

SENATE, No. 224

STATE OF NEW JERSEY 215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

Sponsored by:

Senator STEVEN V. OROHO

District 24 (Morris, Sussex and Warren)

Co-Sponsored by:

Senator O'Toole

SYNOPSIS

Clarifies that Fish and Game Council has sole authority to regulate freshwater fishing, hunting, and trapping.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 2/14/2012)

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2

1 AN ACT concerning the Fish and Game Council, the Division of
2 Fish and Wildlife, and the Department of Environmental
3 Protection, amending various parts of the statutory law, and
4 supplementing Title 23 of the Revised Statutes.

5

6 **BE IT ENACTED** *by the Senate and General Assembly of the State*
7 *of New Jersey:*

8

9 1. Section 25 of P.L.1948, c.448 (C.13:1B-23) is amended to
10 read as follows:

11 25. All of the functions, powers and duties of the Division of
12 Fish and Game of the existing State Department of Conservation,
13 **[of the Fish and Game Council therein,]** and of the State
14 Commissioner of Conservation relating to or administered through
15 **[said]** that division, herein transferred to the Department of
16 Conservation and Economic Development, are hereby assigned to,
17 and shall be exercised and performed through, the Division of Fish
18 and Game in the department.

19 (cf: P.L.1948, c.448, s.25)

20

21 2. Section 26 of P.L.1948, c.448 (C.13:1B-24) is amended to
22 read as follows:

23 26. There shall be within but not of, the Division of Fish **[,**
24 **Game]** and Wildlife, a Fish and Game Council which shall consist
25 of 11 members, each of whom shall be chosen with due regard to
26 **[his]** the member's knowledge of and interest in the conservation of
27 fish and game. Each member of the council shall be appointed by
28 the Governor, with the advice and consent of the Senate. Three of
29 **[such]** the members shall be farmers, recommended to the
30 Governor for appointment to the council by the agricultural
31 convention held pursuant to the provisions of article 2 of chapter 1
32 of Title 4 of the Revised Statutes; six of **[such]** the members shall
33 be sportsmen, recommended to the Governor for appointment to the
34 council by the New Jersey State Federation of Sportsmen's Clubs;
35 one of **[such]** the members shall be the **[chairman]** chairperson of
36 the committee established pursuant to section 7 of **[the**
37 **"Endangered]** "The Endangered and Nongame Species
38 Conservation [Act" (P.L.1973, c.309; C.23:2A-7)] Act," P.L.1973,
39 c.309 (C.23:2A-7) , and one of **[such]** the members shall be a
40 person knowledgeable in land use management and soil
41 conservation practices. One of **[such]** the farmer representatives
42 and two of **[such]** the sportsmen representatives in the council shall
43 be chosen from among residents of any of the following counties--

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

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1 Bergen, Essex, Hudson, Morris, Passaic, Sussex and Warren; one of
2 **【such】** the farmer representatives and two of **【such】** the sportsmen
3 representatives in the council shall be chosen from among residents
4 of any of the following counties--Hunterdon, Mercer, Middlesex,
5 Monmouth, Ocean, Somerset and Union; and one of such farmer
6 representatives and two of such sportsmen representatives shall be
7 chosen from among residents of any of the following counties--
8 Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester
9 and Salem.

10 Each member of the council shall be appointed for a term of **【4】**
11 four years and shall serve until his successor has been appointed
12 and has qualified.

13 (cf: P.L.1979, c.199, s.72)

14

15 3. Section 29 of P.L.1948, c.448 (C.13:1B-27) is amended to
16 read as follows:

17 29. The Division of Fish and **【Game】** Wildlife shall be under
18 the immediate supervision of a director, who shall be a person with
19 special training and experience in **【wild life】** wildlife management
20 and otherwise qualified to direct the work of **【such】** the division.
21 The director of **【such】** the division shall be appointed by the Fish
22 and Game Council, subject to the approval of the Governor, and
23 shall, unless sooner removed by the Governor as hereinafter
24 provided, serve at the pleasure of **【such】** the council and until the
25 director's successor is appointed and has qualified. **【He】** The
26 director shall receive such salary as shall be provided by law.

27 The director shall administer the work of **【such】** the division
28 under the direction and supervision of the commissioner , except,
29 with respect to implementation of the State Fish and Game Code
30 and any comprehensive policies concerned therewith adopted or
31 formulated by the Fish and Game Council, the director shall be
32 under the direction of the Fish and Game Council .

