

*Rule #5*

**STATE OF MINNESOTA**  
**DEPARTMENT OF NATURAL RESOURCES**  
**DIVISION OF FISH AND WILDLIFE AND ENFORCEMENT**

**IN THE MATTER OF PROPOSED ADOPTION OF**  
**FISH AND AQUATIC WILDLIFE RULES**

**STATEMENT OF NEED AND REASONABLENESS**  
**February 2, 1998**

## **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 amendments to existing rules cover a variety of areas pertaining to fish and aquatic wildlife including: seasons, method of take, and limits for roughfish; sport gill netting for whitefish and ciscoes; record keeping requirements for commercial activities; definition of frogs and size limits for leopard frogs and bullfrogs; recreational and commercial harvest of mussels; commercial fishing; possession limits and size limits for stream trout in Lake Superior and its tributaries; catch and release seasons for trout streams in southeast Minnesota; closing selected waters to the taking of fish; fishing regulations on Pool 3 of the Mississippi River; muskellunge size limits on Minnesota-Wisconsin boundary waters; and walleye-sauger possession limit on the Rainy River.

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

A request for comments was published in the State Register on October 20, 1997. This notice described the specific areas the proposed rules deal with, the statutory authority for each of these areas, and the parties that could be affected by the proposed rules. The 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 groups and other organizations and individuals, and by publishing a statewide news release that described major parts of the proposed rule changes. Information on the changes being considered for southeast Minnesota trout streams, Lake Superior and its tributaries, Pool 3 of the Mississippi River, and the Rainy River were posted on the DNR's web site with instructions on how to provide comments. Two public input meetings were also held in the Baudette-International Falls area to get input on the proposal to reduce the walleye-sauger possession limits for the early spring fishery on the Rainy River. In addition, 316 anglers were asked about the proposal during a spring creel survey in 1997. For the changes being considered on southeast Minnesota trout streams, a questionnaire on the proposed changes was developed and sent to anglers who were likely to have fished for trout on southeast Minnesota streams in 1997. Questionnaires were completed and returned by 381 individuals.

Organizations and individuals contacted included: Minnesota Sportfishing Congress; Trout Unlimited; Minnesota Bass Federation; Minnesota Inland Commercial Fisherman's Association; Minnesota Bait Dealers Association; several commercial turtle harvesters; Muskies Incorporated; Minnesota Trout Association; Fisheries Funding and Trout and Salmon Stamp Citizen Oversight Committees; Lake Superior North Shore Commercial Fish Association; Izaak

Walton League; Save Lake Superior Association; United Northern Sportsman; West Lake Superior Trolling Association; Lake Superior Steelhead Association; TROUT; Lake County Recreation Board; Baudette-Lake of the Woods Chamber of Commerce; International Falls Area Chamber of Commerce; Rainy Lake Sportsmans Club; and several state legislators.

As a result of the extensive outreach done by the department, a great deal of input was received regarding the proposed rule changes. The comments received are summarized as follows.

Sport gill netting for whitefish: One comment was received in favor of the proposed changes in whitefish netting for Big Turtle Lake.

Defining frogs: Three comments were received, all in favor of defining frogs.

Prohibiting recreational harvest of live mussels: One comment was received in opposition to the proposed change to prohibit the recreational harvest of live mussels.

Fishing Regulation Changes on Lake Superior and its tributaries: Seven comments were received. Opinions varied on the changes being considered. In general, there was good support to have catch and release only for rainbow trout on Lake Superior tributaries above the posted boundaries, to reduce the possession limit for brown trout over 16 inches from three to one on Lake Superior and its tributaries below the posted boundaries, and to have a continuous fishing closure on two marked areas of the Knife River. There was opposition to removing the aggregate limits for stream trout on Lake Superior and its tributaries and increasing the possession limit for brook trout from five to ten on the St. Louis River and its tributaries above the Fond du Lac Dam. The changes that triggered opposition were not included in the proposed rule.

