

# STATEMENTS OF POLICY

## FISH AND BOAT COMMISSION

[ 58 PA. CODE CH. 57 ]

### Wind Powered Projects

The Fish and Boat Commission (Commission) proposes to adopt a statement of policy in Chapter 57 (relating to statements of policy) that relates to wind power projects. Although not required to publish a proposal to adopt a statement of policy, the Commission is publishing the proposed statement of policy in this manner and is seeking public comment because of the heightened public interest in this issue. The Commission is publishing this proposal under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code).

#### A. *Effective Date*

The proposed statement of policy, if approved, will go into effect upon publication of an order adopting the statement of policy in the *Pennsylvania Bulletin*.

#### B. *Contact Person*

For further information on the proposed statement of policy, contact Jason E. Oyler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposal is available electronically through the Commission's web site at [www.fish.state.pa.us](http://www.fish.state.pa.us).

#### C. *Statutory Authority*

The proposed statement of policy is published under the statutory authority of section 321 of the code (relating to administration and enforcement) that provides that the Commission administer and enforce the code and other laws of this Commonwealth regarding the protection, propagation and distribution of fish.

#### D. *Purpose and Background*

The development of clean, renewable energy sources is a goal supported by the Commission because it will reduce our society's dependence on the burning of fossil fuels that has been linked to local, regional and global environmental change. Recent incentives to pursue clean energy goals have caused an increase in proposed wind power projects across this Commonwealth. However, wind energy project development potentially poses significant impacts to several species under the Commission's jurisdiction and their habitats. These impacts can be either direct (such as, those landscape activities associated with project construction such as the footprint of the windmill and all support facilities) or indirect (such as, individual species or community behavioral responses to the development). The impacts may be short-term, only occurring during construction activities, or long-term, persisting for the life of the project.

Commission staff within the Bureau of Fisheries, Division of Environmental Services, presently review various permits and plans that are required by local, State and

Federal regulatory authorities for wind power project development. These permits include the Department of Environmental Protection's (Department) 25 Pa. Code Chapter 105 (relating to dam safety and waterway management) and the United States Army Corps of Engineers section 404 permits for stream or wetland encroachments; the Department's NPDES permits for stormwater releases; and County Conservation District Erosion and Sedimentation (E&S) Control permits or plans. The staff provided comments to the appropriate regulatory agencies about potential risks to jurisdictional species and their habitats and recommended ways to avoid, minimize or mitigate potential harm. This function is consistent with the Commission's "Resource First" mission. The Commission is particularly concerned with developments in high-risk watersheds that include Exceptional Value and High Quality Designated Watersheds (25 Pa. Code Chapter 93 (relating to water quality standards)) and Class A Wild Trout (58 Pa. Code § 57.8a (relating to Class A wild trout streams)) and Wilderness Trout Stream (58 Pa. Code § 57.4 (relating to wilderness trout streams)) watersheds. Recommendations by Commission staff on wind power projects conform to the Pennsylvania Municipalities Planning Code (53 P. S. §§ 10101—70105) and the Pennsylvania Model Ordinance for Wind Energy Facilities in Pennsylvania. Specific comments about rare species are consistent with the Department's *Policy for Pennsylvania Natural Diversity Inventory (PNDI) Coordination During Permit Review and Evaluation* (Document 400-0200-001). Commission staff also participate on the Governor's Pennsylvania Wind and Wildlife Collaborative.

To address wind energy project development and its potential to significantly impact species under the Commission's jurisdiction and their habitats, the Commission proposes the following statement of policy.

#### E. *Summary of Proposal*

The Commission proposes to adopt a statement of policy on wind power projects that provides for coordination of all agency concerns on proposed wind power projects with the appropriate local, State and Federal agencies to avoid, minimize and mitigate harmful impacts to the species under the Commission's jurisdiction, as well as, the habitat of those species. Under the proposal, Commission staff will seek the collection of adequate data to identify and quantify risks, avoid harmful impacts, avoid ecologically sensitive areas, reduce habitat fragmentation and develop mitigation strategies for unavoidable impacts.

#### F. *Paperwork*

As the Commission already reviews permit applications for wind development projects brought before local, State and Federal permitting agencies, the proposal will not increase paperwork and will not create new paperwork requirements.

#### G. *Fiscal Impact*

The proposal will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposal will impose no new costs on the private sector or the general public.

H. *Public Comments*

Interested persons are invited to submit written comments, objections or suggestions about the proposed statement of policy to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at [www.fishandboat.com/regcomments](http://www.fishandboat.com/regcomments). If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt. Electronic comments submitted in any other manner will not be accepted.

DOUGLAS J. AUSTEN, Ph.D.,  
*Executive Director*

**Fiscal Note:** 48A-202. No fiscal impact; (8) recommends adoption.

## Annex A

## TITLE 58. RECREATION

## PART II. FISH AND BOAT COMMISSION

## Subpart A. GENERAL PROVISIONS

## CHAPTER 57. STATEMENTS OF POLICY

## Subchapter A. FISHERIES POLICIES

## § 57.12. Policy on wind power projects.

It is the policy of the Commission to have its staff fully coordinate agency concerns in the review of wind power development projects with all involved local, State and Federal regulatory agencies to avoid, minimize and mitigate harmful impacts to fish, other aquatic life, reptiles, amphibians and their habitats. Commission staff will seek the collection of adequate data for risk analysis when necessary in the environmental review process, the avoidance of threatened and endangered species and their habitats, the avoidance of ecologically sensitive areas when siting projects, the reduction of habitat fragmentation, and the development of mitigation strategies for unavoidable impacts.

[Pa.B. Doc. No. 08-792. Filed for public inspection April 25, 2008, 9:00 a.m.]