

ASSEMBLY, No. 138

STATE OF NEW JERSEY

216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

Sponsored by:

Assemblyman PARKER SPACE

District 24 (Morris, Sussex and Warren)

Assemblywoman ALISON LITTELL MCHOSE

District 24 (Morris, Sussex and Warren)

Assemblywoman GAIL PHOEBUS

District 24 (Morris, Sussex and Warren)

SYNOPSIS

Increases membership of Fish and Game Council and clarifies it 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: 12/11/2015)

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]** 12 members, each of whom shall be chosen with due regard
 26 to **[his]** the member's knowledge of and interest in the conservation
 27 of fish and game. Each member of the council shall be appointed
 28 by the Governor, with the advice and consent of the Senate. Three
 29 of **[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); one of the members shall be a member of the
 40 aquaculture community; and one of **[such]** the members shall be a
 41 person knowledgeable in land use management and soil
 42 conservation practices. One of **[such]** the farmer representatives
 43 and two of **[such]** the sportsmen representatives in the council shall

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.

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

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

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

15

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

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

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

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

35

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

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

1 Fish and Game Code adopted pursuant to sections 31 through 41 of
2 P.L.1948, c.448 (C.13:1B-29 et al.) or with respect to the
3 implementation of the State Fish and Game Code by the Division of
4 Fish and Wildlife, the division director, the Department of
5 Environmental Protection, and the commissioner as directed by the
6 council.

7 b. The council shall also:

8 **【a.】** (1) Consult with and advise the commissioner and director
9 of the Division of Fish and **【Game】** Wildlife with respect to the
10 work of such division.

11 **【b.】** (2) Study the activities of the Division of Fish and **【Game】**
12 Wildlife and hold hearings with respect thereto as it may deem
13 necessary or desirable.

14 **【c.】** (3) Report to the Governor and the Legislature annually, and
15 at such other times as it may deem in the public interest, with
16 respect to its findings and conclusions.

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

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

21 31. As used in this article, unless otherwise specifically
22 indicated:

23 **【**"Division" means the Division of Fish and Game in the
24 Department of Conservation and Economic Development.

25 "Council" means the Fish and Game Council in the Division of
26 Fish and Game of the Department of Conservation and Economic
27 Development.**】**

28 "Code" means the State Fish and Game Code.

29 "Council" means the Fish and Game Council in but not of the
30 Division of Fish and Wildlife.

31 "Division" means the Division of Fish and Wildlife in the
32 Department of Environmental Protection.

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

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

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

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

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

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

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

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

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

41 c. The Shell Fisheries Council, together with all of its
42 functions, powers, and duties, is continued as the Shell Fisheries
43 Council in the Division of Fish, Game and Shell Fisheries in the
44 Department of Environmental Protection. This act shall not affect
45 the terms of office of the present members of the council. The
46 members of the council shall continue to be appointed as provided
47

1 by existing law.
2 (cf: P.L.1970, c.33, s.7)

3

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

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

16 a. Conduct and supervise research programs for the purpose of
17 determining the causes, effects and hazards to the environment and
18 its ecology;

19 b. Conduct and supervise Statewide programs of education,
20 including the preparation and distribution of information relating to
21 conservation, environmental protection and ecology;

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

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

- 1 duplicate of the analytical report shall be furnished promptly to the
2 person suspected of causing pollution of the environment;
- 3 e. Receive or initiate complaints of pollution of the
4 environment, including thermal pollution, hold hearings in
5 connection therewith and institute legal proceedings for the
6 prevention of pollution of the environment and abatement of
7 nuisances in connection therewith and shall have the authority to
8 seek and obtain injunctive relief and the recovery of fines and
9 penalties in a court of competent jurisdiction;
- 10 f. Prepare, administer and supervise Statewide, regional and
11 local programs of conservation and environmental protection,
12 giving due regard for the ecology of the varied areas of the State
13 and the relationship thereof to the environment, and in connection
14 therewith prepare and make available to appropriate agencies in the
15 State technical information concerning conservation and
16 environmental protection, cooperate with the Commissioner of
17 Health and Senior Services in the preparation and distribution of
18 environmental protection and health bulletins for the purpose of
19 educating the public, and cooperate with the Commissioner of
20 Health and Senior Services in the preparation of a program of
21 environmental protection;
- 22 g. Encourage, direct and aid in coordinating State, regional and
23 local plans and programs concerning conservation and
24 environmental protection in accordance with a unified Statewide
25 plan which shall be formulated, approved and supervised by the
26 department. In reviewing such plans and programs and in
27 determining conditions under which such plans may be approved,
28 the department shall give due consideration to the development of a
29 comprehensive ecological and environmental plan in order to be
30 assured insofar as is practicable that all proposed plans and
31 programs shall conform to reasonably contemplated conservation
32 and environmental protection plans for the State and the varied
33 areas thereof;
- 34 h. Administer or supervise programs of conservation and
35 environmental protection, prescribe the minimum qualifications of
36 all persons engaged in official environmental protection work, and
37 encourage and aid in coordinating local environmental protection
38 services;
- 39 i. Establish and maintain adequate bacteriological, radiological
40 and chemical laboratories with such expert assistance and such
41 facilities as are necessary for routine examinations and analyses,
42 and for original investigations and research in matters affecting the
43 environment and ecology;
- 44 j. Administer or supervise a program of industrial planning for
45 environmental protection; encourage industrial plants in the State to
46 undertake environmental and ecological engineering programs; and
47 cooperate with the **【State Departments】** Department of Health and

