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State Endangered Species Act Statutes:

New Jersey



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State Endangered Species Act Statutes: New Jersey

Endangered and Nongame Species Conservation Act §

23:2A-1 – 2A-16

Current through New Jersey 219th First Annual Session

§ 23:2A-1. Short title

This act shall be known and may be cited as "The Endangered and Nongame Species Conservation Act."

§ 23:2A-2. Legislative findings and declarations regarding endangered species

The Legislature hereby finds and declares the following:

- a. That it is the policy of this State to manage all forms of wildlife to insure their continued participation in the ecosystem;
- b. That species or subspecies of wildlife indigenous to the State which may be found to be endangered should be accorded special protection in order to maintain and to the extent possible enhance their numbers; and
- c. That the State should assist in the protection of species or subspecies of wildlife which are deemed to be endangered elsewhere by regulating the taking, possession, transportation, importation, exportation, processing, sale or offer for sale, or shipment within this State of species or subspecies of wildlife including those on any federal endangered species list.

§ 23:2A-3. Definitions

For the purposes of P.L.1973, c. 309 (C.23:2A-1 et seq.), unless the context clearly requires a different meaning:

"Commissioner" means the Commissioner of the Department of Environmental Protection;

"Department" means the Department of Environmental Protection;

"Endangered species" means any species or subspecies of wildlife whose prospects of survival or recruitment are in jeopardy or are likely within the foreseeable future to become so due to any of the following factors: (1) the destruction, drastic modification, or severe curtailment of its habitat, or (2) its over-utilization for scientific, commercial or sporting purposes, or (3) the effect on it of disease, pollution, or predation, or (4) other natural or manmade factors affecting its prospects of survival or recruitment within the State, or (5) any combination of the



foregoing factors. The term shall also be deemed to include any species or subspecies of wildlife appearing on any federal endangered species list;

“Nongame species” means any wildlife for which a legal hunting or trapping season has not been established or which has not been classified as an endangered species by statute or regulation of this State;

“Take” means to harass, hunt, capture, kill, or attempt to harass, hunt, capture, or kill, wildlife;

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

§ 23:2A-4. Investigations; determinations; management programs; list of endangered species

a. The commissioner shall conduct investigations concerning wildlife indigenous to the State in order to develop information relating to populations, distribution, habitat needs, limiting factors and other biological and ecological data to determine management measures necessary for their continued ability to sustain themselves successfully. On the basis of such determinations the commissioner shall develop management programs which shall be designed to insure the continued ability of wildlife to perpetuate themselves successfully.

b. On the basis of such investigations of wildlife and other available scientific and commercial data the commissioner may by rule or regulation promulgate a list of those species and subspecies of wildlife indigenous to the State which are determined to be endangered, giving their common and scientific names by species and subspecies. The commissioner shall periodically review the State list of endangered species and may by regulation amend the list making such additions or deletions as are deemed appropriate.

§ 23:2A-4.1. Diamondback terrapin; designation as nongame indigenous species; protection; management

a. Notwithstanding any law, rule, or regulation to the contrary, the diamondback terrapin shall be designated as a nongame indigenous species and shall be subject to the laws, rules, and regulations governing the importation, care, possession, and breeding of that type of animal in the State.

b. Any diamondback terrapin, including any nest or egg thereof, shall be protected by the Department of Environmental Protection, any other State agency, and any local governmental entity in the same manner and to the same extent as any nongame species of reptile indigenous to the State that is protected by “The Endangered and Nongame Species Conservation Act,” P.L.1973, c. 309 (C.23:2A-1 et seq.), any other applicable State law, or any rule or regulation adopted pursuant thereto.

c. The commissioner shall investigate populations, distribution, habitat needs, limiting factors, and other biological and ecological data concerning the State's diamondback terrapin population to determine management measures necessary for their continued ability to sustain themselves successfully. On the basis of such determinations, the commissioner shall



develop management programs which shall be designed to insure the continued ability of the State's diamondback terrapin population to perpetuate themselves successfully.

