



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL**

DIVISION OF FISH & WILDLIFE
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FISHERIES
SECTION

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To: Theresa Newman, Regulatory Specialist

From: John H. Clark, Fisheries Section Administrator

Subject: Technical Response to public comments received regarding 7 DE Admin. Code 3300 Non-tidal Finfish 3301 - Definitions and 3304 Creel Limit, Size Limits and Season

The Fisheries Section has considered the public comments received regarding the proposed amendments to 7 DE Admin. Code 3300 Non-tidal Finfish 3301 - Definitions and 3304 Creel Limit, Size Limits and Season and decided that the proposed amendments should be approved as written. The majority of the public comments (seven of nine written comments, all three public hearing comments) received were strongly in favor of the amendments. However, two commenters suggested changes to the amendments:

Is it possible to make the additional section of Red Clay Creek in the proposed amendments 'artificials only' rather than 'fly fishing only'?

While the Division of Fish and Wildlife (Division) would like to accommodate all the requests for specific angling methods on the trout streams, an 'artificials only' section presents problems. While determining if an angler is fly fishing is easy as our Natural Resources Police can see whether an angler is using a fly fishing rod and reel from a distance, determining if someone is using an 'artificial' is much more difficult. There are an enormous variety of lures and artificial baits now available to anglers. Some of the most popular baits for trout fishing, such as Power Bait™, are artificials infused with natural scents and oils, which blur the line between artificial and natural baits, so a definition of artificials would need to be very specific. In addition, artificial lures can be made of various materials (i.e., plastic, cork, rubber, wood, metal, etc.) with numerous hooks and hook types, so the materials and number of hooks would need to be defined, again making it difficult for our Natural Resources Police to enforce. We thank the commenter for the interesting suggestion, but such a definition would be effectively unenforceable, so we recommend keeping the proposed amendment as written.

Is it possible to have a delayed harvest area (area would be catch and release only for a specified period at the beginning of the season) on the trout streams?

This commenter states that delayed harvest is in effect in Pennsylvania and is popular with anglers. While the Division understands that delayed harvest can be an effective way to allow more anglers to enjoy a limited number of trout, trout biology makes it infeasible for Delaware's trout streams. The water temperatures in Delaware's lower gradient streams can reach the upper temperature limit for trout survival soon after stocking in the spring. While we encourage catch and release fishing for many of our sportfish, the trout fishery is designed as a 'put and take' fishery, meaning the trout are stocked to be caught, taken and eaten before they succumb to high temperatures in the stream. There are years when some trout will 'hold over' during the summer months, but those cooler summers are difficult to predict. In contrast, there are years when air temperatures reach into the 90's during the spring and trout fitness and survival suffers. Some anglers do catch and release trout, but anglers may keep four to six trout per day depending on location and anglers are encouraged to keep trout as most of the trout will not survive in Delaware's streams as the temperatures rise. The extra handling of trout caused by a catch and release only area could kill trout due to handling stress, hooking injury from treble hooks, and stress-induced disease. We thank the commenter for the thoughtful suggestion, but we recommend keeping the proposed amendment as written.

What accommodations are made to allow the handicapped access?

Assuming the commenter is referring to the proposed designated trout stream section of Red Clay Creek, this 0.4 mile of additional trout stream is in an unimproved area of Auburn Valley State Park and, as thus, not fully accessible to all anglers. The Division of Parks and Recreation (Parks) owns the entire trout stream stretch of Red Clay Creek and the Division of Fish and Wildlife has worked closely and cooperatively with Parks to open Red Clay Creek for trout fishing. Parks is planning improvements to Auburn Valley State Park, but the Division does not know if any of Parks' plans for those improvements will include access for handicapped anglers on Red Clay Creek. However, Parks does provide access for handicapped anglers at other trout fishing sites and even holds a Trout Fishing Derby every April for special needs and senior citizen anglers on Wilsons Run at Brandywine Creek State Park. The Division does not own any of the property along any of the New Castle County trout streams, thus the Division, while fully in support of improving handicapped access to the trout streams, is limited in the actions it can take to improve handicapped access. We thank the commenter for the reminder that Delaware needs more handicapped accessible fishing areas, but we believe that the overall benefits of the proposed amendments to Delaware's anglers are of sufficient merit and public benefit despite the limited access on some waters such that the proposed amendments should be adopted as written.