

**NOTICE OF PUBLIC HEARING
DEPARTMENT OF GAME, FISH AND PARKS**

A Public Hearing will be held at the Ramada, 1301 West Russell Street, Sioux Falls, South Dakota, on November 6, 2014, at 2:00 o'clock P.M. (CST), to consider adoption, amendment and repeal of Rules pertaining to:

1. ARSD 41:04:01 – Markings and Zones.

Effect: The proposed amendments would modify the “diver-down flag requirements” by changing flag size requirements and restricting diver-down flags from being placed in areas that would restrict watercraft navigation.

Reason: Staff has indicated a preference to increase the minimum size of diver-down flags, as current regulations require only flags to be 8 inches by 10 inches. Other states require flags to be larger. The amendments delete unnecessary language and add language intended to prohibit flags from being placed in a manner that effectively blocks the movement of other watercraft. This would require divers to allow some avenue for other watercraft to safely and legally travel through an area where diving is taking place.

2. ARSD 41:06:02 – License Forms and Fees.

Effect: The proposed amendment would adjust the nonrefundable application fee for elk, mountain goat, and bighorn sheep from \$5 to \$10.

Reason: When a hunter submits an application for elk, mountain goat, and bighorn sheep, the Game, Fish, and Parks Commission may include a nonrefundable application fee by state law (41-6-19.6). During the 2014 Legislative Session, the Department of Game, Fish, and Parks introduced an amendment which would allow the Commission to modify the nonrefundable fee from a rate of \$5 established in 1987 up to \$10. Additional revenue generated from the nonrefundable application fee will be used in the management of these big game species, in particular the Department’s elk depredation program.

3. ARSD 41:06:04 – Hunting Requirements and Prohibited Methods.

Effect: The proposed amendments would prohibit baiting from March 15 through May 31 inclusive and create an exception for research activities conducted by the Department.

Reason: The proposal would amend the period in which bait stations are prohibited for attracting big game animals for the purpose of hunting. In its current form, ARSD 41:06:04:03 allows hunters to bait wild turkeys in the spring, but not in the fall. Conservation officers have identified numerous situations in the last two spring turkey seasons where baiting activities have taken place. Bait stations tend to alter the natural movement patterns of big game animals. They can also cause a delay in the dispersal from wintering grounds, concentrate flocks on the property of those maintaining a bait station, and create refuges that can hamper population control efforts. Bait stations are not necessary to sustain healthy big game populations and can create vulnerability for opportunistic poaching of big game animals. The research exemption for bait stations is necessary to enable the Department to legally conduct various big game research activities.

4. ARSD 41:06:13 – Spring Wild Turkey Hunting Season.

Effect: The proposed amendments would offer residents 85 less one-tag “male turkey” licenses and 340 less two-tag “male turkey” licenses for the Prairie Units than 2014 for an overall decrease of 765 tags; offer nonresidents 10 more one-tag “male turkey” licenses and 28 less two-tag “male turkey” licenses for the Prairie Units than 2014 for an overall decrease of 46 tags; correct unit boundary descriptions for BST-BH1 (Black Hills) and PST-53A (Perkins County), which will not result in any unit boundary changes; remove the archery restriction west of Interstate 29 in Brookings County; remove the split seasons in Clay and Union counties; add Lincoln County to the restricted area where a person may use only a shotgun using shot shells, muzzleloading shotgun, or bow and arrow; reduce the

number of archery turkey access permits valid for Good Earth State Park from 10 to 5; and repeal Unit PST-ZZ1.

Reason: Provide hunting opportunity consistent with wildlife management objectives.

5. ARSD 41:07:01 – General Provisions - Fishing Seasons and Methods.

Effect: The proposed amendments would (a) modify the definition of “Inland waters,” (b) add a definition for “snag hook” and modify the definition of “snagging” accordingly; and (c) allow the use of artificial lights for fishing; and (c) allow for the liberalized take of silver carp and bighead carp that jump into a boat or that can be netted using a dip net.

