

LEGAL NOTICE

In accordance with Neb. Rev. Stat. 84-907, public hearings conducted by the Nebraska Game and Parks Commission, will be held on August 27, 2021 at Legacy of the Plains Museum 2930 Old Oregon Trail Gering, NE prior to consideration and/or enactment of the following:

Pursuant to Neb. Rev. Stat. Sections §§ 37-206.01, 37.215.01, 37-301, 37-304, 37-309, 37-235, 37-355, 37-524, 37-524.02, 37-524.03, 37-547, 37-548, and 37-1206, a public hearing will be held at 8:30 AM to consider amendments to Title 163, Nebraska Administrative Code Chapter 2, entitled Fisheries Regulations, Aquatic Invasive Species Regulations, Section 012 –Rules relating to Aquatic Invasive Species including listing invasive species, inspections, decontamination, impoundments and restrictions.

Pursuant to Neb. Rev. Stat. §§ 37-301, 37-303, 37-314, 37-308, 37-308.01, 37-317, 37-404, 37-426, 37-427, 37-451, 37-452, 37-505, a public hearing will be held at 8:45 AM to consider amendments to Commission Order CO14, Mountain Sheep, regarding the authorization of mountain sheep hunting permits for the 2022 season.

Copies of the proposed regulations and the Fiscal Impact Statement 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](http://www.outdoornebraska.gov).

All interested persons may attend and testify orally or by written submission at the public hearing. Interested persons or organizations may submit written comments prior to the hearing, which will be entered into the hearing record if they: 1) include a request to be included as part of the hearing record; 2) include the name and address of the person or organization submitting the comments; and 3) are received by 1:00 p.m. CT, August 25, 2021 by Sheri Henderson at the Lincoln office, 2200 North 33<sup>rd</sup> Street, Lincoln, NE 68503-0370.

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 FISHERIES REGULATIONS, Aquatic Invasive Species Regulations, Section 012 –Rules relating to Aquatic Invasive Species including listing invasive species, inspections, decontamination, impoundments and restrictions.

All interested persons are invited to obtain draft copies of the proposed regulations from and submit their written comments to Sheri Henderson, 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 close on August 25th, 2021 at 1 p.m. Central Time.

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) 471-5539 or, for persons with hearing impairments, (402) TDD or Nebraska Relay System, (800) 833-7352 TDD by no later than August 20, 2021.

REGULATIONS DOCKET  
Check List

AGENCY: NEBRASKA GAME AND PARKS COMMISSION  
 AGENCY CONTACT: Sheri Henderson, Division of Administration, NE GAME AND  
 PARKS COMMISSION, 2200 North 33rd, P.O. Box 30370, Lincoln NE 68503

PROPOSED NEBRASKA ADMINISTRATIVE CODE CITATION: Title 163, Chapter 2,  
 Section 012

PROPOSED NAME OR TOPIC AREA OF REGULATIONS: See "Abstract of Subject  
 Matter" below

LEGAL AUTHORITY FOR RULES: Neb. Rev. Stat. §§ 37-206.01, 37.215.01, 37-301,  
 37-304, 37-309, 37-235, 37-355, 37-524, 37-524.02, 37-524.03, 37-547, 37-548, and 37-  
 1206.

ABSTRACT OF SUBJECT MATTER: Aquatic Invasive Species Regulations – Rules  
 relating to establishing regulations dealing with aquatic invasive species.

Timetable/Status

Stage	Action	Proposed Date	Effective Date(s)
Pre-Rule	Drafting internal reviews	_____	_____
	Advance notice comment period	_____	_____
	Negotiated Rulemaking	_____	_____
Proposed Rule	Notice of Rulemaking Hearing	<u>07/22/2021</u>	_____
	Governor Waiver	_____	_____
	Rulemaking Hearing	<u>08/27/2021</u>	_____
	Post-hearing Analyses and Revisions	_____	_____
Final Rule	Agency Reviews & Approval	_____	_____
	Attorney General Submission	_____	_____
	Attorney General Approval	_____	_____
	Governor Submission	_____	_____
	Governor Approval	_____	_____
Completion	Filing Date	_____	_____
	Indexing Date	_____	_____
	Publication	_____	_____
	or Termination Notice of Termination w/o Rulemaking	_____	_____
Operative Date	*If later than effective date prescribed in 84-906 & 84-911	_____	_____

