



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

DIVISION OF FISH & WILDLIFE
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**WILDLIFE
SECTION**

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To: Lisa Vest, Regulatory Specialist/Hearing Officer

Through: Patrick Emory, Director

Rob Hossler, Wildlife Administrator

From: Joe Rogerson, Environmental Program Manager II

Subject: Technical Response to public comments received regarding 7 DE Admin. Code 3900 Wildlife

The Wildlife Section has considered the public comments received regarding the proposed amendments to 7 DE Admin. Code 3900 Wildlife and decided that the proposed amendments should be approved with some minor modifications based on feedback received and considered by the Division along with several “typos” that were found after the regulations were published in the Register on November 1, 2023, many of which we transcription errors made when the document we sent to the Register was transcribed into the format and system used for this process. Comments were received from 17 individuals, 16 in writing and 1 verbally at the public hearing. Comments were varied so I have separated the Division’s response to all the comments received within the various subsections of 7 DE Admin. Code 3900 Wildlife and explicitly note the places, using bold font, where the Division intends to adjust the originally proposed regulation changes.

1.0 Definitions

Three people provide comments on definitions within the regulations. All three made a comment related to the definition of “deer” and how white-tailed deer and sika deer are managed in Delaware. Additionally, someone commented on the proposed definition of “direct supervision”, and another commented on the existing definition of “possession”.

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 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... Sika deer are native to Asia and Thailand but were introduced to the eastern shore of Maryland in the early 1900s. Their population has since expanded and occasionally a few individuals have found their way into Delaware. Maryland has separate seasons and bag limits for sika deer and white-tailed deer so that may be some of the impetus behind this interest in Delaware. However, the Division does not believe that such a change is necessary currently, as sika deer remain quite uncommon in our state. For comparison, more than 4,000 sika deer are harvested annually in Maryland, whereas only 1-3 individuals are harvested and reported each year in Delaware. Additionally, significant modifications to existing regulations, the licensing program, and harvest reporting systems would be needed, with significant costs likely necessary for the latter two changes. If sika deer become more common in Delaware, then the Division would consider changes to regulations relating to how these two deer species are defined and their associated regulations related to harvest. The Division does not believe a regulation change is necessary at this time but will continue to collect and improve population and harvest information on sika deer within the state.

During this round of updates to the existing regulations, the Division is proposing to define “direct supervision”. The Division believes there is a need to define this term in response to recent legislative changes (11 Del. C. § 1448,) involving possession of firearms and that impact on hunting by people under the age of 21. The Division carefully considered this definition and consulted internally and externally to develop this definition. We believe that a definition is needed per 11 Del. C. § 1448, and no changes are warranted to what the Division proposed.

The Division received a comment related to its existing definition of “possession”, specifically related to the portion of the definition pertaining to “constructive possession” and what that phrase meant and whether it should be replaced with more familiar language. Constructive possession relates to the legal possession of an object that is not in the person's direct physical control. The phrase has a long standing in case law, as such, the Division believes the overall definition of “possession”, including this specific portion of the definition, should not be changed.

Lastly, after publication in the Register, the Division identified a change needed in this section 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 proposing changes to adjust the date range for the allowed use of foothold traps to be from November 1 through March 20.

2.0 Method of take

The Division received comments from three individuals related to method of take. The first two comments do not relate to specific changes the Division was considering during this

revision, but we believe the feedback has merit and the indicated changes should be made. **A request was made to reduce the minimum bow draw weight from 35 pounds to 30 pounds and the second was to remove the requirement that all crossbows have a manufacture date after 1980. Delaware’s 35 lb. 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. We recommend reducing the minimum bow draw weight from 35 lbs. to 30 lbs.**

As it relates to a crossbow manufacture date, Delaware is the only state in the nation which maintains a manufacture date regulatory standard for the allowance of legal crossbow hunting. This regulation is unnecessary serving only to add unneeded complexity and should be removed. The Division does not have a restriction related to manufacture date pertaining to any other hunting related item, so it should not have one for crossbows.

The Division received two comments related to allowing pellet rifles for gray squirrel hunting which are currently allowed for .17 through .22 calibers. The possession and use of pellet rifles larger than .177 is restricted in 11 Del. C. §1445(1), so the Division was attempting to amend 7 DE Admin Code 3900 Wildlife to be aligned with the existing statute. Inadvertently, as written in the proposed change, the Division eliminated the use of all pellet guns for squirrels and not just those larger than .17 caliber, so the Division is proposing to correct this error and modify the proposed change so that .177 caliber pellet guns are allowed to hunt squirrels but those larger than .177 caliber are not allowed.

