

HEARING OFFICER'S REPORT

TO: The Honorable Shawn M. Garvin
Cabinet Secretary, Department of Natural Resources and Environmental Control

FROM: Lisa A. Vest
Regulatory Specialist, Office of the Secretary
Department of Natural Resources and Environmental Control

RE: **Proposed Amendments to 7 DE Admin. Code 3900: *Wildlife***
(Hearing Docket No. 2023-R-F-0013)

DATE: March 28, 2024

I. BACKGROUND AND PROCEDURAL HISTORY:

A virtual public hearing was held on Wednesday, December 13, 2023, at 6:00 p.m. via the State of Delaware Zoom Platform by the Department of Natural Resources and Environmental Control (“DNREC” or “Department”) to receive comment on proposed regulatory amendments to 7 DE Admin. Code 3900, *Wildlife* (“Amendments”). The Department’s Division of Fish and Wildlife (“DFW”) is proposing to amend nineteen (19) sections of Delaware’s existing *Wildlife* regulation that pertain to the management and conservation of wildlife, including activities involving hunting, trapping, fishing, nuisance wildlife control work and activities authorized on Division-owned lands.

Specifically, changes are proposed within the following sections: 1.0 *Definitions*, 2.0 *Method of Take*, 3.0 *Federal Laws and Regulations Adopted*, 4.0 *Seasons*, 5.0 *Wild Turkeys*, 7.0 *Deer*, 8.0 *General Rules and Regulations Governing Land and Waters Administered by the Division*, 9.0 *Wildlife Theft Prevention Fund*, 10.0 *Nuisance Wildlife*, 14.0 *Falconry*, 15.0 *Collection or Sale of Native Wildlife*, 16.0 *Endangered Species*, 17.0 *Species of Special Concern*, 19.0 (*Reserved*), 20.0 *Game Bird Releases*, and 23.0 *Non-native/Invasive Wildlife*. Additionally, a new section within the existing *Wildlife* regulation is being proposed with the creation of Section 24.0 *Wildlife Management Zone Boundaries*.

While expansive, most of the Amendments being proposed by the Department serve to provide additional hunting and trapping opportunities in Delaware, such as the establishment of new seasons, the expansion of current seasons, the provision of additional methods of take, and the development of new and improved reporting criteria for harvesting game. Additionally, some of the proposed Amendments are needed to minimize negative impacts to some species, as well as to minimize damage to infrastructure and habitats on lands and waters administered by the DFW. Other proposed Amendments are minor administrative updates to correct grammar and misspellings, and to bring the existing regulations into current formatting style.

The following section of this Hearing Officer’s Report (“Report”) provides a description of each of the Amendments proposed by the DFW, as published in the State of Delaware *Register of Regulations* on November 1, 2023:

Section 1.0: Definitions

The proposed Amendments to Section 1.0 are needed to clarify certain phrases or words within the existing *Wildlife* regulation, or have been dictated by recently passed legislation. The Department notes that none of the proposed definition changes will incur any additional expenses to the affected entities. Specifically, the proposed Amendments will (1) update the total number of regulations found within 7 DE Admin. Code 3900, *Wildlife*; (2) establish a definition for the following: “auxiliary marker,” “direct supervision,” “furbearers,” and “pen-raised released quail”; (3) clarify the definition of “baited field”; and (4) add “chukar partridge” and “Hungarian partridge” to the list of species categorized as “Liberated Game.”

Section 2.0: Method of Take

The proposed Amendments within Section 2.0 are intended to provide additional methods of take, but several of the Amendments are also needed to better manage harvest or to comply with existing statutes. The Department notes that none of the proposed changes will incur any additional expenses to the affected entities.

Specifically, the proposed Amendments to Section 2.0 will (1) add crossbows to the list of approved methods of take while hunting wildlife; (2) allow additional methods of take for raccoons and opossums; (3) clarify that both bullfrogs and green frogs can be harvested by hand; (4) clarify the types of ammunitions that are approved for use in Sharps files while hunting deer; (5) remove the reference that the Division Director can issue a permit to hunt waterfowl on Division lands along the Little River; (6) clarify the types and features of foothold traps that can be used; (7) clarify which firearms may be used to hunt gray squirrels, in accordance with 11 *Del.C.* §1445; and (8) require trappers that obtain a permit to trap snapping turtles to obtain and complete an annual report of their take.

Section 3.0: Federal Laws and Regulations Adopted

The proposed Amendments within Section 3.0 are needed in order for Delaware to come into compliance with federal laws. The Department notes that none of the proposed changes will incur any additional expenses to the affected entities. Specifically, the proposed Amendments to Section 3.0 will (1) revise the common name of the “old squaw duck” species to the “long-tailed duck” species; and (2) clarify that only youth hunters are allowed to hunt waterfowl during the special youth waterfowl seasons, and that the same does not also include non-ambulatory hunters using a wheelchair for mobility.

Section 4.0: Seasons

Numerous changes are being proposed to Section 4.0 to adjust existing seasons or to create new seasons for game species. Almost all of the proposed changes would provide hunters and trappers with more opportunities; however, season closures are proposed for both wild bobwhite quail and diamondback terrapins, as both species have experienced population declines and can no longer support harvest. In terms of the diamondback terrapin, this species was once plentiful in the Delaware Bay, but due to numerous environmental factors, their population has declined, and thus this species is now listed as a Species of Greatest Conservation Need.

The DFW sought input from trappers and Natural Resource Police Officers to determine how prevalent trapping was for this species. Of the people contacted, none were aware of anyone currently or recently trapping this species, so while this closure could result in lost revenue by some individuals, it is not expected to affect many.

