



ADMINISTRATIVE RULES COMMITTEE
 Testimony on Administrative Rules
 Kim Kary, Chief Administrative Services Division
 North Dakota Game and Fish Department
 December 7, 2015

Chairman Devlin and members of the Administrative Rules Committee, my name is Kim Kary, Chief of Administrative Services Division of the North Dakota Game and Fish Department (Department). I am providing testimony today regarding amendments to Title 30 of the N.D. Administrative Code adopted by the Department for the following:

- New Chapter 30-02-09 for Elk License Raffle for Annie's house at Bottineau winter park:
See pages 69 & 70.
- Amendments to Sections 30-03-06-05 and 07 regarding Aquatic Nuisance Species (ANS):
See page 71.

The committee requested testimony concerning the following questions. If the answers differ for the sections of law specified above, they will be listed separately. Our response to your questions follows:

1. Whether the rules resulted from statutory changes made by the Legislative Assembly.

New Chapter 30-02-09 for Elk License Raffle for Annie's house at Bottineau winter park

Answer: The Department adopted this rule to implement legislative Senate Bill number 2017, section 3, enacted by the sixty-fourth Legislative Assembly. Section 3 of Senate bill number 2017 is effective through June 30, 2017, and after that date is ineffective. *See Attachment #1-2.*

Amendments to Sections 30-03-06-05 and 07 regarding Aquatic Nuisance Species

Answer: No.

2. Whether the rules are related to any federal statute or regulation.

Answer: No.

3. A description of the rulemaking procedure followed in adopting the rules, e.g., the type of public notice given and the extent of public hearings held on the rules.

Answer: Public notice concerning both of these administrative rules was published in each official county newspaper, published on the Department's website, we notified the public via a press release, and sent a copy to persons or entities who expressed an interest in receiving the notice. In addition, we mailed a copy of the proposed rule regarding ANS to every bait vendor bordering the Red River.

A public hearing was held at the ND Game and Fish Department's Bismarck office on Sept. 15, 2015 at 1:15pm. Written or oral comments were accepted by the Department through Sept. 25, 2015 and were considered by the Department.

4. Whether any person has presented a written or oral concern, objection, or complaint for agency consideration with regard to these rules.

New Chapter 30-02-09 for Elk License Raffle for Annie's house at Bottineau winter park

Answer: The Department did not receive any type of comments.

Amendments to Sections 30-03-06-05 and 07 regarding Aquatic Nuisance Species

Answer: Oral Comments – There were 4 individuals who provided oral comments at the Administrative Rules Public Hearing on 9/15/15. No comments were received via phone. *See Attachment #8a-e*, for summary of oral comments.

Written Comments – The Department received 5 written comments (letter/email). Two of these also provided oral comments at the public hearing. *See Attachment #8f-s*, for copies of written comments.

The Department's responses to the comments are included in *Attachment #9*.

5. The approximate cost of giving public notice and holding any hearing on the rules, and the approximate cost (not including staff time) of developing and adopting the rules.

Answer: Publishing the notice of the rules was combined and cost \$1,737. Other than staff time, there were not any other significant costs for making these rules.

6. An explanation of the subject matter of the rules and the reasons for adopting those rules.

New Chapter 30-02-09 for Elk License Raffle for Annie's house at Bottineau winter park

Answer: The chapter authorizes an elk license raffle for Annie's house at Bottineau winter park and is being created to comply with statutory changes made by the Legislative Assembly. See #1 above.

Amendments to Sections 30-03-06-05 and 07 regarding Aquatic Nuisance Species

Answer: **Chapter 30-03-06-05** – In addition to existing statewide aquatic nuisance species rules, anglers may no longer transport live bait in water away from the Red River. That means all water must be drained from bait buckets as anglers leave the shore, or remove their boat from the water. All boats and other watercraft must have their plugs pulled when exiting the Red River. In addition, all boats entering North Dakota must have their plugs pulled

Chapter 30-03-06-07 – Changes to the penalty.

The reason for adopting these rules results from the finding of adult zebra mussels throughout the Red River as well as heavy infestation of their young. The changes are necessary to reduce the risk of westward spread of zebra mussels in our state.

7. Whether a regulatory analysis was required by N.D.C.C. Section 28-32-08 and whether a regulatory analysis was issued.

Answer: 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.

8. Whether a small entity regulatory analysis and small entity economic impact statement was required by N.D.C.C. Section 28-32-08.1 and whether it was issued.

New Chapter 30-02-09 for Elk License Raffle for Annie's house at Bottineau winter park

Answer: See Attachment #3-4.

Amendments to Sections 30-03-06-05 and 07 regarding Aquatic Nuisance Species

Answer: See Attachment #5-6.

9. Whether these rules have a fiscal effect on state revenues and expenditures, including any effect on funds controlled by your agency.

Answer: A fiscal note was not required because these rules have no fiscal effect. The cost of publishing notice of the rules was \$2,239. Other than staff time, there were not any other significant costs for making these rules.

10. Whether a constitutional takings assessment was prepared as required by N.D.C.C. Section 28-32-09.

Answer: None required since the rules will not limit the use of private real property.

11. If these rules were adopted as emergency (interim final) rules under N.D.C.C. Section 28-32-03, provide the statutory grounds from that section for declaring the rules to be an emergency and the facts that support that declaration and provide a copy of the Governor's approval of the emergency status of the rules.

New Chapter 30-02-09 for Elk License Raffle for Annie's house at Bottineau winter park

Answer: These rules were not adopted as emergency rules.

Amendments to Sections 30-03-06-05 and 07 regarding Aquatic Nuisance Species

Answer: The rules were declared to be an emergency effective August 3, 2015, as interim final rules under N.D.C.C. 28-32-03; emergency rulemaking is necessary for the Department to comply with N.D.C.C. Section 20.1-17-01-05 which allows for the prevention and control of aquatic nuisance species.

See Attachment #7– For a copy of the Governor's approval of the emergency status of the rules.

This concludes my testimony. I will be happy to answer any questions that you might have.

**Sixty-fourth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2015**

SENATE BILL NO. 2017
(Appropriations Committee)
(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the game and fish department; to create and enact a new section to chapter 20.1-08 of the North Dakota Century Code, relating to a gubernatorial proclamation concerning the hunting of elk; to provide for a legislative management study; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the game and fish fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the game and fish department for the purpose of defraying the expenses of the game and fish department, for the biennium beginning July 1, 2015, and ending June 30, 2017, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$25,899,606	\$3,770,636	\$29,670,242
Operating expenses	12,956,728	712,216	13,668,944
Capital assets	3,885,061	1,612,935	5,497,996
Grants	7,122,500	211,912	7,334,412
Land habitat and deer depredation	12,707,403	4,215,278	16,922,681
Noxious weed control	650,000	50,000	700,000
Missouri River enforcement	275,939	6,601	282,540
Grants, gifts, and donations	800,000	27,519	827,519
Nongame wildlife conservation	120,000	0	120,000
Lonetree reservoir	1,935,636	(112,631)	1,823,005
Wildlife services	384,400	0	384,400
Accrued leave payments	<u>816,366</u>	<u>(816,366)</u>	<u>0</u>
Total special funds	\$67,553,639	\$9,678,100	\$77,231,739
Full-time equivalent positions	158.00	5.00	163.00

SECTION 2. GRANTS, GIFTS, AND DONATIONS LINE. The grants, gifts, and donations line item in section 1 of this Act includes up to \$400,000 received by the game and fish department for surface damage, easements, or reclamation on department owned or managed properties as a result of mineral exploration and extraction activities.

SECTION 3. A new section to chapter 20.1-08 of the North Dakota Century Code is created and enacted as follows:

Governor's proclamation concerning the hunting of elk - Annie's house at Bottineau winter park raffle.