§ 23:2A-5. Rules and regulations; inspections; fees

a. The commissioner shall have the power to formulate and promulgate, adopt, amend and repeal rules and regulations, limiting, controlling and prohibiting the taking, possession, transportation, importation, exportation, sale or offer for sale, or shipment of any nongame species or any wildlife on the State list of endangered species, and for the purposes of implementing section 6 of P.L.2016, c. 6 (C.23:2A-6.1). Such rules and regulations shall be designed to promote the public health, safety and welfare and shall be adopted in accordance with the “Administrative Procedure Act,” P.L.1968, c. 410 (C.52:14B-1 et seq.).

b. The commissioner is authorized to conduct periodic inspections in order to determine compliance with the rules and regulations adopted pursuant to this section, and, to that end, is authorized to charge and collect fees in an amount sufficient to cover the costs of the inspections and services performed pursuant to P.L.1973, c. 309 (C.23:2A-1 et seq.)¹. Such fees shall be devoted entirely and exclusively to carrying out the purposes and provisions of P.L.1973, c. 309 (C.23:2A-1 et seq.)¹. Inspection fees shall be established in accordance with a fee schedule adopted by the department as a rule and regulation pursuant to the provisions of the “Administrative Procedure Act.”

§ 23:2A-6. Taking, possession, transportation, import, export, processing, sale, or shipping of endangered species or regulated nongame species

Except as otherwise provided in P.L.1973, c. 309 (C.23:2A-1 et seq.) or the rules or regulations adopted thereunder, no person shall take, possess, transport, import, export, process, sell or offer for sale, or ship, and no common or contract carrier shall knowingly transport or receive for shipment, any species or subspecies of wildlife appearing on the following lists: (1) the list of wildlife determined to be endangered by the commissioner pursuant to P.L.1973, c. 309 (C.23:2A-1 et seq.); (2) the list of nongame species regulated pursuant to P.L.1973, c. 309 (C.23:2A-1 et seq.); and (3) any federal list of endangered species. Any species or subspecies of wildlife appearing on any of the foregoing lists which enters the State from another state or from a point outside the territorial limits of the United States and which is transported across the State destined for a point beyond the State may be so entered and transported without restriction in accordance with the terms of any federal permit or permit issued under the laws or regulations of another state.

§ 23:2A-6.1. Prohibited activities relating to parts or products of specified African species or certain species listed in Appendix I or Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora; exceptions and defenses

a. Notwithstanding the provisions of section 6 of P.L.1973, c. 309 (C.23:2A-6) or any other law, or any rule or regulation adopted pursuant thereto, to the contrary, no person shall possess, transport, import, export, process, sell or offer for sale, or ship, and no common or contract carrier shall knowingly transport or receive for shipment any part or product of: (1) any specified African species; or (2) any species or subspecies of elephant, rhinoceros, tiger, lion, leopard, cheetah, pangolin, marine turtle, or ray listed in Appendix I or Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora.



b. The following exceptions and defenses shall apply to the prohibition in subsection a. of this section:

(1) the part or product was lawfully possessed within the State prior to the effective date of P.L.2016, c. 6 (C.23:2A-6.1 et al.);

(2) the part or product is being used or displayed for scientific, zoological, or educational purposes;

(3) the part or product is conveyed directly to a devisee, heir, or beneficiary, provided that the part or product was lawfully possessed by the decedent prior to the effective date of this section; or

(4) the person lawfully possesses any ivory, ivory product, rhinoceros horn, or rhinoceros horn product in compliance with section 3 of P.L.2014, c. 22 (C.23:2A-13.3).

c. The department may adopt, pursuant to the “Administrative Procedure Act,” P.L.1968, c. 410 (C.52:14B-1 et seq.), such rules and regulations as may be necessary to implement this section.

d. Nothing in this section shall be construed to preclude a person violating this section from also being liable for any applicable violation of P.L.2014, c. 22 (C.23:2A-13.1 et seq.), R.S.23:4-27, or any other State law, rule, or regulation.

e. As used in this section:

“Beneficiary” has the same meaning as that term is defined in N.J.S.3B:1-1.

“Devisee” has the same meaning as that term is defined in N.J.S.3B:1-1.

“Heir” has the same meaning as that term is defined in N.J.S.3B:1-1.

