

LEGAL NOTICE



In accordance with Neb. Rev. Stat. 84-907, a public hearing, conducted by the Nebraska Game and Parks Commission, will be held Friday, October 26, 2018, at the Holiday Inn Express Meeting Room, 508 Second Avenue, Kearney, Nebraska, prior to consideration and/or enactment of the following:

Pursuant to the provisions of Neb. Rev. Stat. 37-806, a public hearing will be held at 8:30 a.m., for Commissioner District Four (4) input on proposed listing and de-listing of State Threatened and Endangered Species.

Pursuant to the provisions of Neb. Rev. Stat. 37-301, 37-304, 37-305, 37-308, 37-314, 37-315, 37-344, 37-411, 37-426, 37-4,104, 37-4,107, 37-4,109, 37-4,111, 37-501 through 37-504, 37-508 and 37-543 through 37-545, a public hearing will be held at 8:45 a.m., to consider amendments to Chapter 2, Fisheries Regulations, Section 006, Sport Fishing Regulations, regarding the management of the transportation and possession for sport fish; clarification of archery fishing, paddlefish and snagging draw permits processes; methods of take for bullfrogs, and water bodies where it is unlawful to possess or use live baitfish.

Pursuant to the provisions of Neb. Rev. Stat. 37-301, 37-304, 37-305, 37-308, 37-314, 37-315, 37-344, 37-411, 37-426, 37-4,104, 37-4,107, 37-4,109, 37-4,111, 37-501 through 37-504, 37-508 and 37-543 through 37-545, a public hearing will be held at 9:00 a.m., to consider amendments to Commission Order C06, Sport Fishing, regarding daily bag limits, possession limits, length limits, and open areas.

Pursuant to the provisions of Neb. Rev. Stat. 37-301, 37-304, 37-524, 37-547 and 37-548, a public hearing will be held at 9:15 a.m., to consider amendments to Chapter 2, Fisheries Regulations, Section 012, Aquatic Invasive Species Regulations, regarding species within categories, inspections, decontamination, impoundment and quarantine of conveyance and restrictions within waters in the state.

Pursuant to the provisions of Neb. Rev. Stat. 37-301, 37-304, 37-308, 37-308.01, 37-314, 37-315, 37-317, 37-404, 37-406, 37-409, 37-447, 37-449, 37-450, 37-452, 37-453, 37-455, 37-455.01, 37-456, 37-529, 37-701, 37-706, 37-708, a public hearing will be held at 9:30 a.m., to consider amendments to Chapter 4, Section 003, Antelope, Deer, Elk, regarding draw permit processes.

Copies of the proposed regulations and fiscal impact statements shall be available for public inspection at the Game and Parks Commission office and the Office of the Secretary of State.

Copies of the proposed Commission Order changes shall be available for public inspection at the Game and Parks Commission website at www.outdoornebraska.gov.

James Douglas, Director

NOTICE OF RULEMAKING
COMMENT PERIOD

NOTICE is hereby given that the Nebraska Game and Parks Commission is accepting written comments on working drafts of proposed amendments, Title 163, Nebraska Administrative Code Chapter 2, entitled REGULATIONS Fisheries, Section 012 – Aquatic Invasive Species Regulations, regarding species within categories, inspections, decontamination, impoundment and quarantine of conveyance and restrictions within waters in the state, prior to the public hearing process.

All interested persons are invited to obtain draft copies of the proposed regulations from and submit their written comments to Sandra Paice, Division of Administration, Nebraska Game and Parks Commission, 2200 N. 33rd, P.O. Box 30370, Lincoln NE 68503, or FAX 402/471-4992. The comment period will end at the close of business on October 25, 2018.

If auxiliary aids or reasonable accommodations are needed to review the drafts or participate in this process, please call the above-named person at (402) 471-5432 or, for persons with hearing impairments, (402) TDD or Nebraska Relay System, (800) 833-7352 TDD by no later than October 18, 2018.

