STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

OFFICE OF THE
SECERTARY

PHONE: (302) 739-4403
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Secretary's Order No.: 2016-P-0006

RE: Approving Final Regulations to Amend 7 DE Admin. Code §9201: *Regulations Governing State Parks*

Date of Issuance: February 15, 2016

Effective Date of the Amendment: March 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 §9201: *Regulations Governing State Parks.* The Department's Division of Parks and Recreation ("Parks") commenced the regulatory development process with Start Action Notice 2015-09 dated September 1, 2015. The Department published its initial proposed regulation Amendments in the December 1, 2015 *Delaware Register of Regulations.* The Department then held a public hearing on December 22, 2015. Consistent with 29 *Del.C.* §10118(a), the public hearing record remained open for public comment through January 6, 2016.

The primary purpose of this proposed regulatory promulgation is to adopt as final the aforementioned proposed *revised* Amendments to 7 DE Admin. Code §9201, *Regulations Governing State Parks* ("Amendments"), in order for Delaware to mirror the recent changes made to Delaware law as a result of the passing of Senate Bill 114 ("SB 114") by the 148th General Assembly in 2015. This bill declassifies a number of minor violations associated with state parks by changing some violations from an unclassified misdemeanor to a Class "D" environmental violation. As a result, the first offense of a Class "D" environmental violation will not be reported on criminal history records provided by the State Bureau of Identification for employment purposes under 11 *Del.C.* §8513(c). Subsequent offenses will, however, be reported for employment purposes.

On December 1, 2015, the Delaware Register of Regulations published the Department's initial proposed Amendments to Delaware's existing *Regulations Governing State Parks*, which included the aforementioned SB 114 requirements. Senate Bill 114 becomes effective following the publication of final regulations consistent with the bill, or on April 1, 2016, whichever occurs first. Adoption of these proposed Amendments will further enable the Department to (1) mirror the recent changes made to Delaware Code as a result of the passing of SB114 by the 148th General Assembly; (2) add a formal definition within these present regulations of the term "firearm", consistent with such definition already existing within Delaware Code (*see* 11 *Del.C.* §222 [12]); (3) provide clarifying language regarding the definition and use of electric bicycles on state park lands; (4) correct previous clerical error; (5) provide additional clarity and overall consistency throughout the Department's existing *Regulations Governing State Parks*; and (6) make other changes to reflect updated Division policies and concerns.

The aforementioned proposed Amendments were presented and thoroughly vetted by the Department at the public hearing on December 22, 2015. Members of the public attended that public hearing, and provided comment to the Department regarding the same, both at the time of the hearing and during the post-hearing time period. The public comment period closed on January 6, 2016.

Subsequent to the record closing for comment after this public hearing, the Department's Division of Parks and Recreation conducted a thorough review of the hearing record and prepared its formal Technical Response Memorandum ("TRM"), dated February 12, 2016, which documents the Department's review of the record, and offers Parks' response to all comments received throughout this regulatory process. In all, there were three main concerns addressed in the aforementioned TRM: (1) the proposed definition of "firearm" and the existing prohibition of a "firearm" on state park lands; (2) the proposed regulatory language to prohibit use of mechanically propelled bait launchers on state park lands; and (3) the proposed definition of "bicycle" and use of "electric bicycles" on state park lands.

With regard to the first and second concerns referenced above, Dan Triano, President of "Bunker Up Fishin" and inventor of the fishing casting system known as "The Sand Blaster Bait Caster" ("Bait Caster"), offered numerous written and verbal comment concerning the Department's proposed regulatory amendments at all phases of this proposed promulgation. Mr. Triano is the manufacturer and seller of the aforementioned Bait Caster device, which uses combustion to project frozen bait up to 300 yards out into the ocean. It is Mr. Triano's contention that his device is not a firearm, but rather a patented fishing apparatus that has been formally classified by the

U.S. Patent Office as "A01K91/02: Fishing line device for casting lines". Moreover, Mr. Triano alleges that, since the Bait Caster was not classified as a firearm by the federal government, it may be legally sold in commerce without the requirement of having a National Firearms Act Stamp, and thus should not be prohibited from use on state park lands. He further notes that his device has had a positive impact on the lives of disabled fishermen, as the device enables those persons to once again enjoy casting fishing lines, and believes that there is an economic benefit to the communities where this device is in use, in that those customers spend their money for local hotels, bait shops, fishing licenses, restaurants, and surf fishing passes. Thus, for the reasons stated above, Mr. Triano believes his device should be allowed to be used in Delaware State Park lands, and not prohibited from use as a firearm.

In response to Mr. Triano's comments as noted above, it is the Department's position that Mr. Triano's device (or any such similar device) should be prohibited from use at Delaware State Parks' multi-use beaches for several reasons. First, Delaware's surf fishing beaches are frequently at capacity, and anglers are in close proximity of each other. The Department has safety concerns for other user groups in such areas, such as kayakers, walkers, body surfers and swimmers, when a device such as this is being operated within such close proximity. Moreover, operator error with such a device draws additional safety concerns when used on Division-managed lands. The Department notes that just one individual improperly using such a device could severely injury or kill other recreational users of the park. Furthermore, DNREC has had complaints from members of the fishing community against these types of devices, as use of the same has been seen as giving some fishermen a competitive advantage over others, and could be perceived as

targeting some restricted species. Lastly, while such devices are primarily marketed to the surf fishing community, the Division has concerns that the same could also be used at any of the Division's inland ponds.

Additional written comment was received by the Department in this matter from Rich King, who voiced his opposition to mechanically propelled bait launchers in general, and offered his opinion on numerous safety concerns regarding the use of same in State Parks. In response, the Department's TRM indicated support of Mr. King's opposition to mechanically propelled bait casters.

Lastly, the Department received written comment in this matter from the Bicycle Products Suppliers Association ("BPSA") and People for Bikes. People for Bikes is a non-profit organization acting on behalf of the U.S. bicycle industry, and is comprised of companies throughout the United States which provide "...a unified front for advocating for bicycling on a national level...". Three recommendations were submitted by People for Bikes for the Department's consideration in this matter, to wit: (1) create a specific definition for "electric bicycles" using language identical to 21 *Del.C.* §101(4); (2) expressly permit the use of electric bicycles on roadways; and (3) permit the use of electric bicycles on paved, multi-use paths.

In response to the above recommendations, the Department proposes to *revise* its initial proposed regulatory amendments by adding some additional language to the proposed amended definition of a bicycle, in order to (1) provide clarity with respect to formally defining an electric bicycle within these regulations; and (2) clarify the use of electric bicycles on multi-use trials, as set forth in Section 12.0 of these regulations. It

should be noted that, since electric bicycles are already permitted on established roadways, there is no need for further clarification of this matter in these regulations.

It should also be noted that, while the Department has made revisions to the proposed Amendments to 7 DE Admin. Code §9201, *Regulations Governing State Parks* as a result of the comment received in this matter as noted above, such changes are non-substantive, as they neither alter the meaning or intent of the proposed regulatory amendments, and therefore, no additional noticing or re-publication of the same is necessitated at this time. It should also 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.

Subsequent to receiving the Division of Parks and Recreation's aforementioned TRM, the Department's presiding hearing officer, Lisa A. Vest, then prepared a Hearing Officer's Report dated February 12, 2016 ("Report"). The Report documents the proper completion of the required regulatory development process, establishes the record, and recommends the adoption of the *revised* proposed regulatory 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 *revised* proposed regulatory Amendments to 7 DE Admin. Code §9201, *Regulations Governing State Parks*, are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the *revised* proposed regulatory Amendments be promulgated as final.

I find that the Department's experts in the Division of Parks and Recreation fully developed the record to support adoption of these *revised* regulatory Amendments. The adoption of these *revised* regulatory Amendments will allow Delaware's regulations to remain consistent with recent changes made to Delaware law as a result of the passing of SB114 by the 148th General Assembly, add a formal definition within these present regulations of the term "firearm" (consistent with such definition already existing within Delaware Code at 11 *Del.C.* §222[12]), provide clarity with regard to formally defining an electric bicycle within these regulations, clarify the use of electric bicycles on multi-use trials in Section 12.0 of these regulations, correct previous clerical error, provide additional clarity and overall consistency throughout Delaware's existing *Regulations Governing State Parks*, and make other changes to reflect updated Division polices and concerns.

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 *revised* proposed amendments to 7 DE Admin. Code §9201, *Regulations Governing State Parks*, pursuant to 7 *Del.C.*, Chapters 47 and 60;

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

December 22, 2015, and held the record open through close of business on January 6, 2016, consistent with 29 *Del.C.* §10118(a), in order to consider public comment on these proposed regulatory amendments before making any final decision;

4. While the Department has made revisions to the initial proposed regulatory amendments to 7 DE Admin. Code §9201, *Regulations Governing State Parks*, as set forth above, such changes are non-substantive, as they neither alter the meaning or intent of the proposed regulatory amendments, and therefore no additional re-publication or noticing of this proposed regulation is necessitated at this time;

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

6. Promulgation of the *revised* proposed regulatory amendments to 7 DE Admin. Code §9201, *Regulations Governing State Parks*, will enable the Department to (1) mirror the recent changes made to Delaware law as a result of the passing of SB114 by the 148th General Assembly; (2) add a formal definition within these present regulations of the term "firearm", consistent with such definition already existent within Delaware Code (*see* 11 *Del.C.* §222 [12]); (3) provide clarifying language regarding the definition and use of electric bicycles on state park lands; (4) correct previous clerical error; (5) provide additional clarity and overall consistency throughout the Department's existing *Regulations Governing State Parks*; and (6) make other changes to reflect updated Division policies and concerns;

7. The Department has reviewed these *revised* proposed regulatory amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104 (version applicable to all regulations initially published 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 regulatory amendments, as initially published in the December 1, 2015 *Delaware Register of Regulations*, and as *revised* and 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 *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 *revised* proposed Amendments to 7 DE Admin. Code §9201, *Regulations Governing State Parks,* 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

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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 §9201:**
Regulations Governing State Parks

DATE: February 12, 2016

I. BACKGROUND AND PROCEDURAL HISTORY:

A public hearing was held on Tuesday, December 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 §9201, *Regulations Governing State Parks*. Pursuant to 7 *Del.C.* §4701(a)(4), the Department has the authority to create and enforce regulations relating to the protection, care and use of the areas it administers.

In 2015, the 148th General Assembly passed Senate Bill 114 ("SB 114"). This bill declassifies a number of minor violations associated with state parks by changing some violations from an unclassified misdemeanor to a Class "D" environmental violation. As a result, the first offense of a Class "D" environmental violation will not be reported on criminal history records provided by the State Bureau of Identification for employment purposes under 11 *Del.C.* §8513(c). Subsequent offenses will, however, be reported for employment purposes.

On December 1, 2015, the Delaware Register of Regulations published the Department's initial proposed amendments to Delaware's existing *Regulations Governing State Parks*, which included the aforementioned SB 114 requirements. Senate Bill 114 becomes effective following the publication of final regulations consistent with the bill, or on April 1, 2016, whichever occurs first. Other regulatory amendments are being proposed at this time to (1) add a formal definition within these present regulations of the term "firearm", consistent with such definition already existing within Delaware Code (*see* 11 *Del.C.* §222 [12]); (2) provide clarifying language regarding the definition and use of electric bicycles on state park lands; (3) correct previous clerical error; (4) provide additional clarity and overall consistency throughout the Department's existing *Regulations Governing State Parks*; and (5) make other changes to reflect updated Division policies and concerns.

The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 DE Admin. Code §9201, as noted above, pursuant to 7 *Del.C.*, Chapters 47 and 60. It should be noted that comment was received by the Department at all phases during the course of this proposed promulgation, and the same will be described in greater detail below. It should also 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 exhibits introduced by responsible Department staff at the public hearing held on December 22, 2015, and marked by this Hearing Officer accordingly as Department Exhibits 1-6; and (3) DAQ Technical Response Memorandum ("TRM") dated February 12, 2016. The

Department's person primarily responsible for the drafting and overall promulgation of these proposed Amendments, Wayne Kline, Chief of Police – Division of Parks and Recreation, developed the record with the relevant documents in the Department's files.