“Specified African species” means the following species of wildlife: (1) African elephant (*Loxodonta Africana*); (2) African leopard (*Panthera pardus*); (3) African lion (*Panthera leo*); (4) black rhinoceros (*Diceros bicornis*); and (5) white rhinoceros (*Ceratotherium simum*).

§ 23:2A-6.2. Possession, transportation, etc. of wildlife or part or product thereof for purposes relating to biomedical research, in accordance with federal or out-of-state permit, or in the course of undertaking law enforcement activities or other mandatory duties

Notwithstanding the provisions of section 6 of P.L.1973, c. 309 (C.23:2A-6), section 6 of P.L.2016, c. 6 (C.23:2A-6.1), or any other State law, or any rule or regulation adopted pursuant thereto, to the contrary, unless such activity is otherwise prohibited by federal law, a person may possess, transport, import, export, process, sell or offer for sale, or ship wildlife, or part or product thereof: (1) for purposes related to the conduct of biomedical research at a facility licensed by the United States Department of Agriculture pursuant to the federal “Animal Welfare Act,” 7 U.S.C. s.2131 et seq., or at a facility conducting biomedical research in compliance with the “Public Health Service Policy on Humane Care and Use of Laboratory Animals” issued by the United States National Institutes of Health; (2) in



accordance with the terms of any federal permit or permit issued under the laws or regulations of another state, if the wildlife, or part or product thereof, enters the State from another state or from a point outside the territorial limits of the United States, and is transported across the State destined for a point beyond the State; or (3) in the course of undertaking any law enforcement activities pursuant to federal or State law, or other mandatory duties required by federal or State law, if the person is an employee or agent of the federal government, the State government, or a bi-state authority.

§ 23:2A-7. Programs for conservation and management; agreements; cooperation with and acceptance of funds from the federal government, county or municipal government, or private sources; committee of experts

a. The commissioner shall establish such programs, including acquisition of land or aquatic habitats, as are deemed necessary for the conservation and management of nongame and endangered species of wildlife.

b. In carrying out programs authorized by P.L.1973, c. 309 (C.23:2A-1 et seq.), the commissioner may enter into agreements with federal agencies, with political subdivisions of the State, or with private persons for administration and management of any area established under this section or utilized for management of nongame or endangered species of wildlife.

c. With the approval of the Governor, the commissioner may cooperate with and receive money from the federal government, any county or municipal government, or private sources for the purposes of P.L.1973, c. 309 (C.23:2A-1 et seq.). The commissioner may establish a separate fund from these contributions for the support of nongame and endangered species programs and for the purposes of P.L.1973, c. 309 (C.23:2A-1 et seq.).

d. The commissioner may authorize, under such terms and conditions as may be prescribed by rule or regulation, the taking, possession, transportation, importation, exportation, sale or offer for sale, or shipment of nongame species and wildlife which appear on the State list of endangered species for scientific, zoological, or educational purposes, for propagation in captivity of such wildlife, or for other special purposes.

e. The commissioner shall appoint a committee of experts to advise and assist the commissioner in carrying out the intent of P.L.1973, c. 309 (C.23:2A-1 et seq.). These experts shall include persons actively involved in the conservation of wildlife.

§ 23:2A-8. Obstruction, hindrance or delay of personnel of department

No person shall obstruct, hinder or delay, or interfere with by force or otherwise, the performance by the department or its personnel of any duty under the provisions of this act, or refuse to permit such personnel to perform their duties by refusing them, upon proper identification or presentation of a written order of the department, entrance to any premises at reasonable hours.

§ 23:2A-9. Investigation of suspected violators



Whenever the department has cause to believe that any person is violating any provision of this act, or a rule or regulation promulgated pursuant to the provisions of this act, the department shall cause a prompt investigation to be made in connection therewith.

