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New Jersey's Bear Hunting Policy Is Too Hunter-Friendly and Should Be Reformed

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I. Introduction

Bear hunting has long been a point of controversy in New Jersey, and it recently entered back into the public eye.¹ On December 6, 2022, the New Jersey Department of Environmental Protection (“NJDEP”) announced that bear hunting seasons have resumed². Governor Phil Murphy announced that he will rescind his 2018 executive order which banned bear hunting on state lands.³ This sudden change occurred because reported damage and nuisance caused by black bears between January and October of 2022 have risen 237% compared to the same time period in 2021.⁴ According to the NJDEP, in 2022, there were 1,538 nuisance and damage reports, including 62 aggressive interactions, 52 attacks on protected livestock, 15 attempted home entries, and one human attack.⁵ Additionally, over 400 bear sightings were reported from January to October, up nearly 130% from the same period in 2021.⁶

New Jersey’s black bear population spans all 21 counties, and the NJDEP estimates that the state bear population will grow by nearly 33% in the next two years.⁷ The bulk of the nuisance

¹ Bear hunting has been a hot topic in New Jersey politics for decades. The most recent controversy began in 2003 when black bears were added to the state’s game code, and New Jersey held its first bear hunt in 33 years. During the 2003 hunt, hunters harvested 328 bears. The following year, in 2004, the Commissioner of the DEP overruled the Fish and Game Council and halted the bear hunt, calling for management alternatives, including contraception and increased public awareness. His efforts only lasted until 2005, when the hunt resumed. The hunt was canceled again between 2006 and 2009. During that time, bear incidents were reported to rise by 96%. The incidents sparked Governor Chris Christie’s administration to reinstate an annual hunt in 2010, which continued until Governor Murphy took office in 2018, and issued an executive order to ban bear hunt again. The Meateater, *Following 2018 ban, New Jersey reopens black bear season*, <https://www.themeateater.com/conservation/wildlife-management/following-2018-ban-new-jersey-reopens-black-bear-season>. (Last visited Nov. 16, 2023) [hereinafter “Meateater”].

² New Jersey Herald, *Appeals court rules NJ bear hunt can move forward Tuesday*, <https://www.njherald.com/story/news/environment/2022/12/06/nj-bear-hunt-2022-can-resume-after-appeals-court-lifts-stay/69705917007/> (Last visited Nov. 16, 2023).

³ Meateater, *supra* note 1.

⁴ *Id.*

⁵ NJDEP, *Bear Activity Report, Annual: 2022*, https://dep.nj.gov/wp-content/uploads/njfw/activity_jan-dec22.pdf (Last visited Nov. 16, 2023) [Hereinafter “Bear numbers 2022”].

⁶ New Jersey Monitor, *Activists say Governor Murphy is turning his back on bears*, <https://newjerseymonitor.com/2023/09/11/activists-say-governor-murphy-is-turning-his-back-on-bears/> (Last visited Nov. 16, 2023) [hereinafter “NJ Monitor”].

⁷ Meateater, *supra* note 1. However, I will soon elaborate on the accuracy of the numbers.

and damage incidents stem from the northwestern portion of the state, particularly in Sussex, Morris, and Warren Counties.⁸ These three counties accounted for 1,384 of the 1,971 black bear reports in 2022.⁹

However, animal rights groups such as the Animal Protection League of New Jersey and the New Jersey Sierra Club have been arguing that the reported incident damages and bear sighting numbers are inflated.¹⁰ They believe that the Covid pandemic led to increased bear sightings because more people were home to see bears, and some bear reports are multiple sightings of the same bear.¹¹ In addition, they claim that hunting has never proved to be the best way to reduce human-bear conflict.¹²

The Governor's most recent policy was based on unreliable estimation of bear populations, and perhaps it was also motivated by things other than wildlife conservation. The current bear management policy is aimed at serving the pleasure of hunters and blatantly ignores the interest of animal rights groups as well as the general public.¹³

Thus, it is submitted that New Jersey needs to reform its bear hunting policies and come up with a better bear-management plan.¹⁴ Killing is simply not a good answer to the existing problem, and resolving the human-bear conflict should not be at the expense of bear lives. Therefore, in section II, I will begin by introducing the human-bear conflict New Jersey faces, and

⁸ *Id.*

⁹ Bear Numbers 2022, *supra* note 3.

¹⁰ NJ Monitor, *supra* note 6.

¹¹ *Id.*

¹² See Hunting might actually increase human bear conflicts, <https://vtdigger.org/2023/03/17/jennifer-lovett-bear-hunting-may-actually-increase-human-bear-conflicts/> (last visited Nov. 25, 2023).

¹³ I will discuss in section III how problematic the current Council is and discusses in X on how problematic the current bear management plan is.

¹⁴ "Bear-management plans" are usually a beautified name for managing the numbers of bears by allowing bear hunting. The NJEDP describe the bear management plan "maintains bears at a density that provides for a sustainable population within suitable bear habitat while minimizing human -bear conflicts and reducing emigration of bears to unsuitable habitat in suburban and urban areas." NJDEP, Black Bear Management Overview, <https://dep.nj.gov/njfw/bears/bear-management-overview/> (last visited Nov. 19, 2013) [Hereinafter "NJBBM Overview"].

why it calls for a more rational bear management plan. In section III, I will explain the operation of the current bear hunting governing agency, the New Jersey Fish and Game Council, and its various problems. In section IV, I will explore other state regulations and agency compositions of policymakers that appear to be more rational and scientific-based to showcase why New Jersey should mirror these states for a more comprehensive reformation of its policy. In section V, I will then compile a list of non-lethal policy recommendations that have been proven more effective in reducing human-bear conflicts. In section VI, I will conclude by revisiting New Jersey's killing-based bear management plan, and urge changes toward a more human-based scheme.

II. Black Bears' Residency in New Jersey

Most bears that currently reside in New Jersey are black bears.¹⁵ They are large-bodied, muscular animals that are quite agile.¹⁶ Black bears can run up to thirty-five miles per hour.¹⁷ New Jersey's adult male black bears weigh from 150 pounds to over 600 pounds.¹⁸ Adult females weigh from 150 pounds to over 400 pounds.¹⁹ Adult black bears are about three feet high when on all four paws and can range from five feet to seven feet tall when standing.²⁰ Although most black bears in New Jersey are black in color, there has been at least one documented black bear in the state that is cinnamon brown in color.²¹

New Jersey has its densest black bear population in its northern region. In 2020, biologists calculated an estimate of 3,158 bears for the region north of Interstate 78 and west of Interstate

¹⁵ See AZ animals, *Discover The Largest Bear Ever Caught In New Jersey*, <https://a-z-animals.com/blog/discover-the-largest-bear-ever-caught-in-new-jersey/> (Last visited Nov. 20, 2023).

¹⁶ See New Jersey Fish and Wildlife, *General Description*, [https://dep.nj.gov/njfw/bears/black-bear-biology-and-behavior/#:~:text=The%20American%20Black%20Bear%20\(Ursus,pounds%20to%20over%20600%20pounds.](https://dep.nj.gov/njfw/bears/black-bear-biology-and-behavior/#:~:text=The%20American%20Black%20Bear%20(Ursus,pounds%20to%20over%20600%20pounds.) (Last visited Oct. 24, 2023). [Hereinafter "NJ Bear General Description"]

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Despite the color differences, for this paper, they are all referred to as black bears or bears.

