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July 23, 1973

COMMISSION REPORT NO. 2D TO THE GENERAL ASSEMBLY OF MARYLAND

REVISED ARTICLE ON NATURAL RESOURCES

I. BACKGROUND OF CODE REVISION.

In July 1970, Governor Mandel established the Commission to Revise the Annotated Code. At the Commission's first meeting in September of that year, the Governor pointed out that the last comprehensive revision of the Maryland Code was completed in 1888, and that during the intervening years a great many statutes had been added, frequently with little or no reference to existing articles of the Code or to logical relationships to existing statutes. As a result, he said, the Annotated Code has lost whatever rational cohesiveness it once had, and had become increasingly difficult to use. The Governor indicated that there now exist in the Code various inconsistencies in the statutory treatment of similar subjects, defects in organization and arrangement of statutes, and numerous instances of ambiguity or lack of clarity in the expression of legislative intent.

Governor Mandel charged the Commission with the responsibility of a formal revision of the public general laws, including an improved

scheme of organization, elimination of obsolete or unconstitutional provisions, resolution of inconsistencies and conflicts in the laws, and the general improvement of language and expression.

Acting pursuant to this mandate, the Commission proceeded to study the history of Code revision in Maryland as well as recent examples of Code revision in a number of our sister states. As a result, it decided upon a rearrangement of the Code into the following 21 articles:

Agriculture	Local Government
Business Regulation	Natural Resources
Commercial Law	Occupations and Professions
Corporations and Associations	Property
Courts and Judicial Proceedings	Public Health
Criminal Law	Public Safety
Education	Social Services
Elections	State Government
Estates	Taxation and Revenue
Family Law	Transportation
General Provisions	

Each of these articles is devoted to a substantial area of the law and will contain the statutes relevant to that particular topic. This system of organization replaces the present alphabetical arrangement of Code provisions which has become somewhat disorganized with the passage of time and in any event tends to promote distribution of related materials throughout the Code, instead of concentrating them in a particular article.

Having reached a decision as to the general organization of the Code, the Commission proceeded to make tentative allocations of the present statutes to the new articles, and also developed certain procedures and style guidelines for use in the revision project. Most of these are set forth in the Revisor's Manual (September 1971) which was distributed to all members of the General Assembly in October of that year.

The next step involved detailed drafting of several of the proposed new articles. The first three are the Articles on Agriculture, Courts and Judicial Proceedings, and Natural Resources. They represent the concrete beginning of a process which, when fully completed, will make Maryland's public general laws easier to locate and easier to understand.

As these first three articles are considered by the General Assembly, it should be kept in mind that they are part of a larger pattern. Thus, a change in language or style which might seem trivial by itself should be thought of in the context of the entire revision project, in which every effort is being made to utilize consistent patterns of organization, arrangement, and language.

The basic thrust of the Commission's work has to do with formal and not substantive changes. Nevertheless, at some points in its work, the Commission has found it necessary to make recommendations which do involve the substance of the laws. In a sense, the elimination of an obsolete provision is a substantive change. Also, where the Commission has discovered inconsistencies or gaps in the laws, it has sometimes made substantive recommendations in an effort to rectify the situation. This follows the Governor's directive to eliminate inconsistencies and conflicts.

In every such case, the revisor's notes following the particular section explain the change and the reasons for it. Changes of this kind are also noted in this report.

Sometimes the Commission identified problems involving such fundamental policy decisions that it felt they should be called specifically to the attention of the General Assembly for determination. These matters are also mentioned in the revisor's notes and in this report.

II. FORM OF THE REVISION BILLS.

The Code Revision Commission contemplates that most of the major new articles of the revised Code will be published as separate volumes. The new articles will not be numbered, but will be cited by name or by appropriate abbreviation.

Within each article, a standard numbering system is used. This consists of one or more digits to the left of a dash; and three or more digits to the right of a dash; essentially the same system now used in present Articles 21, 66 1/2, 93, and 95B of the Code.

The number or numbers to the left of the dash designate the title within the article. The first number or numbers to the right of the dash designate the subtitle. The remaining digits designate the section within the subtitle. Thus, §1-202 of the Natural Resources Article is the second section in subtitle 2 of Title 1 of that article.

The Code revision bills introduced at the 1973 special session reflect this system of organization and numbering. Each bill is arranged in a similar format. Section 1 of the bill consists of the proposed revised article. The text of each article is printed in all capital letters as though it were all new material, but in most instances references to the present Code will indicate that changes

are largely stylistic. This procedure is utilized to reduce the length of the bills, which would be made extraordinarily bulky if the normal symbology of printing present statutory text with brackets to show deletions and capitals to show insertions were utilized.

Each section or subsection of the proposed revised article is followed by a revisor's note which explains the changes, if any, made with respect to present law. These notes facilitate comparison of the revised article with the present law. As a further aid, a cross-reference table is attached to this report. It shows the relationship between present and proposed code provisions and vice versa.

Section 1 of each revision bill has an unusual numbering system. Each page will bear a designation which consists of an abbreviation of the article name, a number designating the title of the new article, and a page number. Thus, in the Natural Resources bill, one might find a page numbered "N.R. § 1-3". This would mean page 3 of Title 1 of the Article.

This numbering system has been adopted to facilitate preprinting of the bills; it will also facilitate their amendment and printing for third reading, since even though there are some amendments, the entire pagination of the bill will not have to be changed. Only the title affected will have to be reprinted.

Sections 2, 3, and following of the bills also have special page designations to facilitate the printing process. These sections of the bill list repeals of present provisions, transfers of present statutes from one article to another, and any repeals and re-enactments with amendments made necessary by the revised article, as well as provisions dealing with the construction and implementation of the Act. As in the case of the text of the revised article itself, appropriate revisor's notes are inserted.

Each revised article, if enacted, will become effective on January 1, 1974. This will permit publication of the revised articles before they become effective and will also make it possible to amend them at the 1974 regular session.

To achieve this effective date, it has been necessary to designate each bill as an emergency bill. Thus, the final sections of each bill include the standard emergency clause. They also include other special effective date provisions which may be required.

III. THE ARTICLE ON NATURAL RESOURCES.

This report is concerned specifically with the proposed Natural Resources Article. The proposed article includes substantially all present provisions of the public general laws dealing with the natural resources of this State, the organization, structure, and operation of the Department of Natural Resources, the Maryland Geological Survey, environmental programs, fish and fisheries, forests and parks, gas and oil, mines and mining, water and water resources, wetlands and riparian rights and wildlife. In addition, there are provisions for enforcement and penalties.

At present, these laws primarily are scattered throughout the Code in Articles 1A, 14B, 27, 33 B, 41, 43, 66C and 96A. They appear in the proposed article with any amendment and addition enacted at the 1973 legislative session.

The Natural Resources Article is divided into ten titles, each of which will be discussed in detail below. The titles are as follows:

Title 1 - Department of Natural Resources

Title 2 - Maryland Geological Survey

Title 3 - Environmental programs

Title 4 - Fish and Fisheries.

Title 5 - Forests and Parks

Title 6 - Gas and Oil

Title 7 - Mines and Mining

Title 8 - Water and Water Resources

Title 9 - Wetlands and Riparian Rights

Title 10 - Wildlife

The manner of preparation of the Natural Resources Article may be of interest to the General Assembly as it evaluates and deliberates this proposal. Initially, the statutes to be allocated to the Natural Resources Article and the drafts were prepared by the Commission staff, the principal drafters being former Associate Revisors Curtis J. Karpel and Bruce C. Bereano, Assistant Revisor Sharon Tucker and Legal Assistant Alan V. Cecil. All staff work was performed under the direction and review of the Commission Director, William H. Adkins, II.

The commission staff work then was submitted to a commission subcommittee chaired by Roger D. Redden, Esq., of Baltimore and consisting of the following commissioners: Hon. Philip Dorsey, of St. Mary's County, John C. Eldridge, Esq., Anne Arundel County, S. Ronald Ellison, Esq., Baltimore, C. Edward Jones, Esq., Baltimore, Henry R. Lord, Esq., Baltimore, James McSherry, Esq., Frederick, Zelig Robinson, Esq., Baltimore, and Doris P. Scott, Esq., Cecil County. The subcommittee in turn examined the material and submitted its proposals to the full commission, which reached the eventual decision as to the material to be included and its style and organization.

After final commission approval, the commission staff placed the drafts in final form, in accordance with the commission's decisions and during the latter part of 1972 and early 1973 presented them

with accompanying reports, to a Legislative Council joint committee chaired by Delegate S. Ruffin Maddox and consisting of Delegates Torrey C. Brown, Carlton Dize, J. Manning McKay, Robert S. Redding, John S. Arnick, and Thomas Hunter Lowe, and Senators Paul J. Bailey, Elroy G. Boyer, John C. Coolahan, and William J. Goodman. This Legislative Council joint committee met regularly on a weekly basis in public hearings and considered the proposed Natural Resources Article in a detailed and deliberative fashion.

In addition to this screening process, the Natural Resources drafts, from their inception, were submitted to and reviewed with the appropriate officials of the Department of Natural Resources who are intimately familiar with these statutes from the viewpoint of both daily operations and legislative history. For example, Joseph H. Manning, Deputy Secretary of Natural Resources, Dr. Kenneth Weaver, Director of the Maryland Geological Survey, Robert Rubelmann and Charles M. Frisbie, of the Fisheries Administration, R. Peter Bond and Tunis Lyon, of the Forest Service, William Parr, of the Park Service, Thomas H. Downs, formerly with the Maryland Environmental Service, William B. Matthews, Jr. and Herbert Sachs, of the Water Resources Administration, Ralph Bitely, of the Wildlife Administration, Warren K. Rich, Earl Schaffer, and Richard C. Rice, Assistant Attorneys General assigned to the Department, and Superintendent Roy W. Rafter, Charles Milton, Charles Garner, Woody Willing, and Paul C. Wentzell and Commander Howard Shenton of the Natural Resources Police Force, were frequently consulted and rendered invaluable assistance.

The drafts also were submitted to a special committee of the Environmental Laws Committee of the Maryland State Bar Association, Inc., the Chesapeake Bay Foundation, and others concerned with the subject matter of the Natural Resources Article.

IV. DETAILED DISCUSSION OF THE NATURAL RESOURCES ARTICLE.

A. TITLE 1 - DEPARTMENT OF NATURAL RESOURCES

Subtitle 1 - Organization, Powers and Duties of Department

Subtitle 2 - Natural Resources Police Force

Subtitle 3 - Maryland Environmental Policy Act.

Title 1 of the proposed article establishes the structure and organization of the Department of Natural Resources. In addition, it contains statutory material organizationally related directly to the Department as a whole or the office of Secretary of Natural Resources.

