

List of Exhibits – January 29, 2020

SAN # 2019-09

Hearing Docket Number 2019-R-F-0031

6PM

DNREC Auditorium

Division of Fish & Wildlife exhibits on proposed amendments 7 DE Admin Code 3300 Non-Tidal Finfish - 3301 Definitions.

Exhibit 1. Meeting agenda from the June 25, 2019 meeting of the Advisory Council on Wildlife & Freshwater Fish, and associated minutes indicating Council support for a proposed amendment to 7 DE Admin Code 3300 Non-Tidal Finfish - 3301 Definitions.

Exhibit 2. Copy of a presentation pertaining to the proposed amendment to 7 DE Admin Code 3300 Non-Tidal Finfish - 3301 Definitions as made by Michael Stangl at the June 25, 2019 Advisory Council on Wildlife & Freshwater Fish meeting.

Exhibit 3. A copy of approved Start Action Notice 2019-09 pertaining to the proposed amendments.

Exhibit 4. A copy of the Regulatory Flexibility Analysis/ Regulatory Impact Statement, corresponding to the proposed action and as published in the January 1, 2020 Delaware Register of Regulations.

Exhibit 5. A copy of Register Notice SAN#2019-09 and the proposed amendment to 7 DE Admin Code 3300 Non-Tidal Finfish - 3301 Definitions, as published in the January 1, 2020 Delaware Register of Regulations.

Exhibit 6. Copy of the legal notice regarding the proposed amendments to 7 DE Admin Code 3300 Non-Tidal Finfish - 3301 Definitions, as posted at the main entryways of DNREC's Richardson & Robbins Building on or about November 20, 2019.

Exhibit 7. Evidence for the publication of the legal notice regarding the proposed amendments to 7 DE Admin Code 3300 Non-Tidal Finfish - 3301 Definitions in the Delaware State News and Wilmington News Journal on December 29, 2019.

Exhibit 8. Notice of this public hearing as it appeared on Delaware's Statewide Calendar and posted December 30, 2019.

Exhibit 9. A copy of the legal notice for tonight's public hearing as posted on DNREC's public notices website starting on December 29, 2019.

Exhibit 10. Additional noticing sent to the Fisheries List Serve, certain Blackboard Connect subscribers, and posted on the Division's FB page regarding tonight's hearing on the proposed amendment to 7 DE Admin Code 3300 Non-Tidal Finfish - 3301 Definitions.

Exhibit 11. A copy of the proposed amendments to 7 DE Admin Code 3501 for attendees of the January 29, 2019 hearing.

Exhibit 12. A copy of a presentation on proposed amendments to 7 DE Admin Code 3501 for tonight's hearing.



ADVISORY COUNCIL ON WILDLIFE & FRESHWATER FISH
TUESDAY, June 25, 2019 @ 7:00 PM
R&R BUILDING AUDITORIUM
89 Kings Highway, Dover, Delaware 19901

MEETING AGENDA

1. Approval of Minutes (Chairman).
2. Delaware Sport Fish Tournament 2019 (Bruce Cole).
3. Land Acquisition Update (Kerri Yandrich).
4. Expansion of the Designated Trout Stream Area on Pike Creek (Michael Stangl).
5. Director Update (David E. Saveikis).

ADVISORY COUNCIL ON WILDLIFE & FRESHWATER FISH MEETING MINUTES

TUESDAY, June 25, 2019

Richardson & Robbins Building Auditorium

89 Kings Highway, Dover, Delaware

Phone 302-739-9912, FAX 302-739-6157

ADVISORY COUNCIL

1. Edward A. Montague, Chair
2. Garrett Grier, Jr., Vice Chair
3. Raymond F. Burris
4. Neal Dukes (Absent)
5. Nathan Hudson
6. Joe C. Johnson
7. Steven Kendus
8. Dale R. Scuse
9. F. Thomas Unruh

DIVISION OF FISH & WILDLIFE

1. Director David E. Saveikis
2. Rob Hossler
3. Bruce Cole
4. Kerri Yandrich
5. Michael Stangl
6. Chief Drew Aydelotte
7. Craig Rhoads
8. Dana Patone

PUBLIC

4 Visitors

The meeting was called to order by Chairman Montague at 7:00 pm.

Agenda Item 1. Approval of Minutes (Chairman).

A motion was made by Councilman Kendus, seconded by Councilman Unruh and the Council voted unanimously to approve the May 28, 2019 meeting minutes with the following correction: *A motion was made by Councilman Unruh, seconded by Councilman Dukes and the Council voted 6-1 recommending removing the proposed regulation change to eliminate gunning rig regulations requiring landowner permission to hunt waterfowl within specified distances from the shoreline of the Delaware River and Bay between the Appoquinimink River and the Murderkill River.* The previous minutes indicated a unanimous recommendation.

Agenda Item 2. Delaware Sport Fishing Tournament 2019 (Bruce Cole).

Bruce Cole, fisheries biologist, gave a presentation on the Division's Delaware Sport Fishing Tournament, summarizing the history of the tournament from the 1930s to the present, followed by describing the changes implemented during 2017 and 2018. The tournament now includes 15 freshwater species and 30 saltwater species, plus an "Unusual Species" category that includes species not native to Delaware or not currently tournament species. There were 362 tournament entries in 2018 for the live release and weigh-in categories combined. In July 2017, a youth tournament division for anglers aged 15 and under was created for both the live release and weigh-in categories. The citation lengths and weights for the youth division are 25% less than those for the adult division. Mr. Cole presented examples of the

newly designed plaques awarded for the largest fish of each species each year, the newly enhanced paper citation certificates and new 2018, 2019 and 2020 collectable lapel pin awards.

Agenda Item 3. Land Acquisition Update (Kerri Yandrich).

Kerri Yandrich, conservation land acquisition specialist, gave a presentation on properties purchased and added to state wildlife areas during the last two years. Since 2017, the Division of Fish & Wildlife has acquired 1,392 acres located throughout all three counties. A total of \$8,386,149 in funds were used for acquisitions within the past two and a half years, to include use of Open Space funds (state), Pittman-Robertson funds (federal), and two competitive federal grants. In addition, four properties were donated to the Division. These new acquisitions expand existing wildlife areas, ponds and reserves for habitat conservation/management and to allow for more outdoor recreation access and activities in these areas such as hunting, fishing and wildlife viewing. Areas expanded from 2017 to present in New Castle County are Eagles Nest Wildlife Area, Cedar Swamp Wildlife Area and Blackbird Reserve. In Kent County, new acquisitions in the past two and a half years expanded the Tappahanna Wildlife Area, Little Creek Wildlife Area, Ted Harvey Conservation Area and Milford Neck Wildlife Area. In Sussex County, new acquisitions expanded the Mispillion Harbor Reserve, Old Furnace Wildlife Area, Midlands Wildlife Area and Records Pond shoreline access during the same time period. The Division is currently in conversations with landowners to acquire other priorities to conserve additional lands and expand public access and opportunities for outdoor recreation.

