

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 102 and 103 (7 Del.C. §§102 & 103)
7 DE Admin. Code 3901

FINAL

ORDER

3900 Wildlife

Secretary's Order No.: 2008-F-0045

3908 General Rules and Regulations Governing Land and Waters Administered by the Division

I. Background:

A public hearing was held on Monday, August 25, 2008, at 6:30 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to the existing Delaware Wildlife Regulation No. 3908: General Rules and Regulations Governing Land and Waters Administered by the Division (2008). These revisions will improve hunting safety and quality on State of Delaware wildlife hunting areas where geocaching and letterboxing activities are permitting. In addition, the revisions will specifically clarify that trespass into areas on State Wildlife Lands that are closed by the Director, and indicated as such on official area maps, is a violation of 3908, and will be enforced as such by the Department with fines assessed accordingly.

Two members of the public attended this hearing on August 25, 2008, however, no public comment or questions were received by the Department at that time regarding this proposed action. Proper notice of the hearing was provided as required by law.

After the hearing, the Department performed an evaluation of the evidence entered into the record in this matter. Thereafter, the Hearing Officer prepared her report and recommendation in the form of a Hearing Officer's Memorandum to the Secretary dated September 10, 2008, and that Report is expressly incorporated herein by reference.

II. Findings:

The Department has carefully considered all relevant public input regarding its proposed regulation, and has provided a reasoned analysis and a sound conclusion with regard to the same, as reflected in the Hearing Officer's Memorandum of September 10, 2008, which is attached and expressly incorporated into this Order. Moreover, the following findings and conclusions are entered at this time:

1. Proper notice of the hearing was provided as required by law.
2. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;
3. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
4. The Department held a public hearing in a manner required by the law and regulations;
5. The Department considered all timely and relevant public comments in making its determination;
6. Promulgation of these proposed amendments would improve hunting safety and quality on state wildlife areas where hunting, geocaching and letterbox activities are permitted;
7. The revisions will specifically clarify that trespass into areas on State Wildlife Lands that are closed by the Director, and indicated as such on official area maps, is a violation of Regulation 3908, and will be enforced as such by the Department with fines assessed accordingly;

8. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally that participate in geocaching or letterbox activities;

9. The Department's proposed amendments to Regulation 3908 are adequately supported, not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the Delaware *Register of Regulations*; and that

10. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary.

III. Order:

Based on the record developed, as reviewed in the Hearing Officer's Memorandum dated September 10, 2008, and expressly incorporated herein, it is hereby ordered that the proposed amendments to State of Delaware Regulation No. 3908 be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons:

The promulgation of the Division of Fish and Wildlife Regulation No. 3908, will aide the Department in its ability to improve hunting safety and quality on state wildlife hunting areas where hunting, geocaching and letterbox activities are permitted, while simultaneously protecting the natural resource itself.

In developing this regulation, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and public concerns surrounding the same, in furtherance of the policy and purposes of 7 **Del.C.**, Ch. 60.

8.0 General Rules and Regulations Governing Land and Waters Administered by the Division (Formerly WR-8)

(Penalty Section 7 **Del.C.** §103(d))

8.1 Motorized Vehicles.

8.1.1 General. It shall be unlawful for any person to drive or operate a motorized vehicle upon any lands administered by the Division, except on established roads or as otherwise authorized by the Director.

8.1.2 Noise. It shall be unlawful for any person to drive or operate a motorized vehicle upon any lands administered by the Division, unless such vehicle is equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise.

8.1.3 Speed Limit. It shall be unlawful for any person to drive or operate a vehicle in excess of twenty (20) miles per hour when on lands administered by the Division, unless otherwise authorized by the Director.

8.1.4 Unlicensed Vehicles. It shall be unlawful for any person to drive or operate any motorized vehicle upon any lands administered by the Division, unless said vehicle is licensed for use upon public highways and roadways or the driver or operator of said vehicle has been issued a permit from the Division.

8.1.5 Parking.

8.1.5.1 It shall be unlawful for any person to park any vehicle on lands administered by the Division in such a manner as to obstruct the use of a boat ramp, roadway or trail. Any vehicle parked in such manner shall be subject to removal, and the owner of said vehicle shall bear all costs involved with such removal.