Additionally, the Division received two comments on a typo related to the proposed definition of an unloaded muzzleloader. The Division will be modifying the proposed change to correctly define such.

3.0 Federal Laws and Regulations Adopted

The Division received one comment within this section, and it related to the “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 used in Sections 5 and 7 when referencing similar hunting opportunities for young hunters involving turkeys and deer, respectively. The commenter believed this language was vague and open to interpretation, but the Division 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.

The old squaw duck was recently renamed the long-tailed duck. A correction is being made to the name due to a transcription error from the Division’s originally proposed

regulations 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. This mistake is being corrected.

4.0 Seasons

The Division received comments from two people regarding comments on seasons for small game. Both commented on the seasons for gray squirrels, pheasants, and pen-raised released bobwhite quail. All three requested that the seasons close on the last day of February which is when the rabbit season currently ends. The Division had proposed to extend the seasons for each of these species through the second Saturday in February but after considering this feedback, the Division believes that running the seasons through the last day of February is appropriate, sustainable to the resources, and will provide additional opportunities to hunters. In addition to the requested season extensions, one person requested that Hungarian partridge have the same season framework as chukars. Not having a season described for Hungarian partridge was an oversight by the Division. We are proposing to add such to coincide with the season for chukars.

In addition to requesting season extensions, both commenters provided feedback to the Division proposing to close the season for wild quail. Both believed that a management plan should be developed for the species that included the parameters for which the season will reopen and that this should be reviewed annually. The Division does believe that a management plan for this species is needed and plans to develop one but closing the season is needed now to protect the remaining birds and then a plan will be developed. Waiting to close the season until a plan has been developed is not the best path towards recovery of this species. Additionally, the Division believes it's proposal to review the season closure every three years is the most responsible and efficient timeframe and as such will provide enough data for the Division to consider, especially since this species typically experiences natural fluctuations in population size due to weather events etc., so an examination annually is not appropriate. A third commenter provide feedback specifically to the Division's intent to establish a season for pen-raised released quail. The commenter believed that that this activity should not be overseen by the Division and instead should be overseen by the Delaware Department of Agriculture as they believed these birds were more like domestic poultry. While these birds are not “wild” the Division is the regulatory agency concerning hunting and protection of the wild species, so transferring oversight of this activity is not appropriate. Lastly, a fourth commenter provide feedback on the proposal to close the wild quail season and supported the Division's changes and our commitment to recovering wild quail in Delaware.

5.0 Wild Turkey

The Division received feedback from five people related to turkey hunting, with four of them requesting that the Division expand the shotgun gauges allowable to turkey hunting to include .28 and .410 gauges and two commented on the use of ammunition consisting of Tungsten Super Shot (TSS). **Considering the request to allow smaller gauge shotguns, the Division has investigated this and examined regulations in surrounding states. The**

Division does not oppose this request and while adjusting the shotgun gauges allowed for turkey hunting was not initially a proposed change, the Division believes this is appropriate.

The Division received three comments related to restrictions on shot type related to turkey hunting. Regarding the use of TSS shot, the Division's proposed changes will allow this metal alloy to be used which was requested by two commenters, so both individuals support the proposed change. One commenter suggested restrictions to the maximum shot size for ammunition using this metal alloy do to their concerns about safety, but the Division believes its proposed changes are appropriate from the standpoint of being easily understood by hunters and easily enforceable by natural resource police officers, and consistent with other state fish and wildlife agency regulations.

A commenter at 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. While the Division recognizes concerns with the use of lead in the environment, specifically to waterfowl hunting and hunting in managed dove fields where lots of shooting takes place in a small area creating greater shot deposition. Turkey hunting is a far more dispersed activity with a hunter typically only firing one round; therefore, the risk of lead exposure in the environment due to turkey hunting is very low, thus this restriction is not necessary.

Before hunting turkeys in Delaware, all hunters are required to complete a mandatory turkey hunting education course. Among the instructional guidance that these students receive, recommendations concerning ammunition selection is presented and we will continue to educate students on the preferred ammunition choices for turkey hunting.

6.0 Game Preserves

No changes to this Section were being proposed by the Division and no comments were received.