Councilman Scuse inquired about the newly acquired properties and whether any were enrolled in the Agricultural Preservation Program. It was explained that the Sheats property at Cedar Swamp that the Division received as a donation was the only recently acquired property so enrolled. Lands enrolled in agricultural preservation are protected from development, but do not provide any public access. Director Saveikis explained that if the Division were to acquire any properties enrolled in agricultural preservation that only the value of the undevelopable share of the property would be purchased since the development rights were already paid for by the Agricultural Preservation Program, and the land owner could not “double dip” and get paid by the state for the same land value twice. Councilman Scuse also asked if the Division considers the cost of land maintenance when considering the purchase of a parcel, since the Division has told the Delaware Bay Retriever Club that it didn’t have sufficient funds or staff to maintain the retriever training area located on the C&D Canal Conservation Area. Director Saveikis assured him that the Division considers the cost of land maintenance and explained that the Delaware Bay Retriever Club is responsible for maintenance of the subject retriever area under a separate lease with the Army Corp of Engineers and that maintenance and management of dog training areas are not eligible activities under Pittman-Robertson funds that are used to manage most state wildlife areas. Councilman Kendus asked for clarification on what Pittman-Robertson funds were for the benefit of the audience, and Director Saveikis explained they were funds derived from federal excise taxes on firearms, ammunition and archery equipment provided to the states for wildlife-related activities at a 3:1 ratio wherein the federal government provides \$3 for every \$1 put up by the state (state hunting license revenues are the primary source for the state share of this funding).

Agenda Item 4. Expansion of the Designated Trout Stream Area on Pike Creek (Michael Stangl).

Michael Stangl, fisheries program manager, gave a presentation on the proposed 0.9 mile expansion of the portion of Pike Creek designated as a trout stream. He explained that currently there is limited public access on this stream due to the sale of Three Little Bakers Golf Course, which resulted in the loss of one mile of accessible trout stream and that there have been multiple complaints from property owners of public trespass. Mr. Stangl met with the superintendent of White Clay Creek State Park to discuss the inclusion of the “Judge Morris Estate Tract” next year as part of this designated trout stream. Mr. Stangl reported that pull off areas along the stream would provide adequate parking.

This trout stream expansion would require a regulatory change, and Mr. Stangl requested a Council recommendation. After a discussion of the proposed trout stream expansion, a motion was made by Councilman Kendus, seconded by Councilman Grier and the council voted unanimously to endorse the trout stream expansion. The Division will proceed with promulgating the proposed regulation change through the formal public regulatory adoption process.

Agenda Item 5. Director’s Update (David E. Saveikis).

Director Saveikis briefed the Council on the following relevant legislation initiated by and being considered by the Delaware General Assembly; H.B. 97 to allow non-resident, full-time students in a public or private college within Delaware to purchase a Delaware hunting, trapping or fishing license at the same fee charged a resident (released from House Natural Resources Committee on April 10, 2019); H.B. 156 to allow non-residents who have been honorably discharged from the armed forces of the United States and have at least a 60% service connected disability to be license exempt to hunt, trap and fish similar to the current exemption for residents (passed the House on June 20, 2019 and has been assigned to the Senate); and S.B. 100 to increase shot and pellet size permitted in air guns up to .25 caliber (released by the Senate Judicial Committee on June 12, 2019).

Director Saveikis generally informed the Council of the following other legislation initiated and introduced by the Delaware General Assembly; S.B. 155 to narrow the definition of “firearm” to align with the federal criminal background check law definition; S.B. 149 to establish the right to hunt, fish and trap; S.B. 68 to prohibit assault weapons; S.B. 69 to require a firearms purchasing card to purchase a firearm; and S.B. 70 to define and prohibit large-capacity firearm magazines.

Councilman Kendus requested an update on hunting and wildlife regulation changes. Director Saveikis informed the Council that the proposed regulation changes are extensive and complicated, involving numerous proposed changes within 14 of 16 existing regulation sections and adding two new regulation sections that takes several months to develop. There are then dozens of steps to the process to include a formal public hearing that will take at least six months to complete and adopt the regulation changes. Director Saveikis indicated that he would keep the Council updated as this process unfolds.

Director Saveikis updated the Council on the new specialty sport fishing license plates available from the Division of Motor Vehicles from which plate sale revenues will be used by the Division to enhance recreational fishing in Delaware.

Director Saveikis updated the Council on the 2019/2020 Hunting & Trapping Guide now available, providing a copy to each Councilman.

Director Saveikis apprised the Council that there will be a subcommittee initiated by the Advisory Council on Tidal Finfisheries to evaluate the current fishing and hunting fine structure. The subcommittee organizers will request that members of the Advisory Council on Wildlife and Freshwater Fish participate in the subcommittee (as well as members of the Council on Shell Fisheries). After discussion, Council Chair Montague and Councilman Hudson volunteered to participate on the subcommittee.

AGENDA FOR THE 8/27/2019 ADVISORY COUNCIL MEETING

Council asked the Division of Fish & Wildlife to provide the agenda for the next meeting, with the Division subsequently developing the following agenda:

1. Approval of Minutes from June 25, 2019 Council Meeting (Chairman).
2. Nanticoke River American Shad Restoration Update (Johnny Moore)
3. Delaware Bayshore Initiative Projects Update (Anthony Gonzon)
4. Proposed Wildlife Viewing Enhancements at Ted Harvey Conservation Area (Anthony Gonzon)
5. Director Update (David E. Saveikis).

There being no further business, a motion was made by Councilman Scuse, seconded by Councilman Kendus and unanimously approved by the Council to adjourn the meeting at 8:18 pm.