The statutory material presently is found primarily in Article 41 of the Code. It was last revised during the 1969 legislative session. The commission attempted to make changes both in language and style patterned after the executive reorganization bills enacted in 1970. The goal was to achieve uniformity of language so that statutes pertaining to all principal departments of State government would contain substantially similar provisions absent a legislative policy decision to treat one department differently from other departments.

The changes proposed in Title 1, in the main, are only stylistic in nature. The following, however, are worthy of particular note:

Subtitle 1. Department of Natural Resources

Section 1-101(d). The term "unit" is first used in this section and throughout the proposed article as the general nomenclaturial reference for the organization and structure within the department. The term has a broad and nondescript connotation which is intended for its use. Use of the terms "agency," "commission," etc. is avoided since they have substantive rather than organizational connotations.

Section 1-107. This section provides for an appeal to the Board of Review of the Department of Natural Resources by any person aggrieved by any decision, action, or non-action on the part of the Secretary or any unit within the department. The commission deleted the requirement that the complainant petition the person who originally decided the matter if that person is the unit's chief executive officer. In this instance, the person aggrieved can directly petition the Board of Review. This change eliminates the need for the complainant to petition the same person who initially decided adversely to him.

Subtitle 2. Natural Resources Police Force.

Subtitle 2 is proposed in light of the establishment, pursuant to Ch. 348, Acts of 1972, of a Natural Resources Police Force within the department. The provisions relating to their general duties and responsibilities are set forth in Title 1 of this article to indicate their relevancy to the article as a whole. Obsolete nomenclaturial references to former law enforcement positions are deleted.

Section 1-205(a). The Legislative Council suggested deletion of the provisions authorizing the Natural Resources Police Force to issue citations for violation of laws enforced by the Secretary. Instead it is proposed to authorize issuance of citations for violation of any law punishable as a misdemeanor. This would be consistent with the powers vested in the police force under §1-204 and is modelled after a similar provision of Art. 66 1/2, §16-107 of the Motor Vehicle Laws. Also modelled after §16-107 are provisions included to indicate when a Natural Resources police officer can take a person into custody.

Section 1-209. This section establishes a uniform penalty for any violation of the provisions of this subtitle. It is the first

instance of several other identical uniform penalty provisions applicable to other titles and subtitles used throughout this article. Accordingly, it is appropriate here to discuss this matter in general.

The commission's proposal to establish uniform penalty provisions in the Natural Resources Article was prompted by the discovery and examination of the plethora of individual and sometimes inconsistent and illogical penalty provisions found throughout the present statutes. Many of these are the result of the fact that they were drafted at different periods of time. The uniform penalty approach makes for considerable simplification and greater consistency. The legislature has adopted this approach, for example, in the Motor Vehicle Laws under Article 66 1/2, §§17-101 and 17-104.

As proposed, violation of any statutory provision, rule, or regulation or restriction promulgated by the Department pursuant to law is a misdemeanor. A first offender would be subject to a maximum fine of $500 or a prison sentence of three months or both. For a second or subsequent offense, the maximum fine would be $1,000 or prison sentence of one year or both. Violation of any rule or regulation or restriction promulgated by the department pursuant to law is punishable as first stated for first and second offenders. A second or subsequent violation is defined as "one which has occurred within two years of any prior violation of this title." This provision was added by the Legislative Council, which felt that prior violations, which would not have to be of the same offense, and which generally involve minor matters, should not encumber someone in perpetuity.

The commission purposely decided not to establish minimum fines or sentences since for certain minor offenses the minimum might

appear too stringent, thus tending to induce a not guilty finding, while in other instances, the minimum would tend to become the maximum sentence imposed, or at least the standard sentence. Furthermore, it was felt that with the establishment of a ceiling on the fine and sentence, the matter then should be left to judicial discretion to weigh the particular facts and circumstances of each case.

However, there are a few instances in the Article where the nature of the offense requires a more severe penalty than the uniform one, or where legislative intent to distinguish the gravity of the offense is evident. In these situations, the commission proposes to preserve the particular penalty stated in the statute which sets forth the prohibited conduct.

To make this clear, the uniform penalty provision states it applies "unless another penalty is specifically provided elsewhere in this title." For example, in Title 5 - Forests and Parks, §5-704, the penalty for violating subsection (a) - maliciously setting fires - is preserved while the penalty for subsection (b) - negligently setting fires - is covered by the uniform penalty provision of that title, §5-1301. Similarly, in Title 7 - Mines and Mining, §7-516, the penalties for strip mining are preserved instead of being covered by the title's uniform provisions, §7-801. In these instances where the more severe express penalty is retained, the commission also felt that, notwithstanding its general policy, the prescribed minimum penalty should be retained as well.

As a related matter, the commission noted an inconsistency among certain code sections proscribing conduct in that some of these sections declare a violation of the provisions a misdemeanor while in other sections there is no such declaration. Accordingly, the

commission proposes a uniform policy of drafting all prohibitory sections without any reference to the gravity of the offense or the fact that violation thereof is subject to the uniform penalty provisions. Each such section only will set forth the particular prohibited conduct and no more. This avoids repetition of language and confusion, and will be useful and convenient once code users become aware of the functions of the uniform penalty provisions. This policy of course would not be followed as to any code section wherein the more severe penalty provision, as explained above, is retained. Those sections would appear as complete penalty provisions in and of themselves setting forth the prohibited conduct, the gravity of any violation thereof and the penalties involved.

Subtitle 3 contains the Maryland Environmental Policy Act, as enacted by Ch. 702, Acts of 1973. As a general statement of State policy respecting the environment and natural resources, it is made a part of the organizational and structural provisions of Title 1.

B. TITLE 2 - MARYLAND GEOLOGICAL SURVEY

Subtitle 1 - Definitions

Subtitle 2 - Organization and Authority of Maryland Geological Survey and Commission on Maryland Geological Survey

Subtitle 3 - Archaeological activities

Subtitle 4 - State Boundary Monuments

Title 2 of the Natural Resources Article is similar to Title 1 in that the statutory material is largely structural and organizational. The proposed changes are primarily in style and nomenclature. Two particular changes worthy of highlight are:

Subtitle 2 - Organization and authority of Maryland Geological Survey and Commission on Maryland Geological Survey.

Section 2-202. Article 66C, §16(b)(6), which gives the director of the Survey authority to examine applications for various mining certificates of competency, is proposed for deletion. In reality, this function is performed by the director of the Bureau of Mines and the Mining Board, and is provided for in Title 7 - Mines and Mining, of this article.

Subtitle 3 - Archaeological activities.

Section 2-308. In this section and in other similar sections throughout the proposed article, the commission has deleted references to legacies, bequests, endowments, etc., and the words "inter vivos" and "testamentary" are substituted, to be used together with the word "gift". This treatment gives "gift" full legal meaning.

Chapter 31, Acts of 1973, added a new §22 to Article 1 of the Code which sets forth this same definition as applicable throughout the Code. In addition, Chapter 31 makes clear that unless otherwise provided by law, expenditure of funds from any such gift is subject to assent to acceptance of the gift pursuant to Art. 15A, §5 of the Code.

C. TITLE 3 - ENVIRONMENTAL PROGRAMS

Subtitle 1 - Maryland Environmental Service

Subtitle 2 - Maryland Environmental Trust

Subtitle 3 - Power Plant Siting and Research Program

Subtitle 4 - Natural Resources Institute

Subtitle 5 - Interstate Environmental Compact

The statutory provisions contained in Title 3 presently appear in Articles 33B, 41, and 66C of the Code. The changes made are wholly stylistic, and concern redundancy and obsolescence. The following, however, are of particular significance:

Subtitle 1 - Maryland Environmental Service.

Sections 3-104(I) and 3-107(a) are the first examples of the commission's drafting policy throughout the article to avoid, wherever possible, the use of internal cross-references in order to prevent the need for future revision. If this cannot be accomplished without either confusing the code user or possibly distorting legislative intent, present statutory internal cross-references are retained; for example, see §3-110.

Section 3-126. This section was added by the Legislative Council to protect innocent third parties by requiring the Maryland Environmental Service to record statutory liens created in its favor. The statutory liens, which appear in proposed §§3-109(c), 3-110(b)(2), (c)(3), (d)(3) and 3-111(b) are present law. The new language changes the present situation only to the extent that a lien will not be effective against a third party unless recorded and indexed as to the person on whose property the lien exists.

The section further provides for the procedural and financial aspects of lien recording and indexing. The Maryland Environmental Service advised both the commission and the Legislative Council that it did not oppose this section.

Subtitle 5 - Interstate Environment Compact.

Section 3-501. This section is the first appearance in the article of several interstate compacts, which are contained in different titles depending upon their subject matter. For example, see Title 6, subtitle 4, §6-401 and Title 8, subtitle 3, §8-301. The commission's policy with all such interstate compacts has been to not revise them in any way since they involve other states and the federal government.

D. TITLE 4 - FISH AND FISHERIES

Subtitle 1 - In general

Subtitle 2 - Organization and authority of Department pertaining to fish and fisheries - In general

Subtitle 3 - Interstate compacts concerning fish and fisheries and related laws.

Part I - Atlantic States Marine Fisheries Compact

Part II - Potomac River Compact of 1958

Subtitle 4 - State Fish Refuges and Hatcheries in tidal and non-tidal waters.

Subtitle 5 - Obstructing the passage of fish: interference with nets and fishing and other prohibitions generally.

Subtitle 6 - Licensing, Regulation and Supervision of fishing and fisheries in non-tidal waters.

Subtitle 7 - Licensing, Regulation and Supervision of fishing and fisheries in tidal waters.

Subtitle 8 - Crabs

Subtitle 9 - Lobsters and Terrapin

Subtitle 10 - Oysters and Clams

Part I - General Provisions relating to oysters and clams

Part II - Provisions relating to oysters

Part III - Hard-shell clams

Part IV - Soft-shell clams

Subtitle 11 - Oyster and Clam culture

Subtitle 12 - Penalties and fines, searches, seizures and forfeitures, and severability.

The statutory provisions contained in Title 4 presently appear in Article 66C of the Code. The scope of some of these present code provisions relate to both the subject areas of fish and fisheries and

game and wildlife. This reflects the fact that both areas of law previously were administered under the same state governmental unit. In this proposal, the commission has dissected these particular code provisions by placing the fish and fisheries material in Title 4 and allocating the material concerning wildlife for inclusion in Title 10. This treatment conforms to the reorganization of the Department of Natural Resources, pursuant to Ch. 348, Acts of 1972, establishing a separate Fish and Fisheries Administration and a Wildlife Administration within the department.