7.0 Deer

Multiple people provided varied feedback on aspects related to deer hunting. A question was submitted related to field dressing procedures. The Division does not believe any changes are needed to regulation concerning this activity. Another question involved the use of a muzzleloading pistol during the "primitive firearm season". The reference to this specific season name is no longer reflective of current nomenclature so the Division acknowledges the comment has merit and is proposing to make an amendment to the regulation to reference the current name for the applicable season (Muzzleloader Seasons). An additional question was received regarding how hunters know the locations where they are restricted from bringing high-risk portions of deer into Delaware to prevent the spread of this fatal disease into our state. The locations where CWD has been found changes frequently due to testing efforts around the country so to retain a current list for hunters, the Division provides an annual update within the hunting and trapping guide and this section also includes guidance on how to contact the Division for more and updated information. To remain current with continual changes to the distribution of this disease, the Division believes the current

regulations allow us to provide the most updated information as quickly as possible, but it will explore providing additional information in other locations such as our website.

One commenter requested changes to existing regulations related to the archery and muzzleloader deer seasons as it relates to hunters with a permit to possess a concealed carry deadly weapon being able to carry their handgun during these seasons. The Division is not considering a change to these regulations at this time.

Three commenters provided feedback to the specific deer seasons. One requested that the Special Season for Young and Disabled Hunters be expanded to include women of any lawful hunting age. While the Division is interested in recruitment, retention, and reactivation of hunters of all age and gender, it does not believe expanding this season to include other hunters will substantially achieve that goal and may negatively impact the primary focus and opportunities for the currently intended target groups. Regarding the antlerless only deer seasons in October, two hunters requested that these seasons be closed entirely. The Division is proposing to shorten these seasons from the currently allowed four days per week to three to better meet management goals and manage hunter effort. The Division believes a reduction of days is in the best interest of deer management in the state, as an elimination of the season will hinder management goals designed to balance the deer population within societal interests, especially farmers and homeowners. Another request was made to allow straight-walled pistol-caliber rifles during all the firearms deer seasons, which is a proposed change that the Division has made so this request is already being addressed.

Lastly, one person asked if there were plans to open discussion related to the ban on trail cameras on public lands as they believed there was not adequate discussion when this activity was previously banned. The Division's proposed changes do not include anything related to trail cameras, nor do we plan to do such.

After publication in the Register, the Division identified five typos that need to be fixed. An inaccuracy related to the price of antlerless deer tags that hunters can purchase was found. The regulation currently lists these tags as being available for \$10 each which is no longer accurate. In 2017, the Governor approved a bill that raised the fee for these tags to \$20. The price of these tags is set within 7 Del.C. §504. To avoid any future inconsistencies if prices are adjusted again, the Division is proposing to strike the reference to cost of these tags within this section such that the price will than always reflect what is described in Delaware Code. An additional change is needed to fix a typo that was found after the regulations were published in the Register the word "persons" was to be replaced and made more specific to include new text of "residents and nonresidents". We did not strike the word "persons" in the proposed changes so grammatically the sentence does not make sense. We will be striking the word "persons" to fix the mistake. Another change relates to a reference to the "primitive weapons season". There is no longer such a season by this name, but it does refer to the current muzzleloader seasons so the language will be updated to refer to the new season name. Lastly, when the Division proposed to rename and restructure the deer seasons two mistakes were found. Some text related to the shotgun season that was moved to a new subsection was not removed from its original location so this erroneous text will be removed and the regulation number for the Crossbow Season as currently proposed is

incorrect. Currently, it is listed is 7.5.5, however it should be 7.5.4. This will also be fixed.

8.0 General Rules and Regulations Governing Land and Waters Administered by the Division
There were no comments received related to this section of the regulations, but the Division is requesting to fix two typos. The word “water” currently includes a hyphen (wa-ter) but this should not be the case, so we are proposing to make this correction. Additionally, there was not a space between a period and the start of the following sentence related to Geocaching and the words “Hunting Information” within the sentence were capitalized but should not have been. Both typos will be fixed.

9.0 Wildlife Theft Prevention Fund

One question was received related to the wildlife theft prevention fund as it relates to the types of birds for which awards are eligible. The proposed changes include all gamebirds which is the interest of the Division, so no amendments are needed.

10.0 Nuisance Game Animals

There were no comments received related to this section of the regulations and the Division is not proposing to make any adjustments to the originally proposed changes.

11.0 Shoreline Refuges of the Delaware River and Bay

No changes to this Section were being proposed by the Division and no comments were received.

12.0 Waterfowl Refuge

No changes to this Section were being proposed by the Division and no comments were received.