§ 23:2A-10. Violations; commissioner actions; civil administrative penalties; criminal penalties

a. Whenever, on the basis of available information, the commissioner finds that a person is in violation of the provisions of P.L. 1973, c. 309, or any rule or regulation adopted, or permit or order issued pursuant thereto, the commissioner may:

- (1) Issue an order in accordance with subsection b. of this section requiring the person to comply;
- (2) Bring a civil action in accordance with subsection c. of this section;
- (3) Levy a civil administrative penalty in accordance with subsection d. of this section;
- (4) Bring an action for a civil penalty in accordance with subsection e. of this section; or
- (5) Petition the Attorney General to bring a criminal action in accordance with subsection f. of this section.

The exercise of any of the remedies provided in this section shall not preclude recourse to any other remedy so provided.

Whenever, on the basis of available information, the commissioner finds that a person is in violation of any provision of P.L. 1973, c. 309, or any rule or regulation adopted, or permit or order issued pursuant thereto, the commissioner may issue an order: (1) specifying the provision or provisions of P.L. 1973, c. 309, or the rule or regulation, or order or permit issued pursuant thereto, of which the person is in violation; (2) citing the action that constituted the violation; (3) requiring compliance with the provision of P.L. 1973, c. 309, the rule or regulation, or order or permit issued pursuant thereto, of which the person is in violation; (4) requiring the restoration to address any adverse effects resulting from the violation; and (5) giving notice to the person of a right to a hearing on the matters contained in the order.

c. The commissioner is hereby authorized and empowered to commence a civil action in Superior Court for appropriate relief from a violation of the provisions of P.L. 1973, c. 309, or any rule or regulation adopted, or any permit or order issued pursuant thereto. This relief may include, singly or in combination:

- (1) A temporary or permanent injunction;
- (2) Recovery of reasonable costs of any investigation, inspection, sampling or monitoring survey that led to the discovery of the violation, and for the reasonable costs of preparing and bringing a civil action commenced under this subsection;



(3) Recovery of reasonable costs incurred by the State in removing, correcting, or terminating the adverse effects resulting from any violation of P.L. 1973, c. 309 for which a civil action has been commenced and brought under this subsection;

(4) Recovery of compensatory damages for any loss or destruction of natural resources, including but not limited to, wildlife, fish, aquatic life, habitat, plants, or historic or archeological resources, and for any other actual damages caused by any violation for which a civil action has been commenced and brought under this subsection. Assessments under this subsection shall be paid to the "Endangered and Nongame Species of Wildlife Conservation Fund," established pursuant to section 1 of P.L. 1981, c. 170 (C.54A:9-25.2), except that compensatory damages to privately held resources shall be paid by specific order of the court to any persons who have been aggrieved by the unauthorized regulated activity;

(5) An order requiring the violator restore the site of the violation to the maximum extent practicable and feasible or, in the event that restoration of the site of the violation is not practicable or feasible, provide for off-site restoration alternatives as approved by the department.

d. The commissioner is authorized to assess a civil administrative penalty of not more than \$25,000 for each violation of the provisions of P.L. 1973, c. 309, and each day during which each violation continues shall constitute an additional, separate, and distinct offense. Any amount assessed under this subsection shall fall within a range established by regulation by the commissioner for violations of similar type, seriousness, duration, and conduct; provided, however, that prior to the adoption of the regulation, the commissioner may, on a case-by-case basis, assess civil administrative penalties up to a maximum of \$25,000 per day for each violation, utilizing the criteria set forth herein. In addition to any administrative penalty to be assessed under this subsection, and notwithstanding the \$25,000 maximum penalty set forth above, the commissioner may assess any economic benefits from the violation gained by the violator. Prior to assessment of a penalty under this subsection, the property owner or person committing the violation shall be notified by certified mail or personal service that the penalty is being assessed. The notice shall include a reference to the section of the statute, regulation, or order or permit condition violated; recite the facts alleged to constitute a violation; state the basis for the amount of the civil penalties to be assessed; and affirm the rights of the alleged violator to a hearing. The ordered party shall have 35 calendar days from receipt of the notice within which to deliver to the commissioner a written request for a hearing. After the hearing and upon finding that a violation has occurred, the commissioner may issue a final order after assessing the amount of the fine specified in the notice. If no hearing is requested, the notice shall become a final order after the expiration of the 35-day period. Payment of the assessment is due when a final order is issued or the notice becomes a final order. The authority to levy an administrative order is in addition to all other enforcement provisions in P.L. 1973, c. 309, and the payment of any assessment shall not be deemed to affect the availability of any other enforcement provisions in connection with the violation for which the assessment is levied. The department may compromise any civil administrative penalty assessed under this section in an amount and with conditions the department determines appropriate. A civil administrative penalty assessed, including a portion thereof required to be paid pursuant to a payment schedule approved by the department, which is not paid within 90 days of the date that payment of the penalty is due, shall be subject to an interest charge on the amount of the penalty, or portion thereof, which shall accrue as of the date payment is due. If the penalty is contested, no additional interest charge shall accrue on the amount of the penalty until



