

HEARING OFFICER'S REPORT

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

FROM: Theresa Newman, Regulatory Specialist, Office of the Secretary,
Dept. of Natural Resources and Environmental Control

RE: **Proposed Regulation Amendments to 7 DE Admin. Code 3300: Non-Tidal Finfish**

DATE: February 1, 2020

I. BACKGROUND AND PROCEDURAL HISTORY:

A public hearing was held on Wednesday, January 29, 2020, at 6:00 p.m. at the Department of Natural Resources and Environmental Control (“DNREC,” “Department”), 89 Kings Highway, Dover, Delaware to receive comment on proposed regulatory amendments to 7 DE Admin. Code 3300: *Non-Tidal Finfish*, Section 3301-*Definitions* (“Amendments”). The Department is proposing revisions to the regulatory definition of “Pike Creek,” specifically, to change the lower boundary of the Designated Trout Stream for Pike Creek from “Pike Creek Road” to “Kirkwood Highway,” thereby extending these designated waters downstream approximately 0.9 miles to the bridge at Route 2 (Kirkwood Highway) in New Castle County, Delaware.

The Department provides a put-and-take freshwater trout fishery each spring in select piedmont streams of New Castle County. Appropriate waters for stocking freshwater trout are limited due to restricted public access and trout habitat requirements. Development, property rights and population growth have reduced public access on some of Delaware's Designated Trout Streams, while freshwater trout angling has remained a seasonally popular activity.

The acquisition of property along Pike Creek by Delaware State Parks (White Clay Creek State Park - Judge Morris Estate) provides an opportunity to expand

Delaware's trout stocking sites and increase public access to Pike Creek's freshwater trout fishery.

The Amendments will enable the Department to extend the defined Designated Trout Waters on Pike Creek as referenced above. This will accommodate freshwater trout stocking and improve angler access to the put-and-take freshwater trout fishery on Pike Creek. The amendment proposed by this action will extend the defined Designated Trout Waters on Pike Creek downstream approximately 0.9 miles to the bridge at Route 2 (Kirkwood Highway). Waters defined as a Designated Trout Stream are closed to all fishing 14 days before the trout season's opening day to provide for stocking, fish acclimation and dispersion and to provide fair access through an established starting time and date. Unless lawfully exempt, a trout stamp is required to fish a Designated Trout Stream from the first Saturday in April through June 30 and from the first Saturday in October through November 30 (\$2.10 resident youth / \$4.20 resident adult/ \$6.20 non-resident). Trout stamp revenues support the purchase of trout in subsequent years.

It should be noted that the Division of Parks and Recreation has given approval to stock the above referenced expansion section of these designated waters. Further, Delaware's Advisory Council on Wildlife and Freshwater Fish endorsed this proposed regulatory action.

The Department has the statutory basis and legal authority to act with regard to promulgation of the Amendments pursuant to 7 *Del. C.* §103(a) & (b). The Department published its initial proposed regulation Amendments in the January 1, 2020 *Delaware Register of Regulations*. Thereafter, the public hearing regarding this matter was held on January 29, 2020. There was no public attendance at the public hearing. Pursuant to Delaware law, the record remained open for fifteen (15) additional days subsequent to the date of the public hearing for receipt of public comment. The hearing record formally closed with regard to public comment at close of business on February 13, 2020 with no comment having been received by the Department during any phase of this proposed regulatory 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.

II. SUMMARY OF THE PUBLIC HEARING RECORD:

The public hearing record consists of the following documents: (1) a verbatim transcript; and (2) twelve (12) documents introduced by Department staff at the public hearing held on January 29, 2020 and marked by Hearing Officer Theresa Newman accordingly as Department Exhibits 1-12. The Department's person primarily responsible for the drafting and overall promulgation of these proposed Amendments, Michael Stangl, Fisheries Program Manager with the Division of Fish and Wildlife, developed the record with the relevant documents in the Department's files.

As stated previously, no comment was received by the Department at any time during the course of this regulatory promulgation. Accordingly, the Department's proposed Amendments are attached hereto as Appendix "A" for the Secretary's review.

