



ADMINISTRATIVE RULES COMMITTEE
 Testimony on Administrative Rules
 Kim Kary, Chief Administrative Services Division
 North Dakota Game and Fish Department
 March 14, 2016

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 amendments to Section 30-03-06-05.4 regarding Aquatic Nuisance Species (ANS) - See page 37.

The committee requested testimony concerning the following questions. Our response to your questions follows:

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

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 this administrative rule amendment 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.

A public hearing was held at the ND Game and Fish Department's Bismarck office on Jan. 12, 2016 at 1:15pm. Written or oral comments were accepted by the Department through Jan. 22, 2016 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.

Answer: Oral Comments – The department did not receive any oral comments at the Administrative Rules Public Hearing on 1/12/16. No comments were received via phone.

Written Comments – The Department received three (3) written comments via email and one (1) posted in a newsletter. *See Attachment #1a-g*, for copies of written comments.

The Department's responses to the comments are included in *Attachment #2*.

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 cost \$1,866. Other than staff time, there were no other significant costs for making these rules.

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

Amendment to Section 30-03-06-05.4 regarding Aquatic Nuisance Species

Answer: Currently all drain plugs must be removed from all watercraft and recreational, commercial, and construction equipment bilges and confined spaces when entering the state or leaving the Red River. To reduce the threat of transport of aquatic nuisance species, it is proposed the current administrative rule be extended statewide, requiring all drain plugs be removed, and water draining devices be open, on all watercraft and recreational, commercial, and construction equipment bilges and confined spaces, during any out-of-water transport.

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.

Answer: *See Attachment #3-4.*

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 \$1,866. 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.

Answer: These rules were not adopted as emergency rules.

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

Copy of Written Comments and Summary of Oral Comments

Written Comments – The Department received three (3) written comments via email and received one (1) written comment in a newsletter. See Attached #/a-g, for copies of written comments.

Oral Comments – The department received no oral comments at the Administrative Rules Public Hearing on 1/12/16 or to-date.

1a

Kary, Kim K.

From: Power, Greg J.
Sent: Wednesday, December 16, 2015 10:00 AM
To: Kary, Kim K.; Steinwand, Terry R.
Subject: FW: Adm Rules. Drain Plugs

-----Original Message-----

From: Bob Gibson [<mailto:bigson@gondtc.com>]
Sent: Wednesday, December 16, 2015 9:25 AM
To: Power, Greg J. <gpower@nd.gov>
Subject: Adm Rules. Drain Plugs

Put the adm rules in effect regarding draining water and plugs. This is a good move by the NDGF. 100% in favor. Bob

From: Lynn Schlueter [mailto:lrshlueter@yahoo.com]
Sent: Monday, January 11, 2016 10:13 PM
To: -Info-Governor's Office
Cc: -Info-Game & Fish Dept.; Kary, Kim K.; Rauschenberger, Ron W.
Subject: Comments on proposed ANS regulations

Dear Governor Jack Dalrymple

Subject: Comments on North Dakota Game and Fish Department's proposed Aquatic Nuisance Species regulations

Aquatic Nuisance Species (to be referred to as ANS) issues are slowly being addressed by the North Dakota Game and Fish Department (to be referred to as NDGF). The NDGF's most recent effort is to enact a regulation which requires the removal of the drain plug or plugs from bilges or water retaining compartments when the vessel or equipment is not on the water. The drain plug(s) is to remain out until the vessel is being launched or the equipment is in use. This law means that the vessel or equipment will be free of water and dry which will prevent ANS movement.

The proposed "drain and dry" regulation is a needed approach to preventing ANS movement. This regulation should have been enacted when ANS regulations were first promulgated.

There continues to be major problems with the ANS prevention regulations recently enacted by the NDGF. The regulation that requires the dumping of baits when leaving waters infested with NDGF/Class I species (information on ANS Class I species is available on NDGF web site). The bait issue is not limited to minnows, but would extend to leeches, crawfish, frogs, and might even include worms. To keep worms cool in the summer, anglers frequently wet the worm's bedding with water from the lake they are fishing.