Sincerely,



Dana Patone
Recording Secretary

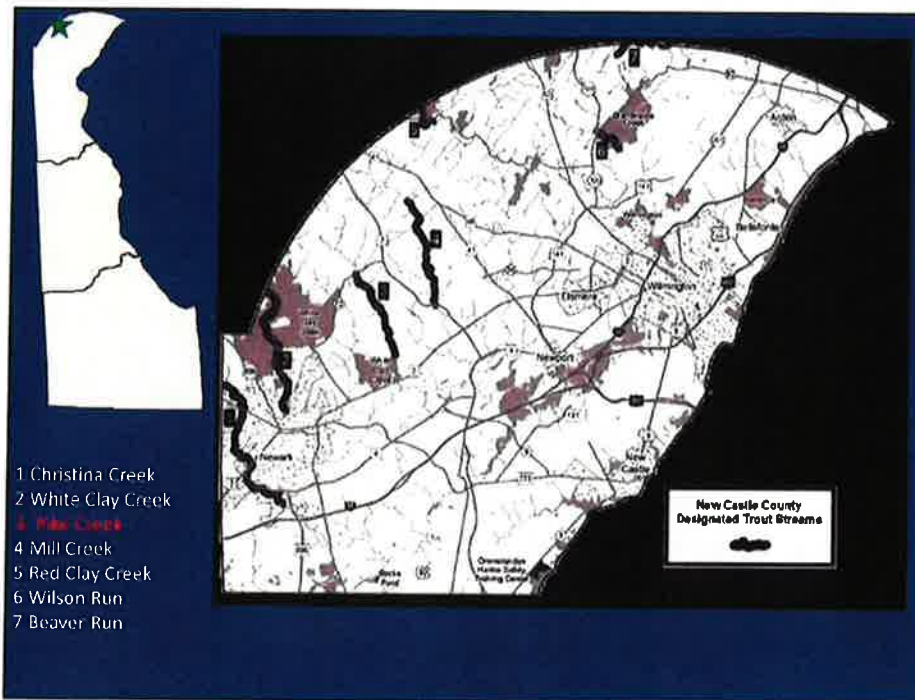


Delaware Division of Fish & Wildlife

The expansion of the designated trout stream area on Pike Creek



We Bring You Delaware's Great Outdoors through Science and Service



- Pike Creek - limited amount of public access to fish
- Access is at a premium
- Three Little Bakers Golf Course on Pike Creek - SOLD
- Resulted in the loss of ~1 mile of accessible trout stream
- More complaints by property owners led to researching properties along the stream
- Met with the superintendent of WCC State Park, Vinny Porcellini, to discuss the inclusion of the Judge Morris Estate Tract into our trout stocking plans next year.



- Parks gave approval to stock the section from Pike Creek Road to Kirkwood Highway (Rt 2)
- This would add approximately 0.9 mile of water with public access to be stocked
- There are adequate parking spots similar to some of our other streams, but there is no parking lot
- This addition would mean a regulatory change to the lower boundary of the designated trout stream for Pike Creek from "Pike Creek Road" to "Kirkwood Highway"
- We are looking for the endorsement from the Council to proceed with expanding the designated trout stream area on Pike Creek so we can initiate the regulatory change



START ACTION NOTICE # 2019-09

1. TYPE OF ACTION:

Amend 7 DE Admin. Code 3300 Non-Tidal Finfish - 3301 Definitions.

2. PURPOSE OF ACTION:

The Department provides a put-and-take freshwater trout fishery each spring in select piedmont streams of New Castle County. Appropriate waters for stocking freshwater trout are limited due to restricted public access and trout habitat requirements. Development, property rights and population growth have reduced public access on some of Delaware's Designated Trout Streams, while freshwater trout angling has remained a seasonally popular activity. The acquisition of property along Pike Creek by Delaware State Parks (White Clay Creek State Park - Judge Morris Estate) provides an opportunity to expand Delaware's trout stocking sites and increase public access to Pike Creek's freshwater trout fishery.

The amendment proposed by this action will extend the defined Designated Trout Waters on Pike Creek downstream approximately 0.9 miles to the bridge at Route 2 (Kirkwood Highway). This will accommodate freshwater trout stocking and improve angler access to the put-and-take freshwater trout fishery on Pike Creek. Waters defined as a Designated Trout Stream are closed to all fishing 14 days before the trout season's opening day to provide for stocking, fish acclimation and dispersion and to provide fair access through an established starting time and date. Unless lawfully exempt, a trout stamp is required to fish a Designated Trout Stream from the first Saturday in April through June 30 and from the first Saturday in October through November 30 (\$2.10 resident youth / \$4.20 resident adult / \$6.20 non-resident). Trout stamp revenues support the purchase of trout in subsequent years. Delaware's Advisory Council on Wildlife and Freshwater Fish endorsed this proposed action.

3. STATUTORY BASIS:

7 Del.C. §103 (a & b)

4. IS THIS PROPOSED REGULATORY ACTION REQUIRED AS A RESULT OF FEDERAL STATUTE OR REGULATION? IF SO, PROVIDE LINK TO FEDERAL MANDATE.

No.

5. DATE OF MOST RECENT REVIEW/AMENDMENT:

The existing 7 DE Admin Code 3300 Non-Tidal Finfish - 3301 Definitions was most recently amended March 1, 2019.

6. LIKELY AFFECTED PUBLIC:

The likely affected public include Pike Creek anglers and residents in proximity to Pike Creek, White Clay Creek State Park - Judge Morris Estate visitors, and local bait and tackle shops.

7. PROPOSED SCHEDULE OF ACTIVITIES:

Register Notice publication – November / December 2019

Public hearing – December 2019 / January 2020

Effective date – February / March 2020

8. REVIEW COMMITTEE:

Advisory Council on Wildlife and Freshwater Fish


9. RESPONSIBLE STAFF MEMBER:

Stewart Michels
DNREC/DFW/Fisheries
89 Kings Hwy.
Dover, DE 19901
Ph.: (302) 739-9914
Fax.: (302) 739-6157
E-mail: Stewart.Michels@delaware.gov

10. APPROVALS:


Stewart Michels Date

Responsible Staff Member

 10/3/19
David E. Saveikis Date

Director, Division of Fish & Wildlife

 10/13/19
Shawn M. Garvin Date

Secretary



Regulatory Flexibility Analysis and Impact Statement Form

For Proposed New and Amended Regulations Affecting Small Businesses or Individuals

Introduction

Beginning January 1, 2016, agencies submitting proposed new or amended regulations that affect small businesses or individuals are required, under the new Regulatory Transparency and Accountability Acts of 2015 (see 80 Del. Laws, c. 112 and 113), to submit a Regulatory Flexibility Analysis (RFA) and a Regulatory Impact Statement (RIS) with the proposed regulation to the Registrar of Regulations (see 29 Del.C. Ch. 104).

This RFA and RIS form is intended to benefit the small businesses and individuals impacted by proposed regulations by ensuring a reasonable level of consistency in the formatting of RFAs and RISs across different agencies and regulations.

State agencies proposing new or amended regulations that are substantially likely to impose additional costs or burdens on small businesses¹ or individuals² must submit a Regulatory Flexibility Analysis (RFA) and a Regulatory Impact Statement (RIS) to the Registrar of Regulations, with the proposed regulation. For agencies proposing amendments to existing regulations, the promulgating agency shall only be required to complete the RFA and RIS for the proposed amended portion of the existing regulation, and not for the entire existing regulation.