after the date on which a final order is issued. Interest charges assessed and collectible pursuant to this subsection shall be based on the rate of interest on judgments provided in the New Jersey Rules of Court.

e. Any person who violates any provision of P.L.1973, c. 309, or any rule or regulation adopted, or permit or order issued pursuant thereto, or an order issued pursuant to subsection b. of this section, or a court order issued pursuant to subsection c. of this section, or who fails to pay in full a civil administrative penalty levied pursuant to subsection d. of this section, or who fails to make a payment pursuant to a penalty payment schedule entered into with the department, or who knowingly makes any false or misleading statement on any application, record, report, or other document required to be submitted to the department, shall be subject, upon order of a court, to a civil penalty not to exceed \$25,000 for each day during which the violation continues. Any civil penalty imposed pursuant to this subsection may be collected with costs in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c. 274 (C.2A:58-10 et seq.). In addition to any penalties, costs or interest charges, the court may assess against the violator the amount of economic benefit accruing to the violator from the violation. The Superior Court and municipal courts shall have jurisdiction to enforce the "Penalty Enforcement Law of 1999."

f. A person who purposely, knowingly or recklessly violates any provision of P.L.1973, c. 309, or any rule or regulations adopted, or permit or order issued pursuant thereto, shall be guilty, upon conviction, of a crime of the third degree and shall, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, be subject to a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment, or both. A person who purposely, knowingly, or recklessly makes a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under any provision of P.L.1973, c. 309, or any rule or regulation adopted, or permit or order issued pursuant thereto, or who falsifies, tampers with or purposely, knowingly, or recklessly renders inaccurate, any monitoring device or method required to be maintained pursuant to P.L.1973, c. 309, or any rule or regulation adopted, or permit or order issued pursuant thereto, shall be guilty, upon conviction, of a crime of the third degree and shall, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, be subject to a fine of not more than \$50,000 per day of violation, or by imprisonment, or both.

g. All penalties collected pursuant to this section shall be deposited in the "Endangered and Nongame Species of Wildlife Conservation Fund," established pursuant to section 1 of P.L.1981, c. 170, (C.54A:9-25.2), and kept separate from other receipts deposited therein, and appropriated to the department for the purposes outlined in that fund.

h. Each applicant or permittee, upon the request of the department, shall provide any information the department or the commissioner requires to determine compliance with any provision of P.L.1973, c. 309, or of any rule or regulation adopted, or permit or order issued pursuant thereto.

§ 23:2A-11. Severability

If any provision of this act or rule or regulation adopted hereunder or the application thereof to any person or circumstances is held invalid, the remainder of the act or rule or regulation and the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.



§ 23:2A-12. Functions, powers and duties of department under other laws

The powers, duties and functions vested in the State Department of Environmental Protection under the provisions of this act shall not be construed to limit in any manner the functions, powers and duties vested in the State Department of Environmental Protection under any other provisions of law.

§ 23:2A-13. Liberal construction of act

This act shall be liberally construed to effectuate the purpose and intent thereof.

