total project installed capacity of 1.0 MW; (5) a 300-foot-long bypassed reach; and (6) an 11-kV transmission line tied into the Gambo Project transmission line.

8. Approximately a mile and a half upstream from the Little Falls Project is the Gambo Project No. 2931, located at RM 19. The Gambo Project includes: (1) a 300-foot-long, 24-foot-high reinforced concrete dam, consisting of a 250-foot-long concrete overflow section, a 50-foot-long canal intake structure, and a sluice gate structure; (2) a 3.3-mile-long impoundment, extending from the Gambo Dam upstream to the tailwaters of the Dundee Project, with a surface area of approximately 151 acres; (3) a 737-foot-long, 15-foot-deep concrete-lined intake canal; (4) a 47-foot-wide by 78-foot-long reinforced concrete and brick powerhouse; (5) two vertical Francis turbine-generator units, each with an installed capacity of 950 kW for a total project installed capacity of 1.9 MW; (6) a 300-foot-long bypassed reach; and (7) an 8-mile-long, 11-kV transmission line.

9. About three miles upstream from the Gambo Project is the Dundee Project No. 2942, located at RM 22. The Dundee Project includes: (1) a 1,492-foot-long dam, consisting of a 175-foot-long, 50-foot-high earthen east embankment, a 1,050-foot-long, 50-foot-high earthen west embankment, a 90-foot-long concrete non-overflow section, a 150-foot-long, 42-foot-high concrete spillway, and a 27-foot-long gated concrete canal intake structure; (2) a 1.7-mile-long impoundment, extending from the Dundee Dam upstream to the tailwaters of the North Gotham Hydroelectric Project No. 2519,[7] with a surface area of approximately 197 acres; (3) a 44-foot-wide by 74-foot-long reinforced concrete powerhouse, which is integral to the spillway section of the dam; (4) three horizontal Francis turbine-generator units, each with an installed capacity of 800 kW for a total project installed capacity of 2.4 MW; (5) a 1,075-foot-long bypassed reach; (6) a 1,075-foot-long, 30-foot-wide, and 11-foot-deep tailrace; and (7) two 10-mile-long, 11-kV transmission lines.

10. The Presumpscot Projects are all operated in a run-of-river mode.

[7] The North Gotham Hydroelectric Project is owned and operated by Brookfield White Pine Hydro, LLC. The license for the North Gotham Hydroelectric Project expires in 2034. *Central Maine Power Co.*, 65 FERC ¶ 62,154 (1993), *order on reh'g*, 73 FERC ¶ 61,149 (1995).

III. Procedural History

11. On May 1, 2013, fish passage was initiated at the non-jurisdictional Cumberland Mills Dam, thus triggering the fish passage requirements for the Saccarappa Project.[8] Pursuant to the project license requirements, including the water quality certification and section 18 fishway prescriptions, fish passage facilities were required to have been operational at the Saccarappa Project by May 1, 2015.

12. On December 31, 2013, the licensee filed an application to surrender its license for the Saccarappa Project, citing, in part, the high cost of constructing and operating required fish passage facilities. As part of its surrender application, the licensee proposed to remove the project's eastern spillway and install a Denil fish ladder[9] over the lower falls. After filing its surrender application, the licensee began discussions with state and federal resource agencies, the City of Westbrook, Maine, and non-governmental organizations regarding fish passage design alternatives. In March 2014, these entities agreed to request that the Commission stay the licensee's surrender proceeding and extend the deadline for operative fish passage at the Saccarappa Project by two years, so as to allow more time to engage in a collaborative process to evaluate fish passage design alternatives. On July 30, 2014, after receiving revised water quality certification conditions from the Maine DEP and section 18 fishway prescriptions from the FWS, Commission staff issued an order approving the stay and extending the deadline for operative fish passage at the Saccarappa Project to within four years after passage is provided at Cumberland Mills Dam (i.e., by May 1, 2017).[10] Subsequently, on September 4, 2014, the licensee withdrew its 2013 surrender application.

13. Over the course of the following year, the entities held numerous technical meetings and continued to discuss alternative designs for fish passage. As a result of these efforts, the licensee filed a second surrender application on December 2, 2015, in which the licensee proposed to install a double Denil fishway at the lower falls and a nature-like passage in the upper western river channel. On March 3, 2016, the Commission issued public notice of the surrender application and solicited comments,

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[8] *See* Commission staff's December 30, 2013 letter filed in the dockets for the Presumpscot Projects (P-2897-030; P-2931-031; P-2932-034; P-2941-026; and P-2942-040) (noting that passage at Cumberland Mills Dam was initiated on May 1, 2013).

[9] A Denil fish ladder is a fishway that allows fish to move upstream and around a barrier through a series of steps, or baffles.

[10] *S.D. Warren Co.*, 148 FERC ¶ 62,086 (2014). The revised water quality certification conditions and section 18 fishway prescriptions similarly extended the deadline for operative fish passage at the Saccarappa Project.

motions to intervene, and protests. On March 7, 2016, the licensee filed a multi-party request that the Commission stay all filing deadlines in the surrender proceeding until July 1, 2016, to allow the entities additional time to consult and potentially resolve remaining differences regarding fish passage. On March 17, 2016, the Commission issued a notice extending the comment deadline provided in the March 3 notice to July 1, 2016.

14. On March 27, 2016, the license requested that the Commission extend the deadline for operative fish passage at the Saccarappa Project by an additional year. The Maine DEP and the FWS filed revised water quality certification conditions and section 18 fishway prescriptions, respectively, reflecting the extension. On June 17, 2016, Commission staff approved the request, making the deadline for operative fish passage at the Saccarappa Project within five years after passage is provided at Cumberland Mills Dam (i.e., by May 1, 2018).[11]

15. On June 3, 2016, the licensee requested a further extension of the comment deadline for its 2015 surrender application. The licensee explained that it had reached an agreement on fish passage with state and federal resource agencies and that the additional time would allow the parties to formalize a settlement agreement. On June 15, 2016, the Commission issued a notice extending the comment deadline provided in the March 3 notice to October 1, 2016. Following an additional request to extend the comment deadline, the Commission extended the comment deadline again, on September 28, 2016, to December 15, 2016.

16. On November 15, 2016, the licensee filed a comprehensive settlement agreement for the Saccarappa Project license surrender (2016 Settlement Agreement). Signatories to the 2016 Settlement Agreement include the licensee, the U.S. Department of the Interior, FWS, Maine Department of Marine Resources (Maine DMR), Conservation Law Foundation, Friends of the Presumpscot River, and the City of Westbrook, Maine (collectively, Settlement Parties). The 2016 Settlement Agreement specifies that fish passage at the Saccarappa Project site would consist of a double Denil fishway over the lower falls and nature-like passage in both the upper western and upper eastern river channels. In addition, the 2016 Settlement Agreement stipulates several changes to the licenses of the four upstream Presumpscot Projects.

17. Pursuant to the 2016 Settlement Agreement, on November 15, 2016, the licensee requested that the Commission extend the deadline for operative fish passage at the Saccarappa Project by an additional year. The Maine DEP and the FWS filed revised water quality certification conditions and section 18 fishway prescriptions, respectively, reflecting the extension. On February 14, 2017, Commission staff approved the request,

[11] *S.D. Warren Co.*, 155 FERC ¶ 62,223 (2016).

making the deadline for operative fish passage at the Saccarappa Project within six years after passage is provided at Cumberland Mills Dam (i.e., by May 1, 2019).[12] Subsequently, and pursuant to the 2016 Settlement Agreement, on February 17, 2017, the licensee withdrew its 2015 surrender application.

18. Following filing of the 2016 Settlement Agreement, the Settlement Parties held technical meetings and developed final design plans for the proposed fish passage. On March 7, 2018, the Settlement Parties executed an Amendment and Extension Agreement, which amended the 2016 Settlement Agreement to reflect these further developments. The 2016 Settlement Agreement and the 2018 Amendment and Extension Agreement are collectively referred to herein as the "Settlement Agreement." The licensee developed its currently proposed surrender and amendment applications in accordance with the Settlement Agreement, and filed both applications with the Commission on March 23, 2018.

IV. Proposed Actions

19. As noted above, Sappi's surrender and amendment applications are consistent with provisions in the Settlement Agreement. We note that the Settlement Agreement includes additional provisions, which are not included in the applications filed with the Commission (e.g., provisions stipulating cost caps and funding measures).[13] Such provisions not included in the applications are not considered in the Commission's decision-making, and should not be construed as limiting any requirements set forth in this order. Moreover, if a measure is required, we expect the licensee to perform it even if the cost exceeds agreed-upon cost caps.[14]

A. Surrender Application

20. In its application to surrender the Saccarappa Project license, and pursuant to the Settlement Agreement, Sappi proposes to: (1) remove the existing powerhouse and other ancillary structures; (2) remove the eastern and western spillways; (3) partially fill the existing tailrace; (4) construct a double Denil fishway within the filled tailrace area to provide fish passage over the lower falls; (5) alter and repair the tailrace guard wall to support the operation of the double Denil fishway; (6) construct a fish counting facility at the exit of the double Denil fishway; and (7) modify the bedrock in the eastern and

[12] *S.D. Warren Co.*, 158 FERC ¶ 62,093 (2017).

[13] Sappi does not request Commission approval of the Settlement Agreement as a whole.

[14] *See, e.g.*, *PacifiCorp*, 133 FERC ¶ 61,232, at P 133 (2010).

western channels to facilitate nature-like fish passage over both the eastern and western sections of the upper falls.

21. Consistent with the Settlement Agreement, Sappi proposes to have the fish passage facilities fully operational by May 1, 2021. Accordingly, Sappi requests that the Commission also extend the deadline for operative fish passage at the Saccarappa Project to within eight years after passage is provided at Cumberland Mills Dam (i.e., by May 1, 2021).

22. Sappi also requests, pursuant to the Settlement Agreement, that the Commission condition issuance of a final surrender acceptance order upon receipt of a written statement authored by an FWS fishway engineer, stating that Sappi has constructed all fish passage facilities according to the approved design drawings, or alternatively, according to construction changes proposed by an FWS engineer.

B. Amendment Application

23. In its application to amend the four upstream Presumpscot Projects, and consistent with the Settlement Agreement, Sappi proposes to: (1) amend the Mallison Falls Project license to include the new double Denil fish passage facilities to be built at the Saccarappa Dam site; (2) extend by ten years, until 2053, the license expiration dates for the Mallison Falls, Little Falls, Gambo, and Dundee Projects; and (3) remove all existing fish passage requirements from the Gambo and Dundee Project licenses.

24. Consistent with the Settlement Agreement, Sappi also requests that the Commission approve the Operation and Maintenance Plan for the Denil fishway, which was included as Appendix B in Sappi's March 23, 2018 amendment application, and make the plan a requirement of the Mallison Falls Project. According to the plan, fish counting at the double Denil fishway would not commence until 2024.

V. Public Notice and Tribal Consultation

25. On May 11, 2018, the Commission issued public notice of Sappi's surrender and amendment applications, establishing June 11, 2018, as the deadline for filing comments, motions to intervene, protests, terms and conditions, recommendations, and prescriptions. Timely notices of intervention were filed by the Maine DMR and the U.S. Department of the Interior, on behalf of the FWS, Bureau of Indian Affairs, and National Park Service.[15] Timely, unopposed motions to intervene were filed by Friends of the Presumpscot River;

[15] Under Rule 214(a)(2) of the Commission's Rules of Practice and Procedure, the agencies became parties to the proceeding upon the timely filing of their notices of intervention. 18 C.F.R. § 385.214(a)(2) (2018).

Friends of Merrymeeting Bay and Ed Friedman (jointly); Conservation Law Foundation; Friends of Sebago Lake; the Town of Standish, Maine; American Whitewater; the City of Westbrook, Maine; Maine Rivers; Sebago Chapter of Trout Unlimited; and Natural Resources Council of Maine.[16]

26. Several intervenors filed comments supporting the proposals, noting the time and effort expended by the Settlement Parties on reaching agreement and contending that the proposals represent the "best outcome realistically possible" for restoring fish passage on the Presumpscot River.[17] American Whitewater filed comments generally supporting the surrender application but requesting that the Commission consider impacts to recreational opportunities. Friends of Merrymeeting Bay and Ed Friedman jointly filed a protest, objecting primarily to the proposed amendments at the four upstream Presumpscot Projects. The Town of Standish, Maine and Friends of Sebago Lake also filed comments, opposing the proposed amendments to the upstream project licenses.

27. In response to the public notice, the FWS filed modified fishway prescriptions for the Presumpscot Projects on June 11, 2018, which were subsequently amended on June 22, 2018.

28. On May 18, 2018, pursuant to the Commission's tribal policy,[18] Commission staff sent letters to the Penobscot Nation and the Aroostook Band of Micmacs, requesting comments on Sappi's proposals. Neither tribe responded to staff's request for comments.[19]

29. The motions to intervene, protests, and comments have been fully considered in determining whether, and under what conditions, to approve the proposed license surrender and license amendments. Comments received on the proposals are summarized and discussed further in the discussion section of this order. In addition, comments

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[16] Timely, unopposed motions to intervene are granted by operation of Rule 214(c)(1) of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c) (2018). Conservation Law Foundation and Friends of the Presumpscot River jointly filed comments noting alleged misrepresentations in Friends of Sebago Lake's motion to intervene, but the parties did not oppose the motion. Thus, the motion is considered unopposed.

[17] *See, e.g.*, Sebago Chapter of Trout Unlimited's June 11, 2018 Motion to Intervene and Comments, at 3.

[18] *See* 18 C.F.R. § 2.1c (2018).

[19] Staff attempted to follow-up with the tribes on June 12 and June 19, 2018, but received no response.

pertaining to environmental issues are addressed in the final Environmental Assessment (EA) prepared for the proposals, as discussed further below.

VI. Discussion

A. Environmental Review

30. On January 23, 2019, Commission staff issued a draft EA for the proposed license surrender and license amendments, evaluating the potential environmental effects of the proposals and identifying environmental measures to mitigate or reduce potential impacts. Comments on the EA were filed by Conservation Law Foundation and Friends of the Presumpscot River (jointly), Friends of Merrymeeting Bay, FWS, Maine DMR, and Sappi. On March 26, 2019, Commission staff issued a final EA. Comments received on the draft EA were considered and addressed in the final EA. The conclusions in the final EA, as well the statutory and regulatory requirements applicable to the proposals, which were evaluated as part of the environmental review, are discussed below.

1. Water Quality Certification

31. Under section 401(a) of the Clean Water Act (CWA),[20] any applicant for a federal license or permit for an activity that may result in a discharge into United States waters must obtain from the state in which the discharge originates certification that any such discharge will comply with applicable water quality standards. Section 401(d) of the CWA provides that the certification shall become a condition of any federal license or permit that authorizes construction or operation of the project.[21] Removal of the Saccarappa Dam will result in a discharge.

32. On March 28, 2018, Sappi applied to the Maine DEP for water quality certification of the proposed license surrender and for amendment of the existing water quality certification conditions for the upstream Presumpscot Projects to align the certification conditions with the provisions in the Settlement Agreement. On October 9, 2018, the Maine DEP issued water quality certification conditions, consistent with the Settlement Agreement, for Sappi's proposed license surrender and license amendments.