The NDGF requiring that bait be dumped when returning to shore will be an increased cost to anglers who plan to fish on consecutive days. Increasing the out-of-pocket expense/expenses is often cited as a major reason anglers decide to no longer participate in recreational fishing activities. The loss of few current anglers will equate to less future anglers being recruited as parents, grandparents, and friends are no longer taking others fishing and teaching them to enjoy the lifelong passion of recreational fishing.

At the current time, the Red River of the North, and the Bois de Sioux River should be included, are the only waters which are impacted by the dump the bait regulation as they are listed as infested with zebra mussels. Of interest is that there has been no effort to have the bait dumping regulations extent upstream on tributaries to these two rivers. It is understood that the number of anglers fishing the Red River is small when compared to other North Dakota waters. The

impacts from the bait dumping regulation will currently be limited to anglers, both residents and non-residents, fishing North Dakota's eastern border water.

When a ANS/Class I specie or species are found in other waters such as Devils Lake or the Missouri River System or the Sheyenne River System, there will be a clamor from anglers fish these waters to modify the bait dumping rules. Large number of anglers will not be willing to dump their bait when they plan to fish the same waters in following days. This equates to Law Enforcement issues at boat ramps and parking lots. The current law will make more law breakers than make people understand how not to move the ANS problem to other waters. The likely outcome from this problem will be that the regulations will be modified to allow angles to change out water while retaining the bait at very select waters. This will be quickly viewed as discrimination to anglers not fishing the popular waters.

Another issue is the use of live bait while ice-fishing. Live bait is to be dumped when returning to the shore, even if the water the bait was in has not been exchanged or diluted with water from the infested waterbody. The bait water is not tainted, but bait must be dumped. Again, dumping bait is an increase in the cost to go fishing. Anglers want to keep the costs for recreation at a manageable level. This will become an issue with Game Wardens at the few access points along the waterbody's shoreline.

What has not been addressed is the impacts of ANS/Class I species on fish stocking by the NDGF. Most of the ANS/Class I species are associated with fish hatchery production. Water sources for the two Federal Hatcheries supplying fish to the NDGF can become infested with an ANS/Class I specie or species. The Sheyenne River which Devils Lake is being discharged in to feeds the Valley City Fish Hatchery and the Garrison Fish Hatchery relies on Missouri River waters. How can fingerling fish or any fish be moved around the state if the hatchery's water supply is from an ANS infested source or sources? Will the NDGF be able to decide it can just change or add well water to the stocking truck when it hauls fish? Anglers cannot change out water on bait and then transport that bait away from the waters they were fishing on. Will the NDGF allow themselves to move fish from or in waters with ANS infestations or will the North Dakota State Water Commission have to make the decision on the NDGF moving infested hatchery waters around the State.

The ANS regulations proposed by the NDGF need to be well thought out and they need to cover the State's recreational fishing needs.

Thank you for taking the time to consider these comments and suggestions.

Yours truly

Lynn R Schlueter

309 Beslund Drive

1d

Devils Lake, ND 58301

Phone – 701/662-1772

Copy to files

1e

Kary, Kim K.

From: -Info-Game & Fish Dept.
Sent: Wednesday, January 13, 2016 11:12 AM
To: Kary, Kim K.; Power, Greg J.
Subject: FW: New Administrative Rule - Water Prohibited

From: Marc Schulz [mailto:bluemoon@westriv.com]
Sent: Wednesday, January 13, 2016 11:06 AM
To: -Info-Game & Fish Dept. <ndgf@nd.gov>
Subject: New Administrative Rule - Water Prohibited

I understand the concern expressed by ND Game and Fish over the transportation of aquatic nuisance species but I believe the administrative rule change being proposed is a radical overreaction to the problem with little impact on the final result. Hard rules are reasonable in areas where invasive species exist and boats coming from out of state should have severe restrictions. But migratory birds and the transport of 5 gallons of water are far more likely to relocate invasive species than the bilge of my fishing boat.