DRAFT FISCAL IMPACT STATEMENT

Agency: Nebraska Game and Parks Commission	
Title: 163	Prepared by: Sandra Paice
Chapter: 2	Date prepared: September 20, 2018
Subject: Section <u>012</u> , Aquatic Invasive Species Regulations	Telephone: 402/471-5432

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	(X)	(X)	(X)
Increased Costs	()	()	()
Decreased Costs	()	()	()
Increased Revenue	()	()	()
Decreased Revenue	()	()	()
Indeterminable	()	()	()

Provide an Estimated Cost & Description of Impact:

State Agency: \$0
 Political
 Subdivision: \$0
 Regulated
 Public: \$0

If indeterminable, explain why:

NEBRASKA ADMINISTRATIVE CODE

Last Issue Approved Date: December 28, 2015 April 21, 2015

Title 163 - Nebraska Game and Parks Commission

Chapter 2 - Fisheries Regulations

012 AQUATIC INVASIVE SPECIES REGULATIONS

012 Aquatic Invasive Species Regulations.—The following regulations are prescribed by the Nebraska Game and Parks Commission, State of Nebraska, in addition to State Statutes in accordance with Neb. Rev. Stat. 37-301, 37-304, 37-524, 37-547 and 37-548. For purposes of these regulations, unless context otherwise requires, the definitions found in Chapter 37, sections 201-234 of the Game Law, are used. These regulations are effective following enactment by the Commission, approval by the Attorney General and Governor, and when five days have elapsed since filing with the Secretary of State.

012.01 DEFINITIONS

012.01A Aquatic Invasive Species are defined as any exotic or non-native aquatic organisms that pose a significant threat to the aquatic resources, water supplies, or water infrastructure of this State. Since the current status and level of threat can be different for each species, four different categories are established:

- Category 1 - Potential Aquatic Invasive Species;
- Category 2 - Priority Aquatic Invasive Species;
- Category 3 - Established Aquatic Invasive Species; and
- Category 4 - Aquatic Invasive Plant Species Listed as Noxious in Nebraska.

Category 1 – Potential Aquatic Invasive Species are those species that have not yet been sampled in Nebraska and are considered a high threat. Those organisms are as follows

Common Name	Scientific Name
Round Goby	<i>Apollonia melanostoma</i>
Snakehead	<i>Chana sp</i>
Black Carp	<i>Mylopharyngodon piceus</i>
Quagga Mussel	<i>Dreissena rostriformis bugensis</i>
New Zealand Mudsnail	<i>Potamopyrgus antipodarum</i>

Giant Reed	<i>Arundo donax</i>
Brazilian Waterweed, Elodea	<i>Egeria densa</i>
Hydrilla	<i>Hydrilla verticillata</i>
Brittle Naiad	<i>Najas minor</i>
Didymo, Rock Spot	<i>Didymosphenia geminate</i>
White River Crayfish	<i>Procambarus acutus</i>
Red Swamp Crayfish	<i>Procambarus clarkua</i>

Category 2 – Priority Aquatic Invasive Species are those species that are currently present in Nebraska but with limited distribution. They are considered highly unwanted species and all efforts should be taken to prevent the expansion of their populations. Those species are as follows include:

Common Name	Scientific Name
Silver Carp	<i>Hypophthalmichthys molitrix</i>
Bighead Carp	<i>Hypophthalmichthys nobilis</i>
White Perch	<i>Morone americana</i>
Yellow Bass	<i>Roccus mississippiensis</i>
Asian Clam	<i>Corbicula fluminea</i>
Zebra Mussel	<i>Dreissena polymorpha</i>
Waterflea	<i>Daphnia lumholtzii</i>
Rusty Crayfish	<i>Orconectes rusticus</i>
Curly-leaf Pondweed	<i>Potamogeton crispus</i>
Flowering Rush	<i>Butomus umbellatus</i>
Eurasian Watermilfoil	<i>Myriophyllum spicatum</i>

Yellow Floating Heart	<i>Nymphoides peltata</i>
Creeping Water Primrose	<i>Ludwigia peploides</i>
<u>Brittle Naiad</u>	<u><i>Najas minor</i></u>
<u>White River Crayfish</u>	<u><i>Procambarus acutus</i></u>
<u>Red Swamp Crayfish</u>	<u><i>Procambarus clarkua</i></u>

Category 3 – Established Aquatic Invasive Species are those species that are well established in Nebraska and total elimination is impossible. Local removal and control is the best that can be expected and protocols established in sub-sections 012.02 to 12.05 012.04 below do not apply to the species on this list, which are as follows includes:

Common Name	Scientific Name
Common Carp	<i>Cyprinus carpio</i>
European Rudd	<i>Scardinius erythrophthalmus</i>
Chinese Mystery Snail	<i>Cipangopaludina chinensis</i>
Japanese Mystery Snail	<i>Cipangopaludina japonica</i>
<u>Asian Clam</u>	<u><i>Corbicula fluminea</i></u>
Common Watercress	<i>Nasturium officinale</i>
Reed Canary Grass	<i>Phalaris arundinacea</i>
Narrow-leaf Cattail	<i>Typha angustifolia and hybrids</i>
<u>Western Mosquitofish</u>	<u><i>Gambusia affinis</i></u>

Category 4 – Aquatic Invasive Species Listed as Noxious in Nebraska are regulated by the Nebraska Department of Agriculture as noxious plant species. Those species are listed as follows include:

Common Name	Scientific Name
Eurasian Common Reed	<i>Phragmites australis</i>
Salt Cedar <u>Saltcedar</u>	<i>Tamarix ramosissima and hybrids</i>
Purple Loosestrife	<i>Lythrum salicaria</i>

012.01B An authorized inspector means a person who has completed Aquatic Invasive Species Level 1 training, or Conservation Officer or peace officer.