33. Specific to the proposed surrender, the October 9, 2018 certification includes 16 conditions, two of which are general or administrative (surrender certification condition 1 incorporates standard conditions of approval and surrender certification condition 16 is a severability provision) and are not discussed further. Surrender

[20] 33 U.S.C. § 1341(a)(1) (2012).

[21] *Id.* § 1341(d).

certification condition 2 requires that the existing water quality certification conditions relating to operation of the Saccarappa Project remain in effect until project decommissioning and dam removal have commenced, and that the water quality certification conditions related to fish passage at the Saccarappa Project, as amended, remain in effect until surrender of the project is effective.

34. The remaining surrender certification conditions require: (1) preparation and implementation of an erosion and sediment control plan (condition 3); (2) preparation and implementation of a plan to coordinate the timing of project activities to minimize impacts on fish passage and resident fish populations (condition 4); (3) implementation of the existing Historic Properties Management Plan (condition 5); (4) use of certain materials when constructing any temporary access road or cofferdam fill in the waterway (condition 6); (5) demolition debris and construction spoils are to be reused, recycled, or disposed of in accordance with state regulations (condition 7); (6) procedures for concrete curing (condition 8); (7) implementation of proposed phased plan for impoundment drawdown (condition 9); (8) shoreline monitoring and implementation of bank stabilization measures (condition 10); (9) monitoring of newly exposed shoreline and river bottom areas for invasive plant species (condition 11); (10) monitoring of fish passage following dam removal and implementation of remedial actions, as needed, as detailed in the proposed Effectiveness Testing and Adjustment Plan (condition 12);[22] (11) monitoring and protection of upstream drainage and outfall structures (condition 13); (12) providing revised floodway maps to the City of Westbrook, Maine and the Federal Emergency Management Agency, following completion of dam removal and fishway installation (condition 14); and (13) modifications to public boat launches and private docks, as needed, following dam removal and fishway installation (condition 15).

35. Specific to the proposed license amendments, the October 9, 2018 certification includes four conditions, two of which are general or administrative (amendment certification condition 1 incorporates standard conditions of approval and surrender amendment certification condition 4 is a severability provision) and are not discussed further. Amendment certification condition 2 requires that the water quality certification conditions relating to operation of the Saccarappa Project remain in effect until project decommissioning and dam removal have commenced, and that the water quality

[22] The Settlement Agreement includes an Effectiveness Testing and Adjustment Plan that stipulates that after surrender of the Saccarappa Project license is effective, Sappi would oversee and make post-construction adjustments to the fish passage facilities that the Maine DMR determines, in consultation with the FWS and Sappi, are necessary to achieve effective fish passage. Sappi must include this plan in the revised Fish Passage Implementation Plan for the Presumpscot Projects, which is required to be filed for Commission approval by Ordering Paragraph (D).

certification conditions related to fish passage at the Saccarappa Project, as amended, remain in effect until surrender of the project is effective. Amendment certification condition 3 states that the existing water quality certification conditions for the Saccarappa, Mallison Falls, Little Falls, Gambo, and Dundee Projects will remain in effect, except as amended, as follows: (1) fish passage facilities (including a counting, trapping, and sorting facility) must be constructed and operational at the Saccarappa Project site within eight years after passage is provided at Cumberland Mills Dam (i.e., by May 1, 2021);[23] (2) the requirements to install fish passage at the Mallison Falls and Little Falls Projects are revised to reflect certain passage triggers at the Saccarappa fishway; and (3) no fish passage facilities at the Gambo and Dundee Projects are required during the term of the licenses for those projects, including any license extensions.

36. On November 23, 2018 and December 14, 2018, Friends of Merrymeeting Bay filed comments, taking issue with the condition providing that no fish passage facilities at the Gambo and Dundee Projects would be required during the term of the licenses for those projects. Friends of Merrymeeting Bay urges the Commission to not adopt that portion of the water quality certification. The State of Maine, Office of the Attorney General filed comments on November 29, 2018, stating that Friends of Merrymeeting Bay did not file an appeal of the water quality certification conditions and that the conditions are now final and must be given deference.[24]

37. The Maine DEP's certification fully explains the basis and rationale for its certification conditions,[25] and we agree that the appropriate forum for challenging the Maine DEP's water quality certification conditions was in state court.[26] Moreover, as discussed further below, we find that amending the licenses for the Gambo and Dundee Projects to remove the requirement to install fish passage facilities during the license

[23] The certification conditions require that the fish passage facilities be designed to initially pass at least 18,000 American shad, 109,000 blueback herring, and 273 Atlantic salmon.

[24] Sappi, Conservation Law Foundation and Friends of the Presumpscot River (jointly), FWS, and the City of Westbrook, Maine filed similar letters, arguing that the certification conditions are final.

[25] *See* Maine DEP's Findings of Fact and Order New Permit and Certifications, at 45-51 (filed Oct. 10, 2018).

[26] *See American Rivers, Inc. v. FERC*, 129 F.3d 99 (2d Cir. 1997); *City of Tacoma v. FERC*, 460 F.3d 53, 67 (D.C. Cir. 2006).

terms, including any license extensions, when considered with Sappi's proposals for the Presumpscot Projects, as a whole, is reasonable and in the public interest.

38. The certification conditions are set forth in Appendix B of this order, and are incorporated by Ordering Paragraph (B).[27] Ordering Paragraph (I) requires Sappi to file, for Commission approval, certain plans and reports required by the certification conditions.

39. Once the Saccarappa Dam and other works of the Saccarappa Project are removed, fish passage structures are installed, and other requirements of this order are satisfied, the Commission will issue notice that the license surrender is effective and Commission jurisdiction over the Saccarappa Project will cease.[28] After the surrender becomes effective, to the extent that the water quality certification conditions require Sappi to continue monitoring at sites where the Commission no longer retains jurisdiction, the State (not the Commission) will be responsible for ensuring Sappi complies with those measures.

2. Coastal Zone Management Act

40. Under section 307(c)(3)(A) of the Coastal Management Act (CZMA),[29] the Commission cannot authorize an activity within or affecting a state's coastal zone unless the state CZMA agency concurs with the applicant's certification of consistency with the state's CZMA program, or the agency's concurrence is conclusively presumed by its failure to act within 6 months of its receipt of the applicant's certification.

41. By e-mail dated June 1, 2018,[30] the Federal Consistency Coordinator for the Maine Coastal Program stated that the Presumpscot Projects are located outside the CZMA-designated coastal area and CZMA consistency review is not required.

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[27] The original April 30, 2003 water quality certification, as amended on December 27, 2016, issued by the Maine DEP for the Presumpscot Projects is included in Appendix A of this order for reference.

[28] As described further below, the Commission will retain jurisdiction over the Denil fish passage facilities, as they will be included as part of the Mallison Falls Project.

[29] 16 U.S.C. § 1456(c)(3)(A) (2012).

[30] *See* Sappi's June 14, 2018 filing (Part 3 of 3).

3. Section 18 Fishway Prescriptions

42. Section 18 of the FPA provides that the Commission shall require the construction, maintenance, and operation by a licensee of such fishways as may be prescribed by the Secretary of the U.S. Department of Interior or the Secretary of Commerce, as appropriate.

43. As explained above, the FWS provided fishway prescriptions for the Presumpscot Projects during relicensing of the projects, and has revised the prescriptions numerous times since then. On June 11, 2018, as revised on June 22, 2018,[31] the FWS provided revised fishway prescriptions for the projects,[32] consistent with the Settlement Agreement and the Maine DEP's water quality certification conditions. Amendments to the existing fishway prescriptions include: (1) extension of the deadline for operative fish passage at the Saccarappa Project site to within eight years after passage is provided at Cumberland Mills Dam (i.e., by May 1, 2021); (2) requirement for Sappi to operate the double Denil and supporting structures in accordance with the proposed Operating and Maintenance Plan, with fish counting not required to commence at the fishway facility until 2024;[33] (3) options to delay fish passage requirements, once triggered, at the Mallison Falls and Little Falls Projects, should the licensee opt to surrender and remove the projects; and (4) removal of requirements for fish passage at the Gambo and Dundee Projects.

[31] On April 5, 2019, the FWS filed a letter, stating that its June 11, 2018, as revised on June 22, 2018, fishway prescriptions are its final fishway prescriptions.

[32] The Commission does not solicit section 18 fishway prescriptions for the surrender of projects. Here, the only changes proposed to the Saccarppa prescription are an extension of the deadline for operative fish passage and a provision regarding future operation of the Denil fishway. The provision regarding operation of the Denil fishway was also, and more appropriately, included in the amended prescriptions for the Mallison Falls and Little Falls Projects. *See infra* note 33.

[33] This requirement is included in the amended Saccarappa Project prescription, as well as the prescriptions for the Mallison Falls and Little Falls Projects. Once the Saccarappa surrender is effective, the Saccarappa fishway prescription will cease, and Sappi's responsibilities for the Denil fishway will derive from the Mallison Falls Project license and fishway prescription.

44. The amended fishway prescriptions are set forth in Appendix D to this order, and Ordering Paragraph (C) amends the Presumpscot Project licenses to reflect the amended fishway prescriptions.[34]

4. Endangered Species Act

45. Section 7(a)(2) of the Endangered Species Act (ESA) of 1973[35] 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.

46. Two federally listed species may occur in the vicinity of the Presumpscot Projects: the threatened northern long-eared bat (*Myotis septentrionalis*) and a flowering plant, the threatened small-whorled pogonia (*Isotria medeoloides*).[36] Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*), listed as threatened under the ESA, and shortnose sturgeon (*Acipenser brevirostrum*), listed as endangered under the ESA, have the potential to occur in the lower Presumpscot River near Casco Bay,[37] downstream of the Saccarappa Project and outside of the action area.

47. On June 14, 2018, the licensee filed documentation of consultation with the FWS regarding the presence of northern long-eared bat hibernacula within the Saccarappa Project area. By e-mail dated June 11, 2018, the FWS confirmed that the Saccarappa Project is not near any known hibernacula or roost trees.[38]

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[34] The original February 5, 2002 section 18 fishway prescriptions, as amended on November 15, 2016, issued by the FWS for the Presumpscot Projects are included in Appendix C of this order for reference.

[35] 16 U.S.C. § 1536(a) (2012).

[36] In addition to being federally listed, the small-whorled pogonia is listed as endangered by the State of Maine.

[37] The lower Presumpscot River refers to the stretch of the river from Cumberland Mills Dam, at approximately RM 10, downstream to Casco Bay, at RM 0.

[38] Nevertheless, on June 13, 2018, the licensee provided the FWS with a Streamlined Consultation Form pursuant to the FWS's final 4(d) rule for the northern long-eared bat.

48. According to communication between the licensee and the Maine Department of Agriculture, Conservation, and Forestry, the small-whorled pogonia is not expected to occur at the Saccarappa Project.[39]

49. Atlantic and shortnose sturgeons have not been identified in the vicinity or upstream of the Saccarappa Project. As Commission staff noted in the final EA, there is no historical record of either sturgeon species spawning in the Presumpscot River, and there is no new evidence available that suggests otherwise.[40] In addition, neither sturgeon species has passed the Cumberland Mills fishway located downstream of the Saccarappa Project.[41] Atlantic and shortnose sturgeon have been found below the Presumpscot Falls, in the lower Presumpscot River at the mouth of Casco Bay, effectively at RM 0,[42] but this area is outside of the project area and dam removal activities are not expected to impact these species. In the final EA, Commission staff concluded that any increases in turbidity that may occur in the river as a result of construction activities at the Saccarappa site would be at most minor and temporary, and limited to the construction area and areas immediately downstream of the project. Measures required by conditions of the water quality certification, including the requirement to file an erosion and sedimentation control plan, would help mitigate any impacts to water quality.[43] The proposed license amendments at the upstream Presumpscot Projects would have no effect on Atlantic or shortnose sturgeons as they are not present in the upstream waters of the Presumpscot River.

50. In the final EA, Commission staff concluded, and we agree, that dam removal and construction of fish passage facilities at the Saccarappa Project site would have no effect on the northern long-eared bat, small-whorled pogonia, Atlantic sturgeon, or shortnose sturgeon. In addition, we agree with the final EA's conclusion that the proposed amendments to the Mallison Falls, Little Falls, Gambo, and Dundee Projects would

[39] Final EA at 52.

[40] *Id.* at 31.

[41] *Id.* As noted above, the Cumberland Mills fishway has been in operation since May 2013.

[42] *Id.* at 30-31; *see also* CHRIS O. YODER ET AL., MIDWEST BIODIVERSITY INSTITUTE, FISH ASSEMBLAGE AND HABITAT ASSESSMENT OF THE PRESUMPSCOT RIVER 2006-7 (2009).

[43] Final EA at 32-33.

have no effect on these species. Accordingly, there is no need for further consultation regarding these species.

5. Magnuson-Stevens Fishery Conservation and Management Act

51. Section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act[44] requires federal agencies to consult with the National Marine Fisheries Service (NMFS) on all actions that may adversely affect Essential Fish Habitat identified under the Act. The Presumpscot River has been designated by the New England Fishery Management Council as Essential Fish Habitat for Atlantic salmon. NMFS did not comment on the applications or recommend specific measures pursuant to the Act. In the final EA, Commission staff determined that the proposed dam removal and fish passage installation at the Saccarappa site are expected to increase potential available habitat for Atlantic salmon and thus, no adverse effect on Essential Fish Habitat is expected.[45] We agree. Therefore, no consultation is necessary.

6. National Historic Preservation Act

52. Under section 106 of the National Historic Preservation Act (NHPA)[46] and its implementing regulations,[47] federal agencies must take into account the effect of any proposed undertaking on properties listed or eligible for listing in the National Register of Historic Places (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 the State Historic Preservation Officer (SHPO) to determine whether and how a proposed action may affect historic properties, and to seek ways to avoid or minimize any adverse effects.

53. To satisfy these responsibilities, the Commission executed a Memorandum of Agreement (MOA) with the Maine SHPO by Commission signature on

[44] 16 U.S.C. § 1855(b)(2) (2012).

[45] Final EA at 5-6.

[46] Section 106 of the National Historic Preservation Act of 1966, as amended, 54 U.S.C. § 306108, Pub. L. No. 113-287, 128 Stat. 3188 (2014). (The National Historic Preservation Act was recodified in Title 54 in December 2014).

[47] 36 C.F.R. pt. 800 (2018).

December 4, 2018 and Maine SHPO signature on December 6, 2018.[48] Sappi and the Penobscot Indian Nation signed the MOA as concurring parties on December 7, 2018, and January 3, 2019, respectively. The MOA sets forth measures to be carried out to mitigate adverse effects to historic properties, resolve disputes, and amend or terminate the agreement. Ordering Paragraph (J) requires Sappi to implement the MOA. This satisfies the Commission's NHPA obligations.