287.²² This is a dramatic growth, compared to the 2019 estimated number of 2, 208.²³ These Black bears are omnivorous and consume berries, fruit, nuts, insects, bird eggs, small mammals, and carrion.²⁴ Throughout late summer and fall, black bears need to consume a minimum of 20,000 calories a day to prepare for the winter den season. Other than natural food found in the woods, garbage is the main source of unnatural foods for black bears in New Jersey.²⁵ In fact, household trash and community trash containers that are left open, or not well-maintained nor protected, are the main reasons bears are attracted to residential neighborhoods.²⁶

The strongest reason for the attraction is because black bears have a remarkable sense of smell.²⁷ They have been documented detecting scents at more than two miles away from a food source.²⁸ This excellent sense of smell sometimes leads them to search for food in residential neighborhoods and campgrounds.²⁹ Thus human-bear interactions are frequent in New Jersey, and bears could be dangerous and interruptive for humans who encounter them.³⁰ According to Bloomberg’s human-bear interactions reports, from 2022 to 2023, there were several home entries, and eighty-four instances of property damage exceeding \$1,000.³¹ To reduce the reported growing number of human interactions with bears, New Jersey has decided to come up with a revised black bear management program.³²

²² Patch News, *Bears Sightings Around Parsippany: Here's What To Do*: <https://patch.com/new-jersey/parsippany/bears-sightings-around-parsippany-heres-what-do> (Last visited Oct. 24, 2023).

²³ *Id.*

²⁴ General Description, *supra* note 15.

²⁵ *Id.*

²⁶ *See Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *See Id.*

³⁰ *Id.*

³¹ Bloomberg, *New Jersey Poised to Resume Bear Hunting After Run-Ins Surge*, <https://www.bloomberg.com/news/articles/2022-11-10/new-jersey-bear-attacks-rise-prompting-calls-to-resume-hunting> (Last visited Oct. 24, 2023) [Hereinafter “Bloomberg Bear Article”].

³² *See Id.*

This program mostly consists of bear hunting, along with black bear research and monitoring, combined with some non-lethal management and the euthanizing of bears that pose a public safety threat.³³ The management program divides bears into three categories: (1) Bears that are a threat to public safety and property; (2) Nuisance bears which are not a threat to public safety or property; and (3) Bears that have normal behavior and are not a nuisance or a threat to public safety.³⁴ Unfortunately, bear hunting is the most prominent and controversial method within the management program.

Indeed, bear hunting is fundamentally fought with controversy. Bear hunting started from a need for food in ancient human history. However, nowadays bear hunting is commonly considered a game. Almost all New Jersey hunters no longer need to hunt bears to keep their families from starving. The real reason behind most bear hunting is to satisfy a sense of human supremacy and entertainment. Hunters often take pictures with bears, posing proudly with them. These bears are often taxidermized as trophies.³⁵

Moreover, hunters and sportsmen have created associations and competitions to organize bear hunting systematically. In New Jersey, their associations have become policymakers which can have their own ways. Hunters in New Jersey have a variety of tools to engage in bear hunting - archery, muzzleloader firearms, and shotguns are all allowed.³⁶ In most instances, archery cannot

³³ NJBBM Overview, *supra* note 13.

³⁴ NJ Dept. of Environmental Protection Division of Fish and Wildlife, *Know the Bear Facts - Black Bears in New Jersey Research and Management*, https://www.nj.gov/dep/fgw/pdf/bear/bearfacts_resmgt.pdf. (Last visited Oct. 24, 2023).

³⁵ See Taxidermy Hobbyist, *Bear Taxidermy*, <https://taxidermyhobbyist.com/animals/bear-taxidermy/> (Last visited Oct. 24, 2023).

³⁶ New Jersey fish and Wildlife, *Bear hunting season Information*, <https://dep.nj.gov/njfw/bears/bear-hunting-season-information/#:~:text=Special%20permit%20requirement%3A%20All%20black,zone%20designated%20on%20the%20permit.> (Last visited Oct. 27, 2023) [Hereinafter “NJ Bear hunting season”].

get through the thick skin and furs of bears and often wounds smaller bears by not-so-accurate shooting. Wounded bears are then often left to die.

Supposedly, the justification behind New Jersey's new bear hunting policy is to protect humans by reducing the bear population and thereby reduce human-bear conflict.³⁷ Yet This method has been proven ineffective. Research has shown that more bears have been killed when the spring hunting season was implemented, but there was no reduction in the number of human-bear interactions; in fact, there were more conflicts in many locations, especially in areas without hunting.³⁸ New Jersey's bear activity may probably be somewhat similar to that of Vermont, where close to half of the bears killed each year are females--with many of them probably pregnant with cubs or engaged in protecting yearlings.³⁹ When these orphans lose the protection and guidance of their mothers, they may become the very "nuisance" bears we often hear complaints about.⁴⁰

So, in reality, bear hunting is primarily just a recreational game, since it serves largely entertainment purposes. Bears do not deserve to be treated like this, and New Jersey should come up with better, non-lethal methods to help residents coexist with the bears.⁴¹

III. New Jersey's Regulatory Scheme and Its Problem

New Jersey's Fish and Game Council was created by Law in 1945⁴² and was later placed under the control of the state Department of Environmental Protection. There *was* no NJ DEP in

³⁷ See Bloomberg Bear Article, *supra* note 18.

³⁸ See, Jennifer Lovett: *Bear hunting may actually increase human-bear conflicts* <https://vtdigger.org/2023/03/17/jennifer-lovett-bear-hunting-may-actually-increase-human-bear-conflicts/> (Last visited Oct. 24, 2023) [hereinafter "Human-bear conflicts"].

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ A recent extensive study, utilizing data from 2004 through 2019, concluded that the most effective way to manage bear and human interactions is through coexistence and proper management of attractants. *Experimental test of the efficacy of hunting for controlling human-wildlife conflict.*

⁴² (N.J.S.A.13:1B-24)

1945]⁴³ The law established that the Council should have 11 members, and the composition was as follows: three members of the Council shall be farmers, recommended to the Governor for appointment by the agricultural convention; six members shall be sportsmen, recommended to the Governor for appointment by the New Jersey State Federation of Sportsmen's Clubs; and two members shall be commercial fishermen⁴⁴. In addition to which, one farmer representative and two sportsmen representatives in the council shall be chosen from among residents of any of the following counties – Bergen, Essex, Hudson, Morris, Passaic, Sussex and Warren; one farmer representative and two sportsmen representatives in the council shall be chosen from Hunterdon, Mercer, Middlesex, Monmouth, Ocean, Somerset and Union; and one farmer representative and two sportsmen representatives shall be chosen from Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester and Salem⁴⁵. Each member of the council shall be appointed for a term of 4 years and serve until his successor has been appointed and has qualified⁴⁶.

The New Jersey Legislature authorized the Council to have independent responsibility to adopt a Fish and Game Code to provide a system for protecting and conserving fish and game⁴⁷. Additionally, the Council was further when authorized to perform an advisory and recommendatory function regarding the development of comprehensive policies for wildlife management.⁴⁸ Primarily, the Council was given the power to determine when and where hunting and fishing may occur in the state, which freshwater fish, game birds, game animals, and fur-

⁴³ See New Jersey Department of Environmental Protection, Council and Committees, <https://dep.nj.gov/njfw/councils-and-committees/> (Last visited Nov, 25, 2023) [Hereinafter "NJ CC"]

⁴⁴ See *Id.*

⁴⁵ See *Id.* "The commercial fishing representatives were replaced on the Fish and Game Council with the Chairman of the Endangered and Nongame Species Advisory Committee and a public member "knowledgeable in land use management and soil conservation practices." (Last visited Nov, 25, 2023)

⁴⁶ <https://casetext.com/statute/new-jersey-statutes/title-13-conservation-and-development-parks-and-reservations/chapter-131b-commissioner-of-conservation-and-economic-development-appointment-term-salary/section-131b-24-fish-and-game-council-members-terms>

⁴⁷ NJ CC, *supra* note 42

⁴⁸ *Id.*

bearing animals may be taken, and in what numbers.⁴⁹ Black bear, thus, are classified as game animals and subject to the Council's management⁵⁰.