What is a Regulatory Flexibility Analysis (RFA)?

In each RFA, an agency must consider, where applicable, lawful, feasible and desirable, specific methods of reducing the burdens of the regulation on individuals and/or small businesses, including: (1) establishing less stringent requirements and deadlines; (2) establishing performance standards to replace design standards; (3) exempting individuals and small businesses from all or part of the regulation; and (4) examining other ways to accomplish the regulation's purpose, while minimizing the impact upon individuals and/or small businesses.

What is a Regulatory Impact Statement (RIS)?

Among other things, each RIS must (1) describe the purpose of the regulation; (2) identify the individuals and/or small businesses subject to it; (3) provide an estimate of the potential costs of compliance; and (4) describe any less intrusive or less costly alternative methods of achieving the purpose of the regulation. In addition, the Act further enhances transparency by requiring the Registrar of Regulations to transmit regulatory impact statements to the appropriate standing committee of the General Assembly.

¹"Small business" means any not-for-profit enterprise, sheltered workshop or business enterprise which is engaged in any phase of manufacturing, agricultural production or personal service, regardless of the form of its organization, when such enterprise or workshop employs fewer than 50 persons, has gross receipts of less than \$10,000,000 and is not owned, operated or controlled by another business enterprise.

² "Individual" means any natural person, including any sole proprietorship. The term "individual" does not include any natural person affected by a regulation in his/her capacity as an officer, director, or employee of an organization that is not a "small business"; e.g. the CEO of a large business.

Agencies, Boards, and Commissions: please fill out this form when proposing new or amended regulations for the purpose of informing the public and business community. All proposed regulations, even if an exemption applies, must have this form attached when submitting to the Registrar of Regulations.

Date 11/19/19 Agency DNREC Division/Office F&W/Fisheries
Contact Name Stewart Michels
Contact Email (or mailing address for comments) stewart.michels@delaware.gov
Regulation # 3301 Title Definitions

Exemptions

- Exemption A:* This proposed regulation is **not subject to Chapter 104, Title 29 of the Delaware Code**, because it will not apply to small businesses or individuals at all.
- Exemption B:* The agency, board, or commission is exempt from completing the RFA and Impact Statement due to the nature of the proposed regulation.

Choose the reason for exemption:

- B1.* This proposed regulation is not substantially likely to impose additional costs or burdens upon individuals and/or small businesses. Explain this conclusion:
- B2.* This is an emergency regulation pursuant to **29 Del.C. §10119**.
- B3.* This proposed regulation is exempt from the procedural requirements of the Administrative Procedures Act, **29 Del.C. §10113(b)**. Choose which reason:
- B3a.* Descriptions of agency organization, operations and procedures for obtaining information
 - B3b.* Rules of practice and procedure used by the agency
 - B3c.* Delegations of authority to subordinates
 - B3d.* Nonsubstantive changes in existing regulations to alter style or form or to correct technical errors
 - B3e.* Amendments to existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulations
 - B3f.* Codifications of existing agency or judicial principles of decision derived from previous decisions and rulings

- B4. This proposed regulation defines standard of conduct or qualifications of individuals applying for licensure or as licensed professionals. Identify which professional license or professional qualification this would apply to:

- B5. Regulations that are required by federal law and/or have already complied with the federal Regulatory Flexibility Act, 5 U.S.C. § 601 et seq. *(If this is checked, the agency, board, or commission shall cite the federal law, regulation, directive, or guidance strictly mandating such state regulation and shall attach any applicable Federal RFA related to the regulation, if available. Attach the Federal RFA statement to this form, or provide the URL):*

End of Exemption Section

Regulatory Flexibility Analysis

State agencies, boards, and commissions proposing to adopt or amend a regulation that is substantially likely to impose additional costs or burdens upon individuals and/or small businesses shall consider, where applicable, lawful, feasible and desirable, the following methods of reducing the additional costs and burdens of proposed regulations on individuals and small businesses:

1. The establishment of less stringent compliance or reporting requirements;
2. The establishment of less stringent schedules or deadlines for compliance or reporting requirements;
3. The consolidation or simplification of compliance or reporting requirements;
4. The establishment of performance standards to replace design or operational standards required in the proposed regulation;
5. The exemption of certain individuals or small businesses from all or part of the requirements contained in the proposed regulation; and
6. Such other alternative regulatory methods that will accomplish the objectives of the proposed regulation while minimizing the adverse impact upon individuals and small businesses.

Explain whether each of the above methods would be applicable, lawful, feasible, and desirable to reduce the costs or burdens of the proposed regulation:

1. Less stringent compliance measures are not applicable, lawful, feasible or desirable as the trout stocking program is a user-pay-user-benefit model established by Code.
2. Less stringent schedules or deadlines for compliance or reporting requirements are lawful, but not feasible or desirable and in the case of reporting are not applicable. The consequence of the amendment facilitates stocking & seasonal aspects that minimize disruptions to non-trout anglers.
3. The consolidation or simplification of compliance or reporting may be lawful and desirable, but not feasible and, in the case of reporting, not applicable. Simplification of the proposed, although desirable, would likely have profound impacts on non-users of the resource or be contrary to law.
4. Establishment of performance standards is not applicable.
5. Certain individuals are exempted by law. Additional exemptions are not desirable or feasible, as they contrary to the user-pay-user-benefit model established by code.
6. Extending costs to the area users is inherent to the associated law that follows a user-pay-user-benefit model. It is applied thru regulation in a manner that reduces burdens non-trout anglers. Small businesses are not known to be burdened by this regulation.

If the above RFA section does not address each of the six methods and there is not an exemption that applies, explain why the agency, board, or commission decided it was not applicable, lawful, feasible, and desirable to complete the RFA section above:

A large, empty rectangular box with a thin black border, intended for the user to provide an explanation if the RFA section does not address the six methods and there is no applicable exemption.

End of Regulatory Flexibility Analysis Section

Regulatory Impact Statement

Any agency, board, or commission that proposes to adopt or amend a regulation that is substantially likely to impose additional costs or burdens upon individuals and/or small businesses must submit the below Regulatory Impact Statement (RIS).

- Reference the statutory provision that allows for the adoption or amendment of the regulation and the statutory provisions that address the subject matter of the regulation. In addition, provide the URL to the specific section of the Delaware Code to allow the public easy access to view the provision.