8.1.5.2 Unless otherwise authorized by the Director, it shall be unlawful for any person to park and leave unattended any vehicle or trailer in any Division parking lot, unless said lot is lawfully being used for direct access to lands or waters administered by the Division.

8.1.5.3 Unless otherwise authorized by the Director, it shall be unlawful for any person to leave any vehicle on lands administered by the Division for a period exceeding 24 hours.

8.2 Conditions of Use.

8.2.1 Trespass. It shall be unlawful for any person to enter upon lands or waters administered by the Division when those lands or waters have been closed by the Division to: protect public safety; protect

Department property; or manage wildlife. Persons shall adhere to special entry restrictions as listed on official area maps signed by the Division Director.

8.2.2 Hours of Entry. It shall be unlawful for any person to be present upon lands or waters administered by the Division between sunset and sunrise, unless such person is lawfully hunting or fishing or has been authorized by written permission of the Director.

8.2.3 Camping. It shall be unlawful for any person to camp on lands administered by the Division, except conservation oriented groups may, with written permission of the Director, camp in areas specified in such permit.

8.2.4 Swimming. It shall be unlawful for any person to swim in waters administered by the Division, except by written permission of the Director.

8.2.5 Dumping.

8.2.5.1 It shall be unlawful for any person to place, dump, deposit, throw or leave any garbage, refuse or similar debris within or upon any lands or waters administered by the Division, except in receptacles provided for such purpose;

8.2.5.2 It shall be unlawful for any person to bring any trash, refuse or similar material onto lands administered by the Division for the purpose of disposing such in Division receptacles.

8.2.5.3 Unless otherwise authorized by the Director, it shall be unlawful for any person to deposit any material, structure, debris or other objects on lands or waters administered by the Division.

8.2.6 Destruction of State Property.

8.2.6.1 It shall be unlawful for any person to deface, damage, remove or alter any structures, buildings, natural-land features, or other property or equipment belonging to the Division.

8.2.6.2 Unless authorized by the Division for management, research or educational purposes, it shall be unlawful for any person to cut, injure or remove trees, shrubs, wildflowers, ferns, mosses or other plants from lands administered by the Division.

8.2.6.3 It shall be unlawful for any person to erect or use any portable or permanent deer stand that involves the use of nails or screws placed in a tree.

8.2.6.4 Unless otherwise authorized by the Director, it shall be unlawful for any person to kindle, build, maintain or use a fire on lands administered by the Division.

8.3 Hunting and Firearms.

8.3.1 Hunting.

8.3.1.1 It shall be unlawful for any person to hunt on lands administered by the Division, except as permitted by the Director in writing and specified on current wildlife area maps distributed by the Division.

8.3.1.2 A daily permit must be obtained before hunting waterfowl at Augustine, Cedar Swamp, Little Creek, Woodland Beach, Ted Harvey, Prime Hook and Assawoman wildlife areas. Permits may be obtained on-site from an authorized agent of the Division and must be returned upon leaving the area. The Director may specify the hours of a permit's effectiveness and determine the conditions of its issuance.

8.3.2 Waterfowl.

8.3.2.1 It shall be unlawful for any person to hunt waterfowl on areas administered by the Division, except from State built blinds, or other blinds authorized by the Division, or by written permission of the Director.

8.3.2.2 It shall be unlawful for any person to enter tidal and/or impounded areas administered by the Division during the waterfowl season, except for access as authorized by paragraph (1) of this subsection.

8.3.3 Trapping. It shall be unlawful for any person to trap or attempt to trap on areas administered by the Division, except for: persons holding a valid contract with the Division to do so; authorized agents of the Division who are conducting authorized wildlife management practices; or scientific purposes as specifically authorized in writing by the Director.

8.3.4 Firearms on Division Areas.

8.3.4.1 It shall be unlawful for any person to possess a firearm on lands or waters administered by the Division from March 1 through August 31, except as authorized by the Director in writing.

8.3.4.2 It shall be unlawful for any person to possess a rifled firearm of any description at any time on those lands bordering the Chesapeake and Delaware Canal and licensed to the

Department by the Government of the United States for wildlife management purposes, except that muzzleloaders and shotguns with rifle barrels may be used during deer seasons when it is lawful to use those firearms.