§ 23:2A-13.1. Legislative findings and declarations regarding ivory trafficking

The Legislature finds and declares that ivory trafficking is at the highest rate ever recorded, with an estimated confiscation of more than 41 tons of illegal ivory worldwide in 2013; that despite laws to protect elephants, more than 35,000 African elephants were slaughtered in 2012 and scientists expect the current levels of illegal trade in ivory will bring elephants to extinction within 20 years; that other species with ivory teeth and tusks -- such as hippopotamuses, narwhals, walruses, and whales -- are equally threatened and the protection of one species may inadvertently draw poachers' efforts to another species; that precious artifacts from prehistoric mammoths are also not safe and need protection from illegal ivory traffickers; that currently the population of all species of rhinoceros living in the wild worldwide has dwindled to 29,000 and, in February 2014, a federal ban on commercial trade of rhinoceros horn and elephant ivory has focused the need to protect rhinoceros populations from poachers as well; and that the most effective way to discourage the illegal trafficking is to eliminate markets and profits for the traffickers.

The Legislature therefore determines that it is an important public purpose to protect all species of rhinoceros and all species of animals with ivory teeth and tusks by prohibiting the import, sale, purchase, barter, or possession with intent to sell, of any ivory, ivory product, rhinoceros horn, or rhinoceros horn product.

§ 23:2A-13.2. Definitions

As used in this act:

“Ivory” means any tooth or tusk composed of ivory from any animal, including, but not limited to, an elephant, hippopotamus, mammoth, narwhal, walrus, or whale, or any piece thereof, whether raw ivory or worked ivory, or made into, or part of, an ivory product.

“Ivory product” means any item that contains, or that is wholly or partially made from, any ivory.

“Raw ivory” means any ivory the surface of which, polished or unpolished, is unaltered or minimally changed by carving.

“Rhinoceros horn” means the horn, or any piece thereof, of any species of rhinoceros.

“Rhinoceros horn product” means any item that contains, or is wholly or partially made from, any rhinoceros horn.



“Total value of the ivory, ivory products, rhinoceros horn, and rhinoceros horn products” means the fair market value of the ivory, ivory products, rhinoceros horn, and rhinoceros horn products, or the actual price paid for the ivory, ivory products, rhinoceros horn, and rhinoceros products, whichever is greater.

“Worked ivory” means ivory that has been embellished, carved, marked, or otherwise altered so that it can no longer be considered raw ivory.

§ 23:2A-13.3. Prohibition on import, sale, purchase, etc. of ivory, ivory product, rhinoceros horn, or rhinoceros horn product; exceptions

a. In addition to the prohibitions established pursuant to, and the penalties imposed for violations of, R.S.23:4-27, “The Endangered and Nongame Species Conservation Act,” P.L.1973, c. 309 (C.23:2A-1 et seq.), and any other applicable law, it shall be unlawful for any person to import, sell, offer for sale, purchase, barter, or possess with intent to sell, any ivory, ivory product, rhinoceros horn, or rhinoceros horn product, except as provided pursuant to this section.

b. It shall be presumptive evidence of possession with intent to sell when any ivory, ivory product, rhinoceros horn, or rhinoceros horn product is possessed in a retail or wholesale outlet commonly used for the buying or selling of similar products, provided, however, that nothing in this subsection shall preclude a finding of intent to sell based on any other evidence which may serve to independently establish such intent. The act of obtaining an appraisal of ivory, an ivory product, rhinoceros horn, or a rhinoceros horn product, alone shall not constitute possession with intent to sell.

c. A person may convey ivory, an ivory product, rhinoceros horn, or a rhinoceros horn product to the legal beneficiary of the ivory, ivory product, rhinoceros horn, or rhinoceros horn product which is part of an estate or other items being conveyed to lawful beneficiaries upon the death of the owner of the ivory, ivory product, rhinoceros horn, or rhinoceros horn product or in anticipation of that death.

d. None of the prohibitions set forth in this section shall apply to employees or agents of the federal or State government undertaking any law enforcement activities pursuant to federal or State law or any mandatory duties required by federal or State law.

e. The prohibition on import set forth in subsection a. of this section shall not apply where the import is expressly authorized by federal license or permit.

f. The Department of Environmental Protection may permit, under terms and conditions as the department may prescribe, the import, sale, offer for sale, purchase, barter, or possession with intent to sell, any ivory, ivory product, rhinoceros horn, or rhinoceros horn product for bona fide educational or scientific purposes, unless this activity is prohibited by federal law.

