



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

OFFICE OF THE
SECRETARY

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DOVER, DELAWARE 19901

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Secretary's Order No.: 2013-F-0057

**RE: Approving Final Regulations to Amend 7 DE Admin. Code 3900,
Delaware Regulations Governing Wildlife: Sections 1.0 (Definitions);
Sections 2.0 (Method of Take); 4.0 (Seasons); 7.0 (Deer);
and 23.0 (Non-Native/Invasive Wildlife)**

Date of Issuance: December 17, 2013

Effective Date of the Amendment: January 11, 2014

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

Background and Procedural History

This Order considers proposed *revised* regulations to amend 7 DE Admin. Code 3900, *Delaware Regulations Governing Wildlife*. The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2013-21. The Department published its initial proposed regulation Amendments in the August 1, 2013 *Delaware Register of Regulations*, and held a public hearing on September 4, 2013.

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The Department proposed its initial amendments to 7 DE Admin. Code 3900, *Delaware Regulations Governing Wildlife* at the aforementioned public hearing held on September 4, 2013, to wit: Section 1.0 (Definitions); Section 2.0 (Method of Take); 4.0 (Seasons); 7.0 (Deer); and 23.0 (Non-Native/Invasive Wildlife) to enable DNREC to (1) create a definition for the terms “Cable Restraint”, “Foothold Trap”, “Jaw Spread”, and “Waterline”; (2) require written permission before trapping on private or public property; (3) make it unlawful to set traps near exposed meat to prevent capture of raptors; (4) make it unlawful to tend or disturb another person’s traps without their permission; (5) prohibit the use of toothed or serrated jawed foothold traps; (6) define the types and sizes of foothold traps permitted to be set both above and below the waterline; (7) allow the use of foot encapsulating traps; (8) require identification tags on all trap types; (9) set a maximum height in which cable restraints may be set above the ground; (10) establish a fox trapping season; (11) authorize a new method in which hunters can validate a harvested deer; (12) make it unlawful to possess a live coyote or nutria without a permit, establish hunting and trapping seasons for coyotes, and establish a trapping season for nutria; (13) require reporting of harvested coyotes and nutria; (14) make it unlawful to release swine into the wild, require individuals to notify the State if swine escape and cannot be recaptured, and make it illegal to kill feral swine unless authorized by the Division; and (15) make it illegal to recreationally hunt feral swine or charge a fee to hunt feral swine.

The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 DE Admin. Code 3900, *Delaware Regulations Governing Wildlife*, pursuant to 7 Del. C. §§102-103, 7 Del.C. §§801-802, and 7 Del. C., Chapter

60. A voluminous amount of public comment was received by the Department regarding this proposed promulgation, and the same was thoroughly addressed and responded to by the Division of Fish & Wildlife in its formal Technical Response Memorandum dated December 3, 2013. Proper notice of the hearing was provided as required by law.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report, dated December 10, 2013 ("Report"), which recommends certain findings and the adoption of the proposed *revised* Amendments, as attached to the Report as Appendix A.

Findings and Discussion

The Delaware Division of Fish and Wildlife (Division) is charged by law with the protection, management and conservation of all forms of protected wildlife within the State for all the constituents of Delaware. In July 2012, the General Assembly passed legislation establishing a new Subchapter VIII of Delaware's wildlife code, authorizing the Department to designate and manage non-native wildlife species. *7 Del.C.* §801 authorizes the Division to establish rules and regulations associated with the management of non-native wildlife species, such as coyotes, nutria and feral hogs. In response to the passage of this statute, the Division has developed a set of proposed regulations amending 7 DE Admin. Code 3900, *Delaware Regulations Governing Wildlife*, to address the management of these non-native species. In order to properly manage several of these species, namely, coyotes and nutria, the existing trapping regulations also needed to be revised to accommodate the different trapping techniques and tools used for these species. In doing so, the Division also revised other aspects of the trapping regulations in order to address issues identified by the public as improvements in the science of furbearer management. Additionally, in an effort to add

efficiency to the ongoing regulatory process, the Division also included in this proposed regulation package a proposed deer tagging change that it had been considering for some time.

Of note is the fact that 7 *Del.C.* §802 authorizes the Department to issue a Secretary's Order specifying the times and means for which person(s) can take, harvest or capture non-native wildlife species that have the potential to become, as determined by the Department upon appropriate evaluation or investigation, seriously injurious to native wildlife or their habitat or to agriculture, domestic animals, property, or human health or safety. Although this Secretary's Order is not part of this present regulation package, it should be noted that the same is being developed in parallel with the proposed non-native species regulations since it is designed to address aspects of non-native species control beyond those being appropriately considered within the proposed regulation package.

Throughout the regulatory development process regarding this particular promulgation, the Department received a voluminous amount of public comment, as noted in the Report. After the hearing record closed with respect to public comment on September 19, 2013, an exhaustive review of the same was undertaken by the Department's Division of Fish & Wildlife. This comprehensive review subsequently yielded a formal Technical Response Memorandum, dated December 3, 2013, which the Hearing Officer then expressly incorporated into her Report.

The aforementioned Technical Response Memorandum encompassed the full spectrum of comment contained in the record concerning this matter. Each comment was meticulously organized and grouped according its subject matter, followed by a thorough and rational discussion of the issue based upon the record developed in this promulgation.

Following the discussion of each subject matter, the Division of Fish & Wildlife offered its recommendation as to what the position of the Department should be with respect to each issue. In most instances, the Division believed that no changes to the Department's proposed amendments were warranted. There were, however, four specific instances which, in light of the meritorious comment received, the Division has proposed to *revise* from its initial proposed amendments, in order to provide additional clarity with regard to the original intent of the proposed amendments and improve upon their intent, as well as to accommodate other meritorious suggested changes. It is the Division's position that these proposed *revisions* to the Department's amendments to 7 DE Admin. Code 3900 are not substantive in nature, and thus no additional vetting of the proposed regulatory amendments is necessary at this time.

The proposed *revisions* to the Department's initial proposed regulation amendments are as follows:

- (1) **Coyote Hunting Season** -- The Division received numerous comments that the initial proposed coyote hunting season of November 1 through the last day of February should be extended to a longer time period. The Division recognizes the recreational opportunities and benefits of a longer hunting season within our existing hunting season framework, and is proposing the following modification to 23.1.1.3 Non-Native Wildlife to extend the coyote hunting season by an additional two months, as follows:

23.1.1.3 Hunting Season. Coyotes may be hunted and harvested from *September 1* through the last day of February.

(2) **Relaxing lock definition** -- The Division received numerous comments suggesting a definition was needed for a “relaxing lock” in associated with the use of cable restraints. The Division agrees a definition within the regulation itself will provide clarity on the use of these trapping devices, and is therefore proposing the following definition be added to 1.0 Definitions:

“Relaxing Lock” shall mean a device installed on a cable restraint that allows the loop to release constriction pressure on the captured animal when the cable is not taut and the animal stops pulling.

(3) **Use of exposed meat as bait in box traps** -- The Division’s initial proposed regulations would establish that it shall be unlawful to bait a trap with meat or animal product visible from above and within 10 feet of a trap in an effort to minimize the chance of capturing raptors or vultures that can be inadvertently captured when they attempt to consume the bait. This regulation was directed towards foothold traps and cable restraints and several commenters asked if this prohibition of exposed bait near a trap would apply to box traps. Because the capture of raptors or vultures within a box trap is very unlikely, and because the intent of the regulation was for foothold traps and cable restraints, the Division is proposing the following modification to 2.1.10 Method of Take to provide clarity on its intent:

2.1.10 It shall be unlawful to bait a trap with meat or animal products, *except box/cage traps*, if the bait is visible from above and within 10 feet of the trap. The use of animal fur or feathers without any attached animal tissues is not restricted.

- (4) **Use of laminated jawed traps** -- The Division's initial proposed regulations would establish that all foothold traps set above the waterline must be have padded or offset jaws, in an effort to improve capture effectiveness and efficiency and reduce animal injury. Several commenters asked if laminated jaw traps would be permitted, as they function similarly to padded jaw traps by increasing the surface area of the trap jaw on a trapped animal's foot, thereby improving capture effectiveness and efficiency while reducing animal injury. Because the use of laminated jaw traps would be consistent with the intent of the regulation (increased capture efficiency and humanness), the Division is proposing the following modification to 2.4.1 Foothold Traps to include laminated jaws as an acceptable foothold above the waterline:

2.4.1 Notwithstanding statutes § 703 and 788 of Title 7, It shall be unlawful for any person to set a leghold foothold trap at any time in this State, except from December 1 through March 10 (March 20 on embanked meadows) in New Castle County and December 15 through March 15 in Kent and Sussex counties. The use of toothed or serrated jawed traps is prohibited. All foothold traps set above the waterline must have padded, *laminated* or offset jaws.

with the exception being that coil-spring traps with a jaw spread of 4 inches or less and long-spring traps with a jaw spread of 4 ½ inches or less do not need to be padded, *laminated* or have offset jaws.

I find that the Department's experts in the Division of Fish and Wildlife fully developed the record to support adoption of these *revised* Amendments. I find that the *revised* proposed Amendments are well-supported by the record developed by the Department, and I adopt the Report to the extent it is consistent with this Order. I also find that the proposed *revisions* to the Department's amendments to 7 DE Admin. Code 3900 are not substantive in nature, and thus no additional vetting of these proposed regulatory amendments is necessary at this time.

With the adoption of this Order, Delaware will be enabled to properly address the management of non-native wildlife species such as coyotes, nutria, and feral swine. The revisions to existing trapping regulations will accommodate the different trapping techniques and tools used for management of these non-native species. Again, additional revisions to various aspects of Delaware's trapping regulations have also been made at this time to address issues identified by the public as improvements in the science of furbearer management. Lastly, revisions to Delaware's existing deer tagging procedure (which had been under consideration for some time) were also included in this present promulgation, and thus the adoption of this Order will aid in the Department's ongoing initiative to increase its efficiency agency wide.

In conclusion, the following findings and conclusions are entered:

1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these *revised* proposed Amendments as final;

2.) The Department provided adequate public notice of the proposed Amendments, and provided the public with an adequate opportunity to comment on the same, including at the public hearing held on September 4, 2013;

3.) The Department held a public hearing on September 4, 2013 in order to consider public comment before making any final decision;

4.) The Department's Hearing Officer's Report, including its recommended record and the recommended *revised* Amendments as set forth in Appendix A, and the Technical Response Memorandum as set forth in Appendix B, are adopted to provide additional reasons and findings for this Order;

5.) The recommended *revised* Amendments should be adopted as final regulation Amendments because Delaware will be able to (1) properly address the management of non-native wildlife species such as coyotes, nutria, and feral swine; (2) accommodate the different trapping techniques and tools used for management of these non-native species; (3) address issues identified by the public as improvements in the science of furbearer management; (4) promulgate revisions to Delaware's existing deer tagging procedure (which had been under consideration for some time); (5) further the Department's ongoing initiative to increase its regulatory efficiency agency wide; and, lastly, because (6) the *revised* amendments are well supported by documents in the record;

6.) The Department shall submit this Order approving the final regulation 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.



Collin P. O'Mara
Secretary

HEARING OFFICER'S REPORT

TO: The Honorable Collin P. O'Mara
Cabinet Secretary, Department of Natural Resources and Environmental Control

FROM: Lisa A. Vest 
Public Hearing Officer, Office of the Secretary
Department of Natural Resources and Environmental Control

RE: **Proposed Regulations Amendments to 7 DE Admin. Code 3900, Delaware Regulations Governing Wildlife: Sections 1.0 (Definitions); 2.0 (Method of Take); 4.0 (Seasons); 7.0 (Deer); and 23.0 (Non-Native/Invasive Wildlife)**

DATE: December 10, 2013

I. BACKGROUND AND PROCEDURAL HISTORY:

A public hearing was held on Wednesday, September 4, 2013, 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 amendments ("amendments") to 7 DE Admin. Code 3900, *Delaware Regulations Governing Wildlife*, to wit: Section 1.0 (Definitions); Section 2.0 (Method of Take); 4.0 (Seasons); 7.0 (Deer); and 23.0 (Non-Native/Invasive Wildlife) to enable DNREC to (1) create a definition for the terms "Cable Restraint", "Foothold Trap", "Jaw Spread", and "Waterline"; (2) require written permission before trapping on private or public property; (3) make it unlawful to set traps near exposed meat to prevent capture of raptors; (4) make it unlawful to tend or disturb another person's traps without their permission; (5) prohibit the use of toothed or serrated jawed foothold traps; (6) define the types and sizes of foothold traps permitted to be set both above and below the waterline; (7) allow the use of foot encapsulating traps; (8) require identification tags on all trap types; (9) set a maximum height in which cable restraints may be set above the ground; (10)

establish a fox trapping season; (11) authorize a new method in which hunters can validate a harvested deer; (12) make it unlawful to possess a live coyote or nutria without a permit, establish hunting and trapping seasons for coyotes, and establish a trapping season for nutria; (13) require reporting of harvested coyotes and nutria; (14) make it unlawful to release swine into the wild, require individuals to notify the State if swine escape and cannot be recaptured, and make it illegal to kill feral swine unless authorized by the Division; and (15) make it illegal to recreationally hunt feral swine or charge a fee to hunt feral swine.