To manage the increasingly expanding populations of black bears and to reduce the number of human interactions with bears, the Council promulgated a Comprehensive Black Bear management policy (CBBMP)⁵¹. In the front pages of this policy, the Council illustrated its goal for black bears is to “to manage the bear’s population at a level that minimizes human-bear conflicts, provides for a sustainable population within suitable bear habitat, and minimize emigration of bears to unsuitable habitat in suburban and urban areas⁵².” Among education, law enforcement, monitoring bear activities and research, the most prevailing and prevent method is legalized bear hunting⁵³. Due to public outcry and efforts of animal rights activist, bear hunting has been paused and reopened repeatedly in the past 30 years⁵⁴. Most recently, on September 6, 2023, to deal with the rapid growth of bear sighting and reported damages caused by black bears in human neighborhoods, the Council unanimously voted to reopen bear hunting⁵⁵, allowing two segments per season a year from 2023- 2028⁵⁶. Hunting hours are allowed beginning 30 minutes

⁴⁹ *Id.*

⁵⁰ *Id.* “Black bears were classified as game items in 1971”.

⁵¹ *Id.* “The council first came up with the policy in 1971, when they first legalized bear hunting. During the last 40 years, the Council steadily increased its efforts to manage bear populations. Since 2001, the Council has spent more than \$15 million on black bear management.”

⁵² NJ Fish and Game Council, 2022 Comprehensive Black Bear Management Policy <https://dep.nj.gov/wp-content/uploads/njfw/2022-cbbmp-for-web.pdf>, at 18, “Policy”.

⁵³ NJBBM Overview, *supra* note 13. “Legalized bear hunting was allowed to afford bear protection from indiscriminate killing”.

⁵⁴ The Meateater, *supra* note 1.

⁵⁵ ABC news, *Why animal conservationists believe reinstating the New Jersey bear hunt won't curb human and bear interactions*, <https://abcnews.go.com/US/animal-conservationists-reinstating-jersey-bear-hunt-curb-human/story?id=93363566>. (Last visited Nov. 25, 2023).

⁵⁶ NJ Monitor, *supra* note 6.

According to the New Jersey Fish and Game 2023 bear management plan, The 2 seasons in 2023 are segment A: October 9-11, October 12-14, and segment B: December 4-9. *See* NJ fish & wildlife, *Bear hunting season information*, <https://dep.nj.gov/njfw/bears/bear-hunting-season-information/> (Last visited Nov. 25, 2023). [Hereinafter “NJ Bear Hunting Season Information”]. Good

before sunrise and ending 30 minutes after sunset. If the cumulative harvest rate reaches 30% of bears tagged in 2023, the season will be closed⁵⁷.

Under the CBBMP, hunters may not attempt to take or kill a black bear weighing less than 75 pounds (live weight) or less than 50 pounds dressed, may not attempt to kill an adult black bear that is in the presence of cubs,⁵⁸ and may not attempt take or kill a black bear or have a loaded weapon within 300 ft. of a baited area when hunting bears⁵⁹. However, other than that, there is not much regulation on hunting. Thus Hunters in New Jersey can hunt mama bears, can use baiting when they hunt, and have the options to use archery, muzzleloader, or shotguns.⁶⁰

There are total of 11,000 black bear hunting permits, allocated by bear management zone. Hunters are allowed to possess up to two permits, each for a different zone. Hunters are allowed to hunt one bear per segment, and once a bear has been successfully hunted, the permit for that segment will no longer be valid. However, Hunters can then purchase another permit to hunt a second bear, during the second segment of the bear hunting season.

The CBBMP has even less regulations regarding hunting permits. Permits can be purchased online through the New Jersey's electronic licensing system, or in person from license agents.⁶¹

⁵⁷ As I am writing the paper on Nov 26, 30% of bears have been hunted, so hunting season is closed. This could be a sign that hunters are overeager to hunt, and they might actually minimize bear populations to a dangerous level, if no more restrictions are in place. *See Id.* "Bear hunting season has been closed".

⁵⁸ Cubes are bears weighing less then 75 pounds.

⁵⁹ NJ Bear hunting Season Information, *supra* note 55.

⁶⁰ Use of weapons is subject to season segments. In 2023, hunter can only use archery, from October 9-11, only use archery or muzzleloader from October 12-14, and only shotgun or muzzleloader from December 4-9. Weapons are subject to some limitations. *Id.* "Archery: a long or recurve bow with a 35 pound pull at draw length, a compound bow with a 35-pound peak weight, or a crossbow with a 75 pound minimum draw weight. Only bows capable of firing a single projectile may be used. Arrows must be well-sharpened metal broadhead with a minimum width of 3/4". Shotgun: not smaller than 20 gauge nor larger than 10 gauge with rifled slugs and capable of holding not more than three rounds. Lead, lead alloy, or copper rifled slug or sabot slug. Buckshot is prohibited. Muzzleloader Rifle: must be single-barrel, single shot rifles not less than .44 caliber. Flintlock, percussion, and in-line ignitions are allowed. Double barrel muzzleloaders prohibited. Persons hunting with a muzzleloader rifle must also possess a current and valid rifle hunting permit."

⁶¹ *See* NJ Fish & wildlife.com, *Online license Sales – Before you start.* <https://nj.aspirafocus.com/internetsales> (Last visited Nov. 25, 2023). [Hereinafter "License Sales"].

The permit purchasing website clearly noted that the only required information: that purchasers need to be at least 18 years old and must provide some form of identification.⁶² Purchasers do not need to present any proof of prior training, and there is not even a user manual of the weapons on the license website. Additionally, New Jersey permits youth bear hunters. As long as youth hunters have a valid firearm hunting license, they can also possess a black bear hunting permit.⁶³ Youth hunters can be as young as ten years old. The only requirement for young hunters is that they must operate under the direct supervision of a properly licensed adult while bear hunting.⁶⁴ Direct supervision means the youth hunter and the supervising adult are together at the same location.⁶⁵

Plainly, from the face of the CBBMP, it is a hunter-friendly plan. Allowing baiting means that hunters are allowed to set up an area with food so that bears living in the nearby forest can come out for the food, and makes them a convenient target.⁶⁶ Black bears are usually above 150 pounds, and this plan only set its minimum limit at 75 pounds. It is basically inviting hunters of all ages, to hunt all kinds of bears, with hunters' favorite weaponry, and use however methods hunters like. Clearly, the CCBMP does not represent the interest of many, and probably most, other New Jersey residents who care more about wildlife conservation than game hunting. The current CCBMP seems to have forgotten all the years of controversy and public debates around bear hunting, and simply picked the hunters' side to support and facilitate.

The problem with the Council's flawed decision-making starts with the composition of its members. Given its legislative function that includes independent power to govern statewide hunting and fishing, the composition of the Council members seems to be comprised entirely of

⁶² *See Id.* "SSN, driver's license, etc"

⁶³ NJ Bear Hunting Season Information, *supra* note 55.

⁶⁴ *See* License Sales, *supra* note 60.

⁶⁵ *Id.*

⁶⁶ Baiting will be discussed in detail in section D of Section V.

people with financial and business incentives to promote hunting. Farmers, sportsmen, and fishermen, all have more incentives to create hunter-friendly policies than bear-protecting policies. In fact, the New Jersey Federation of Sportsman's Clubs (Clubs), responsible for recommending most commissioners to serve on the Council, has a clear agenda for promoting hunting.⁶⁷ The Club's member hold themselves out as a group of outdoor enthusiasts that support hunting, fishing and trapping as vital resources in natural conservation.⁶⁸

The Clubs represents more than 150,000 hunters, trappers and fishermen, throughout New Jersey⁶⁹. In addition, the Clubs give out annual awards to hunters who have achieved significant results in hunting, and hunters who promote hunting in New Jersey⁷⁰. Moreover, the Clubs has a close association with the famous gun rights organization – the National Rifle Association (NRA). Several officers of the Clubs are NRA representatives⁷¹. It raises questions as to the true motive of the Council, in particular regarding the recent, urgent meeting that unanimously re-opened bear hunting. Environmental activists have been arguing that the current CCBMP is not a real management plan, and it is questionable to have a private organization effectively appoint a majority to the Council that determines its policy-making.⁷²

However, the Supreme Court of New Jersey previously made the decision in the 1976 that the membership of the Council was constitutional. The Humane Society and the Sierra Club brought an action at that time challenging the constitutionality of the statute that set forth the

⁶⁷ See New Jersey State Federation of Sportsmen's Clubs, <https://www.njsfsc.org/> (Last visited Nov. 25, 2023) [Hereinafter "the Clubs"]. The Clubs recommend 6 sportsmen out of 11 members to the governor.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ See *Id.*, "the Frank Valgenti Award", and "the Jeannette A. Vreeland Award".

