

North Dakota Game and Fish Department
Testimony Concerning Administrative Rules
March 11, 2009

1. The rules did not result from statutory changes made by the Legislative Assembly.
2. The rules are not related to any federal statute or regulation.
3. Public notice concerning these administrative rules was published in each official county newspaper. A public hearing was held at the ND Game and Fish Department's Bismarck office on October 23, 2008. Written comments were also accepted by the Department.

4. Summary of Oral Comments

A. Harold Erickson, Dakota Trout Ranch – Asked about the penalty section change that states, “No person who has had a department-issued private fish hatchery license revoked or suspended within three years may obtain a license.” Mr. Erickson stated that losing his private fish hatchery licenses would put him out of business. He would lose ownership of his fish. He went on to state that game wardens have a lot of flexibility interpreting the law and there could be problems. He cannot afford to lose his license. He thinks revocation of a license is overkill.

Department Response: The Department considered this concern and kept the \$100 fine for minor violations, but removed the three year time period section. The new wording states, “Violations may be the basis of administrative action up to and including licenses revocation or suspension.”

B. George Berger – Asked why the change in the shooting preserve rules to prohibit the taking of hens is proposed. Chief Game Warden Bob Timian explained that it was proposed to reduce the number of wild hens that are taken at some shooting preserves. Mr. Berger stated that they do not allow the shooting of hens, but did not think this would be a problem in their area of the state – north of Valley City.

Also mentioned problems with interpreting law related to guides and outfitters and their use of Cabalas as a booting agent.

Department Response: The Department considered the hen pheasant issue and removed this change from the proposed rules.

C. Henry Berger – Brought up problems his family was having with interpretation of guide laws and the use of Cabalas or Gander Mountain as booking agents. Stated that they are not being treated fairly on this.

Department Response: The Cabalas issue dealing with booking agents is not a part of the proposed administrative rule changes, but that Department enforcement staff would gladly meet with them to discuss this. Chief Game Warden Bob Timian met with George and Henry Berger after the administrative rule hearing to discuss this issue.

Summary and Response for Written Comments

A. Mathew R. Doeringsfeld suggested that the Department not require name, address and telephone number tags on tree stands that are not left unattended on Department Wildlife Management Areas.

Department Response: The Department agrees with this suggestion and added wording to that affect.

B. Mike Elgin, Owner of Dakota Hunting Club and Kennels, Grand Forks, ND objected to the propose rule that would restrict shooting preserves to harvesting only male pheasants. He stated that this would increase costs and be very negative for shooting preserves.

Department Response: The Department considered this and removed this restriction from the proposed rules.

C. Richard Fink from Bismarck and the **Fishing Tournament Rules Committee** supported the rule proposal that changes the number of tournament patrol boats from one per twenty boats to one per twenty-five boats. Improved communications equipment and new tournament rules concerning culling of fish support this change. It would also be less of a burden for those running fishing tournaments.

Department Response: The Department is adopting the proposed change.

5. The cost of publishing notice of the rules was \$1,832.28. Other than staff time, there were not any other significant costs for making these rules.

6. Chapter 30-02-03 – Operation of Private Game Bird Shooting Preserves – New shooting preserves are limited to no more than 640 acres in size. The purpose is to establish that shooting preserves are allowed primarily to allow the taking of stocked birds, rather than wild birds.

Chapter 30-03-01.1 – Bait Vendors – Limits the maximum number of ponds to fifty for a wholesale bait license. An individual may be issued only one wholesale license per calendar year. Minor clarifications of existing rules are made. The pond and license restrictions are implemented to put some controls in place to reduce potential over harvest problems.

Chapter 30-03-02 – Private Fish Hatcheries – Only one private fish hatchery license may be issued per individual per year. A penalty section is established for this chapter. These are done to make these rules effective.

Chapter 30-03-03 – Construction and Use of Fishhouses for Winter Fishing – Removes the restriction prohibiting the use of campers as fishhouses. Removes the hole size restriction for ice fishing. This is done to remove unnecessary restrictions.

Chapter 30-03-05 – Fishing Contests – The contest definition is clarified as to the events that require a permit. Wording in some sections is clarified. The number of required tournament patrol boats is reduced.

Chapter 30-04-02 – Public Use of Game or Fish Management Areas – Requires a name, address and telephone number tag for tree stands placed on Department wildlife management areas. Requires removal of tree stands on wildlife management areas by January 31 each year. Prohibits paintballing and geocaching on wildlife management areas unless authorized by the Game and Fish Director or designee. The purpose is to better control these activities on Game and Fish lands.

Chapter 30-04-03 – Guides and Outfitters – Establishes the Department's interpretation of NDCC 20.1-03-36.1(4) dealing with the exemption for guide and outfitter licenses for persons who own or lease real property for the primary pursuit of bona fide agricultural purposes. The purpose is to provide guidelines to implement the guide and outfitter law.

7. A regulatory analysis was not required by NDCC section 28-32-08, so none was prepared.

8. Small entity regulatory analysis's and small entity economic impact statements were prepared and copies are attached.

9. A takings assessment was not prepared since the rules will not limit the use of private property.

10. These rules were not adopted as emergency rules.

Small Entity Regulatory Analysis – For all the proposed rules, the following were considered:

Establishing less stringent compliance or reporting requirements

ND Game and Fish considered establishing less stringent compliance or reporting requirements. The reports required are considered to be reasonable and to be the minimum allowable.

Establishing less stringent schedules or deadlines for compliance or reporting requirements

Less stringent schedules or deadlines were considered. The schedules or deadlines are not stringent and are reasonable.

Consolidating or simplifying compliance or reporting requirements

Compliance or reporting requirements have been consolidated or simplified as much as possible.