Specifically, the proposed Amendments to Section 4.0 will (1) eliminate the annual bag limit for beavers (an overabundant species); (2) allow green frogs to be hunted at the same time bullfrogs can be hunted, and clarify that the daily bag limit for both species is in aggregate (and not per species). Green and bullfrogs look similar, and neither are a species of concern; (3) clarify which species of crow may be hunted and the procedures for landowners to control crows that are causing damage; (4) extend the Gray Squirrel Season one week and eliminate unnecessary text related to when the season opens; (5) close the Wild Bobwhite Quail Season but allow landowners who have sufficient habitat and are implementing management practices to support quail to obtain a permit from the Division to hunt on their lands. Also, establish a season for which pen-raised quail may be harvested. The Division will reevaluate the Wild Bobwhite Quail Season closure every three years; (6) eliminate unnecessary text related to when Rabbit Season closes; (7) adjust the trapping season dates for raccoons and opossums in Kent and Sussex Counties to coincide with season dates in New Castle County (season will open earlier and remain open longer); (8) allow raccoon hunters to chase raccoons (no harvest) one month earlier, to now open on August 1 to allow for additional training opportunities. Also, reduce the number of firearm deer seasons in which raccoon hunters are not allowed to hunt at night with the aid of a dog, and clarify hunting hours; (9) eliminate unnecessary text related to when the Red Fox Hunting Season opens, and open the trapping season one month earlier to now open on November 1 instead of December 1, consistent with the hunting season; (10) close the Terrapin Season; (11) adjust the weather criteria used to justify the Muskrat Trapping Season extension to account for large snow events; (12) establish trapping seasons for mink and otter to coincide with the Muskrat Trapping Season; and (13) establish a Chukar Season to coincide with the Pheasant Season.

Section 5.0: Wild Turkeys

Numerous changes are being proposed to Section 5.0. The Department notes that none of the proposed changes will incur any additional expenses to the affected entities. Specifically, the proposed Amendments to Section 5.0 will (1) clarify under what circumstances a person can possess a wild turkey, establish procedures for when turkeys escape from captivity, and prohibit the taking of live turkeys or their eggs from the wild; (2) clarify the types of courses accepted for fulfillment of turkey specific hunter education requirements; (3) clarify the size shot allowed for turkey hunting (nothing larger than size 4 shot) to promote the technical advancement of shot shells while maintaining human safety considerations; (4) clarify the prohibition of hunting turkeys using the aid of either bait or dogs; (5) eliminate the requirement to wear camouflage while turkey hunting and clarify that the prohibition on wearing the colors of white, red, or blue while turkey hunting only pertains to external garments; and (6) formally establish season dates for wild turkey hunting and establish registration procedures for hunters to report their harvests via an automated registration system like our existing deer registration system once the turkey system has been developed.

Section 7.0: Deer

Numerous changes are being proposed to Section 7.0 to revise the existing regulations pertaining to deer. The Department notes that none of the proposed changes will incur any additional expenses to the affected entities. Specifically, the proposed Amendments to Section 7.0 will (1) clarify the type of deer tag nonresident hunters receive if they are exempt from purchasing a license; (2) clarify the procedure for completing a Deer Harvest Report Card after a deer is harvested, and clarify the manner in which deer registration numbers shall be retained; (3) remove the restriction on hunting game, other than deer, with the aid of a dog during the Muzzleloader Season and Shotgun Deer Season; (4) simplify the firearm Deer Seasons by combining the “Either Sex,” “Antlerless,” and the “Special Season for Young and Disabled Hunters” under a single Deer Season category titled, “Shotgun Seasons.”

Continuing with the proposed Amendments to existing Section 7.0: (5) allow legal straight-walled pistol caliber rifles and handguns to be used to harvest a deer during all seasons when it is legal to harvest a deer with a shotgun; (6) clarify that antlered deer may be harvested with longbows or crossbows throughout the Archery and Crossbow Seasons, including during the Antlerless Only Seasons, and clarify when the Archery and Crossbow Seasons open (September 1) and close (January 31 or the last day of the January Muzzleloader Season, whichever is later); (7) clarify that Sunday deer hunting is permitted, in accordance with 7 *Del.C.* §712; (8) restore the October Antlerless Deer Season to only three (3) days per week by eliminating Mondays, thereby providing more of an “opening day effect” to maximize harvest; (9) establish a second weekend within the Special Shotgun Season for Young and Disabled Hunters to occur the last Saturday and Sunday in September; and (10) to minimize the risk of Chronic Wasting Disease occurring in Delaware, restrict the import of selected deer parts of deer harvested within high-fenced, captive facilities.

Section 8.0: General Rules and Regulations Governing Land and Waters Administered by the Division

Expansive changes are being proposed to regulate activities on lands and waters administered by the DFW to minimize habitat destruction, improve safety, and to restrict activities that are not compatible with the intended use of these lands (i.e., hunting, fishing, trapping, and other wildlife-dependent activities). Several changes are being proposed to clarify where motorized vehicles, horseback riding and bicycles are allowed to protect against habitat degradation and disturbing wildlife, as well as to minimize conflicts with other users. Additional rules being proposed include the adoption of the statutes set forth in Title 21, *Motor Vehicles*, of the Delaware Code pertaining to speeding, careless, inattentive, and reckless driving on lands administered by the DFW. At the present time, the DFW does not have the authority to regulate such unsafe practices on Division lands, so the proposed changes would improve safety and guard against habitat and infrastructure destruction. The DFW is also expanding the hours of entry on lands administered by the Division for non-hunters from sunrise to sunset to ½ hour before sunrise to ½ hour after sunset to increase wildlife watching opportunities.