⁷¹ News Four The Garden State Outdoors Enthusiast, *More Bear Attacks Inevitable?* https://www.njsfsc.org/resources/Documents/Newsletters/2022/FSN_February_2022.pdf, at 4.

⁷² NJ Monitor, *supra* note 6.

composition of the Council⁷³. The Court applied the rational-basis test and looked to determine whether there were facts that could reasonably justify the legislative scheme. The court held that the Council has certain responsibilities and powers pertinent to ensuring the statutory objective of an abundant supply of game for recreational and commercial hunting and fishing.⁷⁴ Sportsmen, farmers⁷⁵, and commercial fishermen have a direct interest because they are the most likely to be affected by council decisions⁷⁶. Each class also possesses specialized knowledge of the subject matter⁷⁷. Thus, the Court held that the law is rationally related to its objectives, and the animal rights groups were not successful in proving that the disparate treatment is arbitrary or unreasonable⁷⁸.

Having lost the composition constitutionality battle, the animal rights groups tried another tactic by targeting the bear management plan itself⁷⁹. In 2011, animal protection organization sought a review of the decision of the CBBMP⁸⁰. Unfortunately, the Appellate Division of the Superior Court of New Jersey held that it would not overturn an administrative action “in the absence of a showing that it was arbitrary, capricious or unreasonable, or that it lacked fair support in the evidence.⁸¹” So clearly, the agency has been given a strong presumption of reasonableness and great deference. The court went even further by stating that even if there might be room for

⁷³ *Humane Soc. of U. S., New Jersey Branch, Inc. v New Jersey State Fish and Game Council*, A2d 20 (1976). The plaintiffs brought the case on Equal protection and due process grounds.

⁷⁴ *Id.* at 574

⁷⁵ Court specifically pointed out that farmers are property owners, and they are directly affected by the Council’s activities. *Id.*, at 574-75.

⁷⁶ *Id.*, at 572.

⁷⁷ *Id.*

⁷⁸ *Id.*, at 575.

⁷⁹ See *Animal Protection League of New Jersey v New Jersey Dept. of Env’tl. Protection*, 34 A3d 784 (NJ Super Ct App Div 2011).

⁸⁰ The 2011 CBBMP had no significant difference with the current CBBMP

⁸¹ *Humane*, A2d 20 at 559.

two courses of action, an administrative decision will not be deemed arbitrary and capricious if it is exercised honestly and the chosen course is reasonable⁸².

Although the courts sided with the Council in both cases, the new Jersey Supreme Court did point out that they would prefer to see environmental officials afford more investment into educating people on how to cohabitate and bear counties with wildlife. Thus, based on these court decisions, it is apparent that, in New Jersey, having an independent administrative agency to promulgate rules on bear hunting is constitutional, and its the method of selecting the composition of this agency has been deemed acceptable. Given that determination, any, reforming of the composition of the Council must come from the New Jersey Legislature.⁸³

It must keep in mind, however, that Human-bear conflict is a common problem across all 50 states. The state of Washington and the state of Florida, for example, have even more bear populations. But they have taken a completely different perspective on resolving human-bear conflict than has New Jersey, implemented different policymaking perspectives when choosing their Council members.

Thus, New Jersey should follow these other states' lead, primarily by softening the imbalanced human-bear conflict, and doing a better at educating its people on cohabitating with wildlife.

IV. States with Better Bear Management Policies Than New Jersey

As noted, Bear management is indeed a common question many state governments face. Human-bear encounters and conflicts are common due to the combination of expanded residential areas and increased bear populations. But not all states resort to bear hunting as their primary

⁸² *Id.*, at 561.

⁸³ I will discuss the proposed new composition in section C of section V.

solution. Several states focus primarily on protecting bears and achieving a balance between human-wildlife coexistence⁸⁴. And a few states have limited or banned bear hunting entirely.⁸⁵ Thus, they can serve as great examples for New Jersey legislators in seeking ways to reform their own state's bear hunting policies. Three such states are discussed as follows.

A. Florida

Florida has a black bear management plan, and bear hunting seasons have been closed since December 2019.⁸⁶ The Florida Constitution authorizes its Fish and Wildlife Conservation Commission ("FWC") to enact rules and regulations regarding the state's fish and wildlife resources.⁸⁷ There is no group affiliation requirement for the commissioners.⁸⁸ The FWC's seven Commissioners are appointed by the Governor and confirmed by the Florida Senate to five-year terms.⁸⁹ Their constitutional duty is to exercise the "...regulatory and executive powers of the state with respect to wild animal life and freshwater aquatic life and shall also exercise regulatory and executive powers of the state with respect to marine life, except that all license fees and penalties for violating regulations shall be as provided by law."⁹⁰ To do this, the seven FWC Commissioners

⁸⁴ See Florida Fish and Wildlife Conservation Commission, *Living with Bears, Bears are an important part of Florida's ecosystem*, <https://myfwc.com/wildlifehabitats/wildlife/bear/living/> (Last visited Oct. 24, 2023). [hereinafter "Living with Bears"]

⁸⁵ See Florida Fish and Wildlife Conservation Commission, *Hunting FAQs*, <https://myfwc.com/wildlifehabitats/wildlife/bear/plan-faqs/hunting-faqs/#:~:text=Expand%2FCollapse%20Is%20it%20legal,of%20the%20state%20until%201994>. (Last visited Oct. 24, 2023), and *See No spring bear hunts in Washington — again*, <https://www.opb.org/article/2023/09/11/washington-spring-bear-hunt/#:~:text=The%20Washington%20Fish%20and%20Wildlife,had%20called%20the%20hunts%20cruel>. (Last visited Oct. 24, 2023) [hereinafter "Hunting FAQs"]

⁸⁶ See Florida Fish and Wildlife Conservation Commission, *Florida black bear*, <https://myfwc.com/hunting/bear/#:~:text=The%20FWC%20re%2Dopened%20bear,over%20the%20next%2010%20years>. (Last visited Oct. 24, 2023)

⁸⁷ See Florida Fish and Wildlife Conservation Commission, *The Commission, Welcome to FWC Commission Meetings*, <https://myfwc.com/about/commission/#:~:text=The%20Florida%20Constitution%20authorizes%20the,and%20cond uct%20other%20Commission%20business>. (Last visited Oct. 24, 2023) [hereinafter "FWC welcome letter"].

⁸⁸ See *Id.*

⁸⁹ See Florida Fish and Wildlife Conservation Commission, *The commissioners*, <https://myfwc.com/about/commission/commissioners/> (Last visited Oct. 24, 2023).

⁹⁰ See *Id.*

meet five times each year to hear staff reports, consider rule proposals, and conduct other Commission business.⁹¹ In addition, Florida citizens are welcome to participate in all meetings and have opportunities to address the commission about issues under consideration.⁹²

Florida has a higher black bear population than New Jersey. The black bear population in Florida is scientifically estimated to be approximately 4,050 bears statewide.⁹³ On its website, the FWC has made it clear that bear hunting is only a way to slow down the population growth of certain wildlife, and is not a means to cure human-bear conflict.⁹⁴ It has cautioned that conflicts are possible whenever bears and people live near each other as bears seek out human food sources like garbage, bird seed, and pet food.⁹⁵ The FWC asserts that the most successful way to reduce human-bear conflicts is to secure items that attract bears into neighborhoods.⁹⁶ Thus, Florida has come up with a plan that mainly focuses on humans living with bears, instead of hunting bears.⁹⁷ Out-of-season harvesting and hunting without permits can result in criminal violations and lead to 60 days of imprisonment.⁹⁸ Overall, compliance with hunting regulations is quite high.