The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 DE Admin. Code 3900, *Delaware Regulations Governing Wildlife*, pursuant to 7 Del. C. §§102-103, 7 Del.C. §§801-802, and 7 Del. C., Chapter 60.

Comment was received by the Department regarding this proposed promulgation, and the same will be discussed in detail below. 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; (2) fifteen documents introduced at the public hearing held on September 4, 2013, and marked by this Hearing Officer accordingly as Department Exhibits 1-15; (3) numerous written comments submitted from the public at the time of the aforementioned public hearing, as follows: from Peter S. Martin, marked accordingly as “Martin Exh. #1”; from Andrew Martin, marked accordingly as “Martin Exh. #2”; from George Roof, marked accordingly as “Roof Exh. #1”; from Charles P. West, II, marked accordingly as “West Exh.#1”; from Tom Spangler, President, Delaware National Wild Turkey Federation Board, marked accordingly as “Spangler Exh. #1”; from Kate Hackett, Executive Director, Delaware Wild Lands, marked accordingly as

“Hackett Exh. #1”; from Amy Roe, Ph.D., Conservation Chair, Delaware Chapter of the Sierra Club, marked accordingly as “Sierra Club Exh. #1”; from Brenna Goggin, Environmental Advocate, and Brian Winslow, Executive Director, Delaware Nature Society, marked accordingly as “DNS Exh. #1”; and from Hettie Brown, Delaware State Director, The Humane Society of the United States, marked accordingly as “Humane Society Exh. #1”; (5) a voluminous amount of individual public comments received subsequent to the public hearing of September 4, 2013, but prior to the close of the hearing record on September 19, 2013; and (6) the Technical Response Memorandum from responsible staff of the Department’s Division of Fish & Wildlife, dated December 3, 2013, and received by this Hearing Officer on December 4, 2013. The Department’s persons primarily responsible for the drafting and overall promulgation of these proposed amendments, Joe Rogerson (Deer and Furbearer Biologist), Rob Hossler (Program Manager, Species Conservation and Research), Eugene Moore (Wildlife Section Administrator), and David Saveikis, Director of the Department’s Division of Fish & Wildlife, all developed the record with the relevant documents in the Department’s files.

Subsequent to the submission of the Department’s exhibits into the record at the hearing held on September 4, 2013, the Department proceeded to offer its presentation for the benefit of the record, which contained a brief background on the species at issue in this matter, and a very thorough overview of the regulatory process undertaken by the Department at this time, to provide a greater understanding of the same by those members of the public in attendance that evening.

Following the Department’s presentation regarding each of these affected Sections, questions and comments were received from the general public who were in attendance at the aforementioned public hearing. In each case, the Department took great care to fully respond to

the questions raised by the public, providing clarity to the purpose of the amendments at issue and answering questions to further the understanding of those in attendance that evening. The hearing record remained open following the conclusion of the hearing, to allow for additional public comment regarding this promulgation to be submitted to the Department. The record formally closed with respect to additional public comment being received by the Department in this matter at close of business on September 19, 2013.

It should be noted that the number of individual public comments submitted in this matter was very extensive. Nearly 1,000 pages of written material and comments were received by the Department and included as part of the hearing record prior to the close of the record on September 19, 2013. A majority of comments were received from Delawareans, but comments were also received by the Department from around the United States (even as far away as Alaska). Nearly all of the comments focused on coyote management and/or trapping in general, while only a few comments pertained to the other proposed changes (i.e., red foxes, deer tags, feral swine, and nutria management).

Following the closing of the hearing record with regard to public comment, the Department's Division of Fish & Wildlife initiated an exhaustive review of each and every comment that had been received, and began to prepare its Technical Response Memorandum ("TRM") regarding said comments for inclusion into the record developed in this matter. In its TRM, dated December 3, 2013, the comments and concerns about this proposed promulgation received by the Department were carefully addressed and grouped by general topic area, and then fully addressed by the Division of Fish & Wildlife.

Following the discussion of each subject matter within the TRM, the Division of Fish & Wildlife offered its recommendation as to what the position of the Department should be with respect to each issue. In most instances, the Division believed that no changes to the Department's proposed amendments were warranted. There were, however, four specific instances which, in light of the meritorious comment received, the Division has proposed to *revise* from its initial proposed amendments, in order to provide additional clarity with regard to the original intent of the proposed amendments and improve upon their intent, as well as to accommodate other meritorious suggested changes. It is the Division's position that these proposed *revisions* to the Department's amendments to 7 DE Admin. Code 3900 are not substantive in nature, and thus no additional vetting of the proposed regulatory amendments is necessary at this time.

The proposed *revisions* to the Department's initial proposed regulation amendments are as follows:

- (1) **Coyote Hunting Season** -- The Division received numerous comments that the initial proposed coyote hunting season of November 1 through the last day of February should be extended to a longer time period. The Division recognizes the recreational opportunities and benefits of a longer hunting season within our existing hunting season framework, and is proposing the following modification to 23.1.1.3 Non-Native Wildlife to extend the coyote hunting season by an additional two months, as follows:

23.1.1.3 Hunting Season. Coyotes may be hunted and harvested from *September 1* through the last day of February.

(2) **Relaxing lock definition** -- The Division received numerous comments suggesting a definition was needed for a “relaxing lock” in associated with the use of cable restraints. The Division agrees a definition within the regulation itself will provide clarity on the use of these trapping devices, and is therefore proposing the following definition be added to 1.0 Definitions:

“Relaxing Lock” shall mean a device installed on a cable restraint that allows the loop to release constriction pressure on the captured animal when the cable is not taut and the animal stops pulling.

(3) **Use of exposed meat as bait in box traps** -- The Division’s initial proposed regulations would establish that it shall be unlawful to bait a trap with meat or animal product visible from above and within 10 feet of a trap in an effort to minimize the chance of capturing raptors or vultures that can be inadvertently captured when they attempt to consume the bait. This regulation was directed towards foothold traps and cable restraints and several commenters asked if this prohibition of exposed bait near a trap would apply to box traps. Because the capture of raptors or vultures within a box trap is very unlikely, and because the intent of the regulation was for foothold traps and cable restraints, the Division is proposing the following modification to 2.1.10 Method of Take to provide clarity on its intent:

2.1.10 It shall be unlawful to bait a trap with meat or animal products, *except box/cage traps*, if the bait is visible from above and within 10 feet of the trap. The use of animal fur or feathers without any attached animal tissues is not restricted.

(4) **Use of laminated jawed traps** -- The Division's initial proposed regulations would establish that all foothold traps set above the waterline must be have padded or offset jaws, in an effort to improve capture effectiveness and efficiency and reduce animal injury. Several commenters asked if laminated jaw traps would be permitted, as they function similarly to padded jaw traps by increasing the surface area of the trap jaw on a trapped animal's foot, thereby improving capture effectiveness and efficiency while reducing animal injury. Because the use of laminated jaw traps would be consistent with the intent of the regulation (increased capture efficiency and humanness), the Division is proposing the following modification to 2.4.1 Foothold Traps to include laminated jaws as an acceptable foothold above the waterline:

2.4.1 Notwithstanding statutes § 703 and 788 of Title 7, It shall be unlawful for any person to set a leghold foothold trap at any time in this State, except from December 1 through March 10 (March 20 on embanked meadows) in New Castle County and December 15 through March 15 in Kent and Sussex counties. The use of toothed or serrated jawed traps is prohibited. All foothold traps set above the waterline must have padded, *laminated* or offset jaws, with the exception being that coil-spring traps with a jaw spread of 4 inches or less and long-spring traps with a jaw spread of 4 ½ inches or less do not need to be padded, *laminated* or have offset jaws.

For the Secretary's review, and in order for the Secretary to gain a thorough understanding of this proposed promulgation, a copy of the above-referenced proposed *revised* amendments is attached hereto as Appendix "A", and the same is expressly incorporated into this Hearing Officer's Report at this time. Furthermore, a copy of the Division of Fish & Wildlife's aforementioned Technical Response Memorandum is attached hereto as Appendix "B", and the same is expressly incorporated into this Report as well. It should be noted that the Department adhered to all appropriate Delaware statutes and the regulatory development process in this matter, and that the Department has met the required public notice obligations regarding these proposed amendments. It should also be noted that the Department has reviewed this proposed promulgation 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.

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 *revised* amendments to 7 DE Admin. Code 3900, *Delaware Regulations Governing Wildlife*, as noted above. Accordingly, I recommend promulgation of these proposed amendments in the customary manner provided by law.

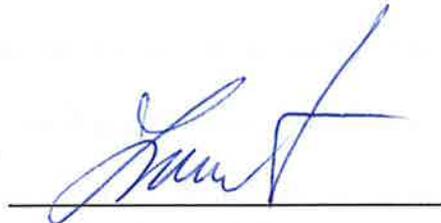
Further, I recommend the Secretary adopt the following findings and conclusions:

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 all proceedings in a manner required by the law and regulations;
4. The Department held its 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 the proposed *revised* regulatory amendments to 7 DE Admin. Code 3900, *Delaware Regulations Governing Wildlife*, will enable Delaware to (1) properly address the management of non-native wildlife species such as coyotes, nutria, and feral swine; (2) accommodate the different trapping techniques and tools used for management of these non-native species; (3) address issues identified by the public as improvements in the science of furbearer management; (4) promulgate revisions to Delaware's existing deer tagging procedure (which had been under consideration for some time); and (5) further the Department's ongoing initiative to increase its regulatory efficiency agency wide;
7. The Department has reviewed these proposed *revised* regulatory amendments 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;
8. The Department's aforementioned proposed *revised* regulatory amendments concerning *Delaware Regulations Governing Wildlife*, as published in the August 1, 2013 *Delaware Register of Regulations* and as subsequently *revised* and 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

9. The Department shall submit the proposed *revised* regulation 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 regulations require, and as the Department determines is appropriate .



LISA A. VEST
Public Hearing Officer

APPENDIX “A”

Title 7 Natural Resources and Environmental Control

3900 Wildlife

3000 Division of Fish and Wildlife

3900 Wildlife

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Definitions

1.0 Definitions

1.1 For purposes of Regulations 1.0 through 23.0, the following words and phrases shall have the meaning ascribed to them, unless the context clearly indicates otherwise:

“Administered by the Division” shall mean owned, leased or licensed by the Division.

“Antlered Deer” shall mean any deer with one or more antlers three inches long or longer, measured from the base of the antler where it joins the skull to the tip of the antler following any curve of the antler.

“Antlerless Deer” shall mean any deer that has no antlers or antlers less than three inches in length.

“Bait” shall mean any nontoxic food material, compound or mixture of ingredients which wildlife is able to consume.

“Baited Field” shall 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.

“Black Powder” shall mean a manufacturer’s approved muzzleloading propellant.

“Cable Restraint” formerly referred to as “snare”, shall be considered a trapping device made of stranded steel cable with a minimum diameter of 5/64 inches. Cable restraints must be equipped with a relaxing-type lock. The cable may not exceed 7 feet in length from the anchor point to the relaxing lock and must be equipped with at least one swivel device, which allows for 360° rotation, between the loop and the anchor. The cable restraint must have stops affixed to the cable to ensure that the cable that makes up the loop may not have a circumference greater than 38 inches when fully open, or a circumference less than 6 ¼ inches when fully closed. Cable restraints with a maximum loop circumference of 12 ½ inches do not require cable stops. Cable restraints must be maintained in good condition so that all components operate properly.