The Department notes that none of the proposed changes will incur any additional expenses to the affected entities. Specifically, the proposed Amendments to Section 8.0 will (1) clarify that, on lands administered by the DFW, motorized vehicles may only be used on established and maintained roads; (2) establish regulations prohibiting speeding, careless, inattentive, and reckless driving on lands administered by the DFW; (3) prohibit the use of radio-controlled drones, boats, and other vehicles, or to launch model rockets on lands and waters administered by the DFW without a permit from the Division Director; (4) for purposes other than hunting, trapping or fishing, expand the hours of entry on lands administered by the DFW to be between ½ hour before and after sunset (instead of sunrise through sunset) to promote additional wildlife watching opportunities; (5) prohibit the release of domestic or wild animals onto lands administered by the DFW unless they are lawfully permitted during dog training activities; (6) prohibit the use of metal detectors on lands administered by the DFW without a permit from the Division Director; (7) clarify when fishing is permitted on state wildlife areas to avoid conflicts with hunting seasons; (8) clarify that all users of state wildlife areas must follow area map rules, not just those hunting or trapping these areas; (9) clarify where and when firearms are permitted on lands administered by the DFW; (10) prohibit crabbing and fishing on any dike, water control structure, or within any impoundment found on lands administered by the DFW; (11) clarify that non-resident hunters are allowed to participate in deer drives conducted on lands administered by the DFW; and (12) clarify that horses and bikes may only be used on roads and trails that have been designated by the DFW.

Section 9.0: Wildlife Theft Prevention Fund

Numerous changes are being proposed to Delaware's existing regulations concerning the wildlife theft prevention fund. The proposed Amendments are to include additional violations for which informants are eligible for a reward if their tip leads to the arrest and conviction of any person found guilty of the violations described in the regulation. None of the proposed changes will incur any additional expenses to the affected entities, as the same would provide money in the form of a reward to those who assist with the conviction of a violator.

Section 10.0: Nuisance Wildlife

Significant changes are being proposed as they relate to commercial Nuisance Wildlife Control Operators (“NWCOs”) and how they are permitted by the DFW and do business in Delaware. Rabbits are being proposed to be added to the list of wildlife species that homeowners can address themselves if they are having nuisance wildlife problems within the limits of incorporated cities and towns without having to obtain a permit. The types of traps allowed to control these species in incorporated areas by landowners is being clarified to limit the type to a box or cage trap. The use of any other traps would have to be approved by the DFW. In terms of NWCOs, currently only the owner/proprietor of the business is required to complete a training program approved by the DFW; however, to better train the staff that are actually in the field conducting nuisance wildlife control work, the proposed change would require all employees actually conducting work in the field to become trained or to be accompanied by someone in the field that has been trained.

The proposed format for training and permitting NWCOs follows the model currently in place and implemented by the Delaware Department of Agriculture as it pertains to certifying people to use restricted use pesticides. If implemented, the proposed change concerning the training and permitting procedures for NWCOs would cause additional expenses to be incurred on the affected entities, as the cost per individual to complete the training program is two hundred dollars (\$200). However, when NWCOs are hired to control wildlife control they charge for their services, so the increased training fees will likely be accounted for in their cost estimates to conduct wildlife control. The DFW believes that having properly trained individuals in the field outweighs the financial burden on the companies, as this approach should result in improved animal welfare and implementation of control methods that are better suited for the problems being resolved.

Specifically, the proposed Amendments to Section 10.0 will (1) include rabbits in the list of wildlife that may be controlled without a permit when causing damage within the limits of residential or commercial areas of incorporated cities or towns, or within residential or commercial structures, using box/cage live traps; (2) clarify who needs a NWCO permit, under what conditions a company needs to register for a permit, and under what conditions an individual needs to be trained and certified; and (3) requires NWCOs to abide by conditions of their permit.

Section 14.0: Falconry

Two changes pertaining to falconry are being proposed by the DFW at this time. First, to permit falconers to hunt during the month of March for resident game (rabbits, squirrels, etc.) so that they will be allowed to collect and stockpile more food to care for their bird(s) outside of the hunting season. Secondly, to remove an outdated regulation previously implemented to transition Delaware's falconry regulations to comply with new federal falconry regulations. None of the proposed Amendments will incur any additional expenses to the affected entities, but instead will help save falconers money by allowing them to hunt longer and stockpile more food, as noted above.

Specifically, the proposed Amendments to Section 14.0 will (1) extend the hunting season by one month for falconers and clarify the types of game species that may be taken by the aid of a falcon; and (2) remove outdated text that describes when previously updated regulations would go into effect.

Section 15.0: Collection or Sale of Native Wildlife

The existing regulation concerning the collection and sale of native wildlife is not clear as to what can and cannot be possessed, collected, bought, and sold. The proposed changes are intended to rectify that problem by only allowing the possession of live animals if the practice is allowed under existing statute or regulation, such as wildlife rehabilitation and scientific collection, but not for the sake of having wildlife as a pet.

The proposed Amendments to this Section will also clarify that pelts from legally harvested furbearers may be bought and sold. Furthermore, at the request of the Delaware Department of Agriculture, the Division of Public Health, and DNREC's Rabies Task Force, live rabies vector species may not be imported, possessed, or sold. Additionally, the collection and possession of one amphibian egg mass cluster or ten or fewer amphibian eggs would be allowed so that individuals can raise these individuals from eggs to adults before releasing them into the wild.