33 (cf: P.L.1948, c.448, s.29)

34

35 4. Section 30 of P.L.1948, c.448 (C.13:1B-28) is amended to
36 read as follows:

37 30. a. In addition to its powers and duties otherwise hereinafter
38 provided in sections 31 through 41 of P.L.1948, c.448 (C.13:1B-29
39 et al.) , the Fish and Game Council shall, subject to the approval of
40 the commissioner, formulate comprehensive policies for the
41 protection and propagation of fish, birds, and game animals and for
42 the propagation and distribution of food fish and for the keeping up
43 of the supply thereof in the waters of the State. No such approval
44 of the commissioner shall be required with respect to the
45 formulation of any comprehensive policies concerning the State
46 Fish and Game Code adopted pursuant to sections 31 through 41 of
47 P.L.1948, c.448 (C.13:1B-29 et al.) or with respect to the

1 implementation of the State Fish and Game Code by the Division of
2 Fish and Wildlife, the division director, the Department of
3 Environmental Protection, and the commissioner as directed by the
4 council.

5 b. The council shall also:

6 **[a.]** (1) Consult with and advise the commissioner and director
7 of the Division of Fish and **[Game]** Wildlife with respect to the
8 work of such division.

9 **[b.]** (2) Study the activities of the Division of Fish and **[Game]**
10 Wildlife and hold hearings with respect thereto as it may deem
11 necessary or desirable.

12 **[c.]** (3) Report to the Governor and the Legislature annually, and
13 at such other times as it may deem in the public interest, with
14 respect to its findings and conclusions.

15 (cf: P.L.1948, c.448, s.30)

16

17 5. Section 31 of P.L.1948, c.448 (C.13:1B-29) is amended to
18 read as follows:

19 31. As used in this article, unless otherwise specifically
20 indicated:

21 **["Division"** means the Division of Fish and Game in the
22 Department of Conservation and Economic Development.

23 "Council" means the Fish and Game Council in the Division of
24 Fish and Game of the Department of Conservation and Economic
25 Development.]

26 "Code" means the State Fish and Game Code **[.]** ;

27 "Council" means the Fish and Game Council in but not of the
28 Division of Fish and Wildlife; and

29 "Division" means the Division of Fish and Wildlife in the
30 Department of Environmental Protection.

31 (cf: P.L.1948, c.448, s.31)

32

33 6. Section 32 of P.L.1948, c.448 (C.13:1B-30) is amended to
34 read as follows:

35 32. For the purpose of providing an adequate and flexible
36 system of protection, propagation, increase, control and
37 conservation of fresh water fish, game birds, game animals, and fur-
38 bearing animals in this State, and for their use and development for
39 public recreation and food supply, the council is hereby authorized
40 and empowered to determine under what circumstances, when and
41 in what localities, by what means and in what amounts and numbers
42 such fresh water fish, game birds, game animals, and fur-bearing
43 animals, or any of them, may be pursued, taken, killed, or had in
44 possession so as to maintain an adequate and proper supply thereof,
45 and may, after first having determined the need for such action on
46 the basis of scientific investigation and research, adopt and from
47 time to time amend and repeal such appropriate and reasonable

1 regulations concerning the same, or any of them, penalties for the
2 violation of which are prescribed by certain of the sections of Title
3 23 of the Revised Statutes amended herein, as it deems necessary to
4 preserve, properly utilize or maintain the best relative number of
5 any species or variety thereof, at the times, in the manner and to the
6 extent hereinafter provided. The regulations so established shall be
7 called the State Fish and Game Code.

8 The council shall be the sole authority in determining whether or
9 not any species of fresh water fish, game bird, game animal, or fur-
10 bearing animal may be pursued, taken, killed, or had in possession
11 and in determining what circumstances, when and in what localities,
12 by what means and in what amounts and numbers those species may
13 be pursued, taken, killed, or had in possession. As directed by the
14 council, the division, the division director, the Department of
15 Environmental Protection, and the Commissioner of Environmental
16 Protection shall implement the State Fish and Game Code as
17 adopted by the council and any comprehensive policies concerned
18 therewith as formulated by the council.

19 (cf: P.L.1948, c.448, s.32)

20

21 7. Section 7 of P.L.1970, c.33 (C.13:1D-4) is amended to read
22 as follows:

23 7. a. All the functions, powers and duties of the Division of
24 Fish and Game of the existing Department of Conservation and
25 Economic Development, **[of the Fish and Game Council therein,]**
26 and of the Division of Shell Fisheries of the existing Department of
27 Conservation and Economic Development, and of the Shell
28 Fisheries Council therein, and of the Commissioner of Conservation
29 and Economic Development relating to, or administered through
30 **[said] those** divisions, are transferred to and vested in the Division
31 of Fish, Game and Shell Fisheries established hereunder.