To a large extent, the revisions made concern style and organization. Obsolescence and redundancy were frequently found and were eliminated. In addition, a number of changes were made because of statutory provisions apparently unconstitutional in light of the holding and intent of the decision in Bruce v. Director, 261 Md. 585 (1971). In that case, the Maryland Court of Appeals held unconstitutional the residential and territorial restrictions placed by the State on the licensing of commercial fishermen who engage in crabbing and oystering in the tidal waters of the State. These restrictions, which prohibited any resident of the State from taking crabs and oysters from waters of a county of which he was not a resident were declared an unlawful classification of persons and discriminatory among the watermen of the several counties in contravention of Art. 23 of the Declaration of Rights of the Maryland Constitution and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

The Bruce decision reasoned that the statutory classification could not be upheld because it bore no reasonable relation to the

public interest. The court declared that:

> ... [T]he crab and oyster resources found in the tidal waters are common property held in trust by the State for all of its citizens, no matter in which part of the State they may live. To that extent, an otherwise legitimate classification of residents which may be made for many purposes, cannot be made if it affects a right (in this case to the enjoyment and use of natural resources) which, as citizens of this State, they enjoy equally. 261 Md. at 606.

Based upon this case, all residential, territorial and other similar restrictions held unconstitutional have been deleted where possible, or the particular provision has been redrafted to retain it in a constitutional fashion.

The particular changes which require attention are the following:

Subtitle 1 - In general.

Section 4-101(b). The definition of the word "catch", is applicable throughout Title 4, and is new. It is used to avoid the string of terms in present statutes which refer to exercising dominion and control over fish.

Section 4-101(e). The definition of the word "fish" applicable throughout Title 4 is new. Present statutory provisions use different terms which create confusion. Whenever a provision pertains only to a particular type of fish - i.e. crabs or oysters - then the particular name is used instead of the generic term.

Section 4-101(I). The definition of the word "person", applicable throughout Title 4, is new. In part, it is derived from several present statutory provisions. A similar definition appears in other titles of the Natural Resources Article, such as Titles 5, 8, and 10.

Subtitle 6 - Licensing, Regulation and supervision of fishing and fisheries in non-tidal waters.

Section 4-602(b). The petition procedure which requires 50

residents who are farmers or hold a valid hunting license to propose rules and regulations is changed to require 50 residents who hold valid angler's licenses because it is believed those qualifications logically apply to wildlife rules and regulations and not fish rules and regulations.

Section 4-604(b). The definition of "resident" concerning anglers' licenses presently set forth in Art. 66C, §219(a) is retained. It is noted, however, for the legislature's consideration, that there appears to be no uniformity throughout the code concerning residency. For example, there is a 12 month requirement as to eligibility for a license to operate nets and seines for commercial fishing or a tonging license; as to a crabbing license, the present statute only states that the licensee shall be a resident without specifying any time period. The question raised is whether a uniform residency requirement should be established for this title?

Section 4-613(b). This section provides that if a person is convicted of fishing without an angler's license or using someone else's license, the license is confiscated and both the license holder and the user are barred for a year from procurring another license. New language is added to protect the innocent party who has his license stolen.

Subtitle 7 - Licensing, Regulation and supervision of fishing and fisheries in tidal waters.

Section 4-701. This section grants the Secretary authority, under certain procedures, to promulgate rules and regulations pertaining to catching, possessing, selling, purchasing, transporting or exporting tidal water fish contrary to present statutory provisions.

Since, in effect, it gives authority to modify the provisions of subtitles 7, 9, and 10, similar language is contained in those subtitles to remind the code user of this fact.

Section 4-705. The provisions of this section protect the commercial net fishing license of any holder inducted or enlisted in the armed forces or employed in essential war industries during the war. The language was revised to apply to any war-time situation. A question is raised as to whether reference to induction should be deleted in light of the establishment of a volunteer armed forces by the federal government.

Section 4-731. The scientific name of the rockfish or striped bass is proposed for deletion here. Elsewhere in the title, other scientific names also are deleted. In part this is due to the fact that scientific names of fish change occasionally, thus necessitating future revision. Also, unless the scientific name has a particular substantive effect on the statutory provisions, its use is superfluous and confusing to the Code user. In contrast, see Subtitle 11, §4-1001(j) wherein the scientific name is used for soft-shell clams. The purpose is for law enforcement to keep other undesired species out of the waters of the State.

Subtitle 8 - Crabs.

Sections 4-801(c) and 4-802. These sections are new language intended to clarify for the Code user that the statutory provisions concerning crabs pertain only to the blue crab species and every stage of its life cycle. The statutory scheme and provisions of subtitle 8 are drafted to relate only to this type of crab.

Section 4-808. In this section, and throughout subtitle 8, the commission has deleted the suffix "shell" when referring to hard or soft crabs. This is done to be consistent with the present language

retained in sections 4-807 and 4-809 which use the terms soft and hard crabs. In addition, the department advises that the proper term does not include the suffix "shell".

Subtitle 10 - Oysters and clams.

Section 4-1001(c). The definition of "Chesapeake Bay" is revised by deleting the language which excludes waters lying outside the territorial limits of any county. As a result of the Bruce decision, the distinction used in the present language between county waters and the waters of the Chesapeake Bay is no longer applicable.

Section 4-1001(d). The definition of "county waters" is retained as viable even in light of the Bruce decision. References are made in the Code to county waters in a geographical rather than residency context, such as in §§4-1008(b) and 4-1010, for example.

Section 4-1001(i), (j), (k), (n), (o) and (q). These subsections are new definitions created for assistance of the Code reader in understanding the meaning of the various terms used.

Section 4-1004(c). This section presently appears as Art. 66C, §698(b) of the Code. The section was amended in 1971 to establish certain uniform licensing provisions in the State for shaft and patent tonging and dredging. The effect was to supersede those inconsistent provisions of §§700, 702, 703, 712, 712A, and 713(b) of Art. 66C concerning such licenses. Accordingly, these sections of the Code are proposed for deletion.

Section 4-1011(a). The reference in the present statute to Lighthouse Lump is deleted since the point does not appear on departmental charts. Instead the reference to "Entrance Lump" is used as the actual intended point.

Section 4-1013(a). Language is added to make reference to "any law enforcement officer" in this and other sections of this Title. Under Art. 66C, §123, other police officers and sheriffs are authorized to enforce State fish laws.

Section 4-1014. The word "unlawful" in the present section is deleted as inconsistent with the provisions of the section. The department advises it was an inadvertence.

Section 4-1015(a). In this section and throughout the Title the word "bar" is used instead of "bed" and "bar" since both terms are synonymous.

Section 4-1017. In subsection (a) the reference to the oyster packers' and dealers' license being in the form of a contract is deleted as obsolete. It originally was enacted as part of a previously repealed provision establishing a contract between the licensee and the State. In subsection (d) the reference to oyster fund, and in other provisions the reference to the clam fund, are changed to Fisheries Research and Development Fund, which is the proper nomenclature.

Subtitle 11 - Oyster and clam culture.

Section 4-1103(d). Language is added in this and other similar sections in Title 4 requiring publication in a newspaper in every county in light of the Bruce decision which applies the statute to residents of the entire State.

Subtitle 12 - Penalties and fines, searches, seizures, and forfeitures and severability.

Section 4-1205. This is a new uniform section, derived from other similar present sections, which authorizes law enforcement officers to seize fish in the course of arresting a person who violates the provisions of this title.

Section 4-1206. This is a new uniform section derived from other similar present sections which authorizes seizure and forfeiture of any unlawfully used devices, equipment and property. As phrased, the court has the discretion to declare the seized items forfeitures. Notwithstanding Art. 26, §155 of the Code, which provides that certain forfeitures are remitted to the District Court system, the new section declares that the forfeitures become the property of the department for its own official use or sale. The Chief Clerk of the District Court advises the Commission that to date there have not been any incidences of the court receiving such property. The court does not feel it has the facilities to handle this situation if it occurred.

Section 4-1207. This is a new section which empowers a court to revoke or suspend any license issued under this title to any person who, while using the license, violates any provision of this title, or rule or regulation promulgated pursuant to it. At present, the court has this authority with regard to licenses to cull oysters and dredge the Chesapeake Bay. In addition to this judicial authority there are present provisions which allow the department administratively to revoke or suspend a license under certain circumstances. For example, see §§4-613, 4-707, and 4-1026. One question raised is whether such authority should be vested both with the court and the department or only one of them.

General revisor's note to Title 4.

Sections 265(e), 295(c), 306, 307, 309, 311, 312 and 313 (pages 4-187 through 4-188 of the first reader copy of the bill) of Article 66C are proposed for deletion, having been superseded by provisions of the Potomac River Compact of 1958. The compact, which appears as §4-306, gives the Commission exclusive jurisdiction to regulate

fish in the Potomac River area defined in the compact.

E. TITLE 5. FORESTS AND PARKS

Subtitle 1 - In general

Subtitle 2 - Organization and authority of Department pertaining to forests and parks - in general

Subtitle 3 - Conservation of Woodland areas

Subtitle 4 - Trees and Forest Nurseries

Part I - Roadside trees

Part II - Transportation of Christmas trees and evergreen shrubs

Part III - Tree experts.

Subtitle 5 - (Blank)

Subtitle 6 - Forest Conservancy Districts

Subtitle 7 - Fire hazards; prevention and abatement

Part I - In general

Part II - Duties of railroads

Subtitle 8 - Middle Atlantic Interstate Forest Fire Protection Compact

Subtitle 9 - Program Open Space

Subtitle 10 - Public Park land and recreational areas.

Subtitle 11 - Public recreation on private land

Subtitle 12 - Wild land and open areas

Part I - open space or open areas

Part II - wild land areas

Subtitle 13 - Penalties; fines; severability.

The statutory material contained in Title 5 presently appears in Article 66 C of the Code. Basically, the commission only has

restructured the organization of the material and made changes related to style, nomenclature and obsolete provisions. Few policy questions are raised. Only the following items deserve special consideration:

Subtitle 4 - Trees and forests nurseries

Part I - Roadside trees.

Section 5-409. The Commission decided to place this section dealing with "liability to aggrieved parties for cutting, burning, or injuring merchantable trees or timber" in this title rather than in the Damages title of the proposed Courts and Judicial Proceedings Article also presently before the legislature. Section 5-409 provides that any person who unlawfully or negligently enters upon another's land without permission to cut or otherwise injure any merchantable tree or timber on the land is civilly liable to the party injured in an amount double the value of the trees or timber injured or destroyed. The Commission concluded that this was appropriate for retention in the Natural Resources Article, rather than for transfer to the Courts Article.

Section 5-418. This section concerns qualifications for a license as a tree expert. The Legislative Council proposed deleting paragraphs (2) and (4) of this section as it presently appears in Art. 66C, §403. The provisions concern the requirement of U.S. citizenship and good moral character. From a policy standpoint, they are inconsistent with requirements for other professional licenses and the moral character standard is too nebulous for impartial application.

