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**1974 LEGISLATION  
RELATING TO  
NEW YORK STATE'S COASTAL  
AND MARINE RESOURCES**

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#### ACKNOWLEDGMENTS

Much of the information contained in this report is from the bills themselves, from the memoranda written by their initiators or legislative proponents, and from statements by the governor and his staff in approving or vetoing bills. I am indebted to many people who supplied information, guidance, and assistance for this project. In particular, I wish to thank Dr. Glenn Stevenson, principal scientist of the New York State Assembly Scientific Staff, Dr. Paul Marr, associate professor of geography at the State University of New York at Albany, Jay J.C. Ginter, research associate for the New York State Sea Grant Program, and Dr. John Judd, executive officer, New York State Sea Grant Program.

## INTRODUCTION

Each year thousands of bills are introduced into the New York State Legislature for consideration. Of the large number of laws proposed, only a small percentage survive the trip through the scrutiny of numerous committees to reach a final vote before the assembly and senate. The outcome of this year's legislative session is a good example of the process: 12,481 bills were introduced in the assembly and 10,840 in the senate. Of these, numerous bills were passed by one legislative house but never got beyond the committees to which they were referred in the other house. Only 1,082 bills were passed by both houses and sent to the governor for his approval or veto.

This report examines the small number of legislative proposals on coastal zone environment, land use, fisheries management, navigation, and water pollution. Seven are now law, one was vetoed, and seven significant bills were considered by the legislature but not acted on. (Bills are designated A-number or S-number for "assembly" or "senate." A letter following the bill number indicates an amended bill.)

The New York State Sea Grant Program sponsored this report to let citizens across the state know what direction the legislature is taking as lawmakers try to find solutions to the pressing problems of development, preservation, and use of the state's marine resources.

A major piece of coastal legislation introduced in the state senate but not acted upon by either house was a freshwater wetlands

bill. New York's tidal wetlands are protected under legislation enacted in 1972, but parallel legislation for Great Lakes wetland areas and wetlands of the other lakes of the state remains to be dealt with.

For the fisherman, sport or commercial, legislation was passed and signed into law covering the protection of shortnose sturgeon and blue pike as endangered species (S-7297), and the creation of a menhaden sanctuary (A-8562-A). A bill was introduced but not passed that would have begun a striped bass management program.

Businessmen and residents along the state's waterways may be affected by a floodplain insurance bill that became law (A-12370), and by a new law raising the fines for water pollution (S-8424).

Land-use planning and its future throughout the state's coastal region was under discussion for several bills dealing with floodplain management, coastal zone management, and bistate coastal study. It is not only environmentalists who are involved in this area: sport fishermen and commercial fishermen are at odds--a schism reflected in some of the legislation introduced. Several bills of this year attempted to begin sound fisheries management programs, but contained aspects thought to be discriminatory against commercial and/or recreational fishing. Reflected in much of this legislation is awareness and deepening concern for the future of the state's coastal regions--land resources as well as the resources in the water.

COASTAL AND MARINE RESOURCES  
LEGISLATION PASSED AND SIGNED INTO LAW  
1974 LEGISLATIVE SESSION

FLOOD INSURANCE PROGRAM

A-12370 Chapter 839  
Assemblyman Marshall Laws of 1974  
Adds Article 36 to Environmental Conservation  
Law

The goal of this law is to insure the qualification of New York State communities for participation in the national flood insurance program. Federal legislation requires that communities designated as especially susceptible to flood hazards must partake in the national program to receive federal financial assistance for a number of items including home mortgages, disaster relief, and loans from all federally supervised banks.

To qualify for participation in the national insurance program, "the adoption of adequate land use controls and enforcement measures" is required by the affected locality. While some flood-prone communities have taken steps to establish floodplain management programs, more have not and need assistance. This law will allow the Department of Environmental Conservation to aid communities by providing technical assistance to prepare floodplain management programs meeting federal standards.

