

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Chapter 1, (7 **Del.C.**, Ch. 1)
7 **DE Admin. Code** 3901

FINAL

3900 Wildlife Regulations

Secretary's Order No.: 2007-F-0028

Date of Issuance: August 15, 2007

Effective Date of the Amendment: September 11, 2007

3901 Definitions

I. Background:

A public hearing was held on Tuesday, July 31, 2007, at 6:00 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to the existing Delaware Wildlife Regulation No. 3901: Definitions (2007). This proposed action is needed to define the term "black powder" as it pertains to muzzle-loading rifles, and to provide clarity with regard to what the Division views as an acceptable propellant for muzzleloaders in Delaware, while providing options to hunters regarding this issue. Furthermore, this action is needed to create a definition for the term "deer", so that hunters will be allowed to legally harvest sika deer and white-tailed deer during any and all of the established deer hunting seasons.

Numerous members of the public attended this hearing on July 31, 2007, however, no public comment or questions were received by the Department regarding this proposed action. Proper notice of the hearing was provided as required by law.

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 response given to each such comment, as reflected in the Hearing Officer's Report of August 13, 2007, 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 provide better understanding to the regulated community with regard to the actual defining of "black powder" and "deer" for Delaware hunters;
7. Promulgation of these proposed amendments would also provide additional means by which to discourage the growing population of sika deer, thus effectuating a reduction in potential human/sika deer conflicts, the potential for disease transmission, and competition with white-tailed deer and other native wildlife;
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;
9. The Department's proposed amendments to Regulation 3901 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 Report dated August 13, 2007, and expressly incorporated herein, it is hereby ordered that the proposed amendments to State of Delaware Regulation No. 3901 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. 3901, will aide the Department in its ability to provide better clarity to Delaware hunters with regard to the formal definitions of "black powder" and "deer". Additionally, this rulemaking represents careful, deliberate and reasoned action by this agency to discourage the growing population of sika deer while simultaneously reducing the potential for disease transmission and competition with native white-tailed deer and other native wildlife. Furthermore, it takes steps to further reduce potential human/sika deer conflicts as well.

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.

John A. Hughes, Secretary

Secretary's Order No.: 2007-F-0030

Date of Issuance: August 15, 2007

Effective Date of the Amendment: September 11, 2007
3902 Method of Take

I. Background:

A public hearing was held on Tuesday, July 31, 2007, at 6:00 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to the existing Delaware Wildlife Regulation No. 3902: Method of Take (2007). There are three actions being proposed in this promulgation: (1) clarification of existing regulation that it is legal to use a muzzle-loading rifle during deer shotgun seasons; (2) clarification of existing regulation that it is legal for bow hunters to use a mechanical release, but no device that allows the bow to be drawn and locked in place; and (3) to allow squirrel hunters to use any of the following: a .17 caliber rifle, a .22 caliber rifle, or a muzzle-loading rifle up to a .36 caliber, for squirrel hunting south of the C&D Canal during the whole squirrel season.

It should be noted that there were originally four actions being proposed in this promulgation. An entirely new section (2.9) was presented at the public hearing, which would have prohibited hunters from being in the field with more than one hunting implement at a time. In light of public comment and concerns received by the Division during this public hearing process, and due to further considerations made by the Division as a result of said comments, the Division has decided to withdraw the proposed Section 2.9 from Regulation 3902. Further consideration of this matter will be made by the Division in future rulemaking procedures.

Numerous members of the public attended this hearing on July 31, 2007, however, no public comment or questions were received by the Department regarding this specific proposed action. Proper notice of the hearing was provided as required by law.

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 response given to each such comment, as reflected in the Hearing Officer's Report of August 14, 2007, 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 provide better understanding to the regulated community with regard to allowing hunters to use a muzzle-loading rifle during deer shotgun seasons, and will clarify that bow hunters may use a mechanical release but no device that allows the bow to be drawn and locked in place;
7. Promulgation of these proposed amendments would also allow squirrel hunters to use any of the following: a .17 caliber rifle, a .22 caliber rifle, or a muzzle-loading rifle up to a .36 caliber, for squirrel hunting south of the C&D Canal during the entire squirrel season;
8. The proposed addition of Section 2.9 to these regulations has been formally withdrawn by the Division due to public comment and discussions regarding same, but will be revisited at another rulemaking procedure by this Division in the future;
9. 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;
10. The Department's proposed amendments to Regulation 3902 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
11. 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 Report dated August 14, 2007, and expressly incorporated herein, it is hereby ordered that the proposed amendments to State of Delaware Regulation No. 3902 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. 3902, will aide the Department in its ability to provide better understanding to Delaware hunters with regard to the legal use of allowing hunters to use a muzzle-loading rifle during deer shotgun seasons, and will clarify that bow hunters may use a mechanical release but no device that allows the bow to be drawn and locked in place. This will also bring clarity concerning the specific types of rifles which may be used by hunters to hunt squirrel south of the canal. Additionally, this rulemaking represents careful, deliberate and reasoned action by this agency to balance 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.

John A. Hughes, Secretary

Secretary's Order No.: 2007-F-0032

Date of Issuance: August 15, 2007

Effective Date of the Amendment: September 11, 2007
3904 Seasons

I. Background:

A public hearing was held on Tuesday, July 31, 2007, at 6:00 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to the existing Delaware Wildlife Regulation No. 3904: Seasons (2007). These proposed changes have been requested by hunters through the Division's Advisory Council on Wildlife and Freshwater Fish. Additions to deer seasons have resulted in a decrease in the number of days for some small game hunting. Therefore, several changes are being proposed to Wildlife Regulation No. 3904 at this time.

There are actually six actions being proposed in this promulgation: (1) extension of the gray squirrel hunting season to end the first Saturday in February, as well as permitting squirrel to be hunted during any firearms deer season, except the November shotgun deer season, provided the squirrel hunters wear the same 400 square inches of hunter orange that the deer hunter has to wear; (2) increasing the daily bag limit of squirrels from 4 to 6, to be compatible with harvest limits in adjacent states; (3) extension of the pheasant season to the first Saturday in February, and permitting hunting during any deer gun season except the November deer gun season, provided 400 square inches of hunter orange is worn by the pheasant hunter; (4) permitting quail hunting during deer firearms seasons, provided 400 square inches of hunter orange is worn by the quail hunter; (5) permitting rabbit hunting during deer firearms seasons, provided 400 square inches of hunter orange is worn by the rabbit hunter; and (6) extension of the rabbit season to February 15th, again, to be more compatible with the seasons of adjacent states.

Numerous members of the public attended this hearing on July 31, 2007. A question was raised at the hearing for clarification purposes, and the same was answered fully by Department personnel at the time of the hearing. Proper notice of the hearing was provided as required by law.

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 response given to each such comment, as reflected in the Hearing Officer's Report of August 14, 2007, 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 provide additional hunting days in Delaware for small game hunting, and better mirror the seasons for small game enjoyed in adjacent states;
7. Promulgation of these proposed amendments would extend the hunting seasons of gray squirrel, pheasant, quail, and rabbit, as well as increasing the daily bag limit of squirrels from four to six, which again would be more compatible with harvest limits found in adjacent states;
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;
9. The Department's proposed amendments to Regulation 39024 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 Report dated August 14, 2007, and expressly incorporated herein, it is hereby ordered that the proposed amendments to State of Delaware Regulation No. 3904 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. 3904 will aide the Department in its desire to provide small game hunters with additional hunting days, and better mirror the seasons for small game enjoyed in adjacent states. Additionally, this rulemaking represents careful, deliberate and reasoned action by this agency to balance 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.

John A. Hughes, Secretary

Secretary's Order No.: 2007-F-0033
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Effective Date of the Amendment: September 11, 2007
3905 Wild Turkeys

I. Background:

A public hearing was held on Tuesday, July 31, 2007, at 6:00 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to the existing Delaware Wildlife Regulation No. 3905: Wild Turkey (2007). This proposed action is needed to implement a new written test developed by the Division's new Hunter Safety Coordinator. Previously, in order to be eligible to hunt wild turkeys in the State of Delaware, a hunter simply attended the hunter safety class. At the end of the class, the hunter would obtain his turkey hunter safety permit. The proposed changes to Section 5.2 indicate that a person must not only attend the class, but must also pass the test given at the conclusion of the class in order to obtain their permit. Additionally, the Division has proposed a new section to these regulations, Section 5.3.8, which would prohibit the use of electronic calls for hunting wild turkeys.

Numerous members of the public attended this hearing on July 31, 2007, however, no public comment or questions were received by the Department regarding this proposed action. Proper notice of the hearing was provided as required by law.

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 response given to each such comment, as reflected in the Hearing Officer's Report of August 14, 2007, 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 allow the Division of Fish and Wildlife to implement the aforementioned written test at the conclusion of its Turkey Hunter Safety Class, before granting attendees their Turkey Hunter Safety Permit;
7. Promulgation of these proposed amendments would also prohibit the use of electronic calls for hunting wild turkeys;
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;
9. The Department's proposed amendments to Regulation 3905 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 Report dated August 14, 2007, and expressly incorporated herein, it is hereby ordered that the proposed amendments to State of Delaware Regulation

No. 3905 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. 3905: Wild Turkeys will aide the Department in its ability to provide a better educational experience for Delaware hunters with regard to turkey hunter safety issues. Additionally, it will allow the Department to enforce the prohibition of electronic calls for hunting wild turkeys here in Delaware.

