



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

OFFICE OF THE
SECRETARY

89 KINGS HIGHWAY
DOVER, DELAWARE 19901

PHONE: (302) 739-4403
FAX: (302) 739-6242

Secretary's Order No.: 2016-F-0014

**RE: Approving Final Regulations to Amend 7 DE Admin. Code §3900, to wit:
Section 4.0, *Seasons*; and Section 23.0, *Non-native/Invasive Wildlife***

Date of Issuance: March 17, 2016

Effective Date of the Amendment: April 11, 2016

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

Background, Procedural History and Findings of Fact

This Order relates to proposed *revised* regulation Amendments to 7 DE Admin. Code §3900, as follows, to wit: Section 4.0, *Seasons*; and Section 23.0, *Non-native/Invasive Wildlife* ("Amendments"). The Department's Division of Fish and Wildlife ("Division") commenced the regulatory development process with Start Action Notice 2015-07 dated August 12, 2015. The Department published its initial proposed regulation Amendments in the September 1, 2015 *Delaware Register of Regulations*. The Department then held a public hearing on September 22, 2015. Consistent with 29 *Del.C.* §10118(a), the public hearing record remained open for public comment initially through October 7, 2015.

Delaware's good nature depends on you!

The purpose of this proposed regulatory promulgation is to adopt as final the aforementioned proposed Amendments to enable the Department to establish reporting requirements for gray fox taken, killed or captured (i.e., harvested), and to clarify and standardize the timeframe and methodology for reporting coyote and nutria harvests.

The aforementioned proposed Amendments were presented and thoroughly vetted by the Department at the public hearing on September 22, 2015. Members of the public attended the above referenced hearing, and comment was received by the Department concerning these proposed Amendments, both verbally at the time of the hearing and via email thereafter. Pursuant to Delaware law, the record remained open for fifteen (15) additional days subsequent to the date of the public hearing, for the purpose of receiving additional public comment. It should be noted that all proper notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

The hearing record formally closed with regard to public comment at close of business on October 7, 2015. Following the close of the hearing record for public comment on October 7, 2015, the Department's Division of Fish and Wildlife performed a thorough review of all public input that had been received up through that time and, at the request of this Hearing Officer, a Technical Response Memorandum ("TRM") was subsequently prepared by the Division in response to the same. It should be noted that all comments received pertained solely to the harvest reporting framework for gray fox; no comments were received pertaining to the harvest reporting proposals for either coyotes or nutria. The aforementioned TRM, dated October 30, 2015, discussed the extensive review of the comment received by the Division in this matter, and noted that the vast majority of

comments received were in opposition to the Department's proposal to require the reporting of harvested gray fox to the Division by the next business day following the harvest.

The Department was previously granted the authority by the 148th General Assembly to establish reporting requirements for harvested gray fox. In order to evaluate the gray fox harvest, the Department had required in its initial proposed Amendments that anyone harvesting a gray fox must report the harvest to the Division by the next business day following the harvest. Harvest reporting provides a mechanism for the Division of Fish and Wildlife to collect data on the number of gray foxes harvested, harvest location, and when such harvest is occurring. The Department's aforementioned TRM notes that many individuals who provided comment in this matter indicated that reporting harvests by the end of the next business day would be burdensome, or could result in some individuals not reporting their harvests if they were unable to report within the required short time frame. If an individual failed to report harvest within the required daily timeframe, he or she may be unwilling to file a harvest report, due to the fear of being in violation of the regulation. As such, some commenters indicated a desire to have a longer allowable time frame in which to report gray fox harvests.

As it continued its review of the hearing record in this matter, the Division then considered establishing the requested end-of-year harvest reporting requirement, and determined that, while an end-of-year harvest reporting requirement would be feasible for trappers, it would not provide complete harvest data from hunters and other individuals harvesting gray fox. The Division notes in its TRM that all licensed and registered trappers are currently sent a comprehensive voluntary Trapper Mail Survey at the end of

the trapping season, which includes questions related to the number of each species trapped by each trapper. Mandatory reporting of gray fox harvest could be performed in conjunction with the annual Trapper Mail Survey. Similar to the Trapper Mail Survey, the Division sends a Hunter Mail Survey to hunters each year, but, unlike the trapper survey, only a subset (20%) of known hunters are mailed a survey. Hunters are subsampled because of their large numbers and the cost associated with sampling such a large population. Since every hunter does not receive a survey, this method would not obtain complete harvest data from all hunters that harvest a gray fox.