This new law, which becomes effective September 1, 1974, requires all communities designated as flood-prone by the U.S. Department of Housing and Urban Development to become involved in floodplain management. It also gives the state the responsibility of insuring that municipalities develop such plans.

The law applies not only to communities on rivers and streams throughout the state, but also to all coastal areas, including flood-prone areas in Long Island and areas subject to high-water damage along the Great Lakes.

There are two possible areas of weakness in this law. It does not specifically mention funding either for the Department of Environmental Conservation or for

communities to develop floodplain management plans. Second, although the state is required to aid communities, the law does not mention implementation of the management plans. The wording of the federal legislation (Title 42 U.S.C., sec. 4022) mentions enforcement provisions as integral to any land-use plan; the New York law merely reiterates this requirement without discussing implementation.

This legislation is expected to promote a comprehensive and coordinated system of measures to prevent and correct practices leading to flood damage. Despite costly public investment in flood control protection, floodplain areas are still subject to substantial damage and loss of life: in June 1972, portions of 26 counties were destroyed and an estimated \$700 million worth of property damage sustained.

WATER POLLUTION CONTROL

S-8424 Chapter 516  
Senator Ackerson *et al* Laws of 1974  
Amends sec. 71-1929, subdiv. 1 and sec. 71-1933, subdiv. 1 of Environmental Conservation  
Law

Penalties for water pollution under the New York law will now be the same as those specified by the federal Water Pollution Control Act Amendments of 1972. Previously, civil penalty for a violation of the state's water pollution law was not less than \$250 nor more than \$10,000 for the violation plus a penalty of not more than \$500 per day for each day the violation continued. The monetary criminal penalty was a fine of not less than \$500 nor more than \$10,000; each day of such a violation constituted a separate violation. The federal Water Pollution Control Act, section 309, provides that a violation is punishable both by a civil penalty not to exceed \$10,000 per day of violation and by a criminal penalty of a minimum of \$2,500 and a maximum of \$25,000 per day of violation.

A second criminal conviction is punishable by a fine of not more than \$50,000 per day of violation.

Section 402 of the federal Water Pollution Control Act Amendments of 1972 requires federal approval of state water pollution control permit programs. Failure to obtain federal Environmental Protection Agency (EPA) approval would lead to a dual permit program, one state and one federal.

The amended federal program requires the use of effluent standards, rather than the stream standards of former water pollution laws. Under stream standards, discharges from plants could vary depending on the size of the body of water the discharge was going into; allowable discharges were tailored to meet stream conditions. The degree of treatment could also vary. Under effluent standards, the discharge and its treatment are fixed by the type of plant originating the discharge.

In accordance with the change in the federal law, in 1973 the New York State Legislature created a Pollutant Discharge Elimination Program, with the intention of giving New York the requisite authority. But the EPA indicated that penalties under New York law for violation of water pollution control laws did not meet federal standards. This new law increases water pollution penalties sufficiently to gain EPA approval of the state's permit program and allow its implementation.

The results will be reflected in changed treatment of discharges and in improved quality for the state's water resources. For some industries, the new law will mean increased costs from changes in discharge treatment.

## WATER POLLUTION CONTROL

A-8471

Chapter 347

Assemblyman Lane

Laws of 1974

Amends sec. 13-0345, subdiv. 2 and sec. 17-0503, subdiv. 2 of Environmental Conservation Law.

The prohibition against pollution of waters of the marine district--specifically, waters south of the Tappan Zee Bridge--is clarified by this amendment. It deletes the phrase, "from any vessel or building on land and water," from two sections prohibiting the "dumping of garbage, cinders, ashes, oils, acids, sludge or refuse from any vessel or building on land and water into the marine district."

The phrase was thought to be ambiguous, allowing the inference that it is permissible to discharge these pollutants from a source other than a building or vessel. The effect of the new law is to clear away any misunderstanding and to close any loopholes that might have existed in the old laws.

