

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 103(a) & (b) (7 **Del.C.** §103(a) & (b))
7 **DE Admin. Code** 3301

FINAL

Secretary's Order No: 2020-F-0004

**RE: Proposed Regulation Amendments to 7 DE Admin. Code 3300: Non-Tidal Finfish,
Section 3301- Definitions**

Date of Issuance: February 26, 2020

Effective Date: April 11, 2020

3300 Non-Tidal Finfish 3301 Definitions

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to 7 **Del.C.** §§6006 and 6010, and all other relevant statutory authority, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

Background, Procedural History and Findings of Fact

This Order relates to 7 **DE Admin. Code** 3300: Non-Tidal Finfish, Section 3301- Definitions ("Amendments"). The Department proposes revisions to the regulatory definition of "Pike Creek," specifically to change the lower boundary of the Designated Trout Stream for Pike Creek from "Pike Creek Road" to "Route 2 (Kirkwood Highway)," thereby extending these designated waters downstream approximately 0.9 miles to the bridge at Route 2 (Kirkwood Highway) in New Castle County, Delaware.

This action is being taken by the Department to extend the defined Designated Trout Waters on Pike Creek downstream, as referenced above. The extension of the designated waters will accommodate freshwater trout stocking and improvement for angler access to the put-and-take freshwater trout fishery on Pike Creek. The acquisition of property along Pike Creek by Delaware State Parks (White Clay Creek State Park - Judge Morris Estate) provides an opportunity to expand Delaware's trout stocking sites and increase public access. To that, the Division of Parks and Recreation approved the extended section of these designated waters.

In accordance with 7 **DE Admin. Code** 3304, Section 3.6, the extension of the waters defined within the Designated Trout Stream, will be closed for stream trout fishing 14 days before the season's opening day. This shall provide time for stocking, fish acclimation and dispersion, as well as allowing fair access through an established starting time and date. Unless lawfully exempt, a trout stamp is required to fish a Designated Trout Stream from the first Saturday in April through June 30 and from the first Saturday in October through November 30 (\$2.10 resident youth / \$4.20 resident adult/ \$6.20 non-resident). These trout stamp revenues support the purchase of trout in subsequent years.

The Department presented the Amendments at the Delaware Advisory Council on Wildlife & Freshwater Fish meeting on June 25, 2019. During said meeting, the Delaware Advisory Council on Wildlife & Freshwater Fish motioned to endorse the proposed regulatory action. The Department then proceeded with the proposed regulatory changes.

The Department has the statutory basis and legal authority to act with regard to the formal promulgation of these proposed Amendments, pursuant to 7 **Del.C.** §103(a)(b).

The Department published its initial proposed regulation Amendments in the January 1, 2020 Delaware *Register of Regulations*. Thereafter, the public hearing regarding this matter was held on January 29, 2020. There were no members of the public in attendance at the public hearing. Pursuant to 29 **Del.C.** §10118(a), the hearing record remained open for receipt of additional written comment for 15 days following the public hearing. The hearing record formally closed for comment in this matter at close of business on February 13, 2020, with no comment having been received by the Department during any phase of this formal promulgation.

It should be noted that all notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

Hearing Officer Theresa Newman prepared her Report dated February 1, 2020 ("Report"), which expressly incorporated the Department's proposed Amendments into the hearing record generated in this matter. The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed Amendments as attached to the Report as Appendix "A."

Reasons and Conclusions

Based on the record developed by the Department's experts in the Division of Fish and Wildlife, and established by the Hearing Officer's Report, I find that the proposed regulatory Amendments to 7 **DE Admin. Code** 3300: *Non-Tidal Finfish*, Section 3301- *Definitions*, are well-supported. I further find that the Department's experts fully developed the record to support adoption of these Amendments. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed Amendments be promulgated as final.

The following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to this proposed regulatory promulgation, pursuant to 7 **Del.C.** §103(a)(b);

2. The Department has jurisdiction under its statutory authority, pursuant to 7 **Del.C.** Chapter 60, to issue an Order adopting these proposed Amendments as final;

3. The Department provided adequate public notice of the initial proposed Amendments and all proceedings in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the same, including at the time of the public hearing held on January 29, 2020, and during the 15 days subsequent to the hearing (through February 13, 2020), before making any final decision;