In the last 10 years I have had no water in the bilge of my boat and the only time I pull the drain plug is to wash the interior of my boat. Removing the drain plug is extremely inconvenient as I have to open a sealed cap to reach in to pull the plug. It is a blind area and there are sharp corners and screws to maneuver around to get the plug out. I will not use a plug from the outside as that is a good way to lose the plug and swamp a boat.

If ND Game and Fish's goal is to irritate fisherman for little gain (the last rule change on preventing transporting fish in water in a live well was bad enough), then you are on the right track.

Sincerely,

Marc Schulz
Riverdale, ND



WINTER 2016

walleye Lines



Promoting conservation, sportsmanship and education in respect to walleye fishing.

FISH ADDICTIONS: MIKE OLSON AND JOSH CLAWSON “USING TEAMWORK TO CONQUER NEW WATER”

December 4th, 2015 Fargo, ND, Moorhead, MN-FM Walleyes Unlimited, Inc., is pleased to announce that its Thursday, January 21st meeting will feature Mike Olson and Josh Clawson from Fish Addictions. Their seminar will focus on “using teamwork to conquer new water”.

Mike Olson and Josh Clawson each have a long history of the outdoors and fishing in their upbringing. Mike and Josh first met competing against each other on a Minnesota based ice fishing tournament series. Throughout the season, they became aware of how much they had in common, especially their passion for ice fishing. Mike had started FishAddictions.com a year prior and Josh jumped on board. The last 2 years they have been covering much of the Midwest and Canada in their fishing adventures, and sharing these adventures in the form of video reports on social media. With the support of great sponsors the duo was able to start filming for Fish Addictions TV and will continue to share their adventures and knowledge for years to come.



See next page →

“One of our favorite winter activities is picking a lake neither of us has fished before and utilize our past experiences and knowledge to conquer it as a team.” The event will take place Thursday, January 21st at the BAYMONT INN & SUITES, Fargo, ND. The doors will open at 6:30 p.m. and the meeting will begin at 7:00 p.m. This event is free and open to the public. For more information contact Scott Brewer at (701) 388-4408 or Kyle Agre at (701) 429-1242

(19)

FM WALLEYES HAS SUPPORTED THE “PULL THE PLUG”

The North Dakota Game and Fish Department will hold a public hearing to address proposed rule changes to North Dakota Administrative Code Title 30. The hearing is scheduled for 1:15 p.m., Tuesday, Jan. 12 at the agency's main office in Bismarck.

The purpose and explanation of the proposed rule change is as follows:

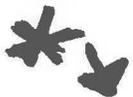
Chapter 30-03-06-05 – Water prohibited. Currently all drain plugs must be removed from all watercraft and recreational, commercial and construction equipment bilges and confined spaces when entering the state or leaving the Red River. To reduce the threat of transport of aquatic nuisance species, it is proposed the current administrative rule be extended statewide, requiring all drain plugs be removed, and water draining devices be open, on all watercraft and recreational, commercial, and construction equipment bilges and confined spaces, during any out-of-water transport.

The proposed rule language may be reviewed at the North Dakota Game and Fish Department, 100 N. Bismarck Expressway, Bismarck, ND 58501-5095, or on the Department's website at gf.nd.gov. A copy of the proposed rules may be requested in writing, or by calling 701-328-6305, or emailing ndgf@nd.gov. Written or oral comments on the proposed rules must be received by Jan. 22, 2016 for consideration.

Anyone who attends the public hearing and needs special facilities or assistance relating to a disability should contact the Game and Fish Department at least seven days before the public hearing.



NORTH DAKOTA GAME AND FISH DEPARTMENT



“FM Walleyes has supported the “Pull the Plug” laws in Minnesota since invasive species have become more widespread the past few years. We understand the importance of not transferring water from lake to lake, and fully support the creation of these same laws in North Dakota.”

ND Game and Fish Department

Agency Consideration of Public Comment (December 2015 / January 2016)

The Department received four written comments via emails/newsletters. (See Attachment #6.) Only one person attended the public hearing and he had no comments. 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 when needed.