As a result of its exhaustive review of the public comment received in this matter, the Division determined that a *revision* of its previously proposed harvest reporting requirement was necessary, to wit: to allow reporting gray fox harvest to occur within seven (7) calendar days of harvest (i.e., reporting within a week). This revision would, according to the Department's TRM of October 30, 2015, provide ample opportunity for individuals to report their harvests without undue burden, while still allowing the Division to collect harvest data on this species in a timely fashion. Additionally, this revision to the aforementioned proposed Amendments would not create two different reporting mechanisms for different types of gray fox harvest.

Due to the fact that the above revision constituted a substantive post-hearing change to the initially proposed promulgation which was vetted to the public at the time of the public hearing of September 22, 2015, the *revised* proposed regulatory Amendments were re-published for public review in the *Delaware Register of Regulations* on January 1, 2016. The hearing record was re-opened at that time in order to receive additional public comment, and comment was once again received by the

Department from January 1, 2016 through February 1, 2016. After the hearing record closed again for public comment on February 1, 2016, the Division of Fish and Wildlife once more performed a thorough review of all public input received to date in this matter, and, accordingly, the Department's Division of Fish and Wildlife provided this Hearing Officer with a *supplemental* TRM dated March 10, 2016. This supplemental TRM not only re-affirmed all information previously set forth in the initial TRM dated October 30, 2015, but also provided a brief summary of the second round of comments received by the Department in this matter.

Pursuant to the supplemental TRM noted above, the position of the Division of Fish and Wildlife remains that the reporting of gray foxes within seven (7) calendar days of harvest (i.e., reporting within a week) provides ample opportunity for individuals to report their harvests, and would not be an undue burden on individuals, while still providing timely reporting information for the Division that is necessary to meet the *intent* of 7 Del.C. §796, *Limitations on Harvesting Gray Fox*. Furthermore, the aforementioned proposed reporting timeframe would allow the agency to collect detailed harvest information that may be otherwise forgotten by the hunter or trapper if several weeks or months have passed since the harvest, or, if an individual harvested multiple gray foxes throughout the allowable timeframe. Thus, no additional changes to the Department's *revised* proposed Amendments to 7 DE Admin. Code §3900: Section 4.0, *Seasons*, and Section 23.0, *Non-native/Invasive Wildlife*, as published in the January 1, 2016 *Delaware Register of Regulations*, are recommended by the Division at this time.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated March 15, 2016 ("Report"). The Report documents the proper

completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed *revised* Amendments as attached to the Report as Appendix “B”.

Reasons and Conclusions

Based on the record developed by the Department’s experts and established by the Hearing Officer’s Report, I find that the proposed *revised* regulatory Amendments to 7 DE Admin. Code §3900, as follows, to wit: Section 4.0, *Seasons*; and Section 23.0, *Non-native/Invasive Wildlife*, are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed *revised* regulatory Amendments be promulgated as final.

I find that the Department’s experts in the Division of Fish and Wildlife fully developed the record to support adoption of these *revised* regulatory Amendments. The adoption of these *revised* regulatory Amendments will allow Delaware to establish reporting requirements for gray fox taken, killed or captured (i.e., harvested), and to clarify and standardize the timeframe and methodology for reporting coyote and nutria harvests;

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed *revised* Amendments to 7 DE Admin. Code §3900, Section 4.0, *Seasons*; and Section 23.0, *Non-native/Invasive Wildlife*, pursuant to 7 *Del.C.* §§788, 796, and 801;

2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Ch. 60, to issue an Order adopting these proposed *revised* regulatory Amendments as final;

