

STATEMENTS OF POLICY

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 57]

Wind Power Projects—Statement of Policy

The Fish and Boat Commission (Commission) adopts a statement of policy in Chapter 57 (relating to statements of policy) that relates to wind power projects. The Commission is publishing this statement of policy under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code).

A. *Effective Date*

The statement of policy will go into effect upon publication of this order adopting the statement of policy in the *Pennsylvania Bulletin*.

B. *Contact Person*

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

C. *Statutory Authority*

The 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 shall administer and enforce the code and other laws of this Commonwealth relating to 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) Chapter 105 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. Staff provide comments to the appropriate regulatory agency about potential risks to jurisdictional species and their habitats and recommend 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 this Commonwealth. 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 has adopted this statement of policy.

E. *Summary of Changes*

The Commission has adopted 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. In accordance with the statement of policy, 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 statement of policy will not increase paperwork and will not create new paperwork requirements.

G. *Fiscal Impact*

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

H. *Public Involvement*

A notice of the proposed statement of policy was published at 38 Pa.B. 1965 (April 26, 2008). Although the Commission was not required to publish a notice of a proposed statement of policy prior to adopting one, it did so because of the heightened public interest in this issue. Prior to the formal public comment period, the Commission received a total two comments. One commentator supported the development of wind power, except where there is an impact to sensitive ecological areas. One commentator suggested placing wind power generating stations on existing hydro electric dams. The Commission did not receive any public comments during the formal public comment period. After the formal public comment period, the Commission received one public comment supporting the proposed policy. Copies of all public comments were provided to the commissioners.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the statement of policy adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided, and the comments that were received were considered.

(3) The adoption of the statement of policy of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

Order

The Commission, acting under the authorizing statutes, orders that:

(a) Title 58 of the Pa. Code Chapter 57, is amended by adding a statement of policy in § 57.12 to read as set forth in 38 Pa.B. 1965.

(b) The Executive Director will submit this order and 38 Pa.B. 1965 to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order and 38 Pa.B. 1965 and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

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

Fiscal Note: Fiscal Note 48A-202 remains valid for the final adoption of the subject statement of policy.

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