“Deer” shall mean white-tailed deer (*Odocoileus virginianus*) and/or Sika deer (*Cervus nippon*).

“Director” shall mean the Director or Acting Director of the Division.

“Division” shall mean the Division of Fish and Wildlife of the Department.

“Established Blind” shall mean a structure or pit constructed for the purpose of hunting migratory waterfowl by a landowner on his or her property or by another person with the permission of the landowner or the landowner’s duly authorized agent.

“Established Road” shall mean a road maintained for vehicular use by the Division and designated for such use by the Division on current wildlife area maps.

“Foothold Trap” formerly referred to as “leghold trap”, shall refer to a type of trap with a mechanism that is designed to catch and hold a mammal by one of its feet or legs.

“Jaw Spread” shall mean the distance between the inside of both jaws, when measured across the trap jaws on a line perpendicular to a line drawn through the jaw pivot points when the trap is in the set position.

“Liberated Game” shall mean cottontail rabbits and game birds, including bobwhite quail, mallard duck, chukar and pheasant released pursuant to § 568 of Title 7.

“Loaded Muzzle-Loading Rifle” shall mean the powder and ball, bullet or shot is loaded in the bore. A muzzle-loading rifle shall not be considered loaded if the cap, primer, or priming powder (in a flintlock) is removed and:

The striking mechanism used to ignite the cap, primer or priming powder is removed or rendered inoperable; or

The rifle is enclosed in a case.

“Lure” shall mean any mixture of ingredients, element or compound that attract wildlife, but the wildlife is unlikely to consume.

“Longbow” shall mean a straight limb, reflex, recurve or compound bow. All crossbows or variations thereof and mechanical holding and releasing devices are expressly excluded from the definition.

“Nongame Wildlife” shall mean any native wildlife, including rare and endangered species, which are not commonly trapped, killed, captured or consumed, either for sport or profit.

“Possession” shall mean either actual or constructive possession of or any control over the object referred to.

“Quality Buck” shall mean an antlered deer with an outside antler spread of at least 15 inches. This measurement is taken across the outside of the main beams at their widest point; this measurement’s path must be perpendicular to the center line of the skull and parallel to the top of the skull plate.

“Refuge” shall mean 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.

“Relaxing Lock” shall mean a device installed on a cable restraint that allows the loop to release constriction pressure on the captured animal when the cable is not taut and the animal stops pulling.

“Roadway” shall mean any road, lane or street, including associated right-of-ways, maintained by this State or any political subdivision of this State.

“Season” shall mean 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” shall include any 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.

“Waterline” shall refer to beneath the surface of the water or below the mean high tide line in an area ordinarily subject to the rise and fall of the tide.

“Wildlife” shall mean any member of the animal kingdom, including without limitation, any amphibian, arthropod, bird, mammal or reptile.

3 DE Reg. 289 (8/1/99)

3 DE Reg. 1738 (6/1/00)

11 DE Reg. 334 (09/01/07)

14 DE Reg. 52 (07/01/10)

15 DE Reg. 1505 (04/01/12)

Title 7 Natural Resources and Environmental Control 3900 Wildlife

3000 Division of Fish and Wildlife

3900 Wildlife

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Method of Take

2.0 Method of Take

(Penalty Section 7 Del.C. §103(d))

2.1 General.

Unless otherwise provided by law or regulation of the Department, it shall be unlawful to hunt any protected wildlife with any weapon or firearm other than a longbow or shotgun (10 gauge or smaller), except that:

2.1.1 Crossbows may be used during all deer seasons;

2.1.2 A muzzle-loading rifle with a barrel length of at least twenty inches and loaded with black powder may be used to hunt deer during muzzleloader and shotgun deer seasons;

2.1.3 A .22 caliber rimfire pistol may be used to hunt raccoons and opossums and to take wildlife lawfully confined in a trap;

2.1.4 A hook, spear or gig may be used to take frogs; and

2.1.5 Snapping turtles may be taken by hand or by using a spear, gig, fyke net or turtle trap. Turtle traps can have only one throat or funneling device.

2.1.6 A single shot antique or authentic reproduction black powder Sharps rifle of 45 to 60 caliber shall be lawful for use during shotgun deer seasons using paper patched bullets.

2.1.7 No person shall place in the field any set or unset equipment associated with the trapping of game animals until the opening day of any state approved trapping season.

2.1.8 Any person who sets or makes use of any trap, cable restraint or other approved wildlife capture device during any lawful trapping season, shall remove all trapping equipment by the last day of the approved trapping season.

2.1.9 It shall be unlawful to set a trap on public or private property without first acquiring written permission from the landowner or managing agency and having said permission in possession while tending traps.

2.1.10 It shall be unlawful to bait a trap with meat or animal products, except box/cage traps, if the bait is visible from above and within 10 feet of the trap. The use of animal fur or feathers without any attached animal tissue is not restricted.

2.1.11 Without first acquiring specific advance permission, it shall be unlawful for any person other than the rightful owner of a trap, to move, take, or damage any trap, or take, or attempt to take, wildlife from any trap.

2.2 Archery and Crossbow.

2.2.1 General. No person shall use or have in his or her possession, while hunting, any: poison arrow, arrow with and explosive tip, or any longbow with a minimum pull less than 35 pounds.

2.2.2 Crossbows used for deer hunting must have a minimum pull weight of 125 pounds, be manufactured after 1980, and have a mechanical safety. Crossbows may be equipped with a scope.

2.2.2.1 It shall be unlawful to transport a crossbow on or within any vehicle while the crossbow is in the cocked position.

2.3 Hunting from Boats.

2.3.1 Distance from Blinds. During the season for the hunting of migratory waterfowl, it shall be unlawful for any person to hunt from a boat of any kind that is within 1500 feet of an established blind, except that:

2.3.1.1 Any person may use a boat to tend lawfully set traps for fur-bearing wildlife;

2.3.1.2 Any person may retrieve crippled waterfowl by the use of a boat in accordance with federal regulations;

2.3.1.3 Any person may use a boat for transportation to and from an established blind lawfully used by such person;

2.3.1.4 Any person may hunt from a boat that is firmly secured and enclosed in an established blind.

2.3.2 Notwithstanding the provisions of subsection 2.3.1 of this section, any person may hunt migratory waterfowl within 1500 feet of an established blind, from a boat, with permission of the blind owner.

2.3.3 Gunning Rigs.

2.3.3.1 During the season for hunting migratory waterfowl, it shall be unlawful for any person to hunt within 900 feet of the shoreline (high tide line) of the Delaware River and Bay, between the Appoquinimink River and the Smyrna River, without written permission of the closest adjoining landowner(s).

2.3.3.2 During the season for hunting migratory waterfowl, it shall be unlawful for any person to hunt within 1500 feet of the shoreline (high tide line) of the Delaware River and Bay, between the Smyrna River and the Murderkill River, without written permission of the closest adjoining landowner(s).

2.3.4 Tender Boats. It shall be unlawful for tender boats servicing gunning (layout) rigs to be further than 1500 feet from the rig or to conduct any activity, except to pick up downed birds or service the rig.

2.3.5 During the season for hunting migratory waterfowl, it shall be unlawful for any person to hunt from a boat, or a floating or fixed blind in the Little River in areas bounded on both sides by land administered by the Division, except as permitted in writing by the Director.

2.4 Foothold Traps.

2.4.1 Notwithstanding statutes § 703 and 788 of Title 7, it shall be unlawful for any person to set a foothold trap at any time in this State, except from December 1 through March 20. The use of toothed or serrated jawed traps is prohibited. All foothold traps set above the waterline must have padded, laminated or offset jaws, with the exception being that coil-spring traps with a jaw spread of 4 inches or less and long-spring traps with a jaw spread of 4 ½ inches or less do not need to be padded, laminated or have offset jaws.

2.4.2 It shall be unlawful for any person to set foothold traps with a jaw spread larger than 6 ½ inches above the waterline. The jaw spread of traps set below the waterline shall not exceed 7 ¼ inches.

2.4.3 It shall be unlawful for any person to set or make use of any foothold, except coil-spring traps with a jaw spread of 4 inches or less and long-spring traps with a jaw spread of 4 ½ inches or less, without first permanently attaching a metallic tag on each trap, bearing:

2.4.3.1 The words "Trapping License, Delaware", the number of the trapping license issued to the owner of the traps and the year of issuance; or

2.4.3.2 The owner's name and address.

2.4.4 When information is furnished to the Division from the owner, tenant or sharecropper of any land that any species of wildlife is detrimental to crops, property or other interests on land on which he or she resides or controls, upon investigation, the Division may issue a permit to such person or his or her

agent for the use of foothold traps to control said species of wildlife. Said permit may be issued at any time of the year.

2.4.5 The setting of each trap in violation of this section shall be a separate offense.

2.4.6 Foot encapsulating traps shall be considered foothold traps.

2.5 Gray Squirrel.

Hunting gray squirrels with a .17 through .22 caliber rimfire or pellet firearm with a rifled barrel, or muzzle-loading rifle not larger than .36 caliber is permitted south of the Chesapeake and Delaware Canal.

2.6 Muskrats.

It shall be unlawful for any person to shoot muskrats at any time, except with written permission of the Director.

2.7 Otters.

Each otter trapped in Delaware must be tagged by an authorized representative of the Division. Each otter sold in Delaware or shipped out of the State must be tagged in accordance with the requirements of the Convention on International Trade in Endangered Species.

2.8 Red Fox.

2.8.1 Red foxes may be killed or trapped in accordance with § 788 of Title 7 and the regulations found within this Section with the following: longbow and crossbow, shotgun, rimfire rifle or centerfire rifle up to .25 caliber, or a muzzle-loading rifle, foothold trap, cable restraint, or box trap.

2.8.2 Notwithstanding subsection 2.8.1 of this section, during any deer firearms season, it shall be unlawful to hunt red fox with any firearm that is not also legal for deer hunting.

2.8.3 Notwithstanding subsection 2.8.1 of this section, it shall be unlawful to kill a red fox that is being pursued by dogs.

2.9 Snapping Turtles

2.9.1 Turtle traps must have either an escape hole below water measuring a minimum of 7.5" in all directions or floats inserted inside the trap or attached to the trap or be set in such a way so that the trap provides sufficient breathing space for all captured turtles at all times.

2.9.2 Each trap shall be marked with a metallic tag bearing the trapper's name and address. The tag shall be attached to the trap in a manner that allows it to remain visible, at all times.

2.9.3 All turtle traps must be lifted and emptied of catch at least once every 24 hours.

2.9.4 An annual permit must be obtained from the Division in order to trap snapping turtles. This permit is free.

2.10 Cable Restraints

2.10.1 It shall be unlawful for any person to set or make use of any cable restraint without first permanently attaching a metallic tag on each cable restraint, bearing:

2.10.1.1 The words "Trapping License, Delaware", the number of the trapping license issued to the owner of the traps and the year of issuance; or

2.10.1.2 The owner's name and address.

2.10.2 It shall be unlawful to set a cable restraint with the bottom of the loop any higher than 12 inches above the ground.

2.11 Box/Cage Traps

2.11.1 It shall be unlawful for any person to set or make use of any box/cage trap without first permanently attaching a metallic tag on each trap, bearing:

2.11.1.1 The words "Trapping License, Delaware", the number of the trapping license issued to the owner of the traps and the year of issuance; or

2.11.1.2 The owner's name and address.

3 DE Reg. 289 (8/1/99)

6 DE Reg. 536 (10/1/02)

11 DE Reg. 334 (09/01/07)

14 DE Reg. 52 (07/01/10)

15 DE Reg. 1505 (04/01/12)

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Seasons

4.0 Seasons

(Penalty Section 7 Del.C. §103(d))

4.1 Season Dates.

Hunting and trapping season dates will be published each year in an annual publication entitled "Delaware Hunting and Trapping Guide."

4.2 General.

It shall be unlawful for any person to hunt those species of wildlife for which a season is designated at any time other than during that season.

4.3 Protected Wildlife.

4.3.1 Unless otherwise provided by law or regulation of the Department, it shall be unlawful for any person to hunt any species of protected wildlife.

4.3.2 It shall be unlawful for any person to sell, transport or possess any species of protected wildlife, except when:

4.3.2.1 Otherwise provided by law or regulation of the Department; or

4.3.2.2 The wildlife was lawfully taken outside of this State in accordance with the laws or regulations of the state or nation where the wildlife was taken.