3. The Department provided adequate public notice of the initial proposed regulatory Amendments and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on said Amendments, including at the time of the public hearing held on September 22, 2015, and held the record open through close of business on October 7, 2015, consistent with 29 *Del.C.* §10118(a), in order to consider public comment on these proposed regulatory Amendments before making any final decision;

4. Due to substantive changes made to the proposed regulatory language, the Department caused the *revised* proposed regulatory amendments to be re-published in the State of Delaware Register of Regulation on January 1, 2016, provided the public with an additional 30 days to comment on the same, and held the record open through close of business on February 1, 2016, in order to consider all public comment on these proposed *revised* regulatory amendments before making any final decision;

5. The Department's Hearing Officer's Report, including its established record and the recommended proposed *revised* regulatory Amendments as set forth in its Appendix "B", are hereby adopted to provide additional reasons and findings for this Order;

6. The adoption of these proposed *revised* regulatory Amendments will allow Delaware to (1) establish reporting requirements for gray fox taken, killed or captured (i.e., harvested); and (2) clarify and standardize the timeframe and methodology for reporting coyote and nutria harvests;

7. The Department has reviewed these proposed *revised* regulatory Amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104 (version applicable to all proposed regulations initially submitted to the *Delaware Register of Regulations* on or before December 31, 2015), 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 proposed *revised* regulatory Amendments, as re-published in the January 1, 2016 *Delaware Register of Regulations*, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final *revised* 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 this Order approving as final the proposed *revised* Amendments to 7 DE Admin. Code §3900, Section 4.0, *Seasons*; and Section 23.0, *Non-native/Invasive Wildlife*, 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.



David S. Small
Secretary

HEARING OFFICER'S REPORT

TO: The Honorable David S. Small
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 Regulation Amendments to 7 DE Admin. Code §3900, as follows, to wit: Section 4.0, *Seasons*; and Section 23.0, *Non-native/Invasive Wildlife***

DATE: March 15, 2016

I. BACKGROUND AND PROCEDURAL HISTORY:

A public hearing was held on Thursday, September 22, 2015, 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, as follows, to wit: Section 4.0, *Seasons*; and Section 23.0, *Non-native/Invasive Wildlife*. The Department’s 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 constituents of Delaware. Pursuant to authority recently granted by the 148th General Assembly under 7 *Del.C.* §796, “*Limitations on Harvesting Gray Fox*”, and previous authority granted under 7 *Del.C.* §801, “*Non-native Wildlife; Rules and Regulations*”, the Division has now proposed the above-referenced Amendments as referenced above.

The purpose of this proposed promulgation is to (1) establish reporting requirements for gray fox taken, killed or captured (i.e., harvested); and (2) clarify and standardize the timeframe and methodology for reporting coyote and nutria harvests. The proposed Amendments were initially

presented by the Division to Delaware's Council on Game and Fish in August of 2015, and then subsequently to the public in general at the aforementioned hearing held by the Department on September 22, 2015.

The Department has the statutory basis and legal authority to act with regard to the aforementioned proposed amendments to 7 DE Admin. Code §3900, to wit: Section 4.0, *Seasons*; and Section 23.0, *Non-native/Invasive Wildlife*, pursuant to 7 Delaware Code, §§788, 796, and 801. Numerous members of the public attended the September 22, 2015 hearing. Comment was received by the Department concerning these proposed Amendments, both verbally at the time of the hearing and via email thereafter, and the same will be discussed in greater detail below. It should be noted that all proper notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

II. SUMMARY OF THE PUBLIC HEARING RECORD:

The public hearing record consists of the following documents: (1) a verbatim transcript; (2) six documents introduced by responsible Department staff at the public hearing held on September 22, 2015, and marked by this Hearing Officer accordingly as Department Exhibits 1-6; (3) Division of Fish and Wildlife's Technical Response Memorandum ("TRM") dated October 30, 2015; and (4) Division of Fish and Wildlife's Supplemental TRM dated March 10, 2016. The Department's person primarily responsible for the drafting and overall promulgation of these proposed Amendments, Joe Rogerson, developed the record with the relevant documents in the Department's files.