13.0 Wildlife Rehabilitation Permits

There were no comments received related to this section of the regulations and the Division is not proposing to make any adjustments to the originally proposed changes.

14.0 Falconry

There were no comments received related to this section of the regulations and the Division is not proposing to make any adjustments to the originally proposed changes.

15.0 Collection or Sale of Native Wildlife

There were no comments received related to this section of the regulations and the Division is not proposing to make any adjustments to the originally proposed changes.

16.0 Endangered Species

There were no comments received related to this section of the regulations but after the regulations were published in the Register the Division realized there were several formatting mistakes and typos that needed to be adjusted. The first was a formatting mistake within the existing regulations for some of the referenced endangered birds. When referencing the breeding segment of the population for some of these species, the

superscript ^{BR} is to be indicated. For some species, this reference is normal font and not a superscript. We will be making this formatting correction. The following formatting changes are also being made:

- Change the font of all scientific names to being italicized which is standard nomenclature.
- Change Carpenter Frog (*Lithobates virgatipes*) to Frog, Carpenter (*Lithobates virgatipes*)
- Switch the order of the Delmarva Fox Squirrel and the Tri-colored Bat so that the three bat species are listed together.
- The scientific name for the Scarletsnake was incorrectly removed. This scientific name will be reinserted.
- Remove the subspecies reference to the Plain-bellied Watersnake.

17.0 Transferring Harvested Game (formerly Species of Special Concern)

There were no comments received related to this section of the regulations and the Division is not proposing to make any adjustments to the originally proposed changes.

18.0 Wanton Waste

No changes to this Section were being proposed by the Division and no comments were received.

19.0 Permits (formerly Reserved)

There were no comments received related to this section of the regulations and the Division is not proposing to make any adjustments to the originally proposed changes.

20.0 Game Bird Releases

Comments related to releasing and hunting gamebirds was the most numerous topics received during the comment period, with seven people providing comment on this subject. **After reviewing the comments, the Division believes many, if not all, were not aware of the existing regulations regarding this activity and how the proposed changes impact such. Existing regulations require anyone releasing upland gamebirds to have them leg banded and for the Division to be notified of the release date and location. The commenters seemingly believe these requirements were new, when in fact they have been in place for more than a decade. The Division 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 to help with consistency. In consideration of the comments received, we did examine which aspects of these requirements are needed. As such, we are proposing to remove the requirement to notify the Division when gamebirds are released, except for quail. However, we will still require hunters to notify us where they are releasing all upland gamebirds. The Division believes the proposed changes will simplify current restrictions on releasing gamebirds for the purposes of hunting and that other existing requirements should not be changed.** Furthermore, no changes are being proposed to the marking procedures of

waterfowl which is what one commenter thought was being included in the proposed changes.

21.0 Guide License

There were no comments received related to this section of the regulations and the Division is not proposing to make any adjustments to the originally proposed changes.

22.0 Hunter and Trapper License Exempt Number

There were no comments received related to this section of the regulations and the Division is not proposing to make any adjustments to the originally proposed changes.

23.0 Non-native/Invasive species

Three people submitted comments related to coyotes with two of them requesting that straight-walled pistol-caliber rifles be an allowable method of harvest, one person requested that the season restriction be lifted, presumably to allow harvest year-round, and one person asked about coyotes being destructive to wetlands. 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 Division does not have the authority to allow them for other species so we cannot make the requested change. Regarding the season on coyotes, much public feedback was received and considered when the season was established in 2014. The Division is not considering any changes to this season currently. Lastly, a question was asked about coyotes being detrimental to wetlands. Coyotes do have impact to the environment around them but typically they are not known to be damaging to wetlands, at least to any large spatial scale. Nutria are included within this same regulation section as coyotes so presumably the reference to wetland damage was meant to refer to nutria and not coyotes, as nutria are known to significantly damage wetlands. No adjustments to the proposed changes within this section are being considered.

24.0 Wildlife Management Zone Boundaries

There were no comments received related to this section of the regulations but after publication the Register the Division noticed a copy and paste error to the boundary description for wildlife management zone 7. This error will be corrected and will read: Zone 7: Land bordered north by Route 12, south by Route 16, east by Route 13, and west by the Maryland state Line.

Unrelated Comment

One comment was received that was unrelated to the authorities of the Division. The commenter had feedback related to deer hunting opportunities at Fresh Pond State Park. This comment was sent to the Division of Parks and Recreation for their review and response.