

North Dakota Game and Fish Department
 Testimony Concerning Administrative Rules
 September 14, 2010

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 April 9 and June 29, 2010. Written comments were also accepted by the Department.
4. Summary and Response of Oral and Written Comments

Bait Vendor Rules

Comments from Rick Bernier of the ND Bait Dealer Association –

Stated that all the penalties for bait vendor rules should be noncriminal – except for illegal interstate transport of bait. Violations of these rules should not be criminal violations.

Department Response: The Department agrees that violations of most of these rules should be noncriminal and has placed noncriminal penalties for these. We agree with Mr. Bernier that illegal interstate transport of bait should be a criminal violation and it is not designated as noncriminal. The Department also believes that illegal stocking in North Dakota is a very serious offense that can be very costly to the state, so this is not designated as noncriminal. Additionally, failure to have the required retail or wholesale license and possession of illegal fish will remain criminal as designated by the Legislature in NDCC Chapter 20.1-06 and 20.1-02-05(22).

Stated that bait traps for wholesale license holders are limited to a maximum of 5 feet in size. He would like to change this so that special permits could be issued for larger equipment.

Department Response: The Department did not propose any changes in the sizes of traps in these rule changes. It would not be appropriate to make this change without required public notice. This may be considered in the future.

Stated that the wording on assistants needs clarification. It states that individuals who have had their bait vendor license revoked may act as an assistant, when the intent may have been the opposite. **Department Response:** The Department agrees that the proposed wording changes to 30-03-01.1-05 were confusing and contained an error. Proposed changes on this section – except for the penalty clause – will not be made at this time.

NOTE: a wrong copy was inadvertently submitted earlier. The corrected version of Sect 30-03-01.1-05 with the intended wording is attached.

Fishing Contest Rules

No comments were received concerning these rule changes.

Aquatic Nuisance Species

The Department received comments mainly supporting, but some opposing the requirement to drain water from boats, including livewells and baitwell when the boats are out of the water.

There was one comment that the Department should take more steps to protect ND resources, including ANS prevention. One comment was that well water could be used and an exception could be made. **Department Response: The Department considered all the comments and understands that there will be some inconveniences as a result of the requirement to drain the water immediately. Unfortunately there is no easy way or easy compromise to handle this. The major impact and high potential of introducing aquatic nuisance species in North Dakota waters forces the Department to make this change.**

Duplicate Licenses

No comments were received concerning this rule change.

Lake Restrictions

The Department considered the comments received both at the hearing and in writing.

Department Response: Opposition to the changes was strong and the Department has decided not to make these proposed changes.

Public use of PLOTS land

Eleven comments were received on this proposal. Most supported the rule. One commented that the fine should be \$500 rather than \$100 and objected to the written permission requirement as being burdensome for the landowner.

Department Response: Support for this rule was strong, so the Department is implementing it as written. We think that a \$100 fine is appropriate and that requiring written approval from the landowner for certain activities is the only option that is enforceable.

5. The cost of publishing notice of the rules was \$1,573.00. Other than staff time, there were not any other significant costs for making these rules.

6. Chapter 30-03-01.1 – Bait Vendors –

Clarifications of existing rules and inclusion of associated penalties for each section.

Chapter 30-03-05 – Fishing Contests –

The section requiring a ratio of tournament patrol boats is eliminated.

Chapter 30-03-06 – Aquatic Nuisance Species –

Eliminates the exemption of allowing water to be used to transport fish in livewells and baitwells when out of the water.

Chapter 30-04-06 – Duplicate Licenses –

In the past only notarized petitions were accepted for duplicate licenses. This change will allow for duplicate licenses to also be issued if petition is witnessed by a Department employee.

Chapter 30-04-08 – Public Use of Game and Fish Department Private Land Open to Sportsmen (PLOTS) Lands –

Establishes a new section that clarifies that PLOTS lands are open only for walk-in access for hunting during hunting seasons and establishes a penalty for violations.

- 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.**

Corrected Version

OCTOBER 2010

CHAPTER 30-03-01.1

30-03-01.1-05. Assistants covered by license. A licensed wholesale bait vendor may employ the assistance of up to six other persons to capture or sell and transport live bait in the manner approved by the director. All assistants must have in their possession department issued documentation. The licensee is responsible for the actions of employees, including all agents or assistants acting under their license. No one who has had a department issued license revoked or suspended within three years may act as an agent or assistant. Anyone who violates this section is guilty of a non-criminal offense and shall pay a one hundred dollar fee.

History: Effective April 1, 2008; amended effective October 1, 2010.

General Authority: NDCC 20.1-06-14

Law Implemented: NDCC 20.1-06-14

**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

These amendments do not increase administrative or other costs for small entities.

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.