32 b. The Fish and Game Council, together with all of its functions,
33 powers and duties, is continued as the Fish and Game Council in
34 but not of the Division of Fish, Game and Shell Fisheries in the
35 Department of Environmental Protection. This act shall not affect
36 the terms of office of the present members of the council. The
37 members of the council shall continue to be appointed as provided
38 by existing law.

39 c. The Shell Fisheries Council, together with all of its functions,
40 powers, and duties, is continued as the Shell Fisheries Council in
41 the Division of Fish, Game and Shell Fisheries in the Department of
42 Environmental Protection. This act shall not affect the terms of
43 office of the present members of the council. The members of the
44 council shall continue to be appointed as provided by existing law.

45 (cf: P.L.1970, c.33, s.7)

46

47 8. Section 12 of P.L.1970, c.33 (C.13:1D-9) is amended to read

1 as follows:

2 12. The department shall formulate comprehensive policies for
3 the conservation of the natural resources of the State, the promotion
4 of environmental protection and the prevention of pollution of the
5 environment of the State. These comprehensive policies shall not
6 supersede or contradict the State Fish and Game Code as adopted
7 and implemented by the Fish and Game Council pursuant to
8 sections 31 through 41 of P.L.1948, c.448 (C.13:1B-29 et al.) or any
9 comprehensive policies concerned therewith formulated by the
10 council. The department shall in addition to the powers and duties

11 vested in it by this act or by any other law have the power to:

12 a. Conduct and supervise research programs for the purpose of
13 determining the causes, effects and hazards to the environment and
14 its ecology;

15 b. Conduct and supervise Statewide programs of education,
16 including the preparation and distribution of information relating to
17 conservation, environmental protection and ecology;

18 c. Require the registration of persons engaged in operations
19 which may result in pollution of the environment and the filing of
20 reports by them containing such information as the department may
21 prescribe to be filed relative to pollution of the environment, all in
22 accordance with applicable codes, rules or regulations established
23 by the department;

24 d. Enter and inspect any building or place for the purpose of
25 investigating an actual or suspected source of pollution of the
26 environment and ascertaining compliance or noncompliance with
27 any codes, rules and regulations of the department. Any
28 information relating to secret processes concerning methods of
29 manufacture or production, obtained in the course of such
30 inspection, investigation or determination, shall be kept
31 confidential, except this information shall be available to the
32 department for use, when relevant, in any administrative or judicial
33 proceedings undertaken to administer, implement, and enforce State
34 environmental law, but shall remain subject only to those
35 confidentiality protections otherwise afforded by federal law and by
36 the specific State environmental laws and regulations that the
37 department is administering, implementing and enforcing in that
38 particular case or instance. In addition, this information shall be
39 available upon request to the United States Government for use in
40 administering, implementing, and enforcing federal environmental
41 law, but shall remain subject to the confidentiality protection
42 afforded by federal law. If samples are taken for analysis, a
43 duplicate of the analytical report shall be furnished promptly to the
44 person suspected of causing pollution of the environment;

45 e. Receive or initiate complaints of pollution of the
46 environment, including thermal pollution, hold hearings in
47 connection therewith and institute legal proceedings for the
48 prevention of pollution of the environment and abatement of

- 1 nuisances in connection therewith and shall have the authority to
2 seek and obtain injunctive relief and the recovery of fines and
3 penalties in summary proceedings in the Superior Court;
- 4 f. Prepare, administer and supervise Statewide, regional and
5 local programs of conservation and environmental protection,
6 giving due regard for the ecology of the varied areas of the State
7 and the relationship thereof to the environment, and in connection
8 therewith prepare and make available to appropriate agencies in the
9 State technical information concerning conservation and
10 environmental protection, cooperate with the Commissioner of
11 Health and Senior Services in the preparation and distribution of
12 environmental protection and health bulletins for the purpose of
13 educating the public, and cooperate with the Commissioner of
14 Health and Senior Services in the preparation of a program of
15 environmental protection;
- 16 g. Encourage, direct and aid in coordinating State, regional and
17 local plans and programs concerning conservation and
18 environmental protection in accordance with a unified Statewide
19 plan which shall be formulated, approved and supervised by the
20 department. In reviewing such plans and programs and in
21 determining conditions under which such plans may be approved,
22 the department shall give due consideration to the development of a
23 comprehensive ecological and environmental plan in order to be
24 assured insofar as is practicable that all proposed plans and
25 programs shall conform to reasonably contemplated conservation
26 and environmental protection plans for the State and the varied
27 areas thereof;
- 28 h. Administer or supervise programs of conservation and
29 environmental protection, prescribe the minimum qualifications of
30 all persons engaged in official environmental protection work, and
31 encourage and aid in coordinating local environmental protection
32 services;
- 33 i. Establish and maintain adequate bacteriological, radiological
34 and chemical laboratories with such expert assistance and such
35 facilities as are necessary for routine examinations and analyses,
36 and for original investigations and research in matters affecting the
37 environment and ecology;
- 38 j. Administer or supervise a program of industrial planning for
39 environmental protection; encourage industrial plants in the State to
40 undertake environmental and ecological engineering programs; and
41 cooperate with the State Departments of Health and Senior Services
42 [,] and Labor and Workforce Development , and [Commerce and
43 Economic Development] the New Jersey Commerce and Economic
44 Growth Commission. in formulating rules and regulations
45 concerning industrial sanitary conditions;
- 46 k. Supervise sanitary engineering facilities and projects within
47 the State, authority for which is now or may hereafter be vested by