III. RECOMMENDED FINDINGS AND CONCLUSIONS:


Based on the record developed, I find and conclude that the Department has provided appropriate reasoning regarding the need for the proposed regulatory amendments to 7 DE Admin. Code 3300: *Non-Tidal Finfish*, specifically, the revisions of Section 3301 – *Definitions*, as set forth above. 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 this proposed regulatory promulgation, pursuant to 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 January 29, 2020, and during the 15 days subsequent to the hearing (through February 13, 2020), before making any final decision;
4. Promulgation of the proposed Amendments to 7 DE Admin. Code 3300: *Non-Tidal Finfish* will enable the Department to extend the Designated Trout Waters on Pike Creek downstream approximately 0.9 miles to the bridge at Route 2 (Kirkwood Highway) in New Castle County, Delaware. The expansion of these designated waters will: (1) provide for the stocking of freshwater trout therein, thus creating additional recreational opportunities in New Castle County; (2) continue the utilization of trout stamp revenues to support the purchase of trout in subsequent years; and (3) improve angler access to the put-and-take freshwater trout fishery on Pike Creek;
5. The Department has reviewed the 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, 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 January 1, 2020 *Delaware Register of Regulations*, and 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.


Theresa L. Newman
Public Hearing Officer

APPENDIX "A"

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code, Section 103(a) & (b) (7 Del.C. §103(a) & (b))
7 DE Admin. Code 3301

REGISTER NOTICE**SAN# 2019-09****Hearing Docket No.: 2019 -R-F-0031****3300 Non-Tidal Finfish****3301 Definitions****1. TITLE OF THE REGULATIONS:**

Amend 7 DE Admin. Code 3300 Non-Tidal Finfish - 3301 Definitions.

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE, AND ISSUES:

The Department provides a put-and-take freshwater trout fishery each spring in select piedmont streams of New Castle County. Appropriate waters for stocking freshwater trout are limited due to restricted public access and trout habitat requirements. Development, property rights and population growth have reduced public access on some of Delaware's Designated Trout Streams, while freshwater trout angling has remained a seasonally popular activity. The acquisition of property along Pike Creek by Delaware State Parks (White Clay Creek State Park - Judge Morris Estate) provides an opportunity to expand Delaware's trout stocking sites and increase public access to Pike Creek's freshwater trout fishery.

The amendment proposed by this action will extend the defined Designated Trout Waters on Pike Creek downstream approximately 0.9 miles to the bridge at Route 2 (Kirkwood Highway). This will accommodate freshwater trout stocking and improve angler access to the put-and-take freshwater trout fishery on Pike Creek. Waters defined as a Designated Trout Stream are closed to all fishing 14 days before the trout season's opening day to provide for stocking, fish acclimation and dispersion and to provide fair access through an established starting time and date. Unless lawfully exempt, a trout stamp is required to fish a Designated Trout Stream from the first Saturday in April through June 30 and from the first Saturday in October through November 30 (\$2.10 resident youth / \$4.20 resident adult / \$6.20 non-resident). Trout stamp revenues support the purchase of trout in subsequent years. Delaware's Advisory Council on Wildlife and Freshwater Fish endorsed this proposed action.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

N/A

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del.C. §103 (a & b)

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

N/A

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed changes to 7 DE Admin. Code 3300 Non-Tidal Finfish - 3301 Definitions opens January 1, 2020 (Hearing Docket No.: 2019 -R-F-0031). A public hearing on the proposed amendment will be held on Wednesday, January 29, 2020 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901. Individuals may submit written comments regarding the proposed changes via e-mail to DNRECHearingComments@delaware.gov, or via USPS to the DNREC Hearing Officer, 89 Kings Highway, Dover, DE 19901. Public comments will be received until close of business Thursday, February 13, 2020.