## DRAFT FISCAL IMPACT STATEMENT

Agency: Nebraska Game and Parks Commission	
Title: 163	Prepared by: Dean Rosenthal
Chapter: 2	Date prepared: July 22, 2021
Subject: Section 012 Aquatic Invasive Species Regulations	Telephone: 402/471-5495

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:

TITLE: 163, NEBRASKA GAME AND PARKS COMMISSION

CHAPTER: 2 REGULATIONS Fisheries – Aquatic Invasive Species

ACTION: Amendments to Existing Regulations

## EXPLANATORY STATEMENT

Prepared by: Dean Rosenthal, Fisheries Division Administrator

The Nebraska Game and Parks Commission is amending the above-referenced regulations as provided by law, and hereby submits this explanatory statement to accompany the regulation and describe their purposes and the changes made during the rulemaking process.

I. Summary: Changes made to existing regulations.

II. Overview of Purposes and Changes Made

Additions and changes were made to update the list of State Statutes that are prescribed in these regulations. Additionally, language that duplicated language in State Statutes were removed from the regulations. Species of Aquatic Invasive Species were moved from one category to another and/or new species were added to the lists to reflect the latest surveys and information.

Added language to prevent possession or transport of Category 1 or 2 Aquatic Invasive Species. Re-organized the regulations to clarify what is unlawful on property owned or operated by the Commission. Additional added language regarding removal of the drain plug from a conveyance when leaving the launch area.

Clarified the definition of Decontaminate. Removed repetitive language regarding inspections of conveyances and unnecessary language from several areas. Clarified that it would be illegal to launch a conveyance on property owned or operated by the Commission without an inspection if an inspection is required prior to launching by regulation.

Updated the decontamination procedures for a conveyance to be consistent with regional/national standards.

**Section 012.** Deleted "Issue" and added "Approved" and updated the Last approved date. Added the following to the list of State Statutes "37-206.01, 37.215.01, 37-309, 37-235, 37-255, 37-524.01, 37-524.03 and 37-1206". Also delete the following "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."

Part 012.01A Deleted "defined as" and added "any", also under Category 1 deleted" are as follows" and added "include". In the list of species in Category 1 the following were deleted "Brittle Naiad (*Najas minor*), White River Crayfish (*Procambarus acutus*), Red Swamp Crayfish (*Procambarus clarkia*)" and added "Parrot Feather (*Myriophyllum aquaticum*), Starry

Stonewort ( *Nitellopsis obtusa*), Water Hyacinth (*Eichhornia crassipes*), Giant Salvinia (*Salvinia molesta*), Water Lettuce (*Pistia stratiotes*)". Under the definition in Category 2 deleted "are as follows" and added "include". In the list of species in Category 2 the following were deleted "Asian Clam (*Corbicula fluminea*)" and added "Brittle Naiad (*Najas minor*), White River Crayfish (*Procambarus acutus*), Red Swamp Crayfish (*Procambarus clarkia*)". Under the definition in Category 3 deleted "Local removal and control is the best that can be expected", and added "sub- in front of the word section and a "0" to 12.02 and added 012.04" and deleted "12.05 and are as follows" and added "includes". In the list of species in Category 3 the following were added "Asian Clam (*Corbicula fluminea*), Western Mosquitofish (*Gambusia affinis*)". Under the definition in Category 4 deleted "are as follows" and added "include". In the list of species in Category 4 correct the spelling of "Saltcedar".

Part 012.01C Deletes "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." Added "It shall be unlawful to possess or transport any Category 1 or 2 invasive species".

Part 012.01D added the following "It shall be unlawful, on property owned or operated by the Commission to:"

Sub-part 012.01D1 added the following "Retain the drain plug in a conveyance when leaving any water body launch area or potential launch area;"

Sub-part 012.01D2 added the following "Arriving at, attempting to enter or leave any water with equipment that contains any aquatic plant material;"

Sub-part 012.01D3 added the following "Arriving at, attempting to enter or leave any water body with live baitfish in water other than from a domestic source;"

Sub-part 012.01D4 added the following "Arrive at, attempt to enter or leave any water body with equipment holding live fish;"

Sub-part 012.01D5 added the following "Arrive at, attempt to enter or leave any water body with any water other than from a domestic source, except for fire-fighting purposes; or"

Sub-part 012.01D6 added the following "Use any felt sole boots or waders in any water body."

Renumbered sub-part 012.01D to 012.01E and deleted "wash, drain, dry, or thermally or otherwise treat a conveyance in order to" and added "from a conveyance".

