

A STUDY OF STATUTES: WHITE PAPER ON THE INCONSISTENCIES OF  
INVASIVE SPECIES STATUTORY AUTHORITIES AND  
IMPLEMENTATION IN MONTANA

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A MONTANA INVASIVE SPECIES COUNCIL PROJECT  
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## I. ABSTRACT

This White Paper will analyze the current Montana invasive species statutory schemes and the implementation of those schemes by utilizing case studies and bill drafting techniques. Any issues or discrepancies within the statutes and/or regulations is to be analyzed for clarity and continuity. Each presented issue will provide background, an in-depth view of the current statutory or regulatory language, and a case study pertaining to that specific category of invasive species. The goal of this White Paper is not to say that Montana has no authoritative control over invasive species. In fact, Montana has an abundance of statutory and regulatory authority to deal with invasive species. The goal of this White Paper is to expose potential weaknesses and provide clarity moving forward.

## II. BACKGROUND & PROBLEM STATEMENT

### A. *Introduction of Invasive Species Project*

In 2018, the Montana Invasive Species Council undertook a comprehensive review of federal, state, local and tribal laws and regulations which pertain to the management of invasive species within the state of Montana. The purpose of the review, which culminated in a Compendium of Invasive Species Laws was to:

1. provide managers and lawmakers with a systematic compilation of the laws and regulations relevant to the management of all-taxa invasive species in the state;
2. provide information and ideas to improve funding, authority, and management responsibility; and
3. provide the necessary information for the council to evaluate the need for a comprehensive Montana Invasive Species Act, as outlined in the 2016 Montana Invasive Species Framework

The Summit was intended to provide a forum for invasive species managers, county leaders, local and tribal governments, private landowners and other stakeholders to evaluate law review findings, hear panelists discuss different models from across North America, suggest action, provide the latest science, and develop recommendations to address invasive species regulatory issues. Sessions were developed based on findings from the law review, which included the following topics: 1) all taxa invasive species listing; 2) managing pathways instead of species; 3) addressing species with economic benefits but environmental impacts; 4) aquatic invasive plant management in Montana; 5) regulations and enforcement of invasive species; and 6) political champions.

The two day-event, held November 15-16 in Helena, featured national and state leaders and technical experts who provided insight and best practices on invasive species laws and regulations. Each panel produced a set of outcomes moving forward. One outcome, from both the all-taxa invasive species listing panel and the managing pathways instead of species panel, was to review current listing processes and compare those with alternative jurisdictions' listing processes in hopes of locating areas of improvement.

The subsequent sections of this White Paper will utilize the teachings from the Summit panels by detailing the gaps in the statutory schemes in hopes of revealing the difficulties and shortcomings of current invasive species management and control.

### *B. Difficulties with the Statutory Schemes & Enforcement*

The difficulties in the state of Montana come from the complex structure of the invasive species statutes and the inconsistencies between them. Depending on the type of invasive species, one is required to explore the Montana Code Annotated to locate statutory authority. Some authorities are buried within multiple tiers of statutes unrelated to the type of species they control. For example, the statutes for aquatic invasive species control are located under Title 80: “Agriculture” and Chapter 7: “disease, pest, and weed control.”

Some of the invasive species statutes lack any language relating to direct management by a department, weakening the statutory schemes and creating confusion amongst involved departments. Rather than being authoritative, the statutes—particularly those in the Aquatic Invasive Species Act—are circular and lack definitive control.

This White Paper is not to say there are not invasive species statutes within the Code to date. In fact, Montana has an abundance of statutory and regulatory authority to deal with invasive species. Rather, the goal of this White Paper is to expose the potential weaknesses of current authorities and the implementation of them and provide clarity moving forward.

## III. IDENTIFIED ISSUES

### *A. Issue 1: Management Authority under the AIS statutes*

#### *1. Background*

#### **AIS Statutory Scheme:**

Title 80, Chapter 7, Part 10 houses the Montana Aquatic Invasive Species Act. The purpose of the Act, found in MCA §80-7-1002, states:

The purpose of this part is to establish a mechanism for Montana to take concerted action to detect, control, and manage invasive species including preventing further introduction, importation, and infestation, by educating the public about the threat of these species, coordinating public and private efforts and expertise to combat these species, and authorizing the use of check stations to prevent the movement of invasive species from infested areas to uninfested areas to protect the state’s economy, environment, recreational opportunities, and human health for the benefit of all Montanans.