As noted above, the purpose of this proposed regulatory promulgation is to establish reporting requirements for gray fox taken, killed or captured (i.e., harvested), and to clarify and

standardize the timeframe and methodology for reporting coyote and nutria harvests. The aforementioned proposed Amendments were presented and thoroughly vetted by the Department at the public hearing on September 22, 2015. As noted previously, comment was received by the Department in this matter during all phases of this promulgation. Pursuant to Delaware law, the record remained open for fifteen (15) additional days subsequent to the date of the public hearing, for the purpose of receiving additional public comment. Again, all proper notification and noticing requirements concerning this proposed promulgation were met by the Department in this matter.

Following the close of the hearing record for public comment on October 7, 2015, the Division performed a thorough review of all public input that had been received up through that time and, at the request of this Hearing Officer, a Technical Response Memorandum (“TRM”) was subsequently prepared by Mr. Rogerson in response to the same. It should be noted that all comments received pertained solely to the harvest reporting framework for gray fox; no comments were received pertaining to the harvest reporting proposals for either coyotes or nutria. The aforementioned TRM, dated October 30, 2015, discussed the extensive review of the comment received by the Division in this matter, and noted that the vast majority of comments received were in opposition to the Department’s proposal to require the reporting of harvested gray fox to the Division by the next business day following the harvest. In all, forty-five (45) comments were received from the public concerning this proposed regulatory promulgation. Of the thirty-nine (39) commenters opposed to the proposal, twenty-three (23) respondents (59%) offered an alternative reporting requirement to allow for annual gray harvest reporting. Only two (2) commenters voiced support the proposed reporting requirements. The remaining commenters

either sought additional information on the proposal, or provided feedback that was not directly related to the proposed changes.

As noted above, the Department was previously granted the authority by the 149th General Assembly to establish reporting requirements for harvested gray fox. In order to evaluate the gray fox harvest, the Department had required in its initial proposed Amendments that anyone harvesting a gray fox must report the harvest to the Division by the next business day following the harvest. Harvest reporting provides a mechanism for the Division of Fish and Wildlife to collect data on the number of gray foxes harvested, harvest location, and when such harvest is occurring. The Department's aforementioned TRM notes that many individuals who provided comment in this matter indicated that reporting harvests by the end of the next business day would be burdensome, or could result in some individuals not reporting their harvests if they were unable to report within the required short time frame. If an individual failed to report harvest within the required daily timeframe, he or she may be unwilling to file a harvest report, due to the fear of being in violation of the regulation. As such, some commenters indicated a desire to have a longer allowable time frame in which to report gray fox harvests.

Continuing with its review of the hearing record in this matter, the Division then considered establishing the requested end-of-year harvest reporting requirement, and determined that, while an end-of-year harvest reporting requirement would be feasible for trappers, it would not provide complete harvest data from hunters and other individuals harvesting gray fox. In its TRM, the Division noted that it currently sends all licensed and registered trappers a comprehensive voluntary Trapper Mail Survey at the end of the trapping season, which includes questions related to the number of each species trapped by each trapper. Mandatory reporting of gray fox harvest could be performed in conjunction with the annual Trapper Mail Survey.

Similar to the Trapper Mail Survey, the Division sends a Hunter Mail Survey to hunters each year, but, unlike the trapper survey, only a subset (20%) of known hunters are mailed a survey. Hunters are subsampled because of their large numbers and the cost associated with sampling such a large population. Since every hunter does not receive a survey, this method would not obtain complete harvest data from all hunters that harvest a gray fox.

As a result of its exhaustive review of the public comment received in this matter (which, as noted previously, was largely in opposition of the proposal for a next business day harvest reporting requirement for gray fox), the Department determined that a *revision* of its previously proposed harvest reporting requirement was necessary, to wit: to allow reporting gray fox harvest to occur within seven (7) calendar days of harvest (i.e., reporting within a week). This revision would, according to the Department's TRM of October 30, 2015, provide ample opportunity for individuals to report their harvests without undue burden, while still allowing the Division to collect harvest data on this species in a timely fashion. Additionally, this revision to the aforementioned proposed Amendments would not create two different reporting mechanisms for different types of gray fox harvest.