§ 23:2A-13.4. Penalties for import, sale, purchase, etc. of ivory, ivory product, rhinoceros horn, or rhinoceros horn product

a. In addition to any applicable penalties which may be imposed pursuant to R.S.23:4-27, “The Endangered and Nongame Species Conservation Act,” P.L.1973, c. 309 (C.23:2A-1



et seq.), or any other applicable law, a person violating any provision of section 3 of this act,[FN 1] or any rule or regulation adopted pursuant to section 5 of this act,[FN 2] shall be guilty of:

(1) for a first offense, a disorderly persons offense and, notwithstanding the provisions of N.J.S.2C:43-3, shall be fined not less than \$1,000 or an amount equal to two times the total value of the ivory, ivory products, rhinoceros horn, and rhinoceros horn products involved in the offense, whichever is greater; and

(2) for a second or subsequent offense, a crime of the fourth degree and, notwithstanding the provisions of N.J.S.2C:43-3, shall be fined not less than \$5,000 or an amount equal to two times the total value of the ivory, ivory products, rhinoceros horn, and rhinoceros horn products involved in the offense, whichever is greater.

b. Upon a conviction for violating the provisions of section 3 of this act, the court shall order the seizure of all ivory, ivory products, rhinoceros horn, and rhinoceros horn products involved in the violation and determine the penalty for the violation based on the assessed value of the seized products pursuant to subsection a. of this section. After sentencing the defendant, the court shall order that the seized ivory, ivory products, rhinoceros horn, and rhinoceros horn products be transferred to the Department of Environmental Protection for proper disposition. The department, at its discretion, may destroy the ivory, ivory products, rhinoceros horn, and rhinoceros horn products or donate them to an educational or scientific institution or organization, including, but not necessarily limited to, a museum, university, or research group.

§ 23:2A-13.5. Rules and regulations

The Department of Environmental Protection may adopt, pursuant to the “Administrative Procedure Act,” P.L.1968, c. 410 (C.52:14B-1 et seq.), rules and regulations necessary for the implementation and administration of this act.

§ 23:2A-14. Intentional feeding of black bears banned; penalty for violation

a. No person shall:

(1) feed, give, place, expose, deposit, distribute or scatter any edible material or attractant with the intention of feeding, attracting or enticing a black bear; or

(2) store pet food, garbage or other bear attractants in a manner that will result in bear feedings when black bear are known to frequent the area.

b. Subsection a. of this section shall not apply in the case of an unintentional feeding of a black bear. "Unintentional feeding" means using or placing any material for a purpose other than to attract or entice black bears but which results in the attraction or enticement of a black bear, and shall include but need not be limited to the use and placement of bait for deer in accordance with section 1 of P.L.1997, c. 424 (C.23:4-24.4) and the State Fish and Game Code.

c. (1) If any person violates subsection a. of this section, the department may institute a civil action in a court of competent jurisdiction for injunctive relief to prohibit and prevent such violation or violations and the court may proceed in the action in a summary manner.



(2) Any person who violates the provisions of subsection a. of this section shall be liable to a civil penalty of up to \$1,000 for each offense, to be collected in a civil action by a summary proceeding under the "Penalty Enforcement Law of 1999," P.L.1999, c. 274 (C.2A:58-10 et seq.) or in any case before a court of competent jurisdiction wherein injunctive relief has been requested. Civil penalties recovered for violations hereof shall be remitted as provided in R.S.23:10-19. The Superior Court and municipal court shall have jurisdiction to enforce the "Penalty Enforcement Law of 1999."

If the violation is of a continuing nature, each day during which it continues shall constitute an additional, separate and distinct offense.

No person shall be assessed a civil penalty pursuant to this paragraph unless the person has first been issued a prior written warning for a violation of subsection a. of this section.

(3) The department is hereby authorized and empowered to compromise and settle any claim for a penalty under this section in such amount in the discretion of the department as may appear appropriate and equitable under all of the circumstances.

d. The provisions of this section shall be enforced by all municipal police officers, the State Police, and law enforcement officers with the Division of Fish and Wildlife and the Division of Parks and Forestry in the Department of Environmental Protection.

e. Nothing in this section shall be construed to restrict in any way the attraction, capture, or taking of black bears by or at the direction of the Division of Fish and Wildlife for management or research purposes.