4.4 Beaver.

4.4.1 Unless otherwise provided by law or regulation of the Department, it shall be unlawful for any person to hunt or trap beaver during any period of the year, however, from December 1 through March 20, landowners (or their agents) may take up to eight beavers from their property without a permit, provided the beavers are causing crop or property damage.

4.4.2 Beaver hides and the meat of lawfully taken beaver harvested anywhere within or outside of Delaware may be sold.

4.5 Bullfrogs.

4.5.1 Season. Bullfrogs may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of bullfrogs: from May 1 through September 30.

4.5.2 Limit. It shall be unlawful for any person to take more than twenty-four (24) bullfrogs in any one day.

4.5.3 License. A hunting or fishing license is required to take bullfrogs.

4.6 Crows.

It shall be unlawful for any person to hunt common crows during any period of the year, except Thursdays, Fridays and Saturdays between and including the fourth Thursday of June and the last Saturday of March, unless said person holds a valid depredation permit. The hunting of common crows is restricted only by the provisions of federal regulations pertaining to the taking of common crows. Crows may be taken without a permit when committing damage or about to commit damage.

4.7 Gray Squirrel.

4.7.1 Season. Gray squirrel may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of gray squirrel: from September 15 (September 14, if September 15 is a Sunday) through the first Saturday in February. Squirrel hunting shall be unlawful

during the November deer firearms season. When squirrel season overlaps with a firearms deer season, squirrel may be hunted when hunter orange is displayed in accordance with § 718 of Title 7.

4.7.2 Limit. It shall be unlawful for any person to take more than six gray squirrels in any one day.

4.8 Opossum.

The opossum may only be hunted or trapped during the lawful season to hunt or trap raccoons.

4.9 Pheasant.

4.9.1 Season. Male pheasant may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of pheasant: from the Monday that immediately precedes Thanksgiving through the first Saturday in February, provided that during a deer firearms season hunter orange is displayed in accordance with §718 of Title 7.

4.9.2 Female Pheasant. It shall be unlawful for any person to hunt or possess any female pheasant at any time, except as permitted on game preserves, by licensed game breeders or as otherwise permitted by law.

4.9.3 Male Pheasant Limit. It shall be unlawful for any person to hunt or possess more than two (2) male pheasants in any one day during the pheasant season, except as permitted by law.

4.9.4 Game Preserves. Nothing in this regulation shall be construed so as to limit the number or sex of pheasants that may be harvested by any one person on licensed game preserves.

4.10 Quail.

4.10.1 Season. Bobwhite quail may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of bobwhite quail: from the Monday that immediately precedes Thanksgiving through the first Saturday of January, provided that during a deer firearms season hunter orange is displayed in accordance with § 718 of Title 7.

4.10.2 Limit. It shall be unlawful for any person to take more than six (6) quail in any one day.

4.11 Rabbit.

4.11.1 Season. Rabbits may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of rabbits: from the Monday that immediately precedes Thanksgiving through the last day of February or the last Saturday of February if February ends on a Sunday provided that during a deer firearms season hunter orange is displayed in accordance with § 718 of Title 7.

4.11.2 Limit. It shall be unlawful for any person to take more than four (4) rabbits in any one day.

4.12 Raccoon.

4.12.1 Trapping Season. Raccoon may be trapped in accordance with the statutes and regulations of the State of Delaware governing the trapping of raccoon: from December 1 through March 10 (March 20 on embanked meadows) in New Castle County; and from December 15 through March 15

in Kent and Sussex counties. The season is open throughout the year on private land, except on Sundays, in eastern New Castle and Kent counties pursuant to § 786 of Title 7 and Section 4(b) of WR-2.

4.12.2 Hunting Season. Raccoon may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of raccoon: from September 1 (September 2, if September 1 is a Sunday) through October 31 for chase only whereby it shall be unlawful to kill raccoon and opossum; from November 1 through the last day of February; and from March 1 through March 31 for chase only whereby it shall be unlawful to kill raccoon and opossum. The season is open throughout the year on private land in eastern New Castle and Kent counties, except on Sundays, pursuant to § 786 of Title 7.

4.12.3 Notwithstanding subsection 4.3.2 of this section, it shall be unlawful for any person to hunt raccoon or opossum during any period when it is lawful to hunt deer with a firearm, except that it shall be lawful to hunt raccoon from 7:00 p.m. until midnight during the December and January firearm deer seasons.

4.13 Red Fox.

4.13.1 Harvest Season. Red fox may be killed in accordance with the statutes and regulations of the State of Delaware governing the hunting of red fox: from November 1 through the last day of February, excluding Sundays. Notwithstanding the foregoing, red foxes may be killed in accordance with Section 8 of WR-2 and § 788 of Title 7.

4.13.2 Trapping Season. Red fox may be trapped with foothold, cable restraint, or cage/box traps from December 1 through March 10.

4.14 Ruffed Grouse.

It shall be unlawful for any person to hunt for ruffed grouse during any period of the year.

4.15 Snapping Turtles.

4.15.1 Season. It shall be unlawful for any person to hunt for snapping turtles during any period of the year, except between and including June 15 and May 15.

4.15.2 Size. It shall be unlawful for any person to sell, offer for sale or kill any snapping turtle with a straight-line carapace (top shell) length of less than eleven inches, measured on the curvature. This straight-line measurement is taken from the nuchal scute directly behind the turtle's head to the base of the notch where the two most posterior scutes meet over the tail.

4.16 Terrapin.

4.16.1 Season. It shall be unlawful for any person to hunt for diamondback terrapin during any period of the year, except between and including September 1 and November 15.

4.16.2 Limit. It shall be unlawful for any person to take more than four (4) diamondback terrapin in any one day.

4.17 Muskrats

4.17.1 7 Day Season Extension. The Department may extend the muskrat trapping season 7 days if the Department determines that the statewide muskrat population can sustain additional harvest

and the average mean temperature for February was below 32°F and the total February snowfall exceeded 12 inches as determined by the National Weather Service station at Wilmington, Delaware.

4.17.2 14 Day Season Extension. The Department may extend the muskrat trapping season 14 days if the Department determines that the statewide muskrat population can sustain additional harvest and the average mean temperature for February was below 28°F and the total February snowfall exceeded 24 inches as determined by the National Weather Service station at Wilmington, Delaware.

3 DE Reg. 289 (8/1/99)

3 DE Reg. 1738 (6/1/00)

6 DE Reg. 536 (10/1/02)

8 DE Reg. 352 (8/1/04)

11 DE Reg. 334 (09/01/07)

13 DE Reg. 941 (01/01/10)

14 DE Reg. 52 (07/01/10)

15 DE Reg. 1505 (04/01/12)

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Deer

7.0 Deer

(Penalty Section 7 **Del.C.** §103(d))

7.1 Limit.

7.1.1 Unless otherwise provided by law or regulation of the Department, it shall be unlawful for any person to:

7.1.1.1 Kill or take or attempt to kill or take more than four antlerless deer in any license year;

7.1.1.2 Possess or transport an antlered deer that was unlawfully killed.

7.1.1.3 Possess or transport an antlerless deer that was unlawfully killed.

7.1.1.4 Kill any antlered deer without first purchasing a Delaware Resident Combination Hunter's Choice Deer tag and Quality Buck Deer Tag, a Delaware Non Resident Antlered Deer Tag, or a Non-Resident Quality Buck Deer Tag except that persons exempt from purchasing a hunting license shall be entitled to take one Hunter's Choice deer at no cost.

7.1.1.5 No hunter may harvest more than two antlered deer during a license year between July 1st and June 30th of the next calendar year.

7.1.2 For the purposes of this section, a person "driving deer" and not in possession of any weapon or firearm shall not be treated as if they are hunting deer, provided they are assisting lawful hunters.

7.1.3 It shall be unlawful for any person to purchase, sell, expose for sale, transport or possess with the intent to sell, any deer or any part of such deer at any time, except that hides from deer lawfully killed and checked may be sold. This subsection shall not apply to venison approved for sale by the United States Department of Agriculture and imported into Delaware.

7.1.4 Notwithstanding subsection 7.1.1 of this section, a person may purchase Antlerless Deer Tags for \$10 each to kill or take additional antlerless deer during the open season. Hunters may take additional antlerless deer on Antlerless Deer Damage Tags at no cost.

7.1.5 Notwithstanding subsection 7.1.1 of this section, a person may use one Quality Buck tag to take an antlered deer with a minimum outside antler spread of fifteen inches, provided the tag is valid for the season in which it is used. Hunters exempt from the requirement to purchase a hunting license must purchase a Quality Buck tag in order to take a second antlered deer in any one license year.

7.2 Tagging, Deer Harvest Report Cards, and Registering Harvested Deer.

7.2.1 Attaching Tags or Punching Deer Harvest Report Cards. Each licensed person who hunts and kills a deer shall, immediately after the killing and before removing the deer from the location of the killing, attach an approved tag to the deer or punch/cut the appropriate section of their approved Deer Harvest Report Card and record in ink the date of harvest on the tag or Deer Harvest Report Card. An approved tag shall mean an Antlerless Deer Tag or Doe Tag received with the hunting license, a Delaware Resident Quality Buck Deer Tag, a Delaware Resident Hunter's Choice Deer Tag, a Delaware Non Resident Quality Buck Deer Tag, a Delaware Non Resident Antlered Deer Tag, an Antlerless Deer Damage Tag, or an Antlerless Tag purchased in addition to the hunting license tags. Any unlicensed person not required to secure a license shall make and attach a tag to the deer that contains the person's name, license exempt number (LEN), address and reason for not having a valid Delaware hunting license or punch/cut the appropriate section of their Deer Harvest Report Card.

7.2.2 Retention of Tag. If required, the tag required by subsection 7.2.1 of this section shall remain attached to the deer until the deer is processed for consumption.

7.2.3 Registering Deer. Each person who hunts and kills a deer shall, within 24 hours of killing said deer, register their deer by phone or over the internet through systems authorized by the Division. Deer taken to a processor or taxidermist must be registered before the animal is delivered, even if this occurs within the 24-hour timeframe. After registering a deer, hunters will be given a deer registration number. This number must be recorded in ink on the approved tags or the hunter's approved Deer Harvest Report Card listed in subsection 7.2.1 of this section. It shall be unlawful to knowingly enter incorrect information when registering a deer.

7.2.4 Dressing. It shall be unlawful for any person to remove from any deer any part thereof, except those internal organs known as the viscera, or cut the meat thereof into parts, until such deer has been registered using the phone or internet system authorized by the Division.

7.2.5 Deer Registration Number. The Deer Registration number provided by the automated phone/internet system must remain with the head and/or carcass until the mount is picked up from the taxidermist or the meat is processed and stored as food.

7.3 Method of Take.

7.3.1 Shotgun. It shall be unlawful for any person to hunt deer during the shotgun season using a shotgun of a caliber smaller than 20 gauge, or have in his or her possession any shell loaded with shot smaller than what is commonly known as "buckshot."

7.3.2 Archery and Crossbow Seasons. It shall be unlawful for any person to hunt deer during the archery season or crossbow season and have in his or her possession any weapon or firearm other than a knife, a longbow or crossbow and sharpened broadhead arrows having minimum arrowhead width of 7/8 of an inch.

7.3.3 Muzzle-loading Pistols. A single shot muzzle-loading pistol of .42 caliber or larger using a minimum powder charge of 40 grains may be used to provide the coupe-de-grace on deer during the primitive firearm season.

7.3.4 Refuge in Water. It shall be unlawful for any person to shoot, kill or wound or attempt to shoot, kill or wound any deer that is taking refuge in or swimming through the waters of any stream, pond, lake or tidal waters.

7.3.5 Dogs. It shall be unlawful for any person to make use of a dog for hunting during the shotgun or muzzleloader seasons for deer (in each county), except as permitted in the hunting of migratory waterfowl from an established blind or for hunting dove, quail, raccoon or rabbit on properties closed to deer hunting with firearms during December and January.

7.4 Illegal Hunting Methods; Baiting.

It shall be unlawful for any person to set, lay or use any trap, snare, net, or pitfall or make use of any artificial light, or other contrivance or device, for the purpose of hunting deer. This subsection does not preclude the use of bait for the purpose of attracting deer in order to hunt them on private land.

