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ENVIRONMENTAL PROTECTION
OFFICE OF LEGAL AFFAIRS
Notice of Receipt of Petition for Rulemaking
Division of Fish and Wildlife Rules
N.J.A.C. 7:25-5.7(e)12; Methods and Restrictions for Wild Turkey Hunting
Petitioner: Nicholas Marchesani

Take notice that on May 6, 2019, the Department of Environmental Protection, on behalf of the Fish and Game Council (Council), received a petition for rulemaking pursuant to N.J.S.A. 52:14B-4(f) and N.J.A.C. 7:1D-1.1 from Nicholas Marchesani (Petitioner). The Petitioner requests that the Council amend the Fish and Wildlife Rules at N.J.A.C. 7:25-5.7(e)12. Particularly, Petitioner requests that the current rule, which provides that a person hunting turkeys shall not have in the person's possession or control a firearm or other weapon within 300 feet of a baited area during the turkey hunting seasons, be repealed. The paragraph requested to be repealed defines a baited area as a collection, deposit, concentration or unnatural gathering of feed including, but not limited to, corn, wheat, oats, or other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.

The Petitioner asserts that the current rule is contrary to and conflicts with N.J.S.A. 23:4-24.2. Petitioner states that the statutory provision only prohibits possession of a weapon and hunting of turkey within 300 feet of a baited area if the person is elevated

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in a tree or is in a structure; it does not forbid baiting of turkey or possession of a weapon within 300 feet of a baited area. Petitioner further asserts that, while there are State statutes that forbid baiting of wild fowl and bears when hunting from the ground, there is no State statute that forbids baiting of turkey or possession of a weapon within 300 feet of a baited area when hunting turkey. Petitioner asserts that the Council is only authorized to adopt rules necessary to effectuate the statute, with N.J.S.A. 13:1B-30 requiring that any rules adopted must be based upon scientific investigation and research. Petitioner questions whether the Council has conducted research supporting a prohibition of weapon possession within 300 feet of bait while turkey hunting. Petitioner states that penalties for violations are set by statute and that the Council has no authority to set the amount of a fine without a statutory provision. Petitioner indicates that the only fine statutorily set for hunting within 300 feet of bait is limited to hunting when elevated in a tree or in a structure of any kind, and the fine for that is \$50, not the \$74 contained in the rules. Petitioner further indicates that turkeys roost near food sources. However, a hunter using a call to attract a turkey on the ground has no way of knowing there is a food source that could be considered bait within 300 feet. The rule is alleged to unfairly punish innocent hunters and not be reasonable or appropriate as required by N.J.S.A. 13:1B-30 as it does not specify that the weapon must

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be loaded. As a result, the provision technically results in an individual being in violation if an area containing feed is within 300 feet of where they park or where they are walking with an unloaded weapon to get to a hunting area. Finally, it is asserted that the rule does not comply with the Administrative Procedure Act as it is contrary to and contradicts the relevant statute. For all the above reasons, the Petitioner asserts that N.J.A.C.7:25-5.7(e)12 should be repealed.

In accordance with N.J.A.C. 7:1D-1.1, the Council will subsequently mail to the Petitioner and file with the Office of Administrative Law a notice of action on the petition.