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.

John A. Hughes, Secretary

Secretary's Order No.: 2007-F-0034

Date of Issuance: August 15, 2007

Effective Date of the Amendment: September 11, 2007
3907 Deer

I. Background:

A public hearing was held on Tuesday, July 31, 2007, at 6:00 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to the existing Delaware Wildlife Regulation No. 3907: Deer (2007). This proposed action entails three changes to existing deer regulations: (1) the requirement of hunters to write the date in ink on their field deer tag once it is placed on the deer, thus rendering the tag invalid for another deer. Furthermore, this proposed amendment adds the Delaware Non-Resident Quality Buck Tag as a legal tag; (2) the prohibition of importation into the State of Delaware of deer carcasses, or parts of a carcass, of any deer killed in a state or Canadian Province where Chronic Wasting Disease (CWD) has been found; and (3) the requirement that, should a hunter be notified by another state or Canadian Province that his animal tested positive for CWD, the Department must be notified within 72 hours so that this agency can obtain the carcass or parts and provide for proper disposal of the materials.

Numerous members of the public attended this hearing on July 31, 2007, however, no public comment or questions were received by the Department regarding this specific proposed action. Proper notice of the hearing was provided as required by law.

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 response given to each such comment, as reflected in the Hearing Officer's Report of August 14, 2007, 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 require hunters to write the date in ink on the field deer tag once it is placed on the deer, and would add the Delaware Non-Resident Quality Buck Tag as a legal tag, thus correcting a previous omission and oversight in the existing regulations;
7. Promulgation of these proposed amendments would also prohibit the importation of deer carcasses or parts of carcass of any deer killed in a state or Canadian Province where Chronic Wasting Disease has been found. Furthermore, these amendments would require hunters to notify DNREC within 72 hours if their animals test positive for CWD, so that the Department can obtain the infected carcass and provide for proper

disposal of the materials. Such action would mirror the actions already implemented in other states to combat CWD, and would empower the Department to do everything in their power to prevent CWD from infecting deer here in Delaware;

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;

9. The Department's proposed amendments to Regulation 3907 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 Report dated August 14, 2007, and expressly incorporated herein, it is hereby ordered that the proposed amendments to State of Delaware Regulation No. 3907 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. 3907 will aide the Department in its ability to enforce the proper use of field deer tags by hunters here in Delaware, as well as to correct a previous omission and oversight with regard to existing deer regulations by adding the Delaware Non-Resident Quality Buck tag as a legal tag. Additionally, it will empower the Department to do everything within its power to prevent Chronic Wasting Disease from crossing Delaware's borders and ultimately infecting deer here in Delaware with this very infectious disease.

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.

John A. Hughes, Secretary

Secretary's Order No.: 2007-F-0031

Date of Issuance: August 15, 2007

Effective Date of the Amendment: September 11, 2007

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

I. Background:

A public hearing was held on Tuesday, July 31, 2007, at 6:00 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 (2007). There are three actions being proposed in this promulgation: (1) to allow rifled shotgun barrels to be used for deer hunting along the C&D Canal; (2) to increase the hunting opportunities on public lands by allowing hunters to be in possession of a firearm while walking along a dike on their way to a Division-authorized deer stand; and (3) to allow the Division to control geocaching and letterboxing activities on its lands for the good of the resource and the persons participating in the activity.

Numerous members of the public attended this hearing on July 31, 2007, however, no public comment or questions were received by the Department regarding this proposed action. Proper notice of the hearing was provided as required by law.

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 response given to each such

comment, as reflected in the Hearing Officer's Report of August 14, 2007, 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 provide better understanding to the regulated community with regard to the legal use of rifled shotgun barrels for deer hunting along the C&D Canal, and will clarify the right of hunters to be in possession of a firearm while walking along a dike on their way to a Division-authorized deer stand;
7. Promulgation of these proposed amendments would also allow the Division to control all geocaching and letterboxing activities on its lands, for the good of the resource as well as for the health, safety and welfare of the public participating in such activities;
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;
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 Report dated August 14, 2007, 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 provide better understanding to Delaware hunters with regard to the legal use of rifled shotgun barrels for deer hunting along the C&D Canal, as well as providing clarity concerning a hunter's right to possess a firearm while walking along a dike en route to a Division-authorized deer stand. Additionally, this rulemaking represents careful, deliberate and reasoned action by this agency to protect the public's overall health, safety and welfare with allowing the Division to now control geocaching activities on its lands, 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.

John A. Hughes, Secretary

Secretary's Order No.: 2007-F-0029

Date of Issuance: August 15, 2007

Effective Date of the Amendment: September 11, 2007

3913 Wildlife Rehabilitation Permits

I. Background:

A public hearing was held on Tuesday, July 31, 2007, at 6:00 p.m. at the DNREC Richardson & Robbins

Building Auditorium to receive comment on proposed amendments to the existing Delaware Wildlife Rehabilitation Permits (Regulation 3913) for 2007. This proposed action will strengthen permitting requirements, improve the care and well being of animals in captivity, and reduce the risk of rabies exposure to rehabilitators and others. In recent years, there have been problems with rehabilitators not caring for animals as they should, and exposing themselves and others to rabies vector species without the proper immunization. This regulatory change will provide better clarity as to what is expected of rehabilitators by the Department regarding these issues. There will also be an additional cost to some rehabilitators that will have to upgrade their facilities and obtain the rabies pre-exposure shots in order to maintain their permit.

Numerous members of the public attended this hearing on July 31, 2007. Questions and comments from those in attendance at the hearing, along with the Department's responses to the same, were fully addressed by the Hearing Officer's Report dated August 13, 2007, which is attached and expressly incorporated into this Secretary's Order. Proper notice of the hearing was provided as required by law.

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 response given to each such comment, as reflected in the Hearing Officer's Report of August 13, 2007, 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 provide fuller clarity with regard to the role of licensed veterinarians relative to wildlife rehabilitation, and would require rehabilitators to conform to standards as written in the document "Minimum Standards for Wildlife Rehabilitation", and to abide by rules and policies specified in the document "Delaware Wildlife Rehabilitation Rules and Policies";
7. Promulgation of these proposed amendments would further provide all rehabilitators working with rabies vector species to have proof of up-to-date pre-exposure immunization against the rabies virus, and would strengthen existing regulations and policies regarding the release of such animals back into the wild;
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;
9. The Department's proposed amendments to Regulation 3913 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 Report dated August 13, 2007, and expressly incorporated herein, it is hereby ordered that the proposed amendments to State of Delaware Regulation No. 3913 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. 3913, will aide the Department in its ability to strengthen permitting requirements, improve the care and well being of animals in captivity, and reduce the risk of rabies exposure to rehabilitators and others. Additionally, this rulemaking represents careful, deliberate and reasoned action by this agency to address the permitting issues affecting Delaware's licensed wildlife rehabilitators at this time.

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.

John A. Hughes, Secretary

Secretary's Order No.: 2007-F-0035
Date of Issuance: August 15, 2007
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3918 Wanton Waste

I. Background:

A public hearing was held on Tuesday, July 31, 2007, at 6:00 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on new State of Delaware proposed Wildlife Regulation No. 3918: Wanton Waste. This regulation is being proposed by the Division at this time to extend the same concept of the waterfowl wanton waste regulations to all game species in Delaware. Specifically, this regulation will make it mandatory for a person wounding or killing a game animal to make all reasonable efforts to retrieve the wounded or dead animal, and that said animal shall be retained in that individual's possession until such time as (1) the animal is processed for consumption, consumed, or utilized for its fur value; (2) the animal is transported to the individual's residence, to a taxidermist, or to a place of commercial processing; or (3) the animal is utilized for scientific, educational, or research purposes. Any use of a game animal as not described in the above three scenarios will be deemed wanton waste by the Department.

Numerous members of the public attended this hearing on July 31, 2007. Two questions were asked about this proposed regulation by an individual attending the hearing, which were fully answered by the Department at the time of the hearing. Proper notice of the hearing was provided as required by law.

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 response given to each such comment, as reflected in the Hearing Officer's Report of August 14, 2007, 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 proposed regulation would require hunters to make all reasonable efforts to retrieve their wounded or dead game animal, and to retain possession of said animal until it was used for a stated purpose as defined within the proposed regulation. Any use of a game animal as not described within the proposed regulation would be deemed wanton waste;
7. Promulgation of this proposed regulation would mirror existing wanton waste regulations pertaining to waterfowl, and therefore extend that same concept to all game animals in Delaware;
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;
9. The Department's proposed Regulation 3918: Wanton Waste, is adequately supported, 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
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 Report dated August 14, 2007, and expressly incorporated herein, it is hereby ordered that the proposed State of Delaware Wildlife Regulation No. 3918: Wanton Waste, be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons:

The promulgation of Wildlife Regulation No. 3918 will enable the Department to discourage the practice of wanton waste with regard to game animals, as it has already done with the promulgation of similar regulations pertaining to waterfowl. 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.

