

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 103(a) and (b) (7 **Del.C.** §103(a) & (b))
7 **DE Admin. Code** 3300

FINAL

Secretary's Order No.: 2019-F-0011

3300 Non-Tidal Finfish

3301 Definitions

3304 Creel Limits, Size Limits and Seasons

**RE: Approving Final Regulations to Amend 7 DE Admin. Code 3300: *Non-Tidal Finfish*
(3301 Definitions & 3304 Creel Limits, Size Limits and Seasons)**

Date of Issuance: February 11, 2019

Effective Date: March 11, 2019

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("DNREC," "Department"), pursuant to 7 **Del.C.** §103(a) and (b), and any 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 proposed Amendments ("Amendments") to 7 **DE Admin. Code** 3300: *Non-Tidal Finfish* (3301 Definitions & 3304 Creel Limits, Size Limits and Seasons). This action is being taken by the Department to adjust the start time for opening day of freshwater trout season on designated trout streams and to provide clarity on stream boundary locations and protected slot limit lengths.

Opening day of freshwater trout seasons often have a specified start time to help manage angler competition for fishing locations, but the current 7:30 a.m. opening day start time for Delaware's designated trout streams serves no current resource management purpose, is not meaningful for managing angler competition for fishing locations, and unnecessarily limits angler access and participation. At the suggestion of a member of the public, Delaware's Advisory Council on Wildlife and Freshwater Fish recommended that the start time of Delaware's opening freshwater trout season be changed from 7:30 a.m. to 7:00 a.m. This change will make the start time consistent with the 7:00 a.m. opening day start time established for designated trout ponds in Kent and Sussex Counties and provide for expanded angler opportunity and participation. Angling hours for the remainder of the trout season, which are one-half hour before sunrise to one-half hour after sunset, remain the same.

The Department also proposes to add clarity to the definition for the portion of Pike Creek that is designated as a trout stream to reflect contemporary landmark and roadway naming. The Department also proposes to add clarity that the upper bound of the smallmouth bass protected slot limit includes those fish measuring 17 inches in total length.

The Department has the statutory basis and legal authority to act with regard to promulgation of the proposed Amendments to 7 **DE Admin. Code** 3300: *Non-Tidal Finfish* (3301 Definitions & 3304 Creel Limits, Size Limits and Seasons), pursuant to 7 **Del.C.** §103(a) and (b). The Department published its proposed Amendments in the January 1, 2019 Delaware *Register of Regulations*. Thereafter, the public hearing regarding this matter was held on January 23, 2019.

No members of the public attended the public hearing. Pursuant to Delaware law, the record remained open for fifteen additional days subsequent to the date of the public hearing for receipt of public comment. The hearing record formally closed with regard to public comment at the close of business on February 7, 2019, with no comments having been received by the Department during any phase of this proposed regulatory 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 Bethany A. Fiske prepared a Hearing Officer's Report dated February 8, 2019. 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 and established by the Hearing Officer's Report, I find that

the proposed Amendments to 7 **DE Admin. Code 3300: Non-Tidal Finfish (3301 Definitions & 3304 Creel Limits, Size Limits and Seasons)** are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed Amendments be promulgated as final. I further find that the Department's experts in the Division of Fish and Wildlife fully developed the record to support adoption of these proposed Amendments.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed Amendments to 7 **DE Admin. Code 3300: Non-Tidal Finfish (3301 Definitions & 3304 Creel Limits, Size Limits and Seasons)**, pursuant to 7 **Del.C.** §103(a) and (b);

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

3. The Department provided adequate public notice of the 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 23, 2019, and during the 15 days subsequent to the hearing (through February 7, 2019), before making any final decision;

4. Promulgation of the proposed Amendments to 7 **DE Admin. Code 3300: Non-Tidal Finfish (3301 Definitions & 3304 Creel Limits, Size Limits and Seasons)** will adjust the start time for opening day of freshwater trout season on designated trout streams and to provide clarity on stream boundary locations and protected slot limit lengths;