7. Environmental Review Conclusion

54. The final EA finds that Sappi's proposal to surrender the Saccarappa Project license and to decommission project features would eliminate a source of renewable generation but would restore this section of the Presumpscot River to a free-flowing condition.[49] Further, the final EA finds that installation of a double Denil fishway at the lower falls and modifications to create nature-like fish passage at the eastern and western upper falls would improve conditions for migrating fish, ensuring that fish can navigate this section of the river after the proposed decommissioning work is completed.[50] Regarding the Mallison Falls, Little Falls, Gambo, and Dundee Projects, the final EA notes that the proposed license amendments are the result of a comprehensive Settlement Agreement, which balances the restoration of a free-flowing river and improved fish passage at the Saccarappa Dam site with the license extensions and removal of fish passage requirements at the Gambo and Dundee Projects.[51]

55. The final EA recommends approval of Sappi's surrender and amendment applications with one additional staff-recommended measure, which is that the MOA entered into between the Commission and the Maine SHPO be incorporated into any surrender order issued for the Saccarappa Project.[52] Commission staff reviewed the costs and benefits of the proposals, and, on balance, recommends the approval of the surrender

[48] On October 15, 2018, Commission staff provided the Advisory Council with a draft MOA and requested its comments. The Advisory Council did not respond.

[49] Final EA at 63.

[50] *Id.*

[51] *Id.* at 63-64.

[52] *Id.* As noted above, Ordering Paragraph (J) requires Sappi to implement the MOA.

and amendment applications, with inclusion of the additional staff-recommended measure.[53] As discussed further below, we agree.

B. Comments on Sappi's Applications

56. As indicated above, none of the commenters or parties in these proceedings oppose the proposed license surrender, or decommissioning of project facilities, of the Saccarappa Project.[54] However, regarding the related proposed license amendments for the Mallison Falls, Little Falls, Gambo, and Dundee Projects, some commenters and parties are in favor of the proposals and others are in opposition.

Comments in Opposition

57. Opponents to the license amendments[55] argue that the proposal reopens licenses that are factually irrelevant to dam removal and passage at the Saccarappa site; relatedly, opponents contend that the Commission should respond to each proposed amendment at each dam in separate proceedings. Opponents claim that the work proposed at the Saccarappa Project is simply a compliance issue, which has nothing to do with the upstream projects. Additionally, opponents contend that the existing licenses for the four upstream Presumpscot Projects are *res judicata* (i.e., they are definitively settled by judicial decision), and that the licenses have been tried and tested before the Maine Supreme Court and U.S. Supreme Court;[56] thus, opponents argue that the Commission is prohibited from downgrading any protections provided in those licenses. In addition,

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[53] Final EA at 64.

[54] In comments filed on June 8, 2018, American Whitewater requested that the design of the nature-like fishway accommodate boat passage. In the draft and final EA, Commission staff determined that redesigning the fish passage in such a way would be inconsistent with the Settlement Agreement and could adversely affect fish passage because competing attraction flows would adversely impact the overall effectiveness of the design. Final EA at 61. American Whitewater did not file comments on the draft EA. We agree with Commission's staff's conclusions.

[55] The license amendments are opposed by Friends of Sebago Lake, Friends of Merrymeeting Bay, and the Town of Standish, Maine. The majority of the opposition arguments are made by Friends of Merrymeeting Bay.

[56] The Maine DEP's 2003 water quality certification for the Presumpscot Projects, which was included in the 2003 licenses, was challenged in state court and ultimately reviewed by the U.S. Supreme Court. *S.D. Warren Co. v. Maine Board of Environmental Protection*, 547 U.S. 370 (2006).

opponents claim that the amendments, if approved, would remove "guarantees" of passage at the upstream projects, and would constitute a "taking from Standish citizens of the great economic and ecosystem value that will be derived from restoring anadromous fish to the entire Presumpscot watershed region."[57] Opponents also argue that the proposed amendments would constitute a change in the designated use of the waterway and would downgrade the water quality; such changes, opponents argue, can only be made by the Maine legislature, after U.S. Environmental Protection Agency approval.

58. In addition, opponents take issue with various provisions of the Settlement Agreement. First, they claim that the FWS and the Maine DMR have a conflict of interest that voids their objective status. They also take issue with a section of the Settlement Agreement that requires the Maine DMR to delay its Presumpscot River fish stocking program until 2025.[58] Lastly, opponents argue that the biological triggers for fish passage requirements at the Mallison Falls and Little Falls Projects should refer to "river herring,"[59] as opposed to "shad and blueback herring;" and, opponents claim that there are now sufficient river herring below Saccarappa Dam to trigger the passage requirements for the Mallison Falls and Little Falls Projects.

Comments in Support

59. In its comments on Sappi's proposals, the FWS notes that the Settlement Parties were uncertain as to whether, and to what extent, the Commission would require fish passage at the Saccarappa site in the event Sappi surrendered the license. FWS explains that even if Sappi were to have installed the fish passage proposed in its 2015 surrender application, fish passage beyond the Saccarappa site would have been "significantly negatively affected or even impossible."[60] FWS contends that without the currently proposed "state-of-the-art fish passage facilities at Saccarappa, shad and blueback herring restoration in upstream waters [would] not be possible."[61] Moreover, the FWS states that

[57] Town of Standish, Maine's June 8, 2018 Motion to Intervene.

[58] Sappi did not request Commission approval of this provision of the Settlement Agreement, and it is not discussed further.

[59] River herring is a collective term for alewife (*Alosa pseudoharengus*) and blueback herring (*Alosa aestivalis*). In some situations, the term "river herring" can include American shad (*Alosa sapidissima*), however resource agencies, including the FWS and NMFS, use the terms "shad" and "river herring" separately.

[60] FWS's June 11, 2018 Comments at 2.

[61] *Id.* at 7.

the Settlement Agreement provisions ensure that the fish passage is operated, maintained, and effective over the long term, even after the Saccarappa surrender becomes effective.

60. In addition, the FWS notes that, to date, few American shad or blueback herring have passed Cumberland Mills Dam, and that it will take "a significant amount of time" for the passage trigger numbers for the Mallison Falls and Little Projects to be met.[62] Further, the FWS contends that it is "unclear" whether the triggers for the Gambo and Dundee Projects would have ever been met under the previous fishway prescriptions during the license terms.[63] Thus, the FWS states that delays in fish passage construction requirements at the Gambo and Dundee Projects are "biologically justified."[64] The FWS anticipates prescribing "biologically appropriate"[65] fish passage requirements when the Gambo and Dundee Projects undergo relicensing in the future.[66]

61. The Maine DMR similarly comments that the Settlement Agreement is "reasonable and consistent with [the Maine DMR]'s restoration plan for the Presumpscot," and that the changes to the upstream project licenses are "reasonable in exchange for achieving the superior design fish passage at Saccarappa proposed by the Settlement Agreement."[67] In addition, the Maine DMR notes that "recolonization of habitat above Saccarappa could easily take until 2053."[68] In response to opponents' comments that there are currently sufficient river herring below Saccarappa Dam to trigger passage requirements for the Mallison Falls and Little Falls Projects, the Maine DMR and FWS point out that most of the river herring currently passing Cumberland Mills Dam are likely alewife, and not blueback herring. As explained further below, blueback herring, not river herring, are the biological trigger species in the Maine DEP's water quality certification and the FWS's fishway prescriptions.

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[62] *Id.* at 6.

[63] *Id.* at 8.

[64] FWS's April 26, 2018 Comments at 1.

[65] *Id.*; *see also* FWS's June 11, 2018 Comments at 7.

[66] With the license extensions approved by this order, the Gambo and Dundee Project licenses will expire in September of 2053.

[67] Maine DMR's June 11, 2018 Comments at 4.

[68] *Id.*

62. Conservation Law Foundation, Friends of the Presumpscot River, Sebago Chapter of Trout Unlimited, Natural Resources Council of Maine, and the City of Westbrook, Maine all filed comments, supporting Sappi's proposals. These entities note the "extensive and unprecedented fish passage provisions voluntarily proposed"[69] by Sappi, the years of negotiating it took to reach this comprehensive Settlement Agreement, and the fact that Sappi's proposals represent "the best outcome realistically possible"[70] for fish passage on the Presumpscot River.

Commission Response

63. In the final EA, Commission staff reviewed Sappi's proposals, as well as all of the comments and considerations described above. Staff found the Maine DMR and FWS's assessments regarding fish recolonization of the Presumpscot River upstream of the Saccarappa site to be reasonable.[71] In addition, staff noted that, in order for fish passage at the upstream projects to be feasible, "the downstream projects must allow for it and the surrender and amendment applications provide such a plan."[72] Staff agreed that removal of the existing fish passage requirements from the Gambo and Dundee Project licenses is a "reasonable compromise in exchange for greatly improved passage at the Saccarappa site."[73] Moreover, staff stated that "[i]t is a well-accepted practice to establish migrating populations into the lower watershed successfully before expanding access to upper watershed habitats."[74]

64. As to opponents' comments that the licenses of the upstream projects are factually irrelevant to the surrender, Commission staff relicensed the Presumpscot Projects together in 2003, and each of the licenses included fish passage requirements. Future fish passage at the four upstream projects is dependent on successful passage at the Saccarappa site; fish must successfully pass the Saccarappa site before passage can be attained upstream. Thus, a surrender of the Saccarappa Project license has important

[69] Conservation Law Foundation and Friends of the Presumpscot River's June 11, 2018 Comments at 16.

[70] Natural Resources Council of Maine's June 11, 2018 Motion to Intervene at 2; Sebago Chapter of Trout Unlimited's June 11, 2018 Motion to Intervene at 3.

[71] Final EA at 42.

[72] *Id.*

[73] *Id.*

[74] *Id.*

implications for each of the upstream projects and the requirements under those licenses. The Commission cannot obligate a licensee to continue operating its project,[75] and the Commission has previously opined that it cannot require installation of fish passage facilities as a condition of a license surrender.[76]

65. For these reasons, we find it appropriate to consider Sappi's proposals (the surrender and amendment applications) as a whole. It is for these same reasons and implications that the Settlement Parties also took a comprehensive approach in finding a resolution to fish habitat restoration on the Presumpscot River.

66. When the proposals are examined as a whole, we agree with Commission's staff assessment that the benefits associated with Sappi's proposals, including the state-of-the-art fish passage at the Saccarappa site, outweigh the costs of the proposals. Like the resource agencies, we find that ensuring successful and effective passage at the Saccarappa site is of utmost importance, as future passage will not be attainable at any upstream projects if fish do not first pass the Saccarappa site. We also defer to the resource agencies' assessments that, in the absence of Sappi's currently proposed passage, fish passage triggers may never be reached at the upstream dams[77] or could take

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[75] *See FPL Energy Maine Hydro, LLC*, 106 FERC ¶ 61,038, at P 31, *reh'g denied*, 107 FERC ¶ 61,120 (2004), *aff'd sub nom Save our Sebasticook v. FERC*, 431 F.3d 379 (D.C. Cir. 2005). For this reason, we disagree with opponents' characterization of the currently proposed work at Saccarappa as a compliance matter. Sappi is not proposing fish passage in order to stay in compliance with its license; rather, Sappi is proposing to surrender its license altogether. As part of its surrender proposal, Sappi is voluntarily proposing to install state-of-the-art fish passage facilities.

[76] See Xcel Energy Operating Cos., 122 FERC ¶ 61,053, at P 25 (2008) ("We do not require a licensee or exemptee to install or operate fish passage facilities as a condition of surrendering its license or exemption, because we are unable to require their continued operation after the surrender becomes effective and our jurisdiction is terminated.") (citing FPL Energy Maine Hydro, LLC, 106 FERC ¶ 61,038 at n.18). See also Project Decommissioning at Relicensing,; Policy Statement, 60 Fed. Reg. 339 at 346 (Dec. 14, 1995) FERC Stats. & Regs. ¶ 31,011 (1995) (cross-referenced at 69 FERC ¶ 61,336) 60 Fed. Reg. 339 at 346 (1995) ("The Commission does not believe that, at [decommissioning], it has the authority to require the existing licensee to install new facilities, such as fish ladders.").

[77] *See* Maine DMR's June 11, 2018 Comments at 3 ("It is [the Maine DMR]'s opinion that, in [the absence of Sappi's currently proposed fish passage], fish passage beyond Saccarappa would be so negatively affected that the trigger numbers for the installation of fish passage at the upstream dams might never be achieved.").

"a significant amount of time."[78] Consequently, we disagree with opponents' assertions that the proposals remove a "guarantee" of fish passage at the upstream projects. Moreover, as referenced above, the need for fish passage requirements at the Gambo and Dundee Projects will be reexamined when those projects undergo relicensing.

67. Opponents' arguments that the 2003 licenses are *res judicata* and can no longer be amended are without merit. Section 6 of the FPA provides that a license may be altered upon mutual agreement between the licensee and the Commission.[79] We find that the circumstances (i.e., the proposed surrender of the Saccarappa Project license) and implications for existing license conditions on upstream projects, justify the proposed amendments, and that Sappi's proposals, as a whole, are in the public interest.

68. We find opponents' remaining arguments, which are that that the proposals constitute a downgrade in water quality, that the FWS and Maine DMR voided themselves of objective status by participating in the Settlement Agreement, and that the biological trigger species for fish passage requirements at the Mallison Falls and Little Falls Projects should refer to "river herring" as opposed to "shad and blueback herring," unconvincing. First, the Maine DEP regulates state water quality standards, including the State's antidegradation policy. The Maine DEP addressed opponents' concerns in its water quality certification proceeding, and determined that the proposals "do not degrade existing water quality standards in any way, violate any existing requirements of the 2003 limited Combined WQC, or change or create any new water quality standards . . ."[80] As explained above, the appropriate forum for challenging the Maine DEP's certification was in state court, which opponents did not do. Second, the FWS and Maine DMR have expertise and regulatory authority over fish passage and restoration in the Presumpscot River so it was not only appropriate, but also prudent, for these agencies to have been included in the Settlement Agreement. Lastly, as to the biological trigger species, American shad, blueback herring, and Atlantic salmon are the species state and federal agencies have targeted for restoration in the Presumpscot River and they have been the biological trigger species contained in the Presumpscot Project licenses since 2003.

69. In sum, we agree with Commission's staff assessment in the final EA, and with the assessments provided by the resource agencies, and find that Sappi's proposals are reasonable and in the public interest.

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[78] FWS's June 11, 2018 Comments at 6.

[79] 16 U.S.C. § 799 (2012). *See also Erie Boulevard Hydropower, L.P.*, 102 FERC ¶ 61,052 (2003).

[80] Maine DEP's Findings of Fact and Order New Permit and Certifications, at n.17 and 47-49 (filed Oct. 10, 2018).

C. Dam Safety

70. The Commission's Division of Dam Safety and Inspections (D2SI) reviewed Sappi's proposals, and determined that there was no reason to deny the surrender proposal for dam safety reasons. Although the Saccarappa Project is being surrendered, all project features that are not removed would become part of the Mallison Falls Project. Therefore, no remaining features would come solely under the regulations of the Maine State Dam Safety Office. Nevertheless, as a courtesy, D2SI staff contacted the Maine State Dam Safety Office to inform them of the proposal.

71. D2SI staff recommended several measures to be included in any surrender order issued for the project; those measures are required by Ordering Paragraphs (A), and (E) to (G). The surrender of the Saccarappa Project will not be effective until D2SI's New York Regional Engineer determines that the Saccarappa Project features have been modified in accordance with this surrender order.

D. Administrative Provisions

72. Sappi requests, consistent with the Settlement Agreement, that the Commission condition issuance of a final surrender order upon receipt of a written statement from an FWS fishway engineer, stating that Sappi has constructed all fish passage facilities according to the approved design drawings or, alternatively, according to construction changes approved by an FWS fishway engineer. We include such a condition in Ordering Paragraph (H), but modify it to require that any construction changes must also be approved by Commission staff prior to such construction. In addition, as noted above, the surrender of the Saccarappa Project will not be effective until D2SI's New York Regional Engineer determines that the Saccarappa Project features have been modified in accordance with this surrender order.