Subtitle 7 - Fire hazards; prevention and abatement.

Part I - In general.

Section 5-701. The reference to "male" inhabitant is

deleted in paragraph (4) of the section since it distinguishes between sexes, which is unconstitutional.

General revisor's note to Title 5.

Art. 66C, §§409A-409U. These present sections of Art. 66C, dealing with registered professional foresters, are proposed for transfer to Art. 56. The sections provide for the licensing and regulation of registered professional foresters and create an independent State Board of Registration for Foresters for this purpose. While topically related to Natural Resources and in particular to Forests and Parks, the State Board is not within the Department of Natural Resources nor statutorily related to it.

The commission intends eventually to propose allocating such statutes in an Occupations and Professions Article of the Code. This article would contain provisions for licensing and regulating all professions and occupations presently found elsewhere in the Code. Examples are Attorneys at Law, Art. 10; Dentistry, Art. 32; Professional Engineers, Art. 75 1/2, etc.

Although the registered professional foresters statutes are proposed for transfer, no revision whatsoever is made. The provisions remain intact as enacted by Ch. 638, Acts of 1972.

Art. 66C, §§410-A-410I. These present sections, concerning public recreation and parks, are proposed for transfer in their entirety to Art. 25 of the Code.

These sections concern the authority and powers of the State counties and municipal corporations to establish and conduct public recreation and parks programs. These programs are in no way related to or administered by the Department of Natural Resources. Rather, the statutes deal with a wholly local government activity. Accordingly, the commission considers it appropriate to allocate them with statutes

of a similar nature in Art. 25 of the Code. Appropriate amendments to Articles 25 and 23A are also proposed; see Sections 3 and 5 of the Bill.

Eventually, these statutes and others will appear in a new Local Government Article of the Code which will contain all present Code material limited in scope to local government functions and activities.

While reallocating sections 410A through 410-I for the present to Art. 25, no revision at all has been made in their language.

Subtitle 5, as originally drafted, dealt with the licensing of landscape architects. The present provisions are found in Art. 56, §§271-281.

The commission and the department agreed that these provisions are more appropriate to Art. 56 than to the Natural Resources Article. House Bill 99, introduced at the 1973 regular session, was intended to place the landscape architect licensing function under the Department of Licensing and Regulation, not the Department of Natural Resources.

Because of technical drafting problems, HB 99 did not pass. However, the allocation of the function to the Department of Licensing and Regulation still seems desirable. In another portion of the bill (Section 5), this transfer is proposed. Hence, the elimination of subtitle 5 of Title 5 of this Article is also proposed, leaving this subtitle blank.

E. TITLE 6 - GAS AND OIL

Subtitle 1 - In general

Subtitle 2 - Prince George's County Underground Storage Act.

Subtitle 3 - Storage of natural or artificial Gas and Petroleum Products in Prince George's County.

Subtitle 4 - Interstate Oil and Gas Compact.

The statutory material contained in Title 6 presently appears in Art. 66C of the Code. In large part, the changes made concern style, organization, and obsolete matters. Of particular import are the following items:

Subtitle 1 - In general.

The commission notes that in Sec. 6-110 the procedure for a re-hearing by a party adversely affected by any rule, regulation, determination, or order of the department is different from the review procedure stated in Title 1. The question raised is whether this section should be deleted or whether it should remain as a specific exception for the department's review procedure. The decision is left to the legislature.

Section 6-111. The original provision of §6-111(a) gave an appeal from any departmental decision precedence over any other type of docketed civil action. The commission proposes deleting this so that the appeal would proceed in a normal fashion. This is desirable from a judicial administration standpoint.

Subtitle 3 - Storage of natural or artificial gas and petroleum products in Prince George's County.

Section 6-307 presently appears as the final sentence of Art. 66C, section 691 of the Code. Chapter 791, Acts of 1957 indicates that this subtitle pertains only to Prince George's County. Therefore, all action should be initiated in that county. See also Sec. 6-302. The reference to "proceeding in lieu of prerogative wit" (please note the spelling error) is proposed for deletion. It is believed that this does not exist in Maryland jurisprudence. This language might have been originally copied from New Jersey, Connecticut, or Pennsylvania. At common law, prerogative writs were mandamus, procedendo, prohibition, quo warranto, habeas corpus, and certiorari. Quo warranto

has been abolished in Maryland - Rule BL 40. Habeas corpus applies to people, not petroleum products. Certiorari does not seem appropriate in this context nor does procedendo, if it still exists. It is not believed prohibition applies (Talbott v. Fidelity & Gas Co., 74 Md. 537 (1891), writ issued by superior court to inferior court, to prevent the latter from exceeding its jurisdiction). This leaves mandamus. It was decided the appropriate remedy was injunctive relief, reference to which is retained in this section. The only other changes made are in style.

F. TITLE 7 - MINES AND MINING.

Subtitle 1 - Definitions

Subtitle 2 - Powers, authority and organization of units pertaining to mines and mining - In general.

Subtitle 3 - Examination, licensing, inspection and supervision of mining activity.

Subtitle 4 - Rules and regulations governing mining activity

Subtitle 5 - Strip mining

Subtitle 6 - Abandoned Mine Drainage Control Act.

Subtitle 7 - Interstate Mining Compact

Subtitle 8 - Penalties; fines; severability.

The statutory material contained in Title 7 presently appears in Art. 66C. As in the case with previous titles, the changes made are mainly stylistic, and concern organization, nomenclature, and obsolete matters. However, there are several substantive revisions which should be noted, and are as follows:

Subtitle 2 - Powers, authority and organization of units pertaining to mines and mining - in general.

Section 7-203(b). This subsection concerns distribution by the Bureau of Mines of certain published information. The phrase "upon request" is added to allow the Bureau to distribute such information only to those who request it. This reduces the burden and cost of such a procedure, and insures that only those persons interested in such information receive it.

Section 7-208(b). This subsection concerns the requisite qualifications for a district mine inspector. The Legislative Council proposes deletion of the provisions requiring an 85% passing grade because such a specific grade is arbitrary and only a certificate of competency should be required.

Subtitle 3 - Examination, licensing, inspection and supervision of mining activity.

Section 7-301. This section is new language. It defines the "examining authority" to mean either "the director of the bureau of mines or his designee" in connection with the procedure for the grant or suspension of a permit of competency or "the examining board" in connection with the procedure for a grant or suspension of first class mine foreman certificate of competency or fire-boss certificate of competency. This new term avoids the reference to either the director or examining board, depending on the particular certificate or permit in question.

Section 7-309. This section concerns forged or counterfeit certificates. The commission proposes a change by inserting a reference to "permit of competency." As the language presently appears, any person who forges or counterfeits a certificate of competency is, upon conviction, guilty of a misdemeanor. Omitted from the section is the reference to a forged or counterfeit permit of competency. Therefore, the commission inserted this phrase in order to include any

type of certificate or permit of competency. This change has the approval of the director of the bureau.

Section 7-310. This section concerns cancellation or suspension of certificate or permit of competency and obtaining new certificate or permit. The commission proposes a change by including a fire-boss certificate of competency within the provisions of this section. As the section presently appears, the procedure pertains only to the cancellation or suspension of a permit of competency or first-class mine foreman certificate. Upon the approval of the director of the bureau, the section has been completely redrafted to include reference to the fire-boss certificate. It should be noted that the fire-boss and first-class mine foreman certificates come within the meaning of the general phrase "certificate of competency."

Section 7-311(a). This section concerns inspection of a mine by a district mine inspector. New language is added to proposed subsection (a) to provide that every mine regardless of whether it is in continuous operation shall be inspected once every two months. Under present law, only mines in continuous operation are inspected once every two months while all others need only be inspected six times a year. Consequently, these mines could be inspected the first six days of the year to comply with the statute. The new language is added to avoid this possibility.

Subtitle 4 - Rules and regulations governing mining activity.

The material in Subtitle 4 deals with detailed provisions regulating mining activity and operations. While such material typically would appear in rules and regulations as opposed to statutes, which is the case here, the commission proposes to leave it intact. The particular importance of the subject matter, as well as the fact that the legislature in the past saw fit to embody these

provisions in statutes rather than rules or regulations are controlling.

However, because of the volume and detail of these provisions, the commission has substantially reorganized and restructured them for purposes of clarity. Provisions generally relating to or dealing with the same subject matter have been grouped together.

Also, throughout the present statutes codified in Subtitle 4, reference is made to "men working in the mine" or other similar language indicating the male gender. The commission felt that the provisions of Art. 1, Sec. 7 of the Code ("masculine includes the feminine unless the context is unreasonable") was not applicable to this type of statutory language which seems to refer expressly to males; see In re Maddox, 93 Md. 727, 50A, 487 (1901). It seems clear that both State and federal equal employment opportunity laws preclude, at least prima facie, limiting all mine employment to men. In addition, adoption of the equal rights amendment to the Maryland Constitution and other similar legislative enactments require revision of such a reference. Therefore, the word "workers" has been inserted for "men"; this in spite of the fact that there does not seem to be a rush of female applicants for work in coal mines; compare Ch. 679, Laws of 1973.

Section 7-414. This section concerns hoisting rock or coal from mines. The provision in the original version making reference to the use of animals for these purposes is deleted as obsolete. Animals are no longer used in the mines. Similar provisions in other sections of Subtitle 4 also have been deleted, or, as indicated in the general revisor's note, have been repealed.

Section 7-455. This section concerns prohibition of influence

or use of intoxicants and drugs in or near a mine. The Legislative Council added new language to define the type of drug to be prohibited and except a person acting under medical supervision.

Subtitle 5 - Strip mining.

Section 7-516(c). This section sets forth the penalties under this subtitle. Subsection (c) presently appears as Art. 66C, §662(A-1) paragraphs (2) and (3). It was added by chapter 355, Acts of 1972. It is made a part of this proposed section for organization purposes to set forth all penalty provisions of the subtitle in one place. The scope of the language of paragraph (2) as enacted appears to apply its penal provisions in all situations when any person mines coal by open-pit or strip method without a permit and not just the situation referred to in paragraph (1), that is, mining coal by open-pit or strip method on any State owned land (see Sec. 7-505(b)). Consequently, paragraph (2), as enacted, is inconsistent with and impliedly repeals at least the first clause of the penalty provisions of Art. 66C, §671 dealing generally with mining without a permit.

Paragraph (2) is not interpreted to have the overall application it appears to state. The title to Ch. 355 states it is an act "to ban strip mining on land owned by the State in certain instances, to provide that certain funds may be used for the purchase of property rights and providing penalty for the violation thereof." The word "thereof" in the title restricts the scope of the penalty provisions to mining on State owned property. To construe this statute otherwise would mean the title is constitutionally defective in violation of Article III, §29, and that therefore the validity of paragraph (2) must fail.