5. The Department has reviewed the proposed Amendments in light of the Regulatory Flexibility Act, consistent with 29 **Del.C.** Ch. 104, and has selected Exemption B1, as this regulation is not substantially likely to impose additional costs or burdens to individuals or small businesses;

6. The Department's Hearing Officer's Report, including its established record and the recommended proposed Amendments as set forth in Appendix A, are hereby adopted to provide additional reasons and findings for this Order;

7. The Department's proposed Amendments, as published in the January 1, 2019 Delaware *Register of Regulations*, and as set forth in Appendix A, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, the Amendments are approved as final, and shall go into effect ten days after publication in the next available issue of the Delaware *Register of Regulations*; and

8. The Department shall submit this Order approving as final the proposed Amendments to 7 **DE Admin. Code 3300: Non-Tidal Finfish (3301 Definitions & 3304 Creel Limits, Size Limits and Seasons)** 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 ~~Henderson~~ the bridge at Pike Creek Road;

"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;

"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)

3302 Special Permits

The Director may issue a permit authorizing the holder thereof to fish by means of nets or other device from any of the non-tidal waters of this State, provided the fishing serves a research, management or educational purpose.

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

3303 Method of Take

(Penalty Section 7 Del.C. §1304)

- 1.0 Non-tidal Waters. It is unlawful for any person to take fish from the non-tidal waters of this State, except by means of hook and line while under the immediate observation of the person using same. Carp, any species of snakehead (Family Channidae) and shad may be taken as set forth otherwise in this regulation.
- 2.0 Carp. It is unlawful for any person to take carp, except by the following methods: hook and line; bow and arrow; and spear. Carp may be taken with a seine from freshwater ponds and non-tidal streams with permission from the Director and under the supervision of a representative of the Division.
- 3.0 Shad. Except as otherwise provided by law, it is unlawful for any person to take shad, except by hook and line, provided said line has no more than two (2) lures attached. Each lure may have no more than one (1) single pointed hook.
- 4.0 Snakehead. It is lawful to take northern snakehead fish (*Channa argus*) or blotched snakehead fish (*Channa maculata*) from non-tidal waters of this State with hook and line; bow and arrow; and spear.
- 5.0 Snagging of Game Fish. It is unlawful for any person to fish in the non-tidal waters of this State with hooks (single, double or treble) knowingly used to snag or otherwise catch or attempt to snag or otherwise catch any game fish by hooking said game fish in any part of the anatomy other than in the mouth.
- 6.0 Fish Ladders. It is unlawful for any person to fish within ten (10) feet of an entrance or exit of a fish ladder or to remove fish from any fish ladder between March 15 and May 30.

3 DE Reg. 289 (08/01/99)
 16 DE Reg. 788 (01/01/13)

3304 Creel Limits, Size Limits and Seasons

(Penalty Section 7 Del.C. §1304)