73. As noted above, the revised water quality certification conditions and fishway prescriptions require that fish passage facilities (including a counting, trapping, and sorting facility) must be constructed and operational at the Saccarappa Project site within eight years after passage is provided at Cumberland Mills Dam (i.e., by May 1, 2021). Accordingly, in Ordering Paragraph (D), we require Sappi to file, for Commission approval, a revised Fish Passage Implementation Plan[81] to reflect the revised water

[81] The Fish Passage Implementation Plan, which was approved by Commission staff on December 13, 2004, *S.D. Warren Co.*, 109 FERC ¶ 62,183 (2004), is required by Article 406 of the licenses for the Saccarappa and Little Falls Projects and Article 407 of the licenses for the Mallison Falls, Gambo, and Dundee Projects. The approved plan incorporates the scheduling provisions for operation of upstream and downstream fish passage facilities pursuant to the water quality certification and section 18 fishway prescriptions.

quality certification conditions and fishway prescriptions, including the extended deadline for operational fish passage at the Saccarappa Project and the removal of fish passage requirements in the existing licenses for the Gambo and Dundee Projects. As part of the revised Fish Passage Implementation Plan, Sappi must include the Effectiveness Testing and Adjustment Plan required by surrender water quality certification condition 12. Updating the Fish Passage Implementation Plan will clarify the revised requirements, timelines, and expectations for fish passage at the Presumpscot Projects. Before filing the plan with the Commission, Sappi must provide the revised plan for review and comment to the Maine DMR, Maine DEP, FWS, and Maine Department of Inland Fisheries and Wildlife.

74. Consistent with the Settlement Agreement, Sappi requests that we amend the Mallison Falls Project license to include the new double Denil fish passage facilities built at the Saccarappa Dam site. In addition, Sappi requests approval of its Operation and Maintenance Plan for Denil fishway, included as Exhibit B in its March 23, 2018 amendment application. We approve both of these requests. We agree that the Commission maintaining oversight of these facilities will be beneficial in ensuring their effectiveness; and, as explained above, effective fish passage at the Saccarappa site is critical for further restoration of fish habitat on the Presumpscot River. Ordering Paragraph (L) approves the Operation and Maintenance Plan and makes it part of the Mallison Falls license.

75. On July 5, 2018, Sappi filed an Exhibit F drawing for the Mallison Falls Project, showing the proposed fish passage facilities. We have reviewed the drawing and determine that it conforms to the Commission's regulations and should be approved. In Ordering Paragraph (N), we require the licensee to file the exhibit drawing in electronic format.

76. In addition, as part of its amendment application, Sappi included four revised Exhibit G drawings for the Mallison Falls Project, incorporating the proposed fish passage facilities at the Saccarappa Project site. We have reviewed these drawings and determined that they are not consistent with our regulations. Three of the drawings do not include a surveyor's stamp or statement, and drawing G-4 includes a statement but is not signed by a licensed surveyor. Furthermore, drawing G-4 identifies the general location of the proposed fish ladders, but does not depict the facilities. Drawing G-4 also displays the powerhouse and spillways that Sappi intends to remove. Ordering Paragraph (O) requires Sappi to filed revised Exhibit G drawings that conform to the Commission's regulations[82] and show, or omit, project features as proposed. Additionally, Ordering Paragraph (O) requires Sappi to file a revised Exhibit A for the Mallison Falls Project, which must include a description of the new features of the project.

[82] *See* 18 C.F.R. §§ 4.39 and 4.41(h) (2018).

77. Ordering Paragraph (P) requires Sappi to file revised Exhibits A, F, and G, as applicable, to describe and show the project facilities, as built, following completion of construction.

78. Consistent with the Settlement Agreement, Sappi requests that we extend the license terms for the Mallison Falls, Little Falls, Gambo, and Dundee Projects by ten years, until 2053. As stated above, as a result of the comprehensive Settlement Agreement, fish passage at the Saccarappa site will be of superior design and will provide a substantial benefit to fish habitat restoration efforts on the Presumpscot River. We find Sappi's proposals, when considered as a whole, are in the public interest. Ordering Paragraphs (Q) through (T) approve the requested license term extensions.

VII. Conclusions

79. We find that Sappi's proposals to surrender its license for the Saccarappa Project, and to amend its licenses for the upstream Mallison Falls, Little Falls, Gambo, and Dundee Projects, are appropriate and in the public interest. We find that the benefits of the proposals outweigh any costs associated with the proposals.

The Commission orders:

(A) Surrender of the license for the Saccarappa Project No. 2897 is approved, subject to the conditions set forth in Ordering Paragraphs (B) through (K) specific to the Saccarappa Project. The surrender shall not be effective until Sappi North America, Inc. has fulfilled these conditions and the Commission's Regional Engineer, Division of Dam Safety and Inspections – New York Regional Office has issued a letter stating that the project's facilities have been modified in accordance with this surrender order.

(B) The water quality certification conditions contained in Appendix A of the licenses for the Saccarappa, Mallison Falls (No. 2932), Little Falls, (No. 2941), Gambo (No. 2931), and Dundee (No. 2942) Projects, which are included as Appendix A of this order for reference, are amended to incorporate the revised water quality certification conditions issued by the Maine Department of Environmental Protection on October 9, 2018, which are included as Appendix B to this order.

(C) The section 18 fishway prescriptions contained in Appendix B of the licenses for the Saccarappa, Mallison Falls, Little Falls, Gambo, and Dundee Projects, which are included as Appendix C of this order for reference, are amended to incorporate the revised section 18 fishway prescriptions as prescribed by the U.S. Fish and Wildlife Service on June 11, 2018 and revised on June 22, 2018, which are included as Appendix D to this order.

(D) *Fish Passage Implementation Plan*. Within 90 days of the issuance date of this order, the licensee must file, for Commission approval, a revised Fish Passage

Implementation Plan, pursuant to Article 406 of the licenses for the Saccarappa and Little Falls Projects and Article 407 of the licenses for the Mallison Falls, Gambo, and Dundee Projects, to incorporate the revised fish passage conditions discussed in this order. Sappi must also include in this plan the Effectiveness Testing and Adjustment Plan required by surrender water quality certification condition 12.

Sappi must provide the revised plan to the following resource agencies for review and comment before filing it with the Commission: Maine Department of Marine Resources, Maine Department of Environmental Protection, U.S. Fish and Wildlife Service, and Maine Department of Inland Fisheries and Wildlife. The licensee must include with the filed plan documentation of consultation with these agencies, copies of comments and recommendations on the completed plan after is has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee must allow a minimum of 30 days for the agencies to comment and make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing must include the licensee's reasons based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the plan is approved by the Commission. Upon Commission approval, the licensee must implement the plan, including any changes required by the Commission.

(E) *Removal Plans and Specifications*. At least 60 days prior to the start of construction, the licensee must submit one copy of its plans and specifications and supporting design document to the Commission's Division of Dam Safety and Inspections (D2SI) – New York Regional Engineer, and two copies to the Commission (one of these must be a courtesy copy to the Director, D2SI). The submittal must also include as part of preconstruction requirements: a Quality Control and Inspection Program, a Temporary Construction Emergency Action Plan, a Soil Erosion and Sediment Control Plan, and, if necessary, a Blasting Plan. The licensee may not begin construction until the D2SI – New York Regional Engineer has reviewed and commented on the plans and specifications, determined that all preconstruction requirements have been satisfied, and authorized start of construction.

(F) *Cofferdams and Deep Excavations*. Should removal activities require cofferdams or deep excavations, the licensee must: (1) have a Professional Engineer, who is independent from the construction contractor, review and approve the design of contractor-designed cofferdams and deep excavation prior to the start of construction; and (2) ensure that construction of cofferdams and deep excavations is consistent with the approved design. At least 30 days before starting construction of any cofferdams or deep excavations, the licensee must submit one copy to the Commission's Division of Dam Safety and Inspections (D2SI) – New York Regional Engineer and two copies to the

Commission (one of these copies must be a courtesy copy to the Commission's Director, D2SI), of the approved cofferdam and deep excavation construction drawings and specifications and the letters of approval.

(G) *Final Decommissioning Report*. Within 30 days of completing the work associated with the project surrender, the license must file with the Commission a final decommissioning report, with photographs, which demonstrates that the project facilities have been modified in accordance with this surrender order. The licensee must submit two copies to the Commission's Division of Dam Safety and Inspections – New York Regional Engineer, and one copy to the Secretary of the Commission.

(H) *Statement from FWS Fishway Engineer*. Sappi must file with the Commission a written statement from a U. S. Fish and Wildlife Service (FWS) fishway engineer, stating that Sappi has constructed all fish passage facilities according to the approved design drawings or, alternatively, according to construction changes approved by a FWS fishway engineer and the Commission. Sappi must provide the Commission with the statement within 30 days of receipt from the FWS fishway engineer.

(I) *Commission Approval of Plans and Filing of Reports*

(a) Requirement to File Plans for Commission Approval

Various conditions of the Maine DEP surrender water quality certification conditions require the licensee to prepare plans for approval by the Maine DEP and to implement those plans without prior approval by the Commission. Each plan listed below must also be submitted to the Commission for approval:

Surrender WQC condition no.	Plan Name	Due date
3	Erosion and Sedimentation Control Plan	30 days prior to the initiation of dam removal activities
4	Plan to Coordinate Timing of Project Activities to Minimize Impact on Fish Passage and Resident Fish Populations	30 days prior to the initiation of dam removal activities

The licensee must include with each plan filed with the Commission documentation that the licensee has received approval from the Maine DEP. The Commission reserves the right to make changes to any plan submitted. Upon Commission approval, the plan becomes a requirement of the order, and the licensee must implement the plan, including any changes required by the Commission.

(b) Requirement to File Reports

Various conditions of the Maine DEP surrender water quality certification conditions require the licensee to file reports with the Maine DEP. These reports document the licensee's efforts to monitor and mitigate adverse effects of its proposal and the Commission may require further action based on the findings of the reports. Each of the following reports must also be submitted to the Commission:

Surrender WQC condition no.	Description	Due date
10B	Shoreline Monitoring and Bank Stabilization Report	Within 1 year of completing dam removal and fishway installation activities
13B	Upstream Drainage and Outfall Structures Monitoring Report	Within 1 year of completing dam removal activities

The licensee must include with each report filed with the Commission documentation of any consultation, and copies of any comments and recommendations made by Maine DEP. The Commission reserves the right to require additional monitoring or mitigation efforts following its review of the reports.

(J) *Memorandum of Agreement*. The licensee must implement the "Memorandum of Agreement Among the Federal Energy Regulatory Commission and the Maine State Historic Preservation Officer (Maine SHPO) Regarding the Surrender of License for the Saccarappa Hydroelectric Project (FERC No. 2897-048)", executed on December 6, 2018. In the event the Memorandum of Agreement (MOA) is terminated, the licensee must continue to implement the provisions of the MOA until the licensee fulfills all the requirements of the surrender order. The Commission may request changes to the provisions of the MOA at any time while the MOA is in effect. The licensee must provide the Commission with notification that all provisions of the MOA have been fulfilled and accepted by the Maine SHPO within 60 days of receiving such notification from the Maine SHPO.

(K) *Start of Construction*. The licensee must commence removal or construction of the project features as authorized in this order within 2 years from the issuance date of this order and must complete removal and construction of the appropriate features within 5 years of the issuance date of this order.

(L) *Operation and Maintenance Plan for Denil fishway*. The Operation and Maintenance Plan for the Denil Fishway, filed by Sappi on March 23, 2018, is approved and made part of the Mallison Falls license. Sappi must file an annual report, pursuant to the plan, by December 31 beginning the first year in which the double Denil fishway is operational. If any changes are made to the fishway design, placement, or operation, an amended Operations and Maintenance Plan must be developed by the licensee in consultation with the Maine Department of Marine Resources and the U.S. Fish and Wildlife Service, which must be filed for Commission approval. The Commission reserves the right to make any changes to the plan.

(M) *Approved Exhibit F Drawing.* The following Exhibit F drawing, filed July 5, 2018, for the Mallison Falls Project No. 2932, conforms to the Commission's rules and regulations, and is approved and made part of the license, as labeled and numbered below.

Exhibit	FERC Drawing No.	Drawing Title
F-4	P-2932-1015	Plan of Fishway

(N) *Exhibit F Drawing in Electronic Format.* Within 45 days of the issuance date of this order, as directed below, the licensee must file two sets of the approved exhibit drawing in electronic file format on compact disks with the Secretary of the Commission, ATTN: OEP/DHAC.

The licensee must prepare digital images of the approved exhibit drawing in electronic format. Prior to preparing each digital image, show the FERC Project-Drawing Number (*i.e.*, P-2932-1015) in the margin below the title block of the approved drawing. The licensee must identify the Exhibit F drawing as **Critical Energy Infrastructure Information (CEII) material under 18 C.F.R. § 388.113**. The electronic file name must include: FERC Project-Drawing Number, FERC Exhibit Number, Drawing Title, date of this order, and file extension in the following

format [P-2932-1015, F-1, Plan of Fishway, MM-DD-YYYY.TIF]. All digital images of the exhibit drawing must meet the following format specification:

IMAGERY:	black & white raster file
FILE TYPE:	Tagged Image File Format, (TIFF) CCITT Group 4 (also known as T.6 coding scheme)
RESOLUTION:	300 dots per inch (dpi) desired, (200 dpi minimum)
SIZE FORMAT:	22" x 34" (minimum), 24" x 36" (maximum)
FILE SIZE:	less than 1 megabyte desired

(O) *Revised Exhibits A and G.* Within 90 days of the issuance date of this order, the licensee must file, for Commission approval, revised Exhibits A and G for the Mallison Falls Project, reflecting the revisions to the project as authorized by this order. Each of the Exhibit G drawings must include a surveyor's stamp or signed statement, must show the fish passage facilities within the project boundary, and must omit features of the Saccarappa Project which would be removed. The licensee must prepare the Exhibit G drawings in accordance with 18 C.F.R. §§ 4.39 and 4.41(h). The Exhibit A for the Mallison Falls Project must be revised to describe the fish passage structures as part of the project.

(P) *As-Built Exhibits.* Within 90 days of completion of construction of the facilities authorized by this order, the licensee must file, for Commission approval, revised Exhibits A, F, and G for the Mallison Falls Project, as applicable, to describe and show those project facilities as built.

(Q) The license term for the Mallison Falls Project is extended to September 30, 2053.

(R) The license term for the Little Falls Project is extended to September 30, 2053.

(S) The license term for the Gambo Project is extended to September 30, 2053.

(T) The license term for the Dundee Project is extended to September 30, 2053.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A

WATER QUALITY CERTIFICATION
MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION
(Original April 30, 2003, as amended on December 27, 2016)
FOR REFERENCE

Water Quality Certification Conditions for the Saccarappa (P-2897), Mallison Falls (P-2932), Little Falls (P-2941), Gambo (P-2931), and Dundee (P-2942) Hydroelectric Projects, Issued April 30, 2003, as amended on December 27, 2016 by the State of Maine Department of Environmental Protection

1. WATER LEVELS AND FLOWS

A. Except as temporarily modified by (1) approved maintenance activities, (2) extreme hydrologic conditions, as defined below, or (3) emergency electrical system conditions, as defined below or (4) agreement between the applicant and other appropriate state and/or federal agencies, all projects shall be operated in a run-of-river mode, with outflow approximately equal to inflow on an instantaneous basis except during flashboard failure or replacement, and with impoundment levels maintained within 1 foot of full pond when flashboards are in place and within 1 foot of spillway crest elevation when flashboards are not in place.