1. Put the administrative rules in effect regarding draining water and plugs. This is a good move by the NDGF.
2. FM Walleyes has supported the "Pull the Plug" laws in Minnesota since invasive species have become more widespread the past few years. We understand the importance of not transferring water from lake to lake, and fully support the creation of these same laws in North Dakota.
3. There continues to be major problems with the ANS prevention regulations recently enacted by the NDGF. The NDGF requiring that bait be dumped when returning to shore will be an increased cost to anglers who plan to fish on consecutive days. Increasing the out-of-pocket expense/expenses is often cited as a major reason anglers decide to no longer participate in recreational fishing activities.

When a ANS/Class I specie or species are found in other waters such as Devils Lake or the Missouri River System or the Sheyenne River System, there will be a clamor from anglers fish these waters to modify the bait dumping rules. Large number of anglers will not be willing to dump their bait when they plan to fish the same waters in following days. This equates to Law Enforcement issues at boat ramps and parking lots. The current law will make more law breakers than make people understand how not to move the ANS problem to other waters. The likely outcome from this problem will be that the regulations will be modified to allow angles to change out water while retaining the bait at very select waters. This will be quickly viewed as discrimination to anglers not fishing the popular waters

Another issue is the use of live bait while ice-fishing. Live bait is to be dumped when returning to the shore, even if the water the bait was in has not been exchanged or diluted with water from the infested waterbody. The bait water is not tainted, but bait must be dumped. Again, dumping bait is an increase in the cost to go fishing. Anglers want to keep the costs for recreation at a manageable level. This will become an issue with Game Wardens at the few access points along the waterbody's shoreline.

What has not been addressed is the impacts of ANS/Class I species on fish stocking by the NDGF. Most of the ANS/Class I species are associated with fish hatchery production. Water sources for the two Federal Hatcheries suppling fish to the NDGF can become infested with an ANS/Class I specie or species. The Sheyenne River which Devils Lake is being discharged in to feeds the Valley City Fish Hatchery and the Garrison Fish Hatchery relies on Missouri River waters. How can fingerling fish or any fish be moved around the state if the hatchery's water supply is from an ANS infested source or sources? Will the NDGF be able to decide it can just change or add well water to the stocking truck when it hauls fish? Anglers cannot change out water on bait and then transport that bait away from the waters they were fishing on. Will the NDGF allow themselves to move fish from or in waters with ANS infestations or will the North Dakota State Water Commission have to make the decision on the NDGF moving infested hatchery waters around the State.

Department Response: The Department generally disagrees with these assumptions and the writer's conclusions. Further, they have little/no relevance to this proposed administrative rule change.

4. I understand the concern expressed by ND Game and Fish over the transportation of aquatic nuisance species but I believe the administrative rule change being proposed is a radical overreaction to the problem with little impact on the final result. Hard rules are reasonable in areas where invasive species exist and boats coming from out of state should have severe restrictions. But migratory birds and the transport of 5 gallons of water are far more likely to relocate invasive species than the bilge of my fishing boat.

In the last 10 years I have had no water in the bilge of my boat and the only time I pull the drain plug is to wash the interior of my boat. Removing the drain plug is extremely inconvenient as I have to open a sealed cap to reach in to pull the plug. It is a blind area and there are sharp corners and screws to maneuver around to get the plug out. I will not use a plug from the outside as that is a good way to lose the plug and swamp a boat.

If ND Game and Fish's goal is to irritate fisherman for little gain (the last rule change on preventing transporting fish in water in a live well was bad enough), then you are on the right track.

Department Response: Although a few boaters will be inconvenienced with this proposed rule change, undoubtedly the vast majority of watercraft operators will see no additional time hardships.

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?

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?

No as exemptions are not needed for any small entity.

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 boaters on North Dakota waters would be subject to the change to the Aquatic Nuisance Species rule.
- 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.**
The preventative measures provided by this change could benefit all residents of the state and at virtually no cost of time or money.
- 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 purpose of the proposed rule.