

Secretary's Order No.: **2008-F-0042**

RE: Proposed Amendments to the State of Delaware
Regulation No. 3903: Federal Laws and Regulations Adopted (2008)

Date of Issuance: September 11, 2008

Effective Date of the Amendment: October 11, 2008

I. Background:

A public hearing was held on Monday, August 25, 2008, at 6:30 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to the existing Delaware Wildlife Regulation No. 3903. The Department wishes to add three additional sub-sections to Regulation No. 3903 concerning Mute Swans. These revisions serve to clarify the existing regulations in this Section, as well as to expand hunting opportunity to minors, and to protect aquatic ecosystems in Delaware from severe damage by Mute Swans.

Additionally, it should be noted that this proposed action also included the intent to change the title of Regulation No. 3903 to simply read "Waterfowl". The Department had wished to change the title of this regulation because there are several items as contained within this section which do not specifically pertain to the Division's adoption of Federal laws and regulations. However, on the advice of the Department's enforcement personnel, they decided to keep the title as is.

Two members of the public attended this hearing on August 25, 2008, however, no public comment or questions were received from them at that time. One e-mail offering public input was received by the

Department prior to the hearing, and that suggestion was incorporated into these proposed amendments. Proper notice of the hearing was provided as required by law.

After the hearing, the Department performed an evaluation of the evidence entered into the record in this matter. Thereafter, the Hearing Officer prepared her report and recommendation in the form of a Hearing Officer's Memorandum to the Secretary dated September 10, 2008, and that Report is expressly incorporated herein by reference.

II. Findings:

The Department has carefully considered all relevant public input regarding its proposed regulation, and has provided a reasoned analysis and a sound conclusion with regard to the same, as reflected in the Hearing Officer's Memorandum of September 10, 2008, which is attached and expressly incorporated into this Order. Moreover, the following findings and conclusions are entered at this time:

1. Proper notice of the hearing was provided as required by law.
2. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;

3. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
4. The Department held a public hearing in a manner required by the law and regulations;
5. The Department considered all timely and relevant public comments in making its determination;
6. Promulgation of these proposed amendments would expand hunting opportunity for minors and protect aquatic ecosystems in Delaware from severe damage by Mute Swans;
7. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally that hunt or practice aviculture;
8. The Department's proposed amendments to Regulation 3903 are adequately supported, not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and that

9. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary.

III. Order:

Based on the record developed, as reviewed in the Hearing Officer's Memorandum dated September 10, 2008, and expressly incorporated herein, it is hereby ordered that the proposed amendments to State of Delaware Regulation No. 3903 be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons:

The promulgation of the Division of Fish and Wildlife Regulation No. 3903, will aide the Department in its ability to provide better clarity to Delaware hunters with regard to the regulations concerning Mute Swans as contained in this section. Additionally, this rulemaking represents careful, deliberate and reasoned action by this agency to expand hunting opportunity for minors and to protect aquatic systems here in Delaware from severe damage by Mute Swans.

In developing this regulation, the Department has balanced the absolute environmental need for the State of Delaware to promulgate

regulations concerning this matter with the important interests and public concerns surrounding the same, in furtherance of the policy and purposes of 7 Del. C., Ch. 60.

/s/ John A. Hughes

John A. Hughes
Secretary

MEMORANDUM

TO: John A. Hughes, Secretary

FROM: Lisa A. Vest, Hearing Officer

RE: Proposed Amendments to State of Delaware
Wildlife Regulation No. 3903: Federal Laws and Regulations
Adopted (2008)

DATE: September 10, 2008

I. Background:

A public hearing was held on Monday, August 25, 2008, at 6:30 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to the existing Delaware Wildlife Regulation No. 3903. The Department wishes to add three additional sub-sections to Regulation No. 3903 concerning Mute Swans. These revisions serve to clarify the existing regulations in this Section, as well as to expand hunting opportunity to minors, and to protect aquatic ecosystems in Delaware from severe damage by Mute Swans.