As mentioned in the *List Review Committee White Paper*, one of the major problems with the AIS Act is the use of contradictory language between sections. For example, subsection (1) of Section 1005 uses the phrase, “collectively or individually” to mandate the departments to enter into a cooperative agreement. Yet, the following subsection states that each department shall

work in collaboration with each other to coordinate their respective responsibilities. The use of the phrase “collectively or individually” weakens the collaborative purpose by allowing a department to operate individually. By doing so, other AIS processes are unclear. How are species listed as AIS? Where does it state FWP has overriding authority for AIS management besides common knowledge?

Another problem with the statutory language of the AIS Act, is found under Section 1006. The use of “collectively or individually” is used again in subsection (3) to describe the development of a strategic plan related to public awareness, prevention and detection, management and emergency response. Allowing a department to decide this individually, again weakens the idea of a collaborative approach. Subsection (2) of Section 1006 details how the departments with jurisdiction shall clarify and coordinate responsibilities for invasive species under the control of more than one department. If the language was clarified and shortened, no invasive species would be under the authority of multiple departments. Instead, one department—for example, FWP—would have controlling authority over Eurasian Watermilfoil, which would be agreed upon during the collaboration stage.

Section 1008 of the Act describes invasive species management areas matters. Rather than managing individual species, the AIS statutes call for management via designated areas. Although there is no issue with this approach to management, each department can create and publish a list of invasive species within the state, suggesting a species-driven approach to management. The statutes provide no clear listing process other than the mandate for the departments to create such lists under Section 1006 (*see* List Review Committee White Paper for more information). However, the creation of the lists does not grant management authority, rather it provides what department will oversee it. Section 1008, which has management authority, does not mention the departmentally created lists within any subsection, promoting the location-driven approach rather than management via species.

### **Agency Perceptions Regarding Statutory Scheme:**

During the Montana Invasive Species Summit in 2018, the Montana Department of Agriculture (MDA) specified that aquatic invasive species control is within Title 80 of the Montana Code Annotated because MDA had broad quarantine authority involving plant pests prior to the AIS act, thus when it was created, AIS was under MDA’s control. However, when invasive mussels became a program focus, MDA needed to transfer responsibilities to FWP, which was the reason for the initial interagency MOU. The problem is that water is a shared resource, so what department has jurisdiction?

Montana Fish, Wildlife and Parks (FWP) emphasized coordination and communication being the key to working well between the multiple agencies, while the Department of Natural Resources and Conservation (DNRC) stated the agency must focus on the three primary roles of the AIS act – providing a home for two invasive species-focused title II agencies (Montana Invasive Species Council and the Upper Columbia Conservation Commission), the Invasive Species Grant Program, and coordination with other agencies—primarily FWP and MDA.

Another concern occurs in instances when a controlling agency was not present to deal with a state-wide problem. The panelists stressed the importance of the shared responsibility between

the three agencies and reminded people of the bigger picture; in picking one department over the other, you are limiting yourself to one side and not hearing the concerns of the other department.

### **Local Authorities' Responsibilities:**

To report an aquatic invasive species sighting, a person can contact either FWP, MDA, or their local Weed Coordinator or Weed District. The Administrative Rules of Montana pertaining to Quarantines and Pest Management include local involvement in the inspection responsibilities. Section 4.12.1301 defines an Accredited Certifying Official as “a federal, state, *or county* official accredited to perform phytosanitary inspections and sign phytosanitary certificates for commodities meeting phytosanitary requirements.” This provision grants county officials’ responsibilities in the management of aquatic invasive species and quarantine authority if the Department so chooses. Another provision detailing local responsibility is found within the Aquatic Invasive Species Act, §80-7-1006. Subsection (5) allows the departments to designate employees to carry out the provisions of this section if they choose. Subsection (6) mandates the departments to authorize a request by another entity to operate a check station if the entity agrees to the conditions of an agreement established by all parties. For example, in 2018, the Confederated Salish and Kootenai Tribes aided in operating the Ravalli Check Station along Highway 93. Another local entity that helped operate a check station in 2018 was the Garfield County Conservation District at the Flowing Wells Check Station.