- Statutory Citation: 7 Del.C.§103 (a & b)
- URL: <https://delcode.delaware.gov/title7/c001/index.shtml>
- Subject Matter Statutory Citation: _____
- URL: _____

- Describe the purpose of the proposed regulation (what is the need for the proposed regulation?):

To afford adequate protections of a portion of Pike Creek to provide for the stocking of freshwater trout and sustain the user-pay-user benefit stocking model

- What are the anticipated benefits of the proposed regulation? (Describe the benefits that are expected to accrue as a result of the implemented regulation). Please quantify such benefits, as feasible:

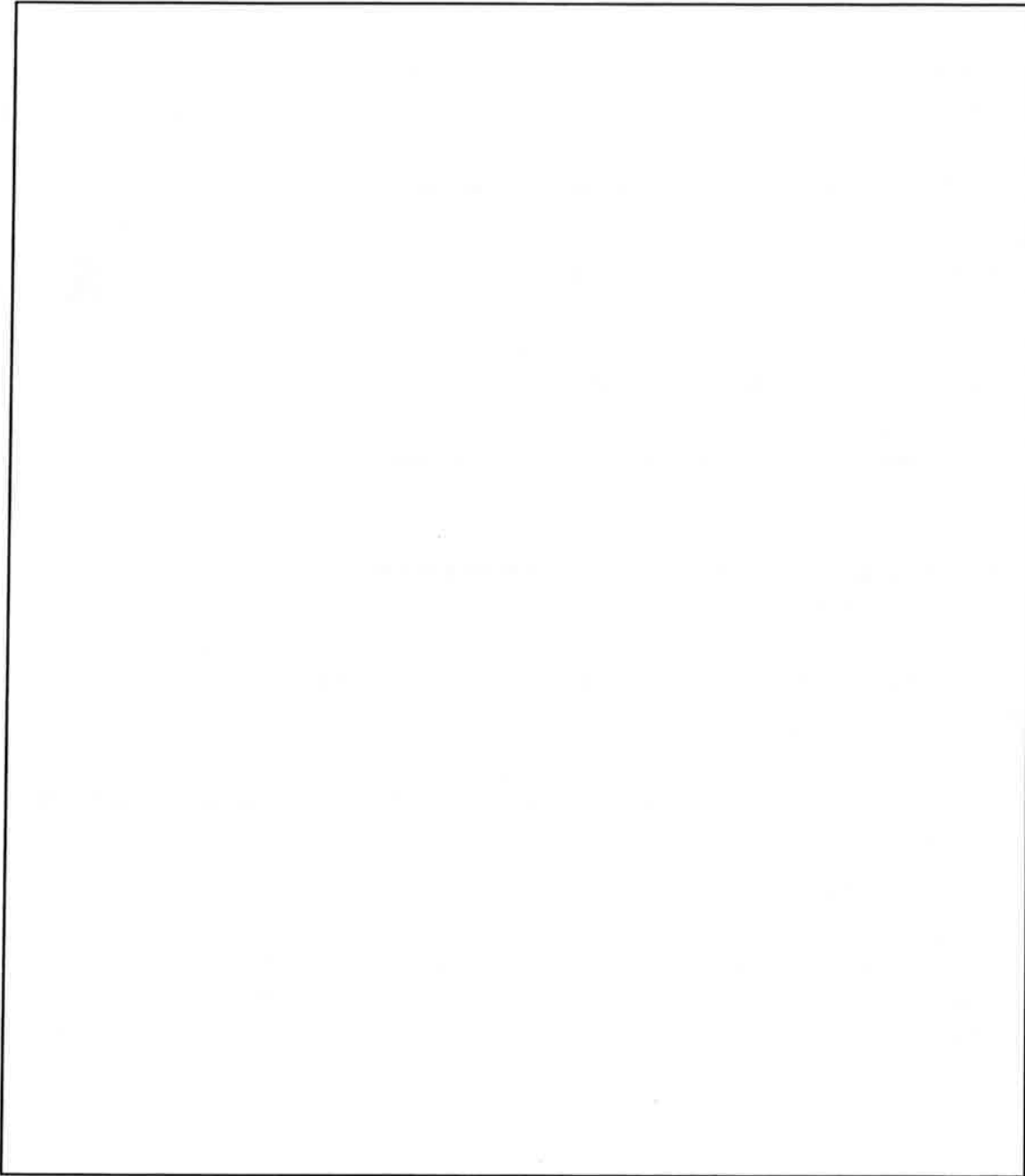
The amendment will provide for stocking freshwater trout in approximate 0.9 miles of stream improving recreational fishing opportunities in New Castle County

- Identify the types of individuals and/or small businesses that would be subject to compliance under the regulation:

Freshwater anglers choosing to fish the the affected waters. Small businesses will not be subject to compliance.

- Provide a **good-faith estimate** of the potential cost of compliance for individuals and/or small businesses, which at minimum shall include the projected reporting, recordkeeping, and other administrative costs required to comply with the proposed regulation. Use the below space for a free-text response (*Cost Estimate Option 1*) or, use the questionnaire below to guide the response (*Cost Estimate Option 2*):

Cost Estimate Option 1:



| | Cost Estimate Option 2 | Yes | No | Unknown |
|----|---|----------------------------------|----------------------------------|----------------------------------|
| 1 | Is this regulation being proposed to implement a state or federal program that provides funds to Delaware? | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| 2 | If this regulation is not implemented, will individuals, businesses, or programs lose federal funding? | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| 3 | Does this regulation implement a plan that has already been approved by the federal government, after an opportunity for public comment? | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| 4 | Does this regulation follow industry standards and best practices? | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
| 5 | Are there potential costs in not establishing these standards? | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| 6 | Does the regulation require capital costs (building costs, material costs, upgrades to property or structures, retrofitting of systems, etc.)? | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| 7 | Does the regulation require additional recurring costs on small businesses or individuals? | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 8 | Does the regulation impose additional administrative burden for a small business or individual? | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 8a | If answering yes to #8, is it ongoing reporting or one time? (Choose answer) <input checked="" type="radio"/> Ongoing <input type="radio"/> One Time <input type="radio"/> Unknown | | | |
| 8b | If answering yes to #8, generally, how much administrative effort will be required to comply with the regulation? <input type="radio"/> Large Amount <input checked="" type="radio"/> Small Amount <input type="radio"/> Unknown | | | |
| 9 | Does the regulation require new or changed record keeping that will create new processes or change processes already in place for small businesses or individuals? | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |

| Cost Estimate Option 2 (continued) | | Yes | No | Unknown |
|---|---|-----------------------|----------------------------------|-----------------------|
| 10 | Would a small businesses or individual be required to hire an outside professional to comply with the proposed regulation (such as an attorney, accountant, tax advisor, environmental consultant, engineering firm, etc.)? | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| 10a | If answering yes to #10, estimate how many hours an outside professional may be needed to assist | | | |
| 10b | If answering yes to #10, will a small business or individual be required to retain the services of the outside professional on an ongoing basis? | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 11 | Does the regulation require small businesses to purchase goods or services that are unusual or not commercially reasonable? | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| 12 | Does the regulation require that small businesses exceed commercially reasonable data storage and transmission standards? | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| 13 | Will small businesses have to hire additional employees in order to comply with the proposed regulation? | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| 14 | Does the regulation require small businesses to cooperate with audits, inspections, or other regulatory enforcement activities? | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| 15 | Does the regulation have the effect of creating additional licenses, taxes and/or fees for small businesses? | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| 16 | Does the regulation require small businesses to obtain additional education to keep up to date with regulatory requirements? | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| 17 | Please further explain any additional costs or burdens, which at a minimum shall include the projected reporting, recordkeeping, and other administrative costs required to comply with the proposed regulation. The measure will require the purchase of a trout stamp to fish in the 0.9 miles of stream during certain restricted periods. Fishing is prohibited two weeks prior to the opening of the trout season in the same waters. | | | |

