

North Dakota Game and Fish Department
Testimony Concerning Administrative Rules
March 12, 2008

1. The rules related to the Antelope License Raffle are the result of Senate Bill 2201 from the 2007 legislative session. This bill authorized this license raffle by the North Dakota Hunter Educators Association.
2. The rules are not related to any federal statute or regulation and were not mandated by federal law.
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 November 13, 2007. Written comments were also accepted by the Department.
4. **Oral Testimony** – Only one person testified at the public hearing for these rules. A representative of the North Dakota Wildlife Federation testified in favor of the Aquatic Nuisance Species rules.

Written Comments – The Department received six letters, all supporting the Aquatic Nuisance Species administrative rules. One of these, Minnkota Power Cooperative, recommended expanding the wording/heading on the two sections titled "Aquatic Vegetation Prohibited" and "Aquatic Vegetation Transport" to encompass all aquatic nuisance species (ANS) including aquatic animals. This is a valid point and fortunately is already covered in NDCC 20.1-17-06. There is specific language applies to all aquatic nuisance species, whether plant or animal. Therefore it is not necessary to address this in these administrative rules.

In an additional letter, the Red River Joint Water Resource Board stated that the Game and Fish Departments efforts to limit of exposure to ANS by means of intrastate transportation by recreational watercraft or vehicles, and commercial or construction equipment are entirely reasonable. Additionally they asked that the Department "give consideration to any potentially adverse consequences these proposed rules might have on water projects constructed by water resource districts in the State." The Department has reviewed this and is not aware of any impact on water projects as a result of these administrative rules.

5. The cost of publishing notice of the rules was \$1,348. Other than staff time, there were not any other significant costs for making these rules.
6. **Antelope License Raffle rules** – These rules establish requirements for the ND Hunter Educators' Association to use when conducting raffles. A pre-raffle plan is required. An accounting statement is required after the completion of the drawing. A financial report on the use of the funds is needed annually. These are basic requirements

for handling this type of fund raiser. These are also required for moose, elk, and mule deer raffles.

Bait Vendors Rules - changes were made to the existing bait vendor administrative rules, primarily done to address ANS issues and to provide clarification on some matters.

Highlights of these changes include –

- 1) No fathead minnows and stickleback can be imported into North Dakota but other aquatic bait (e.g. white suckers, leeches, etc) will continue be allowed with appropriate license.

More than 99% of all live baitfish sold in North Dakota are fathead minnows and the in-state volume of fathead minnows trapped exceeds in-state demand. North Dakota wholesalers can meet North Dakota needs, although out-of state exports can cause periodic distribution challenges. This is not the case for other aquatic bait - North Dakota cannot currently meet demand thus importing (with restrictions) will continue to be allowed,

- 2) No aquatic vegetation can be in the imported bait ... and potable or well water must be used for transport of 'other' live bait,

These two measures help minimize the risk of ANS from Minnesota and other states from making their way inadvertently to North Dakota.

Aquatic Nuisance Species – these rules will affect all anglers, boaters, hunters and some commercial operations in the state. These new rules will minimize the inconveniences to all while providing the necessary protection measures. Two of the more significant rules are –

- 1) All watercraft, trailers, motors and recreational and commercial equipment must be free of aquatic vegetation when leaving a water body, and,
- 2) All water must be drained from the watercraft, trailers, motors and recreational and commercial equipment before leaving a water body (exemption: live wells with fish present).

Watercraft are the major pathway for transporting ANS thus there was special emphasis on this user group. These rules also apply to construction equipment.

Private Fish Hatcheries - just a few changes were made to this section. Equipment must be free of aquatic vegetation and ANS. Further, through the licensing and permitting process, species of fish that may be imported into North Dakota will be required to be disease-free of important parasites and pathogens.

These changes are needed to ensure all individuals transporting/importing fish are in compliance of ANS law and that identified ANS pathways are adequately addressed.

7. A regulatory analysis was not required by North Dakota Century Code 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.

OTHER REQUIREMENTS

Regulatory Analysis – None was prepared. No one requested an analysis and the rules were not expected to have an impact on the regulated community in excess of \$50,000.

Takings Assessment – None required since the rules will not limit the use of private real property.

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 retail or wholesale bait business would be subject to the changes to the Bait Vendors rules. This includes about 200 retail bait operations and 30 wholesale bait operations in North Dakota.

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

There would be minimal additional cost to wholesale bait businesses as a result of requirements to remove or keep out aquatic vegetation and aquatic nuisance species. The prohibition of the importing of fathead minnows or stickleback into the state may force some to obtain new sources for these. This should be easy to do because there are adequate sources in North Dakota and costs should not be higher. The other changes in the rules are clarification of wording to meet legal requirements.

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. It will provide better protection of the state's aquatic resources from invasive and injurious introductions. This will aid in providing improved and sustainable fisheries for the public.

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

There would be minimal additional cost to private fish hatchery businesses as a result of requirements to remove or keep out aquatic vegetation and aquatic nuisance species. The maximum number of ponds contracts for fish removal is decreased from 100 to 20. This should have little or no impact on these businesses because 20 ponds probably are more than enough for these operations. If aquatic nuisance species do infect some North Dakota waters, these businesses will not be allowed to remove fish from these waters. The other changes in the rules are clarification of wording to meet legal requirements.

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. It will provide better protection of the state's aquatic resources from invasive and injurious introductions. This will aid in providing improved and sustainable fisheries for the public.

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
30-03-06, Aquatic Nuisance Species**

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

All individuals or businesses operating equipment on the waters of North Dakota will be affected by these rules.

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

There would be minimal additional cost to individuals and businesses as a result of requirements to remove or keep out aquatic vegetation and aquatic nuisance species.

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. There are little or no costs for inspecting and removing most aquatic vegetation or aquatic nuisance species from equipment. Some aquatic nuisance species such as zebra mussels can be more difficult and expensive to remove. This cost can be reduced by regular inspection and cleaning of equipment. This will provide better protection of the state's aquatic resources from invasive and injurious introductions. This will aid in providing improved and sustainable fisheries for the public.

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 30-02-08, Antelope License Raffle

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

The North Dakota Hunter Education Association

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

The rules are standard accounting requirements for this type of raffle and will result in very little cost to the organization.

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

There should not be any cost to private persons and consumers.

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

None.

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

There are not any less intrusive or less costly methods of achieving the purpose of the rules. These are minimal accounting requirements and compliance will actually help to prevent problems that could jeopardize the future of these raffles.