7.5 Seasons.

7.5.1 Shotgun Seasons. Deer may be hunted with shotgun in accordance with the statutes and regulations of the State of Delaware governing the hunting of deer: from the Friday in November that precedes Thanksgiving by thirteen (13) days through the second Saturday succeeding said Friday; and from the Saturday that precedes the third Monday in January through the following Saturday in January.

7.5.2 Archery Seasons. Deer may be hunted with longbow in accordance with statutes and regulations of the State of Delaware governing the hunting of deer: from September 1 (September 2, if September 1 is a Sunday) through the last day of January, provided hunter orange is displayed in accordance with § 718 of Title 7 when it also lawful to hunt deer with a gun.

7.5.3 Muzzleloader Seasons. Deer may be hunted with muzzle-loading rifles in accordance with the statutes and regulations of the State of Delaware governing the hunting of deer: from the Friday that precedes the second Monday in October through the second Saturday that succeeds the Friday opening day; and from the Monday that follows the close of the January shotgun season through the next Saturday.

7.5.4 Special Antlerless Season. Antlerless deer may be hunted with a shotgun in accordance with the statutes and regulations of the State of Delaware governing the hunting of deer during all Fridays, Saturdays and Mondays in October except for during the October Muzzleloader season and the last Monday prior to the opening Friday of the October Muzzleloader season. Notwithstanding the foregoing, antlered deer may be taken with archery equipment that is legal during this October shotgun season. Antlerless deer may be hunted with shotgun in accordance with the statutes and regulations of the State of Delaware governing the hunting of deer: from the second Saturday in December through the third Saturday in December.

7.5.5 Crossbow Seasons. Deer may be hunted with crossbows in accordance with statutes and regulations of the State of Delaware governing the hunting of deer: from September 1 (September 2, if September 1 is a Sunday) through the last day of January, provided hunter orange is displayed in accordance with 718 of Title 7 when it also lawful to hunt deer with a gun.

7.5.6 Special Shotgun Season for Young and Disabled Hunters. Deer may be hunted on the first Saturday of November by disabled (non-ambulatory) hunters using a wheelchair for mobility, and hunters 10 years of age or older but less than 16 years of age (10 to 15 inclusive). Hunters 13-15 years of age must have completed an approved course in hunter training and possess a Delaware Resident or Non-Resident Junior Hunting License. Young hunters must be accompanied by a licensed non-hunting adult who is 21 years of age or older. Young hunters must be of sufficient size, physical strength and emotional maturity to safely handle a shotgun.

7.6 Carcass Importation Ban.

7.6.1 Importation. It shall be unlawful to import or possess any carcass or part of a carcass of any member of the family Cervidae (deer) originating from a state, Canadian province, country or any portion of the aforementioned jurisdictions thereof as determined by the Division, in which Chronic Wasting Disease has been found in free-ranging or captive Cervids. Notwithstanding the foregoing, the following parts may be imported into the state:

7.6.1.1 Boned-out meat that is cut and wrapped;

7.6.1.2 Quarters or other portions of meat with no part of the spinal column or skull attached;

7.6.1.3 Hides or capes with no skull attached;

7.6.1.4 Clean (no meat or tissue attached) skull plates with antlers attached;

7.6.1.5 Antlers (with no meat or tissue attached);

7.6.1.6 Upper canine teeth (buglers, whistlers, or ivories); and

7.6.1.7 Finished taxidermy products.

7.6.2 Carcass Notification. Any person who imports into Delaware any deer carcass or parts described in subsection 7.6.1 of this section and is notified that the animal has tested positive for Chronic Wasting Disease must report the test results to the department within 72 hours of receiving the notification. In order to facilitate the proper disposal of any infected material, the department may take into possession any imported carcass or carcass part of an animal if the animal has tested positive for Chronic Wasting Disease.

6 DE Reg. 536 (10/1/02)

8 DE Reg. 352 (8/1/04)

11 DE Reg. 334 (09/01/07)

12 DE Reg. 496 (10/01/08)

14 DE Reg. 52 (07/01/10)

15 DE Reg. 1505 (04/01/12)

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Non-native/Invasive Wildlife

23.0 Non-native/Invasive Wildlife

(Penalty Section 7 **Del.C.** §103(d))

23.1 Non-native Wildlife

23.1.1 Coyotes

23.1.1.1 It shall be unlawful to possess, buy, sell, barter, trade, or transfer any live coyote to or from another person unless permitted by the Director of the Division of Fish and Wildlife.

23.1.1.2 Coyotes may be killed or trapped in accordance with the regulations found within this Section with the following: longbow, crossbow, shotgun, rimfire rifle or centerfire rifle up to .25 caliber, a muzzle-loading rifle, foothold trap, cable restraint, or box trap. Notwithstanding the foregoing, coyotes may be killed in accordance with § 802 of Title 7.

23.1.1.2.1 Notwithstanding subsection 23.1.1.2 of this section, during any deer firearms season, it shall be unlawful to hunt coyotes with any firearm that is not also legal for deer hunting.

23.1.1.3 Hunting Season. Coyotes may be hunted and harvested from September 1 through the last day of February.

23.1.1.4 Trapping Season. Coyotes may be trapped in accordance with the statutes and regulations of the State of Delaware governing the trapping coyotes: from December 1 through March 10 using foothold, cable restraints, or cage/box traps.

23.1.1.5 Reporting Harvest. After harvesting a coyote, a hunter and/or trapper must report the harvest via the Division of Fish and Wildlife's established reporting system(s).

23.2 Invasive Wildlife

23.2.1 Nutria (*Myocastor coypus*)

23.2.1.1 It shall be unlawful to possess, buy, sell, barter, trade, or transfer any live nutria to or from another person unless permitted by the Director of the Division of Fish and Wildlife.

23.2.1.2 Nutria may only be trapped during the lawful season to trap muskrats. Notwithstanding the foregoing, nutria may be killed in accordance with § 802 of Title 7.

23.2.1.2.1 Any nutria captured within a trap must be killed and may not be released back into the wild.

23.2.1.3 Anyone capturing a nutria must notify the Division of Fish & Wildlife within 24 hours of the capture.

23.2.2 Feral Swine

23.2.2.1 It shall be unlawful for any person to release swine into the wild. If swine kept in captivity escape and cannot be recaptured within 72 hours the Delaware Division of Fish & Wildlife and the Delaware Department of Agriculture must be contacted.

23.2.2.2 It shall be unlawful for any person to kill feral swine without first obtaining a permit from the Division.

23.2.2.2.1 It shall be unlawful to recreationally hunt feral swine.

23.2.2.2.2 It shall be unlawful for a landowner to charge a fee for the purpose of killing feral swine.

APPENDIX “B”



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
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DIVISION OF FISH & WILDLIFE
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OFFICE OF THE
DIRECTOR

To: Lisa Vest, Hearing Officer

From: Rob Hossler, Program Manager, Species Conservation and Research
Joe Rogerson, Deer and Furbearer Biologist *JER*

Thru: David Saveikis, Division Director *[Signature]*
Eugene Moore, Wildlife Section Administrator *[Signature]*

Subject: Division of Fish and Wildlife's Technical Response to Public Comments Associated with Amendments to Wildlife Regulations 3900 – Non-Native Species, Trapping Regulations and Deer Tagging

Date: December 3, 2013

BACKGROUND

The Delaware Division of Fish and Wildlife (Division) is charged by law with the protection, management and conservation of all forms of protected wildlife within the State for all the constituents of Delaware. In July 2012, the General Assembly passed legislation establishing a new Subchapter VIII of Delaware's wildlife code authorizing the Department to designate and manage non-native wildlife species. Delaware Code §801 authorizes the Division to establish rules and regulations associated with the management of non-native wildlife species such as coyotes, nutria and feral hogs. In response to the passage of this statute the Division has developed a set of proposed regulations amending Wildlife Regulations 3900 to address the management of these non-native species. In order to properly manage several of these species, namely coyotes and nutria, the existing trapping regulations also needed to be revised to accommodate the different trapping techniques and tools used for these species. In doing so the Division also revised other aspects of the trapping regulations to address issues identified by the public as improvements in the science of furbearer management. Additionally, in an effort to add efficiency to the ongoing regulatory process, the Division also included in this proposed regulation package a proposed deer tagging change that it had been considering for some time.



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Delaware Code §802 authorizes the Department to issue a Secretary's Order specifying the times and means for which person(s) can take, harvest or capture non-native wildlife species that have the potential to become, as determined by the Department upon appropriate evaluation or investigation, seriously injurious to native wildlife or their habitat or to agriculture, domestic animals, property, or human health or safety. Although this Secretary's Order is not part of the regulation package, it is being developed in parallel with the non-native regulations since it is designed to address aspects of non-native species control beyond those being appropriately considered within the proposed regulation package.

PUBLIC COMMENT

The number of individual public comments submitted to the Division was extensive and, while individual comments were not individually counted, there were nearly 1,000 pages of written material and comments submitted to the public record. A majority of comments were received from Delawareans but comments were submitted from other states around the country as far away as Alaska. Nearly all of the comments focused on coyote management and/or trapping in general, while only a few comments pertained to the other proposed changes (i.e., red foxes, deer tags, feral swine, and nutria management). Below is breakdown of relevant comments received which pertained to trapping and/or coyote management. Individual comments may be included within more than one category if the commenter provided feedback related to multiple topics.

Public Comments	Number of Comments
Humane Society of the United States form letters which opposed year-round hunting of coyotes	227
Opposed to all hunting	58
Opposed to all trapping	105
General support for hunting and trapping of coyotes	169
Trapping Association form letters – in support of trapping but opposed to eliminating snares	121
Failure to apply 365 day hunting will cause ecosystem damage	80
Hunting/Trapping red fox and coyotes should be tied together	9
Current regulation proposed is not liberal enough	2
Landowners should be able to kill coyotes anytime	13
Secretary's Order inappropriate in availability	1
Coyotes should be referred to as "invasive species" and not "non-native"	1

Coyote Management

The opinion on how coyotes should be managed within Delaware varied widely from no harvest, to unlimited opportunities for hunters or trappers to harvest coyotes year-round, while others felt management should fall somewhere between these two dichotomies. In general, the commenters that were opposed to the harvest of coyotes (hunting or trapping) were also opposed to the killing of any wildlife and felt that all wildlife should be protected and that humans should not manage them or influence their populations. Reasons for not wanting coyote harvest included: trapping and hunting are cruel and inhumane, killing during the pupping season would cause pups to be orphaned, and nature should be allowed to function without human involvement. Additionally, a

very small number of commenters felt that coyotes should not be killed at this time because their population within our state was too low to sustain a harvest but they would consider management as an option if the population increased to levels where this activity was necessary. There were 227 “form letters” submitted on behalf of The Humane Society of the United States (HSUS) in which respondents were opposed to the unlimited harvest of coyotes and insisted that non-lethal techniques should be utilized to minimize human/wildlife conflicts. According to these respondents, lethal control of these animals “should be a last resort.” These form letters comprised the bulk of the responses associated with this management option, but similar comments were also submitted by the Delaware Council of Wildlife Rehabilitators & Educators, the Wild Dog Foundation, the Kent County SPCA, and several private individuals.

Approximately equal to the number of comments submitted relative to not allowing the harvest of coyotes, were the number of commenters that felt there should not be any restriction on the hunting of these animals. This feeling was generally driven by concerns that these animals would negatively impact native wildlife population, particularly game species (e.g., rabbits, turkeys, quail, deer, etc.), or pose significant risk to livestock producers or human safety and pets. Concerning wildlife, deer were the species over which commenters were most concerned would be negatively impacted by the presence of coyotes. This group of commenters generally felt that anything less than a year-round season to hunt coyotes would be inadequate to minimize the above risks. Aside from New Jersey, all surrounding states (Maryland, Virginia, and Pennsylvania) allow the year-round harvest of coyotes and commenters felt we should do the same. Groups that supported a year-round hunting season were the Quality Deer Management Association, Delaware Branch of the Quality Deer Management Association, Delaware Wild Lands Inc., the Delaware Branch of the National Wild Turkey Federation, Delaware State Sportsmen’s Association, Sussex County Council, members of the agricultural community, and citizens that were not affiliated with any of these larger groups to include State Representative David L. Wilson. Furthermore, several commenters requested that the proposed Secretary’s Order allowing the year-round killing of coyotes that are or have the potential to be seriously injurious to livestock, domestic animals, or human safety should be included within these Departmental Regulations rather than as a stand-alone Order. This request was largely due to concerns that this Order could be easily changed in the future if not incorporated in regulations.