- Provide a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation, and why these methods were not preferred to a regulation:

A status quo alternative was considered, but is inconsistent with the user-pay-user-benefit model established by Code.

- *(Optional)* Estimate the amount of agency, board, or commission staff hours it took to prepare this RFA and RIS statement:

<1

- *(Optional)* Agencies are encouraged to list trade or industry groups, small businesses, or other stakeholders such as currently regulated parties that were consulted by the agency, board, or commission in preparing this RFA and RIS. The agency, board, or commission is further encouraged to send them a copy of the RFA and RIS upon completion:

Delaware's Advisory Council on Wildlife and Freshwater Fish endorsed this proposed action.

End of Regulatory Impact Statement Section



DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
DIVISION OF FISH AND WILDLIFE
Statutory Authority: 7 Delaware Code, Section 103(a) & (b) (7 Del.C. §103(a) & (b))
7 DE Admin. Code 3301

PROPOSED

REGISTER NOTICE
SAN# 2019-09

Hearing Docket No.: 2019 -R-F-0031

3300 Non-Tidal Finfish
3301 Definitions

1. TITLE OF THE REGULATIONS:

Amend 7 DE Admin. Code 3300 Non-Tidal Finfish - 3301 Definitions.

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE, AND ISSUES:

The Department provides a put-and-take freshwater trout fishery each spring in select piedmont streams of New Castle County. Appropriate waters for stocking freshwater trout are limited due to restricted public access and trout habitat requirements. Development, property rights and population growth have reduced public access on some of Delaware's Designated Trout Streams, while freshwater trout angling has remained a seasonally popular activity. The acquisition of property along Pike Creek by Delaware State Parks (White Clay Creek State Park - Judge Morris Estate) provides an opportunity to expand Delaware's trout stocking sites and increase public access to Pike Creek's freshwater trout fishery.

The amendment proposed by this action will extend the defined Designated Trout Waters on Pike Creek downstream approximately 0.9 miles to the bridge at Route 2 (Kirkwood Highway). This will accommodate freshwater trout stocking and improve angler access to the put-and-take freshwater trout fishery on Pike Creek. Waters defined as a Designated Trout Stream are closed to all fishing 14 days before the trout season's opening day to provide for stocking, fish acclimation and dispersion and to provide fair access through an established starting time and date. Unless lawfully exempt, a trout stamp is required to fish a Designated Trout Stream from the first Saturday in April through June 30 and from the first Saturday in October through November 30 (\$2.10 resident youth / \$4.20 resident adult / \$6.20 non-resident). Trout stamp revenues support the purchase of trout in subsequent years. Delaware's Advisory Council on Wildlife and Freshwater Fish endorsed this proposed action.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

N/A

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del.C. §103 (a & b)

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

N/A

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed changes to 7 DE Admin. Code 3300 Non-Tidal Finfish - 3301 Definitions opens January 1, 2020 (Hearing Docket No.: 2019 -R-F-0031). A public hearing on the proposed amendment will be held on Wednesday, January 29, 2020 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901. Individuals may submit written comments regarding the proposed changes via e-mail to DNRECHearingComments@delaware.gov, or via USPS to the DNREC Hearing Officer, 89 Kings Highway, Dover, DE 19901. Public comments will be received until close of business Thursday, February 13, 2020.

7. PREPARED BY:

Stewart Michels
Email: Stewart.Michels@delaware.gov
Ph: (302) 739-9914

3300 Non-Tidal Finfish

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

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

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

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

"Designated Trout Pond" means:

Newton Pond in Sussex county (near Greenwood);

Tidbury Pond in Kent County.

"Designated Trout Stream" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 DE Reg. 543 (01/01/20) (Prop.)



DNREC- DIVISION OF FISH & WILDLIFE

LEGAL NOTICE **Notice of Public Hearing**

The Department of Natural Resources and Environmental Control (DNREC), Division of Fish & Wildlife will conduct a public hearing (Docket #2019-R-F-0031) on the proposed revisions to the following regulations: 7 DE Admin. Code 3300 Non-Tidal Finfish - 3301 Definitions.

The public hearing will be held on **Wednesday, January 29, 2020, beginning at 6:00 PM** in the **DNREC Auditorium, Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.**

The proposed revision to 7 DE Admin. Code 3300 Non-Tidal Finfish - 3301 Definitions will extend the defined Designated Trout Waters on Pike Creek approximately 0.9 miles downstream to the bridge at Route 2 (Kirkwood Highway).

The proposed revision is intended to accommodate freshwater trout stocking and improve angler access to the put-and-take freshwater trout fishery on Pike Creek. Waters defined as a Designated Trout Stream are closed to all fishing 14 days before the opening day of trout season to provide for stocking, fish acclimation and dispersion and to provide fair access through an established starting time and date. Unless lawfully exempt, a trout stamp is required to fish a Designated Trout Stream from the first Saturday in April through June 30 and from the first Saturday in October through November 30 (\$2.10 resident youth / \$4.20 resident adult / \$6.20 non-resident). Trout stamp revenues support the purchase of trout in subsequent years.

The proposed amendment may be inspected at DNREC's office located at Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901 and online as of January 1, 2020 at http://regulations.delaware.gov/services/current_issue.shtml

For additional information on this proposed regulatory promulgation, visit <https://de.gov/dnrehearings> or contact Stewart Michels, DNREC/DFW, 89 Kings Hwy., Dover, DE 19901; by phone at 302-739-9914; or by email at Stewart.Michels@delaware.gov.

Persons wishing to comment on the proposed amendments may do so either orally or in written form at the public hearing on January 29, 2020. In lieu of attending the public hearing, written comment may be submitted to the Hearing Officer via the online comment form at <https://dnrec.alpha.delaware.gov/public-hearings/comment-form/>, via email to DNRECHearingComments@delaware.gov, or via USPS to the below address. The Department will accept public comment through the close of business on Thursday, February 13, 2020.