B. Except as temporarily modified by (1) approved maintenance activities, (2) extreme hydrologic conditions, as defined below, or (3) emergency electrical system conditions, as defined below or (4) agreement between the applicant and other appropriate state and/or federal agencies, the following minimum flow releases shall be provided annually into the project bypass reaches:

- Dundee: 60 cfs from May 1 through October 31 and 40 cfs from November 1 through April 30.
- Gambo: 60 cfs year-round.
- Little Falls: Existing leakage (approximately 26 cfs).
- Mallison Falls: 60 cfs from May 1 through October 31 and 40 cfs from November 1 through April 30.
- Saccarappa: Existing leakage (approximately 13 cfs).

Minimum bypass flows shall consist of uncontrolled leakage, spillage, and any

flows released into the bypass reaches through any upstream and downstream eel passage and anadromous fish passage facilities provided at the projects. To the extent possible, all minimum flows shall be provided as spillage at the project dams, in order to provide maximum reaeration.

C. "Extreme Hydrologic Conditions" means the occurrence of events beyond the Licensee's control such as but not limited to abnormal precipitation, extreme runoff, flood conditions, ice conditions or other hydrologic conditions such that the operational restrictions and requirements contained herein are impossible to achieve or are inconsistent with the safe operation of the Project.

D. "Emergency Electrical System Conditions" means operating emergencies beyond Licensee's control which require changes in flow regimes to eliminate such emergencies which may in some circumstances include but are not limited to equipment failure or other abnormal temporary operating condition, generating unit operation or third-party mandated interruptions under power supply emergencies; and orders from local, state or federal law enforcement or public safety authorities.

E. The applicant shall, within 6 months of issuance of a New License for the project by FERC or upon such other schedule as established by FERC, submit plans for providing and monitoring run-of-river operations, impoundment levels, and minimum bypass flows as required by Parts A and B of this condition. These plans shall be reviewed by and must receive the approval of the DEP Bureau of Land and Water Quality.

F. Upon completion of a habitat assessment by the Atlantic Salmon Commission and notification to the applicant of initiation of active Atlantic salmon restoration activities in the Presumpscot River, the applicant shall conduct a study to evaluate the effectiveness of the minimum bypass flows required by Part B of this condition in providing habitat for various life stages of Atlantic salmon.

G. The applicant shall, within 6 months after notification from the Atlantic Salmon Commission on initiation of active Atlantic salmon restoration activities in the Presumpscot River, or upon such other schedule as established by FERC, submit plans for a study to evaluate the effectiveness of minimum bypass flows required by Part B of this condition in providing habitat for Atlantic salmon, prepared in consultation with ASC. This study shall include evaluation of the effectiveness of bypass flows in providing habitat for Atlantic salmon spawning and egg incubation and production of juvenile Atlantic salmon. This plan shall be reviewed by and must receive approval of the DEP prior to implementation. In reviewing the plan, the DEP will consider the recommendations of the ASC.

H. The applicant shall, in accordance with a schedule set forth in the study plan or upon such other schedule as established by FERC, submit the results of any bypass flow effectiveness study, along with any recommendations for changes in the minimum bypass flows required by this condition. After reviewing the study results, and after notice to the applicant and opportunity for hearing, the Department reserves the right to require such changes in the minimum bypass flows established in this certification as may be deemed necessary to provide Atlantic salmon habitat in the bypass reaches.

2. IMPOUNDMENT DRAWDOWN AND REFILL PROCEDURES

A. The applicant shall, unless necessary to address emergency situations or to address dam safety and/or public safety concerns, avoid maintenance drawdowns of the project impoundments during the months of May and June.

B. The applicant shall implement the following procedures for refilling the project impoundments after any impoundment drawdowns:

- If allowed under the FERC-approved Sebago lake level management plan, outflows shall be temporarily increased from Sebago Lake to refill the impoundments while flows from each project are maintained as required by the flow/temperature curve component of the lake level management plan.

- If increased outflows from Sebago Lake are not allowed under the FERC-approved Sebago lake level management plan, a maximum of 25% of the outflow from Sebago Lake shall be used to refill the impoundments while flows from each project are maintained at 75% or more of the outflow from Sebago Lake.

3. UPSTREAM EEL PASSAGE

A. Upstream eel passage facilities shall be installed and operational at all projects within 2 years following the issuance of a new FERC license for the projects.

B. The applicant shall, at least 60 days prior to construction or upon such other schedule as established by FERC, submit final design and operational plans for the upstream eel passage facilities required by Part A of this condition, prepared in consultation with the Department of Marine Resources. These plans shall be reviewed by and must receive the approval of DEP prior to construction. In reviewing the plans, the DEP will consider the recommendations of DMR.

C. The applicant shall, in consultation with the Department of Marine Resources,

conduct a study or studies to determine the effectiveness of the upstream eel passage facilities required by this condition.

D. The applicant shall, concurrent with the commencement of facilities operation or upon such other schedule as established by FERC, submit plans for a study or studies to determine the effectiveness of the upstream eel passage facilities required by Part A of this condition, prepared in consultation with the Department of Marine Resources. These plans shall be reviewed by and must receive the approval of DEP prior to implementation. In reviewing the plans, the DEP will consider the recommendations of DMR.

E. The applicant shall, in accordance with a schedule set forth in the study plan or upon such other schedule as established by FERC, submit the results of any upstream eel passage effectiveness studies, along with any recommendations for changes in the design and/or operation of any passage facilities installed pursuant to this condition.

F. The applicant shall be responsible for taking such actions as are needed to effectively pass eels upstream through the projects. After reviewing the study results, and after notice to the applicant and opportunity for hearing, the Department reserves the right to require reasonable changes in the design and/or operation of the upstream eel passage facilities installed pursuant to this condition as may be deemed necessary to effectively pass eels upstream through the projects.

4. DOWNSTREAM EEL PASSAGE

A. The applicant shall, immediately following the issuance of a new FERC license for the projects, institute operational measures to provide downstream eel passage at all projects. These measures must include suspending generation at each project for at least 4 hours per night for at least four one-week periods during the downstream eel migration period. The timing of the generation shutdown shall be determined each year, in consultation with the Department of Marine Resources, to maximize the expected benefit for downstream eel migration.

B. The applicant shall, in consultation with the Department of Marine Resources, conduct a 3-year study to determine the exact timing of the generation shutdown, so as to result in the optimum benefit for downstream eel migration.

C. The applicant shall, within 60 days following the issuance of a new FERC license for the project or upon such other schedule as established by FERC, submit plans for a study to determine the exact timing of the generation shutdown required by Part B of this condition, prepared in consultation with the Department of Marine

Resources. These plans shall be reviewed by and must receive the approval of DEP prior to implementation. In reviewing the plans, the DEP will consider the recommendations of DMR.

D. The applicant shall, in accordance with a schedule set forth in the study plan or upon such other schedule as established by FERC, submit the results of the downstream eel passage study, along with any recommendations for the exact timing of the generation shutdowns required by this condition.

E. The applicant shall be responsible for taking such actions as are needed to effectively pass eels downstream through the projects. After reviewing the study results, and after notice to the applicant and opportunity for hearing, the Department reserves the right to require changes in the timing of the operational shutdowns required by this condition as may be deemed necessary to effectively pass eels downstream through the projects.

F. In the event that downstream passage facilities are installed at a project pursuant to Condition 5 below, the applicant may, in consultation with the Department of Marine Resources, conduct a study to determine the effectiveness of these facilities in passing eels downstream through the project. Upon request by the applicant, and after reviewing the study results and the recommendations of DMR, the Department reserves the right to reduce or terminate the operational shutdowns required by this condition.

5. UPSTREAM AND DOWNSTREAM ANADROMOUS FISH PASSAGE

Saccarappa Project

A. The applicant shall install and operate the following upstream fish passage facilities at the project:

- Phase I. A Denil "fish ladder," or other passage facilities of comparable efficiency in passing the target species, designed to pass at least 18,000 American shad, 109,000 blueback herring, and 273 Atlantic salmon annually. These facilities, which shall include a counting, trapping and sorting facility, must be operational no later than **6** years after passage is available at the downstream Cumberland Mills Dam.

- Phase II. Convert or replace the Phase I passage facilities with a fish lift, or other passage facilities of comparable efficiency in passing the target species, designed to pass up to 58,000 American shad, 353,000 blueback herring, and 426 Atlantic salmon annually. These facilities, which shall include a counting, trapping and sorting facility, must be operational no

later than 2 years after (1) notification from the Department of Marine Resources, the Department of Inland Fisheries and Wildlife, and the Atlantic Salmon Commission of initiation of Phase II restoration above Gambo Dam and (2) the capacity of the installed Phase I passage facilities has been reached for any of the target species.

B. The applicant shall install and operate downstream passage facilities designed to pass American shad, blueback herring, and Atlantic salmon at the project. These facilities shall be operational concurrent with the completion of upstream anadromous fish passage facilities at the project or within 2 years following notification by the Department of Marine Resources or the Atlantic Salmon Commission of sustained stocking of anadromous fish above the Saccarappa Dam, whichever comes first.

Mallison Falls Project

A. The applicant shall install and operate the following upstream fish passage facilities at the project:

- Phase I. A Denil "fish ladder," or other passage facilities of comparable efficiency in passing the target species, designed to pass at least 4,200 American shad, 26,000 blueback herring, and 32 Atlantic salmon annually. These facilities, which shall include a counting, trapping and sorting facility, must be operational no later than 2 years after passage of at least 2,960 American shad or 18,020 blueback herring in any single year at the downstream Saccarappa Project.

- Phase II. Convert or replace the Phase I passage facilities with a fish lift, or other passage facilities of comparable efficiency in passing the target species, designed to pass up to 44,000 American shad, 270,000 blueback herring, and 185 Atlantic salmon annually. These facilities, which shall include a counting, trapping and sorting facility, must be operational no later than 2 years after (1) notification from the Department of Marine Resources, the Department of Inland Fisheries and Wildlife, and the Atlantic Salmon Commission of initiation of Phase II restoration above Gambo Dam and (2) the capacity of the installed Phase I passage facilities has been reached for any of the target species.

B. The applicant shall install and operate downstream passage facilities designed to pass American shad, blueback herring, and Atlantic salmon at the project. These facilities shall be operational concurrent with the completion of upstream anadromous fish passage facilities at the project or within 2 years following notification by the Department of Marine Resources or the Atlantic Salmon

Commission of sustained stocking of anadromous fish above the Mallison Falls Dam, whichever comes first.

Little Falls Project

A. The applicant shall install and operate the following upstream fish passage facilities at the project:

- Phase I. A Denil "fish ladder," or other passage facilities of comparable efficiency in passing the target species, designed to pass at least 3,100 American shad, 19,000 blueback herring, and 15 Atlantic salmon annually. These facilities, which shall include a counting, trapping and sorting facility, must be operational no later than 2 years after passage of at least 2,960 American shad or 18,020 blueback herring in any single year at the downstream Saccarappa Project.

- Phase II. Convert or replace the Phase I passage facilities with a fish lift, or other passage facilities of comparable efficiency in passing the target species, designed to pass up to 43,000 American shad, 263,000 blueback herring, and 168 Atlantic salmon annually. These facilities, which shall include a counting, trapping and sorting facility, must be operational no later than 2 years after (1) notification from the Department of Marine Resources, the Department of Inland Fisheries and Wildlife, and the Atlantic Salmon Commission of initiation of Phase II restoration above Gambo Dam and (2) the capacity of the installed Phase I passage facilities has been reached for any of the target species.

B. The applicant shall install and operate downstream passage facilities designed to pass American shad, blueback herring, and Atlantic salmon at the project. These facilities shall be operational concurrent with the completion of upstream anadromous fish passage facilities at the project or within 2 years following notification by the Department of Marine Resources or the Atlantic Salmon Commission of sustained stocking of anadromous fish above the Little Falls Dam, whichever comes first.

Gambo Project

A. The applicant shall install and operate the following upstream fish passage facilities at the project:

- Phase I. No upstream fish passage facilities required.

- Phase II. A fish lift, or other passage facilities of comparable efficiency in passing the target, designed to pass up to 40,000 American shad, 244,000 blueback herring, and 153 Atlantic salmon annually. These facilities, which shall include a counting, trapping and sorting facility, must be operational no later than 2 years after (1) notification from the Department of Marine Resources, the Department of Inland Fisheries and Wildlife, and the Atlantic Salmon Commission of initiation of Phase II restoration above Gambo Dam and (2) passage of at least 620 American shad or 3,800 blueback herring in any single year at the downstream Little Falls Project.

B. The applicant shall install and operate downstream passage facilities designed to pass American shad, blueback herring, and Atlantic salmon at the project. These facilities shall be operational concurrent with the completion of upstream anadromous fish passage facilities at the project or within 2 years following notification by the Department of Marine Resources or the Atlantic Salmon Commission of sustained stocking of anadromous fish above the Gambo Dam, whichever comes first.

Dundee Project

A. The applicant shall install and operate the following upstream fish passage facilities at the project:

- Phase I. No upstream fish passage facilities required.

- Phase II. A fish lift, or other passage facilities of comparable efficiency in passing the target species, designed to pass up to 20,000 American shad, 122,000 blueback herring, and 64 Atlantic salmon annually. These facilities, which shall include a counting, trapping and sorting facility, must be operational no later than 2 years after (1) notification from the Department of Marine Resources, the Department of Inland Fisheries and Wildlife, and the Atlantic Salmon Commission of initiation of Phase II restoration above Gambo Dam and (2) passage of at least 4,020 American shad or 24,460 blueback herring in any single year at the downstream Gambo Project.

B. The applicant shall install and operate downstream passage facilities designed to pass American shad, blueback herring, and Atlantic salmon at the project. These facilities shall be operational concurrent with the completion of upstream anadromous fish passage facilities at the project or within 2 years following notification by the Department of Marine Resources or the Atlantic Salmon Commission of sustained stocking of anadromous fish above the Dundee Dam, whichever comes first.

All Projects

C. The applicant shall, at least 180 days prior to construction or upon such other schedule as established by FERC, submit final design and operational plans for the upstream and downstream anadromous fish passage facilities required by Parts A and B of this condition, prepared in consultation with the Department of Marine Resources and the Atlantic Salmon Commission. These plans shall be reviewed by and must receive the approval of DEP prior to construction. In reviewing the plans, the DEP will consider the recommendations of the ASC and DMR.

D. The applicant shall, in consultation with the Department of Marine Resources and the Atlantic Salmon Commission, conduct a study or studies to determine the effectiveness of the upstream and downstream anadromous fish passage facilities required by this condition.

E. The applicant shall, concurrent with the commencement of facilities operation or upon such other schedule as established by FERC, submit plans for a study or studies to determine the effectiveness of the upstream and downstream anadromous fish passage facilities required by Parts A and B of this condition, prepared in consultation with the Department of Marine Resources and the Atlantic Salmon Commission. These plans shall be reviewed by and must receive the approval of DEP prior to implementation. In reviewing the plans, the DEP will consider the recommendations of the ASC and DMR.