§ 23:2A-15. Appropriation of matching sum to qualify for federal grants to benefit wildlife

a. There shall be appropriated each fiscal year to the Department of Environmental Protection a sum sufficient to provide the State match required to qualify for any federal grants or other assistance apportioned and made available to the State of New Jersey under the State Wildlife Grants Program or any similar program established pursuant to federal law, rule, or regulation for the purpose of benefitting wildlife and their habitat, including species that are not hunted or fished.

b. The annual State match appropriation requirement under subsection a. of this section shall be met through the appropriation, from the "Endangered and Nongame Species of Wildlife Conservation Fund" established by section 1 of P.L.1981, c. 170 (C.54A:9-25.2), from the "Wildlife Conservation Fund" established by section 1 of P.L.1993, c. 119 (C.39:3-33.10), or from any other fund or account established by law exclusively or primarily to fund the conservation of endangered or nongame wildlife and their habitat, of moneys, credited in such funds or accounts, that cumulatively exceed an amount equal to the total amount from those funds or accounts that was used in State fiscal year 2005 to support programs and activities related to the conservation of endangered or nongame wildlife and their habitat, which support is ineligible to meet the State match requirement under the State Wildlife Grants Program.

c. In any fiscal year, to the extent that funds directed to be appropriated under subsection b. of this section are insufficient to meet the annual State match appropriation requirement under subsection a. of this section, the remaining amount necessary to meet



that requirement shall be made from the General Fund.

d. The sum appropriated under this section each fiscal year shall be expended by the Division of Fish and Wildlife in the Department of Environmental Protection for the purposes and in accordance with the requirements of the federal program and to allow the Endangered and Nongame Species Program in the division to perform its duties and responsibilities.

§ 23:2A-16. Prohibition on use of wild or exotic animals in a traveling animal act; definitions; penalties; exceptions

a. As used in this section:

“Mobile or traveling housing facility” means a vehicle, including a truck, trailer, or railway car, used to transport or house an animal used for performance.

“Performance” means any animal act, carnival, circus, display, exhibition, exposition, fair, parade, petting zoo, presentation, public showing, race, ride, trade show, or similar undertaking in which animals perform tricks, give rides, or participate as accompaniments for the entertainment, amusement, or benefit of a live audience.

“Traveling animal act” means any performance which requires an animal to be transported to or from the location of a performance in a mobile or traveling housing facility.

“Wild or exotic animal” means any live animal that is classified into any of the following scientific classifications:

(1) Artiodactyla, excluding domestic cattle, bison, American buffalo, water buffalo, yak, zebu, gayal, bali cattle, suidae, sheep, goats, llamas, or alpacas;

(2) Camelidae;

(3) Canidae, including any hybrids thereof, but excluding domestic dogs;

(4) Crocodilia;

(5) Elephantidae;

(6) Felidae, including any hybrids thereof, but excluding domestic cats;

(7) Marsupialia;

(8) Non-human primate;

(9) Perissodactyla, excluding domestic horses, ponies, donkeys, or mules;

(10) Pinnipedia;



(11) Ursidae; and

(12) Elasmobranchii, excluding rays.

b. Notwithstanding any other law, rule, or regulation adopted pursuant thereto, to the contrary, no person shall use a wild or exotic animal in a traveling animal act.

c. Any person who violates this section shall be subject to the penalties provided for in section 10 of P.L. 1973, c. 309 (C.23:2A-10), except that the criminal penalties provided in subsection f. of that section shall not apply.

d. This section shall not apply to:

(1) exhibitions at a non-mobile, permanent institution or facility licensed by the United States Department of Agriculture and permitted by the Division of Fish and Wildlife in the Department of Environmental Protection;

(2) outreach programs for bona fide educational or conservation purposes conducted by, or affiliated with, a non-mobile, permanent institution or facility that meets the requirements described in paragraph (1) of this subsection;

(3) an institution of higher education exhibiting wild or exotic animals for research or education purposes; or

(4) outreach programs conducted by governmental entities.

