

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

IN THE MATTER OF PROPOSED ADOPTION OF
GAME AND FISH RULES

STATEMENT OF NEED AND REASONABLENESS
February 11, 1997

GENERAL PROVISIONS

I. INTRODUCTION

Purpose

The primary purpose of the game and fish rules is to preserve, protect, and propagate desirable species of wild animals while ensuring recreational opportunities for people who enjoy wildlife-related activities. The proposed rules, and amendments to existing rules, cover a variety of areas pertaining to game and fish including: state game refuges and wildlife management areas; controlled hunting zones; deer and bear licenses, permits, and tags; deer registration; deer and bear quota area boundaries; moose and elk license applications; rabbit limits; raccoon and red fox seasons; trapping regulations; goose season regulations; possession of bears by wildlife rehabilitators; commercial mussel, minnow, and fish harvest operations; seasons and limits for fish and snapping turtles; and provisions for aquatic management areas.

Notification to Persons and Classes of Persons Affected by the Proposed Rules

A request for comments was published in the State Register on August 5, 1996. This notice described the specific areas with which the proposed rules deal, the statutory authority for each of these areas, and the parties that could be affected by the proposed rules. The Department of Natural Resources (department) also provided additional notice to people who may be affected by the rules by sending the request for comments and additional information to a number of angling, hunting, and trapping groups and other organizations and individuals, and by publishing statewide news releases that described the proposed rule changes. The additional notice was summarized in a notice plan that was approved by the Office of Administrative Hearings.

Organizations and individuals contacted under the notice plan included: Minnesota Lakes Association; Nature Conservancy; Minnesota Sportfishing Congress; Trout Unlimited; Bass Federation; Smallmouth Alliance; several resort associations and chambers of commerce; the Minnesota Inland Commercial Fisherman's Association; the Minnesota Bait Dealers Association; commercial turtle harvesters; businesses that manufacture minnow traps; Commissioner of Trade and Economic Development; Minnesota Deer Hunters Association; Minnesota Waterfowl Association; Minnesota Trappers Association; Minnesota Bowhunters Inc; Minnesota State Archery Association; Ducks Unlimited; Minnesota Chapter of the Rocky Mountain Elk Foundation; Minnesota Chapter of the National Wild Turkey Federation; Minnesota Fish and Wildlife Legislative Alliance; and the Minnesota Wildlife Assistance Cooperative.

In addition, prior to publishing the request for comments the department sought extensive input on parts of the proposed rules that deal with Lake Superior and its tributaries, bass seasons, waterfowl, elk, rabbits, furbearers, and trapping. Input was received from the Lake Superior

Steelhead Association, Western Lake Superior Trolling Association, United Northern Sportsmen, Arrowhead Flyfishers, Izaak Walton League, North Shore Charter Captains, individual anglers, hunters, and trappers, fishing resort owners, chambers of commerce, and fishing guides. This included numerous public meetings at locations around the state and several statewide news releases.

As a result of the extensive outreach done by the department, a great deal of input was received regarding the proposed rule changes. Input that was sought prior to or during the request for comments period was used to help develop some of the proposed rule changes. The comments received are summarized as follows.

Snapping turtle harvest season: Seven responses were received regarding prohibition of harvest for snapping turtles during the egg-laying season. All responses were supportive, however, comments as to when the closure should start varied. One individual requested that the season not be closed until May 15 (instead of May 1); however, two other individuals felt that all of May and June should be closed to cover the entire nesting period.

Largemouth and smallmouth bass seasons: Fifty responses were received regarding the fall harvest closure for smallmouth bass. Of those, 45 were in support of the proposal, 4 were opposed, and 1 did not state support or opposition but requested that the closure start no earlier than September 15 if implemented. In addition, one of the responses in opposition to the proposal requested that the closure start no earlier than September 15 if implemented. However, twenty of those people who supported the harvest closure requested that it start earlier in September. Two comments were received that were opposed to starting the bass season on the Saturday of Memorial Day weekend (instead of the Saturday closest to May 29).

It should be noted that extensive input on bass seasons has been sought by the department for the past two years prior to publishing the request for comments on August 5, 1996. A notice of solicitation of outside opinion regarding fishing seasons for largemouth and smallmouth bass was published on April 17, 1995. Input was solicited from a large number of anglers and angling related interests on extensive changes in the bass seasons that included a spring and fall harvest closure for smallmouth bass and an early catch and release season for largemouth bass. Almost 200 responses were received and this input, along with input received during the request for comments period, was used to help formulate the proposed rule.

Brook trout season, possession limit, and size limit for Lake Superior and tributaries: Two responses were received, both of which favored catch and release only regulations for brook trout on Lake Superior and its tributaries. In addition, a number of organizations involved with Lake Superior issues provided input during the request for comments period to help formulate this proposal.

Rainbow trout (including steelhead) catch and release for Lake Superior and tributaries: Three comments were received, all of which favored catch and release only for wild steelhead on Lake Superior and its tributaries. A number of organizations involved with Lake Superior issues

had already provided input before the request for comments was published. This input was used to help formulate the proposal.

Salmon possession limits for Lake Superior and tributaries: There were four comments, three of which were in support of a reduced possession limit and one that was opposed. A number of organizations involved with Lake Superior issues had already provided input before the request for comments was published. This input was used to help formulate the proposal.

Size reduction for minnow traps: The department was considering amending existing rules to reduce the size of minnow traps that could be used by a person not licensed as a minnow dealer. This was not included in the proposed rules on the basis of negative input received from individual anglers that trap their own minnows and the lack of biological necessity at this time for the proposal.

Game refuges and wildlife management areas: One letter, received in response to the request for comments, recommended that the Department prohibit hunting of Canada geese on wildlife management areas. Two letters and petitions with 26 signatures were received recommending that the department prohibit all hunting and trapping on all state game refuges and national wildlife refuges. This input was considered in developing the rules. However, allowing hunting on wildlife management areas is statutorily mandated and allowing hunting in refuges is statutorily authorized. Elimination of all hunting and trapping on all state game refuges would be very far-reaching, has not been discussed publicly, and would more appropriately be addressed by legislation.

Waterfowl: Expanding the early September Canada goose season statewide was discussed at six public meetings held in February 1996 in various regions around the state. These meetings were accompanied by several statewide news releases listing proposed changes and soliciting public comment. Of the approximately 300 people who attended these meetings, 236 responded to a written questionnaire on expansion of the early September Canada goose season statewide. Of the 199 who expressed an opinion on this topic, 174 (87%) expressed support and 25 (13%) expressed opposition. Of people offering verbal comments at these same meetings, nine expressed support and three expressed opposition.

Two letters or phone calls were received on hunting of Canada geese, one requesting that hunting be allowed within 100 yards of water and one requesting that goose hunting be allowed in fields of freshly picked corn during the early season only. Current state and federal rules already allow hunting of geese in freshly harvested fields of corn. The department has in the past considered allowing hunting of geese near water during the early September season, but has decided to restrict it to provide areas of "refuge" to make hunting in the surrounding uplands more effective, to reduce disturbance to ducks using the wetlands, and to avoid conflicts with other recreational users of the water during early September.

A petition with 142 signatures was received opposing the round-up of Canada geese and donation to food shelves. The roundup of flightless geese in urban areas in the summer is

conducted under state and federal permits and is not a hunting provision that is a subject of the proposed rules.

Rabbits: The proposal to combine rabbit and hare limits was discussed at the same public meetings and in news releases as discussed above for waterfowl. Of the 139 people completing questionnaires who expressed an opinion on this topic, 118 (85%) expressed support and 21 (15%) expressed opposition. No phone calls or letters were received on this topic.

Furbearers and trapping: The proposals to allow use of traps capable of capturing more than one animal at a time; to allow a person to be accompanied by a dog while setting or tending traps, and to expand fox and raccoon seasons were discussed at the same public meetings and in news releases as discussed above for waterfowl and rabbits. Of the 177 people completing questionnaires who expressed an opinion on allowing accompaniment by a dog while trapping, 134 (76%) expressed support and 43 (24%) expressed opposition. Of the 175 people completing questionnaires who expressed an opinion on allowing traps capable of capturing more than one animal, 100 (57%) expressed support and 75 (43%) expressed opposition. Of the 210 people completing questionnaires who expressed an opinion on continuing the year around season for red fox and raccoon, 153 (73%) expressed support and 57 (27%) expressed opposition.

In response to the request for comments, six letters and three petitions (with a total of 75 signatures) were received recommending that the Department prohibit use of leghold and conibear traps. These comments were considered in the development of the rule. However, trapping is a statutorily authorized activity and these recommendations would more appropriately be addressed to the legislature.

One comment was received recommending allowing trappers to fill otter tags in the fall or the spring and opening the mink season later. These comments were considered in the development of the rule.

Elk and Moose: A series of individual meetings with organizations and landowners were held prior to a statewide round table meeting on the proposed elk season on June 3, 1996. Elk seasons for 1996 were promulgated by the expedited rule process and are not proposed for inclusion in this permanent rule because of the highly variable nature of potential elk populations and seasons from year to year. The provision of this rule dealing with elk landowner license application procedures was not specifically discussed in the meetings, but it is to fulfill statutory provisions for defining family members for purposes of this drawing and is proposed to be consistent with the procedure for moose applications.