Renumbered sub-part 012.01E to 012.01F and Deleted the old "012.01F Waters of the State means all waters under the jurisdiction of the State of Nebraska."

Deleted Part "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."

Renumbered Part 012.03 to 012.02

Renumbered sub-part 012.03A to 012.02A and deleted "has the authority" and added "is approved by the Commission" and "as permitted by law".

Renumbered sub-part 012.03B to 012.02B and deleted ", Conservation Officer or peace officer".

Deleted sub-part "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."

Renumbered sub-part 012.03D to 012.02C and deleted "It shall be unlawful to refuse to permit or prevent proper decontamination of a conveyance as prescribed by an authorized inspector." Also deleted "cover" and added "reimburse".

Renumbered sub-part 012.03E to 012.02D and deleted "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 reason to believe the conveyance was not properly inspected prior to launch or may otherwise contain Aquatic Invasive Species." And added "If the Commission requires by regulation that an inspection is required prior to launching or attempting to launch a conveyance on any property owned or operated by the Commission, it shall be unlawful to launch or attempt to launch a conveyance without an inspection, and any person operation a conveyance may be ordered to remove the conveyance from the water or any conveyance launch area by any Conservation Officer or peace officer if there is probable cause to believe that the conveyance was not properly inspection prior to launch or may otherwise contain Aquatic Invasive Species" and also added "or launch area".

Renumbered sub-part 012.03F to 012.02E and deleted ", through the course of an inspection".

Deleted sub-part 012.03G

Deleted sub-part 012.03H

Deleted sub-part 012.03I

Renumbered sub-section 012.04 to 012.03

Deleted part 012.04A

Deleted part 012.04B

Renumbered part 012.04B1 to 012.03A and deleted "of the exterior of" and added "through either:" Also deleted "The entire exterior of the conveyance and all intakes shall be thoroughly washed with water of at least 140 degrees Fahrenheit A high pressure (minimum of 2,500 pounds per square inch or psi) water wash or scrubbing will be used as necessary."

Renumber sub-part 012.04B2 to 012.03A1 and added "Using hot water and high pressure wash utilizing approved decontamination procedures as described in "Uniform Minimum Protocols and Standards for Watercraft Inspection and Decontamination Programs for Dreissenid Mussels in the Western United States" (UMPS), 3rd edition, published by the Pacific States Marine Fisheries Commission; or" And deleted " 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 degrees Fahrenheit but not at high pressure. 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."

Added sub-part "012.03A2 Removing the conveyance from any water body or launch area for 30 days."

Renumbered sub-part 012.04B3 to Part 012.03B and deleted ",Conservation Officer or peace officer" and added "If, following re-inspection, an authorized inspector determines that complete decontaminations has not occurred, the authorized inspection may require additional decontamination by removing the conveyance from any water body or launch area for 30 days."

Renumbered Sub-section 012.05 to 012.04 and deleted "AND QUARANTINE"

Renumbered part 012.05A to 012.04A and deleted "if"

Deleted sub-part 012.05A1

Deleted sub-part 012.05A2

Deleted sub-part 012.05A3

Deleted sub-part 012.05A4

Renumbered part 012.05B to 012.04B and deleted "in charge of" and added "responsible for". Added "(10)" for clarification and deleted "location of the impounded" and add "being impounded".

Renumbered part 012.05C to 012.04C and deleted "this" and added "these" and an "s" to regulation.

Renumbered part 012.05D to 012.04D and deleted "Department" and added "Commission".

Renumbered part 012.05E to 012.04E

Renumbered sub-section 012.06 to 012.05

Renumbered part 012.06A to 012.05A and deleted "Contaminated" and added "Infested"

The proposed regulation is consistent with the legislative intent established by Section 84-907.09. The proposed regulation is not the result of any state or federal mandate, rendering a state or federal funding mechanism not applicable. The Commission will solicit public comment prior to the date of a public hearing. The Commission did not use the Negotiated Rulemaking Act in developing the proposed regulation.

Changes in Text Between Notice and Adoption:

DATED the 22<sup>th</sup> day of July, 2021.

NEBRASKA GAME AND PARKS COMMISSION



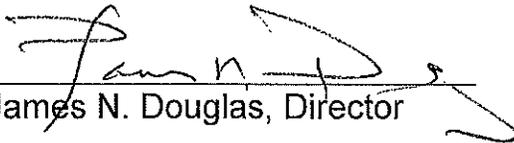
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Dean Rosenthal, Division Administrator

I hereby adopt this explanation statement as the statement of the Nebraska Game and Parks Commission concerning the purposes of this rule-making action and of the changes made during the process.