Between these two spectrums were a much smaller number of comments. These commenters generally believed that coyotes should be managed and harvested, but not in an unlimited manner. They supported a season which avoided the pupping season and the potential for orphaned pups, was aligned with the current fox season and was timed to coincide with when pelts were of prime value. Comments of this nature were submitted by The Delaware Trappers Association; Bob Eriksen, Regional Director of the National Turkey Federation and former State of New Jersey wildlife biologist; the Maryland/Delaware Chapter of The Wildlife Society; Dr. Thomas Serfass, Carnivore Ecologist with Frostburg State University; the Delaware Nature Society and several of its members; and several private individuals.

Unless opposed to all coyote harvest, the overwhelming majority of commenters felt that the proposed trapping season length was adequate. A few commenters suggested that the season start two weeks earlier, November 15th as opposed to the proposed December 1st, which in their opinion would better capture the timeframe when pelts were prime and in peak condition for

sale. A few commenters requested that the coyote be classified as an invasive species rather than its current classification as a non-native species (note that Delaware Code specifically classifies the coyote as a non-native species and not as an invasive species).

General Trapping Regulations

Unless opposed to the concept of recreational trapping under any circumstance, very few comments were submitted that directly addressed the general trapping regulations other than those associated with the use of cable restraints vs. snares. Many respondents (N = 121) requested that the use of snares as currently permitted be kept in place and that trappers not be forced to switch to a cable restraint style device. If a switch was made towards using cable restraints instead of snares, one person requested that snares associated with water sets and beaver trapping continue to be allowed and cable restraints would only be required on sets placed above the waterline. Other requested changes included the development of a better definition of a “relaxing lock” within the proposed cable restraint definition, allowing box/cage traps and snares to be used within 10’ of exposed meat as bait, and allowing the use of laminate jaw style foothold traps in conjunction with offset or padded jaws in areas above the waterline.

Red Fox Trapping Season

Very few comments were submitted that specifically addressed the proposed creation of a red fox trapping season. Of those that were submitted, the strong majority were from people that supported the creation of a red fox trapping season and the overwhelming majority of people felt that the proposed trapping season length was adequate. A few comments suggested that the season start two weeks earlier, November 15th as opposed to the proposed December 1st, which in their opinion would better capture the timeframe when pelts were prime and in peak condition for sale. Reasons of support included concerns with red fox predation on native wildlife, eliminating the need for the cumbersome landowner permit system that is currently offered by the Division, and increasing trapping opportunities. Most of the comments regarding the opposition towards trapping were specifically directed towards coyote and not red fox trapping.

Deer Tag Changes

Overall, very few comments were submitted relative to the proposed change of an allocation of four antlerless deer tags when a hunter purchases a hunting license instead of two doe/female only tags and two antlerless deer tags as currently provided. All comments on this topic were from members of either the Delaware Branch of the Quality Deer Management Association or Delaware Wild Lands, Inc. and they were generally opposed to this change because of concern that hunters could significantly increase the harvest of unantlered male deer with this tag structure instead of two of the tags requiring their use on only female deer. Concerning the proposed adoption of Deer Harvest Cards in lieu of deer tags that are physically placed on a harvested deer, there was no opposition and the few comments on this subject that were received were in favor of this change.

Feral Swine

Overall, very few comments were submitted relative to the proposed prohibition on introduction or hunting of feral swine. Of the comments submitted, all but one person supported this change. The HSUS requested that the regulations go a step further and restrict people from possessing captive feral swine, Eurasian boar, razorbacks, etc.

Nutria

Overall, very few comments were submitted concerning the proposed management of nutria in Delaware and of those received nearly all commenters supported the proposed changes; however a few commenters that were opposed to killing any animal, were also opposed to the management of this species. Reasons provided for the support of the proposed nutria regulations included the prevention of damage to wetland habitats and their associated plant and animal communities due to the feeding habits of nutria and the removal of an invasive, non-native species from Delaware's landscape.

DIVISION OF FISH & WILDLIFE'S TECHNICAL POSITION

As indicated above the number of comments was voluminous, however they can be readily categorized to a few key issues with numerous associated sub-issues. The Division will address these key issues individually while also addressing the multiple sub-issues.

Coyote Management

Year Round Hunting and Trapping Season for Coyotes - The Division had proposed a four month coyote hunting season (November 1 through the last day of February, 120 days) and a 3 ½ month coyote trapping season (December 1 through March 10, 100 days). There were numerous comments requesting a 365-day hunting season, similar to that of other states. While numerous states have year-round hunting seasons for coyotes, there are also several that have a season only within the traditional fall/winter hunting season framework. For example, both New Jersey and Massachusetts offer a hunting season structure similar to the Division's proposal and the deer biologist within both states indicated the deer populations were still healthy. Additionally, surveys of several of those states with extended coyote hunting seasons have determined that the vast majority of their coyote harvest occurs during these traditional hunting seasons when hunters are out hunting other species. Most states have a limited trapping season similar to what the Division has proposed. Additionally, the proposed hunting and trapping regulations in concert with the proposed Secretary's Order will provide a 365-day period in which coyotes can be killed if identified as a serious problem to the landowner.

The Division also received numerous comments that there should be a limited hunting and trapping season or no season at all. One of the most common comments was to not allow hunting or trapping when coyotes are likely to be raising/nursing pups, which occurs during the period of March – June. Additional reasons for the hunting and trapping season framework as initially proposed by the Division include aligning the season with similar species (red fox),

which makes sense from a recreational and enforcement approach, especially with trapping where the activity has limited control on the capture of no-target species. Also having a limited hunting season will minimize potential poaching opportunities of other species, especially deer. Finally, fall/ winter seasons will promote the taking of coyotes when their pelt/fur is prime and in peak condition for sale, thereby minimizing the wanton waste of an important recreational and commercial resource.

Several comments were also made that numerous other states started with modest coyote hunting and trapping seasons and then subsequently revised them making them more liberal (such as year-round) and that Delaware should learn from these states experiences and start with more liberal coyote seasons. While the Division was familiar with the progression of season length changes among many of these nearby states, we also learned from several of these states that they thought it necessary to start with modest seasons in order to obtain information on harvest pressure and populations size of their coyote populations. This concept of a modest “data gathering” season structure is a common and creditable wildlife management technique, as it allows for a limited harvest of animals to gather population data on the distribution and abundance of a species, especially for species such as coyotes for which other non-harvest methods of gathering similar data are difficult if not impossible. Information such as harvest location, harvest method, and coyote age and gender will be gathered when these animals are reported. Once these population and distribution data are collected over several years, the Division will be in a much better position to evaluate if the season should be expanded and when such an expansion is warranted.

A few commenters expressed concern that not having a year-round hunting season for coyotes would limit or negatively impact recreational opportunities. It is the Division’s position that the proposed season creates new recreational opportunities since currently there is no open season for coyotes. While the proposed season may not maximize recreational opportunities such as a 365-day season would, as a wildlife resource agency the Division must balance this opportunity with a multitude of factors such as resource availability, species sustainability to harvest, social concerns, conflicting recreational activities, etc. For example, the hunting season for Delaware’s most popular game species, the white-tailed deer, occurs only during a 5-month period and not year-round because the Division needs to balanced hunter opportunity with deer population size, deer ecology, cultural carrying capacity, agricultural practices, hunting traditions, and competing alternative recreational opportunities. The four month coyote hunting season (November 1 through the last day of February, 120 days) that was proposed by the Division in the draft regulations is during the timeframe when most hunting for coyotes occurs (fall and winter), even among those states that have 365-day seasons. Finally, the initially proposed coyote hunting and trapping seasons would run concurrent with the existing red fox hunting season and the proposed red fox trapping season.

The earliest confirmed coyote sighting in Delaware occurred at the Prime Hook National Wildlife Refuge in 1994, indicating that coyotes have been in Delaware for at least 20 years, yet they are still an uncommon occurrence, albeit more frequently observed now than years ago. Although there is no accurate method to estimate the population size of coyotes in Delaware, based on road kill rates (1-2 coyotes removed by DelDOT annually) in comparison to other animals (deer), coyote levels are likely to be currently low, estimated ~ 50-100 animals

statewide. While estimating populations via roadkills is not common, coyotes are relatively susceptible to vehicle mortality (Van Deelen and Gosselink 2006). This relatively slow growth rate over 20 years does not indicate that Delaware's coyote population is primed for a rapid expansion; therefore, a structured season will allow the Division to collect data while the population is relatively small for justification of an expansion of the season if and when such is warranted.

It is the Division's position that a year-round coyote hunting or trapping season(s) is not appropriate considering our current population of coyotes and the fact that a more limited season(s) is within the confines of established seasons in other Mid-Atlantic States. Furthermore, biologists from the three nearby states that allow a year-round hunting season all acknowledged that most coyote harvest occurs during the fall or winter, and animals are usually harvested opportunistically while a hunter is pursuing other game, particularly deer. Few animals are harvested when hunters target coyotes specifically or at a time during the year when a hunting season is not open for another species. Based on these experiences, a coyote season within the framework of existing hunting seasons provides hunters the opportunity to harvest coyotes when most of the animals are likely to be taken regardless if the season were year-round. Additionally, because of the coyotes ability to avoid humans, it is unlikely that hunting alone will effectively manage coyote populations; therefore an aggressive trapping season is also needed for management purposes. It should be also be noted that of the 49 states that have coyotes (Delaware being the 49th), no state has been able to control their coyote population, including several Plains states that used drastic measures such as poison (cyanide), bounties, elaborate trapping mechanisms (coyote-getters), and aerial hunting. Coyotes are here to stay in Delaware and their statewide population distribution and abundance is best approached as that of management and not unattainable eradication.

Maintaining a Completely Closed Season for Coyotes - Many commenters felt that based on the current low estimated population size, that the coyote season should remain closed. It is the Division's position that, based on the now statewide expansion of the coyote population, its estimated population size within the state and within surrounding states, its reproductive fecundity, its natal dispersal range, and the anticipated initial harvest rates, that moderate hunting and trapping seasons are necessary and sustainable. Additionally, there was an increasing interest by hunters, trappers, and landowners for a harvest season, which indicated that such seasons would be widely acceptable as recreational activities. As mentioned previously, the concept of a modest season structure would allow hunters/trappers to act as data collectors through their harvest reports. This limited harvest of animals would provide population data on the distribution and abundance of coyotes, a species for which other non-harvest methods of gathering similar data are difficult if not impossible. The expected harvest from open seasons is not expected to significantly reduce the relatively low coyote population in Delaware, though their harvest is necessary to manage any unacceptable expansion and increase in the population.

Coyote Impacts on other Wildlife Populations - Many of the comments submitted expressed concerns of the impact of coyotes on wildlife populations, specifically deer. The deer population in Delaware is very robust and productive largely due to the absence of severe winters, abundance of high quality food, and low levels of mortality other than that directly attributed to humans (e.g., hunting or vehicle collisions). The impact of coyotes on deer populations is not

fully understood, in spite of many recently conducted studies. Results from these studies range from no impact on the deer population, to coyotes being less of a predator on deer than bears and bobcats (in states with those species), to coyote predation suppressing deer numbers to a level lower than desired (Campbell 2012, Kilgo et al. 2012, and Vreeland et al. 2004). The reason for these differences is still open for debate and certainly shows that the coyote/deer relationship, like all predator/prey interactions, is very dynamic and complex. Contributing factors such as alternate prey abundance, habitat composition, initial deer population size, deer reproductive ecology, weather, predator management, and numerous other considerations all influence the extent to which coyotes may or may not substantially impact the deer population.

It is the Division's position that Delaware's deer population will not likely be significantly impacted by coyotes. The Division recently (2006) completed a comprehensive study on our state's deer reproductive ecology. The project revealed that 94% of the adult females (does that are 1.5 years of age or older) were pregnant at the time of collection and the average number of fetuses per adult doe was 1.96. These two reproductive parameters indicate how productive Delaware's deer population is when one considers that nearly every adult doe will give birth to nearly two fawns every spring, potentially doubling the deer population every year.