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## HUDSON RIVER VALLEY COMMISSION

S-7078-A

Chapter 103

Senator Hudson

Laws of 1974

Amends sec. 721, subdiv. 1 of Executive Law

The Hudson River Valley Commission, created by the legislature in 1966, was charged with promoting coordinated planning and development of land and resources along the Hudson River and within the Hudson River Valley.

The amendments: (1) give the commission the authority to elect a vice-chairman from its own members, (2) require bimonthly meetings rather than semiannual meetings, and (3) clarify the beginning of the 30-day review period by requiring that all sponsors submit proposals in the "form and manner" prescribed by the Office of Parks and Recreation (of which the commission is part); the day on which this is done marks the beginning of the review period.

These changes in the law should aid the commission in becoming more responsive to groups seeking its approval for projects. The former semiannual meeting schedule

proved unrealistic because of the large number of projects to be reviewed. Review was also complicated by the review period requirement.

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#### MENHADEN SANCTUARY

A-8562-A

Chapter 455

Assemblyman Mannix *et al* Laws of 1974  
Adds subdiv. 5 to sec. 13-0333 of Environmental Conservation Law.

This law creates a marine sanctuary for menhaden in Long Island Sound. Commercial seining for menhaden will be prohibited within the sanctuary area, which extends along the shoreline west of Eatons Neck Point to Execution Rocks, then along the Westchester County shoreline to Buoy 36. The seaward limit of the area is defined by a straight line from Buoy 13 (north shore of Long Island) to Buoy 44 (off Execution Rocks) and by a line one-half mile seaward from the line connecting Buoy 44 and Buoy 36.

Justification for the bill argues a conservation intent: that the designated area is a menhaden spawning ground and that unlimited netting in this area threatens elimination of the species. This argument is based on published landing data for menhaden in New York, showing a decline to nearly zero in recent years.

The drop-off in published landings is somewhat misleading, however: the menhaden processing industry has moved out of state. Menhaden currently being caught in New York waters are landed and recorded in other states, primarily in New Jersey and Rhode Island. The menhaden catch in the summer of 1973 in Long Island and New England waters was in fact one of the best in recent years.

Then, too, menhaden are known to spawn in many other areas of Long Island Sound and the Peconic Bays besides the area designated in this law. Menhaden are common along other parts of the Atlantic coast. It is unlikely that unlimited netting in the "sanctuary" area would cause the extinction of this fish.

The primary concern behind this legislation seems to be social rather than conservational: opposition to the presence of menhaden fishing boats. Many citizens find offensive the wastewater that pours out in the process of suctioning the catch from the nets into the boats. This effluent contains oily fish parts and by-products unpleasant to see or smell. Since menhaden are usually caught close to the shoreline and within harbors and bays, the menhaden fishing boats often leave fish wastes near public and private beaches. This effluent is organic, will eventually decompose, and is not toxic, but it temporarily reduces the esthetic value of the beaches affected.

Another social objection to the menhaden fishery has developed from the mistaken belief of many sport fishermen that menhaden are the principal diet of bluefish and striped bass, and that commercial netting of menhaden will force the sport fish to migrate in search of food. This belief is unsupported by the evidence: stomach analyses of striped bass and bluefish show partly digested flounder, bergals, pogies, and small blackfish, as well as menhaden. Fishery biologists hold that if menhaden are present, sport fish will feed on them because they are easy prey. When not available, the sport fish switch to something else.

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#### MINIMUM SIZE FOR SOUTHERN FLOUNDER

A-8717

Chapter 86

Assemblyman Costigan

Laws of 1974

Amends sec. 13-0339, subdiv. 1, para. c of Environmental Conservation Law.