Reason: (a) The current numerical references to subdivisions defining border waters within the current “Inland waters” definition are incorrect. The proposed amendments to the definition would replace these references with language specifying which border waters are not included and eliminate any need to update subdivision text in the future. (b) Although other terms for methods of take listed in SDCL 41-12-12 are defined in administrative rule, “snag hook” is not. Once “snag hook” is defined, the definition of “snagging” may be amended and simplified. (c) The rule allowing for use of artificial lights for fishing was inadvertently repealed during the 2013 administrative rule reduction process and the proposed amendment will reinstate this rule. (c) Presently, silver carp and bighead carp that inadvertently jump into a boat or can be netted from the air using a dip net cannot be legally harvested, and the proposed rule amendment will allow anglers opportunity to harvest those fish.

6. ARSD 41:07:03 – Fish Limits.

Effect: The proposed amendments would (a) change the channel catfish daily and possession limits on Nebraska border waters; and (b) correct the county references for Hanson Lake and Curlew Lake in subsection (2) of ARSD 41:07:03:03.

Reason: (a) The proposed amendments to the channel catfish limits on Nebraska border waters will align South Dakota limits with Nebraska limits for this species. (b) The proposed amendments to subsection (2) of ARSD 41:07:03:03 are needed to correct the county designations for Hanson Lake and Curlew Lake in current rule.

7. ARSD 41:07:05 – Snagging of Paddlefish.

Effect: The proposed amendments would clarify the manner in which paddlefish taken below Gavin's Point Dam are to be measured for purposes of the established length restriction.

Reason: The clarifications on measuring paddlefish are necessary to clear up confusion which presently exists among licensed paddlefish anglers concerning the proper manner of measuring paddlefish for purposes of complying with the length restriction.

8. ARSD 41:07:06 – Spearing.

Effect: The proposed amendments would (a) modify the rule pertaining to areas open to the spearing of game fish as follows: (i) clarify the area in which game fish may be speared on Lake Sharpe, (ii) add Shadehill Reservoir to the areas open to the spearing of game fish, (iii) allow for spearing of northern pike and catfish year round from all inland lakes (with limited exceptions) and the Grand River below Shadehill Reservoir downstream to the Perkins-Corson county line, and (iv) allow the spearing of northern pike and catfish from all South Dakota-Minnesota boundary waters, except the Bois de Sioux River, from November 15 through the last Sunday of February, inclusive; (b) require that all fish taken with legal spear, speargun, or bow and arrow must be taken into possession by the person spearfishing and to clarify that all harvest restrictions in effect for a species apply to all methods of take; and (c) repeal the rule pertaining to use of a diver-down flag and place modified diver-down flag requirements in ARSD 41:04:01:08 (see paragraph 1 of this Public Notice).

Reason: (a)(i) There is currently confusion over spearing of game fish around the HWY 14 bridge in Pierre. Clarifying that spearing of game fish may take place to the upstream edge of the bridge should eliminate confusion. (a)(ii) Shadehill Reservoir is the only prairie Bureau of Reclamation reservoir in western South Dakota not open to the spearing of game fish, and there is no biological or social reason for continuing this restriction. (a)(iii) Allowing spearing of northern pike and catfish year round from all inland lakes (with limited exceptions) and the Grand River below Shadehill Reservoir downstream to the Perkins-Corson county line would add spearing opportunity for two underutilized species without impacting the majority of the angling public. (a)(iv) Allowing spearing of northern pike and catfish from November 15 through the last Sunday of February, inclusive, on all South Dakota-Minnesota boundary waters, except the Bois de Sioux River, would add spearing opportunity for an underutilized species. (b) There presently is nothing in rule or statute that prohibits a person from shooting rough fish and not taking them into possession. The proposed amendments would address this omission and also clarify harvest requirements for paddlefish shot during the archery paddlefish season. Referencing that length limits in effect on a water also pertain to spearing and archery helps clarify that all harvest restrictions apply to all legal methods of take. (c) Because text defining dimensions of a diver-down flag is set out in ARSD 41:04:01:08, and text in the current rule referring to use of a diver-down flag is duplicative of language in SDCL 42-8-44.1, ARSD 41:07:06:08 is unnecessary and may be repealed.