John A. Hughes, Secretary

3900 Wildlife Regulations

1.0 Definitions (Formerly WR-1)

1.1 For purposes of Regulations 1.0 through 16.0, the following words and phrases shall have the meaning ascribed to them, unless the context clearly indicates otherwise:

"Administered by the Division" shall mean owned, leased or licensed by the Division.

"Antlered Deer" shall mean any deer with one or more antlers three inches long or longer, measured from the base of the antler where it joins the skull to the tip of the antler following any curve of the antler.

"Antlerless Deer" shall mean any deer that has no antlers or antlers less than three inches in length.

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

"Baited Field" shall 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.

"Black Powder" shall mean a manufacturer's approved muzzleloading propellant.

"Deer" shall mean white-tailed deer (*Odocoileus virginianus*) and/or Sika deer (*Cervus nippon*).

"Director" shall mean the Director or Acting Director of the Division.

"Division" shall mean the Division of Fish and Wildlife of the Department.

"Established Blind" shall mean a structure or pit constructed for the purpose of hunting migratory waterfowl by a landowner on his or her property or by another person with the permission of the landowner or the landowner's duly authorized agent.

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

"Liberated Game" shall mean cottontail rabbits and game birds, including bobwhite quail, mallard duck, chukar and pheasant released pursuant to § 568 of Title 7.

"Loaded Muzzle-Loading Rifle" shall mean the powder and ball, bullet or shot is loaded in the bore. A muzzle-loading rifle shall not be considered loaded if the cap, primer, or priming powder (in a flintlock) is removed and:

The striking mechanism used to ignite the cap, primer or priming powder is removed or rendered inoperable; or

The rifle is enclosed in a case.

"Lure" shall mean any mixture of ingredients, element or compound that attract wildlife, but the wildlife is unlikely to consume.

"Longbow" shall mean a straight limb, reflex, recurve or compound bow. All crossbows or variations thereof and mechanical holding and releasing devices are expressly excluded from the definition.

"Nongame Wildlife" shall mean any native wildlife, including rare and endangered species, which are not commonly trapped, killed, captured or consumed, either for sport or profit.

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

"Refuge" shall mean 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.

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

"Season" shall mean 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" shall include any 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.

"Wildlife" shall mean any member of the animal kingdom, including without limitation, any amphibian, arthropod, bird, mammal or reptile.

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

3 DE Reg. 1738 (6/1/00)

2.0 Method of Take (Formerly WR-2)

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

2.1 General.

Unless otherwise provided by law or regulation of the Department, it shall be unlawful to hunt any protected wildlife with any weapon or firearm other than a longbow or shotgun (10 gauge or smaller), except that:

2.1.1 A crossbow may be used in lieu of a shotgun to hunt deer during that part of the November shotgun season that runs from Monday through Saturday of each year and in any shotgun or muzzleloader deer season open in December or January;

2.1.2 A muzzle-loading rifle with a barrel length of at least twenty inches and loaded with black powder may be used to hunt deer during ~~the primitive firearms season~~ muzzleloader and shotgun deer seasons;

2.1.3 A .22 caliber rimfire pistol may be used to hunt raccoons and opossums and to take wildlife lawfully confined in a trap;

2.1.4 A hook, spear or gig may be used to take frogs; and

2.1.5 A spear, gig, trap or fyke net may be used to take snapping turtles.

2.1.6 A single shot antique or authentic reproduction black powder Sharps rifle of 45 to 60 caliber shall be lawful for use during shotgun deer seasons using paper patched bullets.

2.2 Bow and Arrow.

2.2.1 General. No person shall use or have in his or her possession, while hunting, any: poison arrow, arrow with explosive tip, or any bow drawn and held or released by mechanical means (draw locking device), except the Director may issue permits to hunters who are permanently disabled to use crossbows, provided:

2.2.1.1 The applicant has a physician's certification that he or she is unable to use conventional archery equipment;

2.2.1.2 The applicant has a disability that requires the use of a wheelchair;

2.2.1.3 The applicant is a single or double amputee above the elbow, or a double amputee below the elbow;

2.2.1.4 The applicant has a permanent physical disorder which cannot be surgically corrected and prevents the use of an arm or hand;

2.2.1.5 The applicant has lung disease to the extent that forced (respiratory) expiratory volume for one (1) second when measured by spirometer is less than one (1) liter or arterial oxygen tension (po) is less than 60 mm/Hg on room air at rest; or

2.2.1.6 The applicant has cardiovascular disease to the extent that functional limitations are classified in severity as class III or class IV according to standards accepted by the American Heart Association.

2.2.2 Crossbows. Crossbows used for deer hunting must be between 125 and 200 pounds of pull weight, manufactured after 1980, and have a mechanical safety.

2.3 Hunting from Boats.

2.3.1 Distance from Blinds. During the season for the hunting of migratory waterfowl, it shall be unlawful for any person to hunt from a boat of any kind that is within 1500 feet of an established blind, except that:

2.3.1.1 Any person may use a boat to tend lawfully set traps for fur-bearing wildlife;

2.3.1.2 Any person may retrieve crippled waterfowl by the use of a boat in accordance with federal regulations;

2.3.1.3 Any person may use a boat for transportation to and from an established blind lawfully used by such person;

2.3.1.4 Any person may hunt from a boat that is firmly secured and enclosed in an established blind.

2.3.2 Notwithstanding the provisions of subsection 2.2.1 of this section, any person may hunt migratory waterfowl within 1500 feet of an established blind, from a boat, with permission of the blind owner.

2.3.3 Gunning Rigs.

2.3.3.1 During the season for hunting migratory waterfowl, it shall be unlawful for any person to hunt within 900 feet of the shoreline (high tide line) of the Delaware River and Bay, between the Appoquinimink River and the Smyrna River, without written permission of the closest adjoining landowner(s).

2.3.3.2 During the season for hunting migratory waterfowl, it shall be unlawful for any person to hunt within 1500 feet of the shoreline (high tide line) of the Delaware River and Bay, between the Smyrna River and the Murderkill River, without written permission of the closest adjoining landowner(s).

2.3.4 Tender Boats. It shall be unlawful for tender boats servicing gunning (layout) rigs to be further than 1500 feet from the rig or to conduct any activity, except to pick up downed birds or service the rig.

2.3.5 During the season for hunting migratory waterfowl, it shall be unlawful for any person to hunt from a boat, or a floating or fixed blind in the Little River in areas bounded on both sides by land administered by the Division, except as permitted in writing by the Director.

2.4 Leghold Traps.

2.4.1 It shall be unlawful for any person to set a leghold trap at any time in this State, except from December 1 through March 10 (March 20 on embanked meadows) in New Castle County and December 15 through March 15 in Kent and Sussex counties.

2.4.2 Notwithstanding subsection 2.4.1 of this section, it shall be lawful to trap raccoons with leghold traps in New Castle County or Kent County from the southerly boundary of New Castle County Route 380 and east and southeast of the center line of U.S. Route No. 13, thence following said center line of U.S. Route No. 13 to the point where U.S. Route No. 13 forms a junction with U.S. Route No. 113 and thence along the center line of U.S. Route No. 113 to a line dividing Kent County from Sussex County during any time of the year, except on Sundays. Notwithstanding the foregoing, this subsection shall not apply to lands in Kent County lying east of the center line of Route 113, north of the Sussex County line and south of the St. Jones River.

2.4.3 It shall be unlawful for any person to set long-spring traps, "Stop-Loss" traps or jump traps larger than No. 1½ or coil-spring traps larger than No. 1 in any location, except:

2.4.3.1 In any marsh ordinarily subject to the rise and fall of the tide;

2.4.3.2 In a diked marsh that was formerly tidal;

2.4.3.3 Below the mean high tide line in a river ordinarily subject to the rise and fall of the tide;

2.4.3.4 On an island surrounded by tidal marsh or diked marsh that was formerly tidal; or

2.4.3.5 In the areas described in subsection 2.4.2 of this section.

The term "diked marsh" shall not include millponds or any stream running into a millpond.

2.4.4 In addition to the areas listed in subsection 2.4.3 of this section, traps described in said subsection may be set for river otter and/or beavers in tax ditches, millponds and streams leading into such ponds only by underwater sets.

2.4.5 It shall be unlawful for any person to set or make use of long-spring traps, "Stop-Loss" traps or jump traps larger than No. 1½ or coil-spring traps larger than No. 1 without first permanently attaching a metallic tag on each trap, bearing:

2.4.5.1 The words "Trapping License, Delaware", the number of the trapping license issued to the owner of the traps and the year of issuance; or

2.4.5.2 The owner's name and address.

2.4.6 It shall be unlawful for any person to set a long-spring trap, "Stop-Loss" trap, jump trap No. 1½ or smaller or a coil-spring trap No. 1 or smaller in any location in this State, except in the areas described in subsections 2.4.3 and 2.4.4 of this section and in the following locations:

2.4.6.1 A ditch;

2.4.6.2 A stream; or

2.4.6.3 On land not subject to cultivation of crops due to a normally marshy condition.

2.4.7 For the purposes of subsection 2.4.6 of this section, the term "ditch" shall mean a long, narrow channel dug into the earth as a trough for drainage or irrigation of the soil that normally contains flowing water.