1 law in the department, and shall, in the exercise of such supervision,
2 make and enforce rules and regulations concerning plans and
3 specifications, or either, for the construction, improvement,
4 alteration or operation of all public water supplies, all public
5 bathing places, landfill operations and of sewerage systems and
6 disposal plants for treatment of sewage, wastes and other
7 deleterious matter, liquid, solid or gaseous, require all such plans or
8 specifications, or either, to be first approved by it before any work
9 thereunder shall be commenced, inspect all such projects during the
10 progress thereof and enforce compliance with such approved plans
11 and specifications;

12 l. Undertake programs of research and development for the
13 purpose of determining the most efficient, sanitary and economical
14 ways of collecting, disposing or utilizing of solid waste;

15 m. Construct and operate, on an experimental basis, incinerators
16 or other facilities for the disposal of solid waste, provide the various
17 municipalities and counties of this State, the Board of Public
18 Utilities, and the Division of Local Government Services in the
19 Department of Community Affairs with statistical data on costs and
20 methods of solid waste collection, disposal and utilization;

21 n. Enforce the State air pollution, water pollution,
22 conservation, environmental protection, waste and refuse disposal
23 laws, rules and regulations, including the making and signing of a
24 complaint and summons for their violation by serving the summons
25 upon the violator and thereafter filing the complaint promptly with
26 a court having jurisdiction;

27 o. Acquire by purchase, grant, contract or condemnation, title
28 to real property, for the purpose of demonstrating new methods and
29 techniques for the collection or disposal of solid waste;

30 p. Purchase, operate and maintain, pursuant to the provisions of
31 this act, any facility, site, laboratory, equipment or machinery
32 necessary to the performance of its duties pursuant to this act;

33 q. Contract with any other public agency or corporation
34 incorporated under the laws of this or any other state for the
35 performance of any function under this act;

36 r. With the approval of the Governor, cooperate with, apply
37 for, receive and expend funds from, the federal government, the
38 State Government, or any county or municipal government or from
39 any public or private sources for any of the objects of this act;

40 s. Make annual and such other reports as it may deem proper to
41 the Governor and the Legislature, evaluating the demonstrations
42 conducted during each calendar year;

43 t. Keep complete and accurate minutes of all hearings held
44 before the commissioner or any member of the department pursuant
45 to the provisions of this act. All such minutes shall be retained in a
46 permanent record, and shall be available for public inspection at all
47 times during the office hours of the department;

48 u. Require any person subject to a lawful order of the

1 department, which provides for a period of time during which such
2 person subject to the order is permitted to correct a violation, to
3 post a performance bond or other security with the department in
4 such form and amount as shall be determined by the department.
5 Such bond need not be for the full amount of the estimated cost to
6 correct the violation but may be in such amount as will tend to
7 insure good faith compliance with said order. The department shall
8 not require such a bond or security from any public body, agency or
9 authority. In the event of a failure to meet the schedule prescribed
10 by the department, the sum named in the bond or other security
11 shall be forfeited unless the department shall find that the failure is
12 excusable in whole or in part for good cause shown, in which case
13 the department shall determine what amount of said bond or
14 security, if any, is a reasonable forfeiture under the circumstances.
15 Any amount so forfeited shall be utilized by the department for the
16 correction of the violation or violations, or for any other action
17 required to insure compliance with the order; and

18 v. Encourage and aid in coordinating State, regional and local
19 plans, efforts and programs concerning the remediation and reuse of
20 former industrial or commercial properties that are currently
21 underutilized or abandoned and at which there has been, or is
22 perceived to have been, a discharge, or threat of a discharge, of a
23 contaminant. For the purposes of this subsection, "underutilized
24 property" shall not include properties undergoing a reasonably
25 timely remediation or redevelopment process.