F. The applicant shall, in accordance with a schedule set forth in the study plan or upon such other schedule as established by FERC, submit the results of any upstream and downstream anadromous fish passage effectiveness studies, along with any recommendations for changes in the design and/or operation of any passage facilities installed pursuant to this condition.

G. The applicant shall be responsible for taking such actions as are needed to effectively pass anadromous fish upstream and downstream through the projects, insofar as passage is required in accordance with Parts A and B of this condition. After reviewing the results of the study, and after notice to the applicant and opportunity for hearing, the Department reserves the right to require reasonable changes in the design and/or operation of the upstream and downstream anadromous fish passage facilities installed pursuant to this condition as may be deemed necessary to effectively pass anadromous fish upstream and downstream through the projects.

6. REAERATION MEASURES

A. The applicant shall, commencing with the issuance of a new FERC license for the project, institute the spillage of 50 cfs at the Dundee Dam and 100 cfs at the Gambo Dam, or take other equivalent measures as may be approved by the Department, in order to meet Class B dissolved oxygen standards in the river from Dundee Dam to Saccarappa Dam under dry weather conditions. Spillage must occur whenever river temperatures exceed 22 degrees Celsius, as measured at the Gambo Dam before 8 AM, and shall be in addition to the minimum bypass flows required by Condition 1 above.

B. The applicant shall, within 6 months of issuance of a New License for the project by FERC or upon such other schedule as established by FERC, submit plans for providing and monitoring spillage or other approved reaeration measures as required by Part A of this condition. These plans shall be reviewed by and must receive the approval of the DEP Bureau of Land and Water Quality.

C. The applicant shall, in consultation with the Department, conduct a study or studies to determine the effectiveness of the spillage or other measures required by this condition in meeting Class B dissolved oxygen standards.

D. The applicant shall, within 60 days following the issuance of a new FERC license for the project or upon such other schedule as established by FERC, submit plans for a study or studies to determine the effectiveness of the spillage or other measures taken pursuant to Part A of this condition in meeting Class B dissolved oxygen standards. These plans shall be reviewed by and must receive the approval of DEP prior to implementation.

E. The applicant shall, in accordance with a schedule set forth in the study plan or upon such other schedule as established by FERC, submit the results of any studies to determine the effectiveness of the spillage or other measures taken pursuant to Part A of this condition to meet Class B dissolved oxygen standards in the river from Dundee Dam to Saccarappa Dam, along with any recommendations for changes in measures taken pursuant to this condition.

F. The applicant shall be responsible for taking such actions as are needed to meet dissolved oxygen standards in the river from Dundee Dam to Saccarappa Dam, insofar as the project dams cause or contribute to a violation of these standards under dry weather conditions. After reviewing the study results, and after notice to the applicant and opportunity for hearing, the Department will reopen and modify the terms of this certification to require reasonable changes in the design and/or operation of the projects as may be deemed necessary to meet Class B dissolved oxygen standards in the river from Dundee Dam to Saccarappa Dam

under dry weather conditions.

7. RECREATIONAL FACILITIES

A. The applicant shall develop and implement a Recreational Facility Enhancement Plan for each project, which shall include, at a minimum, the following measures to maintain and/or enhance recreational access and use in the project areas:

Dundee Project

- Rerouting, stabilizing, and maintaining the existing canoe portage trail;
- Seeking an easement to provide walk-in angler access to the project bypass reach; and
- Investigating whether an existing access easement can be altered to permit fishery agency access for stocking purposes.

Gambo Project

- Enhancing and maintaining the existing informal canoe portage trail;
- Developing an interpretive sign to explain the history of the Oriental Powder Mill Complex;
- Providing walk-in angler access to the bypass reach;
- Developing parking and signs for carry-in boat access at the portage take-out location; and
- Assisting the Town of Gorham in regrading and enhancing the Gambo Road approach to the former bridge area immediately upstream from the dam.

Little Falls

- Establishing and maintaining a canoe portage trail;
- Assist Gorham Trails in developing parking, signage, and access for a carry-in boat launch at the Gorham Land Trust Property off of the Tow Path Road; and

- Donate approximately 0.8 acres of land on the island located off-shore of the Hawkes Property to the Gorham Land Trust.

Mallison Falls

- Establishing and maintaining a formal canoe portage trail;
- Providing signs for parking and access at the existing carry-in boat access site at the project powerhouse;
- Developing parking, signage, and access for a carry-in boat access site above the project dam;
- Seeking permission from the Department of Transportation and the Town of Gorham to provide a roadside pullout and carry-in boat access site next to the bridge abutment above the project dam; and
- Continuing to seek an easement or other opportunities to provide walk-in angler access to the bypass reach.

B. The applicant shall, within 12 months following the issuance of a new FERC license for the project or upon such other schedule as established by FERC, submit a Recreational Facility Enhancement Plan for each project as required by Part A of this condition. This plan shall be prepared in consultation with the Department of Conservation and the Department of Inland Fisheries and Wildlife, and shall include a schedule for implementation. This plan shall be reviewed by and must receive approval of the DEP.

8. LIMITS OF APPROVAL

This approval is limited to and includes the proposals and plans contained in the applications and supporting documents submitted and affirmed to by the applicant.

9. COMPLIANCE WITH ALL APPLICABLE LAWS

The applicant shall secure and appropriately comply with all applicable federal, state and local licenses, permits, authorizations, conditions, agreements and orders required for the operation of the projects in accordance with the terms of this certification.

10. EFFECTIVE DATE

This water quality certification shall be effective concurrent with the effective date of

the licenses issued for the projects by the Federal Energy Regulatory Commission.

Appendix B

WATER QUALITY CERTIFICATION
MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION
(Amendments October 10, 2018)

SURRENDER WATER QUALITY CERTIFICATION CONDITIONS

1. STANDARD CONDITIONS OF APPROVAL

   All Standard Conditions of Approval for projects under the MWDCA.

2. CONDITIONS OF PRIOR APPROVAL

   All terms and conditions of Department Order #L-19717-33-E-N dated April 30, 2003 relating to the operation of the existing SHP shall remain in effect and enforceable by the Department until at least such time as project decommissioning and dam removal and fishway installation activities have commenced.

   All terms and condition of Department Order #L-19717-33-E-N dated April 30, 2003 relating to upstream fish passage at the SHP shall remain in effect and enforceable by the Department until at least the completion of the SHP activities to the satisfaction of the Department, in consultation with MDMR and USFWS as necessary, including the removal of the spillways, the construction of the double Denil fishway, and the reshaping of the eastern and western channels.

   Furthermore, all Findings of Fact and Conclusions, as well as all other terms and conditions, in Department Order #L-19717-33-E-N and subsequent Orders shall remain in effect until FEC issues a final surrender Order.

3. EROSION AND SEDIMENTATION CONTROL PLAN

   A. The applicant shall, in consultation with the Department and the general contractor chosen to perform the dam removal and fishway installation activities, prepare, submit, and implement a final erosion and sedimentation control plan for project dam removal and fishway installation activities, including plans to secure the site for over-wintering between construction seasons, if necessary. The plan shall be reviewed and approved by the Department prior to the initiation of dam removal activities. Review and approval by the Department is achieved through application for a condition compliance order.

   B. In addition to any specific erosion and sedimentation control measures included in the plan approved by the Department under Part A of this condition or

otherwise set forth in this Order, the applicant and its agents shall take all necessary measures to ensure that their activities do not result in erosion or sedimentation during or following the approved activities, except for any unavoidable sedimentation that occurs as a result of dam removal and fishway installation activities.

4. TIMING OF ACTIVITIES

The applicant shall, in consultation with the Department and appropriate state and federal fisheries agencies, prepare, submit, and implement a plan to coordinate the timing of project activities to minimize the impact on fish passage and resident fish populations. The plan shall be reviewed and approved (Review and approval by the Department is achieved through application for a condition compliance order) by the Department prior to the initiation of dam removal activities.

5. HISTORIC AND ARCHAEOLOGICAL RESOURCES

The applicant shall implement the Historic Properties and Management Plan (HPMP) based on the Programmatic Agreement as required by the FERC and the Maine SHPO to protect Section 9 and 15 of the Cumberland and Oxford Canal as it relates to erosion.

The applicant will ensure that a written and photographic history of the National Register of Historic Places mill structures are preserved and are recorded with the Historic American Engineering Record/Historic American Building Survey.

6. ACCESS ROAD/COFFERDAM FILL

Any temporary access road and cofferdam fill placed in the waterway or within the 100-year floodway boundaries of the waterway shall consist of clean stone fill or sandbagged clean granular fill free from vegetable matter, lumps or balls of clay and other deleterious substances. That portion passing a No. 200 sieve shall not exceed 10% fines, by weight.

All temporary access road and cofferdam fill shall be removed following completion of dam removal activities.

7. DEMOLITION DEBRIS

All demolition debris and construction spoils shall be reused, recycled or otherwise disposed of in accordance with the Maine Solid Waste Management Regulations.

8. CONCRETE CURING

Concrete shall be precast and cured at least three weeks before placing in the water, or where necessary, shall be placed in forms and shall cure at least one week prior to contact with surface water. A minimum of 15 gallons of water per square foot of new concrete shall be flowed over new concrete to maintain the pH of discharge water at or below 8.5.

9. IMPOUNDMENT DRAWDOWN

The drawdown of the SHP impoundment shall occur in phases, as proposed by the applicant, in order to minimize the impact on fish and wildlife resources, shoreline stability, and water quality. In the first phase, the initial drawdown of the impoundment will be accomplished by opening the head gate and waste gates to direct the Presumpscot River flow to the western channel and dewater the eastern channel for demolition and removal of the eastern portion of the dam. In the second phase, the head gates will be closed to stop flow in the western channel and fill placed to divert flow to the eastern channel for demolition and removal of the western portion of the dam.

10. BANK STABILIZATION

A. The applicant shall, in consultation with the Department, take appropriate measures to monitor the shoreline following dam removal and to implement bank stabilization measures, as needed.

B. Within one year following the completion of dam removal and fishway installation activities, the applicant shall submit a report detailing the results of shoreline monitoring and any bank stabilization measures taken to remediate any significant stream bank erosion or slumping. This report shall be reviewed and approved by the Department (Review and approval by the Department is achieved through application for a condition compliance order).

11. INVASIVE PLANT SPECIES MONITORING AND CONTROL

A. The applicant shall monitor the newly exposed shoreline and river bottom areas following dam removal for invasive plant species, for a period of one vegetative growing season following completion of dam removal activities.

12. POST-DAM REMOVAL FISH PASSAGE

A. The applicant shall take appropriate measures to monitor fish passage following dam removal and fishway installation, and to implement remedial

actions, as needed, to ensure adequate passage through the affected river reach and its tributaries, as described in Sections 2.1.6, 2.1.7.1, and 2.1.7.2 of the Settlement Agreement, and as detailed in Exhibit B of the same document, titled "Effectiveness Testing and Adjustment Plan".

13. UPSTREAM DRAINAGE/OUTFALL STRUCTURES

A. The applicant shall, in consultation with the affected parties, monitor and protect and/or extend upstream drainage and outfall structures, as needed.

B. Within one year following the completion of dam removal activities, the applicant shall submit a report detailing the results of the monitoring and any measures taken to protect and/or extend upstream drainage and outfall structures following dam removal and fishway installation. This report shall be reviewed and approved by the Department (Review and approval by the Department is achieved through application for a condition compliance order).

14. FLOODWAY MAP REVISIONS

Within one year following completion of dam removal and fishway installation activities, the applicant shall provide to the City of Westbrook all potentially useful technical information in the applicant's possession or control to support a request to the Federal Emergency Management Agency to revise the floodway maps for the Presumpscot River in the City of Westbrook and other affected towns to take into account the dam removal and fishway installation. A copy of this technical information shall also be provided to the Department. The applicant shall provide technical engineering data to the Federal Emergency Management Agency (FEMA) regarding changes in flood flow elevations within six months of the removal of the spillways and reshaping of the eastern and western channels.

15. PUBLIC BOAT LAUNCHES and PRIVATE DOCKS

The applicant shall, in consultation with the MDIFW and the City of Westbrook and affected parties, take appropriate measures, as needed, to modify remaining public boat access sites and private docks existing at the time of application was submitted to the Department, as necessary to accommodate lowered water levels, following dam removal and fishway installation.

16. SEVERABILITY

In the event that any provision, or part thereof, of this permit and/or certification is declared to be unlawful by a reviewing court, the remainder of the permit and/or certification shall remain in full force and effect, and shall be construed and

enforced in all respects as if such unlawful provision, or part thereof, has been omitted, unless otherwise ordered by the court.

AMENDMENT WATER QUALITY CERTIFICATION CONDITIONS

1. STANDARD CONDITIONS OF APPROVAL

   Standard Conditions #1, 2, 3, 4, and 10, as attached below, apply to the upstream WQC Amendments.

2. SPECIAL CONDITIONS OF APPROVAL

   All terms and conditions of Department Order #L-19717-33-E-N dated April 30, 2003 and subsequent Orders relating to the operation of the existing SHP, including fish passage, shall remain in effect and enforceable by the Department as specified above in Condition 2 ("Conditions of Prior Approval") set forth in Section 10 of this Order.

3. WQC AMENDMENTS

   All terms and conditions of Department Orders #L-19717-33-N-M (Saccarappa), #L- 19716-33-E-N (Mallison Falls), #L-19715-33-E-N (Little Falls), #L-19714-33-E-N, Gambo), and #L-19713-33-E-N (Dundee) remain in effect for the upstream Mallison Falls, Little Falls, Gambo and Dundee Projects, except as follows:

   Saccarappa. Special Condition #5.A. of Department Order #L-19717-33-E-N reads as follows:

   A. The applicant shall install and operate upstream fish passage facilities at the project:

      Phase I. A Denil "fish ladder" or other passage facilities of comparable efficiency in passing the target species, designed to pass at least 18,000 American shad, 109,000 blueback herring, and 273 Atlantic salmon annually. These facilities, which shall include a counting, trapping and sorting facility, must be operational no later than 2 years after passage is available at the downstream Cumberland Mills dam.

      Phase II. Convert or replace the Phase I passage facilities with a fish lift, or other passage facilities of comparable efficiency in passing the target species, designed to pass up to 58,000 American shad, 353,000 blueback herring, and 426 Atlantic salmon annually. These facilities, which shall

include a counting, trapping and sorting facility, must be operational no later than 2 years after (1) notification from the Department of Marine Resources, the Department of Inland Fisheries and Wildlife, and the Atlantic Salmon Commission of initiation of Phase II restoration above Gambo Dam and (2) the capacity of the installed Phase I passage facilities has been reached for any of the target species.

Department Order #L-19717-33-N-M hereby modifies Special Condition #5.A. for the Saccarappa Project as follows:

B. The applicant shall install and operate upstream passage facilities at the project:

Phase I. A Denil fishway, or other passage facilities of comparable efficiency in passing the target species, designed to pass at least 18,000 American Shad, 109,000 blueback herring, and 273 Atlantic salmon annually. These facilities, which shall include a counting, trapping, and sorting facility, must be in operation no later than eight years after passage is available at the downstream Cumberland Mills dam.