While reproductive potential of a population is a one parameter to consider when assessing the impact of a new mortality source such as predation, the other factor to consider is the vulnerability of that population to predation. In areas where there is significant snow pack, both in depth and duration (e.g., Maine), coyotes have been found to impact adult deer population levels. Deep snow can inhibit deer in two ways, by reducing foraging opportunities which can make these animals weak and by deep snow which makes adult deer more vulnerable to coyote predation due to the heavier body weight and narrow legs of deer which slow their movement through deep snow. The average annual snowfall for Delaware is 16.9 inches and in northern Maine it can exceed 8.3 feet (7 times greater). Based on our limited amount of snowfall and how quickly it melts, it is not expected that winter weather/snow pack will make adult deer vulnerable to coyote predation in Delaware.

In areas lacking sufficient snow pack, coyote predation has been identified to be primarily limited to impacts to newborn and young fawns (less than 12 weeks of age). The primary factors that likely determine coyote impact on fawn populations are related to the timing and duration of the fawning season. The 2006 study in Delaware revealed that the fawning season in Delaware primarily occurs during a 10-day time period from the last week of May through the first week of June, during which time 80% of the fawns were born. Delaware's fawning season is very short compared to some southern states which have a much longer birth pulse, sometimes exceeding 6 weeks or even several months. Because Delaware's fawning season is very short, the window of opportunity for coyotes to find and kill these animals when they are most vulnerable to predation is also short, which minimizes the total number of fawns that can be killed on an annual basis. There have been over 20 fawn survival studies conducted across the northeast and southeast regions mostly in the United States (at least one northeast study was in southern Canada) with several others in progress, which conclude a substantial difference in fawn predation rates between the northern and southern regions. Averaging the predation rates within these regions indicates that 15.2% and 43.0% of all fawn mortality is attributed to coyote predation in the northeast and southeast, respectively. This 3-fold increase in coyote predation in the southeast is

likely linked to the extended duration of the fawning season in the south where coyotes have both sufficient time to develop search images for fawns as well as time to predate on fawns. Delaware's deer reproductive ecology is more similar to that found in the northeast and therefore it is anticipated that predation rates should also be similar to that found the northeast (e.g., Pennsylvania, 8% of fawn mortality attributed to coyotes) and be approximately 3 times less than that found in the southeast (Vreeland et al. 2004).

Delaware is the 6th most densely populated state and our associated robust deer population often leads to frequent conflicts with people (e.g., damage to landscaping, agricultural damage, vehicle collisions, Lyme disease, etc.). As such, Delaware deer population is at or above "social carrying capacity" in most regions of the state. Based on the most recent statewide deer population survey (2009), the preseason deer population was estimated at 40,067 deer with an average deer density of 57.1 deer per square mile of deer habitat. The Division's current goal is to reduce deer numbers to 40 deer/square mile of deer habitat which require the population to be reduced by 11,935 deer or by 30%. Over the past 20 years the Division has liberalized many aspects of the deer management program in an effort to reduce population growth. One such targeted approach is the implementation of two crop damage assistance programs which assist farmers with managing excessive deer numbers that unacceptably damage agricultural crops on their property. These programs are necessary because the current hunting season structure is not adequate to manage excessive, local deer populations impacting these farms. During the 2012/13 season, there were 325 landowners enrolled in these two programs with a total enrolled acreage of 185,229 acres. The Division issued 7,300 crop damage deer tags to these farmers to help reduce deer numbers, which are in addition to the four to six deer tags that each recreational hunter receives with their hunting license. One landowner, Delaware Wild Lands, who is adamantly opposed to a restricted coyote season for fear it would significantly impact their local deer population, annually receives approximately 270 antlerless deer damage tags for the 14,017 acres of land they have enrolled in our Severe Deer Damage Assistance Program. Whether coyotes will have any impact on Delaware's deer population is still open for speculation, but based on the current deer population size, its reproductive potential, our lack of severe winter weather, and the compressed fawning season in Delaware, the Delaware deer population will be certainly able to withstand and sustain any impact of additional mortality associated with increased coyote predation. One perspective of certain constituencies could be that any such increased deer mortality could be beneficial to help reduce an already overabundant deer population (Demarais and Zaiglin 2012).

Deer are not the only wildlife species for which commenters expressed concern from impact by coyotes. The continued success of the wild turkey population, which was extirpated from Delaware until the mid-1980's when the Division initiated a reintroduction effort, is of concern to many Delawareans. The impact of coyotes on wild turkeys has been examined far less than that of deer and the impact, if any, coyotes will have on wild turkeys is not known. One possible reason for the lack of studies of the impact of coyotes on turkey populations is that, to date, no other state has expressed a concern of excessive coyote predation on their turkey population. What is known from a Delaware wild turkey survival project completed in 2012 is that of the 23 radio-collared adult wild turkey hens that were killed during the two year project, 74.2% were killed by red foxes and none were killed by coyotes. Several studies have shown that red foxes are one of the wildlife species that are likely to be negatively impacted by coyotes

and that red fox populations are likely to decline. Declines are not only attributed to direct predation by coyotes on red fox, but also the coyote being a more effective forager for a variety of food resources, thereby outcompeting red foxes. It is likely that coyotes will decrease the red fox population, which may prove beneficial to wild turkeys since the primary source of wild turkey nesting mortality in Delaware by red fox would be reduced (while coyotes may also prey upon wild turkeys, their impact could be expected to be less than that of the red fox due to the coyote being a more effective forager for other food sources). Some studies have shown that an apex predator, such as the coyote, can help suppress smaller mesopredator populations (e.g., skunks, red foxes, raccoons, etc.) (Ritchie and Johnson 2009). Many of these mesopredators are common and efficient predators of ground nesting birds and their eggs, which are coincidentally not primary food sources for coyotes. It is plausible that if coyotes suppress smaller mesopredator populations, then the result could be an increase in population size and nest success of ground nesting birds due to a decrease in mesopredator numbers. This hypothesis was first formally developed in 1988, but several studies have shown this phenomenon to occur. For example, a study conducted in North and South Dakota found that in areas where coyote numbers were abundant and subsequently red fox populations were low, the nesting success of waterfowl was higher than in a nearby area where coyotes were less abundant and red fox populations were high (Sovada et al. 1995).

Concerns about coyote impacts on wildlife were not the only concern expressed by commenters, as several commenters were concerned about the impact coyotes might have on the safety of pets and humans (Gompper 2002). Coyote attacks on people can happen, but they are extremely rare. During a 30-year period (1976 -2006) there were approximately 160 coyote attacks across the United States (5.3/year) and there have only been two confirmed attacks that resulted in a fatality in North America, one in California in 1981 and one in Nova Scotia, Canada in 2009. Compared to other sources of injury, coyote attacks rank extremely low, as annually domestic dogs bite between 4.5 and 4.7 million people, resulting in approximately 30 fatalities; lightning strikes kill 55 people; and 12 people die from football related injuries. So while coyote attacks on people do occur, people are far more likely to be injured or killed from other every day activities, including their neighbor's dog, recognizing that people are more frequently and directly exposed to domestic dogs than to the shy and elusive coyote.

Coyotes do commonly attack pets, particularly cats, small dogs and backyard flocks of free-ranging poultry, but there are several actions people can take to ensure the safety of their animals, which is the same advice the Division provides to homeowners relative to depredation concerns with red foxes and raccoons.

- Do not leave cats outdoors, particularly at night
- Put small dogs on a leash or keep them within a predator-proof fence/kennel
- Make sure poultry are kept inside a pen or chicken house, particularly at night
- Do not provide readily accessible food sources near homes such as:
 - Pet food and water dishes
 - Poorly discarded trash
 - Compost piles.

A few commenters suggested that that the coyote should be defined as an “invasive species” rather than its current listing as a “non-native species.” Delaware Code specifically classifies the

coyote as a non-native species and not as an invasive species. Furthermore, an invasive species is defined in both the Federal Executive Order 13112 (1999) and the National Invasive Species Management Plan (2001) as a species that is (1) non-native (or alien) to the ecosystem under consideration and (2) whose introduction causes or is likely to cause economic or environmental harm or harm to human health. The Delaware Invasive Species Council has also adopted this definition. The coyote, although not native to Delaware, has not been shown to be economically or environmentally harmful at its current population level and distribution and has therefore been classified only as a non-native species in Delaware.

Coyote Depredation Order - Several comments suggested that the proposed regulations do not provide landowners sufficient opportunity to control coyotes on their property. While the hunting and trapping regulations are designed to manage the population of this non-native species, the “Secretary’s Order” authority established under existing Delaware Code §802 provides a responsive mechanism for coyote control outside of the hunting and trapping seasons. The Department plans to issue a Secretary’s Order preauthorizing landowners or their agent to take coyotes year-round on their property using firearms to protect livestock, domestic animals, or human safety. While several individuals requested that the Secretary’s Order be included in this regulation package, it should be noted that harvest of wildlife pursuant to regulation authority requires individuals to be a licensed hunter (or trapper), so a separate Secretary’s Order is necessary to allow landowners that are not licensed hunters to implement control measures for depredation or human safety purposes. Although this Secretary’s Order is not part of the regulation package, it was developed in parallel with the non-native wildlife regulations to specifically accommodate coyote control beyond that within the proposed regulations (i.e., a means whereby landowners can take coyotes 365 days of the year for depredation or human safety purposes). There also appears to be some confusion concerning use of this Order as many commenters suggested that the issuance of “permits” would be laborious and not timely prior to being able to harvest coyote under the Order. The proposed Secretary’s Order is a “standing” order and landowners would be pre-authorized to harvest coyote subject to prescribed conditions of the Order without the need for an individual permit. Individuals would simply be required to report any coyote killed under this order to the Division within one business day and provide information to include the location and reason for the take. This Secretary’s Order is modeled after the Division’s successful deer depredation and fox management orders and is scheduled for issuance in December with appropriate public notification and access to the Order.

It is the Division’s position that the Secretary’s Order provides a companion to the proposed regulation package that collectively and comprehensively provides for the management of the coyote population (through regulated hunting and trapping) and provides a means whereby landowners can take coyotes 365 days of the year with a firearm to protect livestock, domestic animals, or human safety.

General Trapping Regulations

Many individuals commented that they were opposed to trapping and that it was a cruel and inhumane torture; however many of these individuals were also opposed the killing of any animal regardless of the method. Although trapping is controversial, it is a strictly regulated activity for which laws and regulations are strictly enforced. In the United States, trapping is an

activity practiced on a few specific furbearing species whose populations are sustainable in their habitats. Only licensed trappers are allowed to participate and they must follow guidelines and regulations that state agencies regularly review, implement, and enforce that include restrictions on the species that may be harvested, harvest seasons, trap types, trapping methods, and areas open to trapping. Contrary to public perception, trapping is good for conservation, sustaining wildlife health and diversity and an essential component to sound furbearer management. In many cases trapping can be the most efficient and effective method of managing furbearer populations, thereby helping to minimize human-wildlife conflicts and mitigate habitat or ecological changes brought about by certain furbearer species. The Association of Fish and Wildlife Agencies, including the Delaware Division of Fish and Wildlife, endorses regulated trapping as both a wildlife management tool and an acceptable and beneficial recreational and commercial activity.

For trapping to remain as a viable management tool and recreational and commercial activity in Delaware, trapping regulations need to be periodically updated and changed to incorporate advances in trapping equipment and improvements in trapping Best Management Practices (BMPs). One recent advance is the use of cable restraints as a replacement for the device typically known as a snare. Cable restraints differ from snares in that they contain a relaxing lock mechanism which eliminates constant tension on the animal and therefore is considered more humane. The use of snares in Delaware was largely unregulated and the proposed requirement to only allow cable restraints will also establish BMPs that reduce stress and harm to captured animals as well as reduce the potential fatal capture of non-target species. These improvements include requiring trappers to use deer stops to prevent deer from being captured by the leg, relaxing locks that do not kill captured species to allow trappers to release animals they did not intend to capture (e.g., pets or non-target wildlife), and establishing a minimum cable diameter and loop height and size above the ground that will also reduce incidental captures and minimize animal stress.

Another advance in trap types are devices referred to as “foot encapsulating traps,” which are a trap specifically designed to capture raccoons and work on the premise that raccoons will typically reach inside a hole to obtain a food item. The benefit of these devices is that they virtually eliminate the chance of a non-target capture of a cat or dog or most non-target wildlife species because these animals do not have the same food searching instinct and behavior. Although these traps are a variation of the foothold trap, they are not currently legal in Delaware based on the existing definition of a foothold trap. The proposed regulation changes would make these improved devices legal for trappers to utilize.