- 1 Senior Services, the Department of Labor and Workforce
2 Development, and [Commerce] the Division of Business
3 Assistance, Marketing, and International Trade in the New Jersey
4 Economic Development Authority, in formulating rules and
5 regulations concerning industrial sanitary conditions;
- 6 k. Supervise sanitary engineering facilities and projects within
7 the State, authority for which is now or may hereafter be vested by
8 law in the department, and shall, in the exercise of such supervision,
9 make and enforce rules and regulations concerning plans and
10 specifications, or either, for the construction, improvement,
11 alteration or operation of all public water supplies, all public
12 bathing places, landfill operations and of sewerage systems and
13 disposal plants for treatment of sewage, wastes and other
14 deleterious matter, liquid, solid or gaseous, require all such plans or
15 specifications, or either, to be first approved by it before any work
16 thereunder shall be commenced, inspect all such projects during the
17 progress thereof and enforce compliance with such approved plans
18 and specifications;
- 19 l. Undertake programs of research and development for the
20 purpose of determining the most efficient, sanitary and economical
21 ways of collecting, disposing, recycling or utilizing of solid waste;
- 22 m. Construct and operate, on an experimental basis, incinerators
23 or other facilities for the disposal of solid waste, provide the various
24 municipalities and counties of this State, and the Division of Local
25 Government Services in the Department of Community Affairs with
26 statistical data on costs and methods of solid waste collection,
27 disposal and utilization;
- 28 n. Enforce the State air pollution, water pollution,
29 conservation, environmental protection, solid and hazardous waste
30 management laws, rules and regulations, including the making and
31 signing of a complaint and summons for their violation by serving
32 the summons upon the violator and thereafter filing the complaint
33 promptly with a court having jurisdiction;
- 34 o. Acquire by purchase, grant, contract or condemnation, title
35 to real property, for the purpose of demonstrating new methods and
36 techniques for the collection or disposal of solid waste;
- 37 p. Purchase, operate and maintain, pursuant to the provisions of
38 this act, any facility, site, laboratory, equipment or machinery
39 necessary to the performance of its duties pursuant to this act;
- 40 q. Contract with any other public agency or corporation
41 incorporated under the laws of this or any other state for the
42 performance of any function under this act;
- 43 r. With the approval of the Governor, cooperate with, apply
44 for, receive and expend funds from, the federal government, the
45 State Government, or any county or municipal government or from
46 any public or private sources for any of the objects of this act;

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

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

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

27 v. Encourage and aid in coordinating State, regional and local
28 plans, efforts and programs concerning the remediation and reuse of
29 former industrial or commercial properties that are currently
30 underutilized or abandoned and at which there has been, or is
31 perceived to have been, a discharge, or threat of a discharge, of a
32 contaminant. For the purposes of this subsection, "underutilized
33 property" shall not include properties undergoing a reasonably
34 timely remediation or redevelopment process; and

35 w. Conduct research and implement plans and programs to
36 promote ecosystem-based management.

37 (cf: P.L.2007, c.288, s.6)

38
39 9. Section 21 of P.L.1970, c.33 (C.13:1D-18) is amended to
40 read as follows:

41 21. With respect to the functions, powers and duties hereby
42 transferred to the Department of Environmental Protection,
43 whenever in any law, rule, regulation, contract, document, judicial
44 or administrative proceeding or otherwise, reference is made to the
45 Department of Conservation and Economic Development, or the
46 commissioner thereof, the same shall mean and refer to the
47 Department of Environmental Protection and the Commissioner of
48 Environmental Protection, respectively.