Theresa Newman, Hearing Officer
DNREC – Office of the Secretary
89 Kings Highway, Dover, DE 19901



INDEPENDENT NEWS

110 Galaxy Drive • Dover, DE •

State of Delaware:

County of Kent:

Before me, a Notary Public, for the County and to me to be such, who being sworn according to the publisher of the Delaware State News, a County of Kent, and State of Delaware, and the attached, as published in the Delaware State

December 29, 2019

Janet LaPrade

Publisher
Delaware State News

Sworn to and subscribed before me this 29th

Day of December A.D. 2019



Janet Levy
Notary Public



DNREC - DIVISION OF FISH & WILDLIFE

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Theresa Newman, Hearing Officer
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89 Kings Highway, Dover, DE 19901

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379520 DSN 12/29/2019



Classified Ad Receipt
(For Info Only - NOT A BILL)

Customer: SD DIV FISH & WILDLIFE

Ad No.: 0003939246

Address: 89 KINGS HWY
DOVER DE 19901
USA

Pygmt Method: Invoice

Net Amt: \$331.58

Run Times: 1

No. of Affidavits: 0

Run Dates: 12/29/19

Text of Ad:

DNREC- DIVISION OF FISH & WILDLIFE

LEGAL NOTICE
Notice of Public Hearing

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89 Kings Highway, Dover, DE 19901

THIS IS THE ONLY TIME THIS NOTICE WILL APPEAR.

12/29-NJ

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Search, browse, and attend public meetings. View historic meeting information back to March of 2004.

Public Hearing - Freshwater Trout

06:00 PM - 06:00 PM Wednesday January 29, 2020

DNREC Division of Fish and Wildlife / Fish and Wildlife / Natural Resources and Environmental Control

MEETING DESCRIPTION

Hearing regarding proposed action which would revise non-tidal finfish regulations pertaining to freshwater trout. The proposed revisions may be inspected at the Departments offices located at 89 Kings Highway, Dover, DE 19901, or are available by calling the Fisheries Section at (302) 739-9914.

CONTACT INFORMATION

Stew Michels
302-739-9914
stewart.michels@state.de.us
Website

ADDRESS

Richardson & Robbins Building
89 Kings Hwy
Dover DE 19901
DNREC Auditorium

VIRTUAL MEETING INFORMATION

None

DOCUMENTS

[Document](#)

CHANGE HISTORY

| Date | Reason |
|------------|---|
| 12/30/2019 | Topic change - Purpose |
| 12/30/2019 | Document change - Associated Document added |





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Public Hearing: Proposed Revisions to the Non-Tidal Finfish Regulations

The Department of Natural Resources and Environmental Control (DNREC), Division of Fish & Wildlife will conduct a public hearing (Docket #2019-R-F-0031) on the proposed revisions to the following regulations: 7 DE Admin. Code 3300 Non-Tidal Finfish – 3301 Definitions.

Division of Fish & Wildlife

Start Date: December 29, 2019

End Date: February 13, 2019

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Related Topics: finfish, fish and wildlife, fishing, non-tidal, permitting and regulation, public hearing, public notice



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Environmental Finance
Division of Community Affairs
Division of Climate, Coastal, & Energy

Division of Air Quality
Division of Water
Division of Waste and Hazardous Substances

Division of Fish & Wildlife
Division of Parks and Recreation
Division of Watershed Stewardship

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Delaware Fish & Wildlife

December 30, 2019 at 4:30 PM

A public hearing on Delaware's non-tidal finfish regulations pertaining to freshwater trout is scheduled for January 29, 2020 at 6pm in the DNREC Auditorium.

Click on the link for more information.

<https://publicmeetings.delaware.gov/Meeting/64881>



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Scheduled Dec 30 at 2:35pm • Rebecca Houver



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Title Public Hearing Notice - Freshwater Trout

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From DELAWARE DIVISION OF FISH AND WILDLIFE-FISHERMA...

Subject Public Hearing Notice

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The Division of Fish and Wildlife proposes to revise Delaware's non-tidal regulations pertaining to freshwater trout.
Please go to the link below for more details.
<https://publicmeetings.delaware.gov/Meeting/64881>
If you have any questions please contact the Fisheries section at 302-739-9914.

29704 Characters remaining

Copy Modes... Insert Variable Insert Script / HTML Templates Save as Script

Attach File Select files...

Hoover, Rebecca (DNREC)

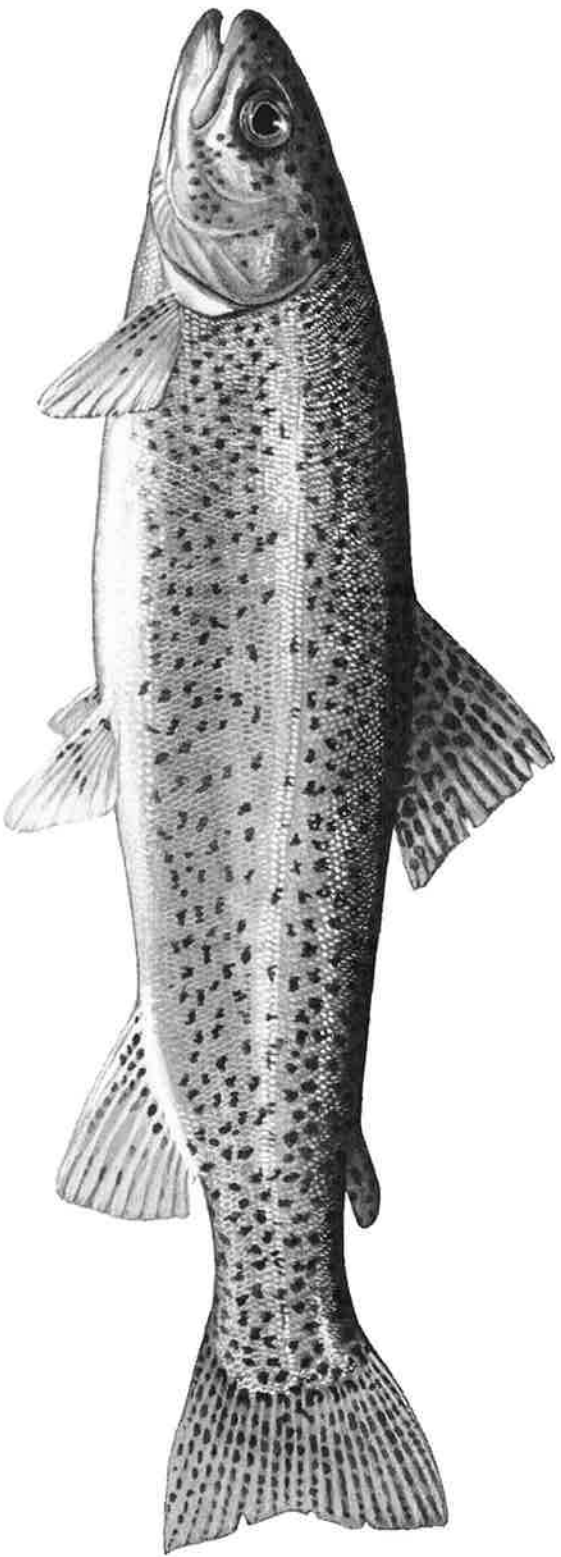
To: List Serve (dnrec_fisheries@lists.state.de.us)
Subject: Public Hearing Notice
Switch-MessageId: ddeda6dcbc9e4be9912edba0e0098250

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If you have any questions please contact the Fisheries section at 302-739-9914.