9. ARSD 41:09:04 – Bait.

Effect: The proposed amendment would prohibit the harvest of mussels for noncommercial purposes.

Reason: Currently, there is no regulation regarding the non-commercial taking of freshwater mussels. South Dakota has three federally listed mussels and an additional

seven species of greatest conservation need; however, there currently is little information on the health of freshwater mussel populations in this state. Mussel identification is extremely difficult and only individuals who work with mussels on a regular basis are able to identify different species. Due to the rarity of many mussel species in South Dakota along with difficulties in identification, protection of all mussel species is warranted.

10. ARSD 41:09:16 – Scientific Collectors.

Effect: The proposed amendments would (a) require listing all wild animal (including amphibians, reptiles, and invertebrates, and parts thereof) specimen collection requests on applications for scientific collector's permits; and (b) add all wild animals (including amphibians, reptiles, and invertebrates, and parts thereof) to the list of specimens for which limits on the number of specimens and special conditions and provisions can be established.

Reason: (a) Currently, amphibians, reptiles, and invertebrates, including freshwater mussels, are not listed as taxa for which collection requests must be included on collection permit applications. The term "wild animals," as defined in statute, includes all these taxa. It is in the best interest of the State of South Dakota to know interested parties who obtain a scientific collector's permit plan to collect these taxa. (b) Currently, amphibians, reptiles, and invertebrates, including freshwater mussels, are not listed as taxa for which special conditions or provisions of harvest can be set. The term "wild animals," as defined in statute, includes all these taxa. It is in the best interest of the State of South Dakota to be able to set these special conditions and provisions of collecting these taxa, as some species in the State are federally listed or are state species of greatest conservation need.

The above rule proposals may be modified or amended following receipt of public comment at the hearing to include or exclude matters that are described in this Notice of Hearing. The hearing may be continued from time to time until its business has been

completed and may be rescheduled.

Interested persons will be given reasonable opportunity to submit data, opinions, arguments and their views, either orally or in writing (or both) at the hearing. Persons unable to attend the hearing may mail data, opinions, arguments, and their views to the office of the Secretary of the Department of Game, Fish, and Parks, Foss Building, 523 East Capitol, Pierre, South Dakota 57501, or transmit by email to <http://rules.sd.gov/>. All persons who desire to submit written data, opinions, arguments, and their views by mail or email are encouraged to mail or transmit the same in sufficient time so that it is received by and in the office of the Secretary of the Department of Game, Fish, and Parks on or before 12:00 o'clock P.M. three (3) days prior to the date of Hearing. Interested persons will be given reasonable opportunity to submit data, opinions, arguments and their views, either orally or in writing (or both) to the Commission for their consideration. All written and email comments must include the name, home town/city, and state of the person submitting the comments.

The above rule proposals are available for review on the internet by going to <http://rules.sd.gov/>, and copies of the proposed rules may be requested from the office of the Secretary of the Department of Game, Fish, and Parks, Foss Building, 523 East Capitol, Pierre, South Dakota 57501. Notice is further given to individuals with disabilities that this hearing is being held in a physically accessible place. Any individuals with disabilities who will require a reasonable accommodation in order to participate in the hearing should submit a request to the undersigned at 605-773-3718 or 605-223-7684 (Telecommunication Device for the Deaf).

Dated this 8th day of October, 2014.

(SEAL)

Jeffrey R. Vonk, Secretary

This Notice of Public Hearing is published at the approximate cost of \$_____.