DATED the 22<sup>th</sup> day of July, 2021.

NEBRASKA GAME AND PARKS COMMISSION



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James N. Douglas, Director

NEBRASKA GAME AND PARKS COMMISSION

**SUBMIT TO GOVERNOR BEFORE SUBMITTING TO EXECUTIVE BOARD AND  
BEFORE PUBLIC HEARING DATE IS SET**

**PROPOSED REGULATION  
GPRO COVERPAGE  
(ATTACH TO PRE-REVIEW CHECKLIST)**

**Agency:** Nebraska Game and Parks Commission  
**Title, Chapter of Rules submitted:** Title 163, Chapter 2, Section 012  
**Subject:** 012, Aquatic Invasive Species Regulations  
**Prepared by:** Dean Rosenthal  
**Telephone:** 402-471-5495  
**Date submitted to Governor:** July 22, 2021

Projected dates for public hearings August 27, 2021

Projected deadline for final approval November 30, 2021

       A copy of the section of laws or federal regulations that triggered these changes is attached.

**FOR GOVERNOR'S OFFICE RECORDS**

**Advisor Assigned:**

**Date approved to proceed:**

**Options for proceeding:**

- a) No further contact with GPRO is necessary until final rules have been approved by the Attorney General.
- b) Contact Governor through GPRO concerning issues raised in Negotiated Rulemaking procedures.
- c) Submit Rules and Regulations Policy Review Checklist to Governor if rules are changed hereafter and a new public hearing is scheduled.
- d) Keep the Governor informed through GPRO as issues arise in negotiations, drafting sessions, advisory board meetings, and public hearings.
- e) Specific policy comments per Governor's instructions is attached.

**PROPOSED REGULATION  
POLICY PRE-REVIEW CHECKLIST**

**Agency:** Nebraska Game and Parks Commission

**Title, Chapter of Regulation:** Title 163, Chapter 2, Section 012

**Subject:** 012, Aquatic Invasive Species Regulations

**Prepared by:** Dean Rosenthal

**Telephone:** 402-471-5495

**A. Policy Changes and Impacts**

**1. What does the regulation do and whom does it impact?**

These changes would update the current status of Aquatic Invasive Species and condense and clarify what is unlawful regarding Aquatic Invasive Species on areas owned or operated by the Nebraska Game and Parks Commission. The changes would also clarify inspection and decontamination requirements for the watercraft users on public waters as authorized by Neb. Rev. Stat. §§ 37-206.01, 37.215.01, 37-301, 37-304, 37-309, 37-235, 37-355, 37-524, 37-524.02, 37-524.03, 37-547, 37-548, and 37-1206.

**2. Describe changes being proposed to current policy and briefly provide rationale.**

Additions and changes were made to update the list of State Statutes the are prescribed in these regulations. Additionally, language that duplicated language in State Statutes were removed from the regulations. Species of Aquatic Invasive Species were moved from one category to another and/or new species were added to the lists to reflect the latest surveys and information.

Added language to prevent possession or transport of Category 1 or 2 Aquatic Invasive Species. Re-organized the regulations to clarify what is unlawful on property owned or operated by the Commission. Additional added language regarding removal of the drain plug from a conveyance when leaving the launch area.

Clarified the definition of Decontaminate. Removed repetitive language regarding inspections of conveyances and unnecessary language from a several areas. Clarified that it would be illegal to launch a conveyance on property owned or operated by the Commission without an inspection if an inspection is required prior to launching by regulation.

Updated the decontamination procedures for a conveyance to be consistent with regional/national standards.

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to the lists to reflect the latest surveys and information.

Added language to prevent possession or transport of Category 1 or 2 Aquatic Invasive Species. Re-organized the regulations to clarify what is unlawful on property owned or operated by the Commission. Additional added language regarding removal of the drain plug from a conveyance when leaving the launch area.

Clarified the definition of Decontaminate. Removed repetitive language regarding inspections of conveyances and unnecessary language from a several areas. Clarified that it would be illegal to launch a conveyance on property owned or operated by the Commission when required by regulation.

Updated the decontamination procedures for a conveyance to be consistent with regional/national standards.