Rehabilitation: Two letters were received supporting the inclusion of black bear as a species that could be possessed by a licensed wildlife rehabilitator; stating a preference for turning an orphaned, sick or injured animal over to a licensed "rehabber" rather than turning it over to the department or euthanizing it. The letters also recommended elimination of permits allowing the use of nonreleasable animals for scientific purposes. These comments were considered in the development of the proposed rule.

Additional notice on the proposed rules will be provided to persons or classes of persons who could be affected. Our notice plan involves sending a notice of intent to adopt rules with or without a public hearing to all of the groups mentioned on page 1 that were contacted under the notice plan for the request for comments, and will include additional persons who had input or expressed an interest during the request for comments period. News releases that detail the major parts of the rules will be released statewide.

Statutory Authority

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

<u>Rules Part</u>	<u>Minnesota Statutes, sections</u>
<u>6230.0200:</u>	97A.137
<u>6230.0400:</u>	97A.091, subd. 2
<u>6230.0500, 6230.0600, 6230.0800, and 6230.0900:</u>	97A.092
<u>6232.0300:</u>	97A.411, subd. 3; 97A.485, subd. 9; 97B.301, subd. 4; and 97B.311
<u>6232.0400:</u>	97A.535, subd. 2 and 2a
<u>6232.2800 and 6232.3000:</u>	97B.411
<u>6232.3800:</u>	97A.431, subd. 4
<u>6232.4500:</u>	97A.433, subd. 4
<u>6232.4700:</u>	97B.311 and 97B.411
<u>6234.0600:</u>	97B.605 and 97B.615
<u>6234.1200:</u>	97B.621
<u>6234.1300:</u>	97B.605
<u>6234.2200:</u>	97B.605; 97B.911; 97B.915; 97B.921; and 97B.925
<u>6234.2600:</u>	97B.901
<u>6240.0800, 6240.0850; 6240.1100; 6240.1200; 6240.1500; 6240.1600; 6240.1700 and 6240.1800:</u>	97B.803
<u>6240.1850:</u>	97A.091, subd. 2 and 97B.803
<u>6244.0410:</u>	97A.401, subd. 3
<u>6254.0400 (repeal):</u>	97C.505, subd. 1
<u>6256.0600:</u>	97C.605, subd. 3
<u>6258.0700:</u>	97C.701, subd. 1
<u>6260.1100:</u>	97C.811, subd. 3
<u>6262.0200:</u>	97A.045, subds. 1 and 2; 97C.005, subd. 3; 97C.401, subd. 1; 97C.415, subd. 2
<u>6262.0300:</u>	97A.045, subds. 1 and 2; 97C.005, subd. 3; 97C.401, subd. 1; 97C.415, subd. 2
<u>6264.0300</u>	97C.001, subd. 3
<u>6264.0400:</u>	97C.005, subd. 3
<u>6262.0500:</u>	97A.045, subd. 2; 97C.005, subd. 3
<u>6266.0100:</u>	97A.045, subd. 4
<u>6266.0400:</u>	97A.045, subd. 4
<u>6270:</u>	86A.06

II. REGULATORY ANALYSIS

Description of the Classes of Persons Affected by the Proposed Rules

The proposed rules would affect hunters and trappers in some wildlife refuges, wildlife management areas and controlled hunt zones. The changes proposed in this rule are for the most part the same as were in effect for the fall 1996 seasons through expedited rules and there has been no opposition from hunters and trappers.

The proposed rule changes for deer, bear, moose, and elk would affect deer, bear, moose and elk hunters. However, the proposed rules are to provide consistency with statutory changes, to provide clarification of existing rules, or to incorporate changes made by expedited emergency rule for the 1996 seasons into permanent rule.

Landowners and tenants in the northwest elk and moose range are affected by the procedures for landowner elk and moose applications. However, the change for moose is a technical correction to make the rule consistent with statute, and the change for elk is to provide a landowner/tenant family provision that is consistent with the moose license drawing process.

The proposed rules on rabbit and hare limits will affect rabbit and hare hunters. However, extensive comment was solicited on this provision and there has been no opposition from hunters.

The proposed rules on raccoon and red fox seasons will affect raccoon and fox hunters and trappers. However, the proposed rules are consistent with those imposed by statute in 1994-1996 and kept in force by expedited emergency rule in 1996.

The proposed regulations on multiple-catch traps, use of dogs while setting traps, and obtaining pelt possession tags will affect trappers, but these changes have the support of the Minnesota Trappers Association and public meeting attendees.

Changes to the goose hunting regulations will affect goose hunters, but all of these changes are consistent with what was publicly reviewed and put into place for the 1996 seasons by expedited emergency rule.

The changes to the wildlife rehabilitation rules will affect licensed wildlife rehabilitators by providing the additional option of possessing bear for rehabilitation. No opposition to this proposal has been expressed.

The proposed regulations will affect some nonhunting/nontrapping users of wildlife management areas and state game refuges who object to hunting and trapping activities. Three letters were received requesting partial or total closure of wildlife management areas, state game refuges and federal refuges to hunting and trapping. The proposed rule provides for closure of two wildlife management areas to hunting and/or trapping and provides for changes in hunting

restrictions in two state game refuges. State and federal wildlife areas are, for the most part, acquired and managed with funds provided by hunters and trappers and state and federal laws require that most of these areas be open to hunting and trapping when compatible. These areas are also open year-around for wildlife viewing and other wildlife-related activities.

The rules may affect commercial bait harvesters (6254.0400 - repealer), commercial mussel harvesters (6258.0700), and commercial fishing operators (6260.1100). However, the proposed rule changes regarding commercial fishing, mussel, and bait harvest operations are minor procedural changes and expected to have little if any impact on commercial operations.

The proposed snapping turtle harvest closure (6256.0600) may reduce the harvest of some commercial turtle trappers. A number of commercial turtle trappers were asked for input on this proposal and those that responded did not express concern for negative impacts on their business. A response was received after the request for comments period from a commercial fishing operator who also commercially harvests snapping turtles. This individual indicated that the proposed rule changes for snapping turtles could negatively impact his business.

The proposed bass season changes (fall harvest closure for smallmouth bass and Memorial Weekend bass opener; 6262.0200, subp. 1A) would affect anglers and angling related businesses. A large number of resorts, resort associations, chambers of commerce, and tourism associations have been asked over the past two years to provide input on potential bass season changes. Only a few have indicated that a fall harvest closure for smallmouth bass would negatively impact their business because they might lose fall business from anglers who want to keep smallmouth bass. However, since this proposal appears to have substantial support among anglers and could help maintain quality smallmouth bass populations, it should have a long term beneficial impact. In addition, the proposal to have the bass season open on Memorial Day weekend could benefit the same angling related businesses that could be affected by the fall smallmouth bass harvest closure.

The proposed fishing regulation changes for brook trout, rainbow trout (including steelhead), and salmon on Lake Superior and its tributaries (6262.0200, subp. 1B, 1C, and 1D and 6262.0300, subp. 6A and 6C) would affect anglers, commercial fishing charters, and other fishing related businesses on the North Shore. However, these proposals have been developed in concert with the various Lake Superior interest groups and have widespread support. No negative impacts to fishing related businesses are anticipated.

People who own or recreate on lakeshore may be affected by rules governing aquatic management areas (Chapter 6270). However, the impacts are expected to be minimal because the proposed rules will not result in major changes in the way these areas are currently used by the public.

Probable Costs to the Agency or Other Agencies from the Proposed Rules and any Anticipated Effects on State Revenues

The wildlife portions of the proposed rules will not result in additional costs to the department or other agencies. There is already extensive monitoring of the wildlife populations and enforcement of the rules for the species that would be affected by the proposed rules and no additional monitoring or enforcement is planned if the rules are adopted. Changes in license and tag application procedures and posting requirements will not create any workload beyond what is currently being done.

The proposed rule for aquatic management areas would entail costs for the department because of the requirement to post signs. The anticipated initial cost of posting signs at restricted and general use aquatic management areas would be approximately \$5,000. There would also be additional annual costs that would depend on the number of new aquatic management areas purchased and the amount of maintenance needed. The costs of posting and maintaining signs would come from the operating budget of the department's section of fisheries.

The other fisheries parts of the proposed rules will not result in costs to the department or other agencies. There is already extensive monitoring of the fish populations that would be affected by the proposed rules and no additional monitoring is planned if the rules are adopted.

There are no anticipated effects on state revenues from these rules.

Determination of Less Costly or Less Intrusive Methods for Achieving the Purpose of the Proposed Rules

For the wildlife management area closures, these areas were acquired with the condition that the listed closures would take place. The only less intrusive option would have been to not acquire these areas and that option would have precluded the benefits to wildlife management and other wildlife related recreational uses of having the areas in public ownership.

For state game refuges, the changes for the Lac qui Parle Refuge are clarifications of how the existing rules have been applied, and are no more intrusive than past practice. The only exception is in the authorization of fishing in the closed area, which is more liberal than past practice.

The changes for Nerstrand Woods Refuge are a liberalization and are not more intrusive than existing rule.

Controlled hunting zone regulations are a clarification of the time that the regulations are in effect and so are not more intrusive than current rule. The changes for Lac qui Parle controlled hunt zone reflect expanded state ownership within an existing zone.

License purchase and validation for deer represents another clarification and is not more intrusive than the rule as applied in past practice.

The change for retrieval of deer on wildlife management areas is a liberalization to correspond to the statutory change in shooting hours. The same is true for the change on quartering deer before registration.