Southeast Minnesota Trout Stream Regulations: The rule changes being considered for southeast Minnesota trout streams included a two week catch and release season for trout from April 1 to the current trout opener (Saturday nearest April 15), catch and release only for trout during the last two weeks of the regular season (September 15 through September 30), and a protected slot limit for brown trout from 12 to 16 inches for the part of the season when harvest is allowed. A total of 60 comments and one petition were received regarding the rule changes. Thirty four were opposed to all changes, 24 were in favor of the changes, and 2 favored some parts of the proposal and opposed others. The petition was opposed to the changes. Trout Unlimited and the Minnesota Trout Association supported the entire proposal. The questionnaires referenced earlier showed more support than opposition for the catch and release parts of the proposal, but more opposition than support for the protected slot limit. The protected slot limit was not included in the proposed rule.

Pool 3 Mississippi River fishing regulations: Four comments were received, all in favor of the proposed change to make fishing regulations the same on the entire length of Pool 3.

Muskellunge Size Limit on Minnesota-Wisconsin Boundary Waters: Three comments were received, all in favor of increasing the minimum size limit for muskellunge from 36 to 40 inches on the Minnesota-Wisconsin boundary waters.

Walleye-sauger Possession Limit on Rainy River: Eight comments were received. Five supported the proposal to reduce the possession limit for walleye and sauger from six to two during the early spring fishery. Two individuals felt the proposal did not go far enough and that the possession limit should be zero or the spring fishery should be closed. One individual was opposed to any changes and included a petition and other comments that included 115 people who were also opposed to any changes. Nineteen people attended the two public meetings in the Baudette-International Falls area and 26 people provided written comments after the public meetings. Support and opposition from the public meetings and subsequent written comments were evenly split. Of the 316 people interviewed during the 1997 spring creel survey on the Rainy River, 54% were in favor of the proposal.

Turtle harvest: Nine comments were received and opinions varied considerably. The Department has decided not to include any changes for turtle harvesting in the proposed rule.

Fishing contests: One comment was received with recommendations on how to better manage fishing contests. The Department has decided not to include any changes for fishing contests in 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 previously mentioned groups who had input or expressed an interest during the request for comments period. We will also notify individuals who commented during the request for comments period and indicated that they wanted to be kept informed of the rule changes as they proceeded. News releases that detail the major parts of the rule 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>
6254.0600	97C.505, subd. 1
6256.0050	97C.601, subd. 6
6256.0200	97C.601, subd. 6
6256.0500	97A.045, subd. 2; 97C.605, subd. 3
6258.0100	97C.701, subd. 1
6258.0300	97C.701, subd. 1
6258.0400	97C.701, subd. 1
6258.0800	97C.701, subd. 1
6260.0300	97C.041; 97C.345, subd. 5; 97C.811, subd. 3

6260.1700	97A.045, subd. 4
6260.1800	97A.045, subd. 4
6260.2400	97C.815, subd. 1
6262.0200	97C.005, subd. 3; 97C.401, subd. 1
6262.0300	97C.005, subd. 3; 97C.401, subd. 1
6262.0500	97C.005, subd. 3; 97C.041; 97C.395, subd. 1; 97C.811, subd. 3
6262.0600	97C.345, subd. 5; 97C.375; 97C.381
6262.0650	97C.345, subd. 5; 97C.375; 97C.381
6262.0800	97C.345, subd. 5; 97C.805, subds. 1 and 2
6262.3050	97C.311, subd. 2
6266.0500	97A.045, subd. 4
6266.0600	97A.045, subd. 4
6266.0700	97A.045, subd. 4

## **II. REGULATORY ANALYSIS**

### **Description of the Classes of Persons Affected by the Proposed Rules**

The proposed rule changes may affect minnow dealers (6254.0600), commercial turtle trappers (6256.0500), commercial mussel harvesters (6258.0400 and 6258.0800), commercial charter boat operators on Lake Superior (6262.3050), and commercial fishing operators (6260.1700, 6260.1800, 6260.2400 and 6266.0600). However, the proposed rule changes regarding these commercial operations are minor and expected to have little if any impact.

The proposed changes in 6262.0800 would affect people who sport gill net for whitefish and ciscoes. The changes are relatively minor and affect primarily the timing of seasons. One of the changes will provide additional recreational opportunity by adding a lake to the list of lakes where sport gill netting can occur.