Delaware Fish & Wildlife

Published by Rebecca Hoover

1 hr • 1/28/2020

REMINDER: A public hearing on Delaware's tidal finfish regulations pertaining to freshwater is scheduled for January 29, 2020 at 6pm in the DNREC Auditorium.

Click on the link for more information!
<https://publicmeetings.delaware.gov/Meeting/>

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3300 Non-Tidal Finfish

3301 Definitions

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

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

23 DE Reg. 543 (01/01/20) (Prop.)

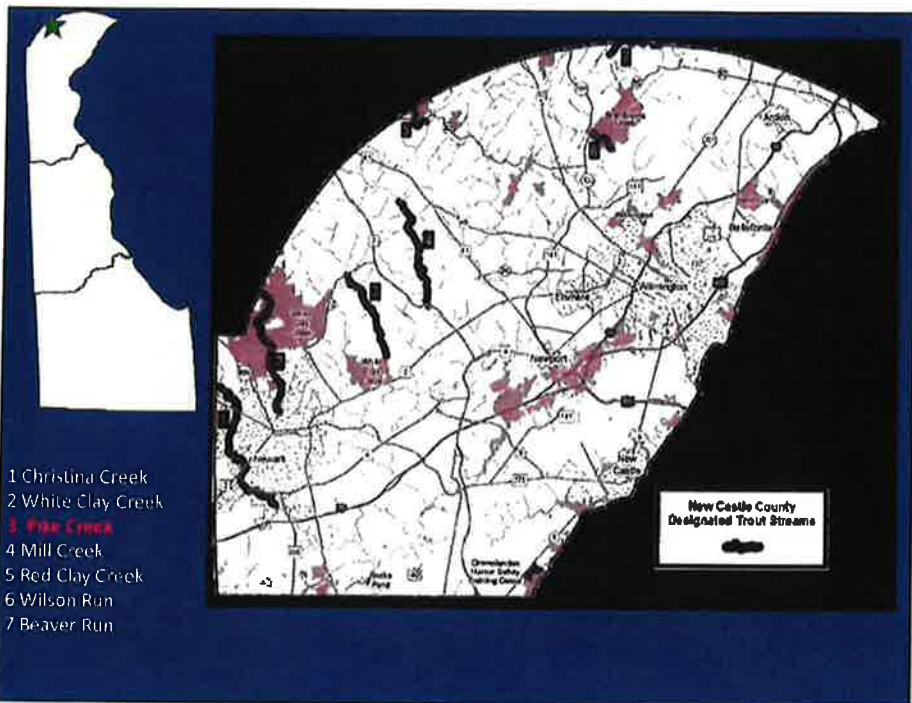


Delaware Division of Fish & Wildlife

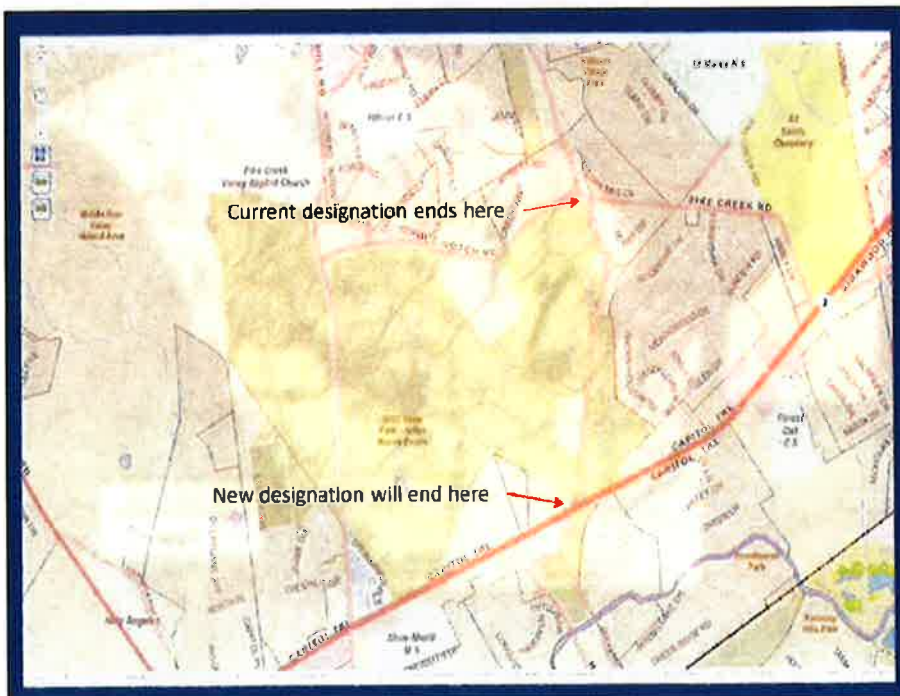
The expansion of the designated trout stream area on Pike Creek



We Bring You Delaware's Great Outdoors through Science and Service



- Pike Creek - limited amount of public access to fish
- Access is at a premium
- Three Little Bakers Golf Course on Pike Creek - SOLD
- Resulted in the loss of ~1 mile of accessible trout stream
- More complaints by property owners led to researching properties along the stream
- Met with the superintendent of WCC State Park, Vinny Porcellini, to discuss the inclusion of the Judge Morris Estate Tract into our trout stocking plans next year.



- Parks gave approval to stock the section from Pike Creek Road to Kirkwood Highway (Rt 2)
- This would add approximately 0.9 mile of water with public access to be stocked
- There are adequate parking spots similar to some of our other streams, but there is no parking lot
- This addition would mean a regulatory change to the lower boundary of the designated trout stream for Pike Creek from "Pike Creek Road" to "Kirkwood Highway"
- We are looking for the endorsement from the Council to proceed with expanding the designated trout stream area on Pike Creek so we can initiate the regulatory change