### **Vectors:**

The National Invasive Species Information Center describes pathways as the means and routes by which invasive species are introduced into new environments; they can be either natural or man-made. Natural pathways include wind, currents, and other forms of natural dispersal that can bring species to a new habitat. Man-made pathways are those which are created or enhanced by human activity and can be intentional or unintentional. Intentional man-made pathways result from deliberate movement of a species by humans outside of its natural range. Unintentional man-made pathways are the inadvertent movement of species as a byproduct of some other human activity. NISC defines “vector” as a biological pathway for a disease or parasite and is not completely synonymous with the broader definition of a pathway. Currently, Montana does not provide a definition of pathway or vector within the invasive species statutes. The definition for “invasive species” includes the term “pathogen,” which is a related term. Without the inclusion of pathway and vector in statute or regulation, the current scheme lacks management authority for vectors that can spread via pathways such as through hay and firewood.

### **New Additions to Statutory Authority:**

During the 2019 Montana Legislative Session, House Bill 411 addressed funding for the AIS statutes. Most of the sections updated language or section numbers relating to the invasive species account and invasive species fund. A few sections are worth noting, including Section 1: Aquatic Invasive Species Prevention Pass for Nonresident Vessels – Rulemaking; and Section 4: Registration Fees of Vehicles and Vessels – Certain Vehicles Exempt From Registration Fees – Disposition of Fees.

Section 1 states;

(1) In order for a motorized vessel exempt from registration in Montana pursuant to 61-3-321 or a non-motorized vessel owned by a nonresident to launch on the waters of this state, the operator must possess an aquatic invasive species prevention pass purchased for the vessel, available for inspection either in physical form or as an electronic copy at the request of a warden, another officer, or an employee of the department. The pass must include a description of the vessel for which it was purchased. (2)(a) The annual fee for an aquatic invasive species prevention pass purchased pursuant to this section is: (i) \$10 for a non-motorized vessel; (ii) and \$30 for a motorized vessel. (b) The pass expires at the end of each calendar year and is not transferable between vessels. (3) Fees collected pursuant to this section must be deposited in the invasive species account established in 80-7-1004. (4) The department may adopt rules to implement the provisions of this section. (5) the provisions of this section do not apply to a motorized vessel owned or controlled by the United States or any state, county, city, special district as defined in 18-8-202, or tribal government or to a motorized vessel that meets the description of property exempt from taxation under 15-6-201(1)(d), (1)(n), or (1)(o), or 15-6-215. (6) For the purposes of this section, the term “non-motorized vessel” includes catamarans, drift boats, kayaks, rafts, and sailboats.

Section 4 increased the one-time registration fees for motorboats, sailboats, personal watercrafts, and motorized pontoons and designated the amount from each fee that would be deposited into the invasive species account. The addition of these sections will create revenue for the state, however, the language, especially between motorized and nonmotorized vessels, can pose as a challenge. *See Issue 5.*

## 2. *Case Study – Flowering Rush*

\*Case Study information to be filled in after MISC meeting in Helena, MT.

### B. *Issue 2: Emerging Species and Species of Concern*

#### 1. *Background*

#### **Exposing the Process or Lack Thereof:**

There is no direct listing process for emerging species or species of potential concern within the state of Montana, however, agencies recognize the possible environmental, ecological, and economical threat these species present. Some statutory schemes include emergency response methods or quarantine provisions, but provide little information regarding how an emerging species is declared as invasive species or a potential threat.

In 2016, President Obama and the NISC emphasized the role of three emerging priorities: health, climate change, and technology. The NISC also released a management plan to address the need to foster and use innovative technology to prevent rapid outbreaks from emerging pathways. The

strategy the NISC suggested was to increase education and awareness of the emerging pathways and how much detriment they can be to an economy and to the landscape. Montana is no stranger to education regarding emerging pathways and emerging species of concern. Through the inclusion of EDRR and EDDmaps, Montana's agencies are aware of the threat. The problem is that there is no authoritative control, either in statute or regulation, relating to management or prevention of this emerging species or species of concern. Could the solution be to implement language about emerging species into already existent quarantine and emergency response statutes? Or does this field of invasive species require its own plan and set of regulatory and/or statutory authority?

### **Emergency Response & Quarantine Statutes:**

As mentioned previously, the MCA and ARM already include statutes and regulations pertaining to emergency response and quarantine authority and could pose as a viable spot for new emerging species prevention and management authorities. The AIS statutes, in the MCA, include an emergency response provision under Section 1013, which gives authority to the Governor and provides three instances when an emergency can be declared, that being if: (1) the introduction or spread of an invasive species has occurred or is imminent; (2) a new and potentially harmful invasive species is discovered in the state and is verified by the departments; or (3) the state is facing a potential influx of invasive species as the result of a natural disaster; *MCA §80-7-1013*.

Another provision detailing emerging response is within the Noxious Weed Trust Fund definitions and describes a "noxious weed emergency" as: "a new and potentially harmful noxious weed growing in the state that has been verified by the department and declared an emergency as provided for in 80-7-815"; *ARM §4.5.101*.

The County Weed Act includes a section that discusses new exotic plant species not previously established in the state; *MCA §7-22-2109*. This section may not use terms like "emerging species" or "species of concern," however, it is the closest statutory description. Section 2109 details that, "district weed boards enter into agreements with the department for the control and eradication of any new exotic plant species not previously established in the state that may render land unfit for agriculture, forestry, livestock, wildlife, or other beneficial use if the plant species spreads or threatens to spread into the state." The problem with this statute as it relates to emerging species is that there is no statutory definition of "exotic plant species" in Montana.

Although there are statutory avenues in Montana for rapid response and emergency situations, there is no statutory definition of an emerging species or actual listing process for emerging species or species of concern. As mentioned in the *List Review Committee White Paper*, state agencies designate intra-agency lists pertaining to these species.

## *2. Case Study*

\*Case Study information to be filled in after MISC meeting in Helena, MT.

### *C. Issue 3: Noncompliance with the County Weed Act*



## 1. Background

### **Noxious Weed Statutory Scheme:**

Noxious weed management designates the Department of Agriculture as the controlling agency, however, most management authority is on the local level through counties. The County Weed Act under Title 7, Chapter 22, Part 21 defines “management authority” as: “the planning and implementation of a coordinate program for the containment, suppression, and, where possible, eradication of noxious weeds”; *MCA §7-22-2100*. Unlike Aquatic Invasive Species, noxious weeds designation has a direct process listed in regulatory and statutory authority. *ARM §4.5.201* details that the department designates certain exotic plants listed in these rules as statewide noxious weeds under the County Weed Act (*MCA §7-22-2101(5)*). Noxious weeds are listed as Priority 1A, Priority 1B, Priority 2A, Priority 2B, and Priority 3 regulated plants.

The County Weed Act also describes the powers and duties of the district weed board and mandates the board to perform certain duties. *MCA §7-22-2109* states:

The board shall: (a) administer the district’s noxious weed management program; (b) establish management criteria for noxious weeds on all land within the district; and (c) make all reasonable efforts to develop and implement a noxious weed management program covering all land within the district owned or administered by a federal agency.

The County Weed Act also includes a provision that discusses a weed management program. The program must be based on a plan, which must specify goals and priorities, review the distribution and abundance of each noxious weed, specify the pesticide management goals, estimate the personnel, operations, and equipment costs, develop a compliance plan, and incorporate cooperative agreements. *MCA §7-22-2121*.

### **Noncompliance:**

Like the AIS Act and its lack of clarity for direct management authority, the County Weed Act also includes a provision that would require some clarification. The provisions in the County Weed Act that discuss noncompliance are detailed, however, also lacks complete authority over property rights. Noncompliance, in Montana, means to suspect a person has a noxious weed on property, but the private property owner does not allow inspections or entrance onto property. In Montana, individuals have extreme property rights and this can conflict with noxious weed enforcement. This enumerated right inspired the certified letter or post regarding the property under the County Weed Act. However, it still does not address the instances where immediate resolution is required.

Noncompliance of noxious weed control and management on private property is quite a descriptive statutory process. First, a complaint must be made against a landowner or the district weed board has reason to believe that noxious weeds are present on the property. If either is the case, the board is mandated to notify the landowner and shall request permission to enter land for inspection. *MCA §7-22-2131*. The landowner must respond to the notification within 10 days of

receipt. If the landowner agrees and gives voluntary compliance, then the board proceeds with the inspection under §7-22-2131. If the board is unable to obtain voluntary compliance, the landowner is considered to be in noncompliance and is subject to actions by the board. *MCA §7-22-2133*. Actions by the board for noncompliance by a landowner are not mandated, however, the board may seek a court order and/or may institute appropriate control measures, including allowing the district coordinator to implement control measures or contracting a commercial applicator. *MCA §7-22-2134*.

The problem with the noncompliance statutes is that there is no provision or phrasing detailing situations when the board would need to enter private property to address an emergency. Although there are other provisions in the County Weed Act that discuss new exotic plant management and strategies, the noncompliance statute does not allow the district weed board to include private property into an emergency management area. The lack of this type of language could pose as a difficulty and end up creating checker-boarded management areas.

### **Public Perception of Noxious Weeds:**

The definition of invasive species and the definition of noxious weed are different, however, a noxious weed can be an invasive species. Due to this slight distinction, identification of noxious weeds as an invasive species can be challenging to the layperson. To combat this problem, the Department of Agriculture and district weed boards publish guidelines for identification and reporting to support the management of these invasive species. Additionally, noxious weed priority lists are public and help the layperson understand what noxious weeds are of more concern than others.

### **Local Authorities' Responsibilities:**

As mentioned previously, control of noxious weeds involves primarily local authorities in statute and regulation. The County Weed Act primarily involves local authorities with oversight authority given to the Department of Agriculture. Municipalities can also become involved in control of nuisance weeds within the city or town lines. The County Weed Act serves as a strong example of local involvement and involvement from members outside of the controlling department. AIS statutes could utilize a stronger local involvement at check stations and for other enforcement purposes. Including local entities like cities and towns could benefit that program greatly and allow for the potential creation of AIS districts, like the weed districts.

#### *2. Case Study*

\*Case Study information to be filled in after MISC meeting in Helena, MT.

#### *D. Issue 4: Managing Pathways*

##### *1. Background*

### **Pathways:**

Managing pathways is a difficult task and in Montana is not in statute, yet some states have developed action plans to combat the transportation of common pathways, such as firewood, pallet wood, and hay. Currently Montana only participates in the national “Don’t Move Firewood” campaign to stop travelling invasive species and pests. Other states, like California, utilize agricultural check stations for food pests and cargo pests in hopes of reducing the impact of invasive species. Montana shares an international border with Canada, which is controlled by the Customs and Border Patrol. Although they develop training regarding invasive species control, they do not have any management authority and rely on APHIS to determine that method. This type of management will become increasingly difficult if no type of statutory or regulatory authority is created under an existing statutory scheme.

Noxious weed statutes utilize the Noxious Weed Seed Free Forage Act (Title 80, Chapter 7, Part 9) to describe the movement of agricultural crops and commodities. As the closest statute discussing potential pathways, the Noxious Weed Seed Free Forage Act states:

The movement of agricultural crops or commodities as livestock forage, bedding, mulch, and related materials, including pellets, cubes, and other processed livestock feeds with noxious weed seeds, causes new and expanding noxious weed infestations on private and government-managed lands, which adversely impact agricultural, forest, recreational, and other lands. *MCA §80-7-902.*

Although pathway is not a defined term in statute, this provision serves as the best example of management authority over the movement of potentially invasive items.

### **The Problem with Implementation:**

The concern with managing pathways over distinct invasive species involves the use of multi-agency processes, regulating borders more stringently, and creating a distinction between what is and what is not a pathway.

First, a pathway focus requires the efforts of multiple agencies. Like the AIS Act, pathway prevention would most likely be a collaborative approach since most of the pathways involve crossing state or country borderlines. For example, firewood is often brought in from another state, thus having the possibility of transporting forest pests and diseases into the state. The management of this pathway would require the inclusion of both federal and state agencies, including the DNRC, MDOT, NPS, and NFS.

Second, as previously mentioned, control of a pathway would involve both federal and state agencies. Because Montana share an international border with Canada, the US Customs and Border Protection agency would also need to be considered as a collaborating agency. The CBP has authority over what they let into the country, but also are required to abide by APHIS’ management authority pertaining to invasive species. However, control of invasive species does not necessarily mean control of pathways. If pathways are to become a focus of invasive species management, then CBP would need concrete management authority given by APHIS.

Third, if regulation of pathways is to become a management tactic, then the distinction between what is and what is not a pathway would need to be clarified. As mentioned in the *List Review Committee White Paper*, the NISC provides a definition of pathways, which are the means and routes by which invasive species are introduced into new environments. According to NISC, pathways can either be natural—wind and currents—or man-made, which can be either intentional or unintentional. Most pathways of concern fall under the unintentional man-made distinction and include ballast waters, firewood, hay, and recreational watercrafts. The biggest problem amongst this list is the definition of recreational watercrafts. What qualifies as a watercraft in each state can differ enormously. The problem with this term is discussed below in Issue 5.

## 2. *Case Study – Firewood*

\*Case Study information to be filled in after MISC meeting in Helena, MT.

### *E. Issue 5: AIS Enforcement & Penalties*

#### 1. *Background*

##### **Drive-Bys:**

Currently, the AIS Act includes two provisions detailing enforcement authority for offenses pertaining to the introduction and transport of aquatic invasive species. MCA §80-7-1014 describes the general penalty for both negligently, which is listed as a misdemeanor, and purposely or knowingly, which is listed as a felony, violating the AIS Act. Under this provision, authoritative officials may give a warning upon the offender if it best serves the public interest. The other provision with enforcement authority is MCA §80-7-1019. This provision discusses drive-bys and states:

A peace officer may (1) stop the driver of a vehicle transporting a vessel or equipment on receiving a complaint or observing that the driver failed to stop at a check station as required under this part; (2) upon particularized suspicion that a vessel or equipment is infested with an invasive species, require the driver of the vehicle transporting a vessel or equipment to submit the vessel or equipment to an inspection. The peace officer may conduct mandatory inspections of any interior portion of the vessel or equipment that may contain water for compliance with this part and rules adopted under this part only if the peace officer obtains a search warrant or the vessel or equipment is physically located within the boundaries of an invasive species management area established under MCA §80-7-1008 or the statewide invasive species management area established under MCA §80-7-1015 and use of mandatory inspections has been included in quarantine measures; and (3) cite a person for a violation of this part.

Negligently introducing AIS into the state can result in a \$500 fine, while knowingly introducing AIS in the state can result in a \$5000 fine. The structure of the fines is determined by a bonding judge and requires the bond to be determined by check station

statistics and need. Although there are consequences for failing to stop at a check station, owners of vessels still drive by and proceed without any citation or fine. Advertising the consequences of drive-bys might help to educate vessel owners and showcase the gravity of this type of offense.

### **Pull the Plug:**

Pull the plug is a requirement under the Clean, Drain, Dry campaign within the state. It requires an owner of a vessel to pull the plug and keep it out while they pull their vessel. Although “pulling the plug” is not mandated in statute or regulation, Resource Protection Rules require that reasonable measures are taken to dry or drain all compartments or spaces that hold water, including emptying bilges, applying absorbents, and ventilation. *ARM §12.5.706*. Areas subject to inspection on a vessel include but are not limited to the exterior of the vessel, livewells, bait buckets, ballast tanks, bilge areas, and the trailer. Meaning that the drain plugs on a vessel can also be inspected and thus are subject to enforcement if not cleaned and drained properly.

Because the language “pull the plug” is not detailed in regulation or statute, some vessel owners are unaware of the requirement to keep it pulled while transporting the vessel. The inclusion of this language in statute or regulation may help clarify this confusion, especially if the phrasing was advertised at check stations.

### **Non-Resident Fees:**

After HB 411 was passed during the 2019 Legislative Session, fees for nonresident vessel owners increased. Out-of-state vessel owners and operators are required to purchase an AIS prevention pass—\$30 for motorized vessels and \$10 for nonmotorized vessels. Again, direct advertisement of these new fees may help out-of-state visitors to stop at check stations, especially since the fee increased in the recent session. The process for nonresidents should be clarified to avoid the use of enforcement officials and the citation in general.

### **Motorized v. Non-motorized:**

Vessel is defined under *MCA §61-1-101(92)*, which states: “vessel means every description of watercraft, unless otherwise defined by the department, other than a seaplane on the water, used or capable of being used as a means of transportation on water.” The Montana Code does not use “motorized” as a term to describe motorized vessels. Instead, the term “motorboat” is used and is defined as: “a vessel, including a personal watercraft or pontoon, propelled by any machinery, motor, or engine of any description, whether or not the machinery, motor, or engine is the principal source of propulsion.” *MCA §61-1-101(40)*. Another term describing motorized vessels is “personal watercraft” and is defined as: “a vessel that uses an outer board motor or an inboard engine powering a water jet pump as its primary source of propulsion and that is designed to be operated by a person sitting, standing, or kneeling on the vessel rather than by the conventional method of sitting or standing in the vessel.” *MCA §61-1-101(54)*. Finally, under this same section, the term “sailboat” is defined as: “a vessel that uses a sail and wind as its primary source of propulsion. The term does not include a canoe or kayak propelled by wind.” *MCA §61-1-101(67)*.

The definition of sailboat includes two other forms of vessels that do not require or utilize a motor, however, the term “nonmotorized” is not defined in statute.

Without a definition of nonmotorized, managing aquatic invasive species becomes difficult. The addition of Stand-Up Paddleboards as a required vessel for inspection opened the conversation to possibly include other recreational nonmotorized vessels like floating tubes. If the inspection requirement were to include floating tubes, management would become extremely difficult to monitor. However, tubes used for floating do have the possibility of serving as a home for aquatic invasive species and meet the definition of “vessel.”

### **Bonds:**

Montana’s Aquatic Invasive Species Program enforcement includes the use of commissioned Game Wardens from Fish, Wildlife, and Parks (FWP). Where there is an increased presence of Game Wardens, compliance increases. Their duties include: water safety enforcement, hunter education, boating education, aquatic invasive species, and other priorities. Currently the fine in Montana for failing to stop for a mandatory inspection is an \$85 penalty. In addition to Game Wardens, other law enforcement can enforce aquatic invasive species rules, such as sheriffs, counties and Tribal Wardens. Montana Game Wardens encourage public participation during agency meetings and contact with local legislators regarding legal changes.

A bond, in Montana, is kept in a bond book and includes the violation and sentencing statute. The bond is the appearance in court, while the fine associated with the bond is the penalty set by the legislature. A bonding Committee comprised of three judges sets the minimum fine (e.g. one that can be written up as a ticket on the spot). There are two categories of bonds: negligent drive-by and knowingly and purposely drive-by. In 2017, Montana enforcement agents witnessed 288 drive-bys, with 81 citations and the remainder were warnings. In 2018, Montana enforcement officers witnessed 224 drive-bys, with 51 citations and the remainder were warnings.

### 2. *Case Study*

\*Case Study information to be filled in after MISC meeting in Helena, MT.

## IV. RECOMMENDATIONS

This section will result from table talk findings with the Statutory Review Committee in Helena, Montana.

## V. CONCLUSION

This section will result from table talk findings with the Statutory Review Committee in Helena, Montana.