8.3.4.3 It shall be unlawful for any person to discharge any firearm on lands or waters administered by the Division on Sunday, except in areas designated by the Director or with a permit from the Director.

8.3.4.4 It shall be unlawful for any person to discharge any firearm on lands or waters administered by the Division for any purpose, including target shooting, other than to hunt during an open season, under conditions approved by the Director and specified on the current wildlife area map.

8.3.5 Dikes. It shall be unlawful for any person to be in possession of any firearm on any dike administered by the Division, unless such person is temporarily crossing a dike at a ninety degree angle or traversing a dike to reach a Division authorized deer stand location during a deer firearms hunting season.

8.3.6 Deer Hunting By Driving. It shall be unlawful for residents to participate in deer drives, except where authorized on current wildlife area maps between the hours of 9:00 a.m. and 3:00 p.m. No more than six (6) resident hunters may participate in driving deer at any one time. Nonresidents may not participate in deer drives at any time. Nonresidents are restricted to hunting deer from stationary locations. Nonresidents may not possess a loaded firearm during the deer season, except to hunt from a stationary location or to retrieve a deer that they wound.

8.4 Horses and Bicycles. It shall be unlawful to ride horses or bicycles on, or allow horses to use, any lands or waters administered by the Division, except on established roads or trails that have been designated by the Division for such purposes on current wildlife area maps.

8.5 Concessions, Posters and Solicitations.

8.5.1 It shall be unlawful for any person to erect, post or distribute any placard, sign, notice, poster, billboard or handbill on lands or waters administered by the Division without written authorization of the Director.

8.5.2 It shall be unlawful for any person to engage in the vending of merchandise, food or services on lands or waters administered by the Division without written authorization of the Director.

8.5.3 It shall be unlawful for any person to do any form of solicitation for money or goods on any lands or waters administered by the Division without written authorization of the Director.

8.6 Firewood. It shall be unlawful for any person to remove firewood from lands administered by the Division without a permit from the Division, except when special firewood areas are designated by the Director in writing.

8.7 Dog Training.

8.7.1 General. It shall be unlawful for any person to train a dog on lands or waters administered by the Division, except:

8.7.1.1 During open hunting seasons for the game that the dog is being trained to hunt;

8.7.1.2 Within a dog training area established by the Division; and

8.7.1.3 As permitted by the Director in writing on current wildlife area maps.

8.7.2 C&D Canal Summit Area. – It shall be unlawful for any person to enter the dog training area west of the Summit Bridge (Rt. 896), designated on the current wildlife area map of the C&D Canal Wildlife Area, for any purpose other than to train dogs or hunt for deer during the shotgun deer seasons. It shall be unlawful for any person to fish, operate a model or full size boat, ride horses or bicycles, or conduct any other activity on the area.

8.8 Geocaching

8.8.1 It shall be unlawful to place caches or letterboxes on Division of Fish and Wildlife property without a permit from the Division. Permits may be obtained by submitting a completed permit application to the appropriate Fish and Wildlife Regional Office. The proposed caching location will be specified in the application. The Regional Fish and Wildlife Manager will review and approve or deny the permit request. A permit will be valid for a maximum of one year from the date of issue at which time the geocache or letterbox must be removed or re-permitted. The permitted time frame will be determined by the area manager and be based on the local wildlife species present and the management activities planned for the area. The area manager will be provided the location of the cache or letterbox and may remove it at his or her discretion, with notice to the permit holder, should circumstances warrant. Online geocache and letterbox descriptions, such as those on geocaching.com or letterboxing.org must include information about access during hunting seasons and provide a link to Delaware Division of Fish and Wildlife Hunting Information. Geocache and letterbox contents must be suitable for all ages.

Food, alcohol, tobacco, weapons or other dangerous items, prescription or illegal drugs and adult items are prohibited. From September 1st. through February 15th. of each year and during the spring turkey hunting season, the placement of or searching for geocaches and letterboxes may only occur on Sundays from sunrise to sunset. During the remainder of the year, geocaching and letterbox activities may occur 7 days per week from sunrise to sunset.

3 DE Reg. 289 (8/1/99)

11 DE Reg. 334 (09/01/07)

12 DE Reg. 496 (10/01/08) (Final)