The governor may by proclamation provide for a season to hunt elk in a manner, number, places, and times as the governor prescribes. Licenses to hunt elk must be issued by lottery, except as provided under subsection 7 of section 20.1-03-11, with only residents eligible to apply; however, the governor may by proclamation make available to Annie's house at Bottineau winter park a license to hunt elk in a manner, places, and times as the governor prescribes. Annie's house at Bottineau winter park shall hold a raffle under rules adopted by the director with residents and nonresidents eligible to participate. No more than ten percent of the gross proceeds of the raffle may be used to promote the raffle and all remaining net proceeds must be used to support the operations of Annie's house at

Bottineau winter park. Annie's house at Bottineau winter park shall submit reports concerning the raffle as the director requires. An individual who has been convicted of illegally taking a moose, elk, or bighorn sheep is not eligible to receive a license under this section.

SECTION 4. LEGISLATIVE MANAGEMENT STUDY - LICENSES FOR FUNDRAISING. During the 2015-16 interim, the legislative management shall consider studying game and fish department licenses provided to entities for the purpose of fundraising. The study must include a review of the present law in this and other states and the feasibility and desirability of allowing the game and fish department to issue these licenses using procedures and within limits established by the legislative assembly. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fifth legislative assembly.

← **SECTION 5. EXPIRATION DATE.** Section 3 of this Act is effective through June 30, 2017, and after that date is ineffective.

Small Entity Regulatory Analysis
For Amendments to NDAC Article 30-02
New Chapter 30-02-09 Elk License Raffle

1. **Was establishment of less stringent compliance or reporting requirements for small entities considered?** Yes. **To what result?** The compliance and reporting requirements for this big game raffle applies only to Annie's House at Bottineau Winter Park (AHBWP) and are very similar to the compliance and reporting requirements established for other big game raffles which have been determined to be reasonable and acceptable.
2. **Was establishment of less stringent schedules or deadlines for compliance or reporting requirements considered for small entities?** Yes. **To what result?** The schedules and deadlines for compliance or reporting requirements for this big game raffle applies only the AHBWP and are very similar to the schedules and deadlines for compliance or reporting requirements established for other big game raffles which have been determined to be reasonable and acceptable.
3. **Was consolidation or simplification of compliance or reporting requirements for small entities considered?** Yes. **To what result?** It was determined that the proposed compliance or reporting requirements were not in need of simplification.
4. **Were performance standards established for small entities for replacement design or operational standards required in the proposed rule?** No, the proposed rule applies only to AHBWP.
5. **Was exemption of small entities form all or any part of the requirements in the proposed rule considered?** No, the proposed rule applies only to AHBWP.

Small Entity Economic Impact Statement
For Amendments to NDAC Article 30-02
New Chapter 30-02-09 Elk License Raffle

1. **Small entities that may be subject to the proposed rule.** Annie's House at Bottineau Winter Park (AHBWP).
2. **The Administrative or other costs required for small entities to comply with the proposed rule.**
This proposed rule applies only to AHBWP and the costs will be minimal as the proposed rule would allow AHBWP to use 10% of the gross raffle proceeds to promote the raffle and offset administrative costs.
3. **The probable cost and benefit to private persons and consumers who may be affected by the proposed rule.** None, the proposed rule applies only to AHBWP.
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?** There are no less intrusive or less costly methods of achieving the purposes of the proposed rules.

Small Entity Regulatory Analysis
For Amendments to NDAC Chapters
30-03-06 Aquatic Nuisance Species

- 1. Was establishment of less stringent compliance for small entities considered? To what result?**

The current administrative rules were established, in part, to minimize impacts to users groups. However, as the threat of ANS transport/movement has increased, so does the need for the proposed rule to meet this threat.

- 2. Was establishment of less stringent schedule or deadlines for compliance or reporting considered for small entities? To what result?**

Since this was/is an emergency order meant to meet the immediate need of additional protection, the 'one size fits all' approach was needed. However, this rule has little/no application to small entities.

- 3. Was consolidation or simplification of compliance or reporting requirements for small entities considered? To what result?**

Not applicable as there are no reporting requirements.

- 4. Were performance standards established for small entities for replacement design or operational standards required in the proposed rule? To what result?**

Not applicable.

- 5. Was exemption of small entities from all or any part of the requirements in the proposed rule considered? To what result?**

Yes, in the case of an impacted guides/outfitters who are licensed on the Red River. In these cases, as part of obtaining their license they may be granted transport of live legal baitfish if certain conditions are fully met.

Small Entity Economic Impact Statement

For Amendments to NDAC Chapters

30-03-06 Aquatic Nuisance Species

- 1. Small Entities that may be subject to the proposed rule.**
All anglers and boaters on waters designated as Class I: Prohibited Aquatic Nuisance Species would be subject to the changes to the Aquatic Nuisance Species rules.
- 2. The administrative or other costs required for small entities to comply with the proposed rule.**
These rule 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.**
There could be minor increases in costs for a few who reuse their bait. In terms of cost, these minimal increases incurred by a few anglers will be offset in increase in sales by bait dealers.
- 4. The probable effect of the proposed rule on state revenues.**
There will be no effects on state revenues.
- 5. Whether there are any less intrusive or less costly methods of achieving the proposed rule's purpose.**
There are no less intrusive or less costly methods of achieving the purposes of the proposed rules.



State of
North Dakota
Office of the Governor

Attachment ⑦

Jack Dalrymple
Governor

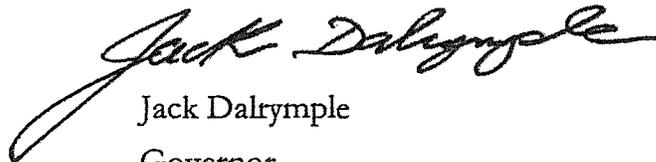
MEMO

TO: Terry Steinwand, Director
FROM: Governor Jack Dalrymple
SUBJECT: Governor's Approval of Emergency Rule for Aquatic Nuisance Species
DATE: July 30, 2015

On July 29, 2015 at 1:30 pm I met with Terry Steinwand, Director of North Dakota Game and Fish Department, to discuss the potential for an Emergency Rule to address the recent occurrence of zebra mussel in the Red River. Information was provided on locations where zebra mussel were found, a summary of the potential impacts of zebra mussel and the natural resource and industry in North Dakota, what Game and Fish is doing and has done to inform and educate the public on aquatic nuisance species and a proposal of rule change to Chapter 30-03-06 of North Dakota Administrative Rules to reduce the westward spread risk of zebra mussels.

The Emergency Rule process is the correct manner in which to proceed and approve the Emergency Rule process to amend administrative code to reduce the risk of westward spread of zebra mussel.

Sincerely,


Jack Dalrymple
Governor

Summary of Oral Comments and Copy of Written Comments

Oral Comments – There were 4 individuals who provided oral comments at the Administrative Rules Public Hearing on 9/15/15. No comments were received via phone. See Attached #8a-e, for summary of oral comments.

Written Comments – The Department received 5 written comments (letter/email). Two of these also provided oral comments at the public hearing. See Attached #8f-s, for copies of written comments.

Note: All comments were related to the ANS rule changes. We did not receive any type of comments regarding the Elk License Raffle proposed rules.