The proposed changes in 6262.0200, 6262.0300, 6262.0500, 6266.0500, and 6266.0700 would affect anglers and angling related businesses to varying degrees. The proposed changes for Lake Superior and its tributaries (6262.0200, 6262.0300, and 6262.0500) are minor and not expected to have a major impact on anglers or angling related businesses. The proposal for an early catch and release season on southeast Minnesota trout streams (6262.0200) would provide additional recreational opportunity which could positively impact angling related businesses. The proposal to have catch and release only during the last two weeks of the current season on southeast Minnesota trout streams (6262.0200) could result in a slight reduction in angling activity, but is not expected to have a significant impact on anglers or angling related businesses. The proposed changes on the inland portion of Pool 3 of the Mississippi River (6262.0200) would result in a continuous fishing season which would provide additional angling opportunity and could positively impact angling related businesses. The proposed fish harvest restrictions for Ida Lake, Loon Lake, and the Otter Tail River (6262.0500) are not expected to have a significant impact on anglers and angling related businesses. The proposed change to increase the muskellunge size limit to 40 inches on the Minnesota-Wisconsin boundary waters (6266.0500) is also not expected to have a significant impact on anglers or angling related businesses. The proposed change to reduce the possession limit for walleye and sauger to two during the spring fishery on the Rainy River (6266.0700) may reduce angling pressure which could have a negative impact on some angling related businesses in that area.

### **Probable Costs to the Agency or Other Agencies from the Proposed Rules**

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. The proposed rules are not anticipated to have any effects on state revenues.

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

Some of the proposed rules result in stricter and therefore more intrusive limits on fish and mussels. In particular, the proposed rule would prohibit the recreational harvest of live mussels (6258.0100 and 6258.0300) and reduce the possession limit for walleye and sauger in the Rainy River from six to two during the spring fishery (6266.0700). Restricting harvest of live mussels to common species was considered as an alternative to banning all harvest of live mussels. This option was rejected because it is difficult to distinguish between different species of freshwater mussels and few people have the expertise to do it. Therefore, it is not reasonable to expect that most people can distinguish between species of mussels that are threatened and endangered versus those that are common. Lesser reductions in the possession limit for walleye and sauger were also considered, but were rejected because it was felt they would not meet the objective of reducing fishing pressure and associated crowding during the spring fishery on the Rainy River.

The other changes in the proposed rules that have more restrictive limits on fish are minor and will be relatively unobtrusive to anglers. For example, the proposal to reduce the possession limit for brown trout in Lake Superior and its tributaries below the posted boundary from three over 16 inches to one over 16 inches will have little impact because brown trout are uncommon in Lake Superior and few anglers catch more than one over 16 inches. Similarly, the proposal to change the 16 inch minimum size limit to catch and release only for rainbow trout in Lake Superior tributaries above the posted boundaries will have little impact on anglers, because few rainbow trout exceed 16 inches in those stream reaches. The proposal to have catch and release only for trout in southeast Minnesota streams during the last two weeks of September will have some impact on anglers, but it is expected to be minimal because most of the trout harvest in those streams occurs earlier in the season (various DNR file information and reports). The proposal to increase the minimum size limit for muskellunge from 36 inches to 40 inches will have little impact on anglers, because most muskellunge in the affected size range are voluntarily released.

The proposed change in 6262.3050 is less intrusive than existing language because it provides for less stringent penalties when Lake Superior fish guides fail to submit reports.

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

The major alternatives to size limits and possession limits being applied to fish and mussels are: 1) quotas where a certain level of harvest is allowed after which all harvest activity is curtailed for the remainder of the season; 2) limited entry where only a certain number of anglers or commercial harvesters are allowed to engage in harvest activities; and 3) closed seasons (an alternative considered for the Rainy River spring fishery). 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. A closed season for the spring fishery on the Rainy River was not proposed because it would be unnecessarily obtrusive and would eliminate recreational angling opportunity during that time period.

### **Probable Costs of Complying with the Proposed Rules**

The types of restrictions being proposed for harvest of fish and mussels do not result in increased costs for the public. The changes in reporting requirements do not create the need for new or expanded reports, but only clarify when reports have to be received by the DNR. The changes in seasons for mussels and fish do not require new or additional permit or license fees for people engaged in harvest of those species. The changes in lakes included in commercial fishing areas also do not require new or additional license fees for licensed commercial fishing operators.

