

# DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

## DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 1104 (7 Del.C. §1104)  
7 DE Admin. Code 3301 and 3304

### PROPOSED

#### REGISTER NOTICE

SAN # 2022-04

DOCKET # 2022-R-F-0016

#### 3300 Non-Tidal Finfish

1. TITLE OF THE REGULATIONS:

Amend 7 DE Admin. Code 3300 Non-Tidal Finfish - 3301 Definitions and 3304 Creel Limits, Size Limits and Seasons 3.0 Trout.

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, one pond in Kent County, and one pond in Sussex County. This action proposes to augment the waters open for trout fishing by adding an additional 0.4 miles of designated trout stream to the stocked portion of Red Clay Creek, create a fly fishing-only area on Red Clay Creek, and increase trout fishing participation by young people with the designation of Youth Days.

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. Freshwater trout angling remains a seasonally popular activity and the continuing water quality improvement of Red Clay Creek provides an opportunity to expand Delaware's trout waters in an undeveloped area of Auburn Valley State Park, increase public access to Red Clay Creek's freshwater trout fishery, and provide the second fly-fishing only area in the state.

This action will also create Youth Days (one day on the Kent and Sussex County trout ponds and one day on the New Castle County trout streams) for anglers under the age of 16. The growing need of the public to find safe, suitable outdoor activities for children during the 2020 lockdown phase of the COVID pandemic provided the impetus for DNREC to use the State of Emergency to designate the opening day of the trout season on the New Castle County streams as a Youth Day in 2020 and opening day for the ponds and streams as Youth Days in 2021. The Youth Days, which restricted trout fishing to young people under the age of 16, were very popular and helped increase the number of trout anglers both years compared to 2019. Youth Days provide a great introduction to fishing for Delaware's young people with the hope that many of the Youth Day participants become lifelong anglers.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

N/A

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del.C. §1104

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 and 3304 Creel Limits, Size Limits and Seasons 3.0 Trout opens November 1, 2022 (Hearing Docket No. 2022-R-F-0016). A virtual public hearing will be held on **Tuesday, November 22, 2022, beginning at 6 p.m.** The web link to the virtual meeting is found on the DNREC Public Hearings site at <https://de.gov/dnrechearings>. If prompted for a password, please use: TROUT. To access the audio-only portion of the virtual hearing, dial 1-408-418-9388 and enter event code 2340 459 7194. Closed-captioning is available by request if made at least 7 days before the event.

Those wishing to offer verbal comments during DNREC virtual public hearings must pre-register no later than noon on the date of the virtual hearing. The designated page for this Pre-Registration process can be found here: <https://dnrec.alpha.delaware.gov/public-hearings/comments/registration/>

Individuals may submit written comments regarding the proposed changes via e-mail to [DNRECHearingComments@delaware.gov](mailto: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 **Wednesday, December 7, 2022.**

7. PREPARED BY:

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### 3300 Non-Tidal Finfish

#### 3301 Definitions

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

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

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

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

**"Designated Trout Pond"** means:

Newton Pond in Sussex county (near Greenwood);

Tidbury Pond in Kent County.

**"Designated Trout Stream"** means:

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

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

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

**"Pike Creek"**, from Route 72 to the bridge at 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 approximately 1.4 miles downstream to the Auburn Valley State Park boundary adjacent to Creek Road (39°48'31.00"N and 75°40'13.00"W Delaware Coordinate System of 1983);

**"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.

**"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 and Red Clay Creek from the downstream side of Yorklyn Road (39°48'29.00"N and 75°40'33.00"W Delaware Coordinate System of 1983) approximately 0.4 miles downstream to the Auburn Valley State Park boundary adjacent to Creek Road (39°48'31.00"N and 75°40'13.00"W Delaware Coordinate System of 1983).