Additionally, it should be noted that this proposed action also included the intent to change the title of Regulation No. 3903 to simply read "Waterfowl". The Department had wished to change the title of this regulation because there are several items as contained within this section which do not specifically pertain to the Division's adoption of Federal laws and regulations. However, on the advice of the Department's enforcement personnel, they decided to keep the title as is.

Two members of the public attended this hearing on August 25, 2008, however, no public comment or questions were received from them at that time. One e-mail offering public input was received by the Department prior to the hearing, and that suggestion was incorporated into these proposed amendments. Proper notice of the hearing was provided as required by law.

II. Summary of Hearing Record:

At the time of the hearing on August 25, 2008, Kenneth Reynolds, Program Manager with the Department's Division of Fish and Wildlife, offered the Department's exhibits pertaining to this regulatory promulgation, along with a brief explanation to the public with regard to the salient points of the proposed amendments to these regulations.

Mr. Reynolds explained to the attendees at this public hearing that changes are being proposed by the Department within this Section concerning Mute Swans. First, the scientific name of the Mute Swan is being added to the regulatory language, so as to avoid any confusion as to what bird this regulation applies. Additionally, new sub-parts to this Section are also being added, which will make it unlawful to possess, buy, sell, barter, trade or transfer any Mute Swan or their eggs to or from another person, unless permitted to do so by the Department's Director of the Division of Fish and Wildlife. Moreover, these revisions will make it unlawful to release any Mute Swan into the wild.

Lastly, the Department has added language to this Section that would drop the age at which a child could participate in the one-day waterfowl youth hunt from 12 years old to 10 years old. This is being proposed because the Department currently allows 10 year olds to take the hunter education class and receive their hunter education certificate. At the hearing, Mr. Reynolds specifically noted that hunters in the 13 – 15 year old bracket

that participate in this activity would have to now purchase the junior hunting license, which was implemented last year, and take the hunter training class to possess that license.

The Department received one public comment via email relative to the Mute Swan issue from Joseph Joachimowski. This comment asked that the Department insert the phrase “live Mute Swan” into Section 3.5.2, where it states that “...it shall be unlawful to possess, buy, sell, barter, trade, or transfer any Mute Swan”. The rationale to this request is that, if a hunter were to harvest a Mute Swan (which is perfectly legal), the Department would certainly want him to be able to possess that Mute Swan. Thus, the Department has incorporated that suggestion into these proposed regulations.

As noted above, this proposed action initially included the intent to change the title of Regulation No. 3903 to simply read “Waterfowl”. Subsequent to the public hearing (and prior to the record closing), the Division’s Enforcement Section recommended that the title of 3903 not be changed at this time. This recommendation was adopted, and is reflected in the Department’s final version to be forwarded to the Register of Regulations.

For brevity’s sake, and for the Secretary’s review, a copy of the Department’s proposed amendments to these regulations is attached hereto as Attachment “A” and is expressly hereby incorporated into this report.

It should also be noted that the Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally that hunt or practice aviculture.

III. Conclusions and Recommendations:

Based on the above discussion, I conclude that the Department has provided appropriate reasoning regarding the need for these proposed changes to Delaware's Wildlife Regulation 3903: Federal Laws and Regulations Adopted, and has thoroughly addressed all public questions and/or comments provided during the various phases of the record developed in this matter. Accordingly, I recommend promulgation of these proposed amendments in the customary manner provided by law.

Further, I recommend the following findings:

1. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;
2. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
3. The Department held a public hearing in a manner required by the law and regulations;
4. The Department considered all timely and relevant public comments in making its determination;
5. Promulgation of these proposed amendments would expand hunting opportunity for minors and protect aquatic ecosystems in Delaware from severe damage by Mute Swans;

6. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally that hunt or practice aviculture;
7. The Department's proposed amendments to Regulation 3903: Federal Laws and Regulations Adopted, are adequately supported, not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and that
8. The Department shall submit the proposed regulation as a final regulation to the Delaware Register of Regulation for publication in its next available issue, and shall provide written notice to the persons affected by the Order.

 /s/ Lisa A. Vest .
LISA A. VEST
Hearing Officer

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