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856 813-0412

MAY 4, 2019

I am petitioning for the repeal of N.J.A.C 7:25-5.7(e)12.

N.J.A.C. 7:25-5.7

(e) The methods and **restrictions** for wild turkey hunting are as follows:

12. A person hunting turkeys shall not have in possession or control, a firearm or other weapon within 300 feet of a baited area during the turkey hunting seasons. A baited area is defined as the collection, deposit, concentration or unnatural gathering of feed including, but not limited to, corn, wheat, oats, or other substance that may constitute a lure or enticement to turkeys.

N.J.A.C 7:25-5.7(e)12 is contrary to and conflicts with NJ Statute 23:4-24.2.

I have found nothing that allows for restrictions in rule making except for **13:1B-32 Regulations and amendments thereof relating to game e. Establish, change or abolish restrictions based upon sex, maturity or other physical distinction.**

23:4-24.2. Shooting or taking game bird or animal from tree or structure within 300 feet of baited area

No person shall, except under emergency conditions authorized by the Division of Fish and Game, kill, destroy, injure, shoot, shoot at, take, wound, or attempt to take, kill, or wound a game bird or game animal, or have in his possession or control any firearm or other weapon of any kind, while elevated in a standing tree, or in a structure of any kind within 300 feet of a baited area under a penalty of \$50.00 for each offense.

If I possess a weapon and am hunting turkey from the ground (not in a tree or in a structure) within 300' of a baited area I would not be in violation of State Statute 23:4-24.2 but I would be in violation of N.J.A.C. 7:25-5.7(e)12.

There are State Statutes that forbid baiting of wild fowl and bears but there is no State Statute that forbids baiting of turkey or possession of a weapon within 300' of a baited area when hunting any species from the ground except wild fowl and bears.

According to 52:14B-2 an administrative rule implements or interprets law.

52:14B-2. Definitions

(e) "Administrative rule" or "rule," when not otherwise modified, means each agency statement of general applicability and continuing effect that **implements or interprets law**,...

N.J.A.C 7:25-5.7(e)12 does not interpret or implement any law it's contrary to Statute 23:4-24.2.

<https://www.nj.gov/dep/fgw/pdf/2017/gamecode2017-18.pdf> This is the actual signed Game Code document. The first paragraph states...

5/6/19 RECEIVED  
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NJ DEPT OF ENVIRONMENTAL PROTECTION  
LEGAL COUNSEL

**"The amended regulations are known as the 2017 - 2018 Game Code and implement the statute laws..."**

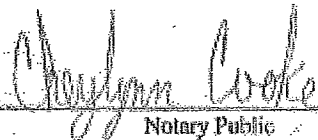
**2017-2018 GAME CODE**

ADOPTED August 10, 2017 -- PUBLISHED IN THE NEW  
JERSEY REGISTER, September 5, 2017  
EFFECTIVE (PURSUANT TO N.J.S.A. 13:1B-34) September 10, 2017

Subscribed before me this  
25<sup>th</sup> day of October, 2017.



Dave Burke, Acting Chairman  
Fish and Game Council

  
Notary Public

Cherylynn Cooke  
Notary, State of New Jersey  
My Commission expires on September 11, 2019

I hereby certify that the following proposal was adopted by the New Jersey Fish and Game Council on June 13, 2017 and pursuant to the adoption thereof, said amendments shall become part of the Game Code and any regulations respecting hunting inconsistent therewith are rescinded herein provided

On June 13, 2017 at a public meeting held at New Jersey Division of Fish and Wildlife Central Region Office, Assunpink WMA, One Eldridge Road, Robbinsville, New Jersey, the Fish and Game Council of the New Jersey Department of Environmental Protection, approved the following amendments to N.J.A.C. 7:25-5 for 2017-2018 pursuant to the N.J.S.A. 13:1B-34. The amended regulations are known as the 2017-2018 Game Code and implement the statute laws insofar as these items are concerned on the effective date hereof. The 2017-2018 Game Code is effective until amended, repealed or June 12, 2021

**N.J.A.C 7:25-5.7(e)12 does implement any law N.J.A.C 7:25-5.7(e)12 is contrary to Statute 23:4-24.2.**

*23:2-15 Rules, regulations.*

*3. The Department of Environmental Protection shall 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 effectuate the provisions of this act.