Phase II. Convert or replace the Phase I passage facilities with a fish lift, or other passage facilities of comparable efficiency in passing target species, designed to pass up to 58,000 American shad, 353,000 blueback herring, and 426 Atlantic salmon annually. These facilities, which shall include a counting, trapping and sorting facility, must be operational no later than 2 years after (1) notification from the Department of Marine Resources, the Department of Inland Fisheries and Wildlife, and the Atlantic Salmon Commission of initiation of Phase II restoration above Gambo Dam and (2) the capacity of the installed Phase I passage facilities has been reached for any of the target species.

Mallison Falls. Condition 5. of Department Order #L-19716-33-E-N reads as follows:

A. The applicant shall install and operate the following upstream fish passage facilities at the project:

Phase I. A Denil "fish ladder" or other passage facilities of comparable efficiency in passing the target species, designed to pass at least 4,200 American shad, 26,000 blueback herring, and 32 Atlantic salmon annually. These facilities, which shall include a counting, trapping and sorting facility, must be operational no later than 2 years after passage of at least 2,960 American shad or 18,020 blueback herring in any single year at the downstream SHP.

Phase II. Convert or replace the Phase I passage facilities with a fish lift, or other passage facilities of comparable efficiency in passing the target species, designed to pass up to 44,000 American shad, 270,000 blueback herring, and 185 Atlantic salmon annually. These facilities, which shall include a counting, trapping and sorting facility, must be operational no later than 2 years after (1) notification from the Department of Marine Resources, the Department of Inland Fisheries and Wildlife, and the Atlantic Salmon Commission of initiation of Phase II restoration above Gambo Dam and (2) the capacity of the installed Phase I passage facilities has been reached for any of the target species.

B. The applicant shall install and operate downstream passage facilities designed to pass American shad, blueback herring and Atlantic salmon at the project. These facilities shall be operational concurrent with the completion of upstream anadromous fish passage facilities at the project or within 2 years following notification by the Department of Marine Resources or the Atlantic Salmon Commission of sustained stocking of anadromous fish above the Mallison Falls Dam, whichever comes first.

Department Order #L-19716-33-G-M herby modifies Condition 5. as follows:

A. Upon the occurrence of 2,960 American shad or 18,020 blueback herring passing in any single season at the Saccarappa fish counting facility, S.D. Sappi shall either (1) two years thereafter construct and operate upstream and downstream fish passage facilities at the project in accordance with A., Phase I and Phase II, and B. of Section 5 of the 2003 Water Quality Certification for the Mallison Falls Hydroelectric Project (Project #L-19716-33-E-N) and as required by the Mallison Falls Project FERC license, or (2) three years thereafter surrender its FERC license, and remove, at a minimum, all dam spillways at the Project.

Upstream Fish Passage - Phase I. A Denil fishway or other passage facilities of comparable efficiency in passing the target species, designed to pass at least 4,200 American shad, 26,000 blueback herring, and 32 Atlantic salmon annually. These facilities, which shall include a counting, trapping and sorting facility, must be operational no later than 2 years after passage of at least 2,960 American shad or 18,020 blueback herring in any single year at the downstream SHP.

Phase II. Convert or replace the Phase I passage facilities with a fish lift, or other passage facilities of comparable efficiency in passing the target species, designed to pass up to 44,000 American shad, 270,000 blueback herring, and

185 Atlantic salmon annually. These facilities, which shall include a counting, trapping and sorting facility, must be operational no later than 2 years after (1) notification from the Department of Marine Resources and the Department of Inland Fisheries and Wildlife of initiation of Phase II restoration above Gambo Dam and (2) the capacity of the installed Phase I passage facilities has been reached for any of the target species.

Downstream Fish Passage. The applicant shall install and operate downstream passage facilities designed to pass American shad, blueback herring and Atlantic salmon at the project. These facilities shall be operational concurrent with the completion of upstream anadromous fish passage facilities at the project or within 2 years following notification by the Department of Marine Resources of sustained stocking of anadromous fish above the Mallison Falls Dam, whichever comes first.

Little Falls. Condition 5 of Department Order #L-19715-33-E-N reads as follows:

A. The applicant shall install and operate the following upstream fish passage facilities at the project:

Phase I. A Denil "fish ladder" or other passage facilities of comparable efficiency in passing the target species, designed to pass at least 3,100 American shad, 19,000 blueback herring, and 15 Atlantic salmon annually. These facilities, which shall include a counting, trapping and sorting facility, must be operational no later than 2 years after passage of at least 2,960 American shad or 18,020 blueback herring in any single year at the downstream SHP.

Phase II. Convert or replace the Phase I passage facilities with a fish lift, or other passage facilities of comparable efficiency in passing the target species, designed to pass up to 43,000 American shad, 263,000 blueback herring, and 168 Atlantic salmon annually. These facilities, which shall include a counting, trapping and sorting facility, must be operational no later than 2 years after (1) notification from the Department of Marine Resources, the Department of Inland Fisheries and Wildlife, and the Atlantic Salmon Commission of initiation of Phase II restoration above Gambo Dam and (2) the capacity of the installed Phase I passage facilities has been reached for any of the target species.

B. The applicant shall install and operate downstream passage facilities designed to pass American shad, blueback herring and Atlantic salmon at the project. These facilities shall be operational concurrent with the completion of upstream anadromous fish passage facilities at the project or within 2

years following notification by the Department of Marine Resources or the Atlantic Salmon Commission of sustained stocking of anadromous fish above the Little Falls Dam, whichever comes first.

Department Order #L-19715-33-G-M hereby modifies Condition 5. as follows:

A. Upon the occurrence of 2,960 American shad or 18,020 blueback herring passing in any single season at the Saccarappa fish counting facility, S.D. Sappi shall either (1) two years thereafter construct and operate upstream and downstream fish passage facilities at the project in accordance with Section 5 A. of the 2003 Water Quality Certification for the Little Falls Hydroelectric Project (Project #L-19715-33-E-N) and as required by the Little Falls Project FERC license, or (2) three years after removal of the Mallison Falls spillways, surrender its FERC license, and remove, at a minimum, all dam spillways at the Project.

Upstream Fish Passage - Phase I. A Denil fishway or other passage facilities of comparable efficiency in passing the target species, designed to pass at least 3,100 American shad, 19,000 blueback herring, and 15 Atlantic salmon annually. These facilities, which shall include a counting, trapping and sorting facility, must be operational no later than 2 years after passage of at least 2,960 American shad or 18,020 blueback herring in any single year at the downstream SHP.

Phase II. Convert or replace the Phase I passage facilities with a fish lift, or other passage facilities of comparable efficiency in passing the target species, designed to pass up to 43,000 American shad, 263,000 blueback herring, and 168 Atlantic salmon annually. These facilities, which shall include a counting, trapping and sorting facility, must be operational no later than 2 years after (1) notification from the Department of Marine Resources and the Department of Inland Fisheries and Wildlife, of initiation of Phase II restoration above Gambo Dam and (2) the capacity of the installed Phase I passage facilities has been reached for any of the target species.

Downstream Fish Passage. The applicant shall install and operate downstream passage facilities designed to pass American shad, blueback herring and Atlantic salmon at the project. These facilities shall be operational concurrent with the completion of upstream anadromous fish passage facilities at the project or within 2 years following notification by the Department of Marine Resources of sustained stocking of anadromous fish above the Mallison Falls Dam, whichever comes first.

Gambo. Condition 5. of Department Order #L-19714-33-E N reads as follows:

A. The applicant shall install and operate the following upstream fish passage facilities at the project:

Phase I. No upstream fish passage facilities required.

Phase II. A fish lift, or other passage facilities of comparable efficiency in passing the target [species], designed to pass up to 40,000 American shad, 244,000 blueback herring, and 153 Atlantic salmon annually. These facilities, which shall include a counting, trapping and sorting facility, must be operational no later than 2 years after (1) notification from the Department of Marine Resources, the Department of Inland Fisheries and wildlife, and the Atlantic Salmon Commission of initiation of Phase II restoration above Gambo Dam and (2) passage of at least 620 American shad or 3,800 blueback herring in any single year at the downstream Little Falls Project.

B. The applicant shall install and operate downstream passage facilities designed to pass American shad, blueback herring and Atlantic salmon at the project. These facilities shall be operational concurrent with the completion of upstream anadromous fish passage facilities at the project or within 2 years following notification by the Department of Marine Resources or the Atlantic Salmon Commission of sustained stocking of anadromous fish above the Gambo Dam, whichever comes first.

Department Order #L-19714-33-G-M herby modifies Condition 5. as follows:

A. No fish passage facilities are required for the term of the FERC license issued on October 3, 2003 for the Gambo Hydroelectric Project, or for the term of any extension by amendment of that license.

Dundee. Condition 5. of Department Order #L-19713-33-E-N reads as follows:

A. The applicant shall install and operate the following upstream fish passage facilities at the project:

Phase I. No upstream fish passage facilities required.

Phase II. A fish lift, or other passage facilities of comparable efficiency in passing the target species, designed to pass up to 20,000 American shad, 122,000 blueback herring, and 64 Atlantic salmon annually. These facilities, which shall include a counting, trapping and sorting facility, must be operational no later than 2 years after (1) notification from the

Department of Marine Resources and the Department of Inland Fisheries and wildlife, of initiation of Phase II restoration above Gambo Dam and (2) passage of at least 4,020 American shad or 24,460 blueback herring in any single year at the downstream Gambo Project.

B. The applicant shall install and operate downstream passage facilities designed to pass American shad, blueback herring and Atlantic salmon at the project. These facilities shall be operational concurrent with the completion of upstream anadromous fish passage facilities at the project or within 2 years following notification by the Department of Marine Resources of sustained stocking of anadromous fish above the Dundee Dam, whichever comes first.

Department Order #L-19713-33-N-M hereby modifies Condition 5. as follows:

A. No fish passage facilities are required for the term of the FERC license issued on October 3, 2003 for the Dundee Hydroelectric Project, or for the term of any extension by amendment of that license.

4. SEVERABILITY

If any provision, or part thereof, of any of these certifications is declared to be unlawful by a reviewing court, the remainder of the certification shall remain in full force and effect, and shall be construed and enforced in all respects as if such unlawful provision, or part thereof, had been omitted, unless otherwise ordered by the court.

Appendix C

UNITED STATES DEPARTMENT OF THE INTERIOR'S PRESCRIPTIONS FOR FISHWAYS PURSUANT TO SECTION 18 OF THE FEDERAL POWER ACT
(Original issuance February 5, 2002, amended November 15, 2016)
FOR REFERENCE

10. Prescription for Fishways

Pursuant to Section 18 of the Federal Power Act, as amended, the Secretary of the Department of the Interior, as delegated to the Service, exercises her authority to prescribe the construction, operation, and maintenance of such fishways as deemed necessary.

10.1 General Prescriptions for the Presumpscot River Projects

A. This prescription for fishways is based on the assumption that fish passage or dam removal would be achieved at the downstream Smelt Hill Dam and the Cumberland Mills Dam, and that the Commission will not order the removal of the Saccarappa, Mallison Falls, and/or Little Falls Projects, as described in the DEIS. (DEIS, p. 28). Several interested parties, including the Department, have urged the removal of one or more of these projects. If, in its public interest consideration and licensing decision, the Commission orders the removal of one or more of these projects, the Department will modify its Prescription for Fishways accordingly.

B. Fishways shall be constructed, operated, and maintained to provide safe, timely, and effective passage for Atlantic salmon, American shad, blueback herring, and American eels at the licensee's expense.

To ensure the immediate and timely contribution of the fishways to the on-going and planned anadromous and catadromous fish restoration and enhancement program in the Presumpscot River, the following are included and shall be incorporated by the licensee to ensure the effectiveness of the fishways pursuant to Section 1701(b) of the 1992 National Energy Policy Act (P.L. 102-486, Title XVII, 106 Stat. 3008).

C. Design Populations

The total number of returning fish reaching the lowermost of the five projects covered in this relicensing would depend on a number of factors, including whether fishways are installed or dam removals are used to achieve passage. Overall fishway efficiency and cumulative losses of fish attempting to use the upstream and downstream fish passage facilities also would affect the total potential restored run of shad, river herring, salmon,

and eels.

1. Shad and River Herring

Based on current estimates, restored runs of shad and river herring in the Presumpscot River could approach 75,000 Shad, 200,000 Alewives, and 450,000 Blueback Herring. The numbers of fish expected to pass each of the dams on the river are contained in the Department's Administrative Record and are summarized below (See Table 1).

2. Atlantic Salmon

Projections for restored runs of Atlantic salmon runs have been calculated, along with minimum levels of escapement at each dam needed to ensure that restoration and management goals are met. Those numbers of fish also are summarized below. It is unlikely, however, that the run of salmon would be large enough to affect the design of fishways at any of the five project dams. The more numerous species (Shad and Herring) typically determine the kind of fish passage that should be built at a hydroelectric project.

3. American Eel

American eels already are present in the area occupied by the five projects. While the Department does not have a precise estimate of the numbers of eels that would be expected to use fish passage at the projects, such passage would enhance the eel stocks and help achieve overall management goals. In addition, upstream passage needs for eels differ from those of salmon, shad, and river herring. Separate upstream eel fishways typically are installed at barriers in addition to those that are provided for anadromous fish.

Table 1. Summary of Fishway Design Populations

Project	Species	Phase 1*	Phase 2*
Saccarappa	American shad	18,000	58,000
	Blueback herring	109,000	353,000
	Atlantic salmon	273	426
	American eel	undetermined	undetermined
Mallison Falls	American shad	4,200	44,000
	Blueback herring	26,000	270,000
	Atlantic salmon	32	185
	American eel	undetermined	undetermined
Little Falls	American shad	3,100	43,000
	Blueback herring	19,000	263,000
	Atlantic salmon	15	168
	American eel	undetermined	undetermined

Gambo	American shad Blueback herring Atlantic salmon American eel	-- -- -- undetermined	40,000 244,000 153 undetermined
Dundee	American shad Blueback herring Atlantic salmon American eel	-- -- -- undetermined	22,000 122,000 64 undetermined

Note: Data provided by State agencies rounded to nearest (1,000) above 10,000.
(*) See Paragraph 10.1.E on Scheduling.

4. Other Species

Fish passage provided at one or more of the five projects would be expected to pass trout, landlocked salmon, and other riverine species. The numbers of riverine fish using the fishways are likely to be small, relative to anadromous and catadromous species.

D. Upstream fishways shall be operationa1 during the designated migration period at river flows up to 3,000 cfs (See Table 2), as measured at the USGS gage at Westbrook (#01064118). Downstream fishways shall be operated during the designated migration period whenever units are operated at the Presumpscot River projects.

Table 2. Upstream and downstream migration periods for species covered in this Prescription for Fishways. *

Species	Upstream Migration Period	Downstream Migration Period
Atlantic salmon	April 15 – November 15	April 1 – June 30 (smolts & kelts) October 15 – December 31 (kelts)
American shad	May 1 – July 15	August 1 – November 15 (juv.) May 15 – August 1 (adult)
Alewife & blueback herring	May 1 – July 15	July 15 – November 15 (juv.) May 15 – August 1 (adult)
American eel	April 1 – June 30 **	July 15 – November 15 ***

* Any of these migration periods may be changed during the term of the license by the Service, based on new information, in consultation with the other fishery agencies and

the licensee.