ND Game and Fish Department

Summary and Response of Oral Comments for

Administrative Rules Public Hearing 9/15/15

Oral comment from Brad Durick: Brad Durick Outdoors, a guide service over on the Red River based in Grand Forks. I really did not prepare a statement because I thought there would be a little more back and forth discussion available here, but frankly looking at this versus working on border water in Minnesota I think this is a fairly flawed law. But being a guide and the financial stakes this could have I have to stick to what I need here. When this came up, as a fishing guide, we use a lot of suckers in the Red River. I use literally thousands of suckers and they are hard enough to get, they range anywhere from \$.50 to \$2.00 a sucker depending the size based on where you are buying them, what the demand is, whatever. Based on my season and I have had this discussion with people in the department, I am basically the only person who is affected by this, but as a fishing guide I have to have enough bait on hand to get through a trip because there is nothing worse than running out bait. I figured based on my 100 or so days on the water that is going to cost me \$10 to \$12 a day in transporting what I would normally transport home to my tank, which I will explain in a minute. Do the math on that, that is between \$1,000 and \$1,200 in lost bait which based my rates is somewhere between 2 and 4 days of work just to throw bait out. Now, of course, you can freeze suckers, before that comes up, but it does affect the quality of the bait that that is being taken care of. Now to explain how I do this, I buy my bait legally from a delivery vendor who delivers to Home of Economy in Grand Forks. I take it home to my commercial tank which is treated water at which point when I go fishing I take water from my tank put it in a 5 gallon frabill aerated bucket with whatever I need for the day, always figuring for a little bit of extra and I take off. You can't put suckers from cold water to warm water, they die immediately. So at the end of the day the same treated city water that is in my 5 gallon bucket would normally go home. Now we have had this discussion, I got a conditional waiver for 2015, so I have 1 of 2 proposals for this: proposal 1: We can continue to get me a waiver that was signed which that I thought was pretty painless this year, it is recording, or number 2: attach something to the outfitter license that we get at the beginning of the year that continues to allow guides and outfitters to haul up to 5 gallons which is the current law anywhere with the exception of the Red River. For the waiver I have, Blake Riewer the warden, was at my house, checked out my tank and filtration systems, checked out my buckets, took pictures of everything, I am always open to that because I have nothing to hide there, but this could be for a 1 man operation guide service a fairly detrimental deal to me particularly. Now as an average angler watching what Minnesota has done, I think we should be offered at least the opportunity to change our water on our bait with fresh water that is kept in the truck. That is just a side note to what I just said. The other thing is in addition to what I have just said in my situation is should this spread to a place such as Devils Lake this law goes into affect I noticed there are a lot of guides and outfitters out there carrying expensive leaches and other baits who are probably unaware of this. So you know that is why I

like the idea of attaching this to the outfitter license in the future is just simply to protect us guides and outfitters from the financial burdens that this could cause. You know with that, guides and outfitters don't want aquatic nuisance in our water, it is our livelihood, it is the last thing we want to deal with. However, we have to use common sense approach to transporting our bait and operating our business. With that, thank you.

Department Response:

See Attachment 9 (#14).

Oral comment from Susie Kenner: This is just a copy of the letter I had emailed over. I am Susie Kenner, I am with the Devils Lake Chamber of Commerce, the tourism division and I guess I am here today to just visit a little bit about the fact that I think some of the ANS rules that have taken place are more of a reactive approach rather than a proactive approach. For an example I was in Pelican Lake this summer and we went through, put our boat in the water, you know they didn't do anything, didn't check our boat, but when you came out of the water since they do have the zebra mussels, we sat in line for an hour so we could have them you know check the boat and make sure we weren't carrying any weeds or zebra mussels or anything like that and I just feel that Devils Lake is still a clean lake and we don't have the ANS issues at the moment and it brings in almost \$50 million of a tourism impact to our area and our county and I just don't feel that we are doing enough to keep our lake clean and if we continue the way that we are going, I think we will eventually end up with zebra mussels anyway because that is the way the world is coming to. But rather than having it 20 years from now you know if we are not doing anything about it it might only take a couple of years. Again, people from all over are coming to North Dakota to do their fishing, a good example, Mille Lacs, you can't bring home a fish now so they are coming from Minnesota to fish our waters and they are not required to stop and get their boat checked anywhere. Another good example is our fishing tournaments, you know you have to do the questionnaire, you know have you had your boat in any other waters and I think you ask them like 4 questions, but all you have to do is say yes I am following the rules, there is no inspections, there is no way to guarantee that what they are saying is truthful. And, so, just one other example if we could bring with our tournament regulations that they are required to have their boats checked, I know we do that for the Devils Lake Chamber of Commerce, for our fishing tournament as well as the 2 national tournaments that we are bringing in. It is in our rules, they are required to go to Ed's Bait Shop and have their boats and their trailers inspected. And last year one did get turned away and they had to go and clean their boat and come back and have it inspected. Now granted it all depends on who is there to check the boat and if they do a good job or not, but I think with some proper training and some proper tools and some boat washes I think a lot of these problems could be alleviated. A lot of our waters are close to the borders of Minnesota and they might go fishing in Minnesota on a Wednesday night and then come to Devils Lake on a Friday and you know they are boat isn't being inspected. So you know there is different things states are doing with ANS, sniffing dogs and boat checks along the borders and it's not that we want to detour

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people from coming to our state by any means, you know I am in a position where I want to get as many people here as possible to come to fishing on Devils Lake and spend their money, but I want them to do it properly and cleanly to keep our waters viable for years to come. And I don't know, I am not involved on the water side with the pumping of our waters, but I have been asking the question and so have many others, you know if our lake does become infected with zebra mussels are those pumps still going to be able to run because right now the waters going through the Sheyenne to Ashtabula to the Red River and so forth, and may even be connected with the Missouri River. So it is just another question we need to start asking and figuring out what we can do. So I guess I am here today to just plead the case that I am hoping with our ANS rules and regulations coming up that we can be more proactive instead of reactive and I think we will get a lot further. So that is all I wanted to say thank you.

Department Response:

See Attachment 9 (#1, 2, 3, 7)

Oral comment from Mike Jensen: Hi there, Mike Jensen, North Dakota Tourism, I represent the state Department of Commerce. I just wanted to give some input from tourism division because ANS is very important and we have seen it hit some lakes in Minnesota and how it has affected, you know, some of those lakes. It is a very touchy topic. But one of the things more specifically that I wanted to talk about was similar to what Captain Brad here said is in some way providing a waiver, I am concerned about the cost that this might affect some of our guides and outfitters. With the exception of Devils Lake most of the state has thin coverage for guides and outfitters, it is hard for us to recruit new ones and to have another barrier to entry for new guides and outfitters such as having to buy bait every day and throw bait every day, it is something we are concerned about and just something that was one thing that I agreed with Brad too on is that the last people in the world who want to see ANS get into waters is going to be our guides and outfitters. They are the ones, I mean it is in their best interest to protect the resource and I would fully agree with having sort of waiver for people possessing a guide and outfitter license. That's all.

Department Response:

See Attachment 9 (#14)

Oral response from Johnnie Candle: My name is Johnnie Candle, I am here today wearing many hats, not literally but figuratively. I am the president of the Lake Region Angler's Association in the Devils Lake area and I am also a guide and outfitter and a professional tournament angler. Not here to tell my whole life story, but I am not a North Dakota native, I was born and raised in the state of Ohio and was heavily involved in the sportfishing industry in Ohio throughout the 80s into the 90s before I moved to North Dakota and aquatic nuisance species is nothing new to