The Department notes that none of the proposed changes will incur any additional expenses to the affected entities. Specifically, the proposed Amendments to Section 15.0 will (1) clarify which species of wildlife may be possessed, bought, and sold, and under which circumstances each is permissible; (2) reorganize, alphabetically, the list of reptiles and amphibians that are allowed to be collected and possessed, and update several species for which the common or scientific names have changed; and (3) remove outdated text on grandfathered reptile and amphibian collections.

Section 16.0: Endangered Species

Several species on Delaware's State Endangered Species List have had their common or scientific names changed. Additionally, the Saltmarsh Sparrow (*Ammospiza caudacuta*) is being proposed to be added to the State Endangered Species List, as its listing is warranted under the following criteria: (1) Saltmarsh Sparrows are ranked as globally imperiled (G2); (2) they are declining in Delaware, as well as throughout their range; and (3) under current conditions, it is expected that they are unlikely to persist beyond 2050.

Additionally, the Carpenter Frog (*Lithobates virgatipes*) is being proposed to be added to Delaware's State Endangered Species List, as the species is rare and declining in Delaware. The DFW has only four (4) known site records for the Carpenter Frog in Delaware, and it is one of, if not the most, rare amphibians in Delaware. Recent surveys at one of those sites have not yielded any detections, so this site may have been extirpated, leaving only three sites where this species is known to occur.

Furthermore, one of these three sites is located at the Prime Hook National Wildlife Refuge, and its location on the Refuge is vulnerable to being negatively impacted by sea-level rise. If conditions at the Refuge deteriorate because of changes due to sea-level rise, then it is likely that this species will not be able to survive there, resulting in only two known locations where this species may continue to survive.

Lastly, the Tri-Colored Bat (*Perimyotis subflavus*) is also being proposed to be added to Delaware's State Endangered Species List. This species is being reviewed under the federal Endangered Species Act by the United States Fish and Wildlife Service ("USFWS"), as it is rare and declining in Delaware, the region, and globally. Its decline is a result of White-nose Syndrome, a wildlife disease that has caused severe and sudden declines of multiple bat species, including the tri-colored bat, the northern long-eared bat, and little brown bat, with the latter two species already included on Delaware's State Endangered Species List. None of the proposed changes will incur any additional expenses to the affected entities.

Section 17.0: Species of Special Concern

The proposed changes to Section 17.0 are to delete the existing regulation concerning "Species of Special Concern," as this regulation was developed in 2002 in response to potential federal funding becoming available that would have mandated states to have a list of "Species of Special Concern." This funding has since become available without the required species listing. This title is being proposed to be replaced with a new regulation concerning the process for transferring harvested game between individuals. The proposed new title of this section will be "Section 17.0: *Transferring Harvested Game.*"

Currently, under federal law, deer or migratory birds are the only species for which a transferring process is defined. The proposed Amendments would define how other harvested game (e.g., gray squirrels, rabbits, quail, etc.) could be transferred by hunters by placing a tag on each animal being transferred that is signed by the hunter and states their name, address, and the total number of each species harvested. This new regulation will help DNREC's Natural Resource Police Officers determine who harvested the game animals.

The Department notes that none of the proposed changes will incur any additional expenses to the affected entities, other than the nominal cost of having to produce and tag each game animal being transferred from the hunter to another individual.

Section 19.0: (Reserved)

Section 19.0 is currently “Reserved” and does not contain any regulations. That void is being filled with a new regulation pertaining to compliance of conditions set forth in permits issued by either the DFW or the Department, pursuant to Title 7 of the Delaware Code. Currently, unless a permit condition is the result of an existing regulation or statute restricting an activity, the DFW lacks the authority to enforce that permit condition (other than revoking the permit). For example, if a condition of a permit is to carry a copy of the permit in one’s possession, or to provide a report of the permit activities, and the regulation or statute does not exist mandating such, then the only penalty the DFW can impose is to revoke the permit. This Amendment would give the DFW increased regulatory authority over permits being issued, which would improve compliance with permit conditions. The proposed changes will not incur any additional expenses to the affected entities unless they violate conditions of a permit and could now be fined under Penalty Section 7 *Del.C.*§103(d).

Section 20.0: Game Bird Releases

The Department’s proposed Amendments to Section 20.0 pertain to under what circumstance someone needs a permit to release game birds (including quail, Chukar Partridge, Hungarian Partridge, and pheasant), as well as what information they need to provide to the DFW prior to the release being approved. Currently, anyone releasing game birds is required to place a “Division approved” leg band on each bird, but the DFW has never formally defined what constitutes an approved band. Thus, the proposed changes would define which marking devices are approved by the DFW.

The proposed Amendments will incur minimal additional expenses to the affected entities, i.e., none other than the cost of having to acquire marking devices that would meet approval in terms of color and retention thresholds. If people are currently using bands that do not meet the types being proposed with this proposed Amendment, then they would have to purchase new bands, which can be purchased for less than \$0.03 each.

Section 21.0: Guide License

The proposed Amendments to Section 21.0, as they relate to guide licenses, are to clarify that annual reports to the DFW are due by July 1st annually, rather than the current requirement of “within seven days after the close of the season.” The current regulatory language can be ambiguous, as there are many different season dates. Additionally, nonresidents that are exempt from purchasing a guide license for the purposes of snow goose hunting would be required to not have been convicted for violations of any wildlife or fisheries statutes or regulations within the last three years (which is a requirement for individuals that purchase a guide license). The Department notes that none of the proposed changes in this section will incur any additional expenses to the affected entities.