1 With respect to the functions, power and duties of the
2 Department of Health and the commissioner thereof, which are
3 herein transferred and vested in the Division of Environmental
4 Quality established hereunder, whenever in any law, rule,
5 regulation, contract, document or otherwise, reference is made to
6 the Department of Health, or the commissioner thereof, the same
7 shall be deemed to mean and refer to the Department of
8 Environmental Protection and the Commissioner of Environmental
9 Protection, respectively.

10 Whenever the term "Division of Clean Air and Water" occurs or
11 any reference is made thereto in any law, contract or document, the
12 same shall be deemed to mean or refer to the Division of
13 Environmental Quality in the Department of Environmental
14 Protection established hereunder.

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

19 Whenever the term "Clean Water Council" occurs or any
20 reference is made thereto in any law, contract or document, the
21 same shall be deemed to mean or refer to the Clean Water Council
22 in the Department of Environmental Protection established
23 hereunder.

24 Whenever the term, "Commission on Radiation Protection" or
25 any reference is made thereto in any law, contract or document, the
26 same shall be deemed to mean or refer to the Commission on
27 Radiation Protection in the Department of Environmental Protection
28 established hereunder.

29 Whenever the term "Division of Fish and Game" or "Division of
30 Shell Fisheries" occurs or any reference is made thereto in any law,
31 contract or document, the same shall be deemed to refer to the
32 Division of Fish **】, Game and Shell Fisheries】** and Wildlife
33 established hereunder.

34 Whenever the term "Director of Fish and Game" occurs or any
35 reference is made thereto in any law, contract or document, the
36 same shall be deemed to mean or refer to the Director of the
37 Division of Fish **】, Game and Shell Fisheries】** and Wildlife
38 established hereunder.

39 Whenever the term "Fish and Game Council" occurs or any
40 reference is made thereto in any law, contract or document, the
41 same shall be deemed to mean or refer to the Fish and Game
42 Council in but not of the Department of Environmental Protection
43 established hereunder.

44 Whenever the term "Shell Fisheries Council" 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 Shell Fisheries
47 Council in the Department of Environmental Protection established

1 hereunder.

2 Whenever the term "Director of Shell Fisheries" occurs or any
3 reference is made thereto in any law, contract or document, the
4 same shall be deemed to mean or refer to the Director of the
5 Division of Fish **】, Game and Shell Fisheries】** and Wildlife
6 established hereunder.

7 Whenever the term "Division of Resource Development" or
8 "Director of the Division of Resource Development" 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 Division of Natural
11 Resources established hereunder and the director thereof,
12 respectively.

13 Whenever the term "Resource Development Council" or
14 "Planning and Development Council" occurs or any reference is
15 made thereto in any law, contract or document, the same shall be
16 deemed to mean or refer to the Natural Resource Council
17 established hereunder.

18 Whenever the term "Division of Parks, Forestry and Recreation"
19 occurs or any reference is made thereto in any law, contract or
20 document, the same shall be deemed to mean or refer to the
21 Division of Parks, Forestry and Recreation in the Department of
22 Environmental Protection established hereunder.

23 Whenever the term "Parks, Forestry and Recreation Council"
24 occurs or any reference is made thereto in any law, contract or
25 document, the same shall be deemed to mean or refer to the Parks,
26 Forestry and Recreation Council in the Department of
27 Environmental Protection established hereunder.

28 Whenever the term "Division of Water Policy and Supply"
29 occurs or any reference is made thereto in any law, contract or
30 document, the same shall be deemed to mean or refer to the
31 Division of Water Policy and Supply in the Department of
32 Environmental Protection.

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

37 Whenever the term "Division of Economic Development" is
38 referred to in any law, contract or document, the same shall be
39 deemed to mean or refer to the Division of Economic Development
40 in the Department of Labor and Industry.

41 Whenever the term "Economic Development Council" is referred
42 to in any law, contract or document, the same shall be deemed to
43 mean or refer to the Economic Development Council in the
44 Department of Labor and Industry.

45 Whenever the term "Division of Veterans' Services" is referred
46 to in any law, contract or document, the same shall be deemed to
47 mean or refer to the organizational unit of the Department of
48 Institutions and Agencies to be established pursuant to section 13 of

1 this act.

2 Whenever the term "Veterans' Services Council" is referred to in
3 any law, contract or document, the same shall be deemed to mean or
4 refer to the Veterans Services Council in the Department of
5 Institutions and Agencies.