The aforementioned proposed Amendments to 7 DE Admin. Code §9201, were presented and thoroughly vetted by the Department at the public hearing on December 22, 2015. As noted previously, members of the public attended said public hearing, and comment was received by the Department with regard to this proposed regulatory 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 regarding these proposed Amendments. The hearing record formally closed with regard to public comment on January 6, 2016. Again, all proper notification and noticing requirements concerning this proposed promulgation were met by the Department in this matter.

Subsequent to the close of the hearing record for public comment on January 6, 2016, the Department thoroughly reviewed the hearing record and prepared its formal Technical Response Memorandum ("TRM"), dated February 12, 2016. This TRM documents the Department's review, and offers the Department's response to all comments received throughout this regulatory process. In all, there were three main concerns addressed in the aforementioned TRM: (1) the proposed definition of "firearm" and the existing prohibition of a "firearm" on state park lands; (2) the proposed regulatory language to prohibit use of mechanically propelled bait launchers on state park lands; and (3) the proposed definition of "bicycle" and use of "electric bicycles" on state park lands.

With regard to the first and second concerns referenced above, Dan Triano, President of "Bunker Up Fishin" and inventor of the fishing casting system known as "The Sand Blaster Bait

Caster" ("Bait Caster"), offered numerous written and verbal comment concerning the Department's proposed regulatory amendments at all phases of this proposed promulgation. Mr. Triano is the manufacturer and seller of the aforementioned Bait Caster device, which uses combustion to project frozen bait up to 300 yards out into the ocean. It is Mr. Triano's contention that his Bait Caster device is not a firearm, but rather a patented fishing apparatus that has been formally classified by the U.S. Patent Office as "A01K91/02: Fishing line device for casting lines". Moreover, Mr. Triano alleges that, since the Bait Caster has also "...passed through the ATF as NOT being classified a firearm", it may be legally sold in commerce without the requirement of having a National Firearms Act Stamp, and thus should not be prohibited from use on state park lands. He further notes that his device has "...changed the lives of disabled fishermen as well...", as the Bait Caster enables those persons who had given up their love of fishing due to disability to now cast lines and be "back in the game". Lastly, Mr. Triano believes that when his customers buy his product for use in Delaware State Parks, there is an economic benefit to the communities where they fish, by way of those customers spending their money for local hotels, bait shops, fishing licenses, restaurants, and surf fishing passes. Thus, for the reasons stated above, Mr. Triano believes his device should be allowed to be used in Delaware State Park lands, and not prohibited from use as a firearm.

After careful review of Mr. Triano's comments by responsible Department staff (as well as a phone call between Chief Kline and Mr. Triano to discuss this matter in greater detail), it is the Department's position that Mr. Triano's device (or any such similar device) should be prohibited from use at Delaware State Parks' multi-use beaches for several reasons. First, Delaware's surf fishing beaches are frequently at capacity, and anglers are in close proximity of each other. The Department has safety concerns for other user groups in such areas, such as

kayakers, walkers, body surfers and swimmers, when a device such as this is being operated within such close proximity. Moreover, operator error with such a device draws additional safety concerns when used on Division-managed lands. The Department notes that just one individual improperly using such a device could severely injury or kill other recreational users of the park. Furthermore, DNREC has had complaints from members of the fishing community against these types of devices, as use of the same has been seen as giving some fishermen a competitive advantage over others, and could be perceived as targeting some restricted species. Lastly, while such devices are primarily marketed to the surf fishing community, the Division has concerns that the same could also be used at any of the Division's inland ponds.

Additional comment was received by the Department in this matter from Rich King, who voiced his opposition to mechanically propelled bait launchers in general, and offered his opinion on numerous safety concerns regarding the use of same in State Parks, including, but not limited to, the following: (1) operator error on a crowded summer beach could be very dangerous, and potentially deadly; (2) nothing that holds compressed air is 100% safe, and if anyone can purchase these devices, chances are that the person using it is not fully trained to operate such a cannon; (3) there is the potential for a number of these devices to be in use on the beach simultaneously, and during the summer months the beaches are too crowded with people to safely use such a device; (4) no "self-respecting angler" would use a cannon to cast their bait, as "…the fish are in the first 30 feet of water"; and (5) liability issues in general with regard to potential personal injury arising from the use of such devices. In response, the Department's TRM indicated support of Mr. King's opposition to mechanically propelled bait casters.

Lastly, the Department received written comment in this matter from the Bicycle Products Suppliers Association ("BPSA") and People for Bikes. People for Bikes is a non-profit

organization acting on behalf of the U.S. bicycle industry, and is comprised of companies throughout the United States which provide "...a unified front for advocating for bicycling on a national level...". Three recommendations were submitted by People for Bikes for the Department's consideration in this matter, to wit: (1) create a specific definition for "electric bicycles" using language identical to 21 *Del.C.* §101(4); (2) expressly permit the use of electric bicycles on roadways; and (3) permit the use of electric bicycles on paved, multi-use paths.

In response to the above recommendations, the Department proposes to *revise* its initial proposed regulatory amendments by adding some additional language to the proposed amended definition of a bicycle, in order to (1) provide clarity with respect to formally defining an electric bicycle within these regulations; and (2) clarify the use of electric bicycles on multi-use trials, as set forth in Section 12.0 of these regulations. It should be noted that, since electric bicycles are already permitted on established roadways, there is no need for further clarification of this matter in these regulations.

The Department's aforementioned TRM does an excellent job of identifying all of the relevant issues surrounding this proposed regulatory amendment action, and succeeds in discussing the same in a thorough and balanced manner, while accurately reflecting the information contained in the hearing record. Thus, the Department's TRM of February 1, 2016 is expressly incorporated into this Report, and attached hereto for that purpose as Appendix "A". It should also be noted that, while the Department has made revisions to the proposed Amendments to 7 DE Admin. Code §9201 as a result of the comment received in this matter as noted above, such changes are non-substantive in nature, and serve only to provide additional clarity and understanding to those who visit and enjoy Delaware's State Parks. Therefore, no additional noticing or re-publication of the same is necessitated at this time. It should also 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.

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 *revised* proposed Amendments to 7 DE Admin. Code §9201, *Regulations Governing State Parks*, as noted above. Accordingly, I recommend promulgation of these *revised* 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 *revised* proposed amendments to 7 DE Admin. Code §9201, *Regulations Governing State Parks*, pursuant to 7 *Del.C.*, Chapters 47 and 60;

2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.*, Ch. 60, to issue an Order adopting these *revised* proposed 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 December 22, 2015, and held the record open through close of business on January 6, 2016, consistent with 29 *Del.C.* §10118(a), in order to consider public comment on these proposed regulatory amendments before making any final decision;

4. While the Department has made revisions to the initial proposed regulatory amendments to 7 DE Admin. Code §9201, *Regulations Governing State Parks*, as set forth above, such changes are non-substantive, as they neither alter the meaning or intent of the proposed regulatory amendments, and therefore no additional re-publication or noticing of this proposed regulation is necessitated at this time;

5. Promulgation of the *revised* proposed regulatory amendments to 7 DE Admin. Code §9201, *Regulations Governing State Parks*, will enable the Department to (1) mirror the recent changes made to Delaware law as a result of the passing of SB114 by the 148th General Assembly; (2) add a formal definition within these present regulations of the term "firearm", consistent with such definition already existing within Delaware Code (*see* 11 *Del.C.* §222 [12]); (3) provide clarifying language regarding the definition and use of electric bicycles on state park lands; (4) correct previous clerical error; (5) provide additional clarity and overall consistency throughout the Department's existing *Regulations Governing State Parks*; and (6) make other changes to reflect updated Division policies and concerns;

6. The Department has reviewed these *revised* proposed regulatory amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104 (version applicable to all regulations initially published 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 regulatory amendments, as initially published in the December 1, 2015 *Delaware Register of Regulations*, and as *revised* and 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 *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

8. The Department shall submit the *revised* proposed regulatory amendments as final *revised* regulatory amendments to 7 DE Admin. Code §9201, *Regulations Governing State Parks,* 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.

LISA A. VEST
Public Hearing Officer

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Attachments/Appendix:

Appendix A: Div. of Parks TRM (02/12/16)
Appendix B: Proposed Reg. Amendments

APPENDIX "A"

State of Delaware
Department of Natural Resources and Environmental Control
Delaware Division of Parks and Recreation
Chief of Enforcement
Wayne D. Kline
152 South State Street
Dover, DE 19901

To: Lisa Vest, DNREC Hearing Officer

Thru: Raymond Bivens, Director Division of Parks and Recreation

From: Wayne Kline, Chief of Police Division of Parks and Recreation

Subject: Proposed Changes to State Park Rules and Regulations (Revised)

Date: February 12, 2016

Background

Title 7 Chapter 47 of the Delaware Code gives the Department of Natural Resources and Environmental Control the ability to make and enforce regulations relating to the protection, care and use of the areas it administers (7 Del. C. §4701 (a) (4)).

In 2015, the 148th General Assembly passed Senate Bill 114. This bill declassifies a number of minor violations associated with state parks by changing some violations from an unclassified misdemeanor to a class D environmental violation. As a result, the first offense of a class D environmental violation will not be reported on criminal history records provided by the State Bureau of Identification for employment purposes under §8513(c) of Title 11. Subsequent offenses will be reported for employment purposes. The bill is effective following the publication of final regulations consistent with the bill or on April 1, 2016 whichever comes first.

On September 17, 2015 a Start Action Notice was approved by Cabinet Secretary David Small pursuant to 7 Del. C. §4702(c); *all rules and regulations of the Department of Natural Resources and Environmental Control promulgated pursuant to this chapter shall have the effect of law and shall be published in at least 2 newspapers of general circulation in the territory to be effected, at least 30 days prior to the rule or regulation becomes effective, except in cases of an emergency when the Department of Natural Resources and Environmental Control shall give such advance notice as it deems necessary or desirable.*

On December 1, 2015 the Delaware Register of Regulations published the proposed changes to the State Park Rules and Regulations (Volume 19, Issue 5). The changes included SB 114 requirements but also made general housekeeping changes to the regulations. The current version of the Rules and Regulations had been in effect since June 2004.

Discussion

The public comment period for changes to the Rules and Regulations was open from December 1, 2015-January 6, 2016. Several comments were received by email with general questions about the proposed changes. Most questions were commentary versus procedural on the proposed changes; however there three submittals to be noted for discussion purposes.

Submittal #1:

Dan Triano, Bunker Up Fishin New Ringgold, PA, attended the public hearing and submittal a letter in opposition to the proposed definition of a firearm (*Firearm includes any weapon from which a shot, projectile or other object may be discharged by force of combustion, explosive gas, and/or mechanical means, whether operable or inoperable, loaded or unloaded)* and the addition to the regulation prohibiting mechanically propelled bait launchers (*21.6.3 It shall be unlawful for anyone to utilize an apparatus to cast a fishing hook or bait as a projectile by force of combustion, explosive gas and /or mechanical means or to possess such apparatus, whether operable or inoperable, loaded or unloaded).* The definition of a firearm mirrors language found in 11 Del. C. §222 (12). Mr. Triano manufactures and sells a device that uses combustion to project frozen bait a great distance from the user. He maintains that his bait caster launcher is not a firearm. He has received a patent on the device and states that the ATF considers his system a fishing device.