me from that standpoint. I remember a Lake Erie that had no aquatic nuisance species in it and I also remember the 6:00 news articles of the power plants that caught on fire and the pumps that didn't provide drinking water anymore and the boats that couldn't be started anymore because of these mussels that no one knew what they were that were suddenly attaching to everything. That's a whole other issue that may or may not be a Game and Fish issue, but it is an aquatic nuisance species issue and Susie touched on it lightly when she mentioned pumps in Devils Lake. But how many other pumps and systems are there where an aquatic nuisance specie like a zebra mussel or some exotic weed will plug and clog and destroy? Maybe its agriculture, center pivots that can't be used in the river or cooling stations that refineries and power plants on Lake Sakakawea. Again, not an expert in those situations, but it is something I wanted to bring up based on past experience. More personal on the fishing level, from a Lake Region Angler's president's standpoint, I want to give kudos to the Game and Fish Department for creating possibly the most incredible fishery in the United States of America. And I say that because I travel all around the United States fishing, and I see the license plates from every state you can name and every province of Canada that come to fish in our great lake. And we are only 90 miles away now from total devastation in my mind. Will aquatic nuisance species totally destroy the Devils Lake fishery? Probably not, Mother Nature is so much better at fixing human's problems than humans are at fixing human's problems it is unbelievable. And I have seen that with bodies of water like the Great Lakes. Lake Erie has not got zebra mussels and quagga mussels and spiny water fleas and round gobies and the list goes on and on and on and on of all the aquatic nuisance species that were going to destroy the Great Lake's salmon and walleye and bass fisheries and they continue to get better and better and better by no fault of our own. That is Mother Nature taking care of the issues that we've created, and I am sure she will find a way to do that in Devils Lake. But it is going to be change and it is going to come with a lot of painful years in-between, and we don't want to see that happen if we don't want to see that happen, I would agree with that. So from a lake region angler's perspective we are here to urge the Game and Fish again to be more proactive as Susie mentioned. Our club has been down to the Game and Fish office many times before to have meetings and everyone here knows our concerns and we take pride in the fact that well as I look around the room there aren't many folks here from places other than Devils Lake, so we take pride in the fact that we are spearheading this and that we do care enough to be the noise makers or the greasy wheel so-to-speak and we are here to continue that. Much more proactive approach may be more stringent regulations. One line and I don't have the rule in front of me to read it verbatim, but it said when an aquatic nuisance species is found in a new body of water then these rules immediately take effect. Very rarely do you hear someone say why wait, but I am here to say why wait. I would much rather see very stringent regulations statewide before the problem gets here instead of waiting til something already gets in a body of water to reenact or enact a rule. The other part of the whole equation that I don't quite personally get is it seems to me, and I am not on the inside, but everything is about leaving the lake, leaving the lake, leaving the lake, and I think it should be more focused on when you get to the lake than leaving the lake. If we know it's in there yeah we don't want it going somewhere else, but if it does go back to Minnesota or back to Wisconsin, here or there, but I don't want it coming to Devils Lake, I don't want it coming to the Missouri River in Bismarck, I don't want it coming to Beulah, Hazen, Garrison, New Town, those are all phenomenal fisheries. They all deserve the best chance they

have for survival and if we can stop it from coming in I would rather see that than be so worried about it leaving. Now I realize when it leaves it is going to end up somewhere it shouldn't, I see that, but I have yet to see a rule in North Dakota about it coming in, everything is when you leave a boat ramp, when you leave a boat ramp, what about when you are coming to the lake? Now to put my other hat on from my personal perspective, some things I have seen around the country, I traveled to Utah this year where they have, granted not near the boat ramps that we have in North Dakota, but they have people stationed at every boat launch in the state of Utah, at least that is the way it was explained to me, where your boat does get inspected before it goes into the water. Is that expensive? Yeah it is expensive. Is it even more expensive to have boat washes and all that at every boat landing? Yeah it is expensive. But how much money and time and effort have we spent as a state and as a Game and Fish agency to build what we have to create the tourism for Devils Lake, for the state, for Bismarck, for Lake Sakakawea and I am just mentioning the big 3, the North Dakota big 3. What about the Jamestown Reservoir's and the Lake Ashtabula's and all these little perch sloughs that are popping up everywhere? I think we spend a lot of time, effort and money to build this stuff and I am willing to say that it is worth every nickel we can afford to throw at it to keep it as long as we possibly can. I hate to be the guy that always comes in saying do this do this do this and not offer help so I am also here on behalf of the Lake Region Anglers to say if there is anything we can do as an organization to help the Game and Fish, and I think you guys know this already, but we are only a phone call or an email away. We are on your side even though sometimes we push and push and push, it is because we all want the same thing in the end. I know we have been loud, I know we have made some noise, I know we may have had some uncomfortable conversations in the past, but please let it be known on the record that our hearts are in the right place and we do want to do all we can to help Game and Fish protect all our waterways, not just Devils Lake from these devastating creatures that could ruin a lot of things for both individuals making a living on the water or those that just want to enjoy a great day of fishing on some of our great waterways. Thank you for your time.

Department Response:

See Attachment 9 (#1, 3, 6, 9)

ry, Kim K.

m: -Info-Game & Fish Dept.
t: Wednesday, September 16, 2015 7:25 AM
Kary, Kim K.; Power, Greg J.
ject: FW: Comments on proposed emergency aquatic nuisance species regulations for North Dakota waters which includes the Red River of the North

m: Lynn Schlueter [mailto:lrslueter@yahoo.com]

t: Tuesday, September 15, 2015 4:57 PM

-Info-Game & Fish Dept.; Kary, Kim K.; Rauschenberger, Ron W.; -Info-Governor's Office

Me

ject: Comments on proposed emergency aquatic nuisance species regulations for North Dakota waters which includes the Red River of the North

Aquatic Nuisance Species (to be referred to as ANS) are a real danger to North Dakota's aquatic resources – recreational purposes and water for municipal and commercial uses, irrigation, and power production. The North Dakota Game and Fish Department (to be referred to as the Department) is responsible for protecting, conserving, and enhancing the State's aquatic resources. The finding of larval zebra mussels and, recently, an adult mussel in the Red River requires the Department's actions which suit the situation and still allow for the many uses of the river.

The proposed emergency regulations should have been formulated after discussions with concerned recreationalists and other water users. The proposed emergency regulations were created without public knowing its language or impacts, both immediate and for the future. The proposed emergency regulations were written, sent out to the public and there was no review or period for discussion(s). The proposed emergency regulations are to be adopted as is and in their final form. With the current emergency regulation making process, there are no allowances for input or adjustment or crafting the rules needed to reach the desired outcome.

While the emphasis appears to be focused on fishing waters, the proposed emergency regulations also apply to recreational boating, waterfowl hunting, and any use or work on North Dakota's waters and all of the State's waters. The impacts from the proposed emergency regulations must be considered in this larger content. The proposed emergency regulations must be considered to prevent and control problems when any North Dakota water(s) is found to have serious ANS infestation.

The proposed emergency regulations are for any North Dakota water(s) which have an ANS which is designated as Class I (to be referred to as Class I/ANS). The Class I designation has been determined by the Department's staff. The proposed emergency regulations would pertain to any water now or in the future to become infested with a Class I/ANS (to be referred to as ANS/Class I water).

When reviewing the proposed emergency regulations, there are oversights that should be corrected prior to implementing the new regulations. The problem areas and solutions are given:

1) Proposed emergency regulation for preventing the movement of Class I/ANS from infested water(s) by draining all water from all watercraft and recreational, commercial, and construction

equipment bilges and confined spaces, livewells and baitwells (to be referred to a watercraft and equipment).

This proposed regulation does not say when the drain plug(s) can be replaced – at the boat ramp? later at home? or at the job site? or just after entering North Dakota? It will be difficult for the department's or other North Dakota law enforcement officers to ascertain when the drain plug(s) was inserted.

With a drain plug(s) in and not on the water, a watercraft or equipment can retain lake or river water that was not effectively drained at the ramp or has accumulated from rainfall or other sources. This pooled water can provide an environment which would allow ANS to remain viable. This situation would make the movement of ANS more likely than if the watercraft or equipment was always allowed drain.

A simple and effective approach would be to require that drain plug(s) be removed and remain out of watercraft and equipment when not on North Dakota's water(s). The drain plug(s) would remain out except when the watercraft or equipment is in use. This regulation would apply to all North Dakota water and to any watercraft and equipment entering or leaving North Dakota.

Exclusions to the emergency regulations will be needed for potable water or waste or sewage or on-board containers and for any compartment(s) used for dry storage or for compartments whose purpose is to "not holding water".

The "plug out when not in use" regulation would be simpler for enforcement purposes.

and

2) The proposed emergency regulations would require the depositing of legal live baits (this would include leeches, frogs, invertebrates which would include earthworms, etc.) and legal live bait fish (this would include white suckers, various minnows, and other fishes) (these two groups will be referred to as live fish baits) when leaving water(s) infested with Class I/ANS. The cost of live fish baits is a major expense for many styles of fishing. While the Red River is currently North Dakota's only ANS/Class I water, the proposed emergency regulations will be applied to any waters infested with Class I/ANS now and in the future. This portion of the emergency regulations has the potential to greatly impact many anglers across the state.

