

PROPOSED RULEMAKING

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 75]

Fishing; Endangered Species

The Fish and Boat Commission (Commission) proposes to amend Chapter 75 (relating to endangered species). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code).

A. *Effective Date*

The proposed rulemaking, if approved on final-form rulemaking, will go into effect on January 1, 2014.

B. *Contact Person*

For further information on the proposed rulemaking, contact Wayne Melnick, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's web site at www.fish.state.pa.us.

C. *Statutory Authority*

The proposed addition of § 75.5 (relating to qualified surveyors for endangered and threatened species and their habitat) is published under the statutory authority of sections 2102 and 2305 of the code (relating to rules and regulations; and threatened and endangered species).

D. *Purpose and Background*

The proposed rulemaking is designed to enhance the Commission's protection of endangered and threatened species and their habitat. The specific purpose of the proposed rulemaking is described in more detail under the summary of proposal.

E. *Summary of Proposal*

The Natural Diversity Section (NDS) within the Commission's Bureau of Fisheries, Division of Environmental Services, routinely comments on development projects that may adversely impact endangered and threatened species during the permit review process. The NDS provides technical assistance to project proponents by reviewing projects in or near waterways or other areas that may be occupied by these rare species. Site-specific surveys are a component of the project review phase when a project activity potentially conflicts with an endangered or threatened species and its habitat.

It is essential that individuals who conduct surveys for endangered and threatened species in connection with these projects be qualified to search for and successfully find and correctly identify these species and their habitats. To ensure that individuals conducting these surveys are qualified, the Commission proposes that surveyors demonstrate to its satisfaction that they meet general and, when applicable, taxonomic-specific surveyor requirements. Under the proposed requirements, to be deemed qualified by the Commission, surveyors will have to document and demonstrate their education and experience surveying an endangered or threatened species and its habitat and their knowledge and experience in species survey protocol implementation. The NDS staff will review applications and may accompany applicants in the field to evaluate their knowledge of the target species,

species identification skills and familiarity with target species habitat. If an applicant meets the requirements, the Commission will deem him to be qualified and will place his name on the Commission's qualified surveyor list for the species described in the application.

Requirements will be general as to endangered and threatened species and specific as to the taxa to be surveyed. These requirements will be approved by the Executive Director and published in the *Pennsylvania Bulletin*. Commission staff have developed draft qualified surveyor requirements for endangered and threatened species. The Commission will seek public comment regarding them prior to finalization. To implement the new qualified surveyor requirements, the Commission proposes to add § 75.5 to read as set forth in Annex A.

F. *Paperwork*

The proposed rulemaking will increase paperwork and create new paperwork requirements in that persons who wish to conduct surveys for endangered and threatened species in connection with development projects as of January 1, 2014, will be required to complete an application to document and demonstrate their education and experience surveying endangered or threatened species and their habitat. In the application, persons also will have to document and demonstrate their knowledge and experience in survey protocol implementation. If approved, the Commission will place the individual's name on the Commission's qualified surveyor list for the species described in the application. Presently, persons who wish to conduct surveys for endangered and threatened species in connection with development projects may voluntarily apply for placement on the list but are not required to do so.

G. *Fiscal Impact*

The proposed rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions. The Commission's costs to develop, review and process applications will be nominal. The Commission estimates that it will receive and review approximately 100 applications during 2014, the first year that the proposed section will be in effect. After the first year, the Commission expects that applications will level off to 25 per year for the next 8 years. Since the Commission's qualification of a surveyor will be valid for 10 calendar years and will expire on December 31 of the 10th year for which it was granted, the Commission expects an increase in applications in year 10 as the 2014 applicants reapply. The Commission estimates the cost of the initial development and printing of the application to be approximately \$2,500. The Commission estimates that it will incur approximately \$200 in staff time for each application it reviews. The Commission estimates its total cost at about \$20,000 to review 100 applications in 2014 and about \$5,000 per year to review 25 applications in each of the following 8 years.

The proposed rulemaking will not impose new costs on the private sector or the general public. There is not an application fee to become a qualified surveyor.

H. *Public Comments*

Interested persons are invited to submit written comments, objections or suggestions about the proposed rulemaking to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000 within

60 days after publication of this proposed rulemaking 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. 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.

JOHN A. ARWAY,
Executive Director

(*Editor's Note:* See 43 Pa.B. 107 (January 5, 2013) for a notice related to this proposed rulemaking.)

Fiscal Note: 48A-238. (1) Fund; (2) Implementing Year 2013-14 is \$22,500; (3) 1st Succeeding Year 2014-15 is \$5,000; 2nd Succeeding Year 2015-16 is \$5,000; 3rd Succeeding Year 2016-17 is \$5,000; 4th Succeeding Year 2017-18 is \$5,000; 5th Succeeding Year 2018-19 is \$5,000; (4) New program; no program history; (7) General Government Operations—Fish Fund; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 75. ENDANGERED SPECIES

§ 75.5. Qualified surveyors for endangered and threatened species and their habitat.

(a) *Requirement.* To conduct surveys for endangered or threatened species or their habitat in connection with an application for a proposed or planned development activity, a surveyor shall be deemed qualified by the Commission.

(b) *Qualification.* An individual who wishes to be qualified by the Commission to conduct surveys for endangered or threatened species shall demonstrate to the Commission's satisfaction that he meets the qualified surveyor requirements as approved by the Executive Director and published in the *Pennsylvania Bulletin*. The individual shall demonstrate his qualifications by submitting the completed application provided by the Commission.

(c) *List.* Upon qualification, the Commission will place the names of the individuals meeting these requirements on its qualified surveyor list for the species described in the application.

(d) *Duration.* The Commission's qualification of a surveyor is valid for 10 calendar years and expires on December 31 of the 10th year for which it was granted.

(e) *Renewal.* A qualified surveyor shall apply for renewal of the Commission's qualification every 10 years by submitting the completed renewal application provided by the Commission within 90 days prior to the qualification's expiration.

(f) *Denial and revocation.* The Commission may deny qualification of a surveyor who does not meet the requirements of this section. The Commission may revoke the qualification of a surveyor when the surveyor no longer meets the requirements of this section. A person aggrieved under this subsection may appeal to the Executive Director in accordance with 1 Pa. Code § 35.20 (relating to appeals from actions of the staff). Part II of 1 Pa. Code (relating to General Rules of Administrative Practice and Procedure) applies.

(g) *Other requirements.* When applicable, a qualified surveyor shall meet the requirements of §§ 51.71 and 75.4 (relating to scientific collectors' permits; and special permits).

[Pa.B. Doc. No. 13-6. Filed for public inspection January 4, 2013, 9:00 a.m.]