Department Recommendation:

The Department's position regarding Mr. Triano's device or any similar devices should be prohibited from use at Delaware State Parks multiuse beaches for several reasons. The Division's surf fishing beaches are frequently at capacity and anglers are in close proximity of each other. The Division has safety concerns for other user groups in the area such as kayakers, walkers, body surfers and swimmers when a device like this is being operated. Operator error with this device draws additional safety concerns when used on Division managed lands. One individual improperly using this device could severely injure or kill other recreational users of the park. We have had complaints from members of the fishing community against these types of devices. It is seen as giving some fisherman a competitive advantage over others and could be perceived as targeting some restricted species.

This device is primarily marketed to the surf fishing community but the Division has concerns that the device could also be used at any of the inland ponds.

Submittal #2:

Rich King attended the public meeting and submittal in writing afterwards his opposition to mechanically propelled bait casters. He cites a number of safety concerns with this type of device.

Department Recommendation:

The Department supports Mr. King's opposition to mechanically propelled bait casters.

Submittal #3:

The Bicycle Products Suppliers Association (BPSA) and People for Bikes submitted written comment on the proposed changes to the Rules and Regulations. People for Bikes is a non-profit

organization acting on behalf of the U.S. bicycle industry and is comprised of member companies throughout the Unites States. They "provide a unified front for advocating for bicycling on a national level, a strategic center to ensure collaboration between each piece in the bicycling movement, and the ability to support local efforts through our financial, community and communication resources."

People for Bikes submitted three recommendations for changes before the Regulations become effective. These were:

1. Create a specific definition for "electric bicycles" using language identical to 21 Del. C. § 101(4).
2. Expressly permit the use of electric bicycles on roadways
3. Permit the use of electric bicycles on paved, multi-use paths.

Department Recommendation:

1. The **proposed** definition of a bicycle in the Rules and Regulations is: *Bicycle shall include that certain class of vehicles which are exclusively human-powered by means of foot pedals, which the driver normally rides astride, which have not in excess of 3 wheels and which may be commonly known as unicycles, bicycles and tricycles.* The Department proposes to **amend the proposal** to include the full definition of a bicycle as defined in 21 Del. C. §101(4). The definition of a bicycle would be: *Bicycle shall include that certain class of vehicles which are exclusively human-powered by means of foot pedals, which the driver normally rides astride, which have not in excess of 3 wheels and which may be commonly known as unicycles, bicycles and tricycles. The term "bicycle" also includes a 2- or 3-wheeled vehicle with fully operable pedals and an electric motor of less than 750 watts (1 horsepower), whose maximum speed on a paved level surface, when powered solely by such motor while ridden by an operator who weighs 170 pounds, is less than 20 miles per hour.*

2. Electric bicycles are already permitted on established roadways the same as motorized vehicles. There is no need to further clarify this in the Rules and Regulations.

3. The Department should clarify the use of electric bikes (e-bikes) on multi-use trails in Section 12.0. The following is a proposed change to the existing proposal:
    - 12.1.1 Bicycling is permitted only on roadways designated for public use, designated and signed bike paths and multiple use trails designated and signed for such use. **[Bicycles with electric motors are prohibited on all trails except with written permission from the Director.]**

Conclusion

After reviewing the comments submittal during the public comment period, the Division indorses the above Recommendations for inclusion in the Hearing Officer's Report.

APPENDIX "B"

Department of Natural Resources & Environmental Control
Division of Parks and Recreation
Statutory Authority: 7 Delaware Code, Section 4702(c) (7 Del.C. 4702(c))

1.0 Definitions

"Activity Charge" means any fee assessed to offset the costs associated with a particular program or activity."

"~~Activity~~ Actively Engaged in Surf Fishing" means when a person is taking all reasonable and necessary actions to maximize the probability of hooking and landing game fish by rod, reel and line attached to a baited rig, artificial lure or artificial fly. A person is also actively engaged in surf fishing when they are within 50 feet of their fishing equipment and are tending, casting and recasting their fishing equipment.

"Alcoholic Liquor", "Alcoholic Beverages" include the 4 varieties of liquor defined in 4 **Del.C.** §101 (alcohol, spirits, wine and beer) as well as every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed by a human being and any liquid or solid containing more than 1 of the 4 varieties defined in 4 **Del.C.** §101 is considered as belonging to that variety which usually has the higher percentage of alcohol.

"Authorized Agent" shall mean any employee of the Division or volunteer who has been delegated the authority to perform or cause to be performed, certain designated acts or functions within the scope of his duties.

"Bicycle" shall include that certain class of vehicles which are exclusively human-powered by means of foot pedals, which the driver normally rides astride, which have not in excess of 3 wheels and which may be commonly known as unicycles, bicycles and tricycles. **[The term "bicycle" also includes a 2- or 3-wheeled vehicle with fully operable pedals and an electric motor of less than 750 watts (1 horsepower), whose maximum speed on a paved level surface, when powered solely by such motor while ridden by an operator who weighs 170 pounds, is less than 20 miles per hour. [(21 Del. C. 101(4)).]]**

"Commission" means the Commission created under 4 **Del.C.** Ch. 3, under the name of "The Delaware Alcoholic Beverage Control Commission".

"Department" shall mean the Department of Natural Resources and Environmental Control.

"Director" shall mean the Director of the Division of Parks and Recreation or his designee.

"Division" shall mean the Division of Parks and Recreation of the Department of Natural Resources and Environmental Control.

"Drug Paraphernalia" for the purposes of this chapter shall be defined in 16 **Del.C.** §4701.

"Firearm" includes any weapon from which a shot, projectile or other object may be discharged by force of combustion, explosive, gas and/or mechanical means, whether operable or inoperable, loaded or unloaded. [**(11 Del. C. 222 (12))**].

"Highway" means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

"Hunter Registration Card" means a document issued by the Division which confers eligibility to participate in hunting programs on parks subject to special restriction.

"License" means any license, temporary instructor's permit or temporary license issued under the laws of the state pertaining to the licensing of persons to operate ~~motor~~motorized vehicles or vessels. "License" shall also mean any document issued by the State for hunting or fishing.

"Motorized Vehicle" means every vehicle which is self-propelled including, but not limited to, mopeds, motorcycles, all terrain vehicles (ATV) and other two, three~~, three~~ or four-wheel vehicles, except Other Power-Driven Mobility Devices that comply with the device specifications in the Division of Parks and Recreation's administrative policy.

"Operator" means any person who is in actual in physical control of any ~~motor~~motorized vehicle, vessel, snowmobile or other means of conveyance.

"Owner" means a person who holds legal title to a vehicle, vessel or snowmobile.

"Permit" shall mean any written license issued by the Department permitting the performance of a specified act or acts.

"Resident" shall mean any person, persons or corporations owning a ~~motor~~motorized vehicle(s) duly registered by the Delaware Motor Vehicle Division of the Department of Public Safety and possessing a valid Delaware Motor Vehicle operator's license.

"Restaurant" means any establishment, provided with special space and accommodation, where, in consideration of payment, food is habitually furnished to a park visitor, and does not include the following types of establishments defined in 4 **Del.C.** §101, tavern or taproom.

"Restricted Use Parking Area" means those parking areas which may be set aside and reserved for use by persons patronizing certain facilities within the park. Such areas will be signed designating type of use: i.e., Restaurant Parking, Marina Parking, etc.

"Secretary" shall mean the Secretary of the Department of Natural Resources and Environmental Control.

"Snowmobile" means a ~~motor~~motorized vehicle designed to travel over ice or snow supported in whole or in part by skis, belts, or cleats, or an engine-driven vehicle of a type which uses sled-type runners or skis or an endless belt tread or any combination of these or other similar means of contact with the surface upon which it is operated, but does not include any farm tractor, highway or other construction

equipment or any military or law enforcement vehicle.

"State" shall mean the State of Delaware.

"Surf Fishing Vehicle Permit" means the owner's copy of the written permit and a surf fishing vehicle plate with current year validation sticker affixed.

"Vending" means to solicit or receive an order for; keep or expose for sale; deliver or value in any other way than purely gratuitously; keep with intent to sell; traffic in; or for any valuable consideration, promise or obtain, directly or indirectly, or under any pretext or by any means whatsoever, procure, or allow to be procured for any other person.

"Vendor" means a person who is in the act of vending as defined in these regulations.

"Vessel" includes every description of water craft, other than a seaplane on water, used or capable of being used as a means of transportation.

2.0 General Information

2.1 Purpose.

It shall be the intent and purpose of the Division of Parks and Recreation to adopt only those minimal Rules and Regulations that are essential to the protection of Park resources and improvements thereto and to the safety, protection and general welfare of the visitors and personnel on properties under its jurisdiction.

2.2 Scope.

Unless otherwise provided by statute, the following shall constitute the Rules and Regulations of the Division of Parks and Recreation and shall govern the use of all applicable lands, recreation areas, historic sites, natural areas, nature preserves, rights as grantee to conservation easements, marinas, waters and facilities administered by the Division of Parks and Recreation. No Rule or Regulation herein shall preclude the enforcement of any statute under the Delaware Code.

2.3 Regulation Authority.

In accordance with Title 7 **Del.C.** §4702(c), of the Delaware Code Annotated, the Administrative Procedures Act, all Rules and Regulations of the Department of Natural Resources and Environmental Control, Division of Parks and Recreation, shall have the effect of law and shall be published in at least two newspapers, of general circulation in the territory to be affected, 30 days prior to the date the Rules and Regulation become effective, except in the case of an emergency, the Department or Division shall give such advance notice as deemed necessary or desirable.

2.4 Construction

2.4.1 No Rule or Regulation herein shall be interpreted or construed in such a manner as to prevent or delay authorized personnel of the Department or other state,

county or municipal agencies from completing official duties or emergency services.

2.4.2 In special circumstances, events or emergencies, the Secretary or Director may, when it is deemed to be in the public interest, waive a specific Rule, Regulation or fee.

2.4.3 Failure to enforce a specific Rule or Regulation at a particular instance or instances shall not affect the validity of any other Rule or Regulation or affect the validity of such Rule or Regulation at any other time.

2.5 Park Policies

2.5.1 In order to promote the safety and welfare of park visitors and protect and manage property in the parks, the Director, Chief of Enforcement, Part Administrators and Superintendents shall have the authority to develop reasonable policies for State Parks that are not in conflict with 7 **Del.C.** Ch. 47 and these Rules and Regulations. These policies must be approved by the Director and posted in a conspicuous place in the park prior to their becoming effective. Copies of all policies shall also be maintained in the office of the Park Superintendent or Administrator of the park.

2.5.2 Violation of any park policy shall be grounds for eviction from the park and the denial, revocation or suspension of any permit issued or privilege granted by the Division.

2.5.3 The Division shall have the authority to enforce safety rules and/or policies developed in accordance with 2.5.1 of these Regulations or the protection of visitors and property.

2.6 Severability.

If any section, subsection, paragraph, sentence, phrase or word of these Rules and Regulations are declared unconstitutional by a court of competent jurisdiction, the remainder of these Rules and Regulations shall remain unimpaired and shall continue in full force and effect, and proceedings thereunder shall not be affected.

2.7 ~~Terms~~

~~2.7.1 Any term contained in these Rules and Regulations shall be construed as follows:~~

2.7.~~1.~~1 Any term in the singular shall include the plural and vice versa;

2.7.~~1.~~2 Any term in the masculine shall include the feminine and neuter;

2.7.~~1.~~3 The prohibition of an act shall tend to include an attempt to commit such act and the causing and/or the procuring directly or indirectly of such act;

2.7.~~1.~~4 No provision contained in these Rules and Regulations and no act performed by an officer or employee of the Department in the lineof duty or in the scope of employment, or any act performed by a person, his agents, or employees in the performance or execution of the terms of an agreement with the Department shall be cause to be deemed unlawful; and

2.7.~~1.~~5 Any reference to the Director, Park Administrator, Superintendent or Marina Manager shall include their authorized agent.