Accordingly, new language is added to clarify the intended

restrictive scope of the penalty provisions of paragraph (2) which are intended to provide the penalty for mining on State owned land without a permit. This does not revive the validity of the paragraph but only conforms its scope to the situation the act's title describes. Also, this clarifies the apparent inconsistency of paragraph (2) and the first clause of present section 671.

Subtitle 6 - Abandoned Mine Drainage Control Act.

Subtitle 6 deals with the "Abandoned Mine Drainage Control Act." The commission decided not to codify any statutory provision dealing with specific issues of general obligation bonds, like those found presently in Art. 66C, §674C of this particular Act. This decision was based upon the fact that such provisions have little continuing statutory importance, and cause undue repetition and duplication in a Code. Such is not the case with special obligation and revenue bonds. The general obligation bond statutes are to be transferred to the session laws. No revisions are made in the transfer process; see general revisor's note to Title 7.

H. TITLE 8 - WATER AND WATER RESOURCES.

Subtitle 1 - In general

Subtitle 2 - Organization and authority of unit pertaining to water and water resources.

Subtitle 3 - Interstate water compacts

Subtitle 4 - Scenic Rivers Review Board and related program

Subtitle 5 - Maryland Potomac Water Authority

Subtitle 6 - Well drilling and well drillers

Part I - In general

Part II - Well drilling

Part III - Well drillers

Subtitle 7 - State Boat Act

Subtitle 8 - Appropriation or use of waters, reservoirs, and dams.

Subtitle 9 - Flood control and water supply powers and functions

Subtitle 10 - Shore erosion control

Subtitle 11 - Sediment control

Subtitle 12 - Watershed sediment and waste control

Subtitle 13 - Patuxent River Watershed

Subtitle 14 - Water Pollution control and abatement

Subtitle 15 - Penalty and fines; prosecutions; severability.

Title 8 contains 15 subtitles. It combines statutory material which presently appears in Articles 14B, 43, 66C, and 96A of the Code relevant to the subject matter of water and water resources. In the main, changes made are stylistic, organizational, and concern nomenclature and obsolete provisions. However, the commission does note the following items for the legislature's particular attention:

Subtitle 1 - In general.

Section 8-101(c) is new language which defines the term "appropriate county governing body". The term is proposed for use throughout Title 8 to avoid repetition and to cover both charter and non-charter county situations.

Subtitle 5 - Maryland Potomac Water Authority.

Under §8-513, the Maryland Potomac Water Authority is authorized to receive funds from the State and political subdivisions towards its obligations and duties. As the section presently reads, the State may lend the Authority money without restriction. The question is raised whether such authority complies with Article III, §34 of

the Maryland Constitution which establishes limitations on State loans.

Subtitle 6 - Well drilling and well drillers.

In §8-601, the present definition of the term "aquifer", which appears in Art.96A, §48 is deleted from subtitle 6. A reading of the relevant present statutes shows the word does not appear to be used.

Section 8-607(b) deals with the composition and appointment of the Board of Well Drillers. A substantive change in the manner of appointment of board members is made. As proposed, the Governor would appoint a member upon the Secretary's recommendation, with the advice and consent of the Senate. This is more logical than allowing the Secretary to make such an appointment with approval of the Governor. This change makes this appointment procedure uniform throughout this Article.

Section 8-612 concerns reciprocity provisions for well drillers' licenses. It presently appears as Art. 96A, §86 of the Code. The last sentence concerning levy of higher fees and greater restrictions on a non-resident whose State maintains such fees and restrictions for Marylanders is proposed for deletion by the Legislative Council because it is unnecessary. There are no extant reciprocal agreements and one is not likely to be entered into because Maryland has the most stringent license requirement and charges the highest fees. Furthermore, this provision is a poor interstate policy. The only other changes made are in style.

Subtitle 7 - State Boat Act.

Section 8-701(c) states the definition of "dealer". The present reference to outboard motor dealers is proposed for deletion at the suggestion of the Department. Section 8-710, which pertains to licensing of dealers, makes it plain that coverage is required only

for dealers in vessels.

Section 8-701(f). This section defines "manufacturer". A reference to importing is added to close the gap in the present laws and comply with the Federal Boat Safety Act of 1971.

Section 8-701(m) is new and defines "state of principal use". It is required by the Federal Boat Safety Act of 1971. The effect is to eliminate the 90 day reciprocation presently given numbered vessels from other states.

Section 8-701(n) defines "use" and is revised to conform to the Federal Boat Safety Act of 1971.

Section 8-701(o) defines "vessel". It is broadened to include equipment and gear normally considered part of a vessel to conform to federal regulations.

Section 8-703 concerns certain powers and duties of the department. Changes are proposed to conform to the Federal Boat Safety Act of 1971. In addition, in subsection (b) the word "document" is inserted in place of "certificate of number, title, permit, license, or registration". This change gives the department full authority and avoids confusion. The provision refers only to a manufacturer's or dealer's license since this is the only license document the department issues. Unlike other states, Maryland does not require a boat operator's license.

The present reference to a permit and a registration is confusing. The department advises that it issues no permits or registrations for boats and vessels. Also, the statutes within this subtitle, except for §8-712(c) and (f) do not refer to such documents. They only refer to certificates of number and of title.

Section 8-711(a) concerns hull identification numbers of a vessel. It replaces present Article 14B, §4N(a) of the Code and conforms to the Federal Boat Safety Act of 1971. The federal law now requires a vessel whose construction starts after October 31, 1972 to have a hull identification number of a certain type, permanently affixed outside the transom above the water line.

Section 8-712(d) concerns issuance of a certificate of number. The present reference to identification number is deleted to avoid confusion with hull identification numbers. Reference to placement on the forward half of the vessel conforms with the requirements of the Federal Boat Safety Act of 1971.

Section 8-724 pertains to boating accidents. In subsection (b), changes in requirements for submitting a report and exemptions from those requirements are patterned after the Federal Boat Safety Act of 1971. In subsection (c), reference to the vessel's owner is added to make the accident report similar to the statutory scheme of the motor vehicle laws. Subsection (e) is a combination of Chapters 375 and 826, Acts of 1973. The gross negligence standard of Chapter 375 has been used instead of the ordinary negligence standard of Chapter 826.

Subtitle 11 - Sediment control.

Section 8-1102 concerns exemptions from this subtitle. New language is added to emphasize that a county or municipality may issue a permit only for those matters exempted by this section, and not for matters exempted by county ordinances.

Subtitle 12 - Watershed sediment and waste control.

The present provisions of Art. 66C, §§411V-411AD concerning Patuxent River watershed waste control, and §§411AE-411AO concerning Severn River watershed waste control, as a result of their substantive

similarity, are combined into the provisions of Subtitle 12. Accordingly, Art. 66C, §§411AE-411AO are proposed for repeal as referred to in the general revisor's note to Title 8.

Section 8-1205 establishes a lien in favor of the county or governmental unit for certain funds expended. In order to protect innocent third parties, language is added in §8-1212 to require recording and indexing of the liens. This proposal is identical to the one raised and discussed earlier in this report in Title 3, Subtitle 1, concerning liens created in favor of the Maryland Environmental Service.

Section 8-1211 protects a person with a riparian right to use water in the Severn River watershed for agricultural purposes from any condemnation by the State or local government. It appears that this refers to every type of condemnation. The question raised is whether such an exception is intended or desirable.

General revisor's note to Title 8.

Of particular note in the general revisor's note to Title 8, on pages 218 through 221, is Art. 66C, §§13B and 22-30 concerning the authority and procedures for extracting sand, gravel, rare earth and minerals from the Chesapeake Bay and Potomac River. The provisions were enacted by Ch. 574, Acts of 1951. They appear to be in obvious conflict with the subsequent enacted wetlands statutes, Art. 66C, §§718-730, Ch. 241, Acts of 1970, and therefore are proposed for repeal. Provisions relative to dredging sand, gravel, rare earth and minerals of the Chesapeake Bay and Potomac River seem to fall within the definition of dredging and filling of wetlands in §719, which is proposed §9-101.

I. TITLE 9 - WETLANDS AND RIPARIAN RIGHTS.

Subtitle 1 - In general

Subtitle 2 - State wetlands

Subtitle 3 - Private wetlands

Subtitle 4 - Lands formed by channel excavation in Sinepuxent, Isle of Wight and Chincoteague Bays.

Subtitle 5 - Penalties, Fines and Severability.

The statutory material contained in Title 9 presently appears in Article 66C. It is the State wetlands law, as enacted by Ch. 241, Acts of 1970 and subsequently amended. Few substantive changes are proposed. The commission's revisions largely have been stylistic and organizational. The following points are noted for special attention:

Subtitle 1 - In general.

Section 9-101(c) contains a new definition of "circuit court" applicable to this title. It is intended to clarify the appeal procedures provided for in §§9-305 and 9-308(b). The sections concern appeals to a circuit court for the county where the land lies. The present statutes give no indication in which court in Baltimore City the appeal is prosecuted if the land lies in Baltimore City. The commission has selected the Baltimore City Court to hear the appeal because a jury trial is authorized in this court and administrative appeals are heard in this tribunal. There is statutory precedent for this; see, for example, Art. 41, §§249 and 256 and Art. 66B, § 2.01.

Subtitle 3 - Private wetlands.

Section 9-302(c) concerns the Maryland Agricultural commission acting upon proposed rules and regulations for filling and dredging. It is noted that the requirement that the Secretary of Natural Resources

seek the advice and consent of the commission in this regard applies only to private wetlands. The commission has no authority to pass upon proposed rules and regulations affecting State wetlands.

Section 9-305 provides for judicial review of an administrative appeal under §9-304 by appeal to the circuit court and to the court of appeals. However, present Art. 66C, §728, which appears in §9-308, provides for judicial review of a decision of the board of review by appeal only to the circuit court. The commission proposes that provision should be made for a further right of appeal to the Court of Appeals in §9-308 as in §9-305.

Section 9-310 authorizes courts to restrain any violation under Subtitle 3 of the title. Under the present statute, Art. 66C, §730, the Superior Court of Baltimore City is given this equity jurisdiction. The commission proposes vesting this jurisdiction in the Circuit Court or Circuit Court No. 2 for Baltimore City because the Superior Court of Baltimore City normally does not exercise equity jurisdiction.

Subtitle 4 - Lands formed by channel excavation in Sinepuxent, Isle of Wight, and Chincoteague Bays.

Section 9-403 concerns use of certain land for conservation and for certain hunting and fishing thereon. It is revised in light of the Court of Appeals decision in Bruce v. Director, 261 Md. 585 (1971), which was previously discussed in connection with revisions made in Title 4 - Fish and Fisheries. The court's holding invalidated as unconstitutional certain residential and territorial requirements for fishing licenses. As revised, the section still permits anyone who may lawfully hunt and fish in Worcester County to hunt and fish on these lands.