4. Promulgation of the proposed Amendments to 7 **DE Admin. Code** 3300: *Non-Tidal Finfish*, Section 3301- *Definitions*, will enable the Department to extend the Designated Trout Waters on Pike Creek downstream approximately 0.9 miles to the bridge at Route 2 (Kirkwood Highway) in New Castle County, Delaware. The expansion of these designated waters will: (1) provide for the stocking of freshwater trout therein, thus creating additional recreational opportunities in New Castle County; (2) continue the utilization of trout stamp revenues to support the purchase of trout in subsequent years; and (3) improve angler access to the put-and-take freshwater trout fishery on Pike Creek;

5. The Department has reviewed the proposed Amendments in the light of the Regulatory Flexibility Act, consistent with 29 **Del.C.** Ch. 104, and believes the same to be lawful, feasible and desirable, and the recommendations as proposed should be applicable to all Delaware citizens equally;

6. The Department's proposed regulatory Amendments, as initially published in the January 1, 2020 Delaware *Register of Regulations*, and as set forth in Appendix "A" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they should be approved as final regulatory Amendments, which shall go into effect ten days after their publication in the next available issue of the Delaware *Register of Regulations*; and

7. The Department shall submit the proposed Amendments as final regulatory amendments to the Delaware *Register of Regulations* for publication in its next available issue and provide such other notice as the law and regulation require and the Department determines is appropriate.

Shawn M. Garvin
Secretary

3300 Non-Tidal Finfish

3301 Definitions

1.0 For purposes of Regulations 3301 through 3311, the following words and terms shall have the following meaning, unless the context clearly indicates otherwise:

"Administered by the Division" means owned, leased or licensed by the Division.

"Bait" means any nontoxic food material, compound or mixture of ingredients which wildlife is able to consume.

"Baited Field" means include any farm field, woodland, marsh, water body or other tract of land where minerals, grain, fruit, crop or other nontoxic compounds have been placed to attract wildlife to be hunted.

"Designated Trout Pond" means:

Newton Pond in Sussex county (near Greenwood);

Tidbury Pond in Kent County.

"Designated Trout Stream" means:

"Beaver Run", from the boundary line between this State and the Commonwealth of Pennsylvania to the Brandywine River;

"Christina Creek", from the boundary line between this State and the State of Maryland through Rittenhouse Park;

"Mill Creek", from Brackenville Road to Route 7;

"Pike Creek", from Route 72 to the bridge at ~~Pike Creek Road~~ Route 2 (Kirkwood Highway);

"Red Clay Creek", from the dam just below the boundary between the State of Delaware and the Commonwealth of Pennsylvania to the bridge at Yorklyn Road;

"White Clay Creek", from the boundary line between this State and the Commonwealth of Pennsylvania to the downstream side of Paper Mill Road; and

"Wilson Run", from Route 92 through Brandywine Creek State Park; ~~and~~.

"Director" means the Director or Acting Director of the Division.

"Division" means the Division of Fish and Wildlife of the Department.

"Established road" means a road maintained for vehicular use by the Division and designated for such use by the Division on current wildlife area maps.

"Fishing" or **"to fish"** means to take, catch, kill or reduce to possession or attempt to take, catch, kill or reduce to possession any fish by any means whatsoever.

"Game fish" means smallmouth bass, largemouth bass, black or white crappie, rock bass, white bass, walleye, northern pike, chain pickerel, muskellunge (or hybrids), salmon, trout, sunfishes and white bass/striped bass hybrids.

"Possession" means either actual or constructive possession of or any control over the object referred to.

"Refuge" means an area of land, whether in public or private ownership, designated by the Department as a refuge. Land shall only be designated with the permission of the landowner and if such designation is thought to be in the best interest of the conservation of wildlife. Refuges shall normally be closed at all times to all forms of hunting, except as permitted by the Director in writing for wildlife management purposes.

"Restricted Trout Stream" means the White Clay Creek from a point 25 yards above Thompson Bridge at Chambers Rock Road to the boundary line between this State and the Commonwealth of Pennsylvania.

"Roadway" means any road, lane or street, including associated right-of-ways, maintained by this State or any political subdivision of this State.

"Season" means that period of time during which a designated species of wildlife may be lawfully hunted or a designated species of fish may be lawfully fished.

"Vehicle" means in or by which someone travels or something is carried or conveyed or a means of conveyance or transport, whether or not propelled by its own power.

3 DE Reg. 289 (08/01/99)

3 DE Reg. 1738 (06/01/00)

16 DE Reg. 788 (01/01/13)

21 DE Reg. 886 (05/01/18)

22 DE Reg. 776 (03/01/19)

23 DE Reg. 882 (04/01/20) (Final)