2.4.8 For the purposes of subsection 2.4.6 of this section, the term "normally marshy condition" shall mean land with one or more of the following associated plant groupings growing upon it: cordgrass, sedges, rushes, cattails, threesquare or phragmites.

2.4.9 When information is furnished to a Fish and Wildlife Agent from the owner, tenant or sharecropper of any land that any species of wildlife is detrimental to crops, property or other interests on land on which he or she resides or controls, upon investigation, that Fish and Wildlife Agent may issue a permit to such person or his or her agent for the use of leghold traps to control said species of wildlife. Said permit may be issued at any time of the year.

2.4.10 The setting of each trap in violation of this section shall be a separate offense.

2.5 Gray Squirrel.

Hunting gray squirrels with a ~~[.22 caliber rimfire rifle not larger than .22 caliber .17 caliber rimfire rifle, a .22 caliber rimfire rifle]~~ or muzzle-loading rifle not larger than .36 caliber firing a round projectile is permitted south of the Chesapeake and Delaware Canal. ~~during that part of the gray squirrel season which is not concurrent with the rabbit, quail or pheasant seasons as they are described in Section 4.0~~

2.6 Muskrats.

It shall be unlawful for any person to shoot muskrats at any time, except with written permission of the Director.

2.7 Otters.

Each otter trapped in Delaware must be tagged by an authorized representative of the Division. Each otter sold in Delaware or shipped out of the State must be tagged in accordance with the requirements of the Convention on International Trade in Endangered Species.

2.8 Red Fox.

Red foxes may be killed in accordance with § 788 of Title 7 with the following: bow and arrow; shotgun with shot up to size 2 lead or T steel; rimfire rifle or centerfire rifle up to .25 caliber using hollow point bullets with a maximum bullet weight of 75 grains; or a muzzle-loading rifle.

~~**2.9 Multiple Hunting Implements**~~

~~**Notwithstanding subsections 7.3.3 of regulation 7.0 it shall be unlawful for any person to carry multiple hunting implements while pursuing game in the field.**~~

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

6 DE Reg. 536 (10/1/02)

3.0 Federal Laws and Regulations Adopted (Formerly WR-3)

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

3.1 Federal Laws.

It shall be unlawful for any person to hunt, buy, sell or possess any protected wildlife or part thereof, except in such manner and numbers as may be prescribed by the following federal laws and regulations promulgated thereunder: Airborne Hunting Act (16 USC § 742j-l et seq.), Eagle Act (16 USC § 668 et seq.), Endangered Species Act (16 USC 1531 et seq.), Lacey Act (16 USC § 3371 et seq.), Marine Mammal Protection Act (16 USC § 1361 et seq.), and the Migratory Bird Treaty Act (16 USC § 703 et seq.). Notwithstanding the foregoing, the federal laws and regulations shall be superseded by more stringent restrictions prescribed by State law or regulation of the Department.

3.2 Sea Ducks.

Scoters, eiders and old squaw ducks may be taken during their special season not less than 800 yards seaward from the Delaware Bay shore beginning at an east/west line between Port Mahon and the Elbow Cross Navigation Light south to the Atlantic Ocean or in the Atlantic Ocean.

3.3 Non-toxic Shot.

3.3.1 Required Usage. Non-toxic shot, as defined by federal regulations, shall be required for waterfowl hunting in Delaware. It shall be unlawful for any person to possess shells loaded with lead shot while waterfowl hunting.

3.3.2 Maximum Shot Size. It shall be unlawful for any person to hunt, except for deer, in Delaware with any size non-toxic shot (as defined by federal regulations) pellet(s) larger than size T (.20 inches in diameter).

3.4 Special Mallard Release Areas.

The Division may issue permits to allow the taking of captive-reared mallards during the established waterfowl season under applicable federal regulations. Permits shall only be issued to persons who: control at least 100 acres of land on which there is suitable waterfowl habitat; agree to follow a management plan and federal regulations; and maintain a log of guests and birds harvested. Failure to follow the management plan or a violation of State or federal laws may result in the revocation of a Special Mallard Release Area Permit. Waterfowl may only be hunted on Special Mallard Release Areas from one-half hour after sunrise to one hour before sunset.

3.5 Mute Swans

Mute swans shall be considered an exotic, invasive species that is not subject to state protection.

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

6 DE Reg. 536 (10/1/02)

4.0 Seasons (Formerly WR-4)

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

4.1 Season Dates.

Hunting and trapping season dates will be published each year in an annual publication entitled "Delaware Hunting and Trapping Guide."

4.2 General.

It shall be unlawful for any person to hunt those species of wildlife for which a season is designated at any time other than during that season.

4.3 Protected Wildlife.

4.3.1 Unless otherwise provided by law or regulation of the Department, it shall be unlawful for any person to hunt any species of protected wildlife.

4.3.2 It shall be unlawful for any person to sell, transport or possess any species of protected wildlife, except when:

4.3.2.1 Otherwise provided by law or regulation of the Department; or

4.3.2.2 The wildlife was lawfully taken outside of this State in accordance with the laws or regulations of the state or nation where the wildlife was taken.

4.4 Beaver.

4.4.1 Unless otherwise provided by law or regulation of the Department, it shall be unlawful for any person to hunt or trap beaver during any period of the year, however, from December 1 through March 20, landowners (or their agents) may take up to eight beavers from their property without a permit, provided the beavers are causing crop or property damage.

4.4.2 Beaver hides and the meat of lawfully taken beaver harvested anywhere within or outside of Delaware may be sold.

4.5 Bullfrogs.

4.5.1 Season. Bullfrogs may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of bullfrogs: from May 1 through September 30.

4.5.2 Limit. It shall be unlawful for any person to take more than twenty-four (24) bullfrogs in any one day.

4.5.3 License. A hunting or fishing license is required to take bullfrogs.

4.6 Crows.

It shall be unlawful for any person to hunt common crows during any period of the year, except Thursdays, Fridays and Saturdays between and including the fourth Thursday of June and the last Saturday of March, unless said person holds a valid depredation permit. The hunting of common crows is restricted only by the provisions of federal regulations pertaining to the taking of common crows. Crows may be taken without a permit when committing damage or about to commit damage.

4.7 Gray Squirrel.

4.7.1 Season. Gray squirrel may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of gray squirrel: from September 15 (September 14, if September 15 is a Sunday) through the first Saturday in ~~November; and from the Monday that immediately precedes Thanksgiving through the day that precedes the January shotgun deer season~~ February. Squirrel hunting shall be unlawful during any period and in any area when it is lawful to hunt deer with a firearm the November deer firearms season. ~~Notwithstanding the foregoing, w~~When squirrel season overlaps with an ~~October~~ firearms deer season, squirrel may be hunted when hunter orange is displayed in accordance with § 718 of Title 7.

4.7.2 Limit. It shall be unlawful for any person to take more than ~~four~~ six gray squirrels in any one day.

4.8 Opossum.

The opossum may only be hunted or trapped during the lawful season to hunt or trap raccoons.

4.9 Pheasant.

4.9.1 Season. Male pheasant may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of pheasant: from the Monday that immediately precedes Thanksgiving through the ~~day that precedes the January shotgun deer season, except that no pheasant hunting shall be lawful during any period when it is lawful to hunt deer with a firearm. Notwithstanding the foregoing, pheasant may be hunted during the December firearm deer season when~~ first Saturday in February, provided that during a deer firearms season hunter orange is displayed in accordance with § 718 of Title 7.

4.9.2 Female Pheasant. It shall be unlawful for any person to hunt or possess any female pheasant at any time, except as permitted on game preserves, by licensed game breeders or as otherwise permitted by law.

4.9.3 Male Pheasant Limit. It shall be unlawful for any person to hunt or possess more than two (2) male pheasants in any one day during the pheasant season, except as permitted by law.

4.9.4 Scientific or Propagating Purposes. It shall be unlawful for any person to possess pheasants for scientific and propagating purposes without a valid permit from the Director.

4.9.5 Game Preserves. Nothing in this regulation shall be construed so as to limit the number or sex of pheasants that may be harvested by any one person on licensed game preserves.

4.10 Quail.

4.10.1 Season. Bobwhite quail may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of bobwhite quail: from the Monday that immediately precedes Thanksgiving through the first Saturday of February, ~~except that no quail hunting shall be lawful during any period when it is lawful to hunt deer with a firearm. Notwithstanding the foregoing, quail may be hunted during the December or January firearm deer seasons when~~ provided that during a deer firearms season hunter orange is displayed in accordance with § 718 of Title 7.