Establishing performance standards that replace design or operational standards required in the proposed rule

Performance standards are used when possible.

Exempting small entities from all or part of the rule's requirements

This exemption was considered, but not considered practical or reasonable.

**Small Entity Economic Impact Statement for Amendments to NDAC Chapter
30-03-01, Bait Vendors**

1. Small Entities that may be subject to the proposed rule

All individuals or businesses operating a wholesale bait business would be subject to the changes to the Bait Vendors rules. This includes about 30 wholesale bait operations in North Dakota.

2. The administrative or other costs required for small entities to comply with the proposed rule

3. The probable cost and benefit to private persons and consumers who may be affected by the proposed rule

The proposed rule amendments would not affect costs for private persons and consumers.

4. The probable effect of the proposed rule on state revenues

There would be no effect on state revenues.

5. Whether there are any less intrusive or less costly methods of achieving the proposed rule's purpose

No less intrusive or less costly methods of achieving the proposed rule's purpose are known.

**Small Entity Economic Impact Statement for Amendments to NDAC Chapter
30-03-02, Private Fish Hatcheries**

1. Small Entities that may be subject to the proposed rule

All individuals or businesses operating a private fish hatchery business would be subject to the changes to the Bait Vendors rules. There normally are two or three such operations in North Dakota each year.

2. The administrative or other costs required for small entities to comply with the proposed rule

The changes in the rules are minor and should not increase costs.

3. The probable cost and benefit to private persons and consumers who may be affected by the proposed rule

The proposed rule amendments would not affect costs for private persons and consumers.

4. The probable effect of the proposed rule on state revenues

There would be no effect on state revenues.

5. Whether there are any less intrusive or less costly methods of achieving the proposed rule's purpose

No less intrusive or less costly methods of achieving the proposed rule's purpose are known.

**Small Entity Economic Impact Statement for Amendments to NDAC Chapter
30-03-03, Construction and Use of Fishhouses for Winter Fishing**

1. Small Entities that may be subject to the proposed rule

All individuals or businesses operating fishhouse related business would be affected.

2. The administrative or other costs required for small entities to comply with the proposed rule

The changes in the rules are minor and should not increase costs.

3. The probable cost and benefit to private persons and consumers who may be affected by the proposed rule

The proposed rule amendments would not affect costs for private persons and consumers.

4. The probable effect of the proposed rule on state revenues

There would be no effect on state revenues.

5. Whether there are any less intrusive or less costly methods of achieving the proposed rule's purpose

No less intrusive or less costly methods of achieving the proposed rule's purpose are known.

**Small Entity Economic Impact Statement for Amendments to NDAC Chapter
30-03-05, Fishing Contests**

1. Small Entities that may be subject to the proposed rule

All individuals or businesses involved in fishing contests may be subject to the proposed rule changes.

2. The administrative or other costs required for small entities to comply with the proposed rule

The changes in the rules are minor and should not increase costs. The reduction in the number of patrol boats needed should reduce costs.

3. The probable cost and benefit to private persons and consumers who may be affected by the proposed rule

The proposed rule amendments would not negatively affect costs for private persons and consumers.

4. The probable effect of the proposed rule on state revenues

There would be no effect on state revenues.

5. Whether there are any less intrusive or less costly methods of achieving the proposed rule's purpose

No less intrusive or less costly methods of achieving the proposed rule's purpose are known.

**Small Entity Economic Impact Statement for Amendments to NDAC Chapter
30-04-03, Guides and Outfitters**

1. Small Entities that may be subject to the proposed rule

The rule changes clarify how the Department will interpret state law related to exemptions for the guide and outfitter license requirements.

2. The administrative or other costs required for small entities to comply with the proposed rule

The changes in the rules are minor and should not increase costs.

3. The probable cost and benefit to private persons and consumers who may be affected by the proposed rule

The proposed rule amendments would not affect costs for private persons and consumers.

4. The probable effect of the proposed rule on state revenues

There would be no effect on state revenues.

5. Whether there are any less intrusive or less costly methods of achieving the proposed rule's purpose

No less intrusive or less costly methods of achieving the proposed rule's purpose are known.

**Small Entity Economic Impact Statement for Amendments to NDAC Chapter
30-02-03, Operation of Private Game Bird Shooting Preserves**

1. Small Entities that may be subject to the proposed rule

All currently licensed individuals or businesses operating a private game bird shooting preserve would be exempt from the acreage restriction. New businesses could not be larger than 640 acres. The prohibition of using hens on shooting preserves would impact a small number of these operations.

2. The administrative or other costs required for small entities to comply with the proposed rule

The changes in the rules are minor and should not increase costs.

3. The probable cost and benefit to private persons and consumers who may be affected by the proposed rule

The proposed rule amendments would not affect costs for private persons and consumers.

4. The probable effect of the proposed rule on state revenues

There would be no effect on state revenues.

5. Whether there are any less intrusive or less costly methods of achieving the proposed rule's purpose

No less intrusive or less costly methods of achieving the proposed rule's purpose are known.

**Small Entity Economic Impact Statement for Amendments to NDAC Chapter
30-04-02, Public Use of Game and Fish Management Areas**

1. Small Entities that may be subject to the proposed rule

None would be affected.

2. The administrative or other costs required for small entities to comply with the proposed rule

The changes in the rules are minor and should not increase costs.

3. The probable cost and benefit to private persons and consumers who may be affected by the proposed rule

The proposed rule amendments would not significantly affect costs for private persons and consumers.

4. The probable effect of the proposed rule on state revenues

There would be no effect on state revenues.

5. Whether there are any less intrusive or less costly methods of achieving the proposed rule's purpose

No less intrusive or less costly methods of achieving the proposed rule's purpose are known.