**Section 012.** Deleted "Issue" and added "Approved" and updated the Last approved date. Added the following to the list of State Statutes "37-206.01, 37.215.01, 37-309, 37-235, 37-255, 37-524.01, 37-524.03 and 37-1206". Also delete the following "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."

Part 012.01A Deleted "defined as" and added "any", also under Category 1 deleted "are as follows" and added "include". In the list of species in Category 1 the following were deleted "Brittle Naiad (*Najas minor*), White River Crayfish (*Procambarus acutus*), Red Swamp Crayfish (*Procambarus clarkua*)" and added "Parrot Feather (*Myriophyllum aquaticum*), Starry Stonewort (*Nitellopsis obtuse*), Water Hyacinth (*Eichhornia crassipes*), Giant Salvinia (*Salvinia molesta*), Water Lettuce (*Pistia stratiotes*)". Under the definition in Category 2 deleted "are as follows" and added "include". In the list of species in Category 2 the following were deleted "Asian Clam (*Corbicula fluminea*)" and added "Brittle Naiad (*Najas minor*), White River Crayfish (*Procambarus acutus*), Red Swamp Crayfish (*Procambarus clarkua*)". Under the definition in Category 3 deleted "Local removal and control is the best that can be expected", and added "sub- in front of the word section and a "0" to 12.02 and added 012.04" and deleted "12.05 and are as follows" and added "includes". In the list of species in Category 3 the following were added "Asian Clam (*Corbicula fluminea*), Western Mosquitofish (*Gambusia affinis*)". Under the definition in Category 4 deleted "are as follows" and added "include". In the list of species in Category 4 correct the spelling of "Saltcedar".

Part 012.01C Deletes "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." Added "It shall be unlawful to possess or transport any Category 1 or 2 invasive species".

Part 012.01D added the following "It shall be unlawful, on property owned or operated by the Commission to:"

Sub-part 012.01D1 added the following "Retain the drain plug in a conveyance when leaving any water body launch area or potential launch area;"

Sub-part 012.01D2 added the following "Arriving at, attempting to enter or leave any water with equipment that contains any aquatic plant material;"

Sub-part 012.01D3 added the following "Arriving at, attempting to enter or leave any water body with live baitfish in water other than from a domestic source;"

Sub-part 012.01D4 added the following "Arrive at, attempt to enter or leave any water body with equipment holding live fish;"

Sub-part 012.01D5 added the following "Arrive at, attempt to enter or leave any water body with any water other than from a domestic source, except for fire-fighting purposes; or"

Sub-part 012.01D6 added the following "Use any felt sole boots or waders in any water body."

Renumbered sub-part 012.01D to 012.01E and deleted "wash, drain, dry, or thermally or otherwise treat a conveyance in order to" and added "from a conveyance".

Renumbered sub-part 012.01E to 012.01F and Deleted the old "012.01F Waters of the State means all waters under the jurisdiction of the State of Nebraska."

Deleted Part "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."

Renumbered Part 012.03 to 012.02

Renumbered sub-part 012.03A to 012.02A and deleted "has the authority" and added "is approved by the Commission" and "as permitted by law".

Renumbered sub-part 012.03B to 012.02B and deleted ", Conservation Officer or peace officer".

Deleted sub-part "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."

Renumbered sub-part 012.03D to 012.02C and deleted "It shall be unlawful to refuse to permit or prevent proper decontamination of a conveyance as prescribed by an authorized inspector." Also deleted "cover" and added "reimburse".

Renumbered sub-part 012.03E to 012.02D and deleted "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 reason to believe the conveyance was not properly inspected prior to launch or may otherwise contain Aquatic Invasive Species." And added "If the Commission requires by regulation that an inspection is required prior to launching or attempting to launch a conveyance on any property owned or operated by the Commission, it shall be unlawful to launch or attempt to launch a conveyance without an inspection, and any person operation a conveyance may be ordered to remove the conveyance from the water or any conveyance launch area by any Conservation Officer or peace officer if there is probable cause to believe that the conveyance was not properly inspection prior to launch or may otherwise contain Aquatic Invasive Species" and also added "or launch area".

Renumbered sub-part 012.03F to 012.02E and deleted ", through the course of an inspection".