Changes to the site tagging and license validation provisions for bear are to help enforce the season limits. Less intrusive options considered were to make no change or to require site tagging or license validation, but not both. The option in the proposed rule was selected because it provides the greatest assurance that bears will not be taken from the field untagged and because it provides consistency with requirements for deer.

There are currently a number of restricted and general use aquatic management areas with boundaries that are not marked for the public. The public needs to be able to distinguish between these two types of aquatic management areas because the permitted activities allowed on each would differ under the proposed rules. (See the rule-by-rule analysis for reasons why different types of aquatic management areas have been identified.)

The only ways to identify aquatic management areas for the public are with signs posted at boundaries or maps. Maps are useful, but they were rejected as a primary means of identification because the detail needed to show individual property lines along a lake or stream shore would make them difficult to produce and use. Signs provide the certainty needed for people trying to determine where aquatic management area boundaries are and what activities are permitted. If signs are not posted, the public becomes more vulnerable to trespassing charges and could unknowingly engage in activities that are prohibited in an aquatic management area. The department will ultimately be obligated to sign aquatic management areas regardless of whether the requirement is formalized in rule or not.

Several of the proposed rules on fishing regulations result in stricter and therefore more intrusive limits and seasons on fish and snapping turtles. However, it has long been recognized that harvest restrictions are necessary to provide a sustainable fisheries resource. The best option for reducing harvest and maintaining fish populations is, by definition, more intrusive than alternatives, because "less intrusive" proposals will usually not provide the necessary reductions in harvest. Examples of some of the less intrusive methods that were considered follow.

A shorter closed season for snapping turtle harvest was considered (mid-May through mid-June). This option may have protected a majority of nesting snapping turtles in much of the state. However, there is early and late nesting activity that would not be covered under this option (Oldfield and Moriarty 1994) and there is growing concern that intensive harvest of snapping turtles may not be sustainable (Obbard 1985; Congdon et al. 1994). As a result, a May-June harvest closure was considered to be the best option for providing necessary protection during the egg laying season.

Size limits and reduced possession limits were the less intrusive methods considered to protect smallmouth bass in the fall. These options were rejected because bag limit reductions are usually ineffective for protecting sport fisheries (Fox 1975; DNR file information) and size limits are difficult to apply effectively for most fish species statewide because of the variations in lakes and streams across the state. Another less intrusive option considered was to apply the fall harvest closure only on rivers. There are more data to support such a closure on rivers than there are on lakes. However, the department felt that a closure on both rivers and lakes was the best option because there is some information indicating that such a closure would provide necessary protection to lakes. In addition, applying the closure to lakes and rivers would avoid complexity in the laws and potential enforcement problems.

Several options for brook trout restrictions on Lake Superior and its tributaries were considered in concert with various Lake Superior interest groups. These included: 1) 20 inch minimum size limit and possession limit of one; 2) protected slot limit from 14 to 18 inches; 3) closed season from Labor Day to mid-April; and 4) year-round closed season. The 20 inch minimum size limit and possession limit of one, and closed season from Labor Day through mid-April were the options that were selected. These options protect most of the brook trout population, but allow the potential harvest of a trophy. The 14 to 18 inch protected slot limit would have been less intrusive, but was rejected because it would not provide protection for brook trout under 14 inches which constitute a large portion of the population. The year-round closed season was a more intrusive alternative that was rejected because it was more restrictive than necessary.

The main option considered for the catch and release (or no harvest) regulation for rainbow trout (including steelhead) on Lake Superior and its tributaries was no change, because there is already a 28 inch minimum size limit in place that is very restrictive and protects most of the population. However, this regulation, which was implemented in 1992, has not yet reversed the long term decline of Lake Superior rainbow trout. The no harvest option will provide the best opportunity to determine if the decline in rainbow trout can be reversed.

Description of Alternate Methods for Achieving the Purpose of the Proposed Rules

Many of the proposed wildlife rule changes are clarifications or conforming with statutory changes.

The primary alternatives to requiring site-tagging and license validation for bear would be to require site tagging or license validation, but not both. Either option alone would provide more assurance than currently exists that untagged bears will not be removed from the field, but the option in the proposed rule was selected because it provides a means for assuring compliance with tagging that can be checked in the field at the time the bear is being moved and that can be further corroborated at a later time by the information contained on the license validation. It also provides consistency with requirements for deer which are in place for the same reasons.

The proposed changes in rabbit and hare limits are to set limits that reflect prevailing

population levels and expectations of success, rather than to place any limitation on overall harvest during the course of the season. The changes also may help to a small degree to distribute harvest among harvesters or over a longer period of the season, but that was not a significant factor in the decision to pursue the proposal. The primary alternative would be to make no change in limits -- that would have no significant affect on overall rabbit and hare harvests and would not threaten conservation of these species. However, the option in the proposed rule was supported by hunters.

The primary alternative to a continuous season for red fox and raccoon would be to go to a more restrictive season and to allow red fox and raccoons causing damage to be taken during closed season by permit or by landowners without a permit as authorized in statute. Either approach would allow for taking of these species at times that they are causing problems, although the former option is less intrusive. Session law passed in 1994 legislatively imposed the continuous open season for these species for two years, signaling a strong legislative preference for that approach.

The provisions for allowing use of multiple-catch traps and dogs on traplines are both liberalizations from current rule. The only alternative method of accomplishing this would be to seek a statutory change.

The primary alternative methods for achieving the higher harvest objectives for resident geese of the early goose season rules would be to liberalize goose harvests during the regular season. However, federal migratory bird season frameworks currently do not allow for more liberalization during the regular season and the presence of migratory birds from Canada makes targeting of local birds much more difficult during the later regular seasons. Resident nesting goose populations are high and need management through higher harvests, whereas there are flyway-wide efforts to reduce harvest pressures on migrant Canada geese. By targeting seasons to early September the locally nesting geese can be harvested before the migrants begin to arrive.

The provision to allow licensed rehabilitators to possess bears is a liberalization of current rule.

The major alternatives to the seasons, size limits, and possession limits being applied to snapping turtles, smallmouth bass, and brook trout are: 1) quotas where a certain level of harvest is allowed after which all harvest activity is curtailed for the remainder of the season; and 2) limited entry where only a certain number of anglers or commercial harvesters are allowed to engage in harvest activities. These alternatives could achieve the purpose of the proposed rules. However, quotas and limited entry are not proposed because they are considered to be unnecessarily intrusive and would require more monitoring from the department to determine when harvest limits were reached.

Probable Costs of Complying with the Proposed Rules

The types of restrictions being proposed for hunting and trapping in game refuges will help to clarify allowable activities, but do not result in increased costs to the public. Changes in license and tagging issuance procedures will not result in increased costs to the public. Changes in harvest regulations and seasons for furbearers and geese do not result in increased costs for the public and in fact the liberalization of seasons and zones may enhance income of those selling hunting and trapping products and catering to these activities.

The types of restrictions being proposed for harvest of snapping turtles, smallmouth bass, and brook trout; rainbow trout (including steelhead), and salmon in Lake Superior do not result in increased costs for the public. The provisions for aquatic management areas will help to clarify allowable activities, but also do not result in increased costs to the public.

Assessment of Differences between the Proposed Rules and Existing Federal Regulations

The proposed wildlife rules cover areas that are not addressed by federal law, except for the portions relating to migratory birds (geese). The federal government maintains primary management authority for migratory birds which are protected under international treaty and which readily migrate across state and international borders. The state goose hunting regulations that are the subject of this rule are established within the allowable frameworks established by federal law and regulation. The federal government establishes the outside parameters within which the state can establish its specific seasons, zones, bag limits, and other restrictions. Therefore, the state regulations can be no more liberal than federal regulations, but can be more restrictive.

The proposed fisheries rules cover areas that are not addressed by federal law; therefore, this consideration is not applicable.

Regulatory, Licensure, or Other Charges in the Proposed Rules

The proposed rules do not involve any regulatory, permit, or license fees or any other charges to the public.

Proposed Rules Affect on Farming Operations

The proposed rules will not affect farming operations.

III. RULE-BY-RULE ANALYSIS

Scope

Areas covered by the proposed rules include the following:

- closing Sand Prairie and Pike Bay Wildlife Management Areas to hunting and/or trapping;
- opening and closing special hunting and fishing provisions in the following state game refuges: Lac qui Parle Game Refuge and Nerstrand Woods Game Refuge;
- clarifying and modifying requirements for controlled hunting zones, changing the description of the Lac qui Parle controlled hunt zone, and closing non-waterfowl hunting in the Orwell controlled hunt zone;
- clarifying purchase and validity of deer management and intensive harvest permits;
- making the allowable time for retrieval of deer in northwest Minnesota WMAs with an ATV or snowmobile consistent with the statutory change in shooting hours;
- making rules on deer registration consistent with the statutory change allowing quartering of deer prior to registration;
- modifying bear tagging provisions to allow a tyvek[®]-type seal and requiring tagging and validation of the license at the site of the kill;
- modifying the boundaries of bear quota area 41;
- clarifying that tenants as well as landowners qualify for moose licenses, as authorized by statute;
- defining eligible family members for landowner/tenant elk licenses consistent with statute and the provisions for moose;
- modifying some deer and bear registration block boundaries;
- providing for a combined limit of cottontail rabbit, jackrabbit, and snowshoe hare;
- opening the raccoon and red fox seasons continuously;
- allowing the use of traps capable of capturing more than one animal at a time;
- allowing a person to be accompanied by a dog while setting or tending traps;
- modifying the procedure for obtaining registered furbearer possession tags;
- modifying goose season areas, hunting seasons, and permit requirements;
- permitting bear as a species that may be possessed for rehabilitation.
- establishing a closed season for snapping turtles;
- modifying notification requirements of commercial mussel harvest operations;
- marking uncovered holes in the ice left by commercial fishing operators;
- largemouth and smallmouth bass season changes in inland waters;
- size limit, possession limit, and closed season for brook trout and splake in Lake Superior and its tributaries;
- catch and release for wild rainbow trout (including steelhead) in Lake Superior and its tributaries;
- removal of rule language regarding Atlantic salmon and rule language superseded by statute;
- reduction in salmon possession limits for Lake Superior and its tributaries;
- technical correction to general provisions for special management waters;

- clarification of fish possession limits for boundary waters with adjacent states;
- seasonal fishing closures for portions of two Minnesota-South Dakota boundary waters;
- establishment of provisions for aquatic management areas; and
- repeal of restrictions on minnow seining in Otter Creek in Mower County and the Zumbro River in Wabasha County.