### **Assessment of Differences between the Proposed Rules and Existing Federal Regulations**

The proposed 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. Thus, Minn. Stat., sec. 16A.1285 does not apply.

### **Proposed Rules Affect on Farming Operations**

The proposed rules will not affect farming operations.

*DESCRIPTION of How Anglers Considered + Impacted.*



### III. RULE-BY-RULE ANALYSIS

#### Scope

Areas covered by the proposed rules include the following:

- reporting for commercial minnow dealers
- definition of frogs
- size limits for leopard frogs and bullfrogs
- reporting for commercial turtle sellers
- prohibiting recreational harvest of live mussels
- increasing minimum size limit of commercially harvested three ridge mussels from 2 3/4 inches to 3 inches
- reporting for commercial mussel harvesters
- adding hoop nets and fyke nets to the allowable gear for commercial fishing permits
- reporting for commercial fishing operators on Lake of the Woods
- reporting for commercial fishing operators on Lake Superior
- additions and deletions of lakes in inland commercial fishing areas 28 and 33
- reducing possession limit for brown trout in Lake Superior and its tributaries below the posted boundaries from three over 16 inches to one over 16 inches
- an early catch and release season for trout with barbless hooks only in southeast Minnesota streams from April 1 to the Saturday nearest April 15
- catch and release only for trout with barbless hooks only in southeast Minnesota streams from September 15 to September 30
- catch and release only for rainbow trout in Lake Superior tributaries above the posted boundaries
- making fishing regulations on the inland portion of Pool 3 of the Mississippi River the same as the boundary water portion of Pool 3
- continuous fishing closures on two marked areas of the Knife River
- closing Ida and Loon lakes to the possession of largemouth bass and northern pike until March 1, 2000
- closing the Otter Tail River to the possession of smallmouth bass until March 1, 2008
- clarifying of seasons and methods for taking rough fish
- clarifying of possession limits for rough fish taken by harpooning, archery, and dip nets
- sport gill netting season changes on Upper Red Lake, Big Turtle Lake, and North Long Lake
- reporting for Lake Superior fish guides
- changing the muskellunge size limit from 36 inches to 40 inches on the Minnesota-Wisconsin boundary waters
- clarifying reporting requirements for commercial fishing operators on Minnesota-Wisconsin boundary waters
- reducing the aggregate possession limit for walleye and sauger on the Rainy River from six to two during the spring fishery

## **6254.0600 REQUIREMENTS TO HOLD AND MOVE MORE THAN 24 DOZEN MINNOWS**

Subp. 5. **Required reporting.** The proposed change in this part would clarify the responsibility of commercial minnow dealers to provide reports within existing time lines. The need and reasonableness of the proposed change has been documented in the section under part 6262.3050. The proposed changes under this subpart are reasonable because the deadline for receipt of the reports has been moved two weeks from February 1 to February 15.

## **6256.0050 DEFINITION OF FROGS**

The proposed change would provide a definition for frogs that includes species that are native to Minnesota or species that are native to surrounding areas that could survive in Minnesota. Currently there is no definition of frogs, but there is a requirement in part 6256.0300 that a permit be obtained before importing live frogs. It is common practice for pet stores to import species of frogs that cannot survive in Minnesota and, therefore, pose no resource risk to the state. It is reasonable to more narrowly define frogs to eliminate unnecessary permit requirements for private industry and unnecessary regulatory review by the Department. It is necessary to continue to require importation permits for species of frogs that are present or could survive in Minnesota, because those species could impact Minnesota's native populations of frogs.

## **6256.0200 SIZE LIMITS FOR LEOPARD FROGS AND BULLFROGS**

Existing language in this subpart implies that the only species of frogs that can be taken for nonbait purposes are leopard frogs and bullfrogs and that leopard frogs and bullfrogs have to be at least six inches when taken or possessed for purposes other than bait. The proposed change would continue the existing size limit for leopard frogs and bullfrogs, but remove the prohibition on the taking of other frogs. This change is reasonable because there is not a commercial market or significant recreational harvest for the other species of frogs; therefore, the current prohibition on taking is unnecessary. The proposed change is also reasonable because, under existing language, anyone who captures and possesses a species of frog other than leopard frogs or bullfrogs is technically in violation of the law.