Section 22.0: Hunter and Trapper License Exempt Number

The proposed changes to Section 22.0 are to clarify the rules for obtaining a License Exempt Number (“LEN”), which is needed as part of the DFW’s new licensing system. The first change is to clarify that a separate LEN is needed for the purposes of hunting or trapping, as that allows the DFW to document which LEN holders are hunters, trappers, or both. Additionally, the proposed changes also formally establish that LENs are valid annually from July 1 through June 30, and that it shall be unlawful to obtain a LEN for the same reason for which a license was purchased, thereby duplicating their hunting privileges. LENs are free to hunters and trappers that meet the eligibility criteria, so none of the proposed Amendments to Section 22.0 will incur any additional expenses to the affected entities.

Section 23.0: Non-Native/Invasive Wildlife

There are several proposed Amendments to Section 23.0 regarding the take of non-native/invasive wildlife, specifically, pertaining to the take of coyotes, nutria, and swine. The changes pertaining to coyotes include allowing cage traps to be a method of take, and to open the trapping season a month earlier to November 1 (which is the same date being proposed for red fox trapping). In terms of the proposed changes to the take of nutria, a single change is proposed that would clarify it shall be unlawful to release captured nutria alive, as this species is non-native and highly destructive to wetlands. Changes pertaining to swine involve changing the name of this species from “feral swine” to “free-roaming swine,” which is a better characterization of the animals the DFW encounters. An additional proposed change would be to make it unlawful for someone to harbor free-roaming swine on their property. Free-roaming swine are extremely destructive and pose a human and livestock health and safety risk, thus the proposed Amendments are intended to not allow free-roaming swine populations to become established in Delaware. The Department notes that none of the proposed changes will incur any additional expenses to the affected entities.

Section 24.0: Wildlife Management Zone Boundaries

Lastly, the Department is proposing a new Section to the existing Wildlife Regulations, to be titled, “Wildlife Management Zone Boundaries.” The DFW has eighteen (18) wildlife management zones for which harvest and population status of game species (deer and turkeys, in particular) is monitored, but these boundary descriptions are not currently described in existing law or regulation. To formally adopt these boundaries, the proposed new Section 24.0 would include such defining boundary descriptions in regulations, so as to better assist the Department with harvest reporting compliance and potential season adjustments for species in specific locations (rather than statewide). The Department notes that none of the proposed changes will incur any additional expenses to the affected entities.

The Department has the statutory basis and legal authority to promulgate the above proposed Amendments, pursuant to 7 *Del.C.* §§102(a), 103(a) and (b), 758, 801, and the general authority provided to the Department under 7 *Del.C.* Ch. 60.

The Department published the above initial proposed Amendments in the November 1, 2023, *Delaware Register of Regulations* (“*Register*”). Subsequent to that publication, DFW staff discovered numerous clerical errors in the initial proposed Amendments as published on November 1, 2023. Those errors were corrected by the State Registrar’s Office as of November 3, 2023, and the corrected version of the Department’s initial proposed Amendments was available for the public to review from that date forward. Additionally, such correction was memorialized by the DFW in Department Exhibit No. 10, which was formally entered into the Hearing Record (“*Record*”) by this Hearing Officer at the time of the public hearing, and thoroughly vetted to the public at that time as well.

Department staff, as well as members of the public, attended the public hearing held on December 13, 2023. Comments were received from the public by the Department at the time of the public hearing, as well as during both the pre- and post-hearing phases of this promulgation. Pursuant to 29 *Del.C.* §10118(a), the Record remained open subsequent to the date of the public hearing for receipt of public comment. The Record formally closed with regard to public comment on January 12, 2024.

At the request of this Hearing Officer, the Department’s subject matter experts in the DFW provided a Technical Response Memorandum (“*TRM*”), for the benefit of the Record generated in this matter. The Department’s TRM provided not only responses to the comments received from the public in this matter, but also noted *revisions* being made to the Department’s initial proposed Amendments subsequent to the public hearing held on December 13, 2023, and provided the Department’s reasoning for such revisions. The Department believes the *revised* proposed Amendments provide additional clarity and understanding to the regulated community and are not substantive in nature, and thus no additional noticing or hearing is necessary in this matter.

The Department's TRM, dated February 9, 2024, is discussed in greater detail below. It should be noted that all notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

II. SUMMARY OF THE PUBLIC HEARING RECORD:

The Record consists of the following documents:

- (1) A verbatim transcript of the public hearing, as provided by Veritext Legal Solutions;
- (2) Eleven (11) documents introduced by Department staff at the public hearing held on December 13, 2023, and marked by this Hearing Officer at the time of the hearing accordingly as Department Exhibits 1-11;
- (3) Comments received from the public by the Department in this matter, as posted on the hearing web page dedicated to this proposed regulatory promulgation; and
- (4) Technical Response Memorandum from Joe Rogerson, Environmental Program Manager II, DFW, dated February 9, 2024.

The Department's person primarily responsible for the drafting and overall promulgation of the proposed Amendments, Joe Rogerson, as noted above, developed the Record with the relevant documents in the Department's files.

III. RECOMMENDED FINDINGS AND CONCLUSIONS:

Currently pending before the Department is the adoption of the *revised* proposed amendments to 7 DE Admin. Code 3900, *Wildlife*. As noted previously, the proposed Amendments concern nineteen (19) sections of Delaware's existing Wildlife regulation that pertain to the management and conservation of wildlife, including activities involving hunting, trapping, fishing, nuisance wildlife control work and activities authorized on Division-owned lands. Subsequent to the close of the public comment period on January 12, 2024, the Department's staff in the DFW reviewed all of the comments received from the public in this matter and, at the request of this Hearing Officer, provided a TRM in response to the same.

