STATE OF NEW YORK

S. 2993 A. 2352

2017-2018 Regular Sessions

SENATE - ASSEMBLY

January 18, 2017

IN SENATE -- Introduced by Sen. LAVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

IN ASSEMBLY -- Introduced by M. of A. THIELE -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to the powers and duties of enforcement officers

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 4 of section 71-0907 of the environmental conservation law, subparagraph 5 of paragraph f as added by chapter 366 of the laws of 1981, is amended to read as follows:

4. Officers named in subdivision 1 **of this section** shall have power:

a. To execute all warrants and search warrants issued for violation of the Fish and Wildlife Law and to serve subpoenas issued for examination, investigation or trial of offenses against any of its provisions;

b. To search without search warrant any boat or vehicle of any kind, any box, locker, basket, creel, crate, game bag, package or any container of any nature and the contents of any building other than a dwelling whenever they have **probable** cause to believe that any provision of this article or of any law for the protection of fish, shellfish, crustacea, wildlife, game or protected insects has been or is being violated, and to use such force as may be necessary for the purpose of examination and search;

c. To search any dwelling and its contents, provided they have a search warrant to do so;

d. To arrest without warrant any person committing in their presence a misdemeanor under the provisions of this chapter listed in section 71-0501 or under titles 5 through 15 inclusive and title 33 of this

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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article and to take such person immediately before a magistrate having jurisdiction for trial;

e. To seize as evidence without warrant any fish, shellfish, crustacea, wildlife, game, or parts thereof, protected insects or plumage [~~as defined in section 11-1729~~], whenever they have **probable** cause to believe it is possessed or transported in violation of law, or it bears evidence of illegal taking, or it is possessed or transported under circumstances making the possession or transportation presumptive evidence of illegal taking;

f. To seize as evidence without warrant

(1) Any net, trap or other device constituting a nuisance as defined in section 71-0915 **of this title**;

(2) Any net, trap or device other than a boat, a vehicle, or aircraft or a firearm when they have **probable** cause to believe that its possession or use is in violation of any provision of the Fish and Wildlife Law or regulation pursuant thereto;

(3) Any firearm, when they have **probable** cause to believe that it has been used in a violation of the Fish and Wildlife Law constituting a misdemeanor involving the illegal taking or attempting to take wild deer;

(4) Any rakes, tongs, dredges, or device other than a boat or vehicle used, or in possession for purpose of use, for the taking of shellfish **when they have probable cause to believe that its possession or use is** in violation of subdivisions 1 or 2 of section 13-0309 **of this chapter**. For the purposes of this paragraph "device" includes a bird, dog, or other animal used in or as an aid in taking fish or wildlife, any jack light, spot light or other artificial light other than a headlight attached in proper position to a motor vehicle, any hunting appliance or apparatus and any fishing or netting gear or tackle. This paragraph does not limit any power of seizure pursuant to warrant.

(5) Any boat or vehicle, when they have probable cause to believe it has been used for the taking of shellfish in violation of subdivision 2 or 3 of section 13-0309 of this chapter by a person possessing, at the time of such use, commercial shellfish harvesting gear or shellfish in excess of two pecks. For the purposes of this subparagraph "commercial shellfish harvesting gear" shall mean rakes, tongs, dredges and other devices commonly used to harvest shellfish for commercial purposes.

g. Within twenty-four hours of any search or seizure undertaken without a warrant pursuant to this subdivision, the officer shall file with a court of competent jurisdiction an affidavit or sworn statement describing with particularity the basis for probable cause justifying the places that were searched and the items that were seized. A copy of the affidavit or sworn statement shall be mailed by registered mail to any person charged with an offense under this chapter pursuant to the search or seizure within three days of its filing with the court.

§ 2. This act shall take effect immediately.