

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 102(a) (7 **Del.C.** §102(a))
7 **DE Admin. Code** 3901

FINAL

Secretary's Order No.: 2008-F-0028

Withdrawal of Proposed New Regulation, 19.0: Bald Eagle Protection

Date of Issuance: June 23, 2008

Effective Date: June 23, 2008

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") under 29 **Del.C.** §§8001 et seq., 29 **Del.C.** §§10111 et seq. and 7 **Del.C.** §6010 (a), the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding:

On April 8, 2008, the Department opened a proposed rulemaking proceeding in Start Action Notice ("SAN") 2008-04 to promulgate a regulation which would ensure that the Bald Eagle population here in Delaware persists after protection from the federal Endangered Species Act was terminated on August 8, 2007. Eagles are a significant non-consumptive wildlife resource, which require protection in order to persist. Bald eagles are very sensitive to disturbance, which may result in failure of nests or abandonment of nest sites. In Delaware, the acreage of development in proximity to current nest sites is proposed to double in the next five years. Scientific studies from this region show eagles require significant no-disturbance buffers around their nests in order to persist. The proposed regulation would have maintained the same level of protection to eagle nest sites that was in place under the Endangered Species Act prior to August 2007. Delaware Code currently protects eagles from disturbance, but does not define disturbance. The new regulation proposed would have adopted the same protection to eagle nest sites that was formerly provided under the Endangered Species Act of 1973 prior to the eagle's removal from the federal Endangered Species List in August of 2007.

The aforementioned proposed regulation was published in the May 2008 edition of the *Delaware Register of Regulations*. Subsequently, the Department held a public workshop on May 28, 2008, in order to enhance public awareness of this proposed new regulation concerning Bald Eagle protection in the State of Delaware. A formal public hearing regarding the proposed new regulation was scheduled to be held by the Department on June 4, 2008, and the public comment period was open for written comments from May 1, 2008 through June 14, 2008. As a result of the public comments the Department received during that time period, the Department decided to significantly revise the proposed regulation and publish the revised proposed regulation, once completed, at a later date in the *Delaware Register of Regulations*. In order to not have two proposed regulations simultaneously pending consideration for adoption as a final regulation, the Department will continue to move forward with its plan to substantively revise the proposed regulation concerning Bald Eagle protection here in Delaware, and at this time withdraw the current proposed regulation previously published in the May 2008 *Delaware Register of Regulations*.

In conclusion, the following findings and conclusions are entered:

1. The Department, acting through this Order of the Secretary and 29 **Del.C.** §10118(d), hereby withdraws the proposed regulation published in the *Delaware Register of Regulations* on May 1, 2008;
2. The Department will allow its proposed rulemaking commenced with Start Action Notice No. 2008-04 to continue with a new, substantively revised proposed regulation to be published in the *Delaware Register of Regulations* once all revisions have been made, and the Department may rely on the portions of the administrative record already developed to the extent that the Department determines that they are relevant to the proposed new regulation to be published in a future edition of the *Delaware Register of Regulations*; and
3. The Department shall have this Order published in the *Delaware Register of Regulations* and in newspapers in the same manner as the notice of the proposed regulation.

John A. Hughes
Secretary

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