6 With respect to the functions, powers and duties of the
7 Department of Agriculture which are hereby transferred and vested
8 in the Division of Environmental Quality established hereunder,
9 whenever in any law, rule, regulation, contract, document or
10 otherwise reference is made to the Department of Agriculture, the
11 same shall mean and refer to the Department of Environmental
12 Protection established hereunder.

13 (cf: P.L.1970, c.33, s.21)

14

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

16 23:1-1. As used in this title:

17 "Assistant protector" or "assistant fish and game protector"
18 means the Deputy Chief of the Bureau of Law Enforcement in the
19 division;

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

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

23 "Conservation officer" means any sworn, salaried member of the
24 Bureau of Law Enforcement in the division holding the titles of
25 Conservation Officer I, II, or III, and includes the titles of
26 Supervising Conservation Officer and Chief of the Bureau of Law
27 Enforcement;

28 "Council" means the Fish and Game Council in but not of the
29 Division of Fish and Wildlife in the Department of Environmental
30 Protection;

31 "Delaware river" means the waters of the Delaware river from
32 the Pennsylvania shore to the New Jersey shore, or in the case of
33 any tributaries or inland bays on the New Jersey side, to the mouths
34 of those tributaries or bays;

35 "Deputy warden" or "deputy fish and game warden" means any
36 commissioned deputy conservation officer of the Bureau of Law
37 Enforcement in the division;

38 "Division," "Division of Fish, Game and Wildlife," "board," or
39 "Board of Fish and Game Commissioners" means the Division of
40 Fish and Wildlife in the Department of Environmental Protection;

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

44 "Hunting" means the possession of an instrument used to take
45 wildlife in a condition that makes the instrument readily usable,
46 while in a place or in proximity thereto where wildlife may be
47 found;

48 "Open season" means the date and time of year when wildlife

1 may be captured, taken, killed, or had in possession;

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

4 "Warden" or "fish and game warden" means a conservation
5 officer; and

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

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

10

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

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

39 (cf: R.S.23:2-2)

40

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

43 1. Whenever pursuant to law the Governor shall, by
44 proclamation, close any forests, woodlands or open lands to entry,
45 and any open season for taking fish, game birds, game animals or
46 fur-bearing animals or any of them, shall have been suspended or

1 curtailed thereby, the Fish and Game Council, at the expiration of
2 the period of **【such】** that closure, may **【**, subject to the approval of
3 the State Commissioner of Conservation,**】** by order provide for a
4 new open season or for an extension of **【such】** the open season
5 curtailed, within the limits of the area affected by the Governor's
6 proclamation, for a period not exceeding that during which **【said】**
7 the open season was suspended or curtailed.

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

9
10 13. Section 74 of P.L.1979, c.199 (C.23:2B-15) is amended to
11 read as follows:

12 74. a. The Division of Fish, Game and Shellfisheries is
13 continued and constituted as the Division of Fish, Game and
14 Wildlife in the Department of Environmental Protection. Except as
15 otherwise provided by this act, all the functions, powers and duties
16 of the existing Division of Fish, Game and Shellfisheries, and the
17 director, thereof, are continued in the Division of Fish, Game and
18 Wildlife and the director thereof, and whenever the term "Division
19 of Fish, Game and Shellfisheries" occurs or any reference is made
20 thereto in any law, contract or document, the same shall be deemed
21 or mean to refer to the Division of Fish, Game and Wildlife.

22 b. The Fish and Game Council, together with all its functions,
23 powers and duties, is continued as the Fish and Game Council in
24 but not of the Division of Fish, Game and Wildlife in the
25 Department of Environmental Protection.

26 (cf: P.L.1979, c.199, s.74)

27
28 14. Section 2 of P.L.1999, c.282 (C.23:2B-15.1) is amended to
29 read as follows:

30 2. a. The Division of Fish, Game and Wildlife is continued and
31 constituted as the Division of Fish and Wildlife in the Department
32 of Environmental Protection. All the functions, powers, and duties
33 of the existing Division of Fish, Game and Wildlife and the director
34 thereof are continued in the Division of Fish and Wildlife and the
35 director thereof, and whenever the term "Division of Fish, Game
36 and Wildlife" occurs or any reference is made thereto in any law,
37 contract, or document, it shall be deemed or mean to refer to the
38 Division of Fish and Wildlife.

39 b. The Fish and Game Council, together with all its functions,
40 powers and duties, is continued as the Fish and Game Council in
41 but not of the Division of Fish and Wildlife in the Department of
42 Environmental Protection.