Deleted sub-part 012.03G

Deleted sub-part 012.03H

Deleted sub-part 012.03I

Renumbered sub-section 012.04 to 012.03

Deleted part 012.04A

Deleted part 012.04B

Renumbered part 012.04B1 to 012.03A and deleted "of the exterior of" and added "through either:" Also deleted "The entire exterior of the conveyance and all intakes shall be thoroughly washed with water of at least 140 degrees Fahrenheit A high pressure (minimum of 2,500 pounds per square inch or psi) water wash or scrubbing will be used as necessary."

Renumber sub-part 012.04B2 to 012.03A1 and added "Using hot water and high pressure wash utilizing approved decontamination procedures as described in "Uniform Minimum Protocols and Standards for Watercraft Inspection and Decontamination Programs for Dreissenid Mussels in the Western United States" (UMPS), 3rd edition, published by the Pacific States Marine Fisheries Commission; or" And deleted "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 degrees Fahrenheit but not at high

pressure. 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.”

Added sub-part “012.03A2 Removing the conveyance from any water body or launch area for 30 days.”

Renumbered sub-part 012.04B3 to Part 012.03B and deleted “, Conservation Officer or peace officer” and added “If, following re-inspection, an authorized inspector determines that complete decontaminations has not occurred, the authorized inspection may require additional decontamination by removing the conveyance from any water body or launch area for 30 days.”

Renumbered Sub-section 012.05 to 012.04 and deleted “AND QUARANTINE”

Renumbered part 012.05A to 012.04A and deleted “if”

Deleted sub-part 012.05A1

Deleted sub-part 012.05A2

Deleted sub-part 012.05A3

Deleted sub-part 012.05A4

Renumbered part 012.05B to 012.04B and deleted “in charge of” and added “responsible for”. Added “(10)” for clarification and deleted “location of the impounded” and add “being impounded”.

Renumbered part 012.05C to 012.04C and deleted “this” and added “these” and an “s” to regulation.

Renumbered part 012.05D to 012.04D and deleted “Department” and added “Commission”.

Renumbered part 012.05E to 012.04E

Renumbered sub-section 012.06 to 012.05

Renumbered part 012.06A to 012.05A and deleted “Contaminated” and added “Infested”

B. Why is the rule necessary? Explain and provide an identification of authorizing statute(s) or legislative bill(s).

1. Update of regulation (repeal of obsolete statutes, reflect current policy, editing or technical language changes, etc.) - Yes

2. Annual changes -- cost of living, hunting season schedules, etc. - No
3. Law was changed -- federal or state - No
4. Extension of established policy or program, new initiatives or changes in policy (within statutory authority) - No
5. Constituent initiated - No
6. Financial needs -- increases/decreases in fees - No
7. Litigation requires changes in rules - No
8. Addresses legal or constitutional concerns of Attorney General's office – Yes
9. Implements federal or court mandate - No
10. Other (explain) - N/A

C. What happens if these rules are not adopted?

Commission regulations would not address concerns of Attorney General's office and would not allow the Agency to remain up to date with aquatic invasive species listing and regional and national policies regarding invasive species. Additional spread of potentially damaging aquatic invasive species could occur.

D. Policy Checklist

1. Is this an update or editorial change reflecting essentially no change in policy? Yes
2. Does the policy in the proposed regulation reflect legislative intent? Yes
3. Is the policy proposed in the regulation a state mandate on local government? No
4. Is the policy proposed in the regulation a federal mandate on local government? No

E. Fiscal Impact. In addition to completing the required Fiscal Impact Statement (a copy must be attached to this document), the agency must address the following:

1. Will the proposed regulation reduce, increase or have no change in resources -- funds, personnel or FTE? No change.
2. Have initial contacts been made with citizens or organizations that may be impacted by the proposed regulation? No
3. Does the proposed regulation impact another agency? No
4. Will the proposed regulation reduce, increase, or have no change on reporting requirements of businesses? No change
5. What is the agency's best estimate of the additional or reduced spending? If there is none, please note. If receipt of federal funds is contingent upon approval of the proposed regulation, then indicate the amount and nature of the federal funds affected, and enclose laws or correspondence from federal officials substantiating the information. None

6. Include a description of the impact that the proposed regulation will have on the number of state employees and how the agency intends to address proposed increases or decreases in FTE. None

F. Unique problems or issues and recommendations.

None.

G. Who is expected to be affected, or to oppose or support the proposed regulation? Explain what initial informal contacts been made with organizations or citizens who may be affected by the regulation prior to the public hearing.

The Commission expects support of the majority of stakeholders for the proposed regulations. The Commission gave public notice soliciting public comment on the proposed changes prior to the public meeting.