2.8 ~~Permit Violation Penalties~~

The violation of, or the refusal to obey, any Law, these Rules and Regulations, Park Policies or the terms or conditions of any permit issued or privilege granted by the Division shall be grounds for the suspension or revocation of any permit issued or privilege granted by the Division, the removal or eviction from State Park lands and/or the denial of future entry to, or the denial or future permits or privileges within State Parks. Any and all applicable permit fees shall be forfeited to, and retained by, the Division. Any such suspension, revocation, removal, eviction or the denial of entry, permit or privilege shall not preclude the prosecution of any person for violation of any Law or these Rules and Regulations.

3.0 ~~Rules and Regulations~~

~~3.1~~ Use Restriction/Trespassing**~~---Unclassified Misdemeanors~~**

3.~~1.~~1 The Director may limit or close specific public use areas, lands, waters and/or facilities and/or temporarily prohibit certain activities, including possession and/or consumption of alcoholic beverages within those areas when such action is deemed necessary for property management, protection of flora, faunas and their habitats or when it is in the best interest of the health, safety, and the general welfare of the visitors and/or general public.

3.~~1.~~2 Entering or remaining on lands under the jurisdiction of the Division when such lands are closed or entering or remaining within any building, structure of facility when such building, structure or facility is closed, shall be prohibited without ~~a~~ written permission from the Director~~, or designee~~.

3.~~1.~~3 No person shall enter upon or be present upon lands administered by the Division, except as authorized by statute, regulation or written permission from the Director.

3.~~1.~~4 No structure, facility, building or area administered by the Division will be used for any activity other than that for which it was intended.

3.~~1.~~4.1 No person(s) shall sleep or attempt to sleep or otherwise be present and are not engaged in the activity for which the 24 hour facility or area is used for.

3.~~1~~.5 No person shall use or attempt to use a State Park campground as a principle residence or as a base of operations for conducting any type of business either on a permanent or temporary basis.

3.~~1~~.6 Use of metal detectors on lands under the jurisdiction of the Division shall be prohibited except during normal park hours in the following areas:

3.~~1~~.6.1 ~~Lums Pond State Park swimming area beach;~~

~~3.1.6.2~~ Ocean beaches east of the dune line.

3.~~1~~.7 No person shall collect, excavate, injure, destroy or appropriate prehistoric or historic artifacts or human skeletal remains from lands under the jurisdiction of the Division except with written permission from the Director. Violations under this paragraph may be charged under the provisions of 7 **Del.C.** §5306 or 7 **Del.C.** §5411.

3.~~1~~.7.1 Possession or use of tools or devices specifically designed for the excavation and removal of artifacts or human skeletal remains shall be deemed prima facie evidence of a violation of this Regulation and will be confiscated, held as evidence and be subject to forfeiture upon conviction.

~~3.1.8 In areas where activities such as rock climbing, rapelling or similar activities are permitted on lands administered by the Division a program fee/registration may be required.~~

3.~~1~~.9<u>8</u> The Division maintains exhibits at the Brandywine Zoo, various Nature Centers and temporary exhibits to provide recreational interpretation to the public. The following regulations apply in these areas:

3.~~1~~.9<u>8</u>.1 No person shall bring pets or other animals into the Zoo.

3.~~1~~.9<u>8</u>.2 No person shall throw any object(s) at animals or into the animal enclosures.

3.~~1~~.9<u>8</u>.3 No person shall feed or attempt to feed any animal other than persons designated by the Zoo Director.

3.~~1~~.9<u>8</u>.4 No person shall harass or attempt to harass any of the zoo animals by making unreasonable sounds, gestures, movements or use any object to touch the animals.

3.~~1~~.9<u>8</u>.5 No person shall attempt to cross any safety barriers to prevent the animals from coming in contact with the general public.

3.~~1~~.9<u>8</u>.6 No person shall put or attempt to put any body parts in the animal enclosures.

3.~~1~~.9<u>8</u>.7 No person shall throw any objects(s) into any exhibit.

4.0 Campground Policy---Environmental D Violation

4.1 The Division shall develop policies as necessary pursuant to Section 2.5.1 of these Regulations to ensure the safe and efficient operation of its campgrounds. Copies of the Campground Policy shall be kept on file in the park offices, posted in the campgrounds and will be made available to campers at the time of registration.

5.0 Vessel Regulations---Environmental D Violation

5.1 No person shall launch or recover vessels from waters within or bordering on State Park lands except at designated boat launch areas or docks.

5.2 No person shall operate a vessel except at slow-no-wake speed on any pond or lake, canal or within any marina under the jurisdiction of the Division.

5.2.1 No person shall launch or operate a vessel powered by an internal combustion engine on Trussum Pond and Raccoon Pond.

5.3 All laws, rules and regulations as established by the Department governing boating in the State of Delaware shall apply to all ponds, lakes, rivers, canals, waterways, and marinas owned, leased, licensed or under the jurisdiction of the Division.

5.4 No person shall operate or use vessels of any type, including inflatable rafts, sailboats, rowboats, kayaks, and canoes on waters administered by the Division without one (1) Coast Guard approved lifejacket on board for each person.

5.4.1 Operators and passengers of Division rental canoes and sailboats, ~~or~~ kayaks or other ~~watercrafdt~~watercraft rented or provided by the Division must wear a Coast Guard approved life jacket in the manner prescribed at all times while aboard such craft.

5.5 ~~No person shall operate any vessel within fifty (50) feet of or through any designated public swimming area within any inland pond under the Division's jurisdiction.~~

~~5.6~~ No person shall operate any vessel within one hundred (100) feet of a swimmer or any designated swimming or surfboarding area, any swimmer or surfer or the coastline of any ocean beach or inland bay unless designated for such purpose.

5.~~7~~6 Vessels and/or trailers shall not be anchored, moored, beached, stored or left unattended between the hours of sunset and 8 a.m. on lands or waters administered by the Division without authorization of the Park Administrator, Superintendent or Marina Manager.

5.~~8~~7 Swimming or diving from any vessel, including a seaplane is prohibited in waters under the jurisdiction of the Division.

5.~~9~~8 A person renting a vessel from the Division shall comply with the manufacturer's rated capacity for such vessel.

5.~~10~~9 Operation of a vessel in a negligent or reckless manner which could endanger life, limb or property is prohibited.

~~5.11 Vessels shall not be permitted to dock at Cape Henlopen State Park fishing pier, Holts Landing State Parks fishing pier or at Fort Delaware dock except in an emergency when in distress. The following stipulations must be adhered to:~~

~~5.11.1 Approval for emergency docking must be obtained from the Park Superintendent or Administrator either prior to docking or within eight (8) hours after docking.~~

~~5.11.2 A docking fee based on prevailing rates in the area will be paid by vessels docking at Cape Henlopen fishing pier or at Fort Delaware Dock.~~

~~5.11.3 The owner and/or vessel master shall be responsible for any damage to the docks.~~

5.1~~2~~0 The parking or leaving overnight of vessels, or vessel trailers in marina parking lots or marina areas shall be prohibited unless prior written permission is given by the Marina Manager. This shall not apply to vessels and trailers legally stored within designated vessel storage areas or if the area is designated as a 24-hour facility by the Division.

6.0 Marinas~~---~~**Environmental D Violations**

6.1 ~~Any vessel entering the waters of any marina administered, operated, leased or licensed by the Division shall immediately come under the jurisdiction of the Division. All rules and regulations of the Division, in addition to the laws, rules and regulations governing vessels established by the Department and the U.S. Coast Guard shall apply.~~ The Division shall develop policies as necessary pursuant to Section 2.5.1 of the Regulations to ensure the safe and efficient operation of its marina. Copies of the Marina policies shall be kept on file in the Marina Office and will be made avaialble upon request.

~~6.2 No person shall dock or anchor a vessel within the waters of a marina complex administered, operated, leased or licensed by the Division unless the owner master of such vessel pays such fees as required for dockage. Dockage contracts may be obtained from the marina office or from the Marina Manager. This regulation shall not apply to vessels docking at refueling stations to take on fuel.~~

~~6.2.1 In addition to any penalties assessed for violations of this Regulation, the owner or operator of the vessel shall also pay the dockage or anchorage fee.~~

6.3 Docking or anchoring of vessels will be permitted only in areas designated by the Marina Manager.

6.4 No major repair work, other than minor repairs and routine maintenance shall be performed on any vessel within a marina complex administered, operated, leased or licensed by the Division without the approval of the Marina Manager.

6.4.1 No major repair work shall take place on any vessel, except in such areas as designated by the Marina Manager.

6.5 Refueling of vessels will be permitted only at the designated refueling bulkhead stations. Distributors shall not deliver fuel to vessels docked in a marina administered, operated, leased or licensed by the Division.

6.5.1 No vessel shall dock or anchor at a refueling station except to take on fuel.

6.5.2 Vessels docked at refueling stations to take on fuel shall not be left unattended and shall be removed immediately upon completion of refueling.

6.5.3 Only the owner, master or a crew member shall remain on board during refueling. All passengers must disembark until refueling operations are completed.

6.5.4 All engines must be shut down during refueling.

6.5.5 Smoking or open flames are prohibited within fifty (50) feet of the refueling stations.

6.5.6 No person shall use any refueling station for the purpose of loading or unloading supplies or passengers, except when complying with 6.5.3 above.

6.5.7 No gasoline or diesel fuel shall be pumped or siphoned from any vessel within the marina complex without the Marina Manager's prior approval and then only within an approved area designated by the Marina Manager. Under no circumstances will fuel be removed while the vessel is docked within a slip.

6.6 No refuse, trash, oil or effluents shall be thrown or pumped overboard into the waters of a marina, channel approaches or other areas administered by the Division or Department.

6.6.1 Waste oil and used oil filters shall be transported in sealed containers and deposited in a waste oil tank located within the marina. Waste oil filters will be deposited in an oil filter receptacle located adjacent to the waste oil tank or other authorized recycle centers.

~~6.7 Disorderly conduct by vessel owners, their crew or guests shall be cause for cancellation of a pier dockage agreement and any assigned dock or mooring space.~~

~~6.8 Safety precautions must be observed and complied with in all marina areas administered by the Division.~~

~~6.8.1 Swimming or diving is prohibited from all piers, docks, bulkheads and vessels within marina waters.~~

~~6.8.2 Running or horseplay is prohibited on all piers, docks and bulkheads within the marina.~~

~~6.8.3 Fishing is prohibited from all piers, docks, bulkheads and vessels within marina waters.~~

~~6.8.4 Use of barbecue grills or other types of portable open flame cooking devices are prohibited on docks or vessels moored within the marina complex.~~

~~6.9 Fish cleaning is prohibited within a marina complex, except at authorized fish cleaning facilities that may be provided.~~

~~6.9.1 It is prohibited to throw or dump into the waters or onto the grounds of the marina any fish remains, parts or pieces thereof, except in receptacles provided for such purposes.~~

~~6.10 No person shall go aboard any vessel docked, anchored or stored within a marina complex, unless such person is accompanied by the owner or master, or has written permission from the owner or master of such vessel.~~

~~6.11 No person shall enter upon the grounds, waters, docks or piers of a marina from one-half (½) hour after sunset until one-half (½) hour before sunrise except authorized persons such as vessel owners, masters, crew members and passengers returning from or embarking on boating excursions for fishing or pleasure, or authorized persons residing aboard a vessel.~~

~~6.12 The parking or leaving overnight of vessels or vessel trailers in marina parking lots or marina areas shall be prohibited unless prior written permission is given by the Marina Manager. This shall not apply to vessels and trailers legally stored within designated vessel storage areas.~~

7.0 Water sports---Environmental D Violations

7.1 Persons swimming or sunbathing on areas administered by the Division shall be attired in acceptable swimwear, worn so as to prevent any indecent or lewd exposure of the person.

7.1.1 Males - must cover buttocks and genitals.

7.1.2 Females - must cover buttocks, breasts and genitals.

7.2 Swimsuits must be worn when using Division swimming pools. Cut-off jeans, trousers or other clothing not designed and sold as swimwear will not be permitted.