This law is intended to prevent the catching and sale of undersized flounder by setting a minimum limit of 14 inches for the taking, possession, and sale of southern flounder. Summer flounder, a different species that looks almost identical to southern flounder but is much more common in nearshore New York waters, is already under the same size restriction. The new law blocks the illegal practice some fishermen use



of catching undersized summer flounder and passing them off as "southern flounder," heretofore an unrestricted fish.

**ADDITIONS TO ENDANGERED SPECIES LIST**

S-7297

Chapter 123

Senator B.C. Smith *et al* Laws of 1974

Amends sec. 11-0535 of Environmental Conservation Law.

This new law corrects contradictions with in the Department of Environmental Conservation Law regarding the endangered status of blue pike and shortnose sturgeon. Part 182.1, Title 6 of the *Official Compilation of Codes, Rules and Regulations of the State of New York* lists both blue pike and shortnose sturgeon as endangered species, and section 11-0535 of the Department of Environmental Conservation Law prohibits the "importation, transportation, possession or sale of the species of fish and wildlife so listed." Several other sections of the same law permitted the taking of blue pike and shortnose sturgeon. This new law amends the appropriate sections so that these two species are treated as endangered species consistently throughout the Department of Environmental Conservation Law.

The criteria used by the New York State Department of Environmental Conservation in determining whether a species of fish or wildlife is threatened with extinction are based on the federal Endangered Species Act of 1969: "A species of native fish and wild life shall be regarded as threatened with extinction . . . because its habitat is

threatened with destruction, drastic modification or severe curtailment, or because of overexploitation, disease, predation or because of other factors, . . . [so] that its survival requires assistance."\*

Both blue pike and shortnose sturgeon are listed as endangered species in the Department of the Interior publication *Threatened Wildlife of the United States*. Blue pike was an important commercial fish of Lake Erie. The annual catch often exceeded 20 million pounds and was 19.7 million pounds in 1955 before its recent decline and near-disappearance. It was also prominent in the commercial fishery of Lake Ontario, although the annual catch never exceeded 500,000 pounds.<sup>†</sup> At present, the fish is very rare in the deeper and cooler areas of both lakes. Physical, chemical, and biological deterioration of the Lakes--in particular, a severe oxygen depletion in the blue pike spawning area in central Lake Ontario--has made it difficult for eggs and young to survive.

Shortnose sturgeon has declined for similiar reasons related to pollution of its habitat and overfishing in its spawning areas. All recent records of its being caught in the United States are from the Hudson River, except for one Florida specimen. Its distribution formerly covered the Atlantic seaboard rivers from New Brunswick to Florida, including the Hudson, Delaware, Potomac, Connecticut, and Salmon Creek (North Carolina), as well as the St. Johns River watershed (Florida). A few records exist of a saltwater catch (New Jersey).

\*U.S., Department of the Interior, Bureau of Sport Fisheries and Wildlife, Office of Endangered Species and International Activities, *Threatened Wildlife of the United States*, Resource Publication 114, March 1973 (Washington, D.C.: U.S. Government Printing Office), p. v.

COASTAL AND MARINE RESOURCES  
LEGISLATION PASSED BY THE LEGISLATURE  
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1974 LEGISLATIVE SESSION

LONG ISLAND SOUND STUDY COMMISSION

A-8304-A

Assemblyman Costigan *et al*

This bill would have created a study commission for the Long Island Sound Region and its marine resources, a commission parallel to the one set up in 1973 by the Connecticut legislature. The bistate commission was to study and make specific recommendations for the maintenance, protection, and restoration of the marine resources of Long Island Sound.

Governor Wilson's veto message cited lack of funding which would have delayed the commission from reaching its proposed termination date of March 1975. Sponsors argued, however, that the omission of an appropriation by both Connecticut and New York was intentional, to prevent the commission's

being an interstate compact requiring federal approval--thus entailing delay. Sponsors said that the New York commission could cover its operating expenses with existing resources.