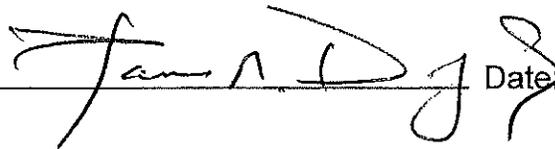
H. Are these proposed rules a likely candidate for negotiated rule-making? Explain. Has the process been completed? If so, explain how the issues were addressed.

The proposed rules are not a likely candidate for negotiated rule-making.

**Director's Verification of Review**

I have reviewed these proposals and verify that, at this stage of the regulation's development, these questions have been accurately addressed.

Director's Signature: \_\_\_\_\_



Date: July 22, 2021

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. 37-206.01, 37.215.01, 37-301, 37-304, 37-309, 37-235, 37-355, 37-524, 37-524.02, 37-524.03, 37-547, and, 37-548, and 37-1206. 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;
- 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~~ include:

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 Snot	<i>Didymosphenia geminate</i>
White River Crayfish	<i>Procambarus acutus</i>
Red Swamp Crayfish	<i>Procambarus clarkua</i>
Parrot Feather	<i>Myriophyllum aquaticum</i>
Starry Stonewort	<i>Nitellopsis obtusa</i>
Water Hyacinth	<i>Eichhornia crassipes</i>
Giant Salvinia	<i>Salvinia molesta</i>
Water Lettuce	<i>Pistia stratiotes</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>
<b>Brittle Naiad</b>	<b><i>Najas minor</i></b>
<b>White River Crayfish</b>	<b><i>Procambarus acutus</i></b>
<b>Red Swamp Crayfish</b>	<b><i>Procambarus clarkua</i></b>

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 include:

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>
Common Watercress	<i>Nasturium officinale</i>
Reed Canary Grass	<i>Phalaris arundinacea</i>
Narrow-leaf Cattail	<i>Typha angustifolia and hybrids</i>
<b>Asian Clam</b>	<b><i>Corbicula fluminea</i></b>

Western Mosquitofish	<i>Gambusia affinis</i>
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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-Saltcedar	<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 It shall be unlawful to possess or transport any Category 1 or 2 invasive species.

012.01D It shall be unlawful, on property owned or operated by the Commission, to:

012.01D1 Retain the drain plug in a conveyance when leaving any water body launch area or potential launch area;

012.01D2 Arriving at, attempting to enter or leave any water with equipment that contains any aquatic plant material;

012.01D3 Arriving at, attempting to enter or leave any water body with live baitfish in water other than from a domestic source;

012.01D4 Arrive at, attempt to enter or leave any water body with equipment holding live fish;

012.01D5 Arrive at, attempt to enter or leave any water body with any water other than from a domestic source, except for fire-fighting purposes;  
or

012.01D6 Use any felt sole boots or waders in any water body.

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.~~

~~012.01D~~ 012.01E 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.

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

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

012.01G 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, as permitted by law, 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~~ 012.02C 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 reason to believe the conveyance was not properly inspected prior to launch or may otherwise contain Aquatic Invasive Species. ~~If the Commission by regulations requires an inspection prior to launching or attempting to launch a conveyance on any property owned or operated by the Commission, it shall be unlawful to launch or attempt to launch a conveyance without an inspection, and any person operation a conveyance may be ordered to remove the conveyance from the water or any conveyance launch area by any Conservation Officer or peace officer if there is probable cause to believe that the conveyance was not properly inspection 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.

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

~~012.03I~~ 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 through either: The entire exterior of the conveyance and all intakes shall be thoroughly washed with water of at least 140 degrees Fahrenheit 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 Using hot water and high pressure wash utilizing approved decontamination procedures as described in "Uniform Minimum Protocols and Standards for Watercraft Inspection and Decontamination Programs for Dreissenid Mussels in the Western United States" (UMPS), 3rd edition, published by the Pacific States Marine Fisheries Commission; or 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 degrees Fahrenheit but not at high pressure. 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.~~

~~012.03A2 Removing the conveyance from any water body or launch area for 30 days.~~

~~012.04B3 012.03B 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. If, following re-inspection, an authorized inspector determines that complete decontaminations has not occurred, the authorized inspection may require additional decontamination by removing the conveyance from any water body or launch area for 30 days.~~

#### ~~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 as permitted by law if:~~

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

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

~~012.05A3~~ 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~~ 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 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.