7.3 Lifeguards shall have the authority to enforce safety rules or policies which are deemed necessary for the protection of the public. Such rules shall be posted in a conspicuous place and shall be on file in the Park Administrator/Superintendent's office. Lifeguards shall have the authority to expel any person or persons who are violating the Park Rules, Regulations and Policies. Swimming outside of designated swimming areas is prohibited.

7.4 No surfboards, sailboards, kayaks or similar watercraft shall be allowed in designated guarded swimming areas unless approved by the Director or their designee.

7.5 Water skiing or towing of any person on any type of device, other than on another vessel, shall be prohibited on all non-tidal waters administered by the Division, except by written permission of the Director or their designee.

7.6 Use of scuba diving equipment shall be prohibited in all waters administered by the Division, unless written permission is given by the Director or their designee.

7.7 The possession of glass containers within any swimming area or on any beach administered by the Division shall be prohibited.

7.8 Swimming or diving is prohibited from all piers, docks, or bulkheads administered by the Division.

7.8.1 Swimming or diving is prohibited from all vessels within marina waters.

8.0 Ice Skating---Environmental D Violations

8.1 No person shall ice skate or enter upon any frozen pond, lake or stream administered by the Division except on areas as may be designated by the Division.

8.2 Areas where ice skating is permitted by the Division shall be marked and no person shall be permitted on the ice outside of such designated area.

~~**9.0 Snowmobiles---Environmental D Violations**~~

~~9.1 Snowmobiles used or operated on lands under the jurisdiction of the Department must be registered with the State of Delaware. Exempt from this requirement are snowmobiles owned by non-residents evidenced by a valid registration of another state, province, county or political subdivision thereof, or the United States.~~

~~9.2 Registration of a snowmobile hereunder shall not be deemed to grant permission for operation of a snowmobile on any public roadway or highway or on private property.~~

~~10~~9.0 Surf Fishing Vehicles~~---~~Environmental D Violations

~~10~~9.1 The Division through its authorized agents shall collect an annual fee and issue an appropriate permit for each ~~four (4) wheel vehicle~~2 axle vehicle, with no less than 4 and no more than 6 wheels, equipped for travel upon sand beaches for the purpose of surf fishing at Cape Henlopen State Park, Delaware Seashore State Park, Fenwick Island State Park, and Beach Plum Island.

~~10~~9.1.1 Surf Fishing Vehicle Permits shall be issued only to those vehicles duly registered and licensed to operate on public highways.

~~10.1.2 Four (4) wheel vehicles for purposes of this Section shall mean a vehicle equipped with four (4) wheels which makes contact with the road surface.~~

~~10.1.3 No Surf Fishing Permit shall be issued to any vehicle which measures less than seven (7) inches between the lowest point of the vehicle and the ground.~~

~~10.1.4~~ Surf fishing vehicles must be equipped with a shovel, jack, tow rope or chain, board or similar support for the jack and a low-pressure tire gauge.

~~10.1.5 Failure to possess adequate saltwater fishing tackle, bait and/or lures commonly used for surf fishing shall be deemed prima facie evidence of a violation of this regulation.~~

~~10~~9.2 No person shall operate a vehicle upon the beach areas or dune crossings administered by the Division without a permit for such vehicle as set forth in Section 10.1.

~~10.3 The surf fishing vehicle plate must be properly displayed on the vehicle for which the permit was issued prior to operation on beach areas administered by the Division.~~

~~10.3.1 The surf fishing vehicle plate shall be affixed to the front of the vehicle.~~

~~10.3.2~~ 9.2.1 The owner's copy of the permit receipt shall be available for inspection at all times when the vehicle is being operated on such beach areas.

9.3 A valid surf fishing vehicle plate with a current surf fishing decal affixed must be properly displayed on the vehicle for which the permit was issued prior to operation on beach areas administered by the Division.

9.3.1 The valid surf fishing vehicle plate shall be affixed to the front of the vehicle.

9.3.2 A valid blue and white numberless plate will be issued upon the purchase of a permit. Numbered surf fishing plates issued prior to 2015 are hereby invalid.

9.3.3. A valid Low Digit Tag may be used in place of the blue and white numberless plate.

9.3.3.1 A Low Digit Tag is a black and white numbered plate auctioned by the Division starting in 2015.

9.3.3.2 A surf fishing permit must be purchased for the current calendar year for the Low Digit Tag to be valid.

9.3.3.3 If a surf fishing permit is not purchased within a current calendar year for the Low Digit Tag, the Division of Parks and Recreation shall have the sole discretion to reissue that Low Digit Tag number.

9.3.3.4 If a Low Digit Tag number is reissued, any previously issued iterations of the Low Digit Tag number are henceforth invalid.

9.3.3.5 The sale, transfer or inheritance of a low digit tag is permitted. The owner and buyer/receiver of the low-digit tag must be present and complete an Affidavit to Transfer form to authenticate the transfer/sale. By law, surf-fishing tags numbered 200 or below may only be transferred to another Delaware-registered vehicle. All rules and regulations pertaining to the ownership of the low-digit surf fishing tag shall transfer to the new owner.

9.4 It shall be a violation of this Section to loan a Surf Fishing Vehicle Permit, or to use or attempt to use a Surf Fishing Vehicle Permit on any vehicle other than the vehicle it is assigned to. In addition to other action that may be taken, the permit ~~will~~ may be confiscated and held as evidence.

~~10~~9.45 It shall be unlawful to operate any vehicle on any authorized dune crossing or on any beach area administered by the Division at any speed that is greater than is reasonable and prudent under the conditions, and having regard to the actual and potential hazards then existing, but never exceeding 15 m.p.h. In every event, speed shall be controlled and limited to that speed necessary to maintain traction and steerage.

~~10~~9.5~~6~~ The capacity of the beaches administered by the Division to absorb the impact of vehicles, without substantial environmental degradations and decreased quality of experience for all visitors is limited. Therefore, vehicle use on the designated beaches is restricted to persons actively engaged in surf fishing. Permitted surf fishing vehicle operation on the beaches administered by the Division for reasons other than traveling to and from fishing areas for the express purpose of actively engaged in surf fishing, is prohibited. Any permitted surf fishing vehicle parked for any period of time on the

beaches administered by the Division, without one or more persons who arrived in that vehicle being actively engaged in surf fishing is prohibited. When no one who arrived in the surf fishing vehicle is actively engaged in surf fishing, the surf fishing vehicle shall exit the beach immediately. In addition to other penalties prescribed in these regulations and by statute, violation of this subsection is grounds for suspension or revocation of the permit.

~~10~~9.~~5~~6.1 Use of a surf fishing permit for the purpose of commercial bait fishing is permitted on the beaches administered by the Division provided all conditions and requirements of said permit are met and a permit is obtained from the Director.

~~10~~9.6.2 All persons actively engaged in surf fishing must possess adequate saltwater fishing tackle, bait and/or lures commonly used for surf fishing.

9.6.3 On the beaches administered by the Division, surf fishing vehicles shall park between the toe of the dune and the high tide line in a single row, specifically meaning no vehicle shall park in front of or behind another vehicle.

9.7 The Division shall designate areas for surf fishing vehicle use on beaches under its jurisdiction. These areas shall be marked with symbol signs indicating 24-hour access, limited access and no access. Operation of a vehicle in an area not authorized for such use or during times and/or dates the area is closed to vehicles shall be a violation of this regulation.

~~10~~9.~~7~~8 The use or operation of any vehicle whatsoever, on, over, or across the sand dunes on Division lands is expressly prohibited, except when it is a vehicle displaying a valid Delaware Surf Fishing Vehicle Permit and is crossing dunes at authorized dune crossings, which are designated and maintained for that purpose by the Division.

10.~~7~~8.1 Any other use or operation of a vehicle on, over or across the primary sand dunes, except at authorized crossings, is expressly prohibited. Violators of this regulation may be charged under 7 **Del. C.** §6805(b) which carries a penalty of $200 to $5,000 or imprisonment for up to two years or both, in addition to reimbursing the Department for reasonable expenses in remedying damages created.

~~10~~9.~~8~~9 Beach areas, including surf fishing areas, may be closed to pedestrians and vehicles, in whole or in part, for resource protection or for health, welfare, and/or safety reasons for such a period as may be determined by the Department. Unauthorized entry into a posted and/or barricaded closed area shall be a violation of this regulation.

~~10.9 It shall be a violation of this Section to loan a Surf Fishing Vehicle Permit, or to use or attempt to use a Surf Fishing Vehicle Permit on any vehicle other than the vehicle it is assigned to. In addition to other action that may be taken, the permit will be confiscated and held as evidence.~~

~~10~~9.10 The Director shall have the right to suspend Surf Fishing Vehicle Permits for up to 90 days or to revoke permits for up to three (3) years for conviction of reckless operation of a surf fishing vehicle or operation of a surf fishing vehicle under the influence of alcoholic beverages and/or drugs on lands administered by the Division or for violations of these regulations.

~~11~~0.0 Vehicles~~---~~Environmental D Violations

~~11~~0.1 Vehicles operated on lands administered by the Division shall be in compliance with all State statutes, laws, rules and regulations.

~~11~~0.1.1 No person shall operate any motorized vehicle upon any lands administered by the Division, unless said vehicle is licensed for use upon public highways and roadways.

~~11~~0.1.2 Vehicles operated on lands administered by the Division must be properly equipped with brakes, headlights, tail lights, tag light, turn signal, and horn all in good working order.

~~11~~0.1.3 Towed trailers must have an adequate towing hook-up, complete with safety chains. They must also be equipped with operating tail lights, turn signals, tag light, and be currently registered to be towed on public roads.

~~11~~0.2 No person shall operate a ~~motor~~motorized vehicle, motorcycle, motor bike or other two or three-wheeled motor driven vehicle upon any lands administered by the Division, unless said person has been issued and is the holder of a valid license or permit to operate said vehicle on public highways and roadways.

~~11~~0.2.1 The license or permit shall be in the immediate possession of the licensee at all times when driving a ~~motor~~motorized vehicle, motorcycle, motor bike or other two or three-wheeled motor driven vehicle and he/she shall display same upon demand of Department Enforcement personnel.

~~11~~0.3 No person shall authorize or permit a ~~motor~~motorized vehicle of any type owned by him or under his control to be driven by any person on lands administered by the Division, knowing that said person has no legal right to do so, or shall authorize or permit said vehicle to be driven in violation of any of the provisions of the said Division's Rules and Regulations.

~~11~~0.4 The driver of a ~~motor~~motorized vehicle when on lands administered by the Division shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicle, the traffic and the condition of the roadway or area.

~~11~~0.5 Every driver shall yield preferential right-of-way at an intersection or other place indicated by stop signs or yield signs authorized and installed by the Division.

11.5.1 Except when directed to proceed by an enforcement officer or traffic control device, every driver of a vehicle approaching a stop intersection indicated by a stop sign shall come to a complete stop before entering the intersection.

110.5.2 The operator of any vehicle who has come to a full stop, as provided in 11.1.1 of this Regulation, shall not enter upon or across such intersection until such movement can be made in safety.

110.6 Specific ~~motor~~motorized vehicle speed limits on lands administered by the Division:

110.6.1 Every driver shall observe all posted speed limits. When no special hazard exists the following speed shall be lawful, but any speed in excess of such limits shall be absolute evidence that the speed is not reasonable or prudent and that it is a violation of this Section:

110.6.1.1 25 m.p.h. -- on roads administered by the Division unless otherwise posted or stated in Regulations.

110.6.1.2 10 m.p.h. -- in parking, camping and congested areas unless otherwise posted.

110.7 No person shall operate a ~~motor~~motorized vehicle on lands administered by the division in a willful or wanton disregard for the safety of persons or property.

110.7.1 No person shall operate a ~~motor~~motorized vehicle on lands administered by the Division in a careless, inattentive or imprudent manner without due regard for road, weather and traffic conditions.