7. PREPARED BY:

Stewart Michels
Email: Stewart.Michels@delaware.gov
Ph: (302) 739-9914

***Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

<http://regulations.delaware.gov/register/january2020/proposed/23 DE Reg 543RFA 01-01-20.pdf>

3300 Non-Tidal Finfish

3301 Definitions

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

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

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

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

"Designated Trout Pond" means:

Newton Pond in Sussex county (near Greenwood);

Tidbury Pond in Kent County.

"Designated Trout Stream" means:

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

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

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

"Pike Creek", from Route 72 to the bridge at ~~Pike Creek Road~~ Route 2 (Kirkwood Highway);

"Red Clay Creek", from the dam just below the boundary between the State of Delaware and the Commonwealth of Pennsylvania to the bridge at Yorklyn Road;

"White Clay Creek", from the boundary line between this State and the Commonwealth of Pennsylvania to the downstream side of Paper Mill Road; and

"Wilson Run", from Route 92 through Brandywine Creek State Park; ~~and~~.

"Director" means the Director or Acting Director of the Division.

"Division" means the Division of Fish and Wildlife of the Department.

"Established road" means a road maintained for vehicular use by the Division and designated for such use by the Division on current wildlife area maps.

"Fishing" or **"to fish"** means to take, catch, kill or reduce to possession or attempt to take, catch, kill or reduce to possession any fish by any means whatsoever.

"Game fish" means smallmouth bass, largemouth bass, black or white crappie, rock bass, white bass, walleye, northern pike, chain pickerel, muskellunge (or hybrids), salmon, trout, sunfishes and white bass/striped bass hybrids.

"Possession" means either actual or constructive possession of or any control over the object referred to.

"Refuge" means an area of land, whether in public or private ownership, designated by the Department as a refuge. Land shall only be designated with the permission of the landowner and if such designation is thought to be in the best interest of the conservation of wildlife. Refuges shall normally be closed at all times to all forms of hunting, except as permitted by the Director in writing for wildlife management purposes.

"Restricted Trout Stream" means the White Clay Creek from a point 25 yards above Thompson Bridge at Chambers Rock Road to the boundary line between this State and the Commonwealth of Pennsylvania.

"Roadway" means any road, lane or street, including associated right-of-ways, maintained by this State or any political subdivision of this State.

"Season" means that period of time during which a designated species of wildlife may be lawfully hunted or a designated species of fish may be lawfully fished.

"Vehicle" means in or by which someone travels or something is carried or conveyed or a means of conveyance or transport, whether or not propelled by its own power.

**DEPARTMENT OF STATE
PUBLIC SERVICE COMMISSION**

Statutory Authority: 26 Delaware Code, Section 209(a) (26 Del.C. §209(a))
26 DE Admin. Code 4001

PUBLIC NOTICE

4001 Rules for the Provision of Telecommunications Services (Dockets 10 and 45)

**IN THE MATTER OF THE RULES FOR THE
PROVISION OF TELECOMMUNICATIONS
SERVICES**

(REG. DKT 10 OPENED MAY 1, 1984; REG. DKT
45 OPENED NOVEMBER 21, 1995; JOINTLY
REOPENED NOVEMBER 17, 1998; JULY 24,
2001; AUGUST 9, 2005; NOVEMBER 5, 2013;
MAY 13, 2014; AUGUST 19, 2014 AND
DECEMBER 5, 2019)

**PSC REGULATION DOCKET
NOS. 10 AND 45**

**IN THE MATTER OF THE REGULATIONS FOR
THE IMPLEMENTATION OF THE
TELECOMMUNICATIONS TECHNOLOGY
INVESTMENT ACT**

(OPENED JULY 20, 1993; REOPENED
DECEMBER 5, 2019)

PSC REGULATION DOCKET NO. 41

**PUBLIC NOTICE OF PROPOSED AMENDMENTS TO THE
PUBLIC SERVICE COMMISSION'S RULES FOR
TELECOMMUNICATIONS SERVICE PROVIDERS**

**TO: ALL TELECOMMUNICATIONS CARRIERS, ALL
CONSUMERS, AND OTHER INTERESTED PERSONS**

In April 2019, the role of the Delaware Public Service Commission ("Commission") with respect to landline telecommunications regulation changed with the passage of Senate Bill No. 18 ("SB 18"). (The Commission does not regulate wireless or voice over internet services.) Among other things, SB 18 amended Title 26 of the Delaware Code by removing certain statutory requirements for Commission-regulated telecommunications service providers that are no longer consistent with recent decisions of the Federal Communications Commission, including significant changes to the Telecommunications Technology Investment Act ("TTIA") (See 26 Del.C. §§215, 704-707).