~~012.01C Conveyance means a motor vehicle, boat, watercraft, raft, vessel, trailer, or any associated equipment or containers, including but not limited to live wells, ballast tanks, bilge areas, and water hauling equipment that may contain or carry Aquatic Invasive Species.~~

~~012.04D 012.01C Decontaminate means to wash, drain, dry, or thermally or otherwise treat a conveyance in order to remove or destroy Aquatic Invasive Species from a conveyance.~~

~~012.04E 012.01D Equipment means an article, tool, implement, or device capable of containing or transporting water or Aquatic Invasive Species.~~

~~012.04F 012.01E Waters of the State means all waters under the jurisdiction of the State of Nebraska.~~

~~012.04G 012.01F Launch area means any ground along the shoreline of a water body where a conveyance may be launched into the water or loaded out of the water for transport, including but not limited to boat ramps.~~

~~012.02 It shall be unlawful for any person to possess, import, export, purchase, sell, transport or release into the waters of the State any Aquatic Invasive Species except when Commission personnel or the owner of a conveyance, or a person authorized by such owner, is removing an Aquatic Invasive Species from a conveyance to be killed or immediately disposed of in a manner as determined by the Commission or allowed to possess, sell or transport by regulations listed in Chapter 2, Sections 003 and 006.~~

~~012.03 012.02 INSPECTIONS~~

~~012.03A 012.02A An authorized inspector has the authority is approved by the Commission to require and conduct inspection of any conveyance that may contain or carry an Aquatic Invasive Species.~~

~~012.03B~~ ~~012.02B~~ It shall be unlawful to fail or refuse to submit to an inspection of a conveyance upon request of an authorized inspector, ~~Conservation Officer or peace officer.~~

~~012.03C~~ If a person refuses to allow inspection of a conveyance or to complete any required removal and disposal of Aquatic Invasive Species prior to departure from any water of the State known to be infected by an Aquatic Invasive Species, the conveyance is subject to impoundment until an Aquatic Invasive Species inspection and decontamination is completed.

~~012.03D~~ ~~012.02C~~ It shall be unlawful to refuse to permit or prevent proper decontamination of a conveyance as prescribed by an authorized inspector. It is the responsibility of the owner of the conveyance to ~~cover~~ reimburse any costs related to the decontamination procedure.

~~012.03E~~ ~~012.02D~~ Any person operating a conveyance may be ordered to remove the conveyance from any water of the State or any conveyance launch area by any Conservation Officer or peace officer if there is a reason to believe the conveyance was not properly inspected prior to launch or may otherwise contain Aquatic Invasive Species. Once removed from the water or launch area, the conveyance shall be subject to inspection for the removal and disposal of Aquatic Invasive Species.

~~012.03F~~ ~~012.02E~~ Any authorized inspector who, ~~through the course of an inspection,~~ determines that Aquatic Invasive Species are present shall document the inspection, including but not limited to the type and number of Aquatic Invasive Species suspected or detected and identification of the conveyance, including license plate number and hull or vehicle identification number, if available. The authorized inspector shall advise the operator that the conveyance shall be required to be decontaminated according to Commission procedures as soon as possible.

~~012.02F~~ It shall be unlawful for a watercraft to have a drain plug in place when not on the water or not in the launch area.

~~012.03G~~ ~~012.02G~~ It shall be unlawful to arrive at or leave any water body in Nebraska with water other than from a domestic source (e.g., water supply system, well, or bottled) except for fire-fighting purposes.

~~012.03H~~ ~~012.02H~~ It shall be unlawful for a conveyance to be launched into waters of the State with Aquatic Invasive Species or any aquatic plants ~~species~~ attached or leave a launch area with any aAquatic Invasive Species or aquatic plants ~~vegetation~~ from that water body still attached.

~~012.03~~ ~~012.02~~ It shall be unlawful to use felt sole boots or waders in waters of the State.

~~012.04~~ ~~012.03~~ DECONTAMINATION

~~012.04A~~ Decontamination shall be achieved by removal of the conveyance from any water body and eliminating the water from all compartments, equipment, and containers that may hold water, including but not limited to live wells, ballast tanks and bilges for a length of time as determined by the Commission not to exceed thirty (30) days.