110.7.2 The intentional accelerating of a ~~motor~~motorized vehicle causing spinning of tires or what is commonly known as "burning rubber" on any park facility or roadway within an area administered by the Division is prohibited and shall be a violation of this Section.

110.8 An operator and/or passenger of a motorcycle under the age of 18 must wear a safety helmet of a type approved by the Secretary of Public Safety.

110.9 An operator of a ~~motor~~motorized vehicle shall not permit any person riding upon any bicycle, coaster, roller skates, sled or toy vehicle to attach same or himself to any ~~motor~~motorized vehicle being operated on lands administered by the Division.

110.10 No person, while on lands administered by the Division, shall ride upon any vehicle without the consent of the driver, and when any person is riding on any vehicle with the driver's consent, no part of the person's body may protrude beyond the limits of the vehicle.

110.11 No person shall drive or operate a ~~motor~~motorized vehicle on lands administered by the

Division, unless such ~~motor~~motorized vehicle is equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise.

1~~1~~0.12 No vehicle shall be driven, moved or parked on any lands administered by the Division unless so loaded or constructed as to prevent its contents from dropping, sifting, leaking or otherwise escaping therefrom.

1~~1~~0.13 It shall be unlawful for any person to operate any ~~motor~~motorized vehicle or any other type of vehicle within any area administered by the Division except on such roads or areas specifically designated by the Division for such purpose.

1~~1~~0.14 No driver shall at any time drive to the left of a solid center line on a roadway when operating a vehicle on lands administered by the Division.

1~~1~~0.15 Where traffic control devices establish one-way traffic, it shall be unlawful to drive in the opposite direction unless directed by a Law Enforcement Officer.

10.16 No person shall drive a motorized vehicle on any lands administered by the Division while using an electronic communication device while such motorized vehicle is in motion.

10.16.1 "Electronic communication device" shall mean a cell telephone, personal digital assistant, electronic device with mobile data access, laptop computer, pager, broadband personal communication device, 2-way messaging device, electronic game, or portable computing device.

10.16.2 "Using" shall mean holding in a person's hand or hands an electronic communication device while: viewing or transmitting images or data; playing games; composing, sending, reading, viewing, accessing, browsing, transmitting, saving or retrieving e-mail, text messages or other electronic data; or engaging in a call. "Using" specifically does not include a person engaging in a call with a hands-free electronic communication device while utilizing hands-free equipment and such person does not hold the hands-free electronic communication device in such person's hand or hands;

10.16.3 This section shall not apply to a law-enforcement officer, a firefighter, an emergency medical technician, a paramedic or the operator of an authorized emergency vehicle in the performance of their official duties;

10.16.4 This section shall not apply to a person using an electronic communication device to report to appropriate authorities a fire, a traffic accident, a serious road hazard, or medical or hazardous materials emergency, or to report the operator of another motorized vehicle who is driving in a reckless, careless or otherwise unsafe manner or who appears to be driving under the influence of alcohol or drugs, or to report any crime.

10.17 The driver of a motorized vehicle operated on any lands administered by the Division shall

wear a properly adjusted and fastened seat belt which meets the applicable federal motorized vehicle safety standards. The driver of a motorized vehicle shall secure or cause to be secured in a properly adjusted and fastened seat belt system, as defined by the applicable federal motorized vehicle safety standards, each occupant of the passenger compartment of the motorized vehicle who is 16 years of age or older.

10.17.1. As used in this section, "motorized vehicle" does not include motorcycles.

10.17.2 This section shall not apply to any person who possesses a written verification from a licensed physician or a licensed physical therapist that such person is unable to wear or use a seat belt for physical or medical reasons or any motorized vehicle which is not required to be equipped with seat belt under federal law or has otherwise been exempted from compliance in conformity with federal law.

10.18 The driver of a motorized vehicle shall secure or cause to be secured any child through the age of 7 and up to and including the weight of 65 pounds in a motorized vehicle operated on any lands administered by the Division, for providing protection of the child by properly securing the child in all seating positions, according to manufacturer's instruction, in a child safety seat or booster seat meeting federal motorized vehicle safety standards, and that is appropriate for the child's weight and height. Every child who has either attained the age of 8 or a weight in excess of 65 pounds and has not yet attained the age of 16 shall, in all seating positions, wear a properly secured seatbelt while in a motorized vehicle operated any lands administered by the Division.

12~~1~~.0 Parking Violations

12~~1~~.1 It shall be unlawful to stop, park or leave unattended any ~~motor~~motorized vehicle on any roadways, berms, trails, no parking zones or in any other areas not specifically designated as a parking area on lands administered by the Division.

12~~1~~.1.1 No person shall park any vehicle in a parking space marked or signed as a designated handicap parking space unless such vehicle bears a special handicap license plate or displays an authorized identification card indicating the vehicle is a vehicle of the handicapped and bearing the license number of the vehicle to which it was issued.

12~~1~~.1.2 No person shall park a vehicle and allow said vehicle to remain parked in an area longer than the posted time limit.

12~~1~~.1.3 No person shall park in any parking space that is signed and marked as reserved for a Park Ranger or emergency vehicles or employee parking.

12~~1~~.1.4 No person shall park in a "Restricted Use Parking Area" unless parking is for use of the facility so designated.

121.1.5 No person shall park in any fire lane or within fifteen (15) feet of a fire hydrant.

121.1.6 No person shall park a vehicle in any designated area without first having paid the appropriate rate, fee or charge established by the Division or Department.

121.2 It shall be unlawful for any vehicle to remain on lands administered by the Division after "closing hours" for any day-use areas closed from sunset until 8 a.m.

121.3 It shall be unlawful to leave any ~~motor~~motorized vehicle unattended on lands administered by the Division for a period exceeding 24 hours, without prior notification to the Park Administrator or Superintendent or written approval from the Director.

121.4 Any officer empowered to enforce Division Rules and Regulations during the performance of his duties may remove or cause to be removed from any lands administered by the Division, at the owner's or operator's expense, any ~~motor~~motorized vehicle, camping unit, or part thereof, parked or standing illegally or in violation of these regulations.

121.4.1 No vehicle or camping unit removed or caused to be removed pursuant to this Section shall be released until payment is made for such removal and/or storage and proper authority to process and operate said vehicle, camping unit or part thereof displayed by the person attempting to recover said vehicle, camping unit or part thereof.

121.4.2 No liability shall occur to the Division or its authorized agents for any damage or loss caused by such removal or storage.

~~12.5 A summons in appropriate form adopted by the Division may be attached to an unattended vehicle found in violation of any of the provisions of these Rules and Regulations.~~

~~12.5.1 If the identity of an operator of an unattended vehicle in violation is not otherwise apparent, the person in whose name the vehicle is registered shall be held prima facie responsible.~~

132.0 Bicycles---Environmental D Violations

132.1 Anyone riding a bicycle or propelling a vehicle by human power shall have all the rights and all the duties applicable to the operator of any other vehicle referenced within these Regulations and shall be in compliance with all State laws, rules and regulations when operating on lands administered by the Division.

132.1.1 Bicycling is permitted only on roadways designated for public use, designated and signed bike paths and multiple-use trails designated and signed for such use. **[Bicycles with electric motors are prohibited on all trails except with written permission from the Director.]**

13~~2~~.1.2 Bicycles must be ridden as far to their right as possible on roadways and trails.

13~~2~~.1.3 Bicyclists must give hand signals when stopping or turning on Park roadways and trails.

13~~2~~.1.4 Bicycles operated on designated bike trails/paths shall yield right of way at all locations where the trail or path intersects with any roadway. Bicycle riders shall yield to horseback riders and/or hikers encountered on multiple use trails administered by the Division. Bike riders shall come to a complete stop and allow horseback riders and/or hikers to pass.

13~~2~~.1.5 Bicycles operated at night shall be equipped with:

13~~2~~.1.5.1 A lamp on the front which shall emit a white light and be visible for 500 feet~~.~~, and;

13~~2~~.1.5.2 Reflectors or reflectorized material on the rear and be visible from 600 feet.

13~~2~~.1.6 No one shall operate a bicycle on Park roadways with ear plugs in both ears or while wearing a headset covering both ears.

~~**14.0 Roller Skating, Skateboards, Roller Skis**~~

~~14.1~~ 12.1.7 Persons riding bicycles upon a roadway or trail shall not ride more than 2 abreast. Persons riding 2 abreast shall not impede the normal and reasonable movement of traffic.

12.1.8 Persons riding bicycles upon a roadway or trail shall obey the instructions of any traffic control device, including traffic signal lights, traffic signs, ~~and~~ traffic markings, **[and trail markings].**

12.1.9 Bicycles operated upon lands administered by the Division shall not be operated in wilful or wanton disregard for the safety of persons or property, in a careless or imprudent manner, or without due regard for road, weather and traffic conditions then existing, or in an aggressive manner.

12.2 Using roller skates, skateboards, roller skis or similar devices is prohibited on lands administered by the Division except in areas which may be designated for such use.

~~14.2~~12.3 No person shall operate a motorized scooter, moped or similar device not defined in 21 **Del.C.** §101(~~53~~35).

~~14.3~~12.4 Persons on skateboards, roller skates, coasters, sleds or toy vehicles are prohibited from being towed or propelled by a ~~motor~~motorized vehicle on lands administered by the Division.

~~15~~13.0 Aviation---Environmental D Violations

~~15~~13.1 No person shall voluntarily bring, land or cause to descend or alight on or upon any lands or waters administered by the Division any aircraft, flying machine, balloon, parachute, drones or other apparatus for aviation except with the prior consent of the Director. "Voluntarily" shall mean for purposes of this paragraph anything other than a forced or emergency landing.

~~15~~13.2 Flying of radio-controlled model aircraft, including drones, or the launching of model rockets shall not be permitted in areas administered by the Division except in areas set aside and designated for such purposes. Special policies regarding insurance and operating conditions will be posted.

~~16~~14.0 Domesticated Animals/Pets---Enviornmental D Violations

~~16~~14.1 No person shall ride or lead a horse through any area or upon any roadway, trail or path administered by the Division unless such area, trail, roadway or path is designated for such use by the Division.

~~16~~14.1.1 Animal-drawn vehicles are permitted upon roadways and parking areas and shall be granted all the rights and shall be subject to all the regulations applicable to ~~motor~~motorized vehicles except for those regulations which by their very nature can have no application.

~~16~~14.2 In areas where horses are permitted on ocean beaches administered by the Division, owners/riders must stay within the parameters outlined in the Horseback Riding Policy.

~~16~~14.2.1 On State Park ocean beach areas, horses must use the designated crossings as outlined in the Horseback Riding Policy.

~~16~~14.2.2 Vehicle and trailers used to transport horses shall be parked in accordance with the Division's Horseback Riding Policy.

14.3 Horseback riders shall yield to hikers encountered on multiple use trails administered by the Division. The horseback rider shall stop and remain stopped until the hiker passes.

~~16.3 Except guide dogs accompanying blind and/or deaf persons~~ 14.4 Except service animals as defined by the Americans with Disabilities Act, dogs and other domesticated animals, shall not be permitted within or upon designated picnic areas, nature trails, public buildings, structures and other designated areas administered by the Division.

~~16.3~~14.4.1 Except ~~guide dogs accompanying blind and/or deaf persons~~service animals as defined by the Americans with Disabilities Act, dogs and other domesticated animals shall not be permitted upon or within any Division-administered swimming area, or swimming area beach or

surfboard/sailboard areas at anytime, day or night, from May 1 through September 30 each year, 7 **Del.C.** §1715.

~~16.3.2~~

14.5 ~~Leashes are not required when lawfully hunting with a dog or when training dogs within designated and authorized hunting and/or dog training areas.~~

~~16.3.3~~ In areas where such animals are permitted, person(s) having custody of said animal must keep it restrained on a leash not to exceed six (6) feet in length and ~~must be~~ under proper control. The sole use of an electronic leash shall be prohibited.