Several other regulation changes were proposed to improve or clarify the existing trapping regulations. These included the requirement that traps not be placed within 10’ of exposed meat used as bait, which will eliminate or minimize the chance of capturing raptors or vultures that can be inadvertently captured when they attempt to consume the bait. A second change would require trappers to obtain written permission from a landowner before they can trap and all traps and cable restraints would require attached metal identification tags, except for those traps used exclusively for muskrats. This will ensure that the landowner is aware of the trapper’s activities and help protect the liability of the trapper in the rare event that a non-target animal is inadvertently captured. This requirement for all trappers and traps to have identification tags

provides consistency among trappers and aids enforcement in identifying illegally set traps. A third change would prohibit disturbing trappers' traps or removing their captured animals without permission from the trapper. This regulation was modeled after the Division's regulations concerning tending crab pots other than their own. A fourth change involves increasing the size of foothold traps allowed within areas above the waterline (e.g., upland sets on land) to provide trappers with the appropriate sized traps to capture foxes and, more importantly, coyotes since existing regulations do not allow foothold traps of sufficient size for trappers to target coyotes. The establishment of a coyote trapping season and regulations allowing appropriate size and type of traps is important in coyote management, as many states have found that trapping is a much more effective population management tool for coyotes than hunting. The size and style of traps selected in the proposed regulations were chosen based on BMPs developed by the Association of Fish and Wildlife Agencies and include a requirement that footholds set above the waterline have padded or offset jaws and that traps with toothed, or serrated jaws would not be allowed. These requirements are another management measure to minimize stress and injury to captured animals. Both padded and offset jaw traps are effectively used in all common foothold sets for furbearers, including the commonly used "dirt hole" set used for most fox and coyote trapping. Additionally, all of the proposed trapping regulation changes were vetted and approved by the Delaware Trappers Association as part of the process in developing the initially proposed regulations.

Several individuals were opposed to the elimination of snares and their replacement with cable restraints as well as several of the cable restraint setting requirements. All comments were evaluated and discussed with external technical experts and local trappers. It was determined that most of these comments were emphasizing improved capture efficiency over trap humaneness and most were from trappers who were from Maryland or trapped in Maryland where cable restraints are not required.

The use of leghold traps or foothold traps has always been controversial in Delaware as in many others states. Currently, foothold traps are only allowed for use in aquatic sets in Delaware; however if fox and coyote trapping is to be permitted, upland foothold trapping will be necessary. Because of this anticipated controversy, the Division spent significant time developing a list of trap types (padded, etc.) and sizes that would be effective, efficient and humane for these canids.

There were several requests to allow the use of larger conibear traps (body-gripping), including the #330 for use below the waterline to trap otters and beavers. The size and use of conibear traps is determined by Delaware Code §721 and would require a legislative change for larger conibear traps and is therefore not be within the purview of a regulatory change.

Red Fox Trapping Season

Several commenters requested that the trapping season for red foxes and coyotes run concurrently, which is the case for the proposed regulations. Additionally, the proposed trapping seasons for these species are also concurrent with the trapping season for other furbearing species (muskrats, mink, opossum, raccoon, otter), which will minimize incidental and illegal take that would occur if these seasons differed. Delaware is the only state in the country that

does not have an established and regulated red fox trapping season. Red fox trapping in Delaware is currently administered by the Division through a permitting process in which landowners may apply for a Fox Management Permit to trap red foxes on their property. There are currently 439 landowners that possess one of these permits and, while this permit process has been successful in achieving its goals, it has also become both burdensome for the Division to administer and an inconvenience for the landowner to apply for the permit and comply with permit requirements. The development of a regulated trapping season would help alleviate the need for many of these permits as many landowners would be able to achieve their management objectives within the season framework and would not require a special permit.

Deer Tag Changes

The proposed regulations include two changes to deer tagging requirements -- the implementation of Deer Harvest Report Cards and replacing two of the "doe tags" that hunters receive with their hunting license with two "antlerless deer tags." Regarding the Deer Harvest Report Cards, many hunters previously and outside this regulation process publicly expressed concern over the tagging requirements associated with the hunting license format change made several years ago. Most hunters receive a hunting license and associated deer tags printed on computer paper that does not hold-up under field conditions (rain and snow) and can easily be torn off the deer once the deer is removed from the harvest site. The tagging change proposed in the regulations would still require hunters to validate their harvest in the field by allowing the hunter to punch a hole on their license for the appropriate "tag" rather than attaching the tag to the deer. This change would be easier for hunters, prevent tags from being lost or damaged in the field, and allow Division Enforcement Agents to inspect hunters in the field to more accurately determine how many deer they have harvested during the season. All comments received specific to the deer harvest report cards supported the proposed changes.

Regarding deer tags that hunters receive, currently hunters are supplied with two doe tags and two antlerless deer tags when they purchase their hunting license. Antlerless deer are defined as, "any deer that has no antlers or antlers less than three inches in length." Doe tags may only be used to harvest a female deer whereas the antlerless deer tags may be used to harvest a doe, a button buck, or a small antlered buck. The purpose of the antlerless deer definition is because the Division, as well as many other state wildlife agencies, has determined that a hunter would have difficulty differentiating a doe or a buck with antlers less than three inches until they retrieved the animal after it was harvested. Under hunting conditions it would be impractical for the hunter to see "buttons" on a button buck or small spike antlers on a buck. As a result, it is confusing to many hunters when we supply them with a tag that can only be used on a doe when the Division recognizes that it is extremely difficult for hunters to differentiate a doe from a small buck under hunting conditions.

Besides this confusion with our antlerless definition, the issuance of "doe only tags" was inconsistent with other deer tags the Division issues. If a hunter fills the two doe tags and two antlerless deer tags currently provided with their hunting license, they can purchase an unlimited number of additional antlerless deer tags for \$10.00/tag, which again are "antlerless deer" tags and not "doe only" tags. This inconsistency is unnecessarily confusing. Additionally, the Division supplies farmers enrolled in our two crop damage assistance programs with over 8000

tags annually, and all of the tags provided are “antlerless deer” tags and not “doe only” tags. It is the Division’s position that the proposed replacement of the two doe tags that are provided with the hunting license with two antlerless deer tags would eliminate confusion by aligning the tagging requirements with our antlerless deer definition, as well as in provide consistency with the numerous other additional tags that the Division provides to hunters.

Several commenters from the Delaware Branch of the Quality Deer Management Association and Delaware Wild Lands, Inc. were generally opposed to the changing of the “doe only tags” tag structure because of concern that hunters could significantly increase the harvest of unantlered male deer such as button bucks. In response, the Division examined deer harvest data and of the 13,302 deer harvested during the 2012-2013 season, 1,950 (15%) of the deer were button bucks. Also of the approximately 15,437 Delaware deer hunters, only 195 filled both of their antlerless deer tags, of which only 124 (0.8%) of the hunters used both of their tags on a button buck. The remaining 71 hunters that filled both of their antlerless deer tags harvested one button buck and one other deer (e.g., adult doe or fawn doe). On the liberal assumption that the same percentage of hunters who harvested a second button buck under the existing regulations would have the same probability of harvesting a third button buck under our new proposed regulations, the statewide harvest of button bucks would be expected to increase by less than nine (9) deer annually (three/county). This very insignificant increase in button buck harvest predicted to be directly attributed to the proposed tag change supports the Division’s position that the proposed regulatory change would not significantly increase the harvest of male antlerless deer (button bucks or < 3 inch antlered deer).

As with any change the Division makes to the deer management program, whether season length, season timing, tag allocation, or tag type, the Division always monitors and evaluates any effect of the change for at least three years following the. In the unlikely event that it is determined the harvest of male antlerless deer increases significantly following the proposed regulatory change, the Division will consider changing the tagging structure to avoid such an effect.

Feral Swine

Currently, feral swine are not established in Delaware and the proposed regulations are designed to prevent them from being established within our state, especially from the intentional release to provide recreational hunting opportunities. The hunting of feral swine is of interest to some hunters, particularly in the Southeast, but the negative consequences of allowing these animals to be established far outweigh the limited hunting opportunities and associated benefits since feral swine cause millions of dollars in agricultural and wildlife habitat damage annually across the United States. During the public comment period, the Humane Society of the United States (HSUS) requested that the Department prevent the possession of common feral swine breeds (i.e., Eurasian boar, razorbacks, etc.) The Department cannot restrict the possession of swine because possession of swine is under the jurisdiction of the Delaware Department of Agriculture (DDA), but the proposed regulations are designed to prevent swine from entering the wild. Additionally, because some of the breeds HSUS listed are similar in appearance to or even used in the commercial livestock industry, enforcement would be difficult even for DDA.

Nutria

Nutria is a semi-aquatic rodent, native to South America that was introduced to the Delmarva Peninsula (Maryland) in 1943. Many of these animals escaped or were intentionally released into the wild and their impact to native wetland ecosystems has been devastating. The proposed regulations are designed to prevent nutria from becoming established within Delaware, but also enable Delaware citizens to kill and remove these destructive animals. The Federal Government has provided funding to eradicate these animals from Delmarva and these regulations are designed to assist with those efforts. Overall, most comments were in support of these regulations, except among those individual opposed to the killing of any wildlife species.

REQUESTED CHANGES TO PROPOSED REGULATIONS

Numerous meritorious public comments and suggestions on the proposed regulations were provided during the public hearing and comment period. The Division is therefore requesting the following changes to the initially proposed regulations in consideration of these public comments to help clarify the regulations and improve upon their intent and to accommodate other meritorious suggested changes. The Division's position is that these changes are not substantive in nature.

Coyote Hunting Season -- The Division received numerous comments that the proposed coyote hunting season of November 1 through the last day of February should be extended to a longer time period. The Division recognizes the recreational opportunities and benefits of a longer hunting season within our existing hunting season framework and is proposing the following modification to 23.1.1.3 Non-Native Wildlife to extend the coyote hunting season:

23.1.1.3 Hunting Season. Coyotes may be hunted and harvested from November 1 September 1 through the last day of February.

Relaxing lock definition -- The Division received numerous comments suggesting a definition was needed for a "relaxing lock" in associated with the use of cable restraints. The Division agrees a definition in regulation will provide clarity on the use of these trapping devices and is proposing the following definition to 1.0 Definitions:

"Relaxing Lock" shall mean a device installed on a cable restraint that allows the loop to release constriction pressure on the captured animal when the cable is not taut and the animal stops pulling.

Use of exposed meat as bait in box traps -- The Division's proposed regulations would establish that it shall be unlawful to bait a trap with meat or animal product visible from above and within 10 feet of a trap in an effort to minimize the chance of capturing raptors or vultures that can be inadvertently captured when they attempt to consume the bait. This regulation was directed towards foothold traps and cable restraints and several commenters asked if this prohibition of exposed bait near a trap would apply to box traps. Because the capture of raptors or vultures within a box trap is very unlikely and because the intent of the regulation was for

foothold traps and cable restraints, the Division is proposing the following modification to 2.1.10 Method of Take to provide clarity on its intent.

2.1.10 It shall be unlawful to bait a trap with meat or animal products, **except box/cage traps**, if the bait is visible from above and within 10 feet of the trap. The use of animal fur or feathers without any attached animal tissues is not restricted.

Use of laminated jawed traps -- The Division's proposed regulations would establish that all foothold traps set above the waterline must have padded or offset jaws in an effort to improve capture effectiveness and efficiency and reduce animal injury. Several commenters asked if laminated jaw traps would be permitted as they function similarly to padded jaw traps by increasing the surface area of the trap jaw on a trapped animal's foot, thereby improving capture effectiveness and efficiency while reducing animal injury. Because the use of laminated jaw traps would be consistent with the intent of the regulation (increased capture efficiency and humanness), the Division is proposing the following modification to 2.4.1 Foothold Traps to include laminated jaws as an acceptable foothold above the waterline:

2.4.1 Notwithstanding statutes § 703 and 788 of Title 7, It shall be unlawful for any person to set a leghold foothold trap at any time in this State, except from December 1 through March 10 20 (March 20 on embanked meadows) in New Castle County and December 15 through March 15 in Kent and Sussex counties. The use of toothed or serrated jawed traps is prohibited. All foothold traps set above the waterline must have padded, **laminated** or offset jaws, with the exception being that coil-spring traps with a jaw spread of 4 inches or less and long-spring traps with a jaw spread of 4 ½ inches or less do not need to be padded, **laminated** or have offset jaws.

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