Due to the fact that the above revision constituted a substantive post-hearing change to the initially proposed promulgation which was vetted to the public at the time of the public hearing of September 22, 2015, the *revised* proposed regulatory Amendments were re-published for public review in the *Delaware Register of Regulations* on January 1, 2016. The hearing record was re-opened at that time in order to receive additional public comment, and comment was once again received by the Department from January 1, 2016 through February 1, 2016. After the hearing record closed again for public comment on February 1, 2016, the Division of Fish and Wildlife once more performed a thorough review of all public input received to date in

this matter, and, accordingly, Mr. Rogerson provided this Hearing Officer with the Division's *supplemental* TRM dated March 10, 2016. This supplemental TRM not only re-affirmed all information previously set forth in the initial TRM dated October 30, 2015, but also provided a brief summary of the second round of comments received by the Department in this matter.

Pursuant to Mr. Rogerson's supplemental TRM noted above, the position of the Division of Fish and Wildlife remains that the reporting of gray foxes within seven (7) calendar days of harvest (i.e., reporting within a week) provides ample opportunity for individuals to report their harvests, and would not be an undue burden on individuals, while still providing timely reporting information for the Division that is necessary to meet the *intent* of 7 Del.C. §796, *Limitations on Harvesting Gray Fox*. Furthermore, it would allow the agency to collect detailed harvest information that may be otherwise forgotten by the hunter or trapper if several weeks or months have passed since the harvest, or, if an individual harvested multiple gray foxes throughout the allowable timeframe. Thus, no additional changes to the Department's *revised* proposed Amendments to 7 DE Admin. Code §3900: Section 4.0, *Seasons*, and Section 23.0, *Non-native/Invasive Wildlife*, as published in the January 1, 2016 *Delaware Register of Regulations*, are recommended at this time.

Mr. Rogerson's supplemental TRM dated March 10, 2016 does an excellent job of identifying all of the relevant issues surrounding the Department's *revised* proposed Amendments to 7 DE Admin. Code §3900: Section 4.0, *Seasons*, and Section 23.0, *Non-native/Invasive Wildlife*, and discussing the same in a thorough and balanced manner which accurately reflects the information in the hearing record. Thus, the Department's supplemental TRM is expressly incorporated into this Report, and attached hereto for that purpose as Appendix "A".

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 Amendments to 7 DE Admin. Code §3900, as follows, to wit: Section 4.0, *Seasons*; and Section 23.0, *Non-native/Invasive Wildlife*, as noted above. Accordingly, I recommend promulgation of these proposed regulatory Amendments in the customary manner provided by law.

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

1. The Department has the statutory basis and legal authority to act with regard to the proposed *revised* amendments to 7 DE Admin. Code §3900, Section 4.0, *Seasons*; and Section 23.0, *Non-native/Invasive Wildlife*, pursuant to 7 *Del.C.* §§788, 796, and 801;

2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Ch. 60, to issue an Order adopting these proposed *revised* regulatory amendments as final;

3. The Department provided adequate public notice of the proposed regulatory amendments and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed regulatory amendments, including at the time of the public hearing held on September 22, 2015, and held the record open through close of business on October 7, 2015, consistent with 29 *Del.C.* §10118(a), in order to consider public comment on these proposed regulatory amendments before making any final decision;

4. Due to substantive changes made to the proposed regulatory language, the Department caused the *revised* proposed regulatory amendments to be re-published in the State of Delaware *Register of Regulation* on January 1, 2016, provided the public with an additional 30 days to comment on the same, and held the record open through close of business on February 1, 2016, in order to consider all public comment on these proposed *revised* regulatory amendments before making any final decision;

5. Promulgation of the proposed *revised* regulatory amendments to 7 DE Admin. Code §3900, Section 4.0, *Seasons*; and Section 23.0, *Non-native/Invasive Wildlife*, will allow Delaware to (1) establish reporting requirements for gray fox taken, killed or captured (i.e., harvested); and (2) clarify and standardize the timeframe and methodology for reporting coyote and nutria harvests;

6. The Department has reviewed these proposed *revised* regulatory amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104 (version applicable to all proposed regulations initially submitted to the *Delaware Register of Regulations* on or before December 31, 2015), and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;

7. The Department's proposed *revised* regulatory amendments, as published in the January 1, 2016 *Delaware Register of Regulations*, and as set forth in Appendix "B" 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

8. The Department shall submit the proposed *revised* regulatory amendments as final regulatory amendments to 7 DE Admin. Code §3900, Section 4.0, *Seasons*; and Section 23.0, *Non-native/Invasive Wildlife* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.