## **6256.0500 COMMERCIAL TAKING OF TURTLES**

Subp. 7. **Required reporting by turtle seller.** The proposed change in this part would clarify the responsibility of commercial turtle sellers to provide reports within existing time lines. The need and reasonableness of the proposed change has been documented in the section under part 6262.3050.

## **6258.0100 SEASON FOR HARVESTING MUSSELS FOR PERSONAL USE**

The proposed language would prohibit the recreational harvest of live mussels for personal use. Freshwater mussels are one of the most threatened groups of animals in North America and this holds true in Minnesota where 25 of the state's 46 species are now listed as threatened or endangered (part 6134.0200, subp. 6). Mussels are particularly vulnerable to over harvest because they are slow growing, take a long time to reach sexual maturity, and have been subject to habitat degradation (Davis 1988; Bright et al. 1990). The proposed changes are necessary to protect mussels because most people who harvest mussels for personal use cannot distinguish between the different species and inadvertent taking of listed species is certain to occur if recreational harvest continues. The proposed changes are reasonable because the taking of shells from dead mussels will still be allowed.

### **6258.0300 COMMERCIAL PERMITS FOR MUSSELS**

Subp. 1. **Commercial permit required.** The proposed language consists of technical changes that are necessary to be consistent with the proposed language prohibiting the harvest of mussels for personal use in 6258.0100.

### **6258.0400 SPECIES FOR COMMERCIAL HARVEST**

The proposed change would increase the minimum size limit for commercially harvested three-ridge mussels from 2 3/4 inches to 3 inches. Currently, all commercial harvest of mussels in Minnesota waters occurs on the Minnesota-Wisconsin boundary portion of the Mississippi River and three-ridge mussels are the only species that can be taken commercially. The changes are necessary to ensure that three-ridge mussels can become sexually mature and reproduce before being subject to commercial harvest. For Example, in Lake Pepin it has been demonstrated that three ridge mussels take 4-5 years to grow from 2 3/4 to 3 inches (DNR file information). The changes are also necessary and reasonable to be consistent with the state of Wisconsin which is in the process of adopting an identical provision. If minimum size limits for mussels differ between Minnesota and Wisconsin, it presents enforcement problems because illegal shells from one state can be laundered through the commercial market of the other.

### **6258.0800 PERMITTEE REPORTS, RECORDS, AND INSPECTIONS**

Subp. 2. **Required reports.** The proposed change in this part would clarify the responsibility of commercial mussel harvesters to provide reports within existing time lines. The need and reasonableness of the proposed change has been documented in the section under part 6262.3050.

### **6260.0300 COMMERCIAL FISHING PERMIT ISSUANCE**

Subp. 3. **Class B permits.** The proposed changes would add hoop nets and fyke nets to the gear allowed under commercial fishing permits. The proposed changes are reasonable because these gear types trap fish alive and allow non-target fish species to be released

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#### **6260.1700 COMMERCIAL FISHING ON LAKE OF THE WOODS.**

Subp. 7. **Required reporting.** The proposed change in this part would clarify the responsibility of commercial fishing operators on Lake of the Woods to provide reports within existing time lines. The need and reasonableness of the proposed change has been documented in the section under 6262.3050.

#### **6260.1800 COMMERCIAL FISHING ON LAKE SUPERIOR**

Subp. 7. **Required reporting.** The proposed change in this part would clarify the responsibility of commercial fishing operators on Lake Superior to provide reports within existing time lines. The need and reasonableness of the proposed change has been documented in the section under 6262.3050.

#### **6260.2400 DESCRIPTION OF INLAND COMMERCIAL FISHING AREAS**

Subp. 28. **Inland Commercial Fishing Area No. 28.** Inland commercial fishing areas include core waters that are assigned to licensed commercial fishing operators as provided by subpart 1 and Minn. Stat., sec. 97C.815, subd. 1 and 2. Each area has one licensee assigned. Licensed commercial fishing operators may fish waters in their core area without any additional permits. Core waters are