Another difference lay in the interpretation of the purpose of the commission. Supporters viewed it primarily as a way of working with the State of Connecticut to develop the best methods to use and preserve the Sound; the bistate commission would serve primarily as a mechanism for keeping the lines of communication open between the two states. The governor, in his veto message, maintained that the work of the commission would duplicate studies already under way. He specifically cited the 1973 Tidal Wetlands Act as the mechanism through which policy will be set in relation to the Long Island Sound region.

SIGNIFICANT COASTAL AND MARINE RESOURCES  
LEGISLATION CONSIDERED BUT NOT PASSED  
1974 LEGISLATIVE SESSION

COASTAL ZONE MANAGEMENT

A-8085-A

Passed Assembly

Assemblyman Duryea

S-6603-A

Senator Giuffreda

The coastal zone bill was intended to establish a temporary state commission to formulate a coastal zone plan for the development and management of New York's coastal resources. The bill was drawn up in response to the accelerating rate at which valuable coastal properties are being developed, are escalating in value, and are coming under restriction from public access. The bill was also directed toward cooperating with the federal Office of Coastal Environment's program sponsoring coastal zone management studies.

The commission would have consisted of 17 members appointed by the governor and legislative leaders. Included as ex-officio members were to have been four state officials: the commissioner of Parks and Recreation, the commissioner of Environmental Conservation, the commissioner of Commerce, and the director of the Office of Planning Services. A coastal advisory board would also have been established to assist the commission in long-range planning priorities and uses of coastal zone resources.

The principal responsibilities of the commission included defining and evaluating the extent of the coastal zone, identifying the major users and uses of coastal zone resources, developing priorities of land and water uses, and setting up the organizational body to oversee and coordinate the uses of coastal resources.

The plan would have qualified the state for continual federal funding for a coastal zone management program and provided a guide for future federal projects within New York's coastal zone. An appropriation of \$220,500

for use by the commission as matching funds for federal money was set forth in the bill.

The potential impact of this legislation would have focused both on offshore resources up to the three-mile limit and on coastal lands--a management program for both land and water resources. It would also have established a commitment on the part of the legislature and executive to evaluate the state's coastal resources and to work out a management program for commercial development, environmental protection, and public use.

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FISHERY MANAGEMENT PROGRAM--STRIPED BASS

A-12329

Passed Assembly

Assemblyman Wertz

This bill sought to initiate a fisheries management program for striped bass in its Hudson River spawning area--from the southern boundary of the Tappan Zee Bridge in Westchester County as far north as Coxsackie in Greene County. The bill provided for licensing those engaged in the taking, sale, and possession of striped bass. The intent was to provide a mechanism through which the Department of Environmental Conservation could gather data on commercial output and its effect upon the striped bass resource. In addition, all parties engaged in any activity relating to or having an impact upon the area and upon the striped bass population would have been required to file an environmental impact statement.

The intent of this legislation was to formulate a sound sanctuary management program for striped bass. However, this legislation proposed licensing of those individuals involved in commercial fishing only. To obtain complete and accurate data, licensing of all individuals taking striped bass would be needed.

NAVIGATION LAW  
S-6157-B

Passed Senate  
Senators B.C. Smith and Cammerer

The purpose of the bill was to recodify the navigation law by consolidating it into the Office of Parks and Recreation. The bill would have enacted a new Chapter 37 of the Consolidated Laws, to be called the Navigation Law, and would have repealed those provisions of the law incorporated in their entirety in the new chapter.

The bill would have served two functions. First, it would have fulfilled a mandate set forth in section 720 of the Executive Law, by recodifying the provisions of the Navigation Law--presently disorganized. Second, assigning responsibility to the commissioner of the Office of Parks and Recreation would have achieved proper administration. This is required by Chapter 140 of the Laws of 1970.