** The eel upstream migration period will need to be refined as more information is made available. The Service is calling for the licensee to study the duration and timing of upstream eel migration through the projects so that the effectiveness of this period can be evaluated.

*** July 15 – November 15 is the period set by the State of Maine for harvesting silver eels. The Service is initially using a reduced period, September 1 – October 31 as the downstream migration period for eels. The Service is calling for the licensee to study the magnitude and timing of downstream eel migration through the projects so that the effectiveness of the reduced period can be evaluated.

E. Scheduling

The timing of installation of fish passage at all five projects would be based on the growth of migratory and riverine fish populations in the Presumpscot River. American eels already are present in the river and would benefit from the immediate implementation of safe, timely, and effective upstream and downstream fishways. The Commission's DEIS also recommends permanent upstream eel fishways at all five projects (DEIS, p. 225).

A fishway must be installed at Saccarappa Dam as soon as passage is achieved at Smelt Hill and Cumberland Mills. The Commission will need to include appropriate license articles requiring preparation of detailed design plans, installation schedules, and studies to evaluate effectiveness of all upstream and downstream measures to be developed in consultation with the Service and other resource agencies. In order to allow for proper consultation with resource agencies and approval by the Commission of all design plans, permanent fish passage must be operational at the Saccarappa Dam within**6** years of the completion of fishway installation at Cumberland Mills Dam (or within 2 years of its removal or breaching). If Saccarappa Dam is not relicensed, and is subsequently removed, the Commission must place similar requirements for implementing fish passage at the license for the next upstream project (Mallison Falls). Numbers of fish counted at each barrier that would be sufficient to trigger installation of fishways at upstream dams is provided below in Table 3.

Upstream fish passage for American eels shall be fully operational no later than 2 years after the date of issuance of a new license. Downstream passage (shutdowns) shall be implemented as soon as the licenses are effective (30 days after date of license issuance). This will ensure that the existing eel resource in the Presumpscot River benefits from passage improvements as soon as practicable.

Table 3. Schedule for implementation of fish passage at Presumpscot River Projects.

Project	Phase 1	Phase 2
Saccarappa	**Anadromous Fish**: **Upstream passage** completed **6** years after passage is available at Cumberland Mills Dam. **Downstream passage** will be completed concurrent with the completion of upstream passage. However, in the event that the Department notifies the licensee that sustained annual stocking of anadromous fish above the project has begun or will begin within 2 years, the downstream passage facility shall be constructed within 2 years of this notice. **American Eel**: **Upstream passage** within 2 years of licensing. **Downstream passage** (shutdowns) within 30 days of licensing. (*)	**Anadromous Fish**: **Upstream passage** upgrade of capacity in accordance with design populations for Phase 2.
Mallison Falls and Little Falls	**Anadromous Fish**: **Upstream passage** will be completed 2 years after 2,960 American shad or 18,020 blueback herring are passed in any single season at Saccarappa Dam. (**)(***) **Downstream passage** will be completed concurrent with the completion of upstream passage. However, in the event that the Department notifies the licensee that sustained annual stocking of anadromous fish above the project has begun or will begin within 2 years, the downstream passage facility shall be constructed within 2 years of this notice.	**Anadromous Fish**: **Upstream passage** upgrade of capacity in accordance with design populations for Phase 2.

	American Eel: **Upstream passage** within 2 years of licensing **Downstream passage** (shutdowns) within 30 days of licensing. (*)	
Gambo	**American Eel**: **Upstream passage** within 2 years of licensing **Downstream passage** (shutdowns) within 30 days of licensing. (*)	**Anadromous fish**: **Upstream passage**, pending agency review of Phase 1 for the downstream projects, will be completed 2 years after 620 American shad or 3,800 blueback herring are passed in any single season at Little Falls Dam. **Downstream passage** will be completed concurrent with the completion of upstream passage. However, in the event that the Department notifies the licensee that sustained annual stocking of anadromous fish above the project has begun or will begin within 2 years, the downstream passage shall be constructed within 2 years of this notice.
Dundee	**American Eel**: **Upstream passage** within 2 years of licensing **Downstream passage** (shutdowns) within 30 days of licensing. (*)	**Anadromous fish**: **Upstream passage**, pending agency review of Phase 1 for the downstream projects, will be completed 2 years after 4,020 American shad or 24,460 blueback herring are passed in any single season at Gambo Dam. **Downstream passage** will be completed concurrent with the completion of upstream passage. However, in the event that the Department notifies the licensee that

		sustained annual stocking of anadromous fish above the project has begun or will begin within 2 years, the downstream passage shall be constructed within 2 years of this notice.

(*) Initially, downstream passage will be via spill resulting from project shutdown for 8 hours per day beginning at sunset from September 1 through October 31. The timing and magnitude of eel migration through the projects is to be evaluated and reported by the licensee and changed as deemed necessary and appropriate by the Service. There will be consultation at each step.

(**) The trigger numbers represent 20 percent of the estimated production of these species for each reach.

(***) Design of upstream fishways will be based on potential size of the runs of shad and blueback Herring. In the event that the shad and blueback herring trigger numbers are not reached, the Service, in consultation with the MASC, will assess the options for passing any runs of Atlantic salmon that may be present.

F. The timely installation of the prescribed fishway structures, facilities, or devices is a measure directly related to those structures, facilities, or devices and is necessary to ensure the effectiveness of such structures, facilities, or devices. Therefore, the Department's Prescription includes the express requirement that the licensee (1) notify, and (2) obtain approval from the Service for any extensions of time to comply with the provisions included in the Department's Prescriptions for fishways.

G. Regarding the timing of seasonal fishway operations, fishways shall be maintained and operated, at the licensee's expense, to maximize fish passage effectiveness throughout the upstream and downstream migration periods for Atlantic salmon, American shad, blueback herring, and American eel. The migration periods for these fish species in the Presumpscot River are shown above in Table 2.

H. The licensee shall keep the fishways in proper order and shall keep fishway areas clear of trash, logs, and material that would hinder passage. Anticipated maintenance shall be performed sufficiently before a migratory period such that fishways can be tested and inspected, and would operate effectively prior to and during the migratory periods. In consultation with the Service and other fishery agencies, the licensee shall develop a fishway maintenance plan describing the anticipated maintenance, a maintenance schedule, and contingencies. The plan shall be submitted to the Service for final review and approval, and the plan shall contain the consultation comments of the fishery

agencies. If any agency recommendation is not incorporated, the licensee's explanation shall be in the plan that is filed with the Commission. Upon approval by the Service, the licensee shall submit the plan to the Commission for approval.

I. The licensee shall develop plans for and conduct fishway effectiveness evaluations in consultation with the Service and other fishery agencies on all prescribed fish passage. The plans and results of effectiveness studies shall be submitted to the Service for final review and approval, and the plan shall contain the consultation comments of the fishery agencies. If any agency recommendation is not incorporated, the licensee's explanation shall be in the plan that is filed with the Commission. Upon approval by the Service, the licensee shall submit the plan to the Commission for approval.

J. The licensee shall provide personnel of the Service, and other Service-designated representatives, access to the project site and to pertinent project records for the purpose of inspecting the fishways to determine compliance with the fishway prescriptions.

K. The licensee shall develop, in consultation with and submit for approval by the Service, all functional and final design plans, construction schedules, and any hydraulic model studies for the fishways or modifications to existing fishways described herein.

10.2 Specific Prescriptions for the Presumpscot River Projects

10.2.1 Saccarappa Project (FERC #2897)

10.2.1.1 Phase 1

10.2.1.1.1 Upstream Fishways

Prescription item #1 – Construct a Denil fish ladder (4 ft. W x 1-on-8 slope) at the Saccarappa project powerhouse. The fishway is to include facilities for counting, trapping, and sorting in the exit channel, and have two gated entrances capable of collecting migrants in the powerhouse tailrace and at the west side of the spillway. The design of the Phase 1 Denil fish ladder should include provisions to facilitate the conversion to a possible future Phase II fish lift. Modifications are to be made to the tailrace guard wall to provide access for fish attracted to the spillway.

Prescription item #2 – Provide up to 30 cfs attraction flow at each of two fish ladder entrances (up to 60 cfs total attraction flow).

Prescription item #3 – Install a separate upstream fishway for American eels; the specific location of this eelway at the project and other design criteria to be determined by the U.S. Fish and Wildlife Service following consultation with the licensee and Maine Department of Marine Resources.

10.2.1.1.2 Downstream Fishways

Prescription item #4 – Install trashracks with a 1-inch clear opening at the powerhouse turbine intake and gated surface bypass discharging up to 40 cfs during the downstream migration periods.

Prescription item #5 – Shutdown generation at sunset for at least 8 hours per night from September 1 through October 31 to provide out-migrating American eels safe and timely passage downstream via flows over the dam. To aid in the effectiveness evaluation of this item, monitor and report the timing and magnitude of eel out-migration past the project for 3 years.

10.2.1.2 Phase II

Prescription item #6 – Construct a separate Denil fish ladder at the spillway; include facilities for counting, trapping, and sorting. Attraction flow at the entrance of the Denil should be up to 30 cfs.

Prescription item #7 – Convert the Phase I Denil fish ladder at the powerhouse to a fishlift (hopper capacity: 750 gallon) when the capacity of the Denil fish ladder is reached (20,000 shad or 200,000 river herring). The Phase II fishlift will continue to have two gated entrances (powerhouse tailrace and west side of spillway), each discharging up to 30 cfs attraction flow, and retain existing or modified facilities for counting, trapping, and sorting.

Appendix D

U.S. DEPARTMENT OF INTERIOR
SECTION 18 MODIFIED FISHWAY PRESCRIPTIONS
(Amendments June 11 and 22, 2018)

Pursuant to the Agreement and its Amendment, the Service hereby exercises its reserved authority under the Federal Power Act to amend its Section 18 prescription for the Saccarappa Project (P-2897), Mallison Falls Project (P-2932), Little Falls Project (P-2941), Gambo Project (P-2931), and Dundee Project (P-2942), as provided below.

Please note that none of the below changes are intended to adjust or remove prescription requirements for the passage of American Eel. Therefore, all American Eel prescription requirements remain unchanged.

Saccarappa (No. 2897)

Consistent with Section 2.1.4.1 of the Agreement and its Amendment:

1. The deadline for operational upstream passage for anadromous fish at the Saccarappa Project is extended until **May 2021**.

2. The third sentence of the second paragraph of Section 10.1(E) of the prescription is hereby amended to provide as follows:

"In order to allow for proper consultation with resource agencies and approval by the Commission of all design plans, permanent fish passage must be operational at the Saccarappa Dam within **8 years** of the completion of fishway installation at Cumberland Mills Dam, or at such later time as may be designated by the Service by written notice to the Commission."

3. The section of Table 2 in the prescription that applies to anadromous fish upstream passage at the Saccarappa Project shall be amended as follows:

"Upstream passage will be completed **8 years** after passage is available at Cumberland Mills Dam, or at such later time as may be designated by the Service by written notice to the Commission."

Consistent with Section 2.1.8.1 of the Agreement:

4. Insert the following new language into the Saccarappa prescription:

"Warren shall be responsible for operating and maintaining the Denil and supporting structures (including the fish counting facility and any remaining portions of the lower falls tailrace guard wall), in accordance with the O&M Plan attached as Exhibit D to the November 15, 2016 Settlement Agreement, incorporated herein and attached hereto. Fish counting at the Saccarappa Denil upstream fishway facility is not required to commence until 2024, although state and federal resource agencies shall be provided access to the fish counting facility for the purposes of effectiveness testing."

Mallison Falls (No. 2932)

Consistent with Section 2.2.1 of the Agreement, the Prescription is hereby modified such that:

5. Upon the occurrence of 2,960 American shad or 18,020 blueback herring passing in any single season at the Saccarappa fish counting facility, Warren shall, two years thereafter, construct the fish passage as required by Section 10.2.2 of the prescription. The Service will stay the requirement for construction of fish passage, via a letter to the Commission, if, one year after the above trigger numbers are met, Warren has filed with the Commission an application to surrender the license for Mallison Falls and such application proposes to remove all dam spillways at the project. The Service retains the authority to lift or extend the stay, through a subsequent letter to the Commission, if Warren withdraws the surrender application, FERC denies it, or there are excessive or unnecessary delays in the surrender application process attributable to Warren's bad faith action or inaction. The requirement for construction of fish passage at Mallison Falls will be eliminated when FERC grants final approval to Warren to surrender its Mallison Falls FERC license.

Consistent with Section 2.1.8.1 of the Agreement:

6. Insert the following new language into the Mallison Falls prescription:

"Upon the effective date of the surrender of the Saccarappa license, Warren shall be responsible for operating and maintaining the Saccarappa Denil and supporting structures (including the fish counting facility and any remaining portions of the lower falls tailrace guard wall), in accordance with the O&M Plan attached as Exhibit D to the November 15, 2016 Settlement Agreement, incorporated herein and attached hereto. Fish counting at the Saccarappa Denil upstream fishway facility is not required to commence until 2024, although state and federal resource agencies shall be

provided access to the fish counting facility for the purpose of effectiveness testing."

Little Falls (No. 2941)

Consistent with Section 2.2.2 of the Agreement, the Prescription is hereby modified such that:

7. Upon the occurrence of 2,960 American shad or 18,020 blueback herring passing in any single season at the Saccarappa fish counting facility (Trigger Date), Warren shall, two years thereafter, construct the fish passage as required by Section 10.2.3 of the prescription. The Service will stay the requirement for construction of fish passage, via a letter to the Commission, if, at some time less than two years after the Trigger Date, Warren has submitted a letter to the Service indicating an intent to remove the Little Falls project within six years from the Trigger Date. The stay shall be extended if, by one year after the Trigger Date, Warren has filed with the Commission an application to surrender the license for Mallison Falls and that such application proposes to remove all dam spillways at the Mallison project. The stay shall be further extended if, within three years from the Trigger Date, the Mallison Falls project spillway is removed, or Warren has made good faith efforts to do so within that time frame, and subsequently does so. The stay shall be further extended, if, within four years after the Trigger Date, Warren has filed with the Commission an application to surrender the license for Little Falls and that such application proposes to remove all dam spillways at the project. The Service retains the authority to lift or extend the stay, through a subsequent letter to the Commission, if Warren withdraws the surrender application, FERC denies it, or there are excessive or unnecessary delays in the surrender application process attributable to Warren's bad faith action or inaction. The requirement for construction of fish passage at Little Falls will be eliminated when FERC grants final approval to Warren to surrender its Little Falls FERC license.

Consistent with Section 2.1.8.1 of the Agreement:

8. Insert the following new language into the Little Falls prescription:

"Upon the effective date of the surrender of the Saccarappa license, Warren shall be responsible for operating and maintaining the Saccarappa Denil and supporting structures (including the fish counting facility and any remaining portions of the lower falls tailrace guard wall), in accordance with the O&M Plan attached as Exhibit D to the November 15, 2016 Settlement Agreement, incorporated herein and attached hereto. Fish counting at the Saccarappa Denil upstream fishway facility is not required to commence until 2024, although state and federal resource agencies shall be provided access to the fish counting facility for the purposes of effectiveness testing."

Gambo (No. 2931) and Dundee (No. 2942)

9. Consistent with Section 2.2.3 of the Agreement, the Prescription is hereby modified to eliminate requirements for fish passage at Gambo and Dundee.