J. TITLE 10 - WILDLIFE.

Subtitle 1 - In general

Subtitle 2 - Organization and authority of unit pertaining to wildlife - in general.

Subtitle 3 - Hunters' licenses

Subtitle 4 - Hunting restrictions - in general

Subtitle 5 - Restrictions relating to species hunted for their fur, pelt, or hide.

Subtitle 6 - Wild waterfowl

Subtitle 7 - Field trials and use of hunting dogs.

Subtitle 8 - State wildlife management areas and hunting grounds

Subtitle 9 - Raising game birds and mammals in captivity

Subtitle 10 - Wild waterfowl policy

Subtitle 11 - Penalties and fines, searches, seizures and forfeitures and severability.

The statutory material contained in Title 10 presently appears in Art. 1A and Art. 66C. In addition to stylistic and organizational changes, it represents a completely new format for the wildlife laws.

The scope of some of the present Code sections relevant to Title 10 relate to both fish and fisheries and game and wildlife. As discussed earlier in reference to Title 4 - Fish and fisheries, this reflects the fact that both areas of law previously were administered by the same State governmental unit. Title 10 omits provisions of Art. 66C relating to fish and fisheries since they are included within Title 4. This division conforms to the reorganization of the Department of Natural Resources under Ch. 348, Acts of 1972, which created a separate Fish and Fisheries Administration and a Wildlife Administration.

The present wildlife statutes are a haphazard collection of provisions lacking any coherent organizational framework. In an attempt to bring order to a chaotic situation, the commission has grouped the various species of mammals and birds treated by the Code into general and specific categories. Species of wildlife are grouped into general categories on the basis of whether a species is game or non-game wildlife. Specific categories, with one exception, are created in light of the natural habitat of certain species. New definitions based on the new classifications are set forth in §10-101. Appendices A and B, which are attached to this report, show the complete breakdown of "wildlife" into the various categories and sub-categories which are discussed below.

"Wildlife" is the most general category of the proposed scheme and includes every species mentioned in the title. "Wildlife" means "every living creature, not human, wild by nature, endowed with sensation and voluntary motion and including mammals, birds, and amphibians and reptiles, which spend a majority of their life cycle on land, or any part, egg, offspring, or dead body of any of them" (§10-101(z)). In a descending schematic framework, wildlife is categorized into four classifications: non-game birds and mammals; game birds and mammals; terrestrial reptiles; and terrestrial amphibians. The definition pertains only to terrestrial amphibians and reptiles because Title 4 - Fish and Fisheries - includes aquatic reptiles and amphibians within the definition of fish; see §4-101(e). Reptiles and amphibians are included only within this general category. The phrase "or any part, egg, offspring, or dead body of any of them" is added by action of the Legislative Council. Identical language appears in Title 4; see §4-101(e). The phrase was added to help enforcement of the provisions of Title 4 and Title 10.

Game birds and mammals and non-game birds and mammals are distinguishable by their definitions; see §10-101(g) and §10-101(l). "Game birds and mammals", defined as "game" in Art. 66C, §112(d), includes all species which may be hunted during open season. The definition of "non-game birds and mammals" is derived from Art. 66C, §135, and includes all birds and mammals for which there is no season. With few exceptions, non-game birds and mammals may not be hunted.

The game birds and mammals classification of wildlife is divided into four sub-classifications: (1) forest game birds and mammals (§10-101(d)), (2) upland game birds and mammals (§10-101(t)), (3) wetland game birds and mammals (§10-101(u)), and (4) fur-bearing mammals (§10-101(f)). The nomenclature of the first three sub-categories is based on the particular habitat of the birds and mammals included within each sub-category. For example, "forest game birds and mammals" inhabit wooded areas. "Upland" is a term used by zoologists to refer to those birds and mammals dwelling in open space areas that are not necessarily elevated. "Wetland game birds" dwell in shoreline areas and in water. This definition includes all species encompassed within the definition of "wild waterfowl". The definition of "wild waterfowl" is added because numerous sections of Art. 66C only relate to wild waterfowl and not to all wetland game birds.

The fourth sub-category, "fur-bearing mammals", presently appears as Art. 66C, §112(c), and is retained because the present Code sets forth numerous provisions pertaining to "fur-bearing mammals." The habitat-related classification is not used here because all "fur-bearing mammals" do not have the same native environment. Rather, the beaver, mink, muskrat, and otter are deemed "fur-bearing mammals" because they are the only ones the law permits to be trapped for their fur.

Appendix B shows the species included within each of the four sub-categories and indicates the present nomenclatoral designation of each in Art. 66C. In addition, Appendix B gives synonyms used in the present sections of Art. 66C for the species included within each sub-category. As can be seen from Appendix A, a species does not occupy more than one sub-category.

The non-game birds and mammals classification of wildlife is divided into two sub-classifications: non-game mammals and non-game birds.

The non-game birds also are classified as "protected birds" (§10-101(o)) or "unprotected birds" (§10-101(r)). Unlike game birds, "protected birds" may never be hunted and are protected by law. "Unprotected birds", on the other hand, are frequently exempted from the present provisions restricting the hunting of wild birds; see, for example, §10-401(a). The present provisions of Art. 66C do not define protected mammals or unprotected mammals although Art. 66C, §142 does refer to "game animals protected by law; see §10-410(1) and accompanying revisor's note.

The following matters are worthy of particular attention:

Suttitle 1 - In general.

Section 10-101 sets forth certain definitions applicable throughout the title. The following new definitions are added pursuant to the organizational scheme described above:

(a) §10-101(d), "Forest game birds and animals".

(b) §10-101(f), "Fur bearing mammals".

(c) §10-101(l), "Non-game birds and mammals".

(d) §10-101(o), "Protected birds".

(e) §10-101(r), "Unprotected birds".

(f) §10-101(t), "Upland game birds and mammals".

(g) §10-101(u), "Wetland game birds".

(h) §10-101(v), "Wild birds".

(i) §10-101(w), "Wild mammals".

(j) §10-101(x), "Wild quadruped".

(k) §10-101(y), "Wild waterfowl".

(l) §10-101(z), "Wildlife".

New language is added to indicate that "fur" or "pelt" includes the fur or skin and fur of any wild quadruped.

Section 10-101(i) defines "hunt". New language derived from the definition of "catch" in Title 4 is added to the definition of "hunt" in order to encompass any taking of birds or mammals.

Section 10-101(j) defines "Migratory birds". The new definition is added because several sections of the Code refer to "migratory birds" which are defined in Part I, Title 50, §1.11 of the Code of Federal Regulations.

Section 10-101(k) defines "Nighttime". It is derived from an identical provision set forth in present §132(e). It is set forth here because it applies to several subtitles within Title 10.

Section 10-101(n) defines "person". The definition is identical to the one proposed in earlier titles; see, for example, Titles 4 and 8.

Section 10-101(s) defines "unprotected mammals". It is added by action of the Legislative Council to clarify the present law which refers to unprotected mammals.

Section 10-101(t) defines "upland game birds and mammals" as mentioned earlier. In particular, enumerated birds and mammals are classified as upland because their habitats are open lands or farm lands rather than forests or wetlands. The reference to "partridge" in the present definition of "game birds" is omitted because it is confusing. In New England, "partridge" is used to refer to the ruff

grouse (included in the definition of "forest game") while in the South "partridge" usually refers to "quail" (included in the definition of "upland game").

Section 10-101(u) defines "wetland game birds" as mentioned earlier. In particular, the present definition of "game birds" in §112(b) includes "mudhens". They are not included here because the term refers to the same birds usually called "clapper rails" or "rails". The term "mergansers" is added to comply with the federal law which includes this species in the classification of wild waterfowl which are included within the proposed definition of "wetland game birds". The term "shorebirds" is retained and includes curlew, plovers, sandpipers, yellow legs, and willet. The term "surf birds" is omitted because it is synonymous with "shorebirds". "Tattlers" is omitted because it is a term used to refer to yellow legs and willet which are "shorebirds".

Section 10-101(x) defines "wild quadruped". It is new language reiterating the dictionary meaning for the Code user's convenience.

Subtitle 2 - Organization and authority of unit pertaining to wildlife - in general.

Section 10-205 concerns the adoption of rules and regulations affecting wildlife. In subsection (a), the term "wildlife" is used instead of "wild birds and mammals" as set forth in the original statute in Art. 66C, §115. The effect is to include terrestrial amphibians and reptiles within the Secretary's rule-making power. In subsection (b), reference to holders of anglers' licenses is deleted as irrelevant to wildlife matters. In subsection (c), the phrase "other emergency" is used instead of the present phrase "similar emergency" because the thrust of this subsection is emergency situations.

In subsection (d), new language is added to require mailing rules and regulations to the clerk of the Court of Common Pleas because the present language does not indicate where they are to be filed in Baltimore City. This addition complies with department practice.

In subsection (e), the $5 fine is retained because it is in addition to the one imposed by the uniform penalty provisions of this title.

Section 10-206 refers to disposing of wildlife "in the best interest of the State" and is proposed for deletion. It is assumed that the department always performs its duties in such a fashion.

Section 10-210 is new language derived from Art. 66C, §125 concerning protection of endangered species. An identical provision appears in Title 4 as §4-210.

In subsection (1) (2), the word "premises" is added instead of "business records" in light of recent Supreme Court cases which have severely limited the scope of warrantless searches incident to a lawful arrest. Coolidge v. New Hampshire, citing Chimel v. U.S., 395 U.S. 752 (1969), declared that contraband coming into plain view during a "search of the arrestee's person or the area within his immediate control" may be seized without a warrant. Chimel defined this area as "the area from within which he (the arrestee) might gain possession of a weapon or destructible evidence." (395 U.S. at 763).

The underlying justification for this exception to the Fourth Amendment, which permits searches authorized by a search warrant issued upon probable cause, is the necessity of protecting the arresting officer. This line of reasoning cannot support the searching of business records. Consequently, the word "premises" is used to permit the type of search authorized by Chimel and Coolidge, both supra.

Subtitle 3 - Hunting licenses.

Section 10-301 concerns hunters' licenses. Aside from organizational changes, new language is added to make the Baltimore County license applicable to "non-game wildlife" because of the proposed definition of this term which encompasses vermin and unprotected birds.

Also, in contrast with various different residency requirements for fishing licenses in Title 4, there is no specific period of residence set for a hunting license. According to the department, residence is based on residing and voting in Maryland and having a Maryland driver's license.

Section 10-302 concerns sale of hunters' licenses by persons engaged in retail businesses. The reference in subsection (b) to the county resident hunter's license is proposed for deletion because Ch. 103, Acts of 1972, abolished the county hunter's license. The penalty in subsection (e) is retained because it is in addition to those provided by the uniform penalty provision.