The required dumping of live fish baits will create additional expenses and issues for anglers fishing in ANS/Class I water(s) on consecutive trips. As a way to saving money, anglers who will be fishing the next day or for an extended period of time are likely to retain live fish bait in water taken from that ANS/Class I water(s). The increase in bait costs can be an important factor in determining if an individual will continue to fish in North Dakota.

The movement of water from any ANS/Class I waters has the potential to spread ANS to other waters. Water should not be moved between any and all waterbodies.

A simpler solution would be to require that live fish bait leaving ANS/Class I water(s) be drained and then placed in fresh, clean water in a container which holds 5-gallons or less of water and that the container is not attached to the boat or vessel or recreational equipment. This would eliminate the transfer of ANS/Class I water to other sites while reducing the expenses for a fishing trip.

and

3) Re-enforce provisions that: a) gamefish or fish for consumption transported from any ANS/Class I water(s) must be out of water or placed on ice; and b) all watercraft and equipment must be free of aquatic vegetation when out of the water. The penalty regulation(s) for watercraft and equipment leaving ANS/Class I water(s) should reflect the severity of the issue and should be much higher monetary fine than for other North Dakota waters.

and

4) Clarification is needed in Section 30-03-06-05.b: "Water ... State Water Commission or otherwise authorized". The "otherwise authorized" needs to be specific as to eliminate conflicts as to which authority of state or local government or individual(s) can actually provide the authorization for water removal and transport for Class I Infested water.

(8/2)

The above items need to be part of the new regulations for dealing with current and future Class I
contaminated water(s) in North Dakota. The Department would benefit from making meaningful
regulations to deal with the expanding ANS problem(s).

Sincerely,

Ann R. Schlueter
19 Beslund Drive
Devils Lake, North Dakota 58301

Copy to files

Dept. Response @ Attachment 9 (#143) (81)

ary, Kim K.

om: Power, Greg J.
nt: Monday, September 14, 2015 5:56 PM
Kary, Kim K.; Steinwand, Terry R.; Peterson, Scott A.; Timian, Robert G.
bje: Fwd: ANS Meeting Tomorrow
achments: ANS Letter.docx

iother

it from my Verizon Wireless 4G LTE smartphone

----- Original message -----

om: Johnnie Candle <johnnie@gondtc.com>
te: 09/14/2015 5:28 PM (GMT-06:00)
: "Power, Greg J." <gpower@nd.gov>
bje: ANS Meeting Tomorrow

g,

anks for taking the time to hold a meeting regarding the new ANS rules for the Red River and potentially more waters ND. As you know the LRAA are supporters of whatever it takes to stop the spread of these unwanted organisms. Our ion has led the way in awareness and preventions since day one. We plan to continue.

a more personal note, I have lived through this before. Growing up in Ohio and making a living as a charter boat ator there, I watch a fishery go through dramatic changes before and after spiny water fleas, zebra mussels, forms algae, gobies, and many others. Did the fishery fade away into nothingness? No it didn't. Did it change matically? Yes it did. Not to mention water intakes, cooling stations, marinas, beaches, and many other factions that / in the water there.

n not telling you anything you do not already know. I do not mean to imply that you are not aware of the issues that ahead. I am here to say that the tougher the regulations, the more widespread the regulations, the better chance we e of keeping ANS out of our incredible waterways. The Game and Fish dept. has done an incredible job to build and intain some of the best fisheries in the country. It would be a shame to see them hurt by ANS.

ll see you at the meeting.

JOHNNIE CANDLE

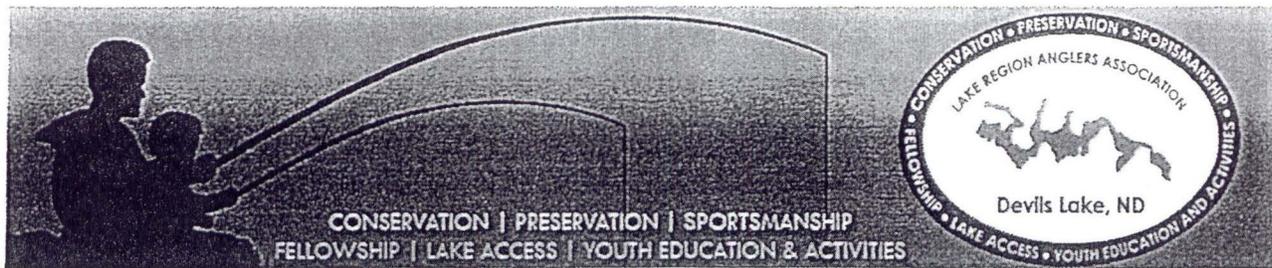
Professional Angler

1 Burke Rd S

Wills Lake, ND 58301

701-371-9431

www.johnniecandle.com



Lake Region Angler Association

PO Box 456

Devils Lake, ND 58301

North Dakota Game and Fish Department
Attn: Greg Power, Chief, Fisheries Division
100 N. Bismarck Expressway
Bismarck, North Dakota 58501-5095

Dear Mr. Power:

This letter is in regard to the ever expanding issues we are having in North Dakota's waterways with ANS or AIS as they seem to be called more often.

With the discovery of Zebra Mussels in the Red River, it seems that things have been placed in high gear in regards to protecting our state's other great waterways. This in itself is a good thing, but our association (LRAA) is concerned that some of the verbiage implies a wait and see attitude. A statement such as "If zebra mussels are discovered in any additional waters, these rules would immediately go into effect for those waters as well." leads us to believe that stringent regulations will only be implemented once the problem gets to a certain body of water.

The LRAA would like to see a proactive approach taken to protect not only Devils Lake and the surrounding fisheries, but all of the waters of North Dakota. While it is important to discard of tainted bait and water when leaving infested water in ND, it is also important to stop ANS, AIS from coming from other regions of the country. Writing tickets to boaters leaving the Red River with livewells full is a great step. However, stopping all boats entering from MN could help as well. Checking boats coming to the lake rather than leaving makes more sense to us.

There is no doubt that this will be an expensive undertaking. Manpower, machinery, and educational campaigns cost a lot of money. On the other hand, how do you place a value on the incredible fisheries in North Dakota?

You know how much this means to the LRAA. We have made special visits to talk with you about these issues before. Our concerns are echoed by many in the Devils Lake region. It is our hope that you hear them. We do not intend to leave the fight to only the Game and Fish Dept. We are here to help however we can.

Sincerely,

Johnnie Candle
President LRAA

ary, Kim K.

om: Power, Greg J.
nt: Monday, September 14, 2015 4:51 PM
: Kary, Kim K.
: Steinwand, Terry R.; Peterson, Scott A.; Timian, Robert G.
bje: FW: ANS administrative rule meeting
achments: ANS letter to G&F.doc

the file.

eg

om: Suzie Kenner [<mailto:suzie@deviislakend.com>]
nt: Monday, September 14, 2015 4:38 PM
Power, Greg J.
bje: RE: ANS administrative rule meeting

eg,
ank you for the information regarding the meeting tomorrow. Attached is my letter. Please let me know if you
ve any questions.
annie Candle and I will be attending the meeting tomorrow - I'm curious on what the other input will be.

ank you,
zie

zie Kenner
ecutive Director, Devils Lake Convention & Visitors Bureau
1.662.4957 | 1.800.233.8048
[viislakend.com](http://deviislakend.com)

m: Power, Greg J. [<mailto:gpower@nd.gov>]
it: Thursday, September 03, 2015 8:49 AM
Duaine Ash <dash@gondtc.com>; Suzie Baisch (suzie@deviislakend.com) <suzie@deviislakend.com>;
st@gondtc.com; brendab58301@yahoo.com; Bob Gibson <bigson@gondtc.com>; rbrueckner@deviislakejournal.com
bje: ANS administrative rule meeting

