

## North Dakota Game and Fish Department Response

## ND Administrative Rules Committee

December 10, 2009

- 1. Has your agency imposed penalties against individuals or organizations by applying provisions in the North Dakota Administrative Code? If so, has the action been by court proceedings or by administrative agency adjudicative proceedings?**

Yes, the ND Game and Fish Department has imposed penalties against individuals or organizations by applying provisions of the ND Administrative Code. These situations involve the writing of a citation by a Game Warden and the handling of the case by the court system.

- 2. Has the validity of rules adopted by your agency imposing penalties been challenged?**

No, it has not been challenged.

- 3. Do you believe that it would be useful to transfer penalty provisions from administrative rules to statutory provisions? If so, please identify any rules provisions imposing penalties which you believe should be transferred to statutory provisions.**

It would be helpful to move the penalty provision for 30-03-01.1-11, "stocking of live fish, live fish eggs, live amphibians, or other live aquatic organism into any waters of the state shall be illegal except with the appropriate license or permit issued by the director" to a statutory provision. We think this is the only situation that needs to be corrected and is necessary because the basis of this rule originates is a chapter of Title 20.1 that does not have a general penalty clause.

- 4. The Game and Fish Department is the only agency we are able to identify which has adopted administrative rules imposing criminal penalties. Do you believe the statutory authority of the Game and Fish Department clearly authorizes imposition of criminal penalties by rules of the department? If so, please identify the statutory authority.**

The ND Game and Fish Department does not claim to have the authority to establish criminal penalties for adopted administrative rules. The Game and Fish Director may establish noncriminal penalties with a fine of up to two hundred fifty dollars. It is the Departments position that all criminal penalties should have a statutory basis and for most situations, NDCC 20.1-02-05(22) establishes this basis.

NDCC 20.1-02-05(22) establishes that violation of any game and fish rule not designated as having a noncriminal penalty is considered a criminal violation as established in the appropriate chapter of this title. The legislature has written general penalty provisions for most chapters of Title 20.1. These establish that any person violating a provision of this chapter for which a penalty is not specifically provided is guilty of a class A or B misdemeanor, depending upon the chapter involved.