14.5.1 Leashes are not required when lawfully hunting with a dog or when training dogs within designated and authorized hunting and/or dog training areas.

~~16.3.4 Areas~~14.6 In areas where such animals are permitted, person(s) having custody of said animal shall not leave the pet unattended.

~~16.3.5~~14.7 Any person(s) with a dog or other domesticated animal or pet, that creates a nuisance or disturbance, or who fails to properly control such animals, may be evicted without refund or reduction of fee.

~~16.3.6~~14.8 Owners or persons having custody of dogs or other domesticated animals shall be responsible for clean up and removal of any feces deposited by the animal.

~~17~~15.0 Conduct---Unclassified Misdemeanor

~~17~~15.1 Disorderly conduct is unlawful and enforcement action may be taken against any person who intentionally causes public inconvenience, annoyance, nuisance, or alarm to any other person or who creates a risk thereof by:

~~17~~15.1.1 Engaging in fighting or in violent, tumultuous or threatening behavior;

~~17~~15.1.2 Making an unreasonable noise or an offensively coarse utterance, gesture or display or addressing abusive language to any person present;

~~17~~15.1.3 Disturbing any lawful assembly or meeting of persons without lawful authority;

~~17~~15.1.4 Obstructing vehicular or pedestrian traffic;

~~17~~15.1.5 Congregating with other persons and refusing to comply with a lawful order of an enforcement officer to disperse;

~~17~~15.1.6 Creating a hazardous or physically offensive condition which serves no legitimate purpose; or

~~17~~15.1.7 Engaging with at least one other person in a course of disorderly conduct, which is likely to cause substantial harm or serious inconvenience, annoyance or alarm and refuses or knowingly fails to obey an order to disperse made by an enforcement officer to the participants.

~~17~~15.2 No person shall expose themselves in any manner which would be considered as indecent exposure or perform any lewd act which they know is likely to be observed by others who would be affronted or alarmed by such act or exposure on lands or waters or in facilities administered by the Division.

~~17~~15.2.1 The disposal of human body waste is prohibited except within designated facilities provided for that purpose.

~~17~~15.3 Gambling is prohibited and no person shall bring into any area administered by the Division, with the intention of engaging in a game of chance for money or other valuables, any implement or device commonly used or intended for gambling purposes.

~~17~~15.4 Practicing, playing or using equipment pertaining to archery or golf on lands administered by the Division is prohibited except in those areas specifically designated for such use.

~~17~~15.5 The playing of games on lands administered by the Division involving thrown objects such as hardballs, frisbees, horseshoes, etc. shall be restricted to such areas set aside for such activities.

~~17~~15.6 While on lands administered by the Division shall, without a valid written permit, use any radio or other sound-producing device or article which, in any way, may annoy or disturb a reasonable person of normal sensitivities.

~~17~~15.7 While on lands administered by the Division, shall at any time use a horn other than as a reasonable warning signal or make any unnecessary or unreasonable harsh sound by means of a horn or other amplified warning devices.

~~17~~15.8 Reasonable quiet must be maintained at all times within all overnight facilities, particularly between the hours of 10 p.m. and 7 a.m. Unnecessary loud noises or disturbances of any nature, which are disturbing to others, shall be prohibited.

~~18~~16.0 Fires~~---~~Environmental D Violation

~~18~~16.1 No person shall kindle, build, maintain, or use a fire on lands administered by the Division, unless ~~there is written permission from the Director or their designee. Said~~said fire ~~shall be in~~is in a designated area and confined within fireplaces, grills, fire rings, or other equipment designed for the purpose of containing cooking fires.

~~18~~16.1.1 Any fire shall be under the care and direction of a competent person from the time it is kindled until it is extinguished.

~~18~~16.1.2 All fires must be properly extinguished and the ashes, embers or coals disposed of in receptacles provided for such purpose, so as to cause no danger whatsoever to persons, structures, animals, plant life, or vehicles.

~~18~~16.1.3 Fires shall be prohibited on designated swimming/surfing beaches administered by the Division.

~~18~~16.1.4 No fires larger than one necessary for cooking purposes shall be permitted~~.~~ unless there is written permission from the Director.

~~18~~16.1.5 Fires of any type or the use or possession of lanterns which use inflammable fuel, are not permitted on fishing piers.

~~18~~16.2 The possession, explosion or discharge of any firecrackers, torpedoes, rockets or other fireworks or explosives in areas administered by the Division is prohibited, except with prior written permission of the Director.

~~18.3 No person shall leave fuel containers open and/or unattended within boat launch areas, docks, piers or bulkheads or on lands under the jurisdiction of the Division.~~

~~19~~17.0 Property Violations~~---~~Unclassified Misdemeanor

~~19~~17.1 It shall be unlawful to place, dump, deposit, throw or leave any garbage, refuse, trash, cans, bottles or other debris of any kind within or upon any public beach, lands or waters administered by the Division, except in receptacles provided for such purpose.

~~19~~17.1.1 No person shall bring into a State Park from an area outside of the Park any garbage, refuse, waste, rubbish or obnoxious materials for the purpose of disposing of such in park litter receptacles.

~~19~~17.2 Disposing or discharging of solid waste on lands or waters under the jurisdiction of the Division is prohibited. Violators may be charged under 7 **Del.C.** §6025(b).

~~19~~17.3 Unless specifically authorized by the Department for management, research or educational purposes, the cutting, injuring or removal of trees, shrubs, wildflowers, ferns, mosses, or other plants from lands administered by the Division is strictly prohibited.

~~19~~17.4 ~~Removal or~~Removing, defacing, damaging, ~~removing or~~ altering, or tampering of any tangible property, including structures, buildings, natural ~~land~~ features ~~or other park property or~~, and equipment ~~from the~~, on lands administered by the Division is strictly prohibited.

~~19~~17.5 The willful~~,~~ harming, collecting, harassing or possessing of wildlife, flora, or fauna on lands administered by the Division is strictly prohibited.

~~19~~17.6 Walking on, over, or across a primary dune administered by the Division, except at locations specified by the Department or Division for such use, shall be prohibited.

~~19~~17.7 Operating a ~~motor~~motorized vehicle in such a manner as to cause willful, wanton or reckless damage to lands administered by the Division, ~~commonly known as "turfing",~~ is prohibited and shall be a violation of this Section.

~~19~~17.8 Use of dedicated state nature preserves shall be limited to posted trails and permitted activities. Property violations are enforceable under these Rules and Regulations and 7 **Del.C.** Ch. 73.

~~**20.0 Multiple Use Trails**~~

~~20.1 Bicycle riders shall yield to horseback riders and/or hikers encountered on multiple use trails administered by the Division. Bike riders shall come to a complete stop and allow horseback riders and/or hikers to pass.~~

~~20.2 Horseback riders shall yield to hikers encountered on multiple use trails administered by the Division. The horseback rider shall stop and remain stopped until the hiker passes.~~

~~21~~18.9 Activities such as rock climbing, rapelling or similar are only permitted in desiganted areas and with the proper permit issued by the Division.

~~21~~18.0 Public Assemblies, Meetings, Distribution or Posting of Printed Matter---Environmental D Violation

~~21~~18.1 In order to maintain the recreational nature of State Parks as a haven for the public from the rigors of work and the commercial environment, and to promote the State's interest in its concessions and sales to the public, no commercial advertising by the distribution or posting of printed matter, other than by the State or its concessionaires, shall be permitted in State Parks.

~~21~~18.2 Public meetings, assemblies, gatherings, demonstrations and/or the distribution or posting of printed matter are allowed on lands administered by the Division provided a permit or approval to do so has been issued by the ~~Park Administrator or Superintendent~~ Director.

~~21~~18.3 ~~An application for such a permit~~A Division Special Use Permit shall be completed and set forth the name of the applicant, the name of the organization (if any), the date, time, duration and the number of persons expected to attend or participate, the location of the proposed distribution or posting of printed matter, and a statement designating the equipment and facilities to be used in connection therewith. The application shall be submitted to the ~~Park Administrator or Superintendent~~Director at least ~~72 hours~~7 days in

advance of the proposed event, distribution or posting.

~~21.4 Within 48 hours the Park Administrator or Superintendent shall issue a permit unless:~~

~~21.4.1 A prior application for a permit for the same time and location has been made, which has been or will be granted; and the activities authorized by that permit do not reasonably allow multiple occupancy of the particular area;~~

~~21.4.2 It appears that the event or the distribution or posting of printed matter will present a clear and present danger to the health or safety or park visitors and/or general public by inciting riots or public disturbances, or by encouraging injury to others, damage to property, or the violation of other people's civil rights; or~~

~~21.4.3 The event or the distribution or posting is of such nature or duration that it cannot reasonably be accommodated in the particular location applied for considering possible damage to park resources or facilities, impairment of a protected area's atmosphere of peace and tranquillity, interference with Park program activities or impairment of public use facilities.~~

~~21.5 The Park Superintendent or Administrator shall designate on a map, which shall be available in the Park office, the locations available for public assemblies and/or distribution or posting of printed matter. Locations may be designated as not available only if such activity would:~~

~~21.5.1 cause injury or damage to Park resources;~~

~~21.5.2 be contrary to the purposes for which the natural, historic, development and special use zones are maintained;~~

~~21.5.3 unreasonably interfere with interpretive, visitor service or other program activities or with the administrative function of the area; or~~

~~21.5.4 substantially impair the operation of public use facilities or services of concessionaires or contractors.~~

~~21.6 The permit may contain such conditions as are reasonably consistent with protection and use of the area for the purposes for which it is maintained.~~

~~21.7~~18.4 Persons engaged in the distribution or posting of printed matter under this Section shall not obstruct or impede pedestrians or vehicles, harass visitors with physical contact or verbal demands, misrepresent the purposes or affiliations of those engaged in the distribution or misrepresent whether the printed matter is available without cost or donation.

~~21.8~~18.5 A ~~permit~~Special Use Permit may be revoked ~~under any of those conditions as listed in 21.5 of this Section which constitutes grounds for denial of a permit, or~~ for violation of the terms or conditions of the permit, Park Regulations or Park Policies. Such a revocation shall be made in writing with the reason(s) for revocation clearly set forth, except under emergency circumstances, when an immediate verbal revocation or suspension may be made, to be followed by a written confirmation.

~~22~~19.0 Solicitations and Concessions~~---Environmental D Violation~~

~~22~~19.1 Vending of merchandise, services or food upon lands administered by the Division is prohibited without the express written approval of the Director.

~~22~~19.2 No person shall solicit for money or goods on any lands administered by the Division without the written permission of the Director.

~~22~~19.3. No person, group of persons, nor any business or commercial entity shall utilize parks or their facilities for business gain, whether for profit or otherwise, except those concessionaires or groups who have followed procedures, met established requirements, paid appropriate program charges and have been authorized by the Director.

~~23~~20.0 Alcoholic Beverages and Drugs~~---Environmental D Violation~~

~~23~~20.1 The sale of alcoholic beverages without a permit from the Division of Alcoholic Beverage Control and written permission from the Director is prohibited on lands and waters administered by the Division.

~~23~~20.2 No person under the age of twenty-one (21) years shall possess or consume alcoholic beverages of any type. Any person suspected of being in violation of this subsection, who fails to provide sufficient identification to prove otherwise may, in addition to any other action taken, be evicted without refund of any fee.

~~23~~20.3 No person who is of legal age to possess or consume alcoholic beverages shall sell, give or in any way provide alcoholic beverages to a person under the age of twenty-one (21) years.

~~23~~20.4 No person under the influence of alcohol, narcotics or any other drug, to the extent of being considered publicly intoxicated, shall enter or remain upon or within lands or waters administered by the Division.

~~23~~20.5 The unlawful possession, use or consumption of narcotics- cotics, drugs, drug substances or controlled substances and/or drug paraphernalia as listed and defined in Title 16, Delaware Code is expressly prohibited upon lands or waters or within facilities administered by the Division.