26 (cf: P.L.1997, c.278, s.26)

27

28 9. Section 21 of P.L.1970, c.33 (C.13:1D-18) is amended to read
29 as follows:

30 21. With respect to the functions, powers and duties hereby
31 transferred to the Department of Environmental Protection,
32 whenever in any law, rule, regulation, contract, document, judicial
33 or administrative proceeding or otherwise, reference is made to the
34 Department of Conservation and Economic Development, or the
35 commissioner thereof, the same shall mean and refer to the
36 Department of Environmental Protection and the Commissioner of
37 Environmental Protection, respectively.

38 With respect to the functions, power and duties of the
39 Department of Health and the commissioner thereof, which are
40 herein transferred and vested in the Division of Environmental
41 Quality established hereunder, whenever in any law, rule,
42 regulation, contract, document or otherwise, reference is made to
43 the Department of Health, or the commissioner thereof, the same
44 shall be deemed to mean and refer to the Department of
45 Environmental Protection and the Commissioner of Environmental
46 Protection, respectively.

47 Whenever the term "Division of Clean Air and Water" occurs or
48 any reference is made thereto in any law, contract or document, the

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1 same shall be deemed to mean or refer to the Division of
2 Environmental Quality in the Department of Environmental
3 Protection established hereunder.

4 Whenever the term "Clean Air Council" occurs or any reference
5 is made thereto in any law, contract or document, the same shall be
6 deemed to mean or refer to the Clean Air Council in the Department
7 of Environmental Protection established hereunder.

8 Whenever the term "Clean Water Council" occurs or any
9 reference is made thereto in any law, contract or document, the
10 same shall be deemed to mean or refer to the Clean Water Council
11 in the Department of Environmental Protection established
12 hereunder.

13 Whenever the term, "Commission on Radiation Protection" or
14 any reference is made thereto in any law, contract or document, the
15 same shall be deemed to mean or refer to the Commission on
16 Radiation Protection in the Department of Environmental Protection
17 established hereunder.

18 Whenever the term "Division of Fish and Game" or "Division of
19 Shell Fisheries" occurs or any reference is made thereto in any law,
20 contract or document, the same shall be deemed to refer to the
21 Division of Fish [, Game and Shell Fisheries] and Wildlife
22 established hereunder.

23 Whenever the term "Director of Fish and Game" occurs or any
24 reference is made thereto in any law, contract or document, the
25 same shall be deemed to mean or refer to the Director of the
26 Division of Fish [, Game and Shell Fisheries] and Wildlife
27 established hereunder.

28 Whenever the term "Fish and Game Council" occurs or any
29 reference is made thereto in any law, contract or document, the
30 same shall be deemed to mean or refer to the Fish and Game
31 Council in but not of the Department of Environmental Protection
32 established hereunder.

33 Whenever the term "Shell Fisheries Council" occurs or any
34 reference is made thereto in any law, contract or document, the
35 same shall be deemed to mean or refer to the Shell Fisheries
36 Council in the Department of Environmental Protection established
37 hereunder.

38 Whenever the term "Director of Shell Fisheries" occurs or any
39 reference is made thereto in any law, contract or document, the
40 same shall be deemed to mean or refer to the Director of the
41 Division of Fish [, Game and Shell Fisheries] and Wildlife
42 established hereunder.

43 Whenever the term "Division of Resource Development" or
44 "Director of the Division of Resource Development" occurs or any
45 reference is made thereto in any law, contract or document, the
46 same shall be deemed to mean or refer to the Division of Natural
47 Resources established hereunder and the director thereof,

1 respectively.

2 Whenever the term "Resource Development Council" or
3 "Planning and Development Council" occurs or any reference is
4 made thereto in any law, contract or document, the same shall be
5 deemed to mean or refer to the Natural Resource Council
6 established hereunder.

7 Whenever the term "Division of Parks, Forestry and Recreation"
8 occurs or any reference is made thereto in any law, contract or
9 document, the same shall be deemed to mean or refer to the
10 Division of Parks, Forestry and Recreation in the Department of
11 Environmental Protection established hereunder.

12 Whenever the term "Parks, Forestry and Recreation Council"
13 occurs or any reference is made thereto in any law, contract or
14 document, the same shall be deemed to mean or refer to the Parks,
15 Forestry and Recreation Council in the Department of
16 Environmental Protection established hereunder.