Section 10-306. The term "wildlife officer" is proposed for deletion in this and subsequent sections and "Natural Resources Police Officer" is substituted. Chapter 348, Acts of 1972, charge the Natural Resources Police Force with enforcing the natural resources laws. The terms "sheriffs," "constables", and "other officers" are deleted and the term "any law enforcement officer" is used instead.

Section 10-311 concerns inadvertent violation of §10-306, involving the duty to possess and show hunter's license while hunting. This section is new language derived from a similar provision of Art. 66C, §130 of the Code. The penalty provision applicable for violating §10-306 is the uniform penalty provision of this title. While the potential penalty is greater under this uniform penalty section,

the rest of the provisions of §130 are unchanged. Thus, the court has the discretion to reduce the penalty in half if the violator displays his license, establishes that it was issued prior to his arrest, and shows that his violation was due to his inadvertence.

Section 10-312 concerns confiscation of a hunter's license. New language is added to make clear that it is in addition to any other provided penalty. Also, provision is made to protect an innocent party whose lost license is used by another.

Section 10-313 concerns trapping permits. The term "propagating" is proposed for deletion and "managing" is substituted therefor because it is a more modern term which encompasses the concept of propagating, restocking, and reducing species of wildlife where necessary. The reference to restocking is proposed for deletion because it is included in management.

The Legislative Council added the reference to "wildlife" and proposed for deletion the present reference to "game birds and game animals". According to the department, the present section is limited because the public was concerned only with game birds and mammals when this section was enacted in 1943.

Subtitle 4 - Hunting restrictions - in general.

Section 10-401 concerns hunting, possessing and selling certain wild birds. In subsection (a), new language is added to exempt game birds during open season. The present language does not exempt game birds although Art. 66C, §132(m) clearly allows a person to hunt game birds during open season. In subsection (b) new language is added to indicate that this subsection is subject to federal rules and regulations which presently prohibit anyone from shooting hawks and owls for any purpose.

Subsection (c), derived from Art. 66C, §136, prohibits the

selling of non-game birds, that is, protected and unprotected birds. As drafted, the section permits a person to hunt and possess unprotected birds but prohibits their sale. The question raised is whether unprotected birds should be exempted from the provisions of subsection (c).

Section 10-406 concerns open season for fur-bearing mammals. New language is added to indicate that this section creates an open season for fur-bearing mammals. This term includes beavers, which are not regulated by the present statute. According to the department, there is no reason for this omission, since the department has established a beaver season falling within this period pursuant to the authority granted to it by §175(c). The present law was enacted prior to 1966 when it was illegal to trap beaver. The verb "to trap" is retained in this and subsequent sections despite its inclusion in the definition of "hunt" in §10-101(i). Most fur-bearing mammals are trapped, rather than hunted in the dictionary sense of the word, and, therefore, this verb is used throughout this subtitle for the convenience of the Code user.

Section 10-407 concerns certain open seasons. Reference to mergansers is included to comply with federal regulations which include this species in the definition of wildfowl; see 50 C.F.R. §1.11.

Section 10-408 sets forth general restrictions on hunting wildlife. Subsection (a) presently appears as Art. 66C, §132(d) of the Code. The present provision permitting hunting when the ground is covered with snow is proposed for deletion because it is superfluous.

In subsection (f), new language is added to indicate that shooting from paved and unpaved roads is prohibited in Kent and Queen Anne's counties and in the Hanover municipal waterworks.

Subjection (j) is new language derived from Art. 1A, §30 of the Code and set forth here for organizational purposes. Art. 1A, §30 relates to "birds and mammals" and consequently, refers to domestic birds and mammals. The provisions of this subsection, however, are restricted to wild birds and mammals due to the nature of this title. For this reason, Art. 1A, §30 is retained. The phrase limiting this prohibition to aircraft in flight is proposed for deletion in order to prohibit any hunting from aircraft.

Subsection (l) presently appears as Art. 66C, §142 of the Code, and prohibits using ferrets or weasels to hunt game birds and mammals "protected by law". Similar language is used in present section 143. No provision of the present Code, however, defines or describes "wildlife or game birds or mammals protected by law". The department, also, has no official definition of wildlife protected by law and is presently proclaiming in a haphazard fashion which species are deemed protected by law.

Section 10-412 contains three provisions which are less protective than federal rules and regulations, and thus may invalidate the entire section as indicated by the opinion of the Attorney General, September 18, 1970. Federal rules and regulations enacted pursuant to the Migratory Bird Treaty Act, July 3, 1918, 40 Stat. 755, 16 U.S.C. 703 et seq, make it unlawful to distribute feed "so as to constitute a lure, attraction, or enticement". 50 C.F.R. §10.21. The present language set forth here makes it unlawful to distribute feed so as to "lure migratory game birds". Secondly, the Maryland statute permits hunting wetland game birds in areas "where feed has been scattered as a result of normal agricultural operations or other natural causes." The federal regulations, however, permit such hunting where feed is "scattered solely as the result of normal agricultural planting or

harvesting." Lastly, the federal statute does not require that any intent or knowledge be shown as a prerequisite to prosecution. The Maryland law, on the other hand, allows prosecution only of a hunter who "knows or in the exercise of reasonable diligence should have known" that feed has been set out to lure game birds.

As the opinion of the Attorney General points out, the federal law permits the states and territories to make or enforce laws regulating migratory game birds if they are not inconsistent with federal law and give further protection to migratory game birds. The Maryland statute does not appear to fall within this category and gives less protection. The question, thus, is whether the legislature should make the State statute consistent with the federal law and thereby assure its enforceability. An amendment making the Federal and State provisions consistent would also avoid a possible source of confusion for hunters.

Section 10-413 concerns certain provisions pertaining to dogs and cats. New language is added to allow a person to carry a hand gun when training dogs as permitted by the gun control act, Ch. 13, Acts of 1972.

Section 10-415 concerns deer hunting in general. The provision in subsection (g) making it unlawful to hunt a deer "taking refuge in" water is proposed for deletion. The commission understands that deer either run through shallow water (in which event they may be hunted) or they swim in deeper water (in which event they may not be hunted). Under no circumstances does a deer take refuge in "water without swimming".

Section 10-417 pertains to exportation of game birds or mammals. The provisions prohibiting shipment of game beyond county limits is proposed for deletion because the abolition of the county hunter's

license makes it obsolete.

In the last provision of subsection (a), the phrase "without any county, city or town of the State" is proposed for deletion and "within or outside the State" substituted therefor. This substitution is made to express more accurately the legislative intent to prohibit any shipment of certain game birds and mammals.

Section 10-418 concerns scientific permits. New language is added to indicate to the Code user that certain acts are permitted despite the prohibitions and restrictions of other provisions of this title.

Subtitle 7 - Restrictions relating to species hunted for their fur, pelt, or hide.

Section 10-504 concerns restrictions relating to beaver, muskrat, and other fur bearers. The phrase "to hunt or trap" is used in this section and throughout this subtitle even though trapping is included in the definition of "hunt" in §10-101(i). The verb "to trap" is added because it is particularly germane to the subject matter of this subtitle and may be necessary to emphasize to the Code user that this subtitle regulates trapping.

Section 10-505 pertains to transportation of furs and pelts. New language is added making the act of transporting and shipping illegal to maintain consistency with the provisions making it illegal to offer to do these acts.

Subtitle 6 - Wild waterfowl.

Section 10-601 sets forth definitions applicable to this subtitle. A number of new definitions are set forth to clarify the present language. First, the definition of "booby, brush or stake blind" is proposed for deletion. This term apparently is used by the present Code to refer to two different types of duck blinds: an

offshore structure built on pilings and a specific location in the water where a stake is placed so that a boat or raft may be anchored or tied to it. The proposed draft defines the first as a stationary blind and the second as a blind site to avoid confusion.

In addition, all references to the various types of boats used for hunting wetland game birds are proposed for deletion in Subtitle 6. The word "gunning rig" is used instead because the thrust of the present language is the permissible dimensions of boats in certain waters and the licensing of them. The word "boat or floating blind", which is a type of gunning rig, is used where the present provisions pertain only to them.

Consequently, the following new definitions are added to Subtitle 6:

(a) §10-601(b), "Blind site"

(b) §10-601(c), "Boat or floating blind"

(c) §10-601(e), "Gunning rig"

(d) §10-601(f), "Stationary blind".

Section 10-603 concerns shooting waterfowl. New language is added to clarify the legislative intent to allow shooting crippled birds previously wounded.

Section 10-607 pertains to gunning rig licenses. Subsection (a) is new language added to indicate that a gunning rig license is required. Although several present sections, namely §§151 and 159, refer to licensed gunning rigs, none of these provisions specifically provide that a license is required. In light of the definition of "gunning rig" in §10-601(e), the specific boats considered gunning rigs are not named. Language is added to indicate to the Code user that this license is in addition to a hunter's license. This subsection is addressed to residents in light of present §159(a) which provides

that licenses required by §151 - Methods of Hunting; Boats - may be issued to any resident. The provision exempting a person using a gunning rig at a licensed blind site is derived from Art. 66C, §151(i).

Section 10-608. The Legislative Council added a new provision to this section to indicate that a resident co-owner must accompany a non-resident on a gunning rig.

Section 10-610 pertains to the minimum size of certain gunning rigs, and is derived from Art.66C, §151(b). The present section allows sneak boats and bushwack rigs, if they meet the dimensions specified in §167, in certain waters. It then provides that a skiff, canoe, or row boat may be used in the same waters. According to the department, the thrust of this section is not the type of boat used but its dimensions. This section, consequently, is revised to require that only gunning rigs of specified dimentions may be used in certain waters.

Section 10-614 is new language, derived from Art. 66C, §§154, 157(b) and 159, and sets forth the licensing requirements for stationary blinds and blind sites. Subsection (a) is a new definition designed to indicate the required amount of shoreline.

Subsections (g) and (h) raise the question of whether a person who does not apply for a blind license by the statutory deadline may apply for a license for an area not licensed after November 1. The present statute seems to indicate that this is not permissible. The department, however, sees no rationale for this prohibition.

Subtitle 7 - Field trials and use of hunting dogs.

Section 10-701 defines "special dog training area". It is a new definition derived from a similar provision of Art. 66C, §146 and added for the convenience of the Code user.

Section 10-703(a). Present language prohibits "shooting at" game and has been translated into a prohibition against "attempting to shoot" game.

Subtitle 8 - State wildlife management areas and hunting grounds.

Sections 10-801 through 10-807 of Subtitle 8 relate to State wildlife management areas and hunting grounds and are derived from Art. 66C, §§186 through 195 of the Code. The provisions pertaining to fish are proposed for deletion because similar provisions appear in Subtitle 4 of Title 4.