- 1.0 Closed Seasons. Unless otherwise provided by law or regulation of the Department, there is no closed season, size limits or possession limits on any species of fish taken by hook and line in any non-tidal waters of this State.
- 2.0 Bass.
 - 2.1 Statewide limits.
 - 2.1.1 It is unlawful for any person to have in possession more than six (6) largemouth bass or to have in possession more than six (6) smallmouth at or between the place where said largemouth and/or smallmouth bass were caught and said person's personal abode or temporary or transient place of lodging.
 - 2.1.2 Unless otherwise authorized in this regulation, it is unlawful for any person to possess any largemouth bass that measure less than twelve (12) inches in total length. Any largemouth bass taken which is less than the twelve (12) inches in total length must be immediately returned to the water with the least possible injury.
 - 2.1.3 It is unlawful for any person to possess any smallmouth bass measuring from twelve (12) inches to and including (17) inches in total length. Any smallmouth bass taken which is equal to or greater than twelve (12) inches and less than or equal to seventeen (17) inches must be immediately returned to the water with the least possible injury.
 - 2.1.4 Notwithstanding 2.1.1 of this section, it is unlawful for any person to have in possession more than one (1) smallmouth bass measuring more than seventeen (17) inches in total length at or between the place where said smallmouth bass was caught and said person's personal abode or temporary or transient place of lodging.
 - 2.1.5 It is lawful for any person to have in possession while fishing up to six (6) smallmouth bass that are less than twelve (12) inches in total length.
 - 2.2 Becks Pond.
 - 2.2.1 Notwithstanding 2.1.1 of this section, it is unlawful for any person to have in possession while fishing on Becks Pond more than two (2) largemouth bass.
 - 2.2.2 Notwithstanding 2.1.2 of this section, it is unlawful for any person to have in possession while fishing on Becks Pond any largemouth bass less than fifteen (15) inches in total length. Any largemouth bass less than fifteen (15) inches in total length must be immediately returned to Becks Pond with the least possible injury.
- 3.0 Trout.
 - 3.1 Pond and Stream Seasons.
 - 3.1.1 It is unlawful for any person to fish for rainbow trout, brown trout, brook trout, or any hybrids of these species in designated trout streams, except between and including the first Saturday of April and the second Saturday of March of each succeeding year.
 - 3.1.2 It is unlawful for any person to fish for rainbow trout, brown trout, brook trout, or any hybrids of these species in designated trout ponds, except between and including the first Saturday of March and the second Saturday of February of each succeeding year.
 - 3.2 Hours of Fishing.
 - 3.2.1 It is unlawful for any person to fish for rainbow trout, brown trout, brook trout, or any hybrids of these species in designated trout streams on the opening day of the trout season before ~~7:30~~ 7:00 a.m. and thereafter for the remainder of the trout season between one-half hour after sunset and one-half hour before sunrise.
 - 3.2.2 It is unlawful for any person to fish for rainbow trout, brown trout, brook trout, or any hybrids of these species in designated trout ponds on the opening day of the trout season before 7 a.m. and thereafter for the remainder of the trout season between one-half hour after sunset and one-half hour before sunrise.
 - 3.3 Possession. It is unlawful for any person to possess in any one day during the prescribed open season more than six (6) rainbow trout, brown trout brook trout or any hybrids of these species in any combination. On any day after a person takes his or her legal limit of trout, said person is prohibited from fishing in a designated trout stream or a designated trout pond on the same day, unless otherwise authorized by law or this regulation.
 - 3.4 Trout Stamp.

3.4.1 It is unlawful for any person to fish in a designated trout stream from the first Saturday in April through June 30 and from the first Saturday in October through November 30, unless said person has in his or her possession a valid trout stamp, or unless said person is exempted by law from having a trout stamp.

3.4.2 It is unlawful for any person to fish in a designated trout pond from the first Saturday in March through April 1, unless said person has in his or her possession a valid trout stamp, or unless said person is exempted by law from having a trout stamp.

3.5 Restricted Trout Stream.

3.5.1 It is unlawful for any person to fish in a restricted trout stream with more than two (2) flies on a line at any one time.

3.5.2 It is unlawful for any person to use any metallic, wooden, plastic or rubber spinners, spoons, lures, plugs, or any natural or synthetic bait on any restricted trout stream.

3.5.3 It is unlawful for any person to have in his or her possession more than four (4) trout within 50 feet of any restricted trout stream. On the restricted trout stream only, trout may be caught and released as long as the four (4) trout possession limit is not exceeded. All trout released must be returned to the water as quickly as possible with the least possible injury.

3.6 Closure of Designated Trout Streams and Ponds.

3.6.1 It is unlawful for any person to fish in a designated trout stream two weeks (14 days) prior to the scheduled opening of the stream trout season.

3.6.2 It is unlawful for any person to fish in a designated trout pond two weeks (14 days) prior to the scheduled opening of the pond trout season.

4.0 Striped Bass and Hybrid Striped Bass

4.1 It is unlawful for any person to have in his or her possession while fishing in the non-tidal waters of this State more than two (2) striped bass (*Morone saxatilis*) or striped bass hybrids (*Morone saxatilis* x *M. chrysops*).