We've received a number of inquiries from the Devils Lake community regarding the place and time of the
coming Aquatic Nuisance Species (ANS) administrative rule public hearing. The hearing is in our Game and Fish
ditorium Tuesday, Sept. 15 at 1:15 p.m. For your information, this is not your typical meeting format; rather it's a
ring with a few Department staff on hand to accept public comment. It is not meant to be an ANS informational
eting nor do we give any detailed background – simply put its meant to give the public an opportunity to comment
the ANS rule(s). The format is nothing like an advisory board meeting (for example) as its much more formal. It
ould also be noted that written comments carry equal weight and can be submitted anytime through September
In the days to follow the public comment period, the Department will take this input (written and oral) and craft
al rules which will be submitted to the Legislative Administrative Rules Committee for their consideration and
ion. For more information on the rule, go to this link for details - [http://gf.nd.gov/news/emergency-aquatic-
sance-species-rules-place-red-river](http://gf.nd.gov/news/emergency-aquatic-
sance-species-rules-place-red-river)

DL

I've received a number of inquiries from the Devils Lake area regarding ANS rules and the communities concerns
obvious. I'm hopeful other areas of the state will also participate and provide their comment. Please don't hesitate
call if you have any questions.

ag J. Power
ief, Fisheries Division
rth Dakota Game and Fish Department
J N. Bismarck Expressway
marck, North Dakota 58501-5095



This email has been checked for viruses by Avast antivirus software.
www.avast.com

devils lake

Tourism

(811)

North Dakota Game and Fish Department
Attn: Greg Power, Chief, Fisheries Division
100 N. Bismarck Expressway
Bismarck, North Dakota 58501-5095

September 14, 2015

Dear Mr. Power,

I am writing this letter in regards to the ANS problem that is starting to take form in our great state of North Dakota. As the tourism director for the largest natural lake in the state, as well as a valuable revenue producing lake, I have some concerns regarding Aquatic Nuisance Species (ANS), including zebra mussels.

North Dakota Game and Fish has a hearing on September 15, 2015, regarding the ANS rules change on the Red River. In the new rules it states, "If zebra mussels are discovered in any additional waters, these rules would immediately go into effect for those waters as well." I question why we, as a state, aren't using more effective means to help stop the spread of ANS now, instead of waiting for our waters to become infected? This is a reactive response versus a proactive response.

Based on 2013 statistics provided by ND Tourism taken from the Tourism Satellite Account, tourism brings a 49.83 million dollar economic impact to Ramsey County and a 98.72 million dollar impact to Benson County. The majority of this tourism activity comes from hunting and fishing. We need to protect the economy of Devils Lake as well as the eco-system and waters of Devils Lake and its surrounding water, along with all the other lakes and rivers in the state.

The concerns for our great waters are larger than just bait. There are more things we should be looking at (just to name a few);

- We need to look at implementing stricter ANS policies for fishing tournaments rather than just a question and answer questionnaire and do a better job of actually inspecting boats before they hit the waters for tournaments.
- Other detection avenues such as inspection sites or ANS sniffing dogs for tournaments as well as check points for boats coming into the state from other states.
- Implement a boat trailer tube check. It's an area where zebra mussels can hide but we aren't checking.

So far in 2015, only 71 citations and 20 written warnings have been given to anglers for breaking the rules and carrying weeds into the state and our waters. Enforcement needs to become stricter and hold people accountable.



Another thing to consider is the pumping of water from Devils Lake to maintain a safe level for the community. If Devils Lake becomes infested with Zebra Mussels what will happen to the pumps? Will they have to shut down? The water that is pumped out runs into many systems of water. These ANS issues will hurt more than just our anglers.

I urge you to consider ideas to protect our waters and keep North Dakota a viable option for anglers and hunters around the Midwest to visit our state and continue to grow our economy, as well as protect the land that our residents love.

Sincerely,

A handwritten signature in cursive script that reads "Suzie Kenner".

Suzie Kenner
Executive Director, Devils Lake CVB

Dept. Response @ Attachment 9 (#9+10)

(8)

Kary, Kim K.

From: Steinwand, Terry R.
Sent: Wednesday, August 19, 2015 1:07 PM
To: trost@gondtc.com
Cc: Kary, Kim K.
Subject: RE: asn

My comments to Kim Kary at the Bismarck office.

From: trost@gondtc.com [<mailto:trost@gondtc.com>]
Sent: Wednesday, August 19, 2015 12:08 PM
To: Steinwand, Terry R.
Subject: RE: asn

What and who do I submit these comments to. and yes I think you guys did the right thing on the emergency rule and my point is that I do think we need to look into this for both safety of our waters and yet make it easy for our wardens and sportsman alike.

Tuesday 08/18/2015 at 7:40 am, "Steinwand, Terry R." wrote:

From:

This all happened pretty fast and we were actually looking at a different mechanism to reduce risk of movement from the Red River to the west but ended up using the emergency rule. There are a lot of different ways to do it with every one creating an issue with someone. It's the first time we've used the emergency rule process and still have to go through the regular routine for passing an administrative rule, which involves a public hearing, which is September 15 at 1:15 pm at GF in Bismarck. And then a period of time (10 days I think) to allow for written public comment. I'd encourage you to either attend the public hearing and/or submit comments on the proposed rule. We'll certainly discuss it more fully at the advisory board meeting.

Terry

---Original Message-----

From: trost@gondtc.com [<mailto:trost@gondtc.com>]
Sent: Tuesday, August 18, 2015 7:14 AM
To: Steinwand, Terry R.
Subject: asn

Terry looking at the new rules for the red river for ans I have a few questions. why did we not look more like Minn. as far as trying to keep things simple and consistent as just a change of water on the bait?

And as far as the boat plug I feel this should go state wide. once again making it easier for both wardens and boaters to make this a habit. I'm not sure how this all works in with a new proclamation but I feel we need to be more aggressive on these issues and at the same time make it simpler for boaters for Minn. and need to have similar rules, just some things as I do fish in Minn. and the red river both and I think we need more common rules for ND and Minn. fishermen

(87)

nd waterfowl hunters.

om rost

Dept. Response @ Attachment 9 (#9+11)

(39)

ary, Kim K.

om: Power, Greg J.
nt: Tuesday, September 22, 2015 3:50 PM
: Kary, Kim K.
: Peterson, Scott A.
bject: FW: Letter from North Dakota Sport Fishing Congress
achments: ndgf.docx

other – should receive in the mail tomorrow.

eg

om: Fishing Manager [mailto:fishing_127@yahoo.com]
nt: Tuesday, September 22, 2015 3:19 PM
: Power, Greg J.
bject: Letter from North Dakota Sport Fishing Congress

eg

end letter to email address given. This is your copy.

ch Brueckner
esident NDSFC

September 22, 2015

North Dakota Game and Fish Dept.
100 North Bismarck Expressway
Bismarck, North Dakota 58501-5095

Subject: Administrative Rules Related to
N.D.A.C. Chapter 30-03-06

Attn: Admin. Service Division Chief

This letter is written on behalf of the North Dakota Sport Fishing Congress its 17 affiliated clubs and their members. Regarding the proposed rules relating to N.D.A.C. Chapter 30-03-06 Aquatic Nuisance Species.

The NDSFC wishes to extend our support and expresses our gratitude to the NDGFD for their continued efforts to reduce the risk of westward movement of zebra mussels. Aquatic Nuisance Species are the number one threat to all waters (recreational, agricultural, commercial and residential) in North Dakota.

In reviewing the proposed changes, the NDSFC believes it is necessary to broaden the changes to the amendment to include all waters in North Dakota to achieve results and reduce the risk of the spread of ANS.

We therefore are recommending that changes to N.D.A.C Chapter 30-03-06 to include all waters in North Dakota and not just state designated as infested with Class I. In addition, all boats and other watercraft must have their plugs pulled when exiting all waters in North Dakota.