The current members of the FWC are Sonya Rood, a housewife who actively support charities and local nonprofit organization; Albert Maury, the President & CEO of Leon Medical Centers; Rodney Barreto, the President & CEO of a consulting company that specializes in corporate and public affairs; Steven Hudson, President & CEO of a company and on the Executive Committee of The Marine Research Hub and The Humane Society; Preston Farrior, University

⁹¹ *Id.*

⁹² See FWC welcome letter, *supra* note 88.

⁹³ See Florida Fish and Wildlife Conservation Commission, *Facts*, <https://myfwc.com/wildlifehabitats/wildlife/bear/facts/> (Last visited Oct. 24, 2023).

⁹⁴ Hunting FAQs, *supra* note 86.

⁹⁵ Living with Bears, *supra* note 85.

⁹⁶ See Hunting FAQs, *supra* note 86.

⁹⁷ See Living with Bears, *supra* note 85.

⁹⁸ See Casanova Law PA, *Fish and Wildlife Violations, Level Two*, <https://www.casanovawpa.com/fish-and-wildlife-violations/#:~:text=Level%20Two,jail%20and%20a%20%24500%20fine.https://myfwc.com/about/commission/commissioners/> (Last visited Oct. 24, 2023).

board member, and the Vice Chair of the Fish & Wildlife Foundation of Florida; Gary Lester, Vice President of Community Relations for The Villages; and Gary Nicklaus, managing partner of an investment company as well as a cochairman of the Children’s Healthcare Charity.⁹⁹ Significantly, none of the members are associated with the sportsmen’s club or fishermen’s association. They are essentially people who are deeply interested in community and charity work with some specialized wildlife conservation knowledge.

The FWC stands its ground on no feeding and no baiting of bears. “A fed bear is a dead bear”¹⁰⁰, is shown on the official site to educate Florida residents on preventing the frequent return of bears to residential communities.¹⁰¹ On the official website, it recommends several policies on co-living with bears, and on educating Florida residents on non-lethal methods at resolving human-bear conflicts. More or specifically, they have provided information on how to scare the bears, and creative ways on how to design low impact communities, as well as offered suggestions on using electric fencing and trash can modification.¹⁰² I will discuss Florida policies further in section V, as I recommend ways for New Jersey to implement community designs mirroring Florida’s Bear Crossing design.

B. Washington State

Washington State's huge, overall black bear population ranges between 25,000 and 30,000 animals.¹⁰³ On average, black bears in Washington weigh between 100 to 300 pounds, with males larger than females.¹⁰⁴ They stand approximately 2.5 to 3 feet at the shoulder when standing on all

⁹⁹ Florida Fish and Wildlife Conservation Commission, *the Commissioners*, <https://myfwc.com/about/commission/commissioners/> (Last visited Oct. 24, 2023).

¹⁰⁰ Living with Bears, *supra* note 85.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Living with the wildlife, Black bears*, <https://wdfw.wa.gov/sites/default/files/publications/00606/wdfw00606.pdf> (Last visited Oct. 24, 2023) [hereinafter “Living with the wildlife”].

¹⁰⁴ Washington Department of Fish and Wildlife, Black Bear <https://wdfw.wa.gov/species-habitats/species/ursus-americanus> (Last visited Oct. 24, 2023) [hereinafter “WA DFW”].

fours, and about 5 feet when standing upright. When on all fours, the black bear's rump is higher than its shoulders.¹⁰⁵ Bear hunting is categorized as big game hunting in Washington state.¹⁰⁶ However, at this time, no bear hunting is permitted.¹⁰⁷

The Washington Fish and Wildlife Commission establishes policies to preserve, protect, and perpetuate fish, wildlife, and ecosystems in that state. It is also responsible for providing sustainable fish and wildlife recreational and commercial opportunities compatible with healthy and diverse fish and wildlife populations.¹⁰⁸ The Commission consists of nine governor-appointed members that serve six-year terms. They regularly hold meetings and hearings around the state and offer opportunities for the public to weigh in on fish and wildlife issues.¹⁰⁹

Commission Members are appointed by the governor. Commission appointees are subject to confirmation by the state Senate.¹¹⁰ The only “grouping” restriction is that the Commission must include three members from west of the Cascade Mountains, three members from east of the Cascade Mountains and three “at-large” members who may reside anywhere in the state. No two Commission members may reside in the same county.¹¹¹ In addition to regular Commission meetings, each member serves on one or more Commission subcommittees, focusing in-depth on individual fish and wildlife issues.¹¹² Currently, the members are: Barbara Baker, an attorney who retired from a long career in the state legislature; Molly Linville, a wildlife biologist; James R. Anderson, an environmental scientist; John Lehmkuhl, a wildlife biologist of 48 years; Woody

¹⁰⁵ *Id.*

¹⁰⁶ WA Department of Fish & wildlife, Hunting Seasons and regulations, <https://wdfw.wa.gov/hunting/regulations>, (Last visited Oct. 24, 2023).

¹⁰⁷ *Id.*

¹⁰⁸ WA Department of Fish & wildlife, <https://wdfw.wa.gov/about/commission> (Last visited Oct. 24, 2023) [Hereinafter “WA Commission members”].

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

Myers, a wildlife lecturer and biologist; Steve Parker, an ecologist and author of numerous publications; Tim Ragen, a marine mammal biologist; Melanie J. Rowland, an animal rights lawyer; and Lorna Smith, an environmental county staff member who specializes in the Clean Water Act and other environmental laws.¹¹³

As shown, the Commission members are essentially animal rights lawyers and scientists. The commissioners are familiar with environmental law legislation of the state and many of them possess scientific knowledge regarding different species and the ecosystem. The composition of this commission seems even better suited than the Florida Commission. Not only have the commissioners devoted their lives to studying animals and understanding the ecosystem, they are also highly trained individuals who can make decisions e based [proof read!] on a more holistic, animal-friendly perspective.

The WDFW's website advises readers that the best way not to interact with bears at home is to remove food that provides bears with a high number of calories.¹¹⁴ This removal policy includes leaving garbage cans in garages or using bear resistant containers, removing bird feeders (including liquid hummingbird feeders), keeping fruit trees picked, and keeping small livestock like chicken and goats in secure enclosures with a roof.¹¹⁵

Undoubtedly, the state of Washington, like New Jersey, is deeply concerned by the problems concerning human-bear conflict. In fact, its state wildlife offices receive hundreds of black bear complaints each year regarding urban sightings, property damage, attacks on livestock, and bear/human confrontations.¹¹⁶ As opposed to New Jersey, which often blames these problems on the increasing growth of the bear population, Washington has concluded that this conflict is

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ Living with black bear-state article, *supra* note 104.

largely the result of humans. The Washington Commission claims that 95% of complaints are the result of irresponsibility on the part of people, based on access to trash, pet food and bird feeders, and on improper storage of food while camping.¹¹⁷

To counteract some of these negative interactions, the Washington Commission has set forth several simple recommendations: carry bear spray and a safety whistle, never run, and never approach a bear.¹¹⁸ They also added enforcement fines and a potential of 90 days imprisonment for feeding bears, whether intentional or not, as a way to deter the residents.¹¹⁹

C. Connecticut

The State of Connecticut, located close to northern New Jersey, does not allow any bear hunting¹²⁰. Currently, there are approximately 1,000 to 1,200 black bears in that state.¹²¹ In contrast to the two states previously mentioned, Connecticut does not have a dedicated commission within its Department of Energy and Environmental Protection (“DEEP”) that regulates bear management.¹²² The DEEP is the sole department within the Connecticut government that regulates bear hunting and bear management. Also, unlike Florida and Washington State, where the current regulations are taking a pause on bear hunting, Connecticut state law states that hunting or trapping bears is illegal¹²³. However, human-bear encounters have gradually been rising in

¹¹⁷ *Id.*

¹¹⁸ WA DFW, *supra* note 105.

