



STATE OF  
**MINNESOTA**  
DEPARTMENT OF NATURAL RESOURCES

FEB 1 1995

500 LAFAYETTE ROAD • ST. PAUL, MINNESOTA • 55155-4045

DNR INFORMATION  
(612) 296-6157

January 30, 1995

Ms. Maryanne V. Hruby,  
Executive Director  
Legislative Commission to  
Review Administrative Rules  
55 State Office Building  
St. Paul, MN 55155

RE: Proposed Permanent Rules Relating to Various Game and Fish Matters

Dear Ms. Hruby:

The Minnesota Department of Natural Resources intends to adopt permanent rules relating to various game and fish matters. We plan to publish a Dual Notice of Intent to Adopt Rules in the February 13, 1995 issue of the State Register.

As required by Minnesota Statutes, sections 14.131 and 14.23, the Department has prepared a Statement of Need and Reasonableness, which is now available to the public. Also as required, a copy of this Statement is enclosed.

For your information, we are also enclosing a copy of the Dual Notice of Intent to Adopt Rules and a copy of the proposed rules.

If you have any questions on these rules, please contact Richard Hassinger (7-1308) or me (6-9564).

Sincerely,

A handwritten signature in cursive script that reads "Kathy A. Lewis".

Kathy A. Lewis, Attorney  
Mineral Leasing Manager

cc: R. Hassinger

STATE OF MINNESOTA  
DEPARTMENT OF NATURAL RESOURCES  
DIVISIONS OF FISH AND WILDLIFE AND ENFORCEMENT

IN THE MATTER OF THE PROPOSED ADOPTION OF  
GAME AND FISH RULES

STATEMENT OF NEED AND REASONABLENESS

JANUARY 12, 1995

## GENERAL PROVISIONS

### Purpose

The purpose of the proposed rule is to make several necessary changes to the game and fish rules. The primary purpose of the game and fish laws is to preserve, protect, and propagate desirable species of wild animals while ensuring recreational opportunities for people who enjoy wildlife-related activities.

The rule covers a variety of areas pertaining to fish and game. The major parts of the rule deal with: wildlife management areas and state game refuges; taking deer, bear, and moose; predator control; migratory waterfowl; shooting preserves and game farms; commercial harvest of minnows; and various fishing regulations on inland and border waters, and Lake Superior.

A "Notice of Intent to Solicit Outside Opinion" was published in the July 18, 1994 edition of the State Register. No responses to this notice have been received.

In 1991, the legislature began to phase out the Department of Natural Resources' use of commissioner's orders to promulgate game and fish regulations. Laws of 1991, Chapter 259 removed the exemption for commissioner's orders, effective July 1, 1992, from the Administrative Procedures Act in Minnesota Statutes, Chapter 14 and provided for the expiration of commissioner's orders that had not been subjected to the Administrative Procedures Act.

After passage of the 1991 legislation, the department consolidated nearly all existing commissioner's orders into one document. This consolidated document was promulgated as Commissioner's Order Number 2450 and published in the State Register on June 22, 1992.

Language in Commissioner's Order 2450 was separated into five categories in preparation for legislative action in 1993 to finalize conversion of commissioner's orders to rules:

- 1) Language that had specific statutory authority for rulemaking was included in a proposed game and fish rule;
- 2) Language that did not have specific statutory authority for rulemaking was removed from the proposed game and fish rule and placed into a proposed emergency game and fish rule;
- 3) Language that repeated statutory language was removed;
- 4) Language that was more appropriate for statute was removed and placed in statute; and
- 5) Language that was no longer necessary was removed.

In addition to the five categories above, all commissioner's orders related to Indian reservations were deferred for consolidation in permanent rulemaking after consultation with the tribes.

The final step in the process of conversion from commissioner's orders to rules was completed with promulgation of a permanent rule in September of 1994. This proposal represents the first major set of changes in game and fish regulations being proposed for a permanent rule since the conversion to rulemaking was completed. Parts of the proposed permanent rule currently exist as emergency rules.

### **Statutory Authority**

Statutory authority for the various provisions of the proposed rule is as follows:

6200.0200: 97A.255  
6210.0100: 86A.06 and 97A.137  
6212.1750: 97A.501, subd. 3  
6212.1800: 84.0895, subd. 5  
6212.2900: 97C.051, subd. 1 and 2  
6212.3000: 97A.418  
6214.0500: 97C.211, subd. 2; 97C.821; and 17.4983, subd. 1  
6230.0200: 97A.137  
6230.0400: 97A.091, subd. 2  
6230.0900: 97A.092  
6230.1300: 97B.311; 97B.711, subd. 3; and 97B.731  
6232.0100: 97B.311, paragraph (a); 97B.411; 97B.505; 97B.515  
6232.0200: 97B.311  
6232.0300: 97B.301, subd. 4; 97B.071  
6232.0700: 97B.311, paragraph (a)  
6232.0800: 97B.305  
6232.1200: 97B.301 and 97B.305  
6232.1250: 97B.301, subd. 4 and 97B.305  
6232.1300 and 6232.1800: 97B.305  
6232.1950: 97B.301, subd. 4 and 97B.305  
6232.2000: 97B.305  
6232.2100: 97B.311 and 97B.312  
6232.2450: 97B.301, subd. 4 and 97B.305  
6232.2500: 97B.111  
6232.2900: 97B.405  
6232.3000: 97B.411  
6232.3700: 97A.431 and 97B.505  
6232.3800: 97A.431  
6232.4000: 97B.505  
6232.4700: 97B.311, paragraph (a) and 97B.411  
6234.0200 and 6234.0400: 97B.711, subd. 2(c)  
6234.1300: 97B.605  
6234.2600: 97B.901  
6234.3000, 6234.3100, and 6234.3400: 97B.671

6236.0100 AND 6236.0900: 97B.711, subd. 3  
6240.0200: 97B.711; 97B.731; 97B.803; and 97B.811, subd. 5  
6240.0550, 6240.0850, 6240.0860, 6240.0900, 6240.1700, and  
6240.1950: 97B.803  
6242.0200: 97A.115, subd. 2  
6242.0500, 6242.0900, and 6242.1000: 97A.105  
6242.1200: 97A.105 and 84.0895, subd. 5  
6252.0500: 97C.345, subd. 5  
6254.0500 and 6254.0510: 97C.505, subd. 1  
6262.0100 and 6262.0200: 97C.005, subd. 3 and 97C.395, subd. 1a  
6262.0300, 6262.0500, 6266.0100, 6266.0300, 6266.0400, and  
6266.0700: 97A.045, subd. 4  
6266.0700: 97A.531, subd. 5  
6284.0500: 84.152, subd. 1

### **Scope**

Areas covered by the proposed rule include the following: documentation to demonstrate lawful possession of a wild animal; walleye fishing closure on Black Bay of Rainy Lake; general regulations for taking fish on border waters; roughfish spearing regulations on the Minnesota - North Dakota border waters; number of hooks allowed per line for anglers on the Minnesota - North Dakota border waters; sturgeon fishing season on the Minnesota - South Dakota border waters; suspension of fish "in-the-round" requirements for fish transported from Canada into Minnesota; angling hours for trout streams south of U.S. Highway 12 on opening day; angling hours on the St. Louis River in St. Louis and Carlton counties and Pigeon River in Cook County; walleye and northern pike possession and size limits on Lake Superior; winter fishing season on Lake Christina in Douglas and Grant counties; clarification of trout seasons in lakes; use of traps, hoop nets, and trap nets for taking minnows; insurance policy requirements for release of fish toxicants; commissioner's authority to terminate fish toxicant permits; clarification of the requirements for transportation of fish and labeling and packing of fish under a fish packer license; gill net mesh sizes for whitefish and cisco netting; general provisions for use of wildlife management areas; permits for use of contraceptive chemicals on wild animals; general restrictions for permits to possess threatened and endangered species; special provisions for wildlife management areas; special provisions for state game refuges; special provisions for Rice Lake National Wildlife Refuge; use of retractable broadheads; intensive harvest permits for taking additional deer; party hunting for antlerless deer; deer bag limit; alternative to blaze orange requirement during firearm deer season; archery deer of either sex during firearms season; archery special hunt areas and procedures; archery deer management permits; taking antlerless deer; antlerless permit and preference drawings; antlerless permit area boundaries; multizone buck license; muzzleloader season and areas; muzzleloader deer management permits; disability hunts; eligibility requirements

for bear quota drawing; bear quota area boundaries; blaze orange for moose hunters; moose hunting party size; deer and bear registration block boundaries; grouse and pheasant bag limits; repeal of tagging provisions for taking red and gray fox; pelt tagging and registration; certification for predator control; designated predator control areas; compensation for predator control; general restrictions for taking and possessing migratory game birds and migratory waterfowl; goose zone boundaries; additional game bird species for commercial shooting preserves; restrictions on sale or disposal of game farm animals and record-keeping and reporting for game farms; possession of threatened and endangered species from game farms; taking minnows on wildlife management areas; and wild rice harvest at Newstrom Lake wildlife management area.

#### **6200.0200 GAME AND FISH GENERAL PROVISIONS.**

##### **Subp. 9. Documentation to demonstrate lawful possession.**

This subpart specifies the documentation necessary to show lawful possession of fish and game taken in other jurisdictions. This requirement is necessary to ensure that fish/game taken in other jurisdictions can be shown to have lawfully originated outside of Minnesota's regulatory jurisdiction especially where fish/game is possessed in excess of state limits.

The regulatory provisions in this proposed rule derive in part from nine commissioner's orders which regulated marking and transportation of fish/game taken on Indian reservations. However, in addition to Indian reservations, these provisions are necessary to provide a documentation requirement for fish/game taken in other states, provinces, or countries. To the extent possible the documentation required is consistent for all jurisdictions except that Indian Band members are required to possess a picture identification card to document Band membership.

This requirement is reasonable and necessary to ensure that state limits are being observed by Minnesota anglers/hunters. The subpart also benefits anglers/hunters by providing specific information regarding what is required to show lawful possession of fish/game, especially in cases where such fish/game is taken in jurisdictions which have higher possession limits. It is also a reasonable requirement for members of Indian Bands who enjoy treaty rights which allow them to take fish/game without regard to state regulation because it provides a specific method by which they can document lawful possession of fish/game off of reservation or ceded territory. Lastly, without this type of regulatory provision, Conservation Officers would take more time in attempting to determine whether the fish/game possessed was lawfully acquired, clearly an avoidable inconvenience to anglers/hunters.

**6210.0100 GENERAL PROVISIONS FOR USE OF WILDLIFE MANAGEMENT AREAS.**

**Subp. 6. Harvest of bait.**

The purpose of the change to this subpart is to clarify that the harvest of bait for non-commercial use in a wildlife management area is an allowable activity that does not require a permit. This change is necessary to clearly reflect current practice. It is reasonable because it is a clarification that makes no substantive change to the existing rule.

**Subp. 10. General restrictions on vehicles.**

The change to item A is simply grammatical. It has no substantive effect. The change to item B clarifies that written permission of the wildlife manager can be either in the form of a permit or by posting with a sign.

The additional language in item C is to authorize the use of motor vehicles for ice fishing purposes on the listed lakes. This is necessary because the listed wildlife areas contain large lakes where ice fishing is a popular winter activity and where motor vehicles of various types have traditionally been used to access fishing locations. These changes to rule are necessary because motor vehicle use is otherwise prohibited in wildlife management areas. These provisions are reasonable because they provide motorized access to large, deep fishing lakes that do not have emergent vegetation that could be damaged by motor vehicle activity. This provision maintains existing restrictions on use of motor vehicles on shallow wildlife lakes which do not have gamefish populations. It is reasonable to limit motor vehicle access only to large, deep lakes that do not have significant emergent vegetation to prevent disturbance of wildlife using winter cover in shallow wetlands and to prevent damage to emergent vegetation that provides important wildlife habitat.

**Subp. 14. Firearms and target shooting.**

The purpose of the first change to this subpart is to provide for the use of posting to restrict shooting or possession of firearms or bows and arrows on wildlife management areas. Previous language only allowed the control of these activities through use of permits and did not provide for restricting those areas where firearms or bows could be discharged. This change is necessary to provide for safety "buffer areas" around some office or visitor facilities located on wildlife management areas that are otherwise open to public hunting. It is reasonable to restrict the discharge of firearms and bows in these areas to protect the safety of employees or visitors using these facilities.

The purpose of the second change to this subpart is to prohibit the use of live ammunition and blanks by persons training dogs on wildlife management areas. This change is

necessary because people are allowed to train dogs on wildlife management areas year around, including those times when nesting wildlife and their young are vulnerable to disturbance. It is reasonable to provide for the training of dogs while at the same time minimizing the amount of disturbance that is caused to wildlife or to other users of the area by limiting the discharge of firearms or blank shells.

**Subp. 19. Abandonment of trash and property.**

The purpose of the change to this subpart is to authorize leaving ice houses unattended overnight on designated lakes within wildlife management areas. It is necessary because this activity would be otherwise prohibited. It is reasonable because the designated lakes provide ice fishing recreational opportunity that can be accommodated without causing significant wildlife disturbance, damage to habitat, or other problems that would be incompatible with the primary purposes for which these areas are managed. (See discussion of pt. 6210.0100, subp. 10 above.) Requiring nightly removal of such ice houses would effectually eliminate their use on these lakes as most ice houses cannot easily be disassembled and moved.

**6212.1750 PERMITS FOR USE OF CONTRACEPTIVE CHEMICALS.**

The purpose of this part is to prescribe rules for the issuance of permits for the administration of contraceptive chemicals to noncaptive wild animals as required by Minnesota Statutes, section 97A.501, subdivision 3.

**Subp. 1. Contraceptive chemicals defined.**

The purpose of this subpart is to define the types of chemicals covered by this part. This subpart is necessary and reasonable because it limits these restrictions to only those chemicals that have contraceptive properties when administered to noncaptive wild animals.

**Subp. 2. Application requirements.**

The purpose of this subpart is to specify information that must be provided with a permit application to use contraceptive chemicals on noncaptive wild animals.

Item A specifies that permits may only be issued to federal, state, or local agencies or to colleges or universities or their agents working under an approved management plan or research proposal. This limitation to governmental agencies, colleges and universities is necessary because these chemicals are designed to affect the populations of wild animals and because consumption of animals treated with these chemicals could have serious detrimental effects on human or animal health. An approved management plan is necessary for operational field applications to ensure that the applicant has assessed the efficacy of other control options in comparison to the application of contraceptive



chemicals. Requirement of a management plan is also reasonable because it is consistent with department requirements for similar types of plans or agreements for other population management permits, such as deer shooting permits. Requirement of an approved research proposal for research projects is necessary to assure that the project has clear and reasonable objectives and will not create adverse effects on wildlife or humans. Also, because wild animals are owned by the state for the benefit of all the people in the state (Minn. Stat. Sec. 97A.025), it is reasonable that the state manages the use of contraceptive materials and requires that application be done under the direction of responsible governmental agencies to assure that wildlife populations and human health are not adversely affected.

Item B requires that the prospective permittee submit a request, in writing, accompanied by a proposed management plan or research proposal. This is necessary because it is impossible to judge the merits or consequences of a chemosterilant application without a clear presentation of the objectives and potential effects on wildlife and humans. It is reasonable to ask an applicant who will be administering a chemical substance to a public wildlife resource to prepare a written description of the precise plans and anticipated results. This allows the department, as the responsible agency, to weigh the potential benefits and risks so that an appropriate permitting decision can be made.

Subitem (1) requires that the plan or proposal be approved by the landowner or land manager responsible for the land. This is necessary and reasonable because without such approval no project can proceed and there is no reason to evaluate the further merits of the proposal.

Subitem (2) requires, for a research proposal, approval of the agency responsible for the research investigator. Again this is necessary and reasonable because, until the proposal has the approval of the supervising agency, no project can proceed and further evaluation of the proposal's merits is premature.

Subitem (3) requires a discussion of the objectives of the management or research proposal. This is necessary and reasonable in order for the department to understand the purpose and expected outcome of the plan or proposal and to be able to evaluate the merits of the proposal and its likelihood of achieving those objectives.

Subitem (4) requires an assessment of the anticipated effects of the chemical treatments on the target species on each site. This is necessary and reasonable for the department to be able to evaluate and weigh the potential effects of the intended chemical application.

Subitem (5) requires documentation of potential impacts to nontarget animals. This is necessary and reasonable because some chemicals or application methods may have potentially detrimental effects on nontarget species and this provision allows the department to weigh those risks against the potential benefits.

Subitem (6) requires documentation of potential threats to human health and safety. This is necessary and reasonable to assure that any proposed project does not create an unacceptable risk to humans.

Subitem (7) requires a description of all planned or completed management actions and an evaluation of the costs, efficiency, effectiveness, and safety of alternative methods for managing target species. This is necessary and reasonable to evaluate whether the proposed contraceptive chemical treatment is the most appropriate management tool or whether other techniques would be preferable for reasons of population impacts, cost, efficiency, effectiveness, or safety.

Subitem (8) requires a plan for monitoring short- and long-term effects of the contraceptive chemical treatments. This is reasonable and necessary so that there is a mechanism for evaluating the effects of the chemical treatment and whether the objectives of the program were met.

#### **Subp. 3. Chemicals.**

The purpose of this subpart is to require that a chemosterilant used under state permit meet any applicable state and federal licensing, labeling, or registration requirements. This is necessary because these substances will be controlled by drug and/or pesticide regulations in addition to state statutes and rules. It is reasonable to assure compliance with all applicable authorities.

#### **Subp. 4. Permit conditions.**

The purpose of this subpart is to specify that chemicals and delivery methods will be limited to those specified in the permit and that reporting and monitoring requirements and other restrictions will be specified in the permit. This subpart is necessary because the specific requirements will be highly variable depending on the chemical, the application method, the site, time of year, etc. Also, all of these chemicals are currently in the research and development phase and none are available for operational use. It is therefore impossible at this time to specify particular chemicals or delivery methods in rule. It is reasonable to specify restrictions in each permit that are tailored to each specific situation because the efficacy, safety, and selectivity of the chemicals will vary by type and delivery method, location, time of year, number of animals to be treated, or other factors.

### **6212.1800 GENERAL RESTRICTIONS FOR PERMITS TO POSSESS THREATENED AND ENDANGERED SPECIES.**

#### **Subp. 1. Permit requirements.**

This subpart provides a clarification of the permit requirement for threatened/endangered species. The current text of Minn. Rule pt. 6212.1800, subpart 1 discusses conditions under which permits will be issued without explicitly requiring a

permit. The proposed language provides a clear requirement for a permit for any of the referenced actions. This subpart is reasonable and necessary to ensure that the public understands who is being regulated and what range of activities require a permit.

Threatened and endangered species are accorded additional protection under the game and fish laws because of their scarcity in the wild. The state is mandated to manage threatened/endangered species to bring them to a point at which they are no longer threatened or endangered (see Minn. Stat. Sec. 84.0895, Subd. 5). An integral part of the state's management plan is to ensure that threatened/endangered species are not being taken indiscriminately from the wild. The permit requirement provides a means and opportunity to ensure that such species possessed originate only from lawful sources.

The change in Minn. Rule 6212.1800, subp. 1 does not substantially alter the requirement for a permit. It functions merely as a clarification of current practice and requirements.

#### **FISH TOXICANTS**

##### **6212.2900 INSURANCE POLICY REQUIRED WITH RELEASE OF FISH TOXICANTS.**

The proposed rule increases insurance requirements for private parties applying fish toxicants under a permit from the commissioner. This increase was recommended by the Risk Management Division of the Department of Administration as the minimum necessary to protect against possible claims. These amounts are considered to be standard for this type of coverage, while the existing required amounts are considered to be very deficient.

The commissioner may permit private parties to apply fish toxicants in public waters as provided by Minn. Stat. sec. 97C.051. The most common use of this permit has been by private fish hatchery and aquatic farm operators on public waters licensed for private fish hatchery or aquatic farm use. Improper use of fish toxicants could potentially result in mortality of non-target aquatic organisms or swine (Sousa, R.J. et al 1991). Commercial liability insurance is necessary to protect against possible claims brought by the public for damage arising from treatment with fish toxicants. It also assures the public that adequate resources will be available to remedy any damage occurring from the use of fish toxicants. This provision is reasonable because it is narrowly drafted to apply only on waters where the public has access. Additionally, a standard commercial general liability insurance policy would meet the requirements of the proposed rule; therefore, a private fish hatchery licensee which had general coverage would not have to purchase additional

insurance as a result of this rule. If a licensee did not already have coverage, the licensee would have to pay an annual premium of about \$1,000 to \$7,500 to apply fish toxicants to waters to which the public has access. The actual cost would vary depending on operational experience and past insurance history.

**6212.3000 CANCELLATION OR TERMINATION OF FISH TOXICANT PERMIT.**

This provision allows the commissioner to cancel fish toxicant permits for violations of permit conditions or part 6212.2900. Violations of fish toxicant permit conditions can result in environmental damage and potential liability claims; therefore, this provision is needed and reasonable to assure the discontinuation of those activities under the authority of a permit.

**6214.0500 EXEMPTION FROM FISH TRANSPORTATION REQUIREMENTS.**

The proposed language clarifies provisions of parts 6214.0300 and 6214.0400 regarding fish transportation and labeling and packing of fish under a fish packer license. Parts 6214.0300 and 6214.0400 are intended to apply primarily to fish taken by angling or other recreational methods rather than fish lawfully taken or raised for commercial purposes; however, this intent is unclear in current rule. Clarification is needed to prevent confusion with separate rules and statutes governing transportation of commercially caught fish and fish raised in private fish hatcheries and aquatic farms. The proposed language is reasonable in that it will not result in a substantive change in the way that transportation and fish packing rules are currently enforced.

**6230.0200 SPECIAL PROVISIONS FOR WILDLIFE MANAGEMENT AREAS.**

**Subp. 1. Areas requiring a permit to trap.**

The purpose of the changes to this subpart is to remove the requirement for a trapping permit on the Orwell and Rothsay Wildlife Management Areas. It is necessary and reasonable because the demand for trapping opportunity on these areas has declined to the point that there are more permits available than the number of applicants. Therefore, there is no longer a need to limit the numbers of trappers on these areas.

**Subp. 6. Areas closed to hunting only.**

The change to this subpart adds the Pine City Wildlife Management Area to the list of areas closed to hunting. It is necessary and reasonable because this area is in Pine City where discharge of firearms is prohibited by local ordinance. Minn. Stat., Sec. 97A.135, subd. 1 provides that at least two-thirds of the area of Wildlife Management Areas acquired in a county must be open to public hunting. Even considering this requirement,

this subpart is reasonable because closure of this 45 acre wildlife management area constitutes less than 2% of the wildlife management areas in Pine county.

**6230.0400 SPECIAL PROVISIONS FOR STATE GAME REFUGES.**

**Subp. 8. East Minnesota River Game Refuge, Blue Earth and Le Sueur counties.**

The purpose of the change to this subpart is to open the East Minnesota River Game Refuge to archery deer hunting during the firearms deer season. This is necessary because there is an over-population of deer in this area that otherwise would be fully protected during the firearms deer season. This provision allows archery harvest of deer that live or move into the refuge during the season, and also provides for some disturbance of deer by archers during the firearms season increasing their vulnerability to harvest by firearms hunters outside the refuge.

**Subp. 16. Gopher Campfire Game Refuge, McLeod county.**

The purpose of the change to this subpart is to close the Gopher Campfire Refuge to archery deer hunting. This is necessary because deer in this area are within population goals, the existence of this refuge is not causing deer depredation problems for adjacent landowners, and local residents favor closing this area. It is reasonable because refuges are established to be closed to hunting unless there is a need to open them for population management purposes.

**Subp. 43. Schoolcraft Game Refuge, Hubbard county.**

The purpose of the change to this subpart is to allow the archery deer hunting in this refuge to continue through the end of the archery season rather than closing the Thursday before the firearms deer season. This refuge was once closed to all hunting during the firearms deer season to reduce disturbance of deer by archers that could make them more vulnerable to firearms hunters in adjacent areas. This change is necessary because deer populations in the refuge have increased to the point that additional harvest is needed. It is reasonable because refuges are established to be closed to hunting unless there is a need to open them for population management purposes.

**6230.0900 ORWELL SPECIAL PROVISIONS.**

**Subpart 1. Time period for special provisions.**

The purpose of the change to this subpart is to eliminate the Elm Lake controlled hunting zone. This change is necessary because goose hunting participation at Elm Lake is so low that there is sufficient opportunity to meet demand without the need to control hunter access and hunting behavior. This change is reasonable because regulations imposed should be the minimum necessary to achieve the management objective, and as such restrictions should be removed when the management purpose is no

longer being served.

**6230.1300 SPECIAL PROVISIONS FOR NATIONAL WILDLIFE REFUGES.**

**Subp. 4. Rice Lake National Wildlife Refuge, Aitkin and Pine Counties.**

The purposes of the changes to this subpart are to clarify the location of Rice Lake National Wildlife Refuge and to add deer (by archery), woodcock, and snipe to the allowable species that may be hunted in the refuge. These changes are necessary because the refuge extends into Pine County as well as Aitkin County, and because national wildlife refuges are open to hunting only as authorized by state and federal rules and regulations. The provisions on the location of the Refuge are reasonable to make clear that the rules apply to all portions of the Refuge, not just those portions in Aitkin County. The provisions on the species that may be hunted are reasonable because there are harvestable surpluses of these species in the refuge and because these provisions are consistent with federal rule. These changes are also reasonable because they merely put into permanent rule those provisions that have previously been in effect through the emergency rule process.

**BIG GAME GENERAL RESTRICTIONS**

**6232.0100 GENERAL RESTRICTIONS FOR TAKING BIG GAME.**

**Subp. 7. Legal bows and arrows.**

The purpose of the change to this subpart is to add provisions relating to legal arrows for big game hunting. The subpart is divided into three items: A, B, and C. Item A represents no change from existing rule specifying bow draw weight.

Item B cross references statutory arrowhead provisions and adds a definition in rule for the meaning of the statutory term "barbless" for application to standard (nonretractable) broadheads. To qualify as barbless, the trailing edge of the blade must create a 90 degree or greater angle with the shaft of the arrow. This is necessary because if the back of the blade creates an acute angle of less than 90 degrees, the blade would be backswept with the trailing tip pointing backwards. This would create a "barbed" condition, making the arrowhead in noncompliance with statute and making withdrawal of the arrowhead difficult. This provision is reasonable because it provides a clear and practical definition of the statutory barbless requirement. Also, it is reasonable to define the term so that both hunters and enforcement personnel have understandable and practical criteria for determining the legality of arrowheads.

Item C provides for the use of "retractable" broadheads as allowed by statute. However, because these broadheads are

designed to be folded until impact, it is necessary to provide specific provisions in rule to specify under what conditions these arrowheads meet statutory requirements. It is necessary to require that retractable arrowheads meet the statutory minimum width at or after impact with the target, rather than before, because the retractable design results in them remaining in a folded position until impact. It is also necessary to require that these broadheads meet the barbless criteria in both design and function because, even though the design may be barbless, if the arrowhead bends or binds in use and fails to retract, it effectively can function as a barbed broadhead. For this reason, a maximum width of two inches is established because the wider broadheads are, by design, more prone to deformation by the heavy bones of big game animals due to the greater leverage associated with a longer blade. This deformation could easily cause the blades not to retract into the slots provided on the broadhead, thus making it functionally a barbed head. These criteria are reasonable to assure that statutory provisions are addressed and to provide understandable and practical criteria for enforcement officers, hunters, manufacturers, and retailers.

#### **6232.0200 DEFINITIONS.**

##### **Subp. 5a. Intensive harvest permit.**

The purpose of the change to this subpart is to define a permit for use in taking additional deer in situations where a limit greater than two (as authorized under regular licenses or management permits) is required. It is necessary because management permits and, in some situations, regular licenses only allow for taking a second deer. It also clarifies the rules on deer bag limits by clearly defining what is authorized under a management permit and creating a new category of permit for higher limits. It is reasonable because in some areas of the state the deer harvest is inadequate to manage the population unless a higher limit is authorized.

#### **6232.0300 GENERAL RESTRICTIONS FOR TAKING DEER.**

##### **Subp. 3. Party hunting.**

The purpose of the change to this subpart is to prohibit party hunting of antlerless deer by persons taking deer under disability permits, unless the other members of the party also have an antlerless permit. This is necessary because non-disabled party members could otherwise shoot an antlerless deer without a permit and have it tagged by the person with the disability permit. It is reasonable because the purpose of the statute authorizing the taking of antlerless deer by disabled persons was to improve the odds of a person with a disability to successfully take a deer, not to provide additional opportunity for members of the disabled person's party.

##### **Subp. 8. Bag Limit.**

The purpose of this subpart is to prescribe the bag limits for deer. It is necessary because deer regulations and deer limits are tailored to meet the population management needs of individual localized management units and because limits are set legislatively in portions of the state. It is reasonable because a limit of one deer per hunter is no longer sufficient to adequately manage deer populations in all areas of the state, yet at the same time there is a need to limit harvest to prevent overharvest and to provide an equitable distribution of harvest among hunters. In some areas there are too few hunters to take the number of deer required to meet management objectives without authorizing some or all hunters to take two or more deer. It is also reasonable because hunters must know what they are legally allowed to take during an open season under each licensing or area option.

**Subp. 9. Alternative color prescribed.**

Deer hunters in Minnesota have, for some time, been required to wear either bright red or blaze orange clothing for safety reasons while hunting or trapping in an area open to the taking of deer by firearms. During the 1993 Legislative Session, the law was changed (effective for the 1994 Deer Season) to require all hunters to wear blaze orange. The change presented problems for certain religions which do not allow their members to wear "loud colors," such as blaze orange. If they hunted deer they were left in the position of having to violate either state law or their religious beliefs.

This subpart prescribes bright red as an exception to the blaze orange requirement for persons whose sincerely held religious beliefs do not allow them to wear blaze orange. This provision is reasonable because bright red does not conflict with the religious beliefs of these religions, provides increased safety by being highly visible, and, prior to the 1994 deer season was a lawful color for this purpose. This subpart allows the state to comply with the Religious Freedoms Restoration Act of 1993 (Public Law Number 103-141) in a way that protects the safety of such hunters without conflicting with their religious beliefs.

**6232.0700 LEGAL DEER BY ARCHERY.**

The purpose of the change to this part is to allow archers to take deer of either sex throughout the open archery season. Formerly archers were restricted to bucks-only during the firearms season. This change is necessary and reasonable because the existing restriction was tied to enforcement of the requirement for bucks-only hunting by most firearms hunters and the difficulty in distinguishing archery from firearms kills. That difficulty no longer exists because enforcement officers now have available techniques to readily distinguish archery from firearms killed deer. It is also reasonable because this change



reduces the complexity and restrictiveness of the rule for hunters.

**6232.0800 ARCHERY SPECIAL HUNT AREAS AND PROCEDURES.**

The purpose of the change to this part is to create two subparts and to add language identifying where special permits are valid and where published information on those areas can be found. It is necessary to specify not only the procedures for obtaining permits, but the general areas where such permits apply. It is reasonable to provide potential applicants additional information on where permits that they might submit applications for will be valid.

**6232.1200 ARCHERY DEER MANAGEMENT PERMITS.**

The purpose of the change to this part is to specify that, in addition to county auditors and the license bureau, other license agents can be authorized to sell deer management permits. This provision is necessary to provide for broader distribution of these permits by license agents. It is reasonable because the number of management permits and the areas where they are authorized have increased greatly, and it is more efficient for both the Department and for hunters to have permits available for purchase in as many of the locations where permits are authorized as possible.

**6232.1250 TAKING DEER BY ARCHERY UNDER INTENSIVE HARVEST PERMITS.**

**Subp. 1. Purchase.**

The purpose of this subpart is to prescribe who is eligible to purchase an intensive harvest permit and where those permits are available for purchase. This provision is necessary to prevent purchase by persons without a current archery license and to reduce expense and complexity in the licensing system. It is reasonable to restrict purchase to individuals with a current archery license because this is a license to take additional deer (beyond the one allowed under a regular license) and because this is a half-price license that is intended only for those individuals who have first purchased a full-price license. It is reasonable to limit the geographic distribution of license vendors to those in the areas where the intensive harvest permits will be valid to provide adequate access to permits while at the same time saving costs of printing and distribution and reducing complexity for vendors.

**Subp. 2. Restrictions.**

The purpose of this subpart is to prescribe general restrictions on the areas where intensive harvest permits may be used. It is necessary and reasonable to restrict the areas where additional deer can be taken to specified permit areas or special hunt areas because these permits allow taking of deer in addition

to those allowed under a regular license and management permit. Such a level of additional harvest cannot be sustained in most of the deer range in the state and must be very carefully targeted to avoid overharvest in areas with low deer populations and/or high hunter numbers.

**6232.1300 SEASONS FOR TAKING DEER BY FIREARMS.**

**Subparts 1-4. Zones 1-4.**

The purpose of the change to these subparts is to provide for exceptions to the requirement that antlerless deer may only be taken by permit and only in specified permit areas. It is necessary and reasonable to provide that persons with statutory authorization to take deer of either sex may only take antlerless deer in permit areas within their zone where permits have been offered because, in permit areas where the quota of antlerless deer permits is zero, the harvest of antlerless deer by hunters with statutory authorization to take deer of either sex could be detrimental to the deer population.

**6232.1800 ANTLERLESS PERMITS.**

**Subp. 2. Preference drawings for antlerless and special area permits.**

The first purpose of the changes to this subpart is to prohibit resident hunters under age 16 from applying for antlerless permits. This change is necessary to prevent hunters under the age of 16 from applying for permits and receiving preference for future years while they are statutorily authorized to take antlerless deer without a permit. This is reasonable because these hunters already enjoy an advantage over other hunters who must apply and wait their turn for a permit. To allow hunters under 16 to apply for unnecessary permits and, by doing so, gain preference in the years to come would give them an undue advantage in obtaining a permit after they turned 16.

The second purpose of the changes to this subpart is to incorporate special area permit language into the description of the preference process in order to provide a preference system for applicants for special permits the same as for antlerless permit applicants. It is a reasonable preference system because it provides for applicants to "take turns" being drawn for a permit based on the number of times they have unsuccessfully applied, as opposed to having their success in drawing a permit based on random chance each year.

**Subp. 3. Antlerless permit areas.**

The purpose of the changes to items A and B is to subdivide two existing antlerless permit areas into five new permit areas. This is necessary to reduce the size of these permit areas and to more closely delineate areas that are similar in terms of habitat, deer populations, land ownership, and hunter densities. It is reasonable because permit areas are the basic unit of land

on which deer populations are managed through harvest. In these permit areas, there were relatively large differences in land ownership, land use, deer habitat, and deer populations. This resulted in a distribution of hunters within the large permit areas that was related more to where public lands or deer concentrations were located rather than to where private lands were located or deer damage problems were occurring. By subdividing these areas, permits can be allocated appropriately for each, improving hunter distribution and deer population management.

**6232.1950 TAKING DEER BY FIREARMS UNDER INTENSIVE HARVEST PERMITS.**

**Subp. 1. Purchase.**

The purpose and rationale for this subpart is the same as that provided for 6232.1250, subp. 1.

**Subp. 2. Restrictions.**

The purpose and rationale for the first sentence of this subpart is the same as that provided for 6232.1250, subp. 2. In addition, this subpart clarifies that the intensive harvest permit can only be used in a firearms zone and time period where the license is valid. This is necessary and reasonable because the intensive harvest permit is intended only to allow the taking of additional deer, not to extend hunting privileges to new zones or time periods.

**6232.2000 MULTIZONE BUCK LICENSE.**

**Subpart 1. Season and open area.**

The purpose of the change to this subpart is to make a technical correction by deleting a partial sentence.

**Subp. 2. Antlerless deer and special hunts.**

The purpose of adding this subpart is to allow a multizone buck license holder to purchase and use an intensive harvest permit. This is necessary to maximize the number of licensed deer hunters who are eligible to purchase and use intensive harvest permits. This is reasonable because these permits are used only in situations where limits of one or two deer are insufficient to successfully manage deer populations due to limited numbers of hunters participating. By allowing any licensed hunter, including multizone buck licensees, to purchase a permit, the potential pool of hunters to harvest deer is maximized.

This subpart also provides that multizone buck licensees may not take antlerless deer under statutory provisions that otherwise authorize the taking of antlerless deer without an antlerless permit. This provision is necessary because the

purpose of this license was to provide an expanded hunting opportunity across zones without compromising deer population management, which relies on limiting antlerless deer harvest to specific areas. This is reasonable because no other holder of this license is allowed to take antlerless deer or to apply for antlerless permits.

#### **6232.2100 MUZZLELOADER SEASON AND AREAS.**

##### **Subparts 1 and 2. Season and open zone.**

The purpose of the change to subparts 1 and 2 is to identify the open areas for the muzzleloader season. It is reasonable to provide for expanded muzzleloader hunting opportunity as provided by Minnesota Statutes section 97B.311 while at the same time assuring that this season will not be detrimental to the deer population. It is reasonable to provide this expanded opportunity because there are relatively few muzzleloader hunters in the state, there is public and legislative support for this proposal, and the open area is designed to avoid areas where deer typically "yard up" prior to this season, becoming more vulnerable to harvest.

##### **Subp. 3. Legal deer by muzzleloader.**

The purpose of this subpart is to prescribe legal deer for muzzleloader hunting. It is necessary and reasonable to specify what type of deer muzzleloader hunters may legally take so that the harvest can be managed and hunters will know what is legal game. It is also reasonable to allow the harvest of deer of either sex because the muzzleloader harvest is relatively low and of little significance to the overall level of deer harvest in the state.

#### **6232.2450 MUZZLELOADER DEER MANAGEMENT PERMITS.**

##### **Subps. 1 and 2. Issuance and open areas.**

The purpose of the changes to this part is to prescribe the areas where muzzleloader hunters may use management permits. It is necessary to delineate the limited areas where these permits will be valid because these permits authorize the taking of a second antlerless deer and such a level of antlerless deer harvest cannot be sustained in all areas of the state. It is reasonable to provide for additional harvest in areas where population management requires it.

#### **6232.2500 DISABLED HUNT.**

##### **Subpart 1. Requirements.**

The purpose of the change to this subpart is to delete the bright red clothing option for persons participating in disability deer hunts. This provision is necessary and reasonable to comply with the statutory change to Minnesota Statutes Section 97B.071.

**Subp. 2. Open areas.**

The purpose of this subpart is to specify that disability permittees may hunt in open areas specified by the commissioner. This provision is necessary as these hunts are often held outside the regular season and in areas normally closed to hunting. This provision is reasonable in order to accommodate the special needs of disabled hunters. In addition, these hunters often are intolerant of cold temperatures and as a result must hunt earlier in the fall. Limited mobility and special needs for accessing areas often make it difficult for such hunters to compete successfully in areas open to nondisabled hunters.

**6232.2900 BEAR PERMIT PROCEDURES.**

**Subp. 3. Required identification number, eligibility.**

The purpose of the change to this subpart is to specify eligibility criteria for the bear quota drawing and the no-quota license. It is necessary to limit the purchase of bear licenses and submission of applications in the preference drawing to those who are eligible to receive a license. This is reasonable to prevent ineligible persons from receiving licenses or pre-empting receipt of licenses by eligible applicants in the limited drawing.

**6232.3000 BEAR QUOTA AREAS.**

**Subps. 4 and 7. Bear Quota Areas 24 and 31.**

The purpose of the change to these subparts is to prescribe a change in the boundary between these two quota areas. It is necessary and reasonable because the portion of the railway that previously formed the boundary between these areas has been abandoned and the added roads are a close approximation to the previous boundary.

**Subps. 9a and 9b. Bear Quota Areas 44 and 45.**

The purpose of these subparts is to subdivide former bear quota area 43 into 2 new quota areas. This is necessary to improve the distribution of bear hunters and bear harvest within this area of the state. It is reasonable because old quota area 43 was one of the largest quota areas in the state and bear habitat and densities varied significantly across the area, particularly from north to south. The new quota areas provide for separate hunter and harvest quotas to be established for the northern and southern portions of the old quota area. This will improve management of bear populations and hunter distribution in this area of the state.

**6232.3700 GENERAL REGULATIONS FOR TAKING MOOSE.**

**Subp. 3. Blaze orange requirement.**

The purpose of the change to this subpart is to require blaze orange clothing only (no red) for moose hunters. This is

necessary to provide for the safety of moose hunters and to make the clothing requirements the same as is required by statute for the deer season. This provision is reasonable because blaze orange is a much more visible color to humans, particularly under low light conditions, and because it will reduce confusion about legal clothing requirements for big game hunting in Minnesota. It also again makes the moose hunting rule consistent with the deer hunting statute, as it was before the statutory change.

**Subps. 8 and 9. License requirement and bag limit.**

The purpose of the changes to these subparts is to provide for variable party sizes for moose hunters. This is necessary to provide increased flexibility for moose hunting. It is reasonable because the moose hunt is now a "once-in-a-lifetime" opportunity and because moose hunting parties are sometimes asked to address property damage by moose where small parties may have more ability to adjust schedules on short notice to respond.

**6232.3800 APPLICATION PROCEDURES FOR A MOOSE LICENSE.**

**Subpart 1. General Procedures.**

The purpose of the change to item B is to incorporate the variable party size provision. It is necessary and reasonable for the reasons presented for 6232.3700, subparts 8 and 9.

The purpose of the change to Item F is to remove the application fee from rule and cross-reference appropriate statutory language. It is necessary and reasonable because the fee is set by statute, not by rule.

**6232.4000 NUISANCE MOOSE.**

The purpose of the change to item E is to incorporate the variable party size provision. It is necessary and reasonable for the reasons presented for 6232.3700, subparts 8 and 9.

**6232.4700 DEER AND BEAR REGISTRATION BLOCKS.**

**Subps. 14, 16, and 41. Registration Blocks 120, 122, and 176.**

The purpose of the changes to these subparts is to prescribe changes to the boundaries between these registration blocks. The change to the boundary between blocks 122 and 176 is necessary and reasonable because the portion of the railway that previously formed the boundary between these areas has been abandoned and the added roads are a close approximation to the previous boundary. The change to the boundary between blocks 120 and 176 is necessary and reasonable because it incorporates changes in the numbering of local roads, but makes no substantive change in the actual boundary between these areas.

**6234.0200 TAKING RUFFED GROUSE AND SPRUCE GROUSE.**

**Subp. 2. Bag limit.**

The purpose of this subpart is to establish the daily bag and the possession limits for ruffed and spruce grouse. It is necessary because Minn. Stat. Sec. 97B.711 establishes maximum limits for these species, but gives the commissioner authority to establish reduced limits. This subpart is reasonable because it establishes reduced limits that provide for a total harvest and a distribution of harvest among hunters that is appropriate for the current population status of these species. It is also reasonable because it simply re-establishes a permanent rule that was inadvertently deleted in the fish and wildlife permanent rule that took effect September 6, 1994 and that was repromulgated through the expedited process effective November 28, 1994.

**6234.0400 TAKING PHEASANTS.**

**Subp. 2. Bag limit.**

The purpose of this subpart is to establish daily bag and possession limits for pheasants. The rationale for this subpart is the same as that provided for 6234.0200, Subp. 2 above.

**6234.1300 TAKING RED FOX AND GRAY FOX.**

**Subp. 3. Tagging.**

The purpose of this change is to repeal this subpart because the legislature repealed the requirement that nonresidents tag fox pelts in 1993 (Laws of 1993, Chapter 269, Section 32).

**6234.2600 PELT TAGGING AND REGISTRATION.**

**Subp. 3. Registration of pelts.**

The purpose of the first change to this subpart is to specify that the 48-hour period for registering pelts after the season applies to the season for each respective species. It is necessary and reasonable because it clarifies the existing language and because the season closures for the various species listed vary.

The purpose of the second change to this subpart is to add otter to the list of species for which pelts must be removed at the time of registration. It is necessary because it is nearly impossible to determine if unskinned carcasses have been illegally taken out-of-season or held over from the previous year. By requiring that the pelt be removed, enforcement officers can inspect the skin side of the pelt for evidence of unprime skins or signs that the pelt has been held in storage. It is reasonable because the animal must eventually be skinned in order to be sold or used and requiring that it be skinned before registration creates no additional effort while facilitating enforcement of seasons and limits.

## **6234.3000 CERTIFICATION FOR PREDATOR CONTROL.**

### **Subp. 2. Application process.**

This subpart requires a hunter or trapper who wishes to be a state certified predator controller to make application for certification on forms provided by the commissioner. It includes a requirement that the applicant provide a summary of experience and skill as a trapper or hunter.

A uniform application is necessary to ensure that all necessary information is gathered in a format that is easily understood and processed for administrative purposes. The summary of experience and skill as a trapper or hunter is reasonable and necessary to ensure that the applicant is qualified to effectively control predators in a damage location.

### **Subp. 3. Predator controller qualification requirements.**

This subpart sets forth the qualifications for certification as a predator controller. These qualification requirements are reasonable and necessary to ensure that those certified as predator controllers have not been convicted of violating laws or a rule of the commissioner relating to furbearing animals. Also, the qualifications assure that applicant possesses the experience and skill necessary to control predators.

Since predator controllers are compensated for taking certain predators it is necessary and reasonable to require them to fully complete the certification application so that adequate information is available to create vendor records and arrange compensation. Incomplete applications would require excessive amounts of staff time to acquire and verify basic information.

Predator controllers are allowed to use methods which are normally unlawful, such as setting snares on land in the farmland furbearer zone when controlling predators in a designated control area. They are also compensated for their activities. These factors make it reasonable and necessary to exclude those persons who have violated a law or rule pertaining to furbearing animals for three years prior to the date of application. Allowing recently convicted violators to participate in the program would require unreasonable levels of monitoring by conservation officers to ensure that only target species were being taken and approved methods are being used.

Predator controllers function in situations where damage due to predators is occurring. Such situations usually involve the loss of poultry, livestock, or other animals resulting in a financial loss to the owner. The requirement for the applicant to demonstrate or attest to their skill as a hunter or trapper is necessary and reasonable to ensure that predators are controlled in a timely, efficient manner, and that only target predators are taken.



**Subp. 4. Inactivity in program.**

It is in the public interest to ensure that an adequate number of predator controllers are readily available to abate damage in designated control areas. Designated control areas are opened in response to a finding by a conservation officer of damage by predators. Generally the damage is the killing of poultry or young livestock resulting in a financial loss to the owner. A timely response by a certified predator controller can generally minimize losses. The predator control program is the only means of providing an adequate response in Minnesota for much of the year. Thus, it is reasonable and necessary to revoke the certification of a predator controller who has been inactive in the program for 24 consecutive months so that the department does not have to continually notify inactive controllers.

Additionally, it is additional administrative work to maintain a list and notify controllers of open areas when they are inactive. The "24 consecutive month" time limit was chosen as a long enough period to ensure that normal and expected situations such as injury, family needs, etc. of limited duration would not be cause for revocation of certification.

**6234.3100 DESIGNATED CONTROL AREAS AND DATE OF OPERATION.**

**Subp. 2. Designation of corrective action.**

This subpart provides the mechanism by which an area is opened to the taking of predators causing damage. Specifically this subpart describes the boundaries of the area open to predator control. The limitations are necessary to ensure that non-target predators are not harvested and that the individual animals harvested of the target species are the individuals most likely responsible for the damage.

This subpart further specifies that the method of control and dates of control shall be described in the directive designating the predator control area. These provisions are reasonable and necessary to ensure that only target species are harvested and that the control activity only takes place for a limited period of time sufficient to abate the damage situation.

The date of October 1 is provided as the date that all open areas close unless an earlier date is specified. This provision ensures that predator control areas are closed and traps/snares are removed prior to the open season for trapping of furbearers which occurs in late fall. By doing so, competition between licensed trappers and predator controllers is eliminated. Additionally, law enforcement is simplified because conservation officers will not be forced to determine whether predator control methods found in the field are a part of a predator control program or in fact are illegal trapping methods being used by a trapper.

Predator control areas opened between October 1 and the last day of February are restricted to a maximum of 30 days. This provision is reasonable and necessary to decrease the possibility of competition between certified predator controllers doing damage abatement and licensed trappers or hunters who are generally active for certain species during the time period.

**Subp. 3. Notification of eligible predator controllers.**

This subpart requires that all predator controllers within 20 road miles of an open predator control area be notified of the open area. Certified predator controllers are not employees of the department and as a result are not required to respond to directives creating open areas. This provision is reasonable and necessary to ensure that an adequate response to a damage situation will be forthcoming without having too many controllers competing to abate the damage situation. The subpart also provides that controllers from more than 20 road miles from the site may be notified if necessary to assure an adequate abatement response to the damage situation.

**6234.3400 COMPENSATION FOR PREDATOR CONTROL.**

**Subp. 2. Identification of sites and methods.**

This subpart provides requirements for certified predator controllers to provide information upon the request of a conservation officer about the location where predators were taken and the methods used. This requirement is reasonable and necessary to ensure that only allowable methods of harvest are being used and that predators presented for payment were captured from within the designated open area. In this way the program can be monitored to ensure that only qualifying predators are submitted for payment and that they have been taken by lawful means.

**Subp. 3. Payment schedule.**

This subpart specifies the amount of payment for specific predators taken during specific periods of time. Compensation is paid for fox and coyote because these species require a higher level of skill to harvest than other predators.

Historically the majority of predator damage occurs in the spring and summer when the predators have no value as furbearing animals. Compensation fees for the period March 1 through September 30 are set at a higher level to offset the lack of fur value and because there is very little public trapping during this period. Compensation fees for the period October 1 through the last day of February are set at a lower level because the individual predators taken have value as furbearers. Predator controllers are allowed to keep the hides of predators taken. Additionally, this is the period when statewide trapping seasons are set which provides a general level of control on predator populations.

**6236.0100 DEFINITIONS.**

**Subp. 5. Legal Bow and arrow.**

The purpose of the change to this subpart is to add provisions for the use of arrows for turkey hunting. It is necessary and reasonable for the reasons presented for 6232.0100, subp. 7. It is also reasonable because wild turkeys are large birds that require the use of the same types of broadheads for an effective kill as are needed for big game. No maximum broadhead width is specified for wild turkeys because they do not have the heavy bone structure of big game animals that is likely to deform wide, slender blades and make them functionally barbed. Also, wild turkeys have a very small killing zone compared to big game and a wider broadhead could reduce crippling losses.

**Subp. 6. Legal firearms.**

The purpose of the change to this subpart is to allow the use of fine shot size number four or smaller for taking wild turkeys, rather than specifying particular shot sizes. This change is necessary to provide for use of additional sizes of shot smaller than number four for taking wild turkeys.

This change is reasonable because there are sizes of fine shot smaller than number four that are effective for taking wild turkeys that are not currently allowed by rule. Furthermore, this change is reasonable because it maintains the existing maximum shot size. This is important for both public safety reasons and for providing for a dense shot pattern that is needed to effectively kill a wild turkey.

**6236.0900 SPECIAL PROVISIONS FOR TAKING TURKEYS.**

**Subp. 4. Male decoys.**

The purpose of this subpart is to prohibit the use of wild turkey decoys that resemble male turkeys. This subpart is reasonable because the use of male turkey decoys increases the risk of a shooting accident to a hunter using them.

Turkey hunting has the highest accident rate of any type of hunting. This is due in part to the fact that, because of the wild turkey's wariness, keen vision, and ability to see color, turkey hunters typically use calls that imitate a turkey as well as using total camouflage and careful concealment. As a result, many accidents are attributable to one hunter mistaking another hunter for a turkey. During spring seasons, when turkey decoys are commonly used in combination with calling, only gobblers (male) turkeys with visible beards are legal game. A significant increase in the safety risk is posed by allowing the use of a male turkey decoy that is placed in close proximity to the hunter and that closely resembles the legal target. While the commercial availability of male turkey decoys is recent, and as a result use by the public is insufficient at this time to yield any significant accident statistics, it is reasonable to prohibit these types of decoys because of the obvious safety risk. It is

also reasonable to enact this prohibition now, before ownership and use of male decoys does become widespread. Finally, this restriction is reasonable because it does not restrict use of hen decoys, which are effective for hunting.

**6240.0200 GENERAL RESTRICTIONS FOR TAKING AND POSSESSION OF MIGRATORY GAME BIRDS.**

**Subp. 3. Blinds on public lands and public waters.**

The purpose of the change to this subpart is to prescribe use of unoccupied blinds and to prohibit the use of threat or force to gain possession of a blind. It is necessary to establish that constructed blinds on public lands or waters do not become the property of the person who constructed them and can be used by anyone on a first-come, first-serve basis and that the use of threat or force to gain occupancy is unlawful. These provisions are reasonable because without such restrictions individuals could pre-empt the use of public lands and resources by others simply by constructing blinds and because public safety is enhanced by clearly prohibiting use of threat or force.

**Subp. 5. Possession and transportation of migratory game birds.**

This subpart provides restrictions on the possession and transportation of unlawfully taken migratory game birds. Minn. Stat. Section 97B.731, subd. 1 provides authority to regulate taking, possessing limits, and seasons for migratory birds. Current rule only deals with taking. This change is necessary to make the rule consistent with statute.

**Subp. 6. Opening day possession limit.**

The purpose of the change to this subpart is to establish the opening day possession limit of migratory birds. This provision is necessary to prevent a person from illegally possessing more freshly killed birds on the opening day than is allowed for a daily limit. Because possession limits are usually higher than daily limits, a person could theoretically take over the daily limit on opening day, but not be in violation of the possession limit. This provision is meant to close this loophole by making the possession limit the same as the daily bag limit on the first day of the hunting season for freshly killed birds. This provision is also reasonable because it makes state rules consistent with federal rules applicable to migratory game birds.

**6240.0550 GENERAL RESTRICTIONS FOR TAKING MIGRATORY WATERFOWL.**

The purpose of this part is to specify that a person may not take ducks, mergansers, geese, coots, or moorhens while in possession of shot other than steel shot, plated steel shot, or

other nontoxic material approved by the director of the U.S. Fish and Wildlife Service. It is necessary because scientific studies have found that lead shot deposited in and near wetlands can cause mortality of waterfowl and other birds when the shot is ingested. This provision is reasonable in order to minimize the risk of lead poisoning and to make this rule consistent with federal rule which prohibits use of lead shot nationwide. This restriction was formerly contained in commissioner's order, but was inadvertently dropped in the conversion to rules. It is also reasonable because including this restriction in rule enables conservation officers to charge nontoxic shot violations in state courts rather than in federal courts under the federal ban.

**6240.0850 TAKING GEESE AND BRANT IN THE WEST GOOSE ZONE.**

The purpose of this part is to describe the West Goose Zone. It is necessary to divide the state into zones for goose hunting because of differences in goose populations, migration routes, staging areas, and hunter densities and resulting harvests among different geographic regions of the state. Goose hunting regulations take into account: 1) "large" Canada geese, including those that nest in the interlake region of Manitoba and winter near Rochester, as well as the giant subspecies of Canada goose that nests in Minnesota; 2) "medium" sized geese from the Eastern Prairie Population (EPP) and the Mississippi Valley Population; and 3) "small" Canada geese from the Tall Grass Prairie Population that can be found in northwest Minnesota during migration. Because geese from a particular population tend to use traditional migration, staging, and stopover areas each year which differ from other populations, specific populations can be managed separately.

The West Zone and the Northwest Zone established in parts 6240.0850 and 6240.0860 respectively account for nearly 90% of the leg and neck band recoveries of EPP geese in Minnesota and these zones are used to regulate the harvest of this population. Because such a high proportion of the harvest occurs in these zones, the more restrictive goose hunting regulations that are required for this population can be limited to a smaller geographic area of the state and more liberal goose hunting regulations can be allowed in the remainder of the state. It is reasonable to establish goose hunting zones with differing seasons in order to avoid overharvest of populations that cannot sustain higher harvest levels, as well as to stimulate additional harvest of populations such as locally breeding giant Canada geese that are increasing and causing damage and nuisance problems.

**6240.0860 TAKING GEESE AND BRANT IN THE NORTHWEST GOOSE ZONE.**

The purpose of this part is to describe the Northwest Goose Zone. The rationale for this part is the same as that described

for 6240.0850.

**6240.0900 TAKING GEESE AND BRANT IN LAC QUI PARLE GOOSE ZONE.**

The purpose of the change to this part is to add cardinal points in the description of the Lac qui Parle Goose Zone. This is necessary to provide greater clarity in interpreting the written legal description of this zone. It is reasonable because it makes no substantive change in the zone boundary, yet makes the legal description easier to interpret and follow.

**6240.1700 TAKING GEESE IN FERGUS FALLS/BENSON CANADA GOOSE ZONE.**

**Subpart 1. Open season.**

The purpose of the change to this subpart is to change the zone name to the Fergus Falls/Benson Canada Goose Zone. This is necessary and reasonable because this zone has been expanded as described in subp. 3.

**Subp. 3. Zone description.**

The purpose of this subpart is to describe the Fergus Falls/Benson Canada Goose Zone. The rationale for this subpart is the same as that provided for 6240.0850. This zone is used for regulating the taking of locally breeding giant Canada geese in early September before the arrival of significant numbers of migrant geese. It is reasonable to provide for a higher level of harvest on these geese because their population is capable of sustaining higher harvest levels and they are creating increased depredation problems.

**6240.1950 TAKING GEESE IN FERGUS FALLS/ALEXANDRIA CANADA GOOSE ZONE.**

The purpose of this part is to describe the Fergus Falls/Alexandria Canada Goose Zone. Again, the general rationale for this part is the same as that described for 6240.0850. This zone is used for regulating the taking of locally breeding giant Canada geese in December. This zone is smaller than that described in 6240.1700 because concentrations of migrant geese may still occur throughout the larger zone in December, and the intent of this zone is to limit the hunt to the locally breeding populations.

**6242.0200 GENERAL PROVISIONS FOR SHOOTING PRESERVES.**

**Subp. 7. Other species for commercial shooting preserves.**

The purpose of the change to this subpart is to designate additional species available for commercial shooting preserves. These provisions are necessary and reasonable because private shooting preserves already can legally take unprotected birds and because gray partridge are a common game species in the state that have been authorized for commercial shooting preserves in

the past through the listing of the species on the commercial shooting preserve license. Thus, this provision does not result in a substantive change in current practice.

#### **GAME FARMS**

Game farms are private enterprises licensed by the state for the purposes of breeding and propagating native species of animals that are indistinguishable from protected wild animals unless marked by the game farm operator.

#### **6242.0500 GAME FARM REQUIREMENTS AND DEFINITIONS.**

##### **Subp. 2. Definition.**

This subpart provides a definition for "upland birds" as used in Minn. Rules pt. 6242.1000, subp. 1. The term has been defined by reference to Minn. Stat. Sec. 97B.711 subdivision 1(a), excluding turkey. This definition is commonly understood by hunters and game farm operators but has never been defined previously in rule or statute. Providing this definition is reasonable and necessary to ensure a common understanding of the game farm requirements by conservation officers and the regulated community.

#### **6242.0900 RESTRICTIONS ON SALE OR DISPOSAL OF GAME FARM ANIMALS.**

##### **Subp. 1. Sales receipt requirement.**

This subpart sets forth the requirements for a sales receipt to be issued by the game farm seller for each sale or disposal of an animal, animal part, or animal product. Sales receipts are provided to game farm licensees at no charge by the department. Licensees are required to complete all required information on the sales receipt.

The Department is charged with managing Minnesota's natural resources for the benefit of the people of the state. The sales receipt mechanism provides a means to ensure that protected wild species are not being unlawfully acquired and used for game farm purposes. Conservation officers rely heavily on sales receipt records to ensure that animals, parts, or products entering commerce come from lawful licensed game farm operations. Absent the game farm sales receipt documentation, a conservation officer would be unable to determine if the acquisition and possession of a protected species was lawful.

Sales receipt information is also useful to ensure that an unscrupulous game farm operation is not unlawfully acquiring protected species from the wild and listing them in required yearly records as purchases from another game farm.

The information required on the sales receipt is reasonable and necessary to ensure that transactions can be traced to a

specific person and that items (animals, parts, or products) transacted can be identified with specificity.

**Subp. 2. Routing of sales receipts.**

This subpart sets forth the timing and routing requirements for distribution of sales receipts.'

The original of each receipt is required to be mailed to the department's Division of Enforcement within 48 hours of the transaction. This receipt is placed in a file created for each licensee. This requirement is reasonable and necessary to allow conservation officers to review transactions in a timely manner and to ensure that complete records of all transactions are maintained. This level of record maintenance is necessary because of the variability of the number of progeny produced by breeding. To illustrate, deer may have from one to three young each year. Without detailed records of each transaction it is impossible to determine if animals being sold are in fact progeny or have been unlawfully acquired from the wild. For example, when a game farm operator sells his/her fifth white-tail deer fawn while having only one doe deer, a conservation officer reviewing the records can easily form probable cause to question the source of the fawn deer.

The first copy of the sales receipt is given to the purchaser to document that the acquisition of the animal, part, or product, was lawful. This requirement serves the same function as a sales receipt in any business transaction. In essence, it protects the purchaser because it allows them to show that the transaction originated from a lawful source.

The second copy is retained by the licensee to document the sale and to be produced as evidence of the sale if requested to do so by a conservation officer or peace officer. This copy can also be used by the operator for business purposes provided it remains available for inspection. Retention of this copy also serves as a check for officers to verify that sale took place as opposed to a person unlawfully procuring an animal from the wild and then stealing and completing a sales receipt to make it appear lawful.

The third copy of the sales receipt is required to be submitted to the local conservation officer for his/her records. Conservation officers are stationed across Minnesota and it is impractical for them to obtain sales record information from the division copy maintained in St. Paul. Local conservation officers have inspection authority on game farms which is sometimes triggered by reviewing sales receipts. In this way, timely local enforcement and information sharing can be accomplished on a case-by-case basis.

These requirements have previously been in effect under



Commissioner's Order authority and did not create significant problems for game farm operators.

**6242.1000 REQUIRED GAME FARM RECORDS.**

**Subp. 1. Records.**

This subpart sets forth a requirement for record keeping related to births, deaths, sales, and acquisitions of animals for game farm purposes. Records are required to be kept in a book provided by the department at no charge to the game farm licensee. These records are necessary to enable the department to review transactions, births, acquisitions, and deaths in a format that is complete and consistent from one game farm operation to another.

The ability to inspect records and compare actual numbers of protected species on site and transacted over a given period is necessary to detecting unlawful acquisition of protected wild animals for game farm purposes. Without records being entered in a standard record book, inspections would take much more time and be more disruptive to the business.

Game farm operators have previously been regulated in this manner by Commissioner's Order without undue intrusion into their business activities.

**Subp. 2. Retention of receipts.**

This subpart requires individual sales receipts to be considered as part of the record book and to be kept with it. This provision is necessary to ensure that all pertinent records are kept in one location, making inspections more easily accomplished and less intrusive upon the operation of the business.

Individual sales receipts record only sale or disposal of animals, animal parts, or products and thus represent only one part of business records. It is necessary to have them present at the same location as the record book to provide a complete record of activity.

**Subp. 3. Entry, retention, and inspection of records.**

This subpart requires that record entries be made in the record book within 48 hours of the birth, transaction, acquisition, death or disposal of an animal, animal part, or product. It also requires records to be maintained for three years following the year of creation and provides for inspection by the commissioner or designee at all reasonable hours.

These requirements are reasonable and necessary to ensure that records are updated in a timely manner. Without this requirement there would be no specific time at which the records must be completed. At the extreme an inspection of records might

have to be delayed until the record book was updated. This would unnecessarily delay the inspection. In addition, no time limit on completing record books may lead to incomplete records due to loss of pertinent sales receipts, acquisition documents, or disposal information.

Records must be maintained for three years following the year of creation to correspond with the three year statute of limitations for charging criminal violations of the game and fish laws. Additionally, records of acquisitions, births, deaths, and/or disposals may be necessary for up to three years to document previous numbers of protected species, progeny, and losses to reconcile current numbers of protected species on site. This requirement is the same as is required for shooting preserves in Minnesota.

#### **6242.1200 THREATENED AND ENDANGERED SPECIES.**

Threatened and endangered species are accorded additional protection under Minn. Stat. Sec. 84.0895. This protection is necessary because these species are scarce and in danger of being reduced to levels which will not support a viable population. The state has a keen interest in intensively managing these species to ensure their continued survival. When these species are present on game farms, the private interest being served may not coincide with the state's management interest. Game farm operators may be motivated by profit (i.e. sale of individual animals) or breeding (i.e. hybridizing species such as timberwolves with domestic dogs), or both.

##### **Subp. 1. Game farm licensees.**

It is in the state's interest to know where threatened/endangered species are located and to be able to differentiate game farm animals from wild animals. The fact that threatened/endangered animals are rare in the wild makes the need to ensure that such species are not being unlawfully acquired and used in game farm commerce even more necessary than for protected species. This subpart clarifies that these protections include threatened as well as endangered animals.

This subpart also provides an exemption from the permit requirement in Minn. Stat. Sec. 84.0895 and Minn. Rule pt. 6212.1800 for game farm licensees provided they list the threatened/endangered species on their license application. In this way the information regarding location of such species can be gathered without subjecting the licensee to an additional permit requirement.

##### **Subp. 2. Permit for purchaser.**

This subpart provides an exemption from the possession permit requirement for threatened/endangered species for persons who lawfully purchase such species from a game farm. The

exemption functions by making the game farm sales receipt serve as the possession permit provided the species was lawfully acquired. This provision is similar in function to 6242.1200 subp. 1 in that it provides necessary information that does not need to be duplicated by issuance of a separate permit.

**6252.0500 OPEN SEASONS FOR TAKING WHITEFISH AND CISCOS.**

This proposed change would increase the minimum mesh size for whitefish/cisco gill netting on Sandy Lake in Beltrami County from 1-3/4 inches to 3-1/2 inches. This would correct a typographical error made on an earlier rule change. A larger minimum mesh size is placed on lakes such as Sandy where the target species is whitefish only. This is reasonable because whitefish are substantially larger than cisco and can be effectively captured with larger mesh. In addition, use of the larger mesh minimizes capture of non-target game fish species such as northern pike and walleye.

**6254.0200 WATERS OPEN TO TAKING MINNOWS.**

The purpose of the change to this part is to clarify that a permit is needed only when taking minnows from within the boundaries of a wildlife management area for commercial purposes. This change is necessary to be consistent with M.R. 6210.0100, Subp.6 and to clearly reflect current practice. It is reasonable because it is a clarification that makes no substantive change to the application of existing rule.

**6254.0500 DEFINITIONS, EXEMPTIONS, AND IDENTIFICATION REQUIREMENTS FOR TAKING MINNOWS IN TRAPS AND NETS.**

Subpart 1 adds nets as legal gear for taking minnows in addition to traps; however, this is not a substantive change because commercial minnow trappers have commonly used both traps and nets. The proposed language distinguishes between traps and nets because nets are used only for commercial purposes and are more obtrusive than traps.

Subpart 2, which provides definitions for various types of minnow trapping gear, is needed to clarify requirements found in part 6254.0510. A distinction needs to be made between minnow traps and hoop and trap nets, because hoop and trap nets are used only for commercial purposes and are more obtrusive than minnow traps.

Subpart 3 exempts aquatic farm and private fish hatchery licensees from the provisions of part 6254.0510 when they are taking minnows from their licensed waters. This is needed and reasonable because Minn. Stat. sec. 17.4983, subd. 3 authorizes licensed aquatic farms (and private fish hatcheries) to use "all reasonable methods to operate and harvest aquatic life from

licensed facilities" (see also Minn. Stat. sec. 97C.505, subd. 6, and Minn. Rules pt. 6250.0200, subp. 3).

Subpart 4 requires minnow trapping gear to display appropriate identification. Identification is necessary so that conservation officers can determine ownership when there are violations or conflicts between users. These identification provisions do not in any way hamper minnow trapping operations.

#### **6254.0510 USE OF MINNOW TRAPS, HOOP NETS, AND TRAP NETS.**

The provisions of subpart 1 are needed to provide for minimum distances between minnow traps, hoop nets, and trap nets to prevent minnow trapping gear from obstructing waterways and to prevent conflicts between minnow trappers. If minnow trapping gear is obstructing a waterway, it can result in excessive capture of target and non-target organisms leading to depletion of the resource, and hinder or prevent navigation. Minimum distances between hoop and trap nets and strings of minnow traps are greater than minimum distances between individual minnow traps, because individual minnow traps are smaller and less obtrusive and therefore less likely to hinder navigation and capture excessive numbers of organisms. These provisions provide reasonable protection against excessive depletion and minimize the possibility of conflicts between users, without hindering commercial and personal harvest of minnows.

Subpart 2 provides maximum time intervals for checking minnow trapping gear. These provisions are necessary to prevent trapping gear from causing mortality of target and non-target organisms. Maximum intervals are increased during winter months because most aquatic life in Minnesota can maintain good condition in traps for longer periods of time when water temperatures are cold. These provisions are reasonable in that they do not hinder commercial and personal harvest of minnows and ensure that minnow trappers do not lose their product due to the stress of capture.

Subparts 3 and 4 provide specifications for minnow trapping gear. This is necessary to prevent use of gear which could result in excessive capture of non-target organisms such as game fish species. Persons harvesting minnows for non-commercial purposes are restricted to smaller minnow traps, which is reasonable because they are taking minnows for personal use only. Maximum sizes for trap openings and mesh of screens and traps are needed to prevent capture of non-target organisms and to prevent larger non-target fish from becoming entangled. This part also provides that area fisheries supervisors or conservation officers be notified when hoop or trap nets are set. Hoop and trap nets are large and arouse the curiosity of the public. Department field staff need to be able to answer inquiries by people who encounter such nets. These provisions were developed with input

from commercial minnow trappers and allow all commonly used methods of taking minnows while preventing problems with capture of non-target species and other potential sources of public conflict.

**6262.0100 GENERAL RESTRICTIONS ON TAKING FISH AND 6262.0200 FISHING REGULATIONS FOR INLAND WATERS.**

The proposed changes in parts 6262.0100, subp.1 and subpart 1(B), 6262.0200, subp. 1.B(4) would: 1) start the trout season one hour before sunrise instead of 10:00 a.m. on opening day, for streams south of U.S. Highway 12; and 2) make fishing hours continuous instead of from one hour before sunrise to one hour after sunset, on the St Louis and Pigeon rivers. Department research has shown that the 10:00 a.m. opener for trout streams south of U.S. Highway 12 is not needed to protect trout populations. In addition, the later opening has confused anglers because the season opens one hour before sunrise for streams north of U.S. Highway 12. This change is reasonable because it eliminates an unnecessary complication which makes it easier for anglers to comply with the game and fish laws. The fishing hour restriction in place on Lake Superior tributaries was intended to prevent illegal taking of migratory trout and salmon during nighttime hours. However, the St. Louis and Pigeon rivers are have few migratory trout and salmon so the fishing hour restriction is not justified for these waters. The proposed change is consistent with fishing hours for warm and cool water fisheries in inland waters and is reasonable to increase recreational angling opportunity and avoid confusion among anglers.

The proposed changes in part 6262.0200, subp. 1.B(5) are technical and needed only to clarify intent of existing language. The changes clarify that specified seasons apply to stream trout in all lakes and not just designated stream trout lakes. The proposed changes in part 6262.0200, subp. 1.C are also technical and clarify which lake trout seasons apply to various lakes, streams, and rivers, and that specified seasons apply to lake trout in all lakes. These changes are needed to prevent confusion amongst anglers and will not result in substantive changes in the enforcement of fishing regulations.

**6262.0300 FISHING REGULATIONS FOR LAKE SUPERIOR.**

The proposed changes in subparts 6.E and 6.F would change possession limits for walleye and northern pike in Lake Superior to two each and implement a 15 inch minimum size limit for walleye. Currently, the possession limits for walleye and northern pike on Lake Superior are six and three, respectively. The proposed change would make possession and size limits for these two species the same for Lake Superior and the St. Louis

River. This is reasonable because these two waters are connected and act as a single system for walleye and northern pike. Department research shows that this provision would not significantly impact the number of walleye or northern pike that anglers could keep, because these species are harvested in very small numbers on Lake Superior. It would not be desirable to increase the St. Louis River possession limits for walleye and northern pike to what is currently in place on Lake Superior, because department research has shown that the lower possession limit for walleye helps to reduce angler harvest and maintain fishing quality on the St. Louis River.

#### **6262.0500 WATERS CLOSED TO TAKING FISH.**

The change in subparts 1 and 2 would remove the permanent fishing closure on Lake Christina and allow winter fishing from December 1 through March 31. Lake Christina was chemically reclaimed in 1987 and has been managed primarily for waterfowl. After reclamation, several actions were taken to benefit waterfowl including: 1) re-stocking with game fish species to help prevent establishment of non-game fish species which would be detrimental to waterfowl habitat; 2) year-round fishing closure to prevent disturbance caused by boat traffic and depletion of game fish populations; and 3) installation of aerators to help keep game fish alive through the winter. Waterfowl habitat has improved greatly on Lake Christina; however, non-game fish species are once again beginning to dominate the fish community. As a result it has been determined that it would be best to not operate the aerators this winter to encourage die-off of undesirable fish species. Opening lake Christina to winter fishing is necessary to allow utilization of the fisheries resource which will be threatened by winterkill. This change is reasonable because winter fishing does not cause the physical disturbance problems to the lake that summer fishing can; therefore, there is no threat to waterfowl habitat.

An additional change would repeal all of subpart 3 which closes Black Bay of Rainy Lake and connected waters to the taking of walleye from April 1 up to Memorial Day weekend. This closure has been in place for a number of years to prevent excessive angling harvest of spawning concentrations of walleye. However, this provision is no longer necessary because restrictive walleye size limits were implemented on all of Rainy Lake for the entire fishing season in May of 1994. Department research indicates that these size limits will reduce angler harvest and allow the Rainy Lake walleye population to increase without the spring closure on Black Bay. The proposed change is reasonable because it removes an unnecessary restriction and allows more angling opportunity without risking excessive depletion of the walleye resource.

#### **6266.0100 GENERAL REGULATIONS FOR TAKING FISH ON BOUNDARY WATERS**

**WITH ADJACENT STATES.**

The proposed changes in subparts 1 and 2 clarify which boundary waters are being covered by the rule. This change is necessary because, as currently written, the rule could confuse anglers. For example, subpart 1 does not specifically refer to the boundary waters being regulated and subpart 2 refers to "described" boundary waters, but does not specify where in rule those waters are described. In addition, Lake Superior is not listed as a boundary water in part 6266.0500, subp. 1, because there is no intent for Lake Superior to be part of the reciprocal licensing agreement that Wisconsin and Minnesota have for other boundary waters. However, since part 6266.0100, subp. 1 refers broadly to boundary waters with adjacent states, it could be interpreted to mean that Wisconsin residents can fish Minnesota waters of Lake Superior with a Wisconsin license. This proposal will not result in substantive changes in the way that boundary water fishing regulations are enforced, but will clarify existing regulations by specifying those waters covered under part 6266.0100, subparts 1 and 2.

**6266.0300 TAKING OF FISH ON MINNESOTA-NORTH DAKOTA BORDER WATERS.**

The proposed change in subpart 3 allows spearing of specified non-game fish species on the Minnesota side of Minnesota-North Dakota border waters which will make Minnesota spearing rules consistent with North Dakota's regulations. This change is reasonable because it reduces potential for confusion created by inconsistent regulations on border waters and provides for increased recreational opportunity targeted at under-utilized species which can withstand additional harvest.

Possession of a spear or bow and arrow on or near water is prohibited outside of the spearing season so that conservation officers do not have to actually witness a fish being speared before having jurisdiction to take action. Darkhouse spearing is generally prohibited to prevent illegal taking of game fish species by spearing. These provisions are reasonable because they do not hinder lawful spearing activities.

The proposed change in subpart 6 allows use of two hooks per line for anglers on Minnesota-North Dakota border waters. This change is reasonable because it reduces potential for confusion created by inconsistent regulations on border waters and will not result in excessive harvest of fish.

**6266.0400 TAKING OF FISH ON MINNESOTA-SOUTH DAKOTA BORDER WATERS.**

The proposed change in subpart 2 would close the fishing season for sturgeon species on Minnesota-South Dakota border

waters. This provision is reasonable because survey data indicate that sturgeon are very rare in these waters and, as a result, an angling season is currently not justified. Additionally, this restriction will make angling regulations for sturgeon consistent with South Dakota's prohibition on taking sturgeon in these border waters. Anglers will be minimally impacted because sturgeon are seldom fished for or caught in these waters.

#### **6266.0700 TAKING OF FISH ON MINNESOTA-CANADA BOUNDARY WATERS**

The proposed change in subpart 6 suspends the requirements of Minn. Stat. section 97A.531, subds. 2, 3, and 4 which was passed by the 1993 legislature. This statute required that fish lawfully taken in Canada be brought into Minnesota "in-the-round" (whole), that Minnesota residents transporting fish from Canada into the state possess a Minnesota angling license, and that any advertisements of fishing resorts in Canada that originate or are distributed in Minnesota contain a summary of the above two restrictions. However, the Commissioner was given the authority to suspend the requirements of this statute when Canada suspended the daily angling validation tag (DAVT) requirement for non-residents. Canada did suspend the DAVT in the spring of 1994 and an expedited emergency game and fish rule suspending the requirements of Minn. Stat. section 97A.531, subds. 2, 3, and 4 was promulgated in May, 1994. This rule part would put the suspension of this statute into permanent rule which is consistent with legislative intent.

#### **6284.0500 HARVESTING WILD RICE IN WILDLIFE MANAGEMENT AREAS.**

The purpose of the change to this part is to add the Newstrom Lake Wildlife Management Area in Aitkin county to the list of Wildlife Management Areas open to the taking of wild rice. It is necessary and reasonable to provide wild ricing opportunity on a lake that has been managed to provide for sustainable production of rice in harvestable quantities.

#### **OTHER CONSIDERATIONS**

##### **Expenditures by Local Public Bodies**

If the adoption of a rule will require the expenditure of public money by local public bodies in excess of \$100,000 in either of the first two years after adoption of the rule, the adopting agency may be required to prepare a written statement as provided by Minnesota Statutes, sections 14.11, subd. 1 and 3.982, giving an estimate of the total cost to all local public bodies. The proposed rule will not require the expenditure of public money by local public bodies and therefore a fiscal note is not required.



## **Agricultural Land Impacts**

If the adoption of a rule will adversely affect agricultural land, the adopting agency is required to comply with state policy on the preservation of agricultural land as provided by Minnesota Statutes, section 14.11, subd. 2 and 17.80-84, and is subject to certain review and notification procedures. The proposed rule will not adversely affect agricultural land.

## **Small Business Considerations**

When an agency proposes a new rule which may affect small businesses as provided by Minnesota Statutes, section 14.115, the agency is required to consider several methods for reducing the potential impact. Portions of the proposed rule may impact small businesses dealing with commercial minnow harvesting, private aquaculture, game farms, and commercial shooting preserves. The Notice of Intent to Solicit Outside Opinion, published July 18, 1994 in the State Register and mailed to all parties on the department list for rulemaking notices, included a description of probable quantitative and qualitative impacts of proposed rules on affected parties. In addition, industry representatives for commercial minnow harvesters and private aquaculture were contacted by phone and mailed a copy of the Notice and relevant draft rule language being considered.

Minnesota Statutes, section 14.115 provides that the commissioner consider the establishment of less stringent compliance or reporting requirements, less stringent schedules or deadlines for compliance or reporting requirements, the consolidation or simplification of compliance or reporting requirements for small businesses, the establishment of performance standards for small businesses to replace design or operational standards in the rule, and the exemption of small businesses from any or all requirements of the rule.

Part 6212.2900 currently in effect allows the commissioner to require an insurance policy for private parties wishing to apply for a permit to use fish toxicants on lakes where the public has lawful access. The proposed change for part 6212.2900 could impact some private fish hatcheries because it increases the amount of insurance required. Part 6212.3000 as proposed allows the commissioner to cancel or terminate fish toxicant permits if permit conditions or the law are violated. Most requests for permits to apply fish toxicants come from private fish hatchery operators, most or all of which are small businesses.

Establishment of less stringent reporting requirements, less stringent schedules or deadlines for compliance or reporting requirements, consolidation or simplification of compliance or reporting requirements, and establishment of performance

standards to replace design or operational standards are not applicable to the proposed language in parts 6212.2900 and 6212.3000. The establishment of less stringent compliance or exemption from the requirements of the rule for small businesses are not appropriate because the potential for liability or environmental damage is not affected by the size of the business applying fish toxicants. If fish toxicants are misused, mortality of non-target aquatic organisms or hogs, environmental contamination, or perceived public health risks could result in significant legal claims, regardless of the size of the business. In fact, having sufficient insurance coverage is more important for small business as large businesses would be more likely to absorb a large legal claim without negative consequences to the continuing viability of the business. Providing for adequate insurance coverage is consistent with Minnesota Statutes, section 97C.051, subd. 1(a) and is necessary to insure that there is adequate financial reimbursement available for recovery of damages to the resource or the public.

The insurance requirement is expected to have minimal impact on private fish hatchery industry because the amount of insurance required would be covered by readily available commercial general liability insurance. Additionally, there are few private fish hatcheries which apply for fish toxicant permits. For example, in 1993 only three private fish hatchery operators applied for fish toxicant permits and in 1994 there have been no requests for fish toxicant permits from private fish hatcheries. Finally, the insurance requirement only applies when fish toxicants will be used on waters to which the public has access. If a private fish hatchery operator has exclusive control of all riparian land around a pond, insurance would not be required for a fish toxicant permit.

Parts 6254.0500 and 6254.0510 could impact small businesses involved with harvesting minnows for sale as bait. The requirements of the rule involve design specifications and operational standards for minnow trapping gear. The provisions were developed with input from minnow industry representatives to insure that specifications and standards were acceptable and would have a minimal impact on the industry.

The establishment of less stringent schedules or deadlines for compliance or reporting requirements and the consolidation or simplification of compliance or reporting requirements are not applicable to the proposed rule.

Establishment of less stringent compliance or exemption from the requirements of the rule would make the proposed rule ineffective, since most if not all minnow harvesters would be classified as small businesses. The proposed operational standards for minnow trapping gear are not substantially different from what has been in rule (and commissioner's order)

previously. These operational standards are necessary to prevent conflicts between minnow harvesters which could arise when two or more operators are working on the same water, to prevent mortality of target and non-target organisms, and to prevent excessive harvest and hindrance to navigation.

The design specifications for minnow trapping gear are new and are necessary to prevent unnecessary capture and mortality of non-target organisms. These specifications prevent gear which is inappropriate for minnow trapping from being used without hindering use of standard minnow trapping gear. Less stringent operational standards or design specifications for small businesses would defeat the purpose of the rule, while offering no real advantage to commercial minnow harvesters.

Less stringent reporting requirements for small businesses applies only to the requirement that commercial minnow harvesters notify the local area fisheries supervisor or conservation officer prior to setting hoop or trap nets. These nets are large and somewhat obtrusive and attract attention from the public. When such nets are used, department field offices often receive numerous inquiries from the public. Less stringent reporting requirements for small businesses would mean that these nets could usually be set with no notice to the department, resulting in otherwise avoidable public conflict. This reporting provision is simple, requires no writing, aids the department in answering public inquiries and avoids conflicts with the public regarding the activities of commercial minnow harvesters.

It is not feasible to replace operational and design standards with performance standards. Preventing mortality of target and non-target organisms, obstruction of waterways, and conflicts between users can be addressed only by operational and design standards. Activities of commercial minnow harvesters are extensive and cannot be consistently monitored. Conservation officers need to be able to quickly check minnow trapping gear and determine whether it is within established guidelines. It would be time consuming and inefficient to adequately monitor minnow trapping activities to determine if performance standards were being met (e.g. minimal numbers of non-target organisms killed, no problems with navigation on waterways, etc.). Performance standards would likely result in increased conflicts among minnow harvesters brought to the department's attention long after the problem and damage has occurred. As a result, performance standards are not a viable option.

Parts 6242.0500 through 6242.1200 will affect private game farms that raise and sell animals for profit. However, the reporting requirements and schedules are considered the least stringent necessary for enforcement and resource monitoring and to determine suitability for relicensing. All necessary forms are provided by the commissioner to simplify the process as much

as possible. Two levels of reporting are required to reduce the burden of record-keeping for game farms that raise upland game birds or waterfowl and that may deal with thousands of animals annually. Less stringent requirements on game farms could result in environmental damage to wild populations of animals and would be inconsistent with Minnesota Statutes , section 97B.105. The proposed requirements protect wildlife resources while imposing minimum burdens on individual game farms.

Part 6242.0200 will affect commercial shooting preserves. However, this proposed rule is permissive and is simply specifying in rule the species that have previously been allowed either as part of the licensing for commercial shooting preserves or by the statutory language that was in effect prior to the 1994 legislative session. The net result is no change for the operation of commercial shooting preserves.

#### **Review of Documents**

Sources cited in this document may be reviewed on work days between 8:00 a.m. and 4:30 p.m. in the Section of Fisheries or Wildlife office on the DNR headquarters, 500 Lafayette Road, St. Paul, Minnesota.

**Witnesses**

If these rules go to public hearing, the witnesses listed below may testify on behalf of the Department in support of the need and reasonableness of the rules. The witnesses will be available to answer questions about the development and content of the rules. The witnesses for the Department of Natural Resources include:

Steve Hirsch, Fisheries Program Manager  
DNR Section of Fisheries  
500 Lafayette Road  
St. Paul, MN 55155-4012  
(612) 296-0791

Ed Boggess, Wildlife Program Manager  
Dave Schad, Forest Wildlife Program Coordinator  
Jay McAninch, Deer Research Biologist  
DNR Section of Wildlife  
500 Lafayette Road  
St. Paul, MN 55155-4007  
(612) 296-3344

Mike Grupa, Administrative Enforcement Officer  
DNR Division of Enforcement  
500 Lafayette Road  
St. Paul, MN 55155-4047  
(612) 297-2447

Based on the foregoing, The Department's proposed rules are both necessary and reasonable.

Dated: January 19, 1995

Rodney W. Sando, Commissioner  
Department of Natural Resources

By: Gail Lewellan  
Gail Lewellan, Assistant Commissioner  
for Human Resources and Legal Affairs

## REFERENCES

Sousa, R.J., F.P. Meyer, R.A. Schnick 1991. Better fishing through management: How rotenone is used to help manage our fishery resources more effectively. United States Fish and Wildlife Service, Sport Fish Restoration Pamphlet, 23 pp.

# Office Memorandum

Department: of Finance

Date: December 5, 1994

To: Kathy A. Lewis, Attorney  
Mineral Leasing Manager  
Division of Minerals, DNR

From: Michelle Harper   
Budget Operations

Phone: 296-7838

Subject: Departmental Earnings Rate Change Response-Intensive Harvest Permit



Pursuant to provisions of Laws 1993, sec. 56, subd. 5 (M.S. 16A.1285), the Department of Finance has reviewed and approved the attached departmental earnings proposal submitted by the Department of Natural Resources on 11/7/94. If you have any questions or concerns, please call me at the above number.

cc Bruce Reddemann  
Lyle Mueller

DEPARTMENT: Natural Resources  
Division of Minerals

STATE OF MINNESOTA

## Office Memorandum

DATE: November 7, 1994

TO: Lyle Mueller  
Department of Finance

FROM: Kathy A. Lewis, Attorney *KAL*  
Mineral Leasing Manager

PHONE: 296-9564

SUBJECT: **Request for Chapter 14 Review and Comment**

The Department of Natural Resources will be adopting another set of permanent rules on various fish and wildlife issues. Only one of the rules in this set involves a fee. We have attached the Departmental Earnings report and we request review and comment by the Department of Finance.

The proposed rule that includes a fee is Minnesota Rules, part 6232.0200, subpart 5a, a copy of which is attached. The rule creates an intensive harvest permit, which authorizes hunters to take more than two deer during an annual season. The intensive harvest permit replaces the issuance of **multiple** management permits. There is no effective change in revenue.

The purpose of creating the new intensive harvest permit is to make the permit situation simpler for deer hunters. Under the current permanent rules, a deer hunter outside the Twin Cities area may receive a regular deer hunting license to take one deer, and one management permit to take another deer; while within the Twin Cities area, a deer hunter may receive a regular deer hunting license and up to four management permits.

Under the permanent rules as proposed, deer hunters within and outside the Twin Cities area may be eligible for the regular deer hunting license to take one deer and one management permit; and within the Twin Cities, deer hunters would also be eligible for an intensive harvest permit which may allow the taking of one, two or three additional deer.

If you need any further information, please let me know. Technical questions on the rules content may be directed to Ed Boggess (7-2072).

cc: E. Boggess



# Department of Finance Departmental Earnings: Reporting/Approval

## Part A: Explanation

<b>Earnings Title:</b> Intensive Harvest Permit	<b>Statutory Authority:</b> 97B.301, Subd. 4(3)	<b>Date:</b> 10-21-94
<b>Brief Description of Item:</b> "Intensive Harvest Permits" are permits issued to deer hunters which authorize them to take more than 2 deer during an annual season.		
<b>Earnings Type (check one):</b> 1. <input checked="" type="checkbox"/> Service/User    2. <input type="checkbox"/> Business/Industry Regulating    3. <input type="checkbox"/> Occupational Licensure 4. <input type="checkbox"/> Special Tax/Assessment    5. <input type="checkbox"/> Other (specify):		
<b>Submission Purpose (check one):</b> 1. <input checked="" type="checkbox"/> Chap. 14 Review and Comment    2. <input type="checkbox"/> Approval of Allowable Inflationary Adjustment 3. <input type="checkbox"/> Reporting of Agency Initiated Change in Departmental Earnings Rate 4. <input type="checkbox"/> Other (specify):		
<b>If reporting an agency initiated action (option 3 above), does agency have explicit authority to retain and spend receipts?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No <b>If yes, cite pertinent statutes:</b>		
<b>Impact of Proposed Change (change in unit rate, number of payees impacted, etc.):</b> <p>The proposed change simply creates a new name for deer management permits that are valid for taking deer in addition to the one allowed on a regular license and the one allowed on a regular management permit. The new terminology was applied to these permits to reduce the level of complexity and confusion associated with deer bag limits and what management permits could legally be used for.</p> <p>The intensive harvest permits function to replace multiple management permits that were issued in the past, and are sold for the same price as management permits (one-half the cost of a regular license). Therefore, there is no substantive effect on either earnings or expenditures.</p>		

**Department of Finance**  
**Departmental Earnings: Reporting/Approval (Cont.)**  
 (\$1,000,000 = 1,000)

SENT BY:

**Part B: Fiscal Detail**

APID: 31000:78-23	AID:		Rev. Code(s):		<input checked="" type="checkbox"/> Dedicated	<input type="checkbox"/> Non-Dedicated	<input type="checkbox"/> Both
Item	F.Y. 1991	F.Y. 1992	F.Y. 1993	F.Y. 1994 As Shown in Biennial Budget	F.Y. 1995 As Shown in Biennial Budget	F.Y. 1994 As Currently Proposed	F.Y. 1995 As Currently Proposed
Deer Management Permits	123	233	603	363	308	363	300
Intensive Harvest Permits (replace multiple deer management permits)	NA	NA	NA	NA	80	0	8
	<b>Expenditures:</b> NA -- see attached						
<b>Direct</b>							
<b>Indirect</b>							
<b>Total</b>							
<b>Current Deficit/Excess</b>							
<b>Accumulated Excess/Deficit*</b>							

0 - 0-94 - 11-12AM

DNR: REAL ESTATE: 301

As necessary, attach detailed schedule/listing of proposed changes in departmental earnings rates.

Agency Signature: *Lyle P. Mueller*

*Lyle P. Mueller* 12/5/94

\* F.Y. 1991 beginning accumulated balance to include amount of accumulated excess/deficit (if any) carried forward from F.Y. 1990

**Part B: Attachment**

**Expenditure data are not available because revenues are deposited into the game and fish fund and are not tracked individually. M.S. 97B.301, Subd. 4(3) authorizes sale of these permits for no more than the fee for a regular license. The half-price fee is based not on related expenditures, but on trying to encourage purchase of these permits to increase deer harvest where additional population management is needed.**