We wish to thank NDGFD for providing the opportunity to make written comments on the topic of ANS and the ruling affecting all North Dakotans and guests.

Cordially,

(85)

Richard Brueckner
President, NDSFC
P O Box 2472
Bismarck, ND 58502

Department Consideration of All Comments

ANS Administrative Rule Public Comments (September 2015)

The only comments received by the Department were four individuals who provided oral comment at the hearing (two also provided a letter) and five letters/emails. (*See Attachment #8.*) No comments were received via phone calls. The following are both general theme and specific questions asked in these public inquiries and the Department's response. In many cases the questions/comments were grouped as they were either identical or very similar.

(Note: There were no comments regarding the Elk License Raffle proposed rules.)

1. The Department and the State need to do more in terms of preventing transfer of ANS – “would like to see a proactive approach taken to protect not only Devils Lake and the surrounding fisheries, but all of the waters of North Dakota”.

DEPARTMENT RESPONSE:

While both individuals and entities in the Devils Lake region have, for years, insisted on more ANS rules and regulations, similar comments have not been received from other portions of the state. The desire to do ‘more’ has been a bit nebulous but more enforcement and more boat inspections (especially of non-resident boats traveling to Devils Lake) has been a common theme. Since these two issues are related, see Q5 for responses.

Specific to more boat inspections, the Department generally inspects watercraft in two ways – 1) on-site at boat launching sites, and 2) roadside checks. The number of boats/watercraft inspected annually are not documented; however, there continues to be an increasing trend of more enforcement checks since the first ANS rules became effective in 2008.

Conducting mandatory watercraft inspections before a boat can enter a water body is another matter often brought up by the Devils Lake community. The Department's response is this simply remains unrealistic with current Department resources and the magnitude of the task. Just for summer fishing/boating, there are more than 220,000 licensed anglers statewide who average more than 15 days/year of fishing, more than 80,000 licensed watercraft, approximately 440 public boat ramps, and a very mobile society – cumulatively this makes checking all watercraft infeasible. Further, evidence from states/lakes that have mandatory inspection rules indicates a relatively large number of watercraft are NOT inspected (for various reasons) thus many wrestle with the ultimate benefits (preventing transport of ANS) of mandatory inspections, especially given the high costs.

However, there has been some successes (esp. the information/education component) elsewhere when targeting high ANS risk / high traffic water recreation-based areas. This is particularly true when targeting high(er) risk boaters/anglers (e.g. non-resident anglers whose state have much higher ANS infestations). Increasing (but not complete coverage) boat inspections, contingent on staffing and budget, will be further considered by Department Administration and Enforcement in the future. This could be addressed via internal Department policy and would not require administrative rule additions/changes.

2. Implement stricter ANS policies for fishing tournaments rather than just a question and answer questionnaire and do a better job of actually inspecting boats before they hit the waters for tournaments.

DEPARTMENT RESPONSE:

For a number of years the Department required 'fishing tournaments' be held to a higher standard as both pre-inspections and post-tournament reporting were required for ANS. After deliberation with the North Dakota fishing tournament committee (a group of individuals, both tournament and non-tournament anglers, along with select Department staff), it was decided this was an unnecessary measure. In the early years of new ANS rules, this mandate served a good purpose of informing the public on ANS issues. However, over time these high(er) profile anglers have become well aware of the issues and since many pre-fish tournaments, the benefits of this requirement dwindled. Further, the vast majority of North Dakota fishing tournaments are North Dakota anglers that don't boat in ANS/Class1 waters. However, national tournaments that include many/most non-resident anglers are still required to both inspect before the tournament and report after the tournaments conclusion. This matter will again be discussed by the tournament committee as well as at the next Aquatic Invasive Nuisance Species committee meeting. Since this deals with Department policy, immediate adjustments can be made if/when needed.

3. Increase detection by operating inspection sites or deploy ANS sniffing dogs for tournaments as well as check points for boats coming into the state from other states (e.g. stopping all boats entering from Minnesota).

DEPARTMENT RESPONSE:

As noted in the response to Q1 above, watercraft inspections or watercraft inspection/decontamination stations are generally conducted in one of two ways: 1) on-site at boat launching sites, and 2) at roadside check stations.

As noted above in the response to Q1, there are approximately 440 public boating access sites in North Dakota (as well as many more other developed private and undeveloped sites). If inspection stations were to be established at boat launching sites, then the logistics and cost would necessitate that only a small fraction of these sites would be prioritized for mandatory ANS inspections. Thus despite the tremendous cost to set up and operate watercraft inspection/decontamination stations at just a few dozen sites, the vast majority of boating access sites and watercraft would not be inspected.

Roadside check stations are thus oftentimes viewed as a more practical alternative to boating access site stations, and are used by several western states. But even here, a cursory review of a North Dakota road map indicates that there are 17 port of entries along the Canadian border, and 24, 23 and 9 paved roads connecting North Dakota with Minnesota, South Dakota and Montana, respectively (and far more gravel roads and trails crossing into these three states). Thus even with roadside check stations priorities have to be established. But by their very design, such stations will again likely miss the majority of watercraft coming into North Dakota. And these stations are also very expensive. Although exact expenses for other states which operate such stations are generally not well documented, Montana's annual AIS report for 2014 lists the costs to operate 20 roving and seasonally permanent roadway stations at slightly over \$1,000,000.

Targeting check stations to particular water bodies is another option, and one which has often been suggested for Devils Lake. But again a cursory examination of a North Dakota road map indicates that there are five state or federal roads that access and/or bisect Devils Lake (111,000 surface acres - not including Stump Lake), and a total of 11 public boating access sites – including Stump Lake. In the case of Devils Lake, it might be most practical to set up mandatory inspection stations at each of these public boating access sites (24/7 during the entire open water season), although legal authority regarding prohibiting boating access at all other private launching sites would need to be investigated.

The situation at Devils Lake is actually quite comparable to Lake Tahoe, Nevada/California (about 122,000 surface acres and 16 usable public ramps and private marinas). The following provides some detail regarding operation of Watercraft Inspection/Decontamination (WID) stations at Tahoe.

2010 through 2012: inspection stations operated seasonally; no fee to the watercraft owner.

2013: at roadside stations during the summer months, but at select boat ramps in the winter months. The "Tahoe In & Out" sticker ranges from \$35 for personal watercraft and vessels under 17 feet and up to \$121 for vessels over 39 feet. The "Tahoe Only" sticker fee is \$30. An additional fee of \$25 is being charged for any boat requiring decontamination and an additional \$10 fee for the decontamination of each raw water system such as ballasts, generators, live wells, etc. (mandatory, but only seasonal and limited to 8:30-5:30)

2014: A Tahoe "in-and-out" sticker ranges from \$35 for personal watercraft and vessels less than 17 feet long, up to \$121 for larger boats. The "Tahoe only" sticker for boats that will remain at the lake is \$30. An additional \$35 fee is charged for any boat requiring decontamination.

2015: current information can be found at <http://tahoeboatinspections.com/>. User fees are as follows:

2015 Watercraft Inspection Fees



Tahoe-Only Boat Annual Fees for all Sealed Vessels \$30

* A boat owner can upgrade from a Tahoe Only Sticker to a Tahoe In & Out sticker by paying the difference between the two stickers.



Tahoe In & Out Boat Annual Inspection Fees

Personal Watercraft (PWC)	\$35
Vessels up to 17 ft.	\$35
Vessels 17.1 ft. - 21 ft.	\$75
Vessels 21.1 ft. - 26 ft.	\$86
Vessels 26.1 ft. - 39 ft.	\$98
Vessels Over 39 ft.	\$121

* Tahoe In & Out Stickers include unlimited inspections and wire sealing/unsealing. Decontamination is not included in sticker fee.