Three basic changes were proposed in the bill. Section 1.03 broadened the definition of navigable waters by including the waters of Nassau and Suffolk counties. This would have provided uniform administration of the Navigation Law statewide for surface water use by boats in operation, safety, enforcement, and rules of the road. Nassau and Suffolk counties' exclusion has been based on local governments' desire to sell sand and gravel dredged from under water to private companies, thereby making a profit for the municipalities. Responsibility for regulating dredging of subsurface waters is assigned to the Department of Environmental Conservation--with an exclusion from such control for the waters of Nassau and Suffolk counties owing to their exclusion from the definition of navigable waters in the Navigation Law. Sponsors of this bill held that exclusion from dredging control should fall within the scope of the Environmental Conservation Law, not the Navigation Law, which applies only to use of the water by boats under such programs as registration, safety, and rules of the road.

Second, the bill proposed an increase in inspection fees for public vessels--the first increase since 1909--under the Office of Parks and Recreation. Proponents asserted that present fees do not cover increased inspection costs.

The third notable change was a proposed threefold increase in registration fees for pleasure vessels by reducing the registration period from three years to one year. The state would thereby get sufficient funds to cover the costs of administering the necessary computerized registration program; at present, boat owners have to wait from six weeks to three months for their registration to clear. Supporters intended the changed registration system to improve service to boat owners.

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BANKS OF NAVIGABLE WATERS

S-9003  
Passed Senate  
Senators Knorr, Trunzo, and Johnson

This bill would have amended section 15-0505 of the Environmental Conservation Law by requiring a permit for any excavation or placing of fill on the banks of the state's navigable waters.

Presently, permits in the law cover only excavation or filling of the navigable waters themselves. Often, excavation on the banks of a waterway can lead to serious damage from erosion. During the dry season, banks of waterways are frequently dug up, leaving scant barrier when the water returns to its old level. State and federal funds are being spent to repair natural damage aggravated by unreviewed projects.

Worthwhile and necessary excavation or filling projects would have proceeded, subject to permit review by the Department of Environmental Conservation. Section 15-0501 of the Department of Environmental Conservation Law now has a similar provision for streams.

TIDAL WETLANDS ACT  
S-9187-B  
Senator B.C. Smith

Passed Senate

This bill would have included imprisonment as an alternative or additional penalty to the fine imposed in the Tidal Wetlands Act for violations, to bring the wetlands law into conformity with Penal Law definition of a misdemeanor.

Section 25-0501 of the Tidal Wetlands Act labels any violation a misdemeanor, providing only a fine as penalty. The Penal Law, section 10-000, subdivision 4, defines a misdemeanor as an offense "for which a sentence to a term of imprisonment in excess of fifteen days may be imposed, but for which a sentence to a term of imprisonment in excess of one year cannot be imposed." Some judges have declined to treat violations of the Tidal Wetlands Act as misdemeanors because the wording of the act does not include imprisonment as a penalty.

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OFFSHORE OIL DRILLING

A-12000-A

Passed Assembly

Assemblyman Reilly

This bill sought to place restrictions on offshore drilling for oil to forestall possible consequent pollution, amending the Environmental Conservation Law by adding a new article. The bill declared that the

marine coastal waters of the state be recognized as a marine sanctuary it prohibited the discharge of oil into the coastal marine sanctuary, and rendered violators strictly liable for damages as well as for the costs of removing the spilled oil.

The attorney general was given authority to bring suit to recover damages to the state caused in violation of this proposed act. He was also given the power to seek injunctive relief and in certain instances to seize materials used in violation of the proposed act.

The Department of Environmental Conservation was given power to license and certify terminal facilities, and to adopt rules and regulations to prevent polluting substances from being spilled or discharged into the state's waters.

Supporters of this legislation said their aim was to protect New York State from such tragic results as were caused by drilling in the Gulf of Mexico and the Santa Barbara channel. The secretary of the interior is considering leasing areas for oil drilling along the eastern seaboard of the United States. This bill did not seek to prohibit offshore drilling but to protect the waters of the state from contamination by oil spill or other polluting substance.