17 Whenever the term "Division of Water Policy and Supply"
18 occurs or any reference is made thereto in any law, contract or
19 document, the same shall be deemed to mean or refer to the
20 Division of Water Policy and Supply in the Department of
21 Environmental Protection.

22 Whenever the term "Water Policy and Supply Council" occurs or
23 any reference is made thereto in any law, contract or document, the
24 same shall be deemed to mean or refer to the Water Policy and
25 Supply Council in the Department of Environmental Protection.

26 Whenever the term "Division of Economic Development" is
27 referred to in any law, contract or document, the same shall be
28 deemed to mean or refer to the Division of Economic Development
29 in the Department of Labor and Industry.

30 Whenever the term "Economic Development Council" is referred
31 to in any law, contract or document, the same shall be deemed to
32 mean or refer to the Economic Development Council in the
33 Department of Labor and Industry.

34 Whenever the term "Division of Veterans' Services" is referred
35 to in any law, contract or document, the same shall be deemed to
36 mean or refer to the organizational unit of the Department of
37 Institutions and Agencies to be established pursuant to section 13 of
38 this act.

39 Whenever the term "Veterans' Services Council" is referred to in
40 any law, contract or document, the same shall be deemed to mean or
41 refer to the Veterans Services Council in the Department of
42 Institutions and Agencies.

43 With respect to the functions, powers and duties of the
44 Department of Agriculture which are hereby transferred and vested
45 in the Division of Environmental Quality established hereunder,
46 whenever in any law, rule, regulation, contract, document or
47 otherwise reference is made to the Department of Agriculture, the
48 same shall mean and refer to the Department of Environmental

1 Protection established hereunder.
2 (cf: P.L.1970, c.33, s.21)

3

4 10. R.S.23:1-1 is amended to read as follows:

5 23:1-1. As used in this title:

6 "Assistant protector" or "assistant fish and game protector"
7 means the Deputy Chief of the Bureau of Law Enforcement in the
8 division;

9 "Closed season" means the date and time of year when wildlife
10 may not be captured, taken, killed, or had in possession in the field;

11 "Code" means the State Fish and Game Code;

12 "Conservation officer" means any sworn, salaried member of the
13 Bureau of Law Enforcement in the division holding the titles of
14 Conservation Officer I, II, or III, and includes the titles of
15 Supervising Conservation Officer and Chief of the Bureau of Law
16 Enforcement;

17 "Council" means the Fish and Game Council in but not of the
18 Division of Fish and Wildlife in the Department of Environmental
19 Protection;

20 "Delaware river" means the waters of the Delaware river from
21 the Pennsylvania shore to the New Jersey shore, or in the case of
22 any tributaries or inland bays on the New Jersey side, to the mouths
23 of those tributaries or bays;

24 "Deputy warden" or "deputy fish and game warden" means any
25 commissioned deputy conservation officer of the Bureau of Law
26 Enforcement in the division;

27 "Division," "Division of Fish, Game and Wildlife," "board," or
28 "Board of Fish and Game Commissioners" means the Division of
29 Fish and Wildlife in the Department of Environmental Protection;

30 "Fishing" means the possession of an instrument used to take fish
31 in a condition that makes the instrument readily usable, while in a
32 place or in proximity thereto where fish may be found;

33 "Hunting" means the possession of an instrument used to take
34 wildlife in a condition that makes the instrument readily usable,
35 while in a place or in proximity thereto where wildlife may be
36 found;

37 "Open season" means the date and time of year when wildlife
38 may be captured, taken, killed, or had in possession;

39 "Protector" or "fish and game protector" means the Chief of the
40 Bureau of Law Enforcement in the division;

41 "Warden" or "fish and game warden" means a conservation
42 officer; and

43 "Wildlife" means any wild mammal, bird, reptile, amphibian,
44 fish, mollusk, crustacean or other wild animal or any part, product,
45 egg or offspring or the dead body or parts thereof.

46 (cf: P.L.1999, c.282, s.1)

47

48 11. R.S.23:2-2 is amended to read as follows:

1 23:2-2. The duties of the **[board]** division shall be the
2 protection and propagation of fish, birds and game animals ,
3 implementation of the State Fish and Game Code as adopted by the
4 Fish and Game Council pursuant to sections 31 through 41 of
5 P.L.1948, c.448 (C.13:1B-29 et al.) and of any comprehensive
6 policies concerned therewith as formulated by the council ,
7 enforcement of the laws relating thereto, propagation and
8 distribution of food fish and the keeping up of the supply thereof in
9 the waters of the **[state]** State . The **[board]** division may close
10 streams or parts of streams for **[forty-eight]** 48 hours immediately
11 following the stocking **[of same]** thereof by the **[board]** division ,
12 and may revoke the license of any person who shall violate the
13 regulation so prescribed. The **[board]** division may permit persons,
14 when duly authorized by the **[board]** division , to carry firearms in
15 the woods and fields at any time when necessary for the
16 conservation of **[wild life]** wildlife . The **[board]** shall have the
17 conduct and control of all hatching stations owned and operated by
18 the **[state]** State . It may investigate any complaint made to it, at
19 all times inspect any dam, weir, fish basket, net or other illegal
20 apparatus for taking fish, and forthwith remove the same, and, on
21 view or information, enforce the laws for the protection and
22 propagation of fish, birds and game animals in **[this state]** the
23 State, by arrest and prosecution of the offender, without complaint
24 or warrant. It shall make a full report to the **[legislature]**
25 Legislature annually, at its meeting, of all its official operations for
26 the year ending on June **[thirtieth]** 30th preceding, with any
27 suggestions and recommendations it deems useful.

28
29 12. Section 1 of P.L.1948, c.39 (C.23:2-2.1) is amended to read
30 as follows:

31 1. Whenever pursuant to law the Governor shall, by
32 proclamation, close any forests, woodlands or open lands to entry,
33 and any open season for taking fish, game birds, game animals or
34 fur-bearing animals or any of them, shall have been suspended or
35 curtailed thereby, the Fish and Game Council, at the expiration of
36 the period of **[such]** that closure, may **[, subject to the approval of**
37 **the State Commissioner of Conservation,]** by order provide for a
38 new open season or for an extension of **[such]** the open season
39 curtailed, within the limits of the area affected by the Governor's
40 proclamation, for a period not exceeding that during which **[said]**
41 the open season was suspended or curtailed.

42 (cf: P.L.1948, c.39, s.1)

43
44 13. Section 74 of P.L.1979, c.199 (C.23:2B-15) is amended to
45 read as follows:

46 74. a. The Division of Fish, Game and Shellfisheries is

1 continued and constituted as the Division of Fish, Game and
2 Wildlife in the Department of Environmental Protection. Except as
3 otherwise provided by this act, all the functions, powers and duties
4 of the existing Division of Fish, Game and Shellfisheries, and the
5 director, thereof, are continued in the Division of Fish, Game and
6 Wildlife and the director thereof, and whenever the term "Division
7 of Fish, Game and Shellfisheries" occurs or any reference is made
8 thereto in any law, contract or document, the same shall be deemed
9 or mean to refer to the Division of Fish, Game and Wildlife.

10 b. The Fish and Game Council, together with all its functions,
11 powers and duties, is continued as the Fish and Game Council in
12 but not of the Division of Fish, Game and Wildlife in the
13 Department of Environmental Protection.
14 (cf: P.L.1979, c.199, s.74)

15
16 14. Section 2 of P.L.1999, c.282 (C.23:2B-15.1) is amended to
17 read as follows:

18 2. a. The Division of Fish, Game and Wildlife is continued and
19 constituted as the Division of Fish and Wildlife in the Department
20 of Environmental Protection. All the functions, powers, and duties
21 of the existing Division of Fish, Game and Wildlife and the director
22 thereof are continued in the Division of Fish and Wildlife and the
23 director thereof, and whenever the term "Division of Fish, Game
24 and Wildlife" occurs or any reference is made thereto in any law,
25 contract, or document, it shall be deemed or mean to refer to the
26 Division of Fish and Wildlife.

27 b. The Fish and Game Council, together with all its functions,
28 powers and duties, is continued as the Fish and Game Council in
29 but not of the Division of Fish and Wildlife in the Department of
30 Environmental Protection.
31 (cf: P.L.1999, c.282, s.2)

32
33 15. Section 4 of P.L.1984, c.37 (C.23:4-22.4) is amended to read
34 as follows:

35 4. The Board of Governors of Rutgers, The State University,
36 shall direct the Department of Wildlife Management at Cook
37 College to conduct a study to identify or develop an animal trap
38 which substantially reduces injury and pain to both targeted and
39 nontargeted animals which are caught in the trap and which could
40 serve as an alternative to the steel-jaw leghold type animal trap.
41 The results of this study shall be published in a report to the New
42 Jersey Fish and Game Council, hereinafter referred to as the
43 "council," in but not of the Department of Environmental Protection
44 within one year of the effective date of this amendatory and
45 supplementary act. For the purposes of this amendatory and
46 supplementary act, the steel-jaw leghold type animal trap does not
47 mean mouse and rat traps designed for use in or under buildings.
48 (cf: P.L.1984, c.37, s.4)

1 16. (New section) a. Notwithstanding any law, rule, or
2 regulation to the contrary, including but not limited to the
3 provisions of subsection a. of section 5 of P.L.1948, c.448
4 (C.13:1B-5), lands under the administration, ownership,
5 management, or control of the Division of Fish and Wildlife or the
6 Department of Environmental Protection which were acquired in
7 whole or in part with monies from the "hunters' and anglers' license
8 fund" created pursuant to R.S.23:3-11 and R.S.23:3-12, from the
9 New Jersey Waterfowl Stamp Account established pursuant to
10 section 5 of P.L.1983, c.504 (C.23:3-79), or with federal aid for fish
11 and wildlife purposes, shall not be closed to the taking of any
12 species of freshwater fish or wildlife in accordance with the State
13 Fish and Game Code by the action of any State agency or official
14 without the approval of the Fish and Game Council.

15 b. For the purposes of subsection a. of this section, "federal aid
16 for fish and wildlife purposes" means any federal grant program to
17 the states for fish and wildlife purposes using funds derived from
18 the assessment of federal excise taxes on sporting equipment,
19 including but not limited to the federal aid in sport fish restoration
20 program, 16U.S.C. s.777 et seq., and the federal aid in wildlife
21 restoration program, 16U.S.C. s.669 et seq.

22

23 17. This act shall take effect immediately.

24

25

26

STATEMENT

27

28 This bill clarifies existing law that the Fish and Game Council is
29 empowered as the sole State governmental entity responsible for
30 determining whether or not any species of fresh water fish, game
31 bird, game animal, or fur-bearing animal may be fished, hunted, or
32 trapped, and in determining what circumstances, when and in what
33 localities, by what means and in what amounts and numbers those
34 species may be fished, hunted, or trapped. The bill also clarifies
35 existing law to require the Division of Fish and Wildlife, the
36 division director, the Department of Environmental Protection
37 (DEP), and the Commissioner of Environmental Protection to
38 implement the State Fish and Game Code as adopted by the council
39 and any comprehensive policies concerned therewith as formulated
40 by the council, all as directed by the council. The bill further
41 emphasizes the autonomy of the council pertaining to matters of
42 fresh water fishing, hunting, and trapping by removing the council
43 from the division and instead locating it in, but not of, the division
44 and the DEP.

45 This bill is necessary to correct the clearly erroneous
46 interpretation of the statutory law given recently by the New Jersey
47 Supreme Court in the case of U.S. Sportsmen' Alliance Foundation
48 v. New Jersey Department of Environmental Protection. In its

1 December 2, 2004 decision in that case, the Court reversed a well-
2 reasoned, unanimous three-judge Appellate Division opinion and
3 thereby stopped the black bear hunt scheduled for December 2004
4 until certain specified conditions were met. In doing so, the
5 Supreme Court found that the Fish and Game Council and the
6 Commissioner of Environmental Protection have "shared
7 responsibility" regarding the formulation of comprehensive policies
8 pertaining to game animals, including black bears. The effect of
9 this decision was to give the commissioner veto authority over any
10 action taken by the council, thereby transforming the council into a
11 mere advisory body. This result is clearly contrary to the statutory
12 law establishing the Fish and Game Council as a fully capable
13 regulatory body, providing for adoption of the State Fish and Game
14 Code by the council only, and establishing the State Fish and Game
15 Code as the only mechanism by which fresh water fishing, hunting,
16 and trapping is regulated in the State. The Court's decision wrongly
17 upset an established statutory framework, over 50 years of
18 precedent, and the designed and mutually accepted working
19 relationship established by the council with the Division of Fish and
20 Wildlife over that time period since the council was created by law.

21 Section 16 of this bill also provides that lands under the
22 administration, ownership, management, or control of the Division
23 of Fish and Wildlife or the DEP which were acquired in whole or in
24 part with monies from the "hunters' and anglers' license fund," from
25 the New Jersey Waterfowl Stamp Account, or with federal aid for
26 fish and wildlife purposes, shall not be closed to the taking of any
27 species of freshwater fish or wildlife in accordance with the State
28 Fish and Game Code by the action of any State agency or official
29 without the approval of the Fish and Game Council. This section
30 responds in part to an Appellate Division opinion issued November
31 24, 2004 in the case of Safari Club International v. New Jersey
32 Department of Environmental Protection in which the court
33 interpreted the current statutory law in support of affirming the
34 notice recently issued by the Commissioner of Environmental
35 Protection closing all lands owned, managed or controlled by the
36 DEP to bear hunting.