The Department's TRM, dated February 9, 2024, also offers several *revisions* to the initial proposed Amendments, based on the public feedback received concerning the same. The Department believes these revisions to be non-substantive in nature, and thus no further noticing or hearing is necessary concerning this proposed regulatory promulgation.

The following section of this Report addresses the specific areas of concern mentioned in the public comments received by the Department in this matter, and provides the DFW's responses to the same. The DFW's additional *revisions* to the initially proposed Amendments, based on the public comment received, are also highlighted below.

Section 1.0: Definitions

The DFW received comments related to the definition of "deer," specifically, how white-tailed deer and sika deer are managed in Delaware. Additional comments were received on the proposed definition of "direct supervision" and the existing definition of "possession." In response, the TRM notes that the Department has carefully considered these definitions and believes that no changes are warranted to what the DFW has proposed at this time. In support of this decision, the TRM further notes that the comments related to the definition of deer are rooted in the request to have separate hunting seasons, bag limits, tags, and harvest reporting requirements for white-tailed deer and sika deer. Currently, the term "deer" is inclusive of both species, so any time the word "deer" is used, it is understood that it references both species, which means that both can be harvested during each of the deer seasons, the same applicable tags can be used on each species, the same harvest limits apply in aggregate, etc.

Section 2.0: Method of Take

There are several additional *revisions* that the DFW is making to Section 2.0 at this time. First, the TRM notes that comments were received from three individuals related to "method of take." The first two comments did not relate to the specific Amendments that the Division was considering during this present promulgation, but since the DFW believes the feedback has merit, the following additional *revisions* are being made:

- (1) a reduction of the minimum bow draw weight from 35 pounds to 30 pounds; and
- (2) removal of the requirement that all crossbows have a manufacture date after 1980.

With regard to the first revision noted above, the TRM notes that Delaware's current 35-pound minimum draw weight regulations are based on decades-old technology and have not been updated to reflect technological advancements made over the last several decades. Industry experts have shown that modern-day, 30-pound draw weight compound bows deliver comparable energy to bows that were in use when minimum bow standard regulations were first adopted. Additionally, technological advancements in broadhead/arrow efficiencies contribute greatly to the effectiveness of modern-day archery hunters. Thus, the DFW is recommending the reduction in the minimum bow draw weight from 35 pounds to 30 pounds at this time. As it relates to the crossbow manufacture date noted above, Delaware is the only state in the nation that maintains a manufacture date regulatory standard for the allowance of legal crossbow hunting. The DFW believes this language is unnecessary and should be removed.

In addition to the above revisions, the DFW received two comments related to allowing pellet rifles for gray squirrel hunting (which are currently allowed). Within the proposed Amendments, the DFW inadvertently excluded pellet firearms from being allowed to hunt this species. The additional revisions to Section 2.0 now correct that error by reinstating pellet firearms and adjusting the calibers allowed, in compliance with what is authorized in 11 *Del.C.* §1445(1), and precluding the use of calibers larger than .177 in size.

The Department's TRM further notes that, upon review of the proposed Amendments subsequent to the close of the public comment period, the DFW identified the need to correct additional clerical errors as it relates to foothold traps and when they may be used. The use of foothold traps is currently restricted, except from December 1 through March 20, but changes were proposed to allow trapping of some furbearers to start on November 1. Foothold traps should be allowed starting November 1 for these species, so the Division is making an additional *revision* to adjust the date range for the allowed use of foothold traps to be from November 1 through March 20.

Lastly, the TRM notes that the DFW received two comments on a clerical error related to the proposed definition of an unloaded muzzleloader. Accordingly, the DFW is *revising* the proposed Amendment to correct the error and properly define the same.

Section 3.0: Federal Laws and Regulations Adopted

The Department's TRM notes that a comment was received relating to the phrase, "...young hunters must be of sufficient size, physical strength and emotional maturity to safely handle a shotgun..." if participating in the Special Shotgun Season for Young Hunters. This same phrase is also used in Sections 5.0 and 7.0 when referencing similar hunting opportunities for young hunters involving turkeys and deer, respectively. The commenter believed this language to be vague and open to interpretation; however, the DFW believes a change is not necessary as it provides guidance, rather than defined legal context, to adults that would be taking a young hunter afield.

With regard to the "old squaw duck" being recently renamed the "long-tailed duck," the Department's TRM notes that a correction is needed to the species name, due to a transcription error from the DFW's initially proposed Amendments to what was displayed within the *Register of Regulations*. The word "old" should have been deleted and the word "duck" should not have been deleted. Thus, the DFW is *revising* this language within Section 3.0 to correct this error at this time.

Section 4.0: Seasons

The DFW received comments regarding seasons for certain small game, specifically, Gray Squirrel Season, Pheasant Season, and Pen-Raised Released Quail Season. The comments included requests that those seasons close on the last day of February (the same day that Rabbit Season currently ends).

The DFW had initially proposed to extend the seasons for each of these species through the second Saturday in February, but after consideration of the comments received, the DFW believes that running the seasons through the last day of February is appropriate, as it will be sustainable to the resources and will provide additional opportunities to hunters. Thus, additional *revisions* are being made to extend those seasons accordingly. In addition to the requested season extensions, one commenter also requested that Hungarian Partridge have the same season framework as Chukar Partridge. The Department's TRM notes that not having a season for Hungarian Partridge was an oversight by the DFW, and thus another *revision* is being made at this time to allow the Hungarian Partridge season to coincide with the season for Chukar Partridge.

In addition to requesting season extensions, commenters also provided feedback as to the Division's proposal to close the season for Wild Quail, specifically, that a management plan should be developed for the species that included parameters for when the season will reopen, and that the management plan should be reviewed by the DFW annually. In response, the DFW does believe that a management plan for this species is needed, and plans to develop the same in future promulgations; however, closing the season now is needed to protect the remaining birds.