4.10.2 Limit. It shall be unlawful for any person to take more than six (6) quail in any one day.

4.11 Rabbit.

4.11.1 Season. Rabbits may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of rabbits: from the Monday that immediately precedes Thanksgiving ~~[through the first Saturday in February 15th], except that no rabbit hunting shall be lawful during any period when it is lawful to hunt deer with a firearm. Notwithstanding the foregoing, rabbit may be hunted during the December or January firearm deer seasons when~~ provided that during a deer firearms season hunter orange is displayed in accordance with § 718 of Title 7.

4.11.2 Limit. It shall be unlawful for any person to take more than four (4) rabbits in any one day.

4.12 Raccoon.

4.12.1 Trapping Season. Raccoon may be trapped in accordance with the statutes and regulations of the State of Delaware governing the trapping of raccoon: from December 1 through March 10 (March

20 on embanked meadows) in New Castle County; and from December 15 through March 15 in Kent and Sussex counties. The season is open throughout the year on private land, except on Sundays, in eastern New Castle and Kent counties pursuant to § 786 of Title 7 and Section 4(b) of WR-2.

4.12.2 Hunting Season. Raccoon may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of raccoon: from September 1 (September 2, if September 1 is a Sunday) through October 31 for chase only whereby it shall be unlawful to kill raccoon and opossum; from November 1 through the last day of February; and from March 1 through March 31 for chase only whereby it shall be unlawful to kill raccoon and opossum. The season is open throughout the year on private land in eastern New Castle and Kent counties, except on Sundays, pursuant to § 786 of Title 7.

4.12.3 Notwithstanding subsection 4.3.2 of this section, it shall be unlawful for any person to hunt raccoon or opossum during any period when it is lawful to hunt deer with a firearm, except that it shall be lawful to hunt raccoon from 7:00 p.m. until midnight during the December and January firearm deer seasons.

4.13 Red Fox.

Red fox may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of red fox: from October 1 through April 30 for chase only whereby it shall be unlawful to kill red fox, except no red fox hunting shall be lawful during any period when it is lawful to hunt deer with a firearm. Notwithstanding the foregoing, red foxes may be killed in accordance with Section 8 of WR-2 and § 788 of Title 7.

4.14 Ruffed Grouse.

It shall be unlawful for any person to hunt for ruffed grouse during any period of the year.

4.15 Snapping Turtles.

4.15.1 Season. It shall be unlawful for any person to hunt for snapping turtles during any period of the year, except between and including June 15 and May 15.

4.15.2 Size. It shall be unlawful for any person to sell, offer for sale or kill any snapping turtle with a carapace length of less than eight inches, measured on the curvature.

4.16 Terrapin.

4.16.1 Season. It shall be unlawful for any person to hunt for diamondback terrapin during any period of the year, except between and including September 1 and November 15.

4.16.2 Limit. It shall be unlawful for any person to take more than four (4) diamondback terrapin in any one day.

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

3 DE Reg. 1738 (6/1/00)

6 DE Reg. 536 (10/1/02)

8 DE Reg. 352 (8/1/04)

5.0 Wild Turkeys (Formerly WR-5)

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

5.1 Possession of Wild Turkey Prohibited; Exceptions.

It shall be unlawful for any person, other than authorized representatives of the Division, to release or possess *Meleagris gallopavo* (wild turkey) in Delaware without a permit from the Division. The prohibition to possess and/or release *Meleagris gallopavo* shall include both birds taken from the wild and birds bred in captivity.

5.2. Instruction Requirement.

It shall be unlawful for any person to ~~obtain a turkey hunting permit from the Division~~ hunt wild turkeys in Delaware before a that same person attends and passes a Division approved course of instruction in turkey hunting.

5.3 Method of Take.

5.3.1 It shall be unlawful for any person to use any firearm to hunt wild turkeys, except a 10, 12, 16, or 20 gauge shotgun loaded with size 4, 5, or 6 shot or a longbow with a broadhead arrow, 7/8 inches in minimum width.

5.3.2 It shall be unlawful for any person to use bait or dogs to hunt wild turkeys.

5.3.3 It shall be unlawful for any person to "drive" wild turkeys.

5.3.4 It shall be unlawful for any person to shoot any wild turkey that is in a roost tree.

5.3.5 It shall be unlawful for any person to hunt wild turkeys unless said person is wearing camouflage clothing.

5.3.6 It shall be unlawful for any person to hunt wild turkeys if said person is wearing any garment with the colors white, red, or blue.

5.3.7 It shall be unlawful for any person to hunt wild turkeys and use artificial turkey decoys of either sex that are wholly or partially made from any part of a turkey that was formerly alive.

5.3.8 It shall be unlawful for any person to hunt wild turkeys using an electronic calling device.

5.4 Season and Limit.

5.4.1 The Division may establish a season for hunting bearded wild turkeys by permit. The Division will determine the terms and conditions of the issuance of permits. It shall be unlawful for any person to hunt wild turkey, except as permitted by the written authorization of the Division.

5.4.2 It shall be unlawful for any person to hunt wild turkeys, except from one-half hour before sunrise to 1:00 p.m.

5.4.3 It shall be unlawful for any person to not check a wild turkey at an authorized checking station by 2:30 p.m. on the day of kill.

5.4.4 It shall be unlawful for any person to take or attempt to take more than one bearded wild turkey per season.

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

6.0 Game Preserves (Formerly WR-6)

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

6.1 It shall be unlawful for any person to hunt liberated game on licensed game preserves from April 1 through October 14.

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

3 DE Reg. 1738 (6/1/00)

7.0 Deer (Formerly WR-7)

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

7.1 Limit.

7.1.1 Unless otherwise provided by law or regulation of the Department, it shall be unlawful for any person to:

7.1.1.1 Kill or take or attempt to kill or take more than four antlerless deer in any license year;

7.1.1.2 Kill or take four antlerless deer in any license year without at least two of the four deer being female deer; or

7.1.1.3 Possess or transport any deer that was unlawfully killed.

7.1.1.4 Kill any antlered deer without first purchasing a Delaware Resident Hunter's Choice Deer tag or a Delaware Non Resident Antlered Deer Tag, except that persons exempt from purchasing a hunting license shall be entitled to take one Hunter's Choice deer at no cost.

7.1.2 For the purposes of this section, a person "driving deer" and not in possession of any weapon or firearm shall not be treated as if they are hunting deer, provided they are assisting lawful hunters.

7.1.3 It shall be unlawful for any person to purchase, sell, expose for sale, transport or possess with the intent to sell, any deer or any part of such deer at any time, except that hides from deer lawfully killed and checked may be sold when tagged with a non-transferable tag issued by the Division. Said tag must remain attached to the hide until it leaves the State or is commercially processed into leather. This subsection shall not apply to venison approved for sale by the United States Department of Agriculture and imported into Delaware.

7.1.4 Notwithstanding subsection 7.1.1 of this section, a person may purchase Antlerless Deer Tags for \$10 each to kill or take additional antlerless deer during the open season. Hunters may take additional antlerless deer on Antlerless Deer Damage Tags at no cost.

7.1.5 Notwithstanding subsection 7.1.1 of this section, a person may use one Quality Buck tag to take an antlered deer with a minimum outside antler spread of fifteen inches, provided the tag is valid for the season in which it is used. Hunters exempt from the requirement to purchase a hunting license must purchase a Quality Buck tag in order to take a second antlered deer in any one license year.

7.2 Tagging and Designated Checking Stations.

7.2.1 Attaching Tags. Each licensed person who hunts and kills a deer shall, immediately after the killing and before removing the deer from the location of the killing, attach an approved tag to the deer and

record in ink the date of harvest on the tag. An approved tag shall mean an Antlerless Deer Tag or Doe Tag received with the hunting license, a Delaware Resident Quality Buck Deer Tag, a Delaware Resident Hunter's Choice Deer Tag, a Delaware Non Resident Quality Buck Deer Tag, a Delaware Non Resident Antlered Deer Tag, an Antlerless Deer Damage Tag, or an Antlerless Tag purchased in addition to the hunting license tags. Any unlicensed person not required to secure a license shall make and attach a tag to the deer that contains the person's name, address and reason for not having a valid Delaware hunting license.

7.2.2 Retention of Tag. The tag required by subsection 7.1.1 of this section shall remain attached to the deer until the deer is presented to an official checking station for examination and tagging or registered by phone or over the internet, as prescribed by subsection 7.1.3 of this section.

7.2.3 Checking Stations. Each person who hunts and kills a deer shall, within 24 hours of killing said deer, present the deer to a checking station designated by the Division or to an authorized employee of the Division. Hunters may also check deer by phone or over the internet through systems authorized by the Division.

7.2.4 Dressing. It shall be unlawful for any person to remove from any deer any part thereof, except those internal organs known as the viscera, or cut the meat thereof into parts, until such deer has been examined by an authorized employee of the Division or a checking station, as prescribed by subsection 7.1.3 of this section or registered using the phone or internet system.