¹¹⁹ The Washington Times, *Jury finds Washington woman, 77, guilty of feeding bears. Is it ‘because I’m from Switzerland’?* <https://www.seattletimes.com/seattle-news/in-1-day-trial-doris-parks-77-of-ilwaco-found-guilty-of-feeding-black-bears-is-it-because-im-swiss/#:~:text=Parks%20said%20she's%20appealing%20the,intentionally%20attracting%20large%20wild%20carni,vores>. (Last visited Oct. 24, 2023)

¹²⁰ The New York Times, *A State Plagued by Bear Encounters Turns to an Old Solution: Guns*, “Connecticut is the only state in the Northeast with a significant bear population but no bear hunting season” <https://www.nytimes.com/2023/08/24/nyregion/connecticut-bears.html#:~:text=It%20also%20prohibits%20intentionally%20feeding,but%20no%20bear%20hunting%20season>. (Last visited Oct. 24, 2023).

¹²¹ *Id.*

¹²² *Id.*

¹²³ Conn. Agencies Regs. § 26-66- 3(f). Although FL and WA did not end bear hunting indefinitely, both states have paused for a very long time, and emphasized policies on preserving bear-human coexistence.

Connecticut as well. Thousands of human-black bear conflicts have been reported in recent years. For example, in 2022, the DEEP tracked sixty-seven home entries by bears.¹²⁴

The no bear-hunting legislation in Connecticut was enacted in 2009 but, since then, there has always been a movement inside of Connecticut that sought to abolish the law. Hunters and farmers in Connecticut have fought hard through a years-long campaign to legalize bear hunting, particularly in the Northwest corner of the state where most sightings have been concentrated.¹²⁵

Despite the fact that the DEEP has faced strong pushback from the bear-hunt advocates,¹²⁶ the Connecticut DEEP has mostly encouraged residents to learn to adapt to the presence of bears and take measures to avoid damage and problems. The agency thus urges people to take steps to avoid feeding and attracting bears, such as taking in bird feeders during the summer and not leaving trash bins outside.¹²⁷ The agency made it clear that in most cases, if left alone, a bear will make its way to a more natural habitat.¹²⁸ The DEEP does possess the authority to relocate bears, although it seldom does. Most typically, a relocation exception may be made to remove a bear in an urban location when there is little likelihood that it can leave safely on its own and when the bear is in a position where it can be safely immobilized.¹²⁹

¹²⁴ CT.gov, DEEP Reminds Residents to be Bear Aware Bear Activity Increases in Early Spring; Residents Reminded to Do Their Part to Not Teach Bears Bad Behaviors <https://portal.ct.gov/DEEP/News-Releases/News-Releases---2023/DEEP-Reminds-Residents-to-be-Bear-Aware> (Last visited Oct. 24, 2023)[Hereinafter “CT bear be aware”]

¹²⁵ CT Mirror, CT lawmakers may legalize bear hunting as interactions increase <https://ctmirror.org/2023/03/09/ct-bear-hunting-legal-bill-public-hearing/> (Last visited Oct. 24, 2023)

¹²⁶ In March 2023, Connecticut lawmakers were scheduled to hold an initial vote on a proposed bill that would have permitted the DEEP to set up a lottery system for hunters to kill up to 50 black bears each year in Litchfield County. In addition, the bill included a permitting system to allow farmers to kill nuisance bears. Shortly after, hundreds of advocates wrote to members of the DEEP protesting the inclusion of a bear hunt. Some wildlife advocates, along with some lawmakers, have argued that DEEP already has the authority to kill bears that pose a danger to humans and that more funding needs to be made available for electric fencing and other non-lethal controls, along with restitution to farmers who do suffer damage from wildlife. This shows that the DEEP also faces the dilemma of protecting hunters right and preserving bears. However, DEEP has consistently chosen non-lethal methods, and has been a leading agency nearby New Jersey that value bears lives over hunters pleasure.

¹²⁷ CT bear be aware, *supra* note 91.

¹²⁸ *Id.*

¹²⁹ *Id.*

It is important to point out that in comparing the number of bears between the states of Connecticut and New Jersey, Connecticut has a much smaller bear population.¹³⁰ This could be a reason for it to have a more relaxed, and bear-friendly policy. However, that is not the full picture. In 2022, a public outcry in that state erupted, soon after the public learned that an off-duty police officer killed a sow¹³¹ with two young bears on his Newton property with an AR-15 rifle.¹³² This is a clear sign that many people in Connecticut do not welcome a bear hunt.

Although in Connecticut farmers are allowed to kill bears in self-defense under extreme circumstances, the state does have serious penalties for violating its no-bear hunting policy: a first-time offender is subject to a fine of up to \$500, imprisonment for up to 30 days, or both; a second-time offender is subject to a fine of up to \$750, imprisonment for up to three months, or both; and a third-time or subsequent offender faces a fine of up to \$1,000, imprisonment for up to six months, or both.¹³³

So, having reviewed the policies employed by three states with bear management programs that currently avoid the hunting—and killing—of bears, I will next discuss several policy recommendations modeled after preventative research and examples from these other states of non-lethal methods that could possibly be adopted in New Jersey to make it, too, more bear friendly.

V. Policy Revisions Recommendation

A. A wildlife-friendly community design

¹³⁰ However, geographically Connecticut is also a smaller state compared to New Jersey.

¹³¹ Sows are Female bears

¹³² Eyewitness News, *DEEP: off-duty officer who killed Newtown bear will not be charged*, <https://www.wfsb.com/2022/07/08/deep-off-duty-officer-who-killed-newtown-bear-will-not-be-charged/> (Last visited Oct. 24, 2023).

¹³³ Connecticut Office of legislative Research, *Penalty for Hunting Black Bear*, <https://cga.ct.gov/2018/rpt/pdf/2018-R-0338.pdf> (Last visited Oct. 24, 2023).

Florida appears to be the leading state that has promoted a wildlife-friendly community design.¹³⁴ And Florida has almost 20,000,000 people, more than double that of New Jersey.¹³⁵ Yet Florida possesses both a growing bear population and a strong humane interest in preserving human-bear harmony. That state's new urbanism program is intended to reduce negative impacts on wildlife¹³⁶. The Bear Management Program of the Florida Fish and Wildlife Conservation Commission (FWC) routinely reviews site plans for developments in the designated Florida black bear range to reduce impacts to bears.¹³⁷ An example of this kind of human-bear coexisting in a residential area has been shown on the FWC website—Bear Crossings.¹³⁸

Bear Crossings is a not-yet-developed 267-acre residential subdivision located within the Northern range of the Florida black bear habitat.¹³⁹ There will be 110 home sites placed along a residential street that connects to a larger collector road.¹⁴⁰ Homes and community facilities are protected by the placement of parcels and strong policies and regulations.¹⁴¹ These policies and regulations are scheduled to be enacted into neighborhood ordinances and homeowners' covenants.¹⁴² A large portion of the developed area has been placed under a conservation easement

¹³⁴ Florida fish and wildlife conservation commission, *Crossings, A Wildlife Friendly Design*, <https://myfwc.com/wildlifehabitats/wildlife/bear/crossings/> (Last visited Nov. 26, 2023) [Hereinafter "Friendly Design"]

¹³⁵ United States Census Bureau, Quick Facts Florida, <https://www.census.gov/quickfacts/fact/table/FL/PST045222> (Last visited Oct. 24, 2023).

¹³⁶ According to FWC, it is becoming increasingly popular and marketable.

¹³⁷ Friendly Design, *supra* note 137. This plan has been reviewed by FWC's Land Use Planning Program and the Florida Department of Economic Opportunity's Community Planning and Development Program, making it a development in the pipeline, rather than an aspirational plan.