LISA A. VEST
Public Hearing Officer

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Attachments/Appendix:

Appendix A: F&W Supp. TRM (3/10/16)

Appendix B: Proposed Reg. Amendments

APPENDIX "A"

5.0 Alternative Safe Harbor to Comply with the Content Requirements of 6 Del.C. §1205C(b)

An operator of a commercial site, service, or application shall be deemed to have made the disclosures required by 6 Del.C. §1205C(b) if the operator has a privacy policy that complies with the requirements of the California Online Privacy Protection Act (CalOPPA), Cal. Bus. & Prof. Code §§22575–22579.

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

Statutory Authority: 7 Delaware Code, Sections 788, 796 and 801 (7 Del.C. §§788, 796 & 801)
7 DE Admin. Code 3900

PUBLIC NOTICE

3900 Wildlife

1. TITLE OF THE REGULATION:

3900 Wildlife - 4.0 Seasons; 3900 Wildlife - 23.0 Non-native/Invasive Wildlife

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

The Department of Natural Resources & Environmental Control (DNREC) initiated the development of regulations pertaining to establish reporting requirements for gray fox taken, killed or captured; also to ensure consistency with and to clarify the allowable timeframe and methodology for reporting coyote and nutria harvests. Reporting requirements were presented to the public in proposed form (19 DE Reg. 176 (09/01/15)) and a public hearing on the matter was held September 22, 2015 at 6:30 PM in the DNREC Auditorium, Dover, DE. The hearing record was closed on October 7, 2015. Following careful consideration of the hearing record and in response to public input received during the regulatory process, which was largely in opposition of the proposal for a next business day harvest reporting requirement, the Division is proposing to adjust its previously proposed harvest reporting requirement to rather allow reporting gray fox harvest within seven (7) calendar days of harvest (i.e., reporting within a week).

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

§788, 796 and 801, Title 7 Delaware Code

5. LIST OF OTHER REGULATIONS THAT MAY BE IMPACTED OR AFFECTED BY THE PROPOSAL:

N/A

6. NOTICE OF PUBLIC COMMENT:

No additional hearing will be held; the Department will receive written comment through February 1, 2016. Individuals may submit written comments regarding the proposed clarification to 7 DE Admin Code §3542 via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042.

7. PREPARED BY:

Rob Hossler Robert.Hossler@state.de.us (302) 739-9912

PROPOSED REGULATIONS

3900 Wildlife

(Break in Continuity of Sections)

4.0 Seasons

(Penalty Section 7 Del.C. §103(d))

(Break in Continuity Within Section)

4.13 Red Fox and Gray Fox.

4.13.1 Red Fox Hunting 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 2.8 of WR-2.0 and §788 of Title 7.

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

4.13.3 Gray Fox Harvest Reporting. All gray fox taken, killed or captured pursuant to §796 of Title 7 must be reported to the Division of Fish and Wildlife within seven (7) calendar days using its established reporting system(s).

(Break in Continuity of Sections)

23.0 Non-native/Invasive Wildlife

(Penalty Section 7 Del.C. §103(d))

23.1 Non-native Wildlife

23.1.1 Coyotes

(Break in Continuity Within Section)

23.1.1.5 Reporting Harvest. After harvesting a coyote, a hunter and/or trapper must report the harvest ~~via~~ to the Division of Fish and Wildlife's by the end of the next business day using its established reporting system(s).

23.2 Invasive Wildlife

23.2.1 Nutria (*Myocastor coypus*)

(Break in Continuity Within Section)

23.2.1.3 Anyone ~~capturing~~ harvesting a nutria must notify the Division of Fish & Wildlife ~~within 24 hours of the capture~~ by the end of the next business day using its established reporting system(s).