~~23~~20.6 Unless authorized by the Director the possession, consumption, or public display of alcoholic beverages or intoxicating liquors within or upon the following areas is prohibited:

~~2320~~.6.1 Brandywine Creek State Park -- Prohibited in all areas.

~~2320~~.6.2 Fort Delaware State Park -- Prohibited in all areas.

~~2320~~.6.3 Wilmington State Parks-Prohibited in all areas.

~~2320~~.6.4 Fox Point State Park-Prohibited in all areas.

~~2320~~.6.5 Specific Areas Within all State Parks -- All nature trails, nature preserves, youth camps public restrooms, bath houses, parking facilities, roadways, designated swimming areas, pools, ~~surfboarding beach areas~~ or other areas designated by the Director.

~~2320~~.7 No person shall operate or be in actual physical control of any motorized vehicle, vessel, bicycle or other means of conveyance while under the influence of alcohol or any drug.

~~2320~~.7.1 Possession and/or use of any alcoholic beverage and/or drugs while aboard Division rental vessels shall be prohibited.

~~2320~~.8 The bringing in of draft beer in kegs or by a vehicle equipped to dispense draft beer shall not be permitted upon lands administered by the Division without prior written permission from the Director.

~~24~~21.0 Hunting, Fishing and Wildlife Management---Environmental D Violation

~~24~~21.1 It shall be unlawful to display, possess or discharge firearms of any description, air rifles, B.B. guns, sling shots, or archery equipment upon lands or waters administered by the Division, except with prior written approval of the Director.

21.2 No person shall hunt, pursue, trap~~,~~ shoot, injure, kill or molest in any way by hand, gun, archery, equipment or dog any wild bird or animal on lands or waters administered by the Division, nor shall any person have any such wild bird or animal in his possession.

21.3 Notwithstanding sections 21.1 and 21.2 above, hunting may be permitted in certain areas at times authorized by the Division. Hunting shall be in accordance with State and Federal laws, rules and regulations.~~; provided however, that such wild bird or animal was not~~ Those persons lawfully hunting in those areas specifically designated for hunting by the Division may possess and discharge authorized firearms for the purpose of lawfully hunting. Those persons lawfully hunting may possess such wild bird or animal hunted, pursued, trapped, injured or killed by gun, archery equipment or dog in areas designated by the Division for hunting when such hunting is lawful.

~~24.2 Hunting may be permitted in certain areas at times authorized by the Division. Hunting shall be in accordance with State and Federal laws, rules and regulations.~~

~~24.3 It shall be unlawful to display, possess or discharge firearms of any description, air rifles, B.B. guns, sling shots or archery equipment upon any lands or waters administered by the Division, except by those persons lawfully hunting in those areas specifically designated for hunting by the Division, or except with prior written approval of the Director.~~

~~24~~21.4 A hunter registration card issued by the Division, in addition to a valid Delaware hunting license, is required for hunting on lands in administered by the Division which are open for hunting. Hunting registration cards shall be issued by the Park Administrator or Park Superintendent and shall be valid for the entire hunting season unless revoked for violation of hunting laws, rules or regulations. All hunting activities shall be regulated ~~bt~~by the registration card and all card holders shall abide by the conditions of the registration card. This hunting registration card shall not be valid for deer hunting on any park where a drawing is held for assignment of deer stands or hunting areas. A special registration card is required in areas that regulate deer hunting by lottery.

~~24~~21.4.1 In areas where elevated deer stands are provided or authorized, hunters must remain on their assigned stand during the shotgun season. Archery deer hunters must stay within the area assigned to their stand. Hunting programs in each State Park vary by season, method of take and other restrictions for that specific park. Hunters must follow Park specific requirements for use of hunting stands and designated hunting areas.

~~24~~21.4.2 Trapping is prohibited except for management purposes as authorized by the Director.

~~24~~21.4.3 Raccoon hunting is restricted to chase by dogs only, with firearms prohibited. Firearms are prohibited while raccoon hunting.

~~24~~21.5 Persons under the influence of alcoholic beverages, liquors or drugs or possessing and/or consuming alcoholic beverages, liquors or drugs shall not be permitted to hunt on Division lands.

~~24~~21.6 Fishing shall be permitted, in accordance with the laws and regulations as set forth by the Division of Fish and Wildlife. ~~A fishing license is required for non-tidal waters~~ A General Fishing Licesnse (GFL) issued by the Division of Fish and Wildlife is required to fish from any lands or in any waters administered but the Division.

~~24~~21.6.1 Fishing is not permitted in designated swimming areas.

21.6.2 Fishing is prohibited from all piers, docks, bulkheads and ~~surfboard areas during day-use hours~~vessels within marina waters.

~~24~~21.6.3 It shall be unlawful for anyone to utilize an aparatus to cast a fishing hook or bait as a projectile by force of combustion, explosive, gas and/or mechanical means, or to possess such aparatus, whether operable or inoperable, loaded or unloaded.

21.7 The disturbance of nesting or interference with the raising of young of wildlife, including amphibians, reptiles, birds or mammals on any lands or waters administered by the Division is prohibited unless authorized by the Director.

~~24~~21.7.1 The heronry at Pea Patch Island Nature Preserve shall be closed to the public year round. Entry without specific prior written authorization by the Division Director is prohibited.

~~24~~21.8 No person, pet or vehicle shall be permitted to enter an area designated and posted by the Division as a bird-nesting/breeding area.

~~24~~21.9 It shall be prohibited for any person to bring in or otherwise introduce any species of domestic or wild animal onto lands administered by the Division.

~~25~~22.0 Rates, Fees and Charges---Environmental D Violation

~~25~~22.1 No person shall use or gain admittance to, or attempt to use or gain admittance to, any area or facilities for which a rate, fee or charge is made by the Division or Department unless he pays the rate, fee or charge established by said Division or Department.

~~25~~22.2 The purchase or resale of a daily entrance fee ticket, except through an authorized Division agent, is prohibited.

~~25~~22.3 The use or attempt to use any altered daily entrance fee ticket is prohibited.

~~25~~22.4 The vehicle permit for entering a State Park shall be affixed to a conspicuous place on the vehicle as designated by the Division. Adhesive backing on the permit shall be used to attach the permit to the vehicle. Use of any other material or device to attach the permit shall be prohibited.

22.5 Use of Senior Annual Pass without a senior being present in the vehicle is prohibited.

22.5.1 Use of a valid Lifetime Pass by a person other than to whom it was issued is prohibited.

~~26~~23.0 Facility Rentals and Special Events---Environmental D Violation

~~26~~23.1 No person shall make use of or attempt to make use of any State Park pavilion or other facility which has been reserved, unless they are a member of the family or group reserving the pavilion or facility.

~~26~~23.2 No person, group or organization shall schedule, hold or conduct an activity or event which requires special arrangements, considerations and/or planning by the staff unless a written request is submitted to the Director ~~or their designee~~ for approval at least 7 days prior to the activity or event. Additional costs may be charged for special arrangements,

considerations and/or planning may include but not be limited to traffic and crowd control, parking, special equipment use, and the use of facilities for activities other than their intended purposes.

~~27~~24.0 Enforcement Powers~~---~~Unclassified Misdemeanor

~~27~~24.1 In accordance with the provision set forth in 7 **Del.C.** §4701(a)(8), the Division may employ personnel who shall have all the powers of investigation, detention and arrest, conferred by law on peace officers, sheriffs, or constables for the enforcement of the Division Rules and Regulations.

~~27~~24.2 Powers, duties and functions of law enforcement officers of the Department of Natural Resources and Environmental Control:

~~27~~24.2.1 In accordance with 29 **Del.C.** §8003(a), law enforcement officers of the Department of Natural Resources and Environmental Control shall see to the enforcement of all laws, regulations, rules, permits, licenses, orders and program requirements of the Department of Natural Resources and Environmental Control.

~~27~~24.2.2 Law enforcement officers of the Department of Natural Resources and Environmental Control shall have police powers similar to those of sherriffs, constables, peace officers and other police officers when enforcing the laws, rules, regulations, permits, licenses, orders and program requirements of the Department of Natural Resources and Environmental Control. Such police powers shall include, but not be limited to, powers of investigation, search, seizure, detention and arrest conferred by law on sherriffs, constables, peace officers and other police officers.

~~27~~24.2.3 Law enforcement officers of the Department of Natural Resources and Environmental Control shall have the authority to serve and return summonses, subpoenas and warrants.

~~27~~24.3 Each employee vested with the enforcement responsibility as authorized ~~in paragraphs a and b~~above shall be required to show proper identification as issued by the Department of Natural Resources and Environmental Control or other county or state law enforcement agencies.

~~27~~24.4 No person shall willfully fail or refuse to comply with any lawful order or direction of any Enforcement Officer on lands or waters administered by the Division.

~~27~~24.5 Anyone interfering with enforcement personnel during the performance of their duty in enforcing these regulations shall be cited for "interfering with enforcement personnel in the performance of his or her duty".

~~28~~25.0 Penalty and Court Powers

~~28~~25.1 In accordance with the provisions set forth in the 7 **Del.C.** §4702(a), ~~whoever violates the Rules and Regulations~~any person convicted of violating any rule or regulation promulgated by the Department of Natural Resources and Environmental Control~~, Division of Parks~~ pursuant to this chapter shall be:

25.1.1 Fined not less than $50 nor more than $100, plus the costs of prosecution and court costs, for any rule or regulation designated by the Department of Natural Resources and ~~Recreation,~~Environmental Control as a class D environmental violation. Any person convicted of a class D environmental violation within 5 years of a prior conviction for a class D environmental violation shall be fined not less than $~~25.00~~100 nor more than $500, plus the costs of prosecution and court costs.

25.1.2 Fined not less than $50 nor more than $250~~.00 and costs for each offense~~, plus the costs of prosecution and court costs, or imprisoned not more than ~~thirty (30)~~10 days, or both~~. For each subsequent like offense, he/she shall be fined not less than $50.00 nor more than $500.00. In addition to such fines, costs or imprisonment, any person who is convicted of any violation involving the damage, destruction or removal of property owned~~, for any rule or ~~administered by the State~~regulation designated by the Department of Natural Resources and Environmental Control as an unclassified misdemeanor.

25.1.3 Fined not less than $10 nor more than $25 for all parking violations. No court costs or other administrative fee shall be ~~required~~assessed if a civil penalty is paid by voluntary assessment. A summons in the appropriate form to ~~make restitution~~be adopted by the Department of Natural Resources and Environmental Control may be attached to ~~the Department for replacement or restoration of such property. Furthermore, in lieu of or~~ an unattended vehicle found in ~~addition to the aforesaid penalties, the court may order violators convicted of violations involving the damage, destruction or removal of State Park property to perform work projects~~violation of any rule or regulation for parking in ~~State Parks~~state parks by an authorized officer.

~~28~~25.2 Justices of the Peace shall ~~severally throughout the State~~ have jurisdiction ~~of~~over violations of the Rules and Regulations of the Department of Natural Resources and Environmental Control, Division of Parks and Recreation, with the condition that any person arrested for such violation be taken before the closest available magistrate in the county where such violation is alleged to have occurred. An arresting officer may issue a summons to any person arrested for any violation of these Rules and Regulations and have said person appear at a subsequent date at the Justice of the Peace Court which is the nearest available Justice of the Peace to the place of arrest during the regularly scheduled hours of said court. For the purposes of this Section, the summons for later appearance shall be sufficient to grant jurisdiction over the offense to the said nearest available Justice of the Peace. A Justice of the Peace is available when he is present at ~~his office or~~ court.

~~28~~25.3 Failure to answer any summons issued for violations of these Rules and Regulations shall result in an additional charge of Failure to Answer Summons.

~~28~~25.4 Nothing contained herein shall preclude an action being brought in a court of equity for injunctive or other relief.