¹³⁸ *Id.* See Appendix A for a photo illustration.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.* Florida Wildlife Conservation Commission is a pioneer in designing wildlife-friendly communities. I have not been able to find any other reliable resources that provide comment or reference on the same or similar idea. Majority of the data and design from this proposal A is based solely from the Florida Fish and Wildlife Conservation Commission website. The website provides a detailed design as well as reasonings for the feasibility of the plan. I believe when combined with proposal B of reducing attractions, this wildlife friendly design, although ahead of its time, makes sense.

(approximately 79%) to protect the preexisting bear habitat on the parcel.¹⁴³ Conservation land set aside in large perpetual easements assures that habitat fragmentation or “islands of habitat” within an area of development are not created during the development process.¹⁴⁴ Below are some key features of the design.

First, the homes will be kept in a zone clear of trees. Researchers have discovered that bears do not like to wander into open areas.¹⁴⁵ Thus, a buffer of thirty feet in the Bear Crossing communities will surround each home. The buffer zone will help the homes to be kept free of high shrubs and trees.¹⁴⁶ Second, road design in the Bear Crossings community attempts to create the feeling of slow, curvy country roads.¹⁴⁷ Road design limits entrances and exits and creates a looped style road system. Additionally, the speed limit will be designed at 20 miles per hour, which increases safety for children and pedestrians and decreases potential animal road kill issues.¹⁴⁸ Third, at the center of the development area, there will be a community facility.¹⁴⁹ The community facility has a commercial-sized, wildlife-resistant dumpster for disposal of large amounts of trash from community events and oversized waste.¹⁵⁰ The dumpster is metal in construction and access doors are secured with latches and locking mechanisms.¹⁵¹ The dumpster is emptied and cleaned regularly to prevent bear migration towards the Facility in search food. Fourth, interior wildlife signage is posted throughout the community so residents and visitors are aware the neighborhood

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* To be even more detailed, “Shrubs and plantings within the buffer will be kept no higher than 18, and trees will not be placed in this buffer zone” “Vegetable gardens and orchards are also prohibited, since they would attract bears into the area. Additionally, bird feeders, outdoor BBQs, specific plant species, and other attractants would be prohibited to reduce attraction for bears as well”.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

is in primary bear habitat and it is imperative they respect the homeowners' ordinance.¹⁵² This signage reinforces the need for drivers and visitors to be aware while driving and interacting in the community.¹⁵³

Additionally, the community can consider building wildlife overpasses on highways.¹⁵⁴ These overpasses are built above regular highways and completely separate crossing animals from human traffic.¹⁵⁵

B. Attractant Reduction

Research has shown that the most effective way to reduce human-bear encounters, and thus reduce human-bear conflict, is to reduce attractants.¹⁵⁶ Normally, black bears are fearful of humans but they are driven by the need to eat.¹⁵⁷ They are born with a sense of smell that can detect odors miles away and possess an adaptable intelligence that helps them quickly to associate humans with food.¹⁵⁸ Problems arise when bears gain access to food sources such as pet foods, garbage, barbecue grills, bird seed, or even livestock feed. When bears constantly have access to unnatural food sources in residential areas and return frequently to the locations driven by the smell of food, they become “habituated,” and they will gradually overcome their fear of humans.¹⁵⁹ Most notably, a wild bear can become permanently food-conditioned after only one handout experience.¹⁶⁰

¹⁵² *Id.*

¹⁵³ *Id.* “Signage exists every 1,500 feet along community roads and at each entrance to the community, communicating the existence of bears in the area and the occurrence of recent bear sightings.”

¹⁵⁴ Design idea borrowed from Banff National Park in Canada. *See* Appendix B for photo illustrations.

¹⁵⁵ But there appears to be no real evidence that this type of “experimental community” will produce a more friendly human-bear coexistence—free of conflict

¹⁵⁶ PHYSORG, *Reducing attractants is best strategy to reduce human-bear conflict*, <https://phys.org/news/2021-06-strategy-human-bear-conflict.html> (Last visited Oct. 24, 2023).

¹⁵⁷ Living with Bears, *supra* note 85.

¹⁵⁸ *Id.*

¹⁵⁹ WGSU News, *Winter is coming so Florida black bears are fattening up in preparation*, <https://www.wusf.org/environment/2021-09-25/winter-is-coming-so-florida-black-bears-are-fattening-up-in-preparation> (Last visited Nov. 26, 2023).

¹⁶⁰ *See Id.*

In counties experiencing bear conflicts, residential areas are usually adjacent to the woods, locations where bears can easily be attracted out of their natural habitat.¹⁶¹ Thus, preventing bears from accessing these unnatural food sources is crucial. Bear rights advocates along with policymakers in several states, therefore, have come up with several suggestions for the residents who live near bears:¹⁶² 1) Resist temptations on feeding bears;¹⁶³ 2) Manage garbage properly by keeping garbage cans with tight-fitting lids in a shed, garage, or fenced area;¹⁶⁴ 3) Spray garbage cans and dumpsters regularly with disinfectants to reduce odors;¹⁶⁵ 4) Keep fish parts and meat waste in your freezer until they can be disposed of properly;¹⁶⁶ 5) Secure trash within a bear-resistant container and put household garbage out on the morning of pickup rather than the night before;¹⁶⁷ 6) Secure trash inside the house, in a sturdy locked garage, or in a specially constructed outbuilding with concrete or cinder block construction with heavy duty wood or steel doors and roof;¹⁶⁸ 7) Protect gardens, beehives, compost, and livestock with electric fencing; 8) Pick ripe fruit from trees and remove fallen fruit from the ground; 9) Remove bird feeders when bears are active (since readily accessible bird seed “rewards” bears for overcoming their natural fear of humans and makes them likely to return); 10) Encourage the homeowners’ association or local government to institute ordinances to secure foods that attract wildlife; 11) Carry a whistle or small air horn to scare a bear away; 12) Use unwelcome mats (Unwelcome mats are typically made of

¹⁶¹ *Id.*

¹⁶² Living with Bears, *supra* note 85

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ Valley Record News, *North bend offers bear-resistant trash containers*, <https://www.valleyrecord.com/news/north-bend-offers-bear-resistant-trash-containers/> (Last visited Nov. 26, 2023).

¹⁶⁶ City of Newcastle Washington, *Bear Sightings in Newcastle*, https://www.newcastlewa.gov/news/archives/2020/bear_sightings_in_newcastle (Last visited Nov. 26, 2023).

¹⁶⁷ NJ Fish and Wildlife, Garbage Management, <https://dep.nj.gov/njfw/bears/garbage-management/#:~:text=Secure%20garbage%20cans,until%20morning%20of%20garbage%20collection>. (Last visited Oct. 24, 2023).

¹⁶⁸ *Bearproofing your trash*, <https://cpw.state.co.us/Documents/Education/LivingWithWildlife/BearproofingTrash.pdf>. (Last visited Oct. 24, 2023).

sheets of sturdy plywood that have been carefully studded with small nails pointing up that can be placed in front of bear-accessible doors and windows.¹⁶⁹ They have been proven very effective at deterring unexpected bear visitors¹⁷⁰); 13) Notify the Environment Protection Department of the state if a bear lingers around residential areas.

In addition, local governments should also employ and send out enforcement staff that give out warnings and tickets when residents are not properly in compliance with the bear-detering ordinances. And furthermore, the New Jersey Fish and Game Council should follow the lead of the Colorado Parks & Wildlife Commission and distribute competitive grants to support local communities in educating residents on the above-mentioned, methods of attraction reduction.¹⁷¹

C. Change the Composition of Council Members

Considering the significant political power and influence in New Jersey that hunters have, New Jersey is unlikely to adopt a model like the state of Connecticut and ban bear-hunting all together. However, the New Jersey State Legislature should seek to follow the models established in the states of Florida and Washington and amend its law (N.J.S.A.13:1B-24) that governs the composition of its Fish and Game Council. Although is it acceptable to Keep the four-year term and 11 commissioners unchanged, council members should no longer have any direct affiliations with sportsmen or sportsmen's clubs. Instead, I propose that at least two council members with Biology or Ecology background and one member with a law degree should be chosen from among residents of any of the following northern counties – Bergen, Essex, Hudson, Morris, Passaic,

¹⁶⁹ *Deterrents can teach bears to stay away, help keep bears wild.*

<https://cpw.state.co.us/Documents/Education/LivingWithWildlife/BearDeterrents.pdf> (Last visited Oct. 24, 2023).