**"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.

**"Youth"** means any individual under the age of 16 engaged in fishing.

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

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

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

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

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

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

### **3304 Creel Limits, Size Limits and Seasons**

(Penalty Section 7 **Del.C.** §1304)

- 1.0 Closed Seasons. Unless otherwise provided by law or regulation of the Department, there is no closed season, size limits or possession limits on any species of fish taken by hook and line in any non-tidal waters of this State.
- 2.0 Bass.
  - 2.1 Statewide limits.
    - 2.1.1 It is unlawful for any person to have in possession more than six (6) largemouth bass or to have in possession more than six (6) smallmouth at or between the place where said largemouth and/or smallmouth bass were caught and said person's personal abode or temporary or transient place of lodging.
    - 2.1.2 Unless otherwise authorized in this regulation, it is unlawful for any person to possess any largemouth bass that measure less than twelve (12) inches in total length. Any largemouth bass taken which is less than the twelve (12) inches in total length must be immediately returned to the water with the least possible injury.
    - 2.1.3 It is unlawful for any person to possess any smallmouth bass measuring from twelve (12) inches to and including (17) inches in total length. Any smallmouth bass taken which is equal to or greater than twelve (12) inches and less than or equal to seventeen (17) inches must be immediately returned to the water with the least possible injury.
    - 2.1.4 Notwithstanding 2.1.1 of this section, it is unlawful for any person to have in possession more than one (1) smallmouth bass measuring more than seventeen (17) inches in total length at or between the place where said smallmouth bass was caught and said person's personal abode or temporary or transient place of lodging.
    - 2.1.5 It is lawful for any person to have in possession while fishing up to six (6) smallmouth bass that are less than twelve (12) inches in total length.
  - 2.2 Becks Pond.
    - 2.2.1 Notwithstanding 2.1.1 of this section, it is unlawful for any person to have in possession while fishing on Becks Pond more than two (2) largemouth bass.
    - 2.2.2 Notwithstanding 2.1.2 of this section, it is unlawful for any person to have in possession while fishing on Becks Pond any largemouth bass less than fifteen (15) inches in total length. Any largemouth bass less than fifteen (15) inches in total length must be immediately returned to Becks Pond with the least possible injury.
- 3.0 Trout.
  - 3.1 Pond and Stream Seasons.
    - 3.1.1 It is unlawful for any person to fish for rainbow trout, brown trout, brook trout, or any hybrids of these species in designated trout streams, except between and including the first Saturday Sunday of April and the second Saturday of March of each succeeding year.
    - 3.1.2 Notwithstanding subsection 3.1.1, it is lawful for any youth to fish for rainbow trout, brown trout, brook trout, or any hybrids of these species in designated trout streams on the first Saturday of April.

~~3.1.2~~ 3.1.3 It is unlawful for any person to fish for rainbow trout, brown trout, brook trout, or any hybrids of these species in designated trout ponds, except between and including the first ~~Saturday~~ Sunday of March and the second Saturday of February of each succeeding year.

3.1.4 Notwithstanding subsection 3.1.3, it is lawful for any youth to fish for rainbow trout, brown trout, brook trout, or any hybrids of these species in designated trout ponds on the first Saturday of March.

### 3.2 Hours of Fishing.

3.2.1 It is unlawful for any person to fish for rainbow trout, brown trout, brook trout, or any hybrids of these species in designated trout streams on the opening day of the trout season before 7:00 a.m. and thereafter for the remainder of the trout season between one-half hour after sunset and one-half hour before sunrise.

3.2.2 It is unlawful for any person to fish for rainbow trout, brown trout, brook trout, or any hybrids of these species in designated trout ponds on the opening day of the trout season before 7 a.m. and thereafter for the remainder of the trout season between one-half hour after sunset and one-half hour before sunrise.

3.3 Possession. It is unlawful for any person to possess in any one day during the prescribed open season more than six (6) rainbow trout, brown trout brook trout or any hybrids of these species in any combination. On any day after a person takes his or her legal limit of trout, said person is prohibited from fishing in a designated trout stream or a designated trout pond on the same day, unless otherwise authorized by law or this regulation.

### 3.4 Trout Stamp.

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

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

### 3.5 Restricted Trout Stream.

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

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

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

### 3.6 Closure of Designated Trout Streams and Ponds.

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

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

### 4.0 Striped Bass and Hybrid Striped Bass

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

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

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

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

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

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

16 DE Reg. 788 (01/01/13)  
22 DE Reg. 776 (03/01/19)  
26 DE Reg. 377 (11/01/22) (Prop.)