~~012.04B~~ If decontamination is not achieved by removal of the conveyance from any water body for at least 30 days, the following requirements apply:

~~012.04B1~~ ~~012.03A~~ Decontamination of the exterior of a conveyance shall be accomplished by removing or destroying all Aquatic Invasive Species, soil, plants, and organisms. The entire exterior of the conveyance and all intakes shall be thoroughly washed with a high pressure power washer using water of at least 140 degrees Fahrenheit and a minimum pressure of five (5) gallons/minute with 3,000 pounds per square inch or psi. A high pressure (minimum of 2,500 pounds per square inch or psi) water wash or scrubbing will be used as necessary.

~~012.04B2~~ ~~012.03A1~~ All compartments, equipment and containers in a conveyance that hold water including, but not limited to live wells, ballast and bilge areas, shall be flushed with water of at least 140 ~~130~~ degrees Fahrenheit but not at high pressure with contact time of 130 seconds. If a bilge pump is present, it shall be operated until the bilge appears to be empty. The lower unit of the engine shall be thoroughly flushed with water of at least 140 degree Fahrenheit.

~~012.04B3~~ ~~012.03A2~~ After decontamination, an authorized inspector, Conservation Officer or peace officer shall re-inspect the conveyance to ensure complete decontamination has occurred prior to the release of the conveyance.

~~012.03B~~ If decontamination with a high pressure power wash is not achieved, then removal of the conveyance from any water body or launch area is authorized for a length of time not to exceed thirty (30) days as determined by the Commission to allow for successful decontamination.

~~012.05~~ ~~012.04~~ IMPOUNDMENT AND QUARANTINE

~~012.05A~~ ~~012.04A~~ All conveyances are subject to impoundment and quarantine by a Conservation Officer or peace officer if:

~~012.05A1~~ ~~012.04A1~~ The person transporting the conveyance refuses to allow an inspection of the conveyance by an authorized inspector, ~~Conservation Officer or peace officer~~;

~~012.05A2~~ ~~012.04A2~~ An authorized inspector, ~~Conservation Officer or peace officer~~ has ~~probable cause~~ reasonable suspicion to believe an Aquatic Invasive Species is present after conducting an inspection;

~~012.05A3~~ ~~012.04A3~~ The person transporting the conveyance refuses to allow a decontamination of the conveyance when decontamination is ordered by an authorized inspector, ~~Conservation Officer, or peace officer~~; or

~~012.05A4~~ ~~012.04A4~~ An authorized inspector, ~~Conservation Officer, or peace officer~~ determines that a quarantine is necessary following decontamination.

~~012.05B~~ ~~012.04B~~ If the person ~~in charge of~~ responsible for an impounded conveyance is not the registered owner, the registered owner shall be notified by mail, return receipt requested, within ten (10) days of the location of the impounded conveyance being impounded. Such notification shall also include contact information for the Conservation Officer or peace officer ordering the impoundment. If the registered owner is present when the conveyance is ordered impounded, then the same information shall be provided to the registered owner at the time the impound order is issued.

~~012.05C~~ ~~012.04C~~ All impounded conveyances shall be held at the risk and expense of the owner. A conveyance held under impound for non-compliance with ~~this~~ these regulations shall only be released after an authorized inspector ~~or Conservation Officer~~ is satisfied by inspection or quarantine that the conveyance is no longer a threat to the aquatic resources, water supplies, and water infrastructure of the State.

~~012.05D~~ ~~012.04D~~ Duration of conveyance quarantine shall be determined by the ~~Department~~ Commission and shall not exceed thirty (30) days.

~~012.05E~~ ~~012.04E~~ An impounded conveyance shall not be released until a Commission impound release form is signed and executed by a Conservation Officer. It is the responsibility of the owner to coordinate with the Commission for the release of the conveyance.

~~012.06~~ ~~012.05~~ RESTRICTIONS

~~012.06A~~ ~~012.05A~~ Waters of the State found to contain Category 1 or Category 2 Aquatic Invasive Species may be listed and posted by the Commission as Aquatic Invasive Species ~~Contaminated~~ Infested Waters. The Commission may then

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establish site-specific protocols for such waters that could include inspection and decontamination. The Commission may require additional restrictions on launching and loading conveyances and restrictions on live baitfish leaving the area.

012.05A1 On any water body that is listed as "Infested" for either Zebra or Quagga mussels, it is illegal to leave the area with live fish, live baitfish or aquatic plants or any water other than from a domestic source that has not been used for holding fish.