¹⁷⁰ *Id.*

¹⁷¹ The state of Colorado implemented this grant in 2022, as part of their effort at resolving human-bear conflict. By providing a competition for the grant, the Council can make sure to know how and where the grant will be used at local communities, and the communities will pay more attention at educating residents on attraction reduction, as well as pay better efforts at actually using the grant. *See* Longmont Leader.com, *Human-bear conflict reduction grant recipients announced.* <https://www.longmontleader.com/local-news/human-bear-conflict-reduction-grant-recipients-announced-7442034> (Last visited Nov. 26, 2023).

Sussex and Warren; two members with Biology or Ecology background and one member with a law degree should be chosen from the more central counties--Hunterdon, Mercer, Middlesex, Monmouth, Ocean, Somerset and Union; and finally, two members with Biology or Ecology background and one member with a law degree should be chosen from the southern counties: Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester and Salem.¹⁷²

I made this suggestion based on the Washington Fish and Wildlife Commission's composition. Having individuals with science background would substantially help policymakers tend more towards wildlife conservation and more favorable human-bear coexistence.. Individuals with law degrees could help the rest of the members have a better understanding of law-making and help establish w a higher ethic morale¹⁷³. The remaining t two members should be chosen from the general public; however, just like the other FWC commissioners, these two members could be educators, businessmen, charity organizers, and especially include at least one woman. Their main criteria should be simply that they are New Jersey residents interested in serving their community and protecting the state's environment and its animal habitat.

Such a less biased Fish and Game Council would probably be more open-minded at adopting bear-friendly policies than the current CBBMP. With them, the possibility of, adopting Bear Crossing type community designs and putting more effort at educating bear attraction reduction to community residents would be more realistic and have less political hurdles to overcome.

D. Partial Reform: State Legislation that Bans Baiting

¹⁷² The commercial fishing representatives were replaced on the Fish and Game Council with the Chairman of the Endangered and Nongame Species Advisory Committee and a public member. NJ CC, *supra* note 42

“knowledgeable in land use management and soil conservation practices.”

¹⁷³ Lawyers are constantly reminded that their profession requires them to practice with high ethical standards..

In light of the fact that it is currently very unlikely to change the current composition of the N.J. Fish and Game Council or to repeal any portion of its Game Code so as to ban bear hunting, I propose in the meantime that at least the current bear-hunting regulation needs to be tightened. Currently, New Jersey allows baiting,¹⁷⁴ and this definitely should be banned. Baiting occurs when trophy hunters and hunting guides place food in the woods to lure black bears in for an easy kill, in a seemingly unsporting and unethical practice.¹⁷⁵ Bait piles are typically composed of foods unhealthy to bears, including fatty pastries rich in processed sugars, grease, or even toxins from theobromines such as caffeine found in chocolate.¹⁷⁶ In response, both New Hampshire and Michigan have banned chocolate and other toxins for use in bear bait.¹⁷⁷

In addition, baiting bears with human foods also increases bears' aging at the cellular level, and leads to tooth decay.¹⁷⁸ Bait sites lead to mortalities to smaller bears, because they concentrate bears who compete for bait.¹⁷⁹ Also bait sites concentrate several species together, which can lead to the spread of diseases like rabies and mange or mortalities to small-bodied prey animals.¹⁸⁰ Baiting is further often associated with the phrase "a fed bear is a dead bear". Moreover, baiting encourages abnormal behaviors in bears, leading to human habituation and food conditioning. And Feeding bears human food obviously contributes to potential conflicts and property damage,

¹⁷⁴ The National Humane Education Society, *Bear-baiting continues in New Jersey - national humane education society*, <https://www.nhes.org/bear-baiting-continues-in-new-jersey/#:~:text=Amazingly%2C%20this%20tasteless%20practice%2C%20known,food%20source%E2%80%9D%20from%20miles%20away>. (Last visited Oct. 24, 2023).

¹⁷⁵ The Humane Society of the United States, *Facts about bear hounding, baiting and springtime hunting*, <https://www.humanesociety.org/resources/facts-about-bear-hounding-baiting-and-springtime-hunting> (Last visited Oct. 24, 2023).

¹⁷⁶ *Id.*

¹⁷⁷ *Id.* Spoiled baits are also noxious, and toxic baits are fatal to bears, pets and other wildlife.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

changes in bear behavior and foraging habits, increased or sustained reproductive rate, and affects their overall physical size, distribution, and numbers.¹⁸¹

Despite all these harmful side effects, baiting is still listed on the New Jersey Fish and Game Council's website as a recommended tip for more successful bear hunting.¹⁸² The main purpose of baiting is simply to catch more bears. Baiting frequently enables hunters to catch small bears that were not allowed to be killed, but can end up in leaving them wounded and fed.

Therefore, I propose that if the Council is not going to ban bear hunting anytime soon, they should at least ban bear baiting. Of course in regards to the topic of tightening the bear-hunting regulations, the Council should also consider banning archery, muzzleloader, and shotguns as the killing instruments, given that they are proven largely ineffective and create inhumane ways of killing, unnecessary torture, and killing by mistake. However, this, unfortunately, appears to be asking way too much of the biased Fish and Game Council presently constituted in New Jersey to undertake.

VI. Conclusion

This article has asserted that the current New Jersey CBBMP is too hunter friendly and does not properly represent the interest of people who care more about wildlife conservation. Ostensibly, the CBBMP comes from a legitimate group of policymakers, but these council members' ' affiliated organizations and the Council's history have proven that they are generally opposed to the interests of animal rights groups. That circumstance does not have to be the case,

¹⁸¹ Bear Defenders, *FAQs. What is bear baiting?* <https://www.beardefenders.org/faqs> (Last visited Oct. 24, 2023).

¹⁸² NJDEP Division of Fish and Wildlife, *Black Bear Hunting Tips*, <https://nj.gov/dep/fgw/qr/beartips.htm#:~:text=Focus%20on%20driving%20wetlands%20and,walk%20slowly%20while%20watching%20ahead>. (Last visited Oct. 24, 2023).

since, states with an even bigger bear population than New Jersey have shown that there are proven methods other than hunting to resolve human-bear conflict that can achieve better results.

In an attempt to reconcile the inevitable human-bear conflict and the seemingly arbitrary Council power, I have recommended four policy revision: (1) Implement human-bear co-existing communities in counties where community facilities discourage bears from coming in; (2) Educate the residents on methods of attraction reduction; (3) Amend N.J.S.A.13:1B-24 to make the composition of the Council less biased. (4) Tighten the current CBBMP by banning baiting, since baiting primarily helps hunters to hunt easily and achieve trophy hunt pleasure. Establishing any or all of these revisions would definitely help reduce human-bear conflict and limit ineffective killing or killing by mistake in New Jersey.

Unfortunately, the N.J. Fish and Game Council and its questionable management plan have been in the center of controversy for years; and currently, with acknowledged recognition of the increasing number of human-bear conflicts in New Jersey, policy reform is clearly necessary. Thus, the several revisions I have proposed should be strongly considered to assist in helping to resolve the ongoing human-bear conflict in New Jersey.

VII. APPENDIX A



VIII. APPENDIX B

Overpass highways can almost eliminate roadkill, and protect drivers' lives from cars crushed from dogging or clashing with bears.



Aerial image of wildlife overpass on the Trans-Canada Highway (#1) in Banff National Park (Image courtesy of Parks Canada)