7-Day Launch Pass Inspection Fees

Personal Watercraft (PWC)	\$33
Vessels up to 17 ft.	\$33
Vessels 17.1 ft. - 21 ft.	\$55
Vessels 21.1 ft. - 26 ft.	\$66
Vessels 26.1 ft. - 39 ft.	\$78
Vessels Over 39 ft.	\$101

* Launch Pass includes one inspection and wire sealing/unsealing valid for 7 consecutive days at any Tahoe launching facility. Decontamination is not included in sticker fee.

Decontamination Fee

All vessels requiring a decontamination \$35

* Additional \$10 fee for the decontamination of ballast systems.

Notes: There is **NO** fee in 2015 for non-motorized watercraft. For vessels transported by a commercial hauler call the AIS hotline: 888-624-6267 • tahoeboatinspections.com

Regarding "ANS sniffing dogs", the use of dogs to detect ANS is a recent development and remains more of a novelty than everyday application. Properly trained dogs have proven to be far better at detecting ANS than human inspectors. The main obstacle to use of such dogs is their high cost to train and maintain, which only adds to the considerable expense of operating inspection stations. And since the number of such dogs is still very limited, they are currently available only in a few states/provinces and only for use at a few sites/stations.

4. Implement a boat trailer tube check. It's an area where zebra mussels can hide but we aren't checking.

DEPARTMENT RESPONSE:

The Department has not been able to find any information to document that boat trailer tubes pose a unique or significant problem regarding ANS inspections and/or compliance with ANS regulations. No matter how well trained the inspectors or thorough the inspections, some ANS inevitably avoid detection. Boat trailer tubes are but one of several areas where zebra mussel or other ANS can possibly avoid detection. Trailer bunks, bilges, ballast tanks, hard to access or inspect crevices and features, etc. are all structures upon or within which ANS, especially very small or even microscopic life forms, can avoid

detection. Decontamination is very effective in either removing and/or killing ANS, even when not detected, but decontamination of all watercraft prior to use in North Dakota is simply not feasible.

5. Enforcement needs to become stricter and hold people accountable.

DEPARTMENT RESPONSE:

Game Wardens do issue citations for ANS violations and the number of citations issued in part is related to the enforcement resources available. There are currently 30 District Game Wardens for the state, half (15) located in the eastern half of the state. The Department has seasonally prioritized ANS enforcement (especially in the east); however, it must be noted there still are other enforcement obligations that must be met throughout the state. The maximum penalty for a violation is set by State Law, the actual penalty for a violation is determined on a case by case basis through the county state's attorney and the court.

Use of the Report All Poachers (RAP) line continues to be encouraged if violations are observed. Lastly, the Department will continue to provide appropriate Information/Education forums to further educate the public regarding the rules and regulations and ongoing ANS threats.

6. Checking boats coming to the lake rather than leaving makes more sense to us. More focus of rules/regulations on when you get to the lake rather than leaving the lake.

DEPARTMENT RESPONSE:

Boats are checked in both directions. Typically checking for possible ANS in boats coming out of a lake is a part of the overall check for compliance with fishing and boating regulations, and incorporation of ANS checks is an efficient use of limited manpower. Checking inbound boats is normally done at ANS check stations. Both are done to detect ANS violations, raise public awareness of active enforcement, and continue to educate the public on ANS. The amount and frequency of checks is limited by staffing and budget.

7. If Devils Lake becomes infested with zebra mussels what will happen to the pumps?

DEPARTMENT RESPONSE:

If zebra mussels were to infest Devils Lake and develop a sustainable population, sufficient time would be available to conduct additional and intense surveys of the Sheyenne River downstream to and including Lake Ashtabula. Coordination with the State Engineer would need to occur to determine the risk and future operation of the pumps.

8. The proposed emergency regulations were created without the public knowing its language or impacts, both immediate and for the future.

DEPARTMENT RESPONSE:

By its very nature, the emergency rule met the emergency need for action. A statewide press release was issued and all public access sites were signed along the Red River with the needed information. As part of the process, impacted parties can (and have) share their concerns in the formal public comment period before final adoption of the rule. The Department considers all comments/concerns and responds appropriately.

9. A simple and effective approach would be to require that drain plug(s) be removed and remain out of watercraft and equipment when not on North Dakota's water(s). The drain plug(s) would remain out except when the watercraft or equipment is in use. This regulation would apply to all North Dakota water and to any watercraft and equipment entering or leaving North Dakota.

DEPARTMENT RESPONSE:

It should be noted that the pending administrative rule does require all watercraft entering North Dakota to have all drain plugs pulled. The question of applying this regulation statewide has been brought up numerous times by the public in recent years. Many/most states have this requirement in place. Given this coupled with the important fact that implementation of a statewide rule would give game wardens the visual ability to immediately identify boats/watercraft that would be at higher risk of transporting ANS, the Department supports the statewide implementation of this rule. However, given that the emergency rule was focused on the Red River and reducing the risk of movement out of the Red River, it was not included on a statewide basis.

10. Require that live fish bait water leaving ANS/Class I water(s) be drained and then placed in fresh, clean water in a container which holds 5-gallons or less of water and that the container is not attached to the boat or vessel or recreational equipment.

DEPARTMENT RESPONSE:

This approach has been used by other states. However, if implemented (the use of clean water used to transport aquatic bait away from an ANS/Class I water), the enforcement of this rule would become very problematic (and as has been noted in those states with such regulations). A major loophole would be created thus increasing the risk of transporting ANS from water to water. This is especially true for microscopic zebra mussel veliger's which could be found in the Red River (or any other infested water) between May and September. The Department does not support this allowance.

Also, it should be noted that it is not illegal to transport legal aquatic bait away from an ANS/Class I water. Rather, what is prohibited is transporting the bait in water.

11. Prohibit the transport of bait water away from all waters in North Dakota and not just state designated as ANS/Class I infested water.

DEPARTMENT RESPONSE:

This request is nearly the totally opposite of that listed in Q10. Implementing this recommendation on a statewide basis would have tremendous impacts to virtually all anglers in the state. The Department does not support this prohibition as its actions, and its impacts on the angling public far exceed the current

threat. Through ongoing monitoring, the Department believes implementation of this rule should only occur where the threat is immediate (ANS/Class I water).

12. The penalty regulation(s) for watercraft and equipment leaving ANS/Class I infested water(s) should reflect the severity of the issue and should be much higher monetary fine than for other North Dakota waters.

DEPARTMENT RESPONSE:

This is addressed in the pending administrative rule change -"30-03-06-07. Penalty. Any person violating a provision of this chapter, except NDAC 30-03-06-05.b, is guilty of a noncriminal offense and shall pay a one hundred dollar fee. Any person violating NDAC 30-03-06-05.b is guilty of a class B misdemeanor under authority of NDCC 20.1-17-09."

13. The "otherwise authorized" in Section 30-03-06-05.b needs to be specific as to what agencies have the authority to provide exemptions for water removal and transport from ANS/Class I infested waters.

DEPARTMENT RESPONSE:

Section 30 of North Dakota Administrative Rules apply to the North Dakota Game and Fish Department only. The North Dakota State Water Commission is singled out in this particular rule (for water appropriation permitting) so only the Department and Commission are the authorized agencies.

14. Fishing guides/outfitters on the Red River (and perhaps elsewhere if restrictions were expanded statewide) require relatively expensive legal live bait fish for their livelihood and cannot afford to dispose of this bait daily. One guide/outfitter offered the following compromise to meet their needs - Proposal 1: Be provided a waiver (special director's permit) annually from the Department, or Proposal 2: attach stipulations to the outfitter license each year.

DEPARTMENT RESPONSE:

The proposed rule provides a provision for an exemption – "Water may not be transported away from waters of the state designated as infested with Class I: Prohibited Aquatic Nuisance species unless permitted by the State Water Commission or otherwise authorized." Any exception will be contingent upon a number of steps that must be met/addressed including an approved inspection of setup (bait tank, etc), clean water source, etc. Since this deals with Department policy, staff will discuss how best to address.