7.2.5 Receipt Tag. The Division shall issue, at a checking station or otherwise, an official receipt tag proving the deer was examined by an authorized employee of the Division or a checking station, as prescribed by subsection 7.1.3 of this section. The receipt tag shall remain with the deer until such time as the deer is processed for consumption or prepared for mounting. Deer checked over the phone or internet will be given a registration number. These deer shall be tagged by the hunter, butcher or taxidermist with the registration number, hunter's first and last name, hunter's date of birth, and date of kill. This tag may be homemade or be one provided by the Division and must remain with the head and/or carcass until the mount is picked up from the taxidermist or the meat is processed and stored as food.

7.3 Method of Take.

7.3.1 Shotgun. It shall be unlawful for any person to hunt deer during the shotgun season using a shotgun of a caliber smaller than 20 gauge, or have in his or her possession any shell loaded with shot smaller than what is commonly known as "buckshot."

7.3.2 Bow and Arrow. It shall be unlawful for any person to hunt deer during the longbow season and have in his or her possession any weapon or firearm other than a knife, a bow and sharpened broadhead arrows having minimum arrowhead width of 7/8 of an inch.

7.3.3 Muzzle-loading Pistols. A single shot muzzle-loading pistol of .42 caliber or larger using a minimum powder charge of 40 grains may be used to provide the coupe-de-grace on deer during the primitive firearm season.

7.3.4 Refuge in Water. It shall be unlawful for any person to shoot, kill or wound or attempt to shoot, kill or wound any deer that is taking refuge in or swimming through the waters of any stream, pond, lake or tidal waters.

7.3.5 Dogs. It shall be unlawful for any person to make use of a dog for hunting during the shotgun or muzzleloader seasons for deer (in each county), except as permitted in the hunting of migratory waterfowl from an established blind or for hunting dove, quail, raccoon or rabbit on properties closed to deer hunting with firearms during December and January.

7.4 Illegal Hunting Methods; Baiting.

It shall be unlawful for any person to set, lay or use any trap, snare, net, or pitfall or make use of any artificial light, or other contrivance or device, for the purpose of hunting deer. This subsection does not preclude the use of bait for the purpose of attracting deer in order to hunt them on private land.

7.5 Seasons.

7.5.1 Shotgun Seasons. Deer may be hunted with shotgun in accordance with the statutes and regulations of the State of Delaware governing the hunting of deer: from the Friday in November that precedes Thanksgiving by thirteen (13) days through the second Saturday succeeding said Friday; and from the Saturday that precedes the third Monday in January through the following Saturday in January.

7.5.2 Archery Seasons. Deer may be hunted with longbow in accordance with statutes and regulations of the State of Delaware governing the hunting of deer: from September 1 (September 2, if September 1 is a Sunday) through the last day of January, provided hunter orange is displayed in accordance with § 718 of Title 7 when it also lawful to hunt deer with a firearm.

7.5.3 Muzzleloader Seasons. Deer may be hunted with muzzle-loading rifles in accordance with the statutes and regulations of the State of Delaware governing the hunting of deer: from the Friday that precedes the second Monday in October through the second Saturday that succeeds the Friday opening day; and from the Monday that follows the close of the January shotgun season through the next Saturday.

7.5.4 Special Antlerless Season. Antlerless deer may be hunted with a shotgun in accordance with the statutes and regulations of the State of Delaware governing the hunting of deer during all Fridays, Saturdays and Mondays in October except for during the October Muzzleloader season and the last Monday prior to the opening Friday of the October Muzzleloader season. Notwithstanding the foregoing, antlered deer may be taken with archery equipment that is legal during this October shotgun season. Antlerless deer may be hunted with shotgun in accordance with the statutes and regulations of the State of Delaware governing the hunting of deer: from the second Saturday in December through the third Saturday in December.

7.5.5 Crossbow Seasons. Crossbows may be used in lieu of shotguns during that part of the November shotgun season that runs from Monday through Saturday of each year and in any shotgun or muzzleloader deer season open in December or January.

7.5.6 Special Shotgun Season for Young and Disabled Hunters. Deer may be hunted on the first Saturday of November by disabled (non-ambulatory) hunters using a wheelchair for mobility, and hunters 12 years of age or older but less than 16 years of age (12 to 15 inclusive) who have completed an approved course in hunter training. Young hunters must be accompanied by a licensed non-hunting adult who is 21 years of age or older. Young hunters must be of sufficient size, physical strength and emotional maturity to safely handle a shotgun.

7.6 Carcass Importation Ban.

7.6.1 Importation. It shall be unlawful to import or possess any carcass or part of a carcass of any member of the family Cervidae (deer) originating from a state or Canadian province in which Chronic Wasting Disease has been found in free-ranging or captive deer. Notwithstanding the foregoing, the following parts may be imported into the state:

7.6.1.1 Boned-out meat that is cut and wrapped;

7.6.1.2 Quarters or other portions of meat with no part of the spinal column or skull attached;

7.6.1.3 Hides or capes with no skull attached;

7.6.1.4 Clean (no meat or tissue attached) skull plates with antlers attached;

7.6.1.5 Antlers (with no meat or tissue attached);

7.6.1.6 Upper canine teeth (buglers, whistlers, or ivories); and

7.6.1.7 Finished taxidermy products.

7.6.2 Carcass Notification. Any person who imports into Delaware any deer carcass or parts described in subsection 7.6.1 of this section and is notified that the animal has tested positive for Chronic Wasting Disease must report the test results to the department within 72 hours of receiving the notification. In order to facilitate the proper disposal of any infected material, the department may take into possession any imported carcass or carcass part of an animal if the animal has tested positive for Chronic Wasting Disease.

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

6 DE Reg. 536 (10/1/02)

8 DE Reg. 352 (8/1/04)

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.

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 the primitive firearm season 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 (Route 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.

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

9.0 Wildlife Theft Prevention Fund. (Formerly WR-9)

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

9.1 Schedule of Rewards.

9.1.1 The Division shall pay up to \$1000 for information leading to the arrest and conviction of any person found guilty of:

9.1.1.1 Commercialization of wildlife; or

9.1.1.2 Killing an endangered species or a species classified as a threatened species in accordance with the Endangered Species Act of 1973, as amended.

9.1.2 The Division shall pay up to \$500 for information leading to the arrest and conviction of any person found guilty of:

9.1.2.1 Illegally hunting black ducks, canvasbacks, Canada geese or turkeys;

9.1.2.2 Poisoning wildlife;

9.1.2.3 Gross over-limits of wildlife;

9.1.2.4 Illegally hunting waterfowl or deer on State game refuges;

9.1.2.5 Hunting or trapping out of season;

9.1.2.6 Illegally hunting at night;

9.1.2.7 Hunting during license revocation; or

9.1.2.8 Possessing, tending or setting killer traps with a jaw spread in excess of 5 inches.

9.1.3 The Division shall pay up to \$100 for information leading to the arrest and conviction of any person found guilty of illegally taking or wounding wildlife with a rifle.

9.1.4 The confidentiality of informants and their payments shall be maintained by administrative procedures. Peace officers, Department employees or members of their immediate families are not eligible for rewards.

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

10.0 Nuisance Game Animals (Formerly WR-10)

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

10.1 Incorporated Cities or Towns. Within the limits of residential or commercial areas of incorporated cities or towns, or within residential or commercial structures, the following game animals may be controlled (killed) without a permit when they are causing damage: gray squirrel, raccoon and opossum. Methods used to control

said animals must be consistent with the laws of this State and the regulations of the Department and only live traps may be used (without a depredation permit) outside of established trapping seasons.

10.2 Pest Control Operators. The Division may designate licensed pest control operators as cooperators to control nuisance wild animals. Said cooperators must agree to follow guidelines for control as determined by the Division and notify potential clients of their fees.

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

11.0 Shoreline Refuges of the Delaware River and Bay (Formerly WR-11)

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

11.1 State Wildlife Area Protection for Intertidal Areas.

Any land located between the high tide line and the low tide line, between the Smyrna River and the St. Jones River and adjoining the Delaware River and Bay is hereby designated a State wildlife area and subject to the rules and regulations pertaining thereto, provided the adjoining landowners to said lands agree to their designation and agree to co-sign complaints concerning violations.

11.2 Exemptions.

Woodland Beach, Pickering Beach, and Kitts Hummock shall be exempt from this regulation. This regulation shall not affect surf fishing vehicles in areas where such vehicles are permitted or other uses of intertidal areas authorized by permit from the Division.

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

12.0 Waterfowl Refuge (Formerly WR-12)

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

12.1 It shall be unlawful for any person to hunt waterfowl in that part of Drawer Creek west of U.S. Route 13 to where the tributaries of the creek meet routes 428 and 429.

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

13.0 Wildlife Rehabilitation Permits (Formerly WR-13)

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

13.1 Permit from Division; Exemption.

13.1.1 It shall be unlawful for any person to hold native wildlife in captivity for the purpose of rehabilitation without a permit from the Division and any other permits required by the U.S. Fish and Wildlife Service.

13.1.2 Licensed veterinarians are exempt from the permitting requirements of this regulation when rendering ~~temporary~~ treatment to injured wildlife and provisions are made to return any ~~injured recovered~~ animals to the wild or transfer them to a permitted rehabilitator for further care. [Licensed veterinarians may only hold wildlife for as long as veterinary care is required.]