Furthermore, the DFW believes its proposal to review the season closure every three years is the most responsible and efficient timeframe for management of Wild Quail and, as such, will provide sufficient data for the DFW to consider future regulatory action. Since this species typically experiences natural fluctuations in population size due to weather events, etc., the Department believes that an examination of this season closure on an annual basis is not appropriate.

Section 5.0: Wild Turkey

The DFW received feedback from several commenters on Section 5.0, with four commenters specifically requesting that the Department expand the shotgun gauges allowable to turkey hunting to include .28 and .410 gauges, as well as allow the use of ammunition consisting of Tungsten Super Shot ("TSS").

In consideration of the requests to allow smaller gauge shotguns, the DFW has examined regulations in surrounding states and has concluded that they do not oppose the same. Further, the TRM notes that, while adjusting the shotgun gauges allowed for turkey hunting was not one of the initially proposed Amendments, the DFW believes that such adjustment is appropriate, and thus the DFW is *revising* their initial proposals at this time.

With regard to the use of TSS shot, the TRM notes that the *revised* proposed Amendments will allow this metal alloy to be used. One commenter also suggested restrictions to the maximum shot size for ammunition using this metal alloy (due to safety concerns), but the DFW believes the *revised* proposed Amendments are appropriate from the standpoint of being easily understood by hunters, easily enforceable by DNREC's Natural Resource Police Officers, and consistent with other State Fish and Wildlife agency regulations. Comments received at the time of the public hearing requested that the use of lead shot be restricted while turkey hunting to minimize the chance of ingestion and poisoning by other avian species through inadvertent consumption of lead pellets found on the ground surface. In response, the DFW recognizes concerns with the use of lead in the environment, specifically, to waterfowl hunting and hunting in managed dove fields where much shooting takes place in a small area creating greater shot deposition. In comparison, turkey hunting is a far more dispersed activity, with a hunter typically only firing one round.

In light of the above, the TRM concludes that the risk of lead exposure in the environment due to turkey hunting is very low, and thus such restriction is not necessary. Furthermore, the TRM notes that prior to hunting turkeys in Delaware, all hunters are required to complete a mandatory turkey hunting education course. Among the instructional guidance that students receive in that course are recommendations concerning ammunition selection, and the DFW will continue to educate students on the preferred ammunition choices for turkey hunting.

Section 7.0: Deer

Multiple comments were received by the Department that provided feedback on various aspects related to deer hunting. The TRM acknowledges receipt of such comments, and notes that the majority of such feedback did not require any additional revisions to the Amendments already being proposed to Section 7.0 at this time. That being said, during post-hearing review, the DFW identified several clerical errors that require correction. Thus, the following additional *revisions* to Section 7.0 are being made by the DFW at this time:

1. The DFW is striking the word “persons” to now include the new, more specific text of “residents and nonresidents.”
2. An inaccuracy was discovered related to the price of antlerless deer tags available for hunters to purchase. The price of these tags is set within 7 *Del.C.* §504, so the DFW is striking the incorrect fee description from within Section 7.0 of the Wildlife regulations.
3. The DFW is updating language relating to a reference to the “primitive weapons season,” as there is no longer such a season by this name; however, such reference does relate to the current Muzzleloader Seasons, so the regulatory language will be updated to refer to that new season within this Section at this time.
4. Lastly, additional *revisions* are being made at this time to correct various clerical errors discovered within this Section, including the removal of erroneous text related to shotgun season and the correction of regulation numbering for the Crossbow Season.

Section 8.0: General Rules and Regulations Governing Land and Waters Administered by the Division

The DFW received no comments specifically related to this section; however, there are several minor, typographical errors that the Department discovered during its post-hearing review which require correction. Thus, the DFW is *revising* this section to correct all such error at this time.

Section 16.0: Endangered Species

As with the immediately preceding section, while there were no comments received from the public related to this specific section, the DFW discovered several formatting and clerical errors in this Section during its post-hearing review which require correction. Thus, the DFW is *revising* this section to correct all such error at this time.

Section 20.0: Game Bird Releases

Section 20.0 received the largest number of comments from the public, with seven people providing comment specifically on this subject area. After reviewing the comments, the DFW believes that many, if not all of these commenters, may not have been aware of the existing regulations regarding this activity, and the impact of the proposed Amendments regarding the same. Existing regulations require anyone releasing upland gamebirds to have them leg banded, and to notify the DFW of such release date and location. These requirements have been in place for over a decade.

The DFW is attempting to make the marking procedures easier by providing additional options other than being limited to leg bands and standardizing what these markers will look like for consistency purposes. In consideration of the comments received, the DFW examined which aspects of the above requirements are needed. As a result, the DFW is now *revising* this Section to remove the requirement to notify the DFW when gamebirds are released, with the exception of quail.

The Department will still require hunters to notify the DFW as to where the releases of all upland gamebird are taking place. The DFW believes the additional *revisions* will simplify current restrictions on releasing gamebirds for the purposes of hunting, and that other existing requirements should not be changed.

Section 23.0: Non-native/Invasive Species

Three comments were received by the DFW related to coyotes, with two of the three comments requesting that straight-walled pistol-caliber rifles be an allowable method of harvest. Additionally, one commenter requested that the season restriction be lifted, presumable to allow harvest year-round, and yet another person inquired about coyotes being destructive to wetlands. In response to those comments, the TRM notes that the use of straight-walled pistol-caliber rifles is defined within 7 *Del.C.* §704 and is specific to these firearms only being allowable for hunting deer. The DFW does not have the authority to allow them for other species, so the DFW cannot make the requested change.