Generally, telecommunications services provided over landlines fall into two categories: (1) "Basic Services,"

which the Commission regulates for price and quality of service; and (2) "Competitive Services," which the Commission does not regulate, other than to certify new carriers who seek to offer such services in Delaware. The SB 18 amendments maintained certification requirements for telecommunications carriers but revised the TTIA (§§704-707) to narrow the definition of "Basic Services" and to allow carriers to change the rates for Basic Services without Commission approval.

By Order No. 9506 dated December 5, 2019 (the "Order"), the Commission now proposes to revise its telecommunications rules to reflect the SB 18 amendments and to otherwise clarify and simplify its regulations by: (1) amending its "Rules for the Provision of Telecommunications Services," codified at 26 Del. Admin. C. §4001 ("§4001") (Regulation Docket Nos. 10 and 45); (2) moving the remaining TTIA requirements (as amended by SB 18) from 26 Del. Admin. C. §4005 ("§4005") to §4001; and (3) repealing its "Regulations for the Implementation of the Telecommunications Technology Investment Act," codified at §4005 (Regulation Docket No. 41).

The text of the Amendments are attached to the Order. The Order and related exhibits are reproduced in the January 2020 edition of the Delaware *Register of Regulations* and may also be reviewed online at the Commission's website at www.depsec.delaware.gov. You may also obtain a paper copy of the Orders at the Commission's Dover office for a fee of \$0.25 per page.

Interested parties may file written comments, suggestions, briefs, compilations of data, or other materials concerning the Amendments. Such material (10 copies) may be submitted to the Commission on or before March 13, 2020, by email to lisa.driggins@delaware.gov or at the following address:

Delaware Public Service Commission
861 Silver Lake Boulevard
Cannon Bldg., Suite 100
Dover, Delaware, 19904
Attn: PSC Reg. Dckts. Nos. 10 & 45

The Commission will conduct a public hearing on the Amendments on Wednesday, February 26, 2020, beginning at 1:00 PM in the Hearing Room of the Delaware Public Service Commission, 861 Silver Lake Blvd., Dover, Delaware.

If you are handicapped and need assistance or aids in participating in this matter, please contact the Commission to discuss any needed assistance or aids. You may contact the Commission with questions or requests about this matter at the Commission's toll-free telephone number (800) 282-8574 (Delaware only) or (302) 739-4333 (including text telephone). You may also send inquiries by Internet e-mail addressed to psc@delaware.gov.

ORDER NO. 9506

IN THE MATTER OF THE RULES FOR THE
PROVISION OF TELECOMMUNICATIONS
SERVICES

(REG. DKT 10 OPENED MAY 1, 1984; REG. DKT
45 OPENED NOVEMBER 21, 1995; JOINTLY
REOPENED NOVEMBER 17, 1998; JULY 24,
2001; AUGUST 9, 2005; NOVEMBER 5, 2013;
MAY 13, 2014; AUGUST 19, 2014 AND
DECEMBER 5, 2019

PSC REGULATION DOCKET
NOS. 10 AND 45

IN THE MATTER OF THE REGULATIONS FOR
THE IMPLEMENTATION OF THE
TELECOMMUNICATIONS TECHNOLOGY
INVESTMENT ACT

(OPENED JULY 20, 1993; REOPENED
DECEMBER 5, 2019)

PSC REGULATION DOCKET NO. 41

AND NOW, this 5th day of December, 2019, the Delaware Public Service Commission ("Commission")