***Please Note: As the rest of the sections were not amended they are not being published. A copy of the regulation is available at:**

3900 Wildlife

DIVISION OF WASTE AND HAZARDOUS SUBSTANCES

Statutory Authority: 7 Delaware Code, Chapters 60 and 63; (7 Del.C., Ch. 60 and 63)
7 DE Admin. Code 1302

REGISTER NOTICE
SAN # 2015-06

1302 Regulations Governing Hazardous Waste

1. TITLE OF THE REGULATIONS:

Delaware's *Regulations Governing Hazardous Waste* (DRGHW)

APPENDIX "B"



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES &
ENVIRONMENTAL CONTROL
DIVISION OF FISH & WILDLIFE
89 Kings Highway
Dover, DE 19901

**OFFICE OF THE
DIRECTOR**

**Phone: (302) 793-9910
Fax: (302) 739-6157**

To: Lisa Vest, Hearing Officer

Thru: David Saveikis, Director - Division of Fish & Wildlife
Rob Hossler, Wildlife Section Administrator

From: Joe Rogerson, Environmental Program Manager II - Species Research and Conservation

Subject: Division of Fish & Wildlife's Technical Response to the Second Round of Public Comments Regarding Gray Fox Harvest Reporting to Previously Deemed Substantive Changes to Proposed Regulations Associated to 7 DE Admin. Code 3900 Wildlife – 4.0 pertaining to Seasons

Date: March 10, 2016

Background and Public Comment

Due to amendments to proposed regulations regarding gray fox harvest reporting that were deemed substantive following an initial public hearing and comment period to 7 DE Admin. Code 3900 Wildlife – 4.0 pertaining to Seasons, the Department reopened the public comment period within the Delaware Register of Regulations for 32 days from January 1, 2016 through February 1, 2016. During this comment period, 47 comments were received. Forty (40) commenters supported an end of the year harvest reporting requirement, 17 of which were non-residents affiliated with the National Trapper's Association; five (5) were opposed to any new regulations pertaining to gray fox; one (1) supported the unspecified Delaware Trappers Association's stance on the matter, but they did not submit a specific comment during this period; and one (1) supported gray fox trapping, but gave no preference for harvest reporting.

Division of Fish & Wildlife's Position

In response to the passage of Title 7, Delaware Code, Chapter 7, Section §796 – Limitations on harvesting gray fox, the Division was granted the authority and there was an expectation to establish reporting requirements for harvested gray foxes. To evaluate gray fox harvest, the Division initially proposed that anyone harvesting a gray fox must report the harvest to the Division by the next business day following the harvest. Harvest reporting provides a

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through Science and Service*

mechanism for the Division to collect data on the number of gray foxes harvested, harvest location, harvest date and method and patterns of gray fox harvest.

In response to public input received during the regulatory amendment process within the initial public comment period, which was largely in opposition of the proposal for a next business day harvest reporting requirement, the Division proposed a reporting timeframe of 7 days following the harvest. The Division's position is that the reporting of gray foxes within seven (7) calendar days of harvest (i.e., reporting within a week) provides ample opportunity for individuals to report their harvests and would not be an undue burden on individuals, while still providing timely reporting information for the Division that is *necessary to meet the intent of Title 7, Delaware Code, Chapter 7, Section §796 – Limitations on harvesting gray fox*. Furthermore, it would allow the agency to collect detailed harvest information that may be forgotten by the hunter or trapper if several weeks or months have passed since the harvest or if an individual harvested multiple gray foxes throughout the allowable timeframe. Therefore, there are no changes to the amendment to 7 DE Admin. Code 3900 Wildlife – 4.0 Seasons as published in the January 1, 2016 Delaware Register of Regulations.

Requested Changes to Proposed Regulation as Amended after the First Public Comment Period

Gray Fox Harvest Reporting

4.13.3 Gray Fox [Harvest] Reporting. All gray fox taken, killed or captured pursuant to § 796 of Title 7 must be reported to the Division of Fish and Wildlife [within seven (7) calendar days] [by the next business day] using its established reporting system(s).