Effectuate not change the provisions.

### **13:1B-30. State Fish and Game Code**

*For the purpose of providing an adequate and flexible system of protection, propagation, increase, control and conservation of fresh water fish, game birds, game animals, and fur-bearing animals in this State, and for their use and development for public recreation and food supply, the council is hereby authorized and empowered to determine under what circumstances, when and in what localities, by what means and in what amounts and numbers such fresh water fish, game birds, game animals, and fur-bearing animals, or any of them, may be pursued, taken, killed, or had in possession so as to maintain an adequate and proper supply thereof, and may, after first having determined the need for such action on the basis of scientific investigation and research, adopt and from time to time amend and repeal such appropriate and reasonable regulations concerning the same, or any of them, penalties for the violation of which are prescribed by certain of the sections of Title 23 of the Revised Statutes amended herein, as it deems necessary to preserve, properly utilize or maintain the best relative number of any species or variety thereof, at the times, in the manner and to the extent hereinafter provided. The regulations so established shall be called the State Fish and Game Code.*

The Counsel sets dates, limits, weapons used ect. Has the Game Counsel performed scientific investigation and research before making the weapon possession within 300' of bait while turkey hunting rule? A rule that is contrary to State Statute 23:4-24.2. And all other turkey rules? The Game Council has scientific investigation and research that shows a turkey hunter must have a turkey call in possession? That electronic calls cannot be used? Ect, ect, ect. Also, penalties for violations (fines) are set by Statute not by the Game Counsel. There is no Statute prohibiting possession of a weapon hunting turkey within 300 feet of bait when hunting from the ground. If there is no Statute there is no fine! The Game Counsel has no authority to set the amounts of fines.

It is a well known fact that turkeys roost near food sources. The most common way turkey hunters hunt is to use locator calls to locate turkeys on the roost and then setup on the ground and attempt to call in the tom turkeys. If the turkeys are roosting near bait how is a hunter supposed to know that? The Statute as written protects hunters from such a situation. The rule can and surely does cause innocent hunters to receive fines and violations for being within 300' of bait that the hunter doesn't know is there. It doesn't seem "reasonable" (13:1B-30) to make a regulation that can and will punish hunters who hunt in the most common way, locate, setup and call. Especially being that turkey roost near food. In addition, I hunt turkey in an area where a guy baits with whole corn on the cob. The animals spread the cobs all over the place. I've seen cobs hundreds of yards away from his bait pile. If a warden finds a cob within 300 feet of me while hunting turkey I get punished by fine for that???

The rule as written is also not "reasonable or appropriate" (13:1B-3) in that it does specify "possession or control, a firearm or other weapon" It does not specify possession of a loaded weapon.

I fed the turkeys beginning in December due to the acorn crop failure up until it warmed up and greens start sprouting. The feed is behind thick cover about 25 yards from a hardly traveled road and even closer to a parking spot in the area that I hunt. Every turkey hunter that may park in the spot or even drive on the main road will be in violation of N.J.A.C 7:25-5.7(e)12. I do not hunt over or even close to the feed area but I would be in violation of N.J.A.C 7:25-5.7(e)12 because I possess a weapon within 300' of the feed area when I park and walk the undrivable road into the woods. My gun is not loaded as I park or walk in but I would still be violating the rule as written.

Any turkey hunter who walks up the walkable or drivable road will be violating N.J.A.C 7:25-5.7(e)12 if they possess a weapon.

For the reasons above and below and for the benefit of other hunters who do comply with the law N.J.A.C 7:25-5.7(e)12 should be repealed. It is not reasonable for there to be a regulation that can, will and does punish turkey hunters who are not violating the law.

**13:1B-32. Regulations and amendments thereof relating to game**

Any regulation of the council or amendment thereto adopted pursuant to the provisions of this article which relates to game birds, game animals or fur-bearing animals, after the council has first determined the need for such action on the basis of scientific investigation and research, may apply to all or any part of the State, at the discretion of the council, and may do any or all of the following as to any or all species or varieties of game birds, game animals, and fur-bearing animals:

- a. Establish, extend, shorten or abolish open seasons and closed seasons.
- b. Establish, change or abolish bag limits and possession limits.
- c. Establish and change territorial limits for the pursuit, taking, or killing of any or all species or varieties.
- d. Prescribe the **manner and the means** of pursuing, taking, or killing any species or variety.
- e. Establish, change or abolish restrictions based upon sex, maturity, or other physical distinction.

