



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

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SECRETARY

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Secretary's Order No: 2022-F-0028

**RE: Approving Final Amendments to 7 DE Admin. Code 3300 – *Non-Tidal Finfish*, sections 3301-
Definitions and 3304 - *Creel Limits, Size Limits and Seasons, 3.0 Trout***

Date of Issuance: December 29, 2022

Effective Date: February 11, 2023

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to 7 *Del.C.* §§6006 and 6010, and all other relevant statutory authority, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

Background, Procedural History and Findings of Fact

This Order relates to 7 DE Admin. Code 3300 – *Non-Tidal Finfish*, more specifically sections 3301- *Definitions* and 3304 - *Creel Limits, Size Limits and Seasons, 3.0 Trout* ("Regulation"). The Department proposes revisions to the Regulation that will enable the Department to augment the waters open for trout fishing by adding an additional 0.4 miles of trout stream to the stocked portion of Red Clay Creek and designate this area as fly-fishing only. In addition, the Department proposes revisions to the Regulation to designate "Youth Day" as the first Saturday of April in trout streams and the first Saturday of March in trout ponds.

In 2018, a section of Red Clay Creek was designated as a trout stream, allowing stocking for trout to be fished in these waters. The trout stream section of Red Clay Creek measures 1.0 miles from the dam just below the boundary between the State of Delaware and the Commonwealth of Pennsylvania, to the bridge at Yorklyn Road in Hockessin, Delaware. As a result of the improved water quality in Red Clay Creek, the Department worked with Auburn Valley State Park to expand the trout stream section in these waters by 0.4 miles. The Amendment extends the trout stream of Red Clay Creek by 0.4 miles past the bridge at Yorklyn Road and downstream to the Auburn Valley State Park boundary adjacent to Creek Road. The Department proposes the 0.4-mile expansion be reserved for fly-fishing only to alleviate the high population of fly-fishing in White Clay Creek.

Fly-fishing is an angling method that uses a light-weight lure to catch fish. The fly is cast using a fly rod, reel, and specialized weighted line that requires casting techniques significantly different from other forms of casting. Throughout the State the only trout stream area reserved for fly-fishing only is one section of White Clay Creek. With the growing popularity of fly-fishing, the Department has designated the 0.4-mile expansion of trout stream in Red Clay Creek as a second trout stream area reserved for fly-fishing only.

Freshwater trout angling is a seasonally popular activity and fly-fishing has grown in popularity amongst anglers. Fly-fishing and trout angling saw an increase during the Covid-19 pandemic. In 2020, under the authority granted by the Governor's Covid-19 Emergency Order, the Department designated the first day of the 2020 trout season as "Youth Day". This day was reserved for those under the age of 16 to fish for trout. The event grew in popularity amongst all anglers, including experienced angler's being able to assist those under the age of 16. The Emergency Order was terminated in 2021, and the Department is required to amend the Regulation to continue the designation of "Youth Day" for anglers under the age of 16.

The Department proposes Amendments to continue the designation of "Youth Day" as the beginning of the trout season. The Amendment will designate the first Saturday of March in trout ponds and the first Saturday of April in trout streams as "Youth Day". Subsequently, trout season for all anglers will then begin on the first Sunday of March in trout ponds and the first Sunday of April in trout streams.

The Department intends to encourage youth to become anglers by providing a designated day for youth to fish for trout a day before all anglers can begin trout fisheries in the streams and ponds. In addition, the 0.4-mile expansion of trout stream in Red Clay Creek for fly-fishing only is expected to ease the overpopulated stream in White Clay Creek.

The Department has the statutory basis and legal authority to act with regard to the formal promulgation of these proposed Amendments, pursuant to 7 *Del. C.* §103 (a & b). The Department published its initial proposed regulation Amendments in the November 1, 2022, *Delaware Register of Regulations*. Thereafter, the public hearing regarding this matter was held on November 22, 2022. There were four members of the public in attendance, with three (3) public comments given at the time of the hearing. Pursuant to 29 *Del.C.* §10118(a), the hearing record (“Record”) remained open for receipt of additional written comment for 15 days following the public hearing. The Record formally closed for comment in this matter at close of business on December 7, 2022, with six (6) written comments received by the Department for the formal promulgation.

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.

Subsequent to the close of the Record, and at the request of presiding Hearing Officer Theresa Newman, the Department’s Division of Fish and Wildlife staff prepared a Technical Response Memorandum (“TRM”). The TRM responds to the comments received by the Department in this matter and provides a thorough discussion in response to the suggestions and questions provided by the public.

Following the receipt of the Department’s TRM as noted above, the Hearing Officer prepared her Hearing Officer’s Report dated December 21, 2022 (“Report”), which expressly incorporated both the Department’s proposed Amendments and the TRM into the Record generated in this matter. The Report documents the proper completion of the required regulatory amendment process, establishes the Record, and recommends the adoption of the proposed Amendments as attached to the Report as Appendix “A.”

Reasons and Conclusions

Based on the Record developed by the Department’s experts in the Division of Fish and Wildlife, and established by the Hearing Officer’s Report, I find that the proposed regulatory Amendments to 7 DE Admin. 3300 – Non-Tidal Finfish, sections 3301- *Definitions* and 3304 - *Creel Limits, Size Limits and Seasons, 3.0 Trout*, are well supported. I further find that the Department’s experts fully developed the record to support adoption of these Amendments. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed Amendments be promulgated as final.

The following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to this proposed regulatory promulgation, pursuant to 7 *Del. C.* §§901, 903(a, b, & e) and 7 *Del. C.* §103 (a & b);
2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Chapter 60, to issue an Order adopting these 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 same, including at the time of the public hearing held on November 22, 2022, and during the 15 days subsequent to the hearing (through December 7, 2022), before making any final decision;
4. Promulgation of the proposed Amendments to 7 DE Admin. 3300 – Non-Tidal Finfish, sections 3301- *Definitions* and 3304 - *Creel Limits, Size Limits and Seasons, 3.0 Trout*, will enable the Department to augment the waters open for trout fishing by adding an additional 0.4 miles of trout stream to the stocked portion of Red Clay Creek, designate the added 0.4 miles as a fly-fishing only area, and designate “Youth Day” as the first Saturday of March in trout ponds and the first Saturday of April in trout streams.
5. The Department has reviewed the proposed Amendments in light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104, and believes the same to be lawful, feasible and desirable, and the recommendations as proposed should be applicable to all Delaware citizens equally;
6. The Department’s proposed regulatory Amendments, as initially published in the November 1, 2022, *Delaware Register of Regulations*, as set forth in Appendix “A” hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they should be approved as final regulatory Amendments, which shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*; and

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



For Shawn M. Garvin
Secretary