

# **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-0047**  
**3920 Game Bird Releases**

### **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 public comment on the proposed new Delaware Wildlife Regulation No. 3920: Game Bird Releases (2008). This new regulation would require that people who raise and release domestically-raised game birds (in particular, quail, pheasant, chukar partridge and Hungarian partridge) into the wild, primarily either for dog training purposes and/or for hunting purposes, obtain a permit from the Division to do so. This new regulation also requires those birds to be leg-banded prior to release. Permitted banders must report the band numbers of the birds released, the type of bird released, and the release date and location.

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 provided a reasoned analysis and a sound conclusion with regard to this proposed new regulation, 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 this new regulation will allow the Department to monitor release activities and better determine what proportion of the reported game bird harvest is made up of native wild birds versus released game farm birds;
7. 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 raising and releasing game birds;

8. The Department's proposed new Regulation 3920 is adequately supported, is not arbitrary or capricious, and is 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

9. 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 new State of Delaware Regulation No. 3920: Game Bird Release 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. 3920, will enable the Department to monitor release activities and better determine what proportion of the reported game bird harvest is made up of native birds versus released game birds.

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.

#### **20.0 Game Bird Releases**

(Penalty Section 7 Del.C. §103(d))

##### 20.1 Permit for releasing game birds

20.1.1 All persons possessing or releasing 25 or fewer domestically raised quail, chukar partridge, Hungarian partridge and pheasants into the wild must obtain a permit from the Division. This permit is free.

##### 20.2 Banding Released Game Birds.

20.2.1 All domestically raised quail, chukar partridge, Hungarian partridge and pheasants must be leg banded with a Division approved band before being released into the wild. ~~Permitted banders~~ Person herein must report the ~~band numbers of birds released~~ number of birds banded], the type of bird released (quail, chukar partridge, Hungarian partridge or pheasant) and the release date and location.

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