N.J.A.C 7:25-5.7(e)12 and other rules were not made pursuant to the provisions. The council can prescribe manner and means it doesn't say that the council can prescribe restrictions, (other than e) nor does it say that the Council can ignore laws to make contrary regulations.

N.J.A.C. 7:25-5.7 is titled methods and **restrictions**. The FG Council is authorized to specify method, manner and means **not restrictions**. Actually most of N.J.A.C. 7:25-5.7(e) does not comply with the Administrative Procedures Act.

Title 52:14B-3a

a. A State agency shall follow the administrative rule-making requirements set forth in the "Administrative Procedure Act," P.L. 1968, c. 410 ( C.52:14B-1 et seq. ), and shall **only implement rules that have been adopted in accordance with those rule-making requirements.**

b. No State agency shall utilize regulatory guidance documents that have not been adopted as rules in accordance with P.L. 1968, c. 410 unless the agency makes such documents readily available to the regulated community through appropriate means, including but not limited to posting in a prominent place on the website for the agency.

c. A regulatory guidance document that has not been adopted as a rule pursuant to P.L. 1968, c. 410, shall not:

**(1) impose any new or additional requirements that are not included in the State or federal law or rule that the regulatory guidance document is intended to clarify or explain; or**

**(2) be used by the State agency as a substitute for the State or federal law or rule for enforcement purposes.**

Again, the rule was not made in compliance with the rule making requirements and is contrary to State Statute, is being used as a substitute for State Law and for enforcement purposes. The regulation/rule about possessing a weapon within 300 feet of bait is contrary to State Statute 23:4-24.2 when hunting turkey from the ground.

13:1B-30. State Fish and Game Code

*"penalties for the violation of which are prescribed by certain of the sections of Title 23 of the Revised Statutes"*

**Fees for fines are prescribed by the Revised Statutes. There is no prescribed fine for turkey hunting from the ground within 300' of bait in the Statutes. Statutes specify fines, fine amounts are not set by the Game Counsel. The fine for baiting within 300 feet of bait when elevated in a tree or in a structure of any kind is \$50 by Statute. How is it that the Game Counsel specifies a \$74 fine? The fine schedule shown at N.J.S.A. 24:4-24.2 does not show a fine for baiting turkey from the ground. The fine for 24:4-24.2 is titled; Hunt from a tree or ground blind within 300 feet of baited area.**

52:18A-78.30. Application of provisions of this act or regulations over inconsistent or conflicting laws or regulations

*It is the intent of the Legislature that in the event of any conflict or inconsistency in the provisions of this act and any other acts pertaining to matters herein established or provided for or in any rules and regulations adopted under this act or other acts, to the extent of the conflict or inconsistency, the provisions of this act and the rules and regulations adopted hereunder shall be enforced and the provisions of the other acts and rules and regulations adopted thereunder shall be of no effect.*

1:30-2.1 Clarity of rules

*(a) In order to be accepted for filing, a document shall be written in a reasonably simple and understandable manner that is easily readable.*

*6. The document shall be sufficiently complete and informative as to permit the public to understand accurately and plainly the legal authority, purposes, and expected consequences of the adoption, readoption, or amendment of the rule.*

*(b) Any rule activity or notice that does not comply with the standard of clarity set forth in (a) above shall be subject to the provisions of N.J.A.C. 1:30-1.12.*

**I'm confused to say the least. How can it be understood accurately when a Regulation contradicts and is contrary to a Statute? A regulation should be authorized by a Statute/Law and is subordinate to a Statute/Law.**


1:30-2.3 Single subject for each section

*Each proposed or adopted section shall embrace but one subject, and that shall be expressed in the section heading.*

N.J.A.C. 7:25-5.7(e) does not comply with 1:30-2.3

For the reasons specified above N.J.A.C 7:25-5.7(e)12 should be immediately repealed,

Sincerely,

A handwritten signature in cursive script that reads "Nicholas Marchesani".

Nicholas Marchesani

CC: PAUL GOLDEN