With regard to the comments concerning the season on coyotes, the TRM notes that much public feedback was received and considered when the Department established Delaware's coyote regulations in 2014. As such, the DFW is not considering any amendments to coyote season at this time. Lastly, a question was raised about coyotes being detrimental to wetlands. In response, the TRM notes that, while coyotes do have impact to the environment around them, they are not typically known to be damaging to wetlands (at least not to any large spatial scale). Nutria, which are included within this same section, are known to significantly damage wetlands, so presumably the reference to wetland damage was meant to refer to nutria and not coyotes. In any event, the DFW is not proposing any further revisions to the proposed Amendments within this section at this time.

Section 24.0: Wildlife Management Zone Boundaries

The DFW received no comments specifically related to Section 24.0; however, during the post-hearing review performed by the DFW, a clerical error related to the boundary description for Wildlife Management Zone 7. Thus, the DFW is *revising* this section to correct this error, so that Zone 7 will read as follows:

Zone 7: Land bordered north by Route 12, south by Route 16, east by Route 13, and west by the Maryland State Line.

To provide further clarity with regard to the numerous revisions that have been made by the DFW throughout the Department's regulatory development process in this matter, and to aid the Secretary in his review of the same, the following documents are attached to this Report as Appendices, and are expressly incorporated herein for the benefit of the Record generated in this matter:

- **Appendix "A"**: The Department's initially proposed Amendments, as published in the November 1, 2023, edition of the *Register of Regulations*;
- **Appendix "B"**: Corrected initial proposed Amendments, made to remove clerical error discovered subsequent to the November 1, 2023, publication in the *Register of Regulations*, but prior to the public hearing held in this matter;
- **Appendix "C"**: List of Post-Hearing *Revisions* to the proposed Amendments, made by the Department during the post-hearing phase of this regulatory promulgation to remove further clerical error and provide clarity and understanding to the regulated community;
- **Appendix "D"**: TRM dated February 9, 2024; and
- **Appendix "E"**: The finalized *revised Amendments to be submitted for publication in the May 1, 2024 edition of the Register of Regulations*.

As noted previously, the Department believes the additional *revisions* made to the proposed Amendments during the post-hearing phase of this promulgation provide further understanding and clarity to the regulated community in this matter, and are non-substantive in nature. Thus, no additional noticing or public hearing is necessary in this matter.

Based on the Record developed in this matter, I find and conclude that the Department has provided appropriate reasoning regarding the need for the *revised* proposed Amendments. Accordingly, I recommend promulgation of the same, in the customary manner provided by law.

Further, I recommend the Secretary adopt the following findings and conclusions:

1. The Department has the statutory basis and legal authority to act with regard to the *revised* proposed amendments to 7 DE Admin. Code 3900: *Wildlife*, pursuant to 7 *Del.C.* §§102(a), 103(a) and (b), 758, and 801;
2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del. C.* Ch. 60, to issue an Order adopting the *revised* proposed Amendments as final;
3. The Department provided adequate public notice of the initial proposed Amendments and all proceedings in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the subsequently *corrected* proposed Amendments, including at the time of the virtual public hearing held on December 13, 2023, and during the days subsequent to the public hearing (through January 12, 2024), in order to consider all public comment on the same before making any final decision;
4. Promulgation of the *revised* proposed Amendments will enable DNREC to provide additional hunting and trapping opportunities in Delaware with the establishment of new seasons, the expansion of current seasons, the provision of additional methods of take, and the development of new and improved reporting criteria for harvesting game.

Additionally, the *revised* proposed Amendments are needed to minimize negative impacts to some species, as well as to minimize damage to infrastructure and habitats on lands and waters administered by the Department. Lastly, the *revised* proposed Amendment further serve to provide minor administrative updates to correct grammar and misspellings, and to bring the existing Wildlife regulations into current formatting style.

5. The Department has reviewed the *revised* proposed Amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104, and believes the same to be lawful, feasible, and desirable, that it will not establish substantive additional costs for individuals or small businesses, and that the recommendations as proposed should be applicable to all Delaware individuals or small businesses equally;

6. Further, the Department has reviewed this *revised* proposed regulatory promulgation in the light of 7 *Del.C.* §10003 and 29 *Del.C.* §10118(b)(3), and has determined that conducting such an assessment regarding the impact of this regulation on the achievement of the State of Delaware’s greenhouse gas emissions reduction targets is not practical;

7. The Department’s proposed Amendments, as published in the November 1, 2023, *Delaware Register of Regulations*, then corrected to remove clerical error subsequent to that publication, then fully vetted to the public at the aforementioned public hearing held on December 13, 2023, and then *revised* non-substantively to remove further clerical error and to provide additional clarity and understanding to the regulated community, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, the *revised* proposed Amendments should be approved as final Amendments, which shall go into effect ten days after publication in the next available issue of the *Delaware Register of Regulations*;

7. The Department has an adequate Record for its decision, and no further public hearing is appropriate or necessary; and

8. The Department shall submit the *revised* proposed Amendments as final Amendments to the *Delaware Register of Regulations* for publication in its next available issue and shall provide such other notice as the law and regulation require, as the Department determines is appropriate.

/s/Lisa A. Vest
LISA A. VEST
Regulatory Specialist

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Attachments:

Appendix A: Initial Proposed Amendments

Appendix B: Corrected Proposed Amendments

Appendix C: List of Post-Hearing Revisions Made to Proposed Amendments

Appendix D: TRM (dated February 9, 2024)

Appendix E: Finalized *Revised* Amendments