13.2 Training, Housing and Veterinary Care; Inspections.

13.2.1 Permit holders must conform to the training, housing, release and veterinary care standards as written in the document "Minimum Standards for Wildlife Rehabilitation" published by the of the National Wildlife Rehabilitators Association and the International Wildlife Rehabilitation Council. Permit holders must also abide by the rules and policies set forth in the "State of Delaware Wildlife Rehabilitation Rules and Policies" document. Failure to abide by both of these documents may result in revocation of the rehabilitation permit. Animals held under rehabilitation permits must be released to the wild ~~within 180 days~~ according to policies set forth in the document "State of Delaware Wildlife Rehabilitation Rules and Policies"] or euthanized, if release is not feasible, unless the Division under § 555 of Title 7 authorizes possession for scientific or propagating propagation or educational purposes[. ~~or unless an extension is~~ For federally listed endangered species and migratory birds an extension must be] granted by the migratory bird permit office of the United State Fish and Wildlife Service, and the Division for each individual case. Rehabilitators must not release sick animals into the wild.

13.2.2 Rehabilitation facilities must be available for inspection by Division employees during normal business hours. Normal business hours shall mean Monday through Friday, except those days designated as holidays, during the hours in which the staff of the Division is scheduled to work. Violations of compliance with the Minimum Standards or the Rules and Policies noted in 13. 2.1 will result in a written warning or

immediate revocation of the rehabilitation permit depending on the violation. Persons receiving a warning will have their facility re-inspected. Failure to address the problem(s) in a timely manner will result in permit revocation. Upon permit revocation, all animals will be removed from the facility and either placed with another rehabilitator, released into the wild, placed with an educational facility, or humanly euthanized.

13.3 Rabies Vector Species

13.3.1 It shall be unlawful for any person to attempt rehabilitation of a rabies vector species without having proof of current pre-exposure immunization against the rabies virus. No permitted rehabilitator shall knowingly expose other non-immunized persons to a rabies vector species. For the purpose of the Delaware Wildlife Rehabilitator Permit, rabies vector species are defined as bats, raccoons, skunks, foxes, coyotes and woodchucks.

13.3.2 All rehabilitated rabies vector species must be released in the county of origin and the Division must be notified ~~[and approve]~~ of the release location ~~[prior to release in the rehabilitator's annual report to the Division]~~. It shall be unlawful for rehabilitated rabies vector species to be released on State Wildlife Management Areas without the consent of the Division Director.

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

14.0 Falconry (Formerly WR-14)

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

14.1 Federal Regulations Adopted.

It shall be unlawful for any person to practice the sport of falconry, except in such a manner as prescribed by regulations promulgated under provisions of 50 CFR (Code of Federal Regulations) §§ 21.28, 21.29 and 21.30. Such regulations are hereby made part of the regulations of the Department as prescribed in § 725 of Title 7. Notwithstanding the foregoing, the federal regulations governing falconry shall be superseded by more stringent restrictions prescribed by law or regulation of the Department.

14.2 Permits.

14.2.1 Residents wishing to practice falconry shall apply to the Division for a falconry permit. To be issued a falconry permit, the person shall successfully pass a written test and have their facilities and equipment inspected as prescribed by the federal regulations.

14.2.2 Nonresidents must purchase a nonresident hunting license and be properly permitted to practice falconry in the state in which he or she resides.

14.2.3 Falconry permits shall be effective, unless revoked, for a period of up to three years and coincide with the license period for the hunting license. The Division shall participate in any joint state/federal permit system available.

14.2.4 The issuance of Apprentice Class permits shall be limited to persons 15 years of age or older.

14.3 Taking of Raptors.

14.3.1 It shall be unlawful for any person to take any birds of prey from the wild without a permit from the Division. The Director shall establish a limit on the number of raptors which may be taken each year and appear before the Council on Game and Fish to receive input on such limit before its adoption.

14.3.2 In 2000, and each year thereafter until changed, the Division may issue up to twelve (12) permits for the taking of twelve (12) birds of prey from the wild in Delaware, except that no more than three (3) permits shall be issued for the taking of three (3) nestling red-tailed hawks or three (3) nestling great horned owls, or any combination thereof. Nonresident falconers may apply for available permits to take nestling raptors, provided the state in which the nonresident resides allows Delaware residents the reciprocal opportunity to remove nestling raptors.

14.3.3 The taking of nestling (eyas) birds shall be limited to red-tailed hawks and great horned owls on Thursdays, Fridays and Saturdays from March 18 through June 30.

14.3.4 The season for the taking of passage birds shall be from September 1 through January 12. Nonresident falconers may apply to obtain any available permits to take passage raptors in Delaware, provided the state in which the nonresident resides has a reciprocal arrangement that permits Delaware residents to take passage raptors.

14.3.5 It shall be unlawful to remove raptors from private property without the express consent of the landowner. It shall also be unlawful for any person to remove raptors from State parks, State forests,

State wildlife areas, State owned wetland mitigation sites, national wildlife refuges, nature preserves, natural areas, and county or local parks without the advance approval of the agency administering the property. The permit to remove a raptor from the wild must be in possession of the falconer when attempting to capture a raptor. Apprentice falconers must be under the direct supervision of their sponsor or a Master or General class falconer when removing raptors from the wild.

14.3.6 Raptors taken from the wild in Delaware may not be sold or bartered.

14.4 Hunting. Falconry shall be a legal method of take for all game birds and game animals in Delaware. The hunting season for resident game shall be from September 1 through February 28. A permit holder whose raptor accidentally kills wildlife during a closed season for such wildlife shall leave the dead wildlife where it lies, except the raptor may feed upon the wildlife before leaving the site of the kill, provided that the wildlife shall not be reduced to possession by the falconer and the falconer shall cease hunting with the raptor that makes the accidental kill for the remainder of the day.

14.5 Marking. Any raptor possessed under a Delaware falconry permit must be banded with a permanent, non-reusable numbered band issued by the U.S. Fish and Wildlife Service or the Division. Captive reared raptors may be marked with either a permanent, non-reusable numbered band or, if sold, a numbered seamless band. Markers shall be removed from birds that die or are intentionally released into the wild and must be forwarded to the Division within ten days along with a report that documents the fate of the bird.

14.6 Release. Raptors, including hybrid raptors, which are not indigenous to Delaware shall not be permanently released into the wild. Raptors released in Delaware must be released within the appropriate season in which that species naturally occurs within the State.

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

3 DE Reg. 1738 (6/1/00)

6 DE Reg. 536 (10/1/02)

15.0 Collection or Sale of Native Wildlife (Formerly WR-15)

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

15.1 Commercial Collection.

15.1.1 Unless otherwise provided by law or regulation of the Department, it shall be unlawful for any person to collect, possess, import, cause to be imported, export, cause to be exported, buy, sell or offer for sale any native wildlife species or any part thereof for commercial purposes without a permit from the Director. The permit shall limit the terms and conditions for collecting or possessing said wildlife within the State.

15.1.2 Notwithstanding subsection 15.1.1 of this section, native wildlife species may be possessed, imported, sold or offered for sale for commercial purposes without a permit from the Director if there is written documentation to confirm that said wildlife was legally taken in and transported from another state.

15.2 Collection and Possession of Reptiles and Amphibians.

15.2.1 Unless otherwise provided by law or regulation of the Department, it shall be unlawful for any person to remove from the wild or possess any native reptile or amphibian species, their eggs or parts without a permit from the Director.

15.2.2 Notwithstanding subsection 15.1.1 of this section, one individual of each of the following species or subspecies of reptiles and amphibians, may be collected and possessed without a permit.

Reptiles

Lizard, Northern Fence (*Sceloporus undulatus hyacinthinus*)

Racer, Northern Black (*Coluber constrictor constrictor*)

Skink, Five-lined (*Eumeces fasciatus*)

Snake, Black Rat (*Elaphe obsoleta obsoleta*)

Snake, Eastern Garter (*Thamnophis sirtalis sirtalis*)

Snake, Eastern Hognose (*Heterodon platirhinos*)

Snake, Eastern Worm (*Carphophis amoenus amoenus*)

Snake, Northern Water (*Nerodia sipedon*)

sipedon)
 Snake, Ringneck (*Diadophis punctatus*)
 Terrapin, Diamondback (*Malaclemys terrapin*)
 Turtle, Common Musk (*Sternotherus odoratus*)
 Turtle, Eastern Box (*Terrapene carolina carolina*)
 Turtle, Eastern Mud (*Kinosternon subrubrum subrubrum*)
 Turtle, Painted (*Chrysemys picta*)
 Turtle, Redbelly (*Pseudemys rubriventris*)
 Turtle, Snapping (*Chelydra serpentina*)

Amphibians

Bullfrog (*Rana catesbeiana*)
 Frog, Green (*Rana clamitans melanota*)
 Frog, New Jersey Chorus (*Pseudacris triseriata kalmi*)
 Frog, Northern Cricket (*Acris crepitans crepitans*)
 Frog, Pickerel (*Rana palustris*)
 Frog, Southern Leopard (*Rana utricularia*)
 Frog, Wood (*Rana sylvatica*)
 Newt, Red-spotted (*Notophthalmus viridescens viridescens*)
 Peeper, Northern Spring (*Pseudacris crucifer crucifer*)
 Salamander, Northern Dusky (*Desmognathus fuscus fuscus*)
 Salamander, Northern Two-lined (*Eurycea bislineata*)
 Salamander, Redback (*Plethodon cinereus*)
 Spadefoot, Eastern (*Scaphiopus holbrookii holbrookii*)
 Toad, American (*Bufo americanus*)
 Treefrog, Gray (*Hyla versicolor* and *Hyla chrysoscelis*)

15.2.3 It shall be unlawful to remove any reptile or amphibian from the wild and later release said reptile or amphibian back to the wild if it has been held in captivity for more than thirty (30) days.