4.2 It is unlawful for any person to possess any striped bass or any striped bass hybrid under the length of fifteen (15) inches measured from the tip of the snout to the tip of the tail while fishing in the non-tidal waters of this State.

5.0 Panfish Limits. It is unlawful for any person to have in possession while fishing in any State-owned non-tidal water more than fifty (50) panfish in aggregate to include bluegill, pumpkinseed, redear sunfish, black crappie, white crappie, white perch or yellow perch, provided no more than twenty-five (25) of the fifty (50) allowed in possession are of any one species.

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

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

13 DE Reg. 1350 (04/01/10)

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

3305 Ice Fishing

(Penalty Section 7 **Del.C.** §1304)

1.0 Restrictions.

1.1 It is unlawful for any person to fish more than five (5) hook and lines in non-tidal water through ice.

1.2 It is unlawful for any person to leave any hook and line being fished through the ice unattended.

1.3 It is unlawful for any person to fish in non-tidal water through ice with any line having more than three hooks.

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

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

3306 Closure of Department Ponds During Drawdowns

(Penalty Section 7 **Del.C.** §1304)

1.0 It is unlawful for any person to fish in any pond or lake administered by the Department when the water level in said pond or lake is lowered for the purpose of aiding in the control of aquatic vegetation, the conservation of fishes or the repair of water control facilities, provided said pond or lake is duly posted with signs by the Division that state said pond or lake is closed to fishing.

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

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

3307 Speed and Wake of Motorboats on Division Ponds

(Penalty Section 7 **Del.C.** §1304)

It is unlawful for any person to operate a motorized vessel, except at a slow-no-wake speed, on any pond or lake administered by the Division.

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

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

3308 Fish Stocking Practices

(Penalty Section 7 **Del.C.** §1304)

1.0 Stocking Fish Practices. It is unlawful for any person to stock any species of fish into the non-tidal public waters of this State without the written permission of the Director. This regulation does not prohibit the stocking of private impoundments.

2.0 Transportation, Possession and Sale. It is unlawful for any person to transport, purchase, possess, or sell walking catfish (*Clarius batrachus*) or the white amur or grass carp (*Ctenopharyngodon idella*) or live northern snakehead fish (*Channa argus*) or blotched snakehead fish (*Channa maculata*) without the written permission of the Director.

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

8 DE Reg. 1315 (03/01/05)

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

3309 Lake Como

(Penalty Section 7 **Del.C.** §1304)

Bait. It is unlawful for any person to use or have in his or her possession any live fish, as bait, while fishing on Lake Como.

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

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

3310 Severability

If any section, subsection, paragraph, sentence, phrase or word of these regulations is declared unconstitutional by a court of competent jurisdiction, the remainder of these regulations shall remain unimpaired and shall continue in full force and effect, and proceedings thereunder shall not be affected.

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

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

3311 Freshwater Fisherman Registry

All persons ages 16 and older who wish to fish in Delaware's fresh or tidal waters or both in any given year must first obtain a Fisherman Identification Network (F.I.N.) number for the year in question before fishing. This number may be obtained at no cost to the angler by calling a toll free number and providing the required information over the phone or by entering the required information on-line through an internet access portal designated by the Department for that purpose. Each person who requests a F.I.N. number is to write this number on his or her Delaware fishing license, or those who are legally unlicensed must be able to produce this number when checked by an enforcement agent when fishing in Delaware waters. Failure to provide a valid F.I.N. number for the year in question is a violation of 7 **Del.C.** §501 in the case of residents, or 7 **Del.C.** §506 in the case of non-residents, and will be treated the same as a failure to have a fishing license before going fishing. Information provided during the process of obtaining a F.I.N. number shall be treated as confidential and may only be shared with the National Marine Fisheries Service for the purpose of compliance with federal requirements for a national registry of marine fishermen.

12 DE Reg. 493 (10/01/08)

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

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