Subtitle 9 - Raising game birds and mammals in captivity.

Section 10-903 concerns sale and shipment of game. Subsections (a) and (b) presently appear as Art. 66C, §181(a) of the Code, and have been divided into subsections for the purpose of clarity. The word "metal" is proposed for deletion and "tag" is substituted therefor because of the practice of using cloth as well as metal tags.

Section 10-906 relates to trespassing on game preserves. The reference to aiders or abettors is proposed for deletion in light of subsection (b) which prohibits aiding and abetting. The present reference to roosting game birds is proposed for deletion because this prohibition is encompassed within the general prohibition of this section. In addition, new language derived from Art. 27, §235 is added for organizational purposes. The comma between "sulphur" and "fire" is proposed for deletion because the only method of hunting birds or mammals by sulphur is by sulphur fire. The present provision in Art. 27, §236 which makes the prohibitions of this section applicable to game preserves and refuges enclosed with fencing six feet in height is omitted because the analogous prohibition of Art. 66C, §183 relates to fencing of any height. Finally, the reference to daytime or nighttime in the last sentence of subsection (a) is

proposed for deletion because this prohibition applies at any time.

Section 10-907 applies to regulated shooting grounds. It is new language derived from the first two sentences of Art. 66C, §181(b) of the Code. Language is added to indicate that any person may apply for a regulated shooting ground permit. In addition, the present provision requiring a fee of "$25 per season" is omitted since it is the practice of the department to require only an annual fee of $25.

Subtitle 10 - Penalties, fines, searches and seizures and forfeitures and severability.

The provisions of this subtitle are identical to those of previous titles with reference to uniform penalty provisions. This section is proposed to clarify the manner of collection of any fines levied on this subtitle. Section 10-1003, dealing with search warrants, is identical to the one in Title 4 which has been previously discussed.

Section 10-1004 also is modeled after a similar provision in §4-1204 which is derived from Art. 66C, §121(b) and (c). Although this section, and §§10-1005 and 10-1006 may result in an unconstitutional search and seizure, the cases recently decided by the Supreme Court would permit the seizure of any wildlife found within the offender's immediate control pursuant to a lawful arrest; see, e.g. Coolidge v. New Hampshire, 403 U.S. 443 (1971); see also revisor's note to §10-210(e). Any wider seizure would seem to be unconstitutional. Instead of revising this section to prevent any potential unconstitutional searches and seizures, the staff decided to retain the present law and let case law govern its day to day operation.

Sections 10-1005 and 10-1006 are provisions relating to seizures

and disposition of wildlife and certain property. They are modelled after similar provisions in Title 4 - Fish and Fisheries - which were referred to earlier and discussed. Forfeiture is made a discretionary matter by the use of the term "may".

Subsection (b) of §10-1006 is new language modelled on an identical provision added by the Legislative Council to Title 4 to protect innocent third parties.

General revisor's note to Title 10. (Pages NR 113 through NR 117).

The general revisor's note lists the particular sections proposed either for repeal or deletion as part of the revision of the wildlife statutes. The reasons for such proposals are given. In particular, Art. 66C, §140 is proposed for deletion. Its provisions are superseded by the Migratory Bird Conservation Act, 16 U S C, §705, enacted in 1971.

V. REMAINING PORTIONS OF HB 1.

In brief, the other enacting sections of HB 1 concern the following:

Section 2. This is a general repealer section embodied in or made unnecessary by the revision process. Specific disposition of sections may be determined by the cross-reference tables.

Section 3. This section transfers Art. 66C, §§409A-409U, dealing with Registered Professional Foresters to Art. 56 as earlier discussed in connection with Title 5 - Forests and Parks.

Section 4. This section transfers to the session laws Art. 66C, §674C, the Mine Reclamation and Water Quality Restoration Loan of 1970 as earlier discussed in connection with Title 7 - Mines and Mining.

permit a chartered county to exercise the power and authority transferred to Art. 25 relating to public recreation and parks. Also, Sec. 5 amends Art. 41, §221A to add the Maryland Board of Examiners of Landscape Architects and the State Board of Registration for Foresters as units within the Department of Licensing and Regulation. This conforms to proposed transfers of statutory provisions relating to these units as earlier discussed.

Section 5 also amends Art. 56, §277(a) to substitute the reference to the Department of Licensing and Regulation for the Department of Natural Resources with reference to the Maryland Board of Examiners of Landscape Architects.

Section 6. This section adds a new §7A to Art. 23A - "Corporations - Municipal" to make clear an incorporated municipality may exercise any power or authority conferred by Art. 25 concerning public recreation and parks, which statutes are proposed for transfer from Art. 66C to Art. 25.

Section 6 also adds §2A to Art. 41 to provide a section which clearly enumerates the principal departments of the executive branch of State government. This will be convenient for the Code users.

Sections 7 through 12. These sections provide for the implementation, construction, and effective date of the Natural Resources Article.

VI. CONCLUSION - MATTERS BROUGHT TO ATTENTION OF GENERAL ASSEMBLY.

At several points in this report, the Commission has called certain matters to the attention of the General Assembly. Most of these concern issues of substantive policy, resolution of which lies outside the Commission's mandate. But while these matters require legislative consideration, the Commission does not suggest that any or all of them need be resolved at the special session. Some of them may require extensive study, and many could appropriately be handled by the Legislative Council, looking to the introduction of legislation in 1974.

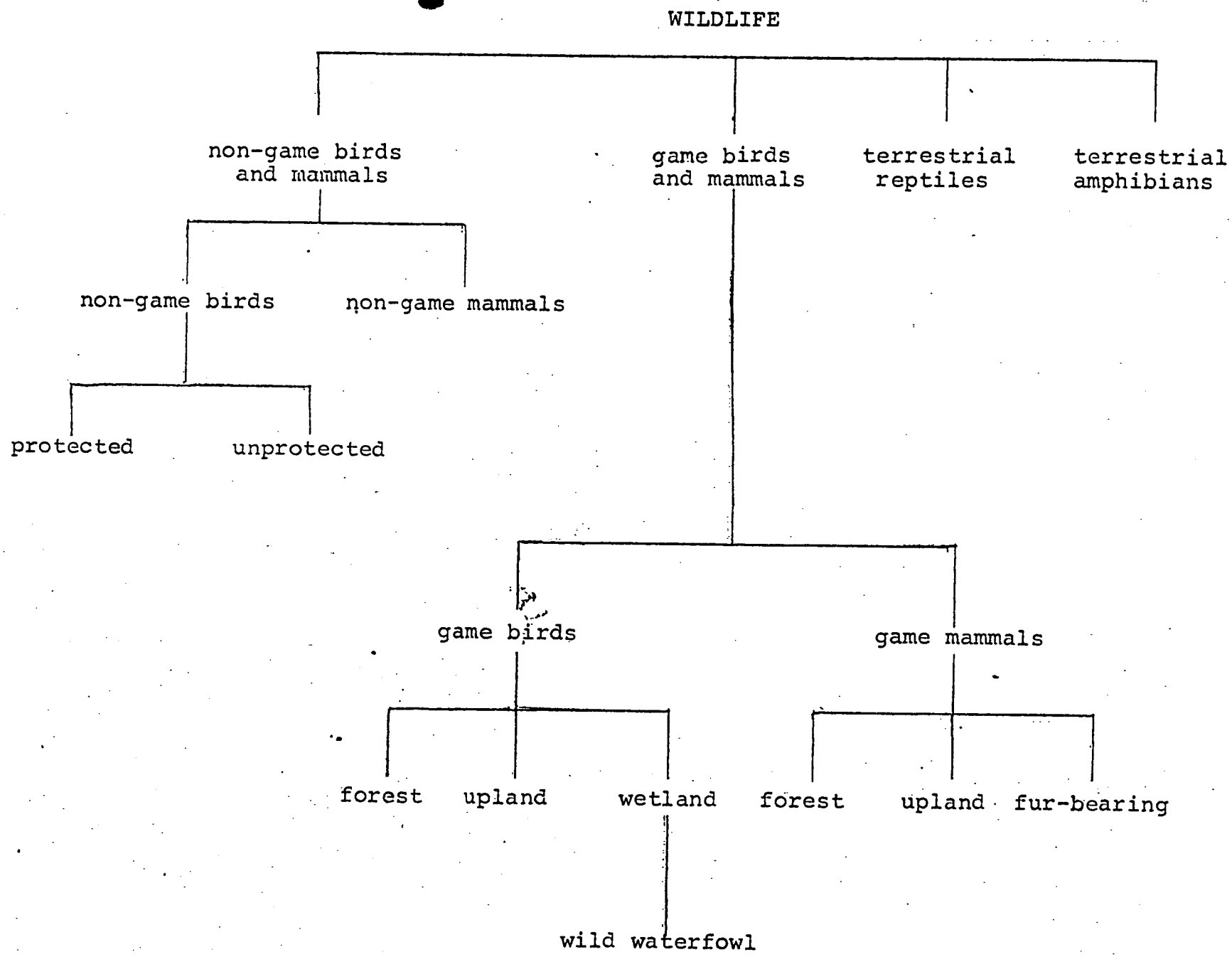
The mention of these items is intended primarily as an aid in determining what matters should be given further consideration following the special session.

Respectfully submitted,

William S. James (SC)
William S. James
President of the Senate
Chairman

Thomas Hunter Lowe (SC)
Thomas Hunter Lowe
Speaker of the House of Delegates
Vice-chairman

APPENDIX A


WILDLIFE
non-game birds and mammals
game birds and mammals
terrestrial reptiles
terrestrial amphibians
non-game birds
non-game mammals
protected
unprotected
game birds
game mammals
forest
upland
wetland
forest
upland
fur-bearing
wild waterfowl

APPENDIX B

PRESENT CODE DEFINTION	PROPOSED DEFINITION	SPECIFIC SYNONYMN
	Upland game birds and mammals	
game birds	blackbirds	
" "	doves	
" "	pheasant	
" "	quail	
" "	woodcock	
game animals	rabbit	
" "	hare	
	Forest game birds and mammals	
game birds	ruffed grouse	
" "	turkey	
game animals	bear	
" "	deer	
" "	opossum	
" "	raccoon	
" "	fox, grey, and red squirrel	
game birds	Wetland game birds	
" "	wild waterfowl	
" "	coots	
" "	ducks	river and sea ducks
" "	geese	
" "	swans	
" "	brant	
" "	gallinules	
" "	grebes	
" "	loons	
" "	reedbirds	

(Appendix B cont.)

game birds	rails	mudhens
" "	shorebirds	curlew, sandpipers, surf birds, tattler, yellow legs, willet
" "	snipe	jacksnipe
Fur-bearing animal	Fur-bearing mammal	
" "	beaver	
" "	mink	
" "	muskrat	
" "	otter	