15.2.4 Notwithstanding subsection 15.1.1 of this section, native reptiles and amphibians taken from the wild and lawfully possessed prior to August 15, 1999, may continue to be held in captivity, provided that written notification of the numbers and species being held is given to the Division prior to December 15, 1999.

15.3 Captive Breeding.

15.3.1 It shall be unlawful for any person to breed in captivity any native wildlife species without a permit from the Director. Said permit shall limit the terms and conditions for captive breeding of said wildlife.

15.3.2 It shall be unlawful for any person to release captive-bred species into the wild. A signed bill of sale shall accompany any captive-bred species that are sold.

15.3.3 This section shall not apply to accredited zoos or to raptors regulated by federal and State falconry or raptor propagation regulations.

15.4 Sale or Possession of CITES Listed Species.

It shall be unlawful for any person to sell or possess bear gall bladder, or other viscera from any species of bear, or any part of other species listed as prohibited by the Convention on International Trade in Endangered Species (CITES). The possession of any part of a bear must be in conformance with CITES.

15.5 Take of Turtles

15.5.1 Turtles can only be taken by hand, turtle trap or dowl-and-line. Turtle traps can have only one throat or funneling device. Turtle traps must have an escape hole provided below the water surface and the hole must measure a minimum of seven and one-half inches in all directions. Hoop-type turtle traps must have the area from the last hoop to the tail-line covered by nylon web having a mesh size of three and one half inches square measure or greater. All turtle traps must be lifted and emptied of catch at least once every 48 hours.

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

3 DE Reg. 1738 (6/1/00)

6 DE Reg. 536 (10/1/02)

16.0 Endangered Species. (Formerly WR-16)

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

16.1 Importation, Transportation and Possession.

16.1.1 Pursuant to § 601 of Title 7, the importation, transportation, possession or sale of any endangered species of fish or wildlife, or hides or other parts thereof, or the sale or possession with intent to sell any article made in whole or in part from the skin, hide or other parts of endangered species of fish or wildlife is prohibited, except under license or permit from the Division.

16.2 Designation of Species by Division.

16.2.1 Pursuant to §601 of Title 7, the Division may designate species of fish and wildlife that are seriously threatened with extinction as endangered species. The Division will review the state list of endangered species and add species suggested by the public that have sufficient documentation for listing.

16.2.2 For the purposes of this section, the phrase "seriously threatened with extinction" shall mean that the species satisfies one or more of the following criteria:

16.2.2.1 Appears on the federal list of endangered species;

16.2.2.2 Ranked as "globally rare" (G1, G2, or G3), which means 100 or fewer populations worldwide; or

16.2.2.3 Is rare within the mid-Atlantic coastal plain.

16.2.3 Based upon the criteria prescribed by subsection 16.2.2 of this section, the following species are declared endangered in this State and are afforded the protection provided by § 601 of Title 7:

Amphibians

Salamander, Eastern Tiger (*Ambystoma tigrinumtigrinum*)

Treefrog, Barking (*Hyla gratiosa*)

Birds

Creeper, Brown^{BR} (*Certhia americana*)

Eagle, Bald (*Haliaeetus leucocephalus*)

Grebe, Pied-billed^{BR} (*Podilymbus podiceps*)

Harrier, Northern^{BR} (*Circus cyaneus*)

Hawk, Cooper's^{BR} (*Accipiter cooperii*)

Heron, Black-Crowned Night- (*Nycticorax nycticorax*)

Heron, Yellow-Crowned Night- (*Nyctanassa violacea*)

Parula, Northern^{BR} (*Parula americana*)

Plover, Piping (*Charadrius melodus*)

Owl, Short-eared^{BR} (*Asio flammeus*)

Oystercatcher, American (*Haematopus palliatus*)

Rail, Black (*Laterallus jamaicensis*)

Sandpiper, Upland (*Bartramia longicauda*)

Shrike, Loggerhead (*Lanius ludovicianus*)

Skimmer, Black (*Rynchops niger*)

Sparrow, Henslow's (*Ammodramus henslowii*)

Tern, Common^{BR} (*Sterna hirundo*)

Tern, Forster's^{BR} (*Sterna forsteri*)

- Tern, Least (*Sterna antillarum*)
- Warbler, Cerulean (*Dendroica cerulea*)
- Warbler, Hooded ^{BR} (*Wilsonia citrina*)
- Warbler, Swainson's (*Limnothlypis swainsonii*)
- Woodpecker, Red-headed (*Melanerpes erythrocephalus*)
- Wren, Sedge (*Cistothorus platensis*)
 - ^{BR} Breeding population only
- Fish
 - Sturgeon, Atlantic (*Acipenser oxyrhynchus*)
- Insects
 - Beetle, Little White Tiger (*Cicindela lepida*)
 - Beetle, White Tiger (*Cicindela dorsalis*)
 - Beetle, Seth Forest Scavenger (*Hydrochus sp.*)
 - Elfin, Frosted (*Incisalia irus*)
 - Firefly, Bethany (*Photuris bethaniensis*)
 - Hairstreak, Hessel's (*Mitoura hesseli*)
 - Hairstreak, King's (*Satyrrium kingi*)
 - Skipper, Rare (*Problema bulenta*)
 - Wing, Mulberry (*Poanes massasoit chermocki*)
- Mammals
 - Squirrel, Delmarva Fox (*Sciurus niger cinereus*)
- Mollusks
 - Lampmussel, Yellow (*Lampsilis cariosa*)
 - Lampmussel, Eastern (*Lampsilis radiata*)
 - Wedgemussel, Dwarf (*Alasmidonta heterodon*)
 - Pondmussel, Eastern (*Ligumia nasuta*)
 - Floater, Brook (*Alasmidonta varicosa*)
 - Mucket, Tidewater (*Leptodea ochracea*)
- Reptiles
 - Sea Turtle, Leatherback (*Dermochelys coriacea*)
 - Sea Turtle, Atlantic Ridley (*Lepidochelys kempii*)
 - Sea Turtle, Green (*Chelonia mydas*)
 - Sea Turtle, Loggerhead (*Caretta caretta*)
 - Turtle, Bog (*Clemmys muhlenbergii*)
 - Snake, Corn (*Elaphe guttata guttata*)

16.3 Federally Listed Species.

16.3.1 Pursuant to the Endangered Species Act of 1973 (16 USC §§ 1531-1543), as amended, the Secretary of the Interior must publish in the Federal Register a list of all fish and wildlife species determined by him or her or the Secretary of Commerce to be endangered species. The federal list of endangered species is hereby adopted and all species listed thereon are hereby declared to be endangered species in the State as prescribed in § 601 of Title 7.

16.3.2 It shall be unlawful for any person to collect, possess or sell any species of fish or wildlife listed as endangered or threatened pursuant to the Endangered Species Act of 1973, as amended, without the appropriate federal permits.

3 DE Reg. 1738 (6/1/00)

6 DE Reg. 536 (10/01/02)

17.0 Species Of Special Concern (Formerly WR-17)

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

17.1 List of Species

The following species or groups of species shall be considered Species of Special Concern for the purpose of qualifying for federal funds for wildlife restoration: Endangered species as designated by state or federal regulations; species designated by WR-16, Section 2, colonial nesting birds; shorebirds; wading birds;

neotropical migrant birds; beach nesting birds; bald and golden eagles; peregrine falcons; other raptors, grassland nesting birds; birds of early successional habitat; bobwhite quail; wild turkey; freshwater mussels; bats; nutria; and overly abundant species such as deer, beavers, southern nesting Canada geese, and red fox.

6 DE Reg. 536 (10/1/02)

18.0 Wanton Waste

Penalty Section 7 **Del.C. §103(d)**

18.1 Retrieval and Possession of Game Animals. A person wounding or killing a game animal shall make a reasonable effort to retrieve the wounded or dead game animal. The retrieved game animal shall be retained in the individual's possession until any of the following occurs:

18.1.1 The game animal is processed for consumption, consumed or utilized for its fur value.

18.1.2 The game animal is transported to the individual's residence, to a taxidermist, or to a place of commercial processing.

18.1.3 The game animal is utilized for scientific, educational or research purposes.

18.2 Any use of a game animal as not described in items 18.1.1- 18.1.3 above will be deemed wanton waste.

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