43 (cf: P.L.1999, c.282, s.2)

44
45 15. Section 4 of P.L.1984, c.37 (C.23:4-22.4) is amended to read
46 as follows:

47 4. The Board of Governors of Rutgers, The State University,

1 shall direct the Department of Wildlife Management at Cook
2 College to conduct a study to identify or develop an animal trap
3 which substantially reduces injury and pain to both targeted and
4 nontargeted animals which are caught in the trap and which could
5 serve as an alternative to the steel-jaw leghold type animal trap.
6 The results of this study shall be published in a report to the New
7 Jersey Fish and Game Council, hereinafter referred to as the
8 "council," in but not of the Department of Environmental Protection
9 within one year of the effective date of this amendatory and
10 supplementary act. For the purposes of this amendatory and
11 supplementary act, the steel-jaw leghold type animal trap does not
12 mean mouse and rat traps designed for use in or under buildings.
13 (cf: P.L.1984, c.37, s.4)

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

29 b. For the purposes of subsection a. of this section, "federal aid
30 for fish and wildlife purposes" means any federal grant program to
31 the states for fish and wildlife purposes using funds derived from
32 the assessment of federal excise taxes on sporting equipment,
33 including but not limited to the federal aid in sport fish restoration
34 program, 16U.S.C. s.777 et seq., and the federal aid in wildlife
35 restoration program, 16U.S.C. s.669 et seq.

36
37 17. This act shall take effect immediately.
38
39

40 STATEMENT

41
42 This bill clarifies existing law that the Fish and Game Council is
43 empowered as the sole State governmental entity responsible for
44 determining whether or not any species of freshwater fish, game
45 bird, game animal, or fur-bearing animal may be fished, hunted, or
46 trapped, and in determining what circumstances, when and in what
47 localities, by what means and in what amounts and numbers those
48 species may be fished, hunted, or trapped. The bill also clarifies

1 existing law to require the Division of Fish and Wildlife, the
2 division director, the Department of Environmental Protection
3 (DEP), and the Commissioner of Environmental Protection to
4 implement the State Fish and Game Code as adopted by the council
5 and any comprehensive policies concerned therewith as formulated
6 by the council, all as directed by the council. The bill further
7 emphasizes the autonomy of the council pertaining to matters of
8 freshwater fishing, hunting, and trapping by removing the council
9 from the division and instead locating it in, but not of, the division
10 and the DEP. The bill would also increase the membership of the
11 council to 12 and require that one member of the council be a
12 member of the aquaculture community.

13 This bill is necessary to correct the clearly erroneous
14 interpretation of the statutory law given by the New Jersey Supreme
15 Court in the case of U.S. Sportsmen' Alliance Foundation v. New
16 Jersey Department of Environmental Protection. In its December 2,
17 2004 decision in that case, the Court reversed a well-reasoned,
18 unanimous three-judge Appellate Division opinion and thereby
19 stopped the black bear hunt scheduled for December 2004 until
20 certain specified conditions were met. In doing so, the Supreme
21 Court found that the Fish and Game Council and the Commissioner
22 of Environmental Protection have "shared responsibility" regarding
23 the formulation of comprehensive policies pertaining to game
24 animals, including black bears. The effect of this decision was to
25 give the commissioner veto authority over any action taken by the
26 council, thereby transforming the council into a mere advisory
27 body. This result is clearly contrary to the statutory law
28 establishing the Fish and Game Council as a fully capable
29 regulatory body, providing for adoption of the State Fish and Game
30 Code by the council only, and establishing the State Fish and Game
31 Code as the only mechanism by which freshwater fishing, hunting,
32 and trapping is regulated in the State. The Court's decision wrongly
33 upset an established statutory framework, over 50 years of
34 precedent, and the designed and mutually accepted working
35 relationship established by the council with the Division of Fish and
36 Wildlife over that time period since the council was created by law.

37 Section 16 of this bill also provides that lands under the
38 administration, ownership, management, or control of the Division
39 of Fish and Wildlife or the DEP which were acquired in whole or in
40 part with monies from the "hunters' and anglers' license fund," from
41 the New Jersey Waterfowl Stamp Account, or with federal aid for
42 fish and wildlife purposes, shall not be closed to the taking of any
43 species of freshwater fish or wildlife in accordance with the State
44 Fish and Game Code by the action of any State agency or official
45 without the approval of the Fish and Game Council. This section
46 responds in part to an Appellate Division opinion issued November
47 24, 2004 in the case of Safari Club International v. New Jersey
48 Department of Environmental Protection in which the court

1 interpreted the current statutory law in support of affirming the
2 notice issued by the Commissioner of Environmental Protection
3 closing all lands owned, managed or controlled by the DEP to bear
4 hunting.