6230.0200 SPECIAL PROVISIONS FOR WILDLIFE MANAGEMENT AREAS

Subp. 5. Areas closed to hunting and trapping. The purpose of the change to this subpart is to close the Sand Prairie Wildlife Management Area (WMA) in Sherburne County to hunting and trapping. Minn. Stat. sec. 97A.137, subd. 1 provides that WMAs are open to hunting (including trapping) and fishing unless closed by rule of the commissioner or by posting. This change is necessary because this WMA is a recent acquisition that included, as a condition of acquisition from the previous owner, that it be closed to these activities. This rule is reasonable because this area still provides other valuable wildlife management and recreation opportunities. It does not reduce the amount of WMA land in this county that is open to hunting below the two-thirds required to be open by statute (Minn. Stat. sec. 97A.135, subd. 1).

Subp. 10. Areas closed to trapping only. The purpose of the change to this subpart is to close the Pike Bay WMA in St. Louis County to trapping. This rule is necessary because this WMA is a recent acquisition that included, as a condition of acquisition from the previous owner, that it be closed to these activities. This rule is reasonable because this area still provides other valuable wildlife management and recreation opportunities. More than two-thirds of the WMA land in this county remains open to hunting and trapping as required by statute (Minn. Stat. sec. 97A.135, subd. 1)

6230.0400 SPECIAL PROVISIONS FOR STATE GAME REFUGES.

Subp. 21. Lac qui Parle Game Refuge, Chippewa and Lac qui Parle counties. The purpose of the changes to this subpart are to:

- Item A.) correct an erroneous cross reference and clarify when the remainder of the refuge is open to small game hunting;
- Item B) clarify the days that the Refuge is open to fishing; and
- Item C) clarify that trespass on Rosemoen Island is prohibited, except as specifically authorized.

The changes to Items A and B are necessary because the goose season has been split into two segments the past few years and this language was originally developed when the goose season was continuous, creating some ambiguities in interpretation. The changes are reasonable because they clarify the application of the regulation for those years when the goose season is split into more than one part, during the time that the season is closed between splits. Also, confusion currently exists and this language will make it clear what regulations are in effect before and after the goose season, as well as during any temporary closures within a split season.

The change to Item C is necessary because trespass, although generally prohibited, is authorized for specific purposes such as cooperative farming of food plots, public wildlife viewing days, and hunts for persons with disabilities. It is reasonable because the primary purpose of the non-entry provision is to reduce disturbance to geese, and that purpose can be maintained and managed by how and when access is authorized.

Subp. 31. **Nerstrand Woods Game Refuge, Rice county.** The purpose of the change to this subpart is to separate out and make no change to that part of the refuge that is within the Nerstrand Big Woods State Park and the Prairie Creek Woods Scientific and Natural Area (SNA) for purposes of deer hunting, and to open the remainder of the refuge to archery and muzzleloader deer hunting during the respective seasons. Minn. Stat. sec. 97A.091 provides that refuges are closed to hunting except as opened by the commissioner. The rule is necessary because deer populations in this refuge have increased to the point that more restrictive regulations on harvest outside of the Park and SNA are no longer necessary. It is reasonable because it provides for an allowable harvest level of deer, while streamlining the process for hunting by allowing archery and muzzleloader deer harvest during established seasons without the necessity for hunters to first submit an application and enter a drawing for a permit.

6230.0500 GENERAL REGULATIONS FOR CONTROLLED HUNTING ZONES.

The purpose of the change to this part is to clarify that controlled hunt regulations are in effect only during the open seasons for taking geese in the zone in which the controlled hunt is located, or when the zone is posted. It is necessary because the current language is unclear about when the regulations apply. It is reasonable because it is consistent with how the current language has been interpreted and applied, and because hunters need to know when the regulations are in effect in order to be able to comply.

6230.0600 DESCRIPTIONS OF CONTROLLED HUNTING ZONES.

Subp. 3. **Lac qui Parle Zone, Chippewa, Swift, Big Stone, and Lac qui Parle counties.** The purpose of the change to this subpart is to add a 40 acre parcel to the Lac qui Parle controlled hunt zone. It is necessary because this parcel was recently acquired and added to the Wildlife Management Area (WMA), but is not included in the current permanent rule description of the controlled hunt zone. It is reasonable because this area is now state-owned WMA land adjacent to the rest of the WMA controlled hunt zone.

Subp. 5. **Roseau River Zone, Roseau county.** The purpose of the change to this subpart is to clarify that the Roseau River controlled hunt zone is as described and posted. The rule is necessary to delineate the area included in the controlled hunt zone and to allow flexibility for when the zone is in effect. It is reasonable because if there is an early or late season or other need related to concerns of neighboring landowners, the local manager has the flexibility to post all or a portion of the zone for different seasons.

Subp. 7. **Talcot Lake Zone, Cottonwood county.** The purpose of the change to this

subpart is to clarify that the Talcot Lake controlled hunt zone is as described and posted. The rule is necessary to delineate the area included in the controlled hunt zone and to allow flexibility for when the zone is in effect. It is reasonable because if there is an early or late season or other need related to concerns of neighboring landowners, the local manager has the flexibility to post all or a portion of the zone as necessary.

6230.0800 THIEF LAKE (LATE) SPECIAL PROVISIONS.

Subp. 5. **Limitation on number of shells possessed.** The purpose of the change to this subpart is to limit persons hunting waterfowl in the controlled hunt zone to only six shells per day. It is necessary to discourage excessive shooting by hunters in the controlled hunt zone. It is reasonable because it is a clarification that is consistent with the way the rule has been applied in the past and with the rules for the early part of the season.

6230.0900 ORWELL SPECIAL PROVISIONS.

Subp. 1. **Time period for special provisions.** The purpose of the change to this subpart is to change the time period that the Orwell special provisions are in effect from during the regular goose season to during any migratory waterfowl season. This change is necessary to make it clear that waterfowl hunting is allowed during any open waterfowl season. It is reasonable because it allows for waterfowl hunting during any goose or duck seasons that may be open, rather than just the regular goose season.

Subp. 6. **Hunting prohibited.** The purpose of the change to this subpart is to prohibit hunting, other than waterfowl hunting, in the Orwell controlled hunting zone. It is necessary because this area is within a sanctuary area that is otherwise closed to reduce disturbance to wildlife. It is reasonable because the controlled hunting zone regulations confine disturbance to the vicinity of the designated stations and only during the goose season, limiting it elsewhere in the sanctuary and at other times.

6232.0300 GENERAL RESTRICTIONS FOR TAKING DEER.

Subp. 6. **License purchase and validation.** The purpose of the change to this subpart is to allow purchase of deer management permits and intensive harvest permits (which allow hunters to take more than one deer) throughout the open deer season, and to clarify that deer management permits are not valid until the hunter's deer hunting license is valid. It is necessary to help ensure that management permits and intensive harvest permits will be used by hunters to the maximum extent possible to harvest deer so that harvest objectives can be met, and to ensure that hunters will not use management permits to get around the required wait for licenses purchased after the start of the season. It is reasonable because hunters may not know whether they need to purchase permits to take additional deer until regular licenses are filled during the season. Requiring them to guess the number of additional tags they will need prior to the season would be an unreasonable restriction, and could result in lower deer harvest as hunters would be reluctant to purchase the extra permits without knowing whether they have a need for them.

Subp. 7. **All-terrain vehicle or snowmobile use by licensed hunters.** The purpose of the change to this subpart is to allow use of all-terrain vehicles and snowmobiles on wildlife management areas in some parts of northwestern Minnesota after the close of shooting hours, which were extended from sunset to one-half hour after sunset by the 1995 legislature (Minn. Stat. sec. 97B.705). It is necessary to prevent use of these vehicles during the one-half hour of legal hunting between sunset and one-half hour after sunset, so that use of these vehicles do not disturb hunting opportunities of other hunters. It is reasonable because the original intent of the subpart was to restrict use of the vehicles to after legal shooting hours, and those shooting hours were changed by the legislature.

6232.0400 REGISTRATION OF DEER.

Subp.4. **General provisions for registration of deer.** The purpose of the change to this subpart is to bring the subpart into compliance with a statute change enacted by the 1996 legislature (Minn. Stat. sec. 97A.535) that allows for deer to be quartered prior to registration. It is necessary to clarify that deer may be quartered before being registered and before a possession tag is affixed. It is reasonable because such quartering is specifically allowed by the statute change.

6232.2800 GENERAL REGULATIONS FOR TAKING BEAR

Subp. 4. **Tagging and license validation.** The purpose of the change in the subpart is to allow for use of tags other than a locking seal for bear hunters, and to require that bear hunting licenses be validated at the site of the kill. It is necessary because new types of tags have been developed for bear hunting licenses that do not have a locking mechanism, because validation can help enforcement officers tie a harvested bear to a license and prevent switching of tags, and to ease registration requirements by having hunters record pertinent information on the registration slip prior to registration. It is reasonable because the new non-locking tags are cheaper and more convenient for hunters, because validation is easy for hunters to comply with, and is also already required for deer hunters.

6232.3000 BEAR QUOTA AREAS

Subp. 8. **Bear Quota Area 41.** The purpose of the change to this subpart is to modify the boundary between Bear Permit Area 41, where the number of permits is limited by quota, and the No-Quota bear hunting area, where there is no limit on the number of licenses that can be issued. It is necessary to allow for better control of high bear populations in the portion of Bear Permit Area 41 that is being changed to No-Quota status. It is reasonable because the area being changed to No-Quota status is more heavily agricultural than the remaining portions of Area 41 and landowners there are suffering from excessive damage from bears. No-Quota status will allow hunters to purchase licenses over-the-counter to assist landowners in harvesting bears that are causing damage, and potentially will allow for higher hunter densities in this small area without compromising bear populations in the remainder of Permit Area 41.

6232.3800 APPLICATION PROCEDURES FOR A MOOSE LICENSE.

Subpart 1. **General procedures.** The purpose of the change to this subpart is to allow certain family members of tenants that qualify for a separate landowner drawing for moose licenses to also qualify for the landowner drawing. It is necessary and reasonable because the change will bring this provision into compliance with statute (Minn. Stat. sec. 97A.431).

6232.4500 ELK LICENSE APPLICATION PROCEDURE.

Subpart 1. **General provisions.** The purpose of the change to this subpart is to allow family members of landowners and tenants that qualify for a special landowner drawing to also qualify for the drawing. It is necessary and reasonable because the change will bring this provision into compliance with statute (Minn. Stat. sec. 97A.433).

6232.4700 DEER AND BEAR REGISTRATION BLOCKS.

Subp. 75. **Registration Block 227, Subp. 75a; Registration Block 228, Subp. 77. Registration Block 236, Subp. 91. Registration Block 337, Subp. 92. Registration Block 338, Subp. 93. Registration Block 339, Subp. 152. Registration Block 462, Subp. 155. Registration Block 465.**

The purpose of the changes to subparts 75-77 and 91-93 is to modify boundaries of deer registration blocks in the Twin Cities metropolitan area. The changes are necessary so that the boundaries of the blocks follow roads, rivers, and other easily recognizable boundaries so that hunters can comply with harvest restrictions tied to these blocks. This is reasonable because antlerless permits are issued based on these block boundaries, and hunters need to be able to easily determine whether they are in the correct block when hunting.

The purpose of the changes to subparts 152 and 155 is to modify boundaries of deer registration blocks in deer hunting Zone 4 to correct an error in the rule that has not corresponded with the map provided to hunters for many years. The changes are necessary so that the boundaries of the blocks in the rules follow boundaries corresponding to those on maps provided to hunters so that they can comply with harvest restrictions tied to these blocks. This is reasonable because antlerless permits are issued based on these block boundaries, hunters need to be able to easily determine whether they are in the correct block when hunting, and the restriction requiring hunters to use their permits only in the appropriate management blocks needs to be enforceable.

6234.0600 TAKING JACKRABBITS, COTTONTAIL RABBITS, AND SNOWSHOE HARES.

Subp. 2. **Bag Limits.** The purpose of the change to this subpart is to combine the limits for cottontail rabbit, jackrabbit, and snowshoe hare. Formerly the jackrabbit and snowshoe hare possession limits were the same as the daily limit, while the cottontail possession limit was double the daily limit. It is necessary because limits were previously combined only for

jackrabbits and snowshoe hares, with a separate limit for cottontail rabbits. The rule is reasonable because the new limits will have no population impact, and still provide adequate numbers for hunter harvest given the population status of these species. The new limits simplify the regulations by treating all members of the rabbit family the same and by making the possession limit consistently double the daily limit.

6234.1200 TAKING RACCOON.

Subpart 1. **Open Season.** The purpose of this change is to continue the year-round raccoon season established by the 1994 legislature for 1994-1996. It is necessary to simplify nuisance animal control activities, and reasonable because it will not affect population status.

6234.1300 TAKING RED FOX AND GRAY FOX.

Subpart 1. **Open season.** The purpose of this change is to continue the year-round red fox season established by the 1994 legislature for 1994-1996. It is necessary to simplify nuisance animal control activities, and reasonable because it will not affect population status.

6234.2200 USE OF TRAPS.

Subp. 8. **Multiple-catch traps.** The purpose of the repeal of this subpart is to eliminate the rule restriction prohibiting the use of multiple-catch traps. It is necessary to simplify regulations by eliminating an unnecessary restriction. Although there may have been a perceived need for this regulation at one time, there is no longer a need for such a regulation to either limit total harvest or to distribute harvest among takers. It is reasonable because the most common use of multiple-catch traps will be submersion cage traps for muskrats, populations of which are little affected by trapping (Novak et al. 1987). This change should also improve welfare of trapped animals by increasing the use of killing devices (versus those that hold animals alive). It is also reasonable because Minnesota is one of only two states that we are aware of that has such a restriction and we do not have unique conditions that require it here.

Subp. 11. Use of dogs while setting or tending traps.

The purpose of the repeal of this subpart is to eliminate the restriction against trappers being accompanied by a dog while tending or setting traps. It is necessary to simplify regulations by eliminating an unnecessary restriction. Although there may have been a need for this regulation at one time to help enforce prevention of use of dogs for activities such as digging mink out of their dens, there is no longer a need for this restriction because digging mink from dens or other animals from dens is already prohibited by Minn. Stat. sec. 97B.095. It is reasonable because it will not affect furbearer population status and because, to our knowledge no other state has such a restriction and there are not needs unique to Minnesota that require it here.

6234.2600 PELT TAGGING AND REGISTRATION

Subpart 1. **Possession tag application.** The purpose of this change is to improve customer service for application and distribution of site tags by providing alternate sites for obtaining tags on a local level. It is necessary and reasonable because it will simplify the process for customers, and reduce workloads for Department staff. Counties are already selling the licenses and can distribute the tags with little additional effort.

6240.0800 WEST CENTRAL GOOSE ZONE PERMIT PROCEDURES.

The purpose of the repeal of this part is to eliminate the West Central Goose Zone permit. It is necessary because this permit is no longer needed to identify hunters and finance surveys to document harvest of Canada geese in this zone. It is reasonable because other surveys are now available to collect any necessary data and because this change merely makes permanent the elimination of this permit that was discontinued by the expedited rule process in 1995.

6240.0850 TAKING GEESE AND BRANT IN THE WEST GOOSE ZONE.

The purpose of the change to this part is to modify the description of the West Goose Zone to delete that portion of the state between state trunk highway 60 and US highway 71. It is necessary to provide for additional harvest of locally-breeding Canada geese during the regular season in the area subtracted from the West Zone. It is reasonable because this small change will not affect the efficacy of the West Zone which is designed to restrict Canada goose harvest in that portion of the state contributing 68% (including the West Central and Lac qui Parle zones) of the migrant Eastern Prairie Population (EPP) harvest as determined from band return data, and because there is a need to harvest more resident geese in this portion of the state where such geese are causing damage.

6240.1100 TAKING GEESE IN REMAINDER OF STATE

The purpose of the change to this part is to extend the open goose season in the "remainder of the state" from 50 days to 70 days. This is necessary to expand the harvest of geese in this zone because of increasing locally breeding goose populations and it is reasonable because it conforms with the more liberal framework option offered by the federal government in this zone. The rule will allow for a higher harvest of geese without adversely affecting migrant EPP populations.

6240.1200 SPECIAL PROVISIONS ON TAKING GEESE DURING EARLY SEASONS.

Subp. 2. **Taking on public roads and rights-of-way.** The purpose of the change to this subpart is to prohibit taking Canada geese on public roads and their rights-of-way in the Twin Cities Metro Zone and in goose refuges open to goose hunting. It is necessary to prevent "firing line" situations and hazards to motorists in areas where large numbers of geese congregate and/or vehicle traffic is heavy. It is reasonable because, although Minnesota statutes authorize

shooting at small game from roads or rights-of-way, they also authorize the commissioner to restrict such shooting involving migratory waterfowl when necessary (Minn. Stat. sec. subd. 1).

6240.1500 TAKING GEESE IN TWIN CITIES METRO CANADA GOOSE ZONE.

Subpart 1. **Open season.** The purposes of the changes to this subpart are to change the season dates in this zone from the 10-day period beginning the first Saturday in September to the period from the first Saturday through September 15 and to clarify the name of the zone as the Twin Cities Metro (rather than Metropolitan) Zone. The change to the season is necessary to comply with new federal framework requirements for this season that allow the season to extend only as late as September 15 without extensive monitoring and reporting requirements to the U.S. Fish and Wildlife Service. It is reasonable because it is within federal guidelines and maximizes opportunities for achieving a higher hunting harvest of geese in this zone. The change to the zone name is necessary and reasonable because it is referred to by both names in different contexts and this is an attempt to standardize on one name.

Subp. 2. **Daily limits.** The purpose of the change to this subpart is to raise the limit from four geese per day to five. It is necessary to maximize the harvest opportunity for geese within this zone because of increasing populations and is reasonable because it is the maximum allowed by federal guidelines for this zone. In addition, Canada goose populations are high in this zone and further harvest is justified to help address nuisance and damage concerns.

Subp. 3. **Zone description.** The purpose of the change to this part is to standardize the zone name as described above in subp. 2.

6240.1600 TAKING GEESE IN THE FOUR GOOSE ZONE.

Subpart 1. **Open season.** The purpose of the change to this subpart is to change the season dates in this zone from the 10-day period beginning the first Saturday in September to the period from the first Saturday through September 15. The change to the season is necessary to comply with new federal framework requirements for this season that allow the season to extend only as late as September 15 without extensive monitoring and reporting requirements to the U.S. Fish and Wildlife Service. It is reasonable because it is within federal guidelines and increases opportunities for achieving a higher hunting harvest of geese in this zone.

Subp. 2. **Daily limits.** The purpose of the change to this subpart is to raise the limit from two geese per day to four. It is necessary to increase the harvest opportunity for geese within this zone because of increasing populations and nuisance and damage problems. It is reasonable because, although not the maximum allowed by federal guidelines, it is a high limit for an area with much better hunting access and lower overall goose densities than are found in the Twin Cities Metro Zone (which has a limit of five geese per day) and will help to attract more hunting pressure to this zone than would likely be the case with a lower limit..

Subp. 3. **Zone description.** The purpose of the change to this part is to describe the

Four Goose Zone. It is necessary to provide a zone where increased limits will allow a greater opportunity for harvest of goose populations that have increased and are causing damage to agricultural crops and nuisance problems. It is reasonable for hunters to be able to know where zone boundaries are for purposes of the open season and limit.

Subp. 4. **Closed Area.** The purpose of this subpart is to provide for a closed area within the Four Goose Zone. It is necessary because this area is a major concentration area for nesting and migrant Canada geese. It is reasonable because this represents only a small portion of the zone. September seasons are new to much of this area of the state, and it is prudent to take a conservative approach on hunting in key goose concentration areas.

6240.1700 TAKING GEESE IN TWO GOOSE ZONE.

Subpart 1. **Open season.** The purpose of the changes to this subpart are to change the season dates in this zone from the 10-day period beginning the first Saturday in September to the period from the first Saturday through September 15 and to establish the Two Goose Zone. The change to the season is necessary to comply with new federal framework requirements for this season that allow the season to extend only as late as September 15 without extensive monitoring and reporting requirements to the U.S. Fish and Wildlife Service. It is reasonable because it is within federal guidelines and maximizes opportunities for achieving a higher hunting harvest of geese in this zone.

Subp. 3. **Zone description.** The purpose of the change to this part is to describe the Two Goose Zone. It is necessary to provide a zone where lower limits will allow an opportunity for harvest of goose populations but that are at lower levels and cause less damage problems than those in metro or agricultural areas. It is reasonable for hunters to be able to know where zone boundaries are for purposes of the open season and limit.

6240.1800 EARLY GOOSE HUNT APPLICATION AND PERMIT

Subpart 1. **Application process.** The purposes of the changes to this subpart are to clarify the cross references to the modified seasons in the other portions of the proposed rule and to clarify application requirements. They are necessary and reasonable because they are technical corrections to clarify the rule.

Subp. 2. **Application fee.** The purpose of the change to this subpart is to reduce the permit requirements and make it clear that only one permit is required for the early season hunt. Previously the hunts were geographically separated and experimental, so a separate permit was required for each. These changes are necessary and reasonable because they reduce the permit requirements for hunters but still provide that participants defray costs of conducting the hunts.

Subp. 3. **Possession of permit required.** The purpose of the change to this subpart is to make it clear that the hunters need only one validated permit, not a permit for each zone. It is necessary and reasonable for the reasons cited above for subp. 2.

6240.1850 GAME REFUGES OPEN TO THE TAKING OF GEESE.

The purposes of the changes to this part are to: 1) remove the Fox Lake and St. James Game Refuges from those refuges open during the early season; 2) to increase the season length for the Douglas County, Otter Tail County, and Sauk Rapids-Rice Goose Refuges and make it clear that they are open during any goose season in which they are located; and 3) to provide for standardized dates that the Fox Lake and St. James Game Refuges are open during the regular season. The changes are necessary: 1) because Fox Lake and St. James Refuges do not need the additional early season hunting pressure to obtain an adequate harvest; 2) to make the season in the remaining refuges listed in this part consistent with the season in the zone in which they are located; and 3) to establish the dates that the Fox Lake and St. James Game Refuges are open. The changes are reasonable because they provide for goose harvests consistent with management needs in these areas and are consistent with the statutory authority of the commissioner to open refuges for hunting (Minn. Stat. sec. 97A.091).

6244.0410 PERMIT CLASSES

Subp. 3. **General class.** and Subp. 4. **Master class.** The purpose of the changes to these subparts is to allow possession of bear by permitted wildlife rehabilitators. This new department rule governing the rehabilitation of orphaned, sick and injured wild animals became effective on July 1, 1996 (Minn. Rules, Chap. 6244). The rule established criteria for issuing permits to individuals, and to individuals in the name of institutions, to provide for the care, treatment, and release of orphaned and debilitated wild animals.

Possession of bears for rehabilitation is not currently allowed under the rule. Bears were excluded from rehabilitation because in the past the department has had poor success with placing orphaned bear cubs with rehabilitators in the state. Bear cubs are quite difficult to rehabilitate, and, with few exceptions, successful release of cubs to the wild has been problematic because as bear cubs mature they need special holding facilities and are easily habituated to humans. Unless extreme cautions are taken in raising cubs to insure that they have only very minimal exposure to humans, upon release they will have little fear of people, are prone to cause nuisance and damage problems, and often end up being killed, while at the same time giving all bears a bad image to some members of the public.

At the time the existing rules were written, it was believed that there were sufficient options for placing orphaned cubs with educational or scientific institutions on a permanent basis. It is now necessary to consider an expansion to allowing wildlife rehabilitators to possess bears because such outlets are not as readily available as originally thought. Additionally, despite past failures at attempts to rehabilitate bear cubs in Minnesota, the department has been in contact with western states which have experienced a reasonable measure of success in rehabilitating bear cubs for release when the proper facilities and procedures are used. Based on the experience of these states, the department believes it is reasonable to work with selected experienced Minnesota licensed rehabilitators to develop

appropriate facilities and procedures for rehabilitation of bear cubs for eventual release.

6254.0200 WATERS OPEN TO TAKING MINNOWS

This is a technical amendment to delete the reference to part 6254.0400. It is reasonable and necessary to make this change because part 6254.0400 is being repealed by this set of rules.

6254.0400 WATERS WITH RESTRICTIONS ON EQUIPMENT USED FOR TAKING MINNOWS

The proposed rule changes would repeal this part which prohibits taking minnows with seines in Otter Creek in Mower County and the Zumbro River in Wabasha County. This is necessary because there is no reason to continue the restrictions against seines. Otter Creek and the Zumbro River are known to have populations of slender madtoms and crystal darters, respectively, which are both on Minnesota's list of special concern species. At one time, the restriction against the use of seines was thought to be necessary to protect these species; however, it is no longer considered to be necessary.

6256.0600 CLOSED SEASON FOR SNAPPING TURTLES

Commercially licensed turtle harvesters report that at least 3,000 to 5,000 snapping turtles are harvested in Minnesota each year. This estimate is certainly low because it is based on voluntary reporting and does not include recreational harvest. The proposed rule would prohibit the harvest of snapping turtles during May and June, which coincides with their egg-laying period in Minnesota (Oldfield and Moriarty 1994).

This closure is necessary and reasonable for two reasons. First, published studies (Obbard 1985; Brooks et al. 1988; Congdon et al. 1994) indicate that high levels of commercial harvest of snapping turtles are not sustainable, especially when the removal of adult females is permitted. In the wild, a very high percentage of newly hatched snapping turtles die as juveniles (Congdon et al. 1994), and relatively few individuals survive to reproductive age. To offset this high juvenile mortality, as well as natural adult mortality and harvest, it is necessary to insure that as many females as possible lay clutches each year. By eliminating the harvest of gravid (egg-bearing) females, the proposed rule is a necessary and reasonable first step toward creating a sustainable harvest of snapping turtles in Minnesota. Secondly, as currently regulated (Minn. Stat., sec. 97C.611), persons can legally harvest gravid females, collect the eggs carried by the females, incubate the eggs artificially, and raise and sell snapping turtles under the minimum size of 10 inches in shell width. As a result, it is difficult for a conservation officer to determine if an undersized snapping turtle in someone's possession has been taken illegally. This proposal is necessary and reasonable to allow enforcement of the current size limit.

6258.0700 PERMITTEE HARVEST OPERATIONS

Subpart 1. **Notice of harvest operations.** The current rule language requires mussel

harvest permittees to notify the area fisheries office or conservation officer 24 hours in advance of mussel harvest operations. However, mandatory notification is causing problems for harvesters because harvest activity involves large numbers of people and occurs over a relatively short time frame. As a result, harvesters have had difficulty providing notification because voice mail services quickly become filled. The proposed rule is reasonable because it allows the commissioner to require prior notification only when necessary to ensure compliance with permit conditions. Notification may be necessary when: 1) permittees have been issued warning citations for violations related to mussel harvest; 2) permittees have been issued a citation for a violation related to mussel harvest but conviction is pending and the mussel harvest permit is still valid; and 3) permittees are suspected of being in violation of mussel harvest regulations.

6262.1100 MARKING UNCOVERED HOLES IN ICE

The proposed change would clarify the marking requirements for uncovered holes left in the ice as a result of commercial fishing operations. The current language references Minn. Stat., Chap. 86B for marking requirements for uncovered holes. However, there are no marking requirements listed in this statute. The proposed language references part 6110.1500, subp. 5f, which does have marking requirements that are applicable to uncovered holes in the ice. The requirements are that signs must be a two-inch wide orange-colored band forming an upright diamond at least 14 inches in height with a printed statement of the source of danger. These signs must line the perimeter of the ice hazard at intervals not exceeding 75 feet and must be at least 48 inches above the ice. These requirements are necessary for public safety reasons as unmarked holes in the ice can result in serious injury or death if a person should fall or drive into one.

6262.0200 FISHING REGULATIONS FOR INLAND WATERS

Subpart 1. **General inland fishing regulations.** The proposed language in this subpart includes changes in largemouth and smallmouth bass seasons, and changes in possession limits, seasons, and size limits for brook trout, rainbow trout (including steelhead), and salmon.

A. Largemouth and smallmouth bass. The proposal in item A. (2) would change the opening season for largemouth bass and smallmouth bass in waters west and south of U.S. Highway 53 to the Saturday of Memorial Day weekend instead of the Saturday closest to May 29, beginning in 1998. The current opener has caused confusion with the angling public because it often, but not always, coincides with Memorial Day weekend. For example, the Saturday closest to May 29 is the same as the Saturday of Memorial Day weekend for 10 of the first 15 years that the proposed rule would be in effect (1998 through 2012). For the other years, the current opening season would be a week later than the proposed opening season. The proposed change is reasonable because it is easier for anglers to remember and plan for. In addition, the proposed change is not great enough to cause concerns for additional bass harvest. For example, if the change was implemented in 1998 as proposed, it would add only 35 days to the bass season over the next 15 years which is an average of 2.3 days per year. It is reasonable to start the new opening season in 1998, because the 1997 opening season has already been announced and a

change would cause confusion for anglers.

The proposed change in item A. (3) would prohibit harvest of smallmouth bass from the second Monday in September through the end of the season which is the third Sunday in February. This change is necessary to protect fall concentrations of smallmouth bass that are vulnerable to angler over-harvest. Studies covering a range of waters have indicated that smallmouth bass move to and concentrate in deep water areas in the fall because it is their preferred coldwater habitat (Marod 1994; Langhurst and Schoenike 1990; Paragamian 1981; Munther 1970; Webster 1954). Most of this documentation is from rivers rather than lakes, although the Webster study did document fall concentrations in Cayuga Lake in New York. In addition, there is a great deal of anecdotal information from anglers and angling publications that reinforces the scientific documentation on lakes and rivers (for examples refer to *In Fisherman* articles: Consolidated Smallmouths, Book 102, September-October-November, 1991; A Final Fling with Late Fall Smallmouths, Book 34, December-January, 1980; Understanding Finicky Fall Smallmouths, Book 33, October-November, 1980). Scientific studies, angler reports, and direct observation indicate that fall concentrations of smallmouth bass occur in Minnesota waters such as the Mississippi River, St. Croix River, Root River, and Zumbro River, as well as lakes in the northern part of the state.

In Minnesota, the best information has been collected on the Mississippi River between Little Falls and Brainerd (Bublitz 1995; Marod 1994; Bublitz 1994). These studies showed that: 1) smallmouth bass formed large fall concentrations above the dam at Little Falls and below the dam at Brainerd; 2) smallmouth bass were vulnerable to fall angling and anglers were targeting them; and 3) almost 90% of the smallmouth bass taken by anglers in the fall were voluntarily released. During the 1993 season, 42% of the estimated boat fishing pressure occurred from August 25 through October 19 in the Little Falls area and 70% of the estimated season catch of smallmouth bass in the Little Falls area occurred during this same time period. Smallmouth bass catch rates peaked in September, indicating that anglers were most effective during this month. In 1995, angling pressure in the Little Falls area again peaked during September.

It is necessary to protect fall concentrations of smallmouth bass from angler over-harvest, even if voluntary release is preventing over-harvest in some areas. Fall fishing is becoming more popular statewide and it is likely that increased numbers of anglers will take advantage of fall smallmouth bass fishing. With this increasing popularity, more harvest oriented anglers could be recruited to the fishery which would quickly cause depletion of the smallmouth bass resource. It is reasonable to give smallmouth bass protection before this happens, because it would be much more difficult to attempt the proposed change after a smallmouth bass harvest tradition develops in the fall. Further, there is a great deal of precedence for protecting fish that are concentrated from harvest. The department has historically protected spring spawning concentrations of fish by closing seasons. The proposal is reasonable because it allows anglers to continue to enjoy catch and release smallmouth bass fishing in the fall without risking depletion of the smallmouth bass resource.

B. Brown trout. The language changes in item B (1) are not substantive. The

proposed changes for brook and rainbow trout necessitated covering these species (and splake) separately in subpart 1, items C and D. To address this structural change in the rule, language covering brook and rainbow trout and splake was removed from item B (1) and (2), except that language indicating that the possession limits for brook and rainbow trout and splake are still in aggregate with brown trout and splake added. There are also some technical wording changes in the single hook requirement to make it less ambiguous and the list of waters is included in item B (2) to clarify that tributaries to the St. Louis River are included. The language in item B (3) was stricken and moved to part 6262.0500, because that part of the rule contains the other inland waters that are closed to the taking of fish.

C. Brook trout and splake. The proposed changes for brook trout and splake below the posted boundaries on tributaries to Lake Superior are to: 1) implement a 20 inch minimum size limit; 2) reduce the possession limit to one; and 3) close the season after Labor Day until the Saturday nearest April 15 (6262.0300, subp. 6A contains the same change for Lake Superior). The posted boundaries generally coincide with the barrier to upstream migration for fish from Lake Superior. The proposed change is designed to protect anadromous or "coaster" brook trout which utilize both Lake Superior and North Shore streams at different life stages. These changes are necessary because coaster brook trout populations in Lake Superior have been severely reduced due to stream habitat changes, introductions of other trout and salmon species, and angler harvest. The 20 inch minimum size limit protects most Lake Superior brook trout because few reach sizes greater than 20 inches. The closed season prevents harvest during the fall spawning period when brook trout enter the streams and are more vulnerable to angling. Carlton County streams and the Knife River above Lake County Road 9 have been excluded from the proposed changes. This is reasonable because these areas harbor primarily stream resident brook trout populations that have not suffered population declines as coasters have.

Coaster brook trout populations in Lake Superior have been very low for a long time and it is unlikely that the proposed changes will have much affect on what anglers can take from Lake Superior and its tributaries. However, there is growing interest in reestablishing coasters and restoration efforts by the Grand Portage Indian Band and the province of Ontario are currently underway. As a result, the proposed changes are necessary to give these restoration efforts the best chance of succeeding.

Splake are a hatchery produced hybrid between a female lake trout and a male brook trout that are extremely difficult to tell apart from a pure brook trout. Although Minnesota does not stock splake in Lake Superior, the state of Wisconsin does. Splake are seldom caught in Minnesota waters of Lake Superior. However, it is necessary to have the same protective regulations for splake as for brook trout so that anglers do not keep brook trout thinking or claiming that they are splake. This is reasonable because it has no discernable impact on anglers.

D. Rainbow trout (including steelhead). The proposed change would require catch and release for all unclipped (wild) rainbow trout below the posted boundaries on tributaries to Lake Superior (6262.0300, subp. 6A contains the same change for Lake Superior). The posted boundaries generally coincide with the barrier to upstream migration for fish from Lake

Superior. The proposed change is designed to protect anadromous or "steelhead" rainbow trout which utilize both Lake Superior and North Shore streams at different life stages. Department data indicate that steelhead in Lake Superior have declined over the past two decades. The current rule for unclipped steelhead was adopted in 1992 and provides for a 28 inch minimum size limit and a possession limit of one. This rule protects most of the steelhead population from harvest. However, the decline in steelhead has not shown signs of being reversed since the rule was adopted. The proposed changes are necessary to determine if a complete elimination of harvest can help steelhead recover. The proposed changes are reasonable because they continue to allow catch and release fishing for steelhead.

F. Chinook, coho, Atlantic, and pink salmon. The proposed change would reduce the possession limit for salmon from 10 to 5 below the posted boundaries on tributaries to Lake Superior (6262.0300, subp. 6C contains the same change for Lake Superior). Originally, the salmon fishery in Lake Superior was supported largely by stocking and high limits were set to allow maximum utilization of stocked fish. However, natural reproduction now sustains a significant part of the fishery and the bag limit of 10 appears excessive, especially given the large size that salmon can attain. Data show that catching a limit of 10 salmon in Lake Superior is extremely rare; therefore, the proposed change is not expected to have much impact on salmon populations or salmon anglers. However, the proposed change is reasonable because it helps to promote the value of the naturalized salmon fishery without negatively impacting anglers or angling related businesses. In addition, a winter fishery for coho salmon has recently developed in Lake Superior. There are no data for the winter fishery; however, observations suggest that angler success is good and anglers have become concerned that the possession limit of 10 may lead to over-harvest during the winter fishery.

The proposed change also includes elimination of language that specifies different seasons for Atlantic salmon in inland waters. This language was originally adopted to make the season for Atlantic salmon and stream trout the same in Square Lake in Washington County. The proposed change is reasonable because the Atlantic salmon program was discontinued in Square Lake and this language has become unnecessary.

6262.0300 FISHING REGULATIONS FOR LAKE SUPERIOR

Subp. 6. **Lake Superior open season, daily, and possession limits.** Subps. 6A and 6C contain proposed changes for brook trout, splake, rainbow trout (including steelhead), and salmon that are identical to the changes discussed for Lake Superior tributaries below the posted boundaries in part 6262.0200, subp. 1, items C, D, and F. Lake Superior and its tributaries below the posted boundaries function as one fisheries system; therefore, the need and reasonableness discussion for the proposed changes on the tributaries may be referred to for the proposed changes in this subpart.

6264.0300 DESIGNATED EXPERIMENTAL WATERS

Subp. 23. **Square Lake experimental regulations.** The proposed changes eliminate

unnecessary language regarding salmon in Square Lake and language that has been replaced by Minn. Stat., sec. 97C.305, subd. 1. The discussion on why the Atlantic salmon season language is no longer necessary in part 6262.0200, subp. 1, item F also applies to the proposal to eliminate language pertaining to salmon under this subpart. Current language in this subpart also requires that a trout stamp is needed to possess trout or salmon on Square Lake. This was made a statewide requirement by Minn. Stat., sec. 97C.305, subd. 1. As a result, it is reasonable to eliminate the redundant language from this part.

6264.0400 DESIGNATED SPECIAL MANAGEMENT WATERS

Subpart 1. **General provisions.** The proposed change is a minor technical correction of a typographical error.

6262.0500 WATERS CLOSED TO THE TAKING OF FISH

Subp. 2. **Waters seasonally closed to taking fish.** The added language in this subpart is not a substantive change. The language was moved from part 6262.0200, subp. 1, item B to this part, because this part contains the other seasonal fishing closures for inland waters.

6266.0100 GENERAL REGULATIONS FOR TAKING FISH ON BOUNDARY WATERS WITH ADJACENT STATES

Subp. 2. **Possession limits on boundary waters.** The proposed change in this subpart is to delete language requiring persons angling from fish houses to comply with the law of the state they are licensed in. This change is necessary because the stricken language has been superseded by Minn. Stat., sec. 97C.355, subd. 2.

6266.0400 TAKING OF FISH ON MINNESOTA-SOUTH DAKOTA BOUNDARY WATERS

Subp. 13. **Waters seasonally closed to taking fish.** The proposed changes would close fishing during March and April in 500 foot sections of Mud Lake and the Bois de Sioux River below the Reservation and White Rock dams, respectively. Game fish, particularly walleyes, congregate in these areas during March and April. Although the season is closed during March and April for walleye, sauger, northern pike, smallmouth bass, and largemouth bass, there are numbers of people fishing these areas at that time because the season for other species is open. The proposed change is necessary because conservation officers have found it difficult to enforce the closed season when anglers are fishing over concentrations of game fish. The proposed change is reasonable because anglers are only being restricted from two short stretches of water where game fish are congregated.

CHAPTER 6270 - AQUATIC MANAGEMENT AREAS

The department's section of fisheries has been acquiring fee title and easement parcels

for a number of years, but has never promulgated rules to cover these areas. Historically, most fisheries acquisition had been for trout stream easements that provided some habitat protection but were primarily for angler and fisheries management access. In 1992, legislation was passed that broadened the scope of fisheries acquisition by authorizing the department to purchase aquatic management areas to protect critical shoreline habitats and provide angler access (Minn. Stat., sec. 86A.05, subd. 14). The legislation also made aquatic management areas part of the outdoor recreation system. Minn. Stat., sec. 86A.06 requires the commissioner to promulgate rules for each unit of the outdoor recreation system.

As fisheries acquisition has become more diverse, the need for rules covering aquatic management areas has increased. The two biggest needs for an aquatic management area rule relate to: 1) potential sellers and local government units who want to know what kinds of activities will be allowed on the land if they sell it to the state; and 2) ensuring that the values the aquatic management area was purchased for are not compromised by incompatible recreational activities.

6270.0100 DEFINITIONS

The proposed rule establishes three different classifications for aquatic management areas. These three classifications distinguish between aquatic management areas that are purchased as easements versus those that are purchased as fee title, and also distinguish between those fee title purchases where hunting and trapping is and is not allowed. The definitions for the various classifications are necessary and reasonable for understanding the substantive portions of the rule.

6270.0200 GENERAL PROVISIONS FOR THE USE OF AQUATIC MANAGEMENT AREAS

Subpart 1. Posting of aquatic management areas. This subpart requires the commissioner to post signs at general and restricted use aquatic management area access points. It is necessary for the public to be able to distinguish between these two types of aquatic management areas because hunting and trapping would be allowed only on general use aquatic management areas.

Subpart 2. Permitted activities for restricted use and general use aquatic management areas. This subpart describes activities that are permitted on general use and restricted use aquatic management areas. The permitted activities are angling, non-motorized travel, and wildlife observation. These are reasonable activities to allow because they will not compromise the values for which aquatic management areas are acquired. Language allowing other unspecified uses that are not inconsistent with statutory intent is necessary to give the public the flexibility to engage in other compatible activities. This provision does not put the public in the position of having to guess what is permitted and prohibited, because subp. 5 lists those activities that are generally prohibited and requires the commissioner to identify other prohibited activities on signs posted at access points.

Subp. 3. Permitted activities for general use aquatic management areas. This subpart allows hunting and trapping on general use aquatic management areas. It is necessary to specify those aquatic management areas where hunting and trapping will be allowed, because these activities will not be compatible in every aquatic management area. Factors that determine the compatibility of hunting and trapping include the size of the parcel and the proximity to residential areas, livestock, and other developments. For example, small parcels that include a narrow strip of land next to the water and are surrounded by homes or cabins would be unsuitable for hunting and trapping. On the other hand, large parcels in undeveloped areas, or small parcels adjacent to large tracts of other public land would likely be suitable for hunting and trapping.

Subp. 4. Easement aquatic management areas. This subpart allows for angler access on easement aquatic management areas. Easement aquatic management areas differ from general and restricted use aquatic management areas in that the landowner has sold an easement to the department to allow angler and management access only. These parcels are typically narrow corridors along trout streams. This language is necessary to clarify that easement aquatic management areas are for angling only unless otherwise specified on signs posted at access points. This language is reasonable because it is consistent with the purchase agreements between the commissioner and landowners who have sold easements.

Subp. 5. Prohibited activities on restricted and general use aquatic management areas. This subpart lists the activities that are prohibited on restricted and general use aquatic management areas. The activities listed are: use of motorized vehicles; leaving vehicles, trailers, boats, or tents overnight; building fires; destruction of plants and property; target and indiscriminate shooting; construction of structures including permanent stands for taking or observing wildlife; use of livestock; and disposal of garbage or other materials. This language is necessary to prevent activities that are incompatible with the values for which aquatic management areas are established. Unauthorized use of motorized vehicles can damage aquatic habitat by destroying vegetation and causing erosion. Other activities such as camping overnight, leaving vehicles, boats, etc overnight, building fires, target shooting, building structures, and using livestock can negatively affect the natural character of the area if they are not properly regulated. The proposed language is reasonable because it allows for most of these activities (except building structures) in designated areas or under permit from the commissioner. By requiring these activities to take place only in designated areas or under special permits, the commissioner can ensure that they are properly regulated and do not compromise the values for which aquatic management areas are established.

This subpart also requires the commissioner to identify any other prohibited activities by posting signs at access points. This language is necessary to give the commissioner flexibility to prohibit other incompatible activities that may not be listed in this rule and to notify the public of other prohibited activities.

Subp. 6. Department operations excluded. This subpart excludes agents of the commissioner and law enforcement officers from the provisions of this part when in the

performance of their duties. This language is necessary because operations to improve aquatic management areas (such as trout stream habitat improvement) as well as law enforcement activities may require the commissioner to temporarily engage in some prohibited activities (such as use of motorized vehicles).

OTHER CONSIDERATIONS

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 at department headquarters, 500 Lafayette Road, St. Paul, Minnesota.

Witnesses

If these rules go to public hearing, the witnesses 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
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Dave Schad, Forest Wildlife Program Coordinator
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Mike DonCarlos, Furbearer/Wildlife Damage Program Coordinator
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Richard Baker, Heritage Zoologist
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Carol Hall, Minnesota County Biological Survey Herpetologist
DNR, Section of Ecological Services
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John Moriarty, Wildlife Specialist
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Based on the foregoing, the department's proposed rules are both necessary and reasonable.

Rodney W. Sando, Commissioner
Department of Natural Resources

By:



Gail Lewellan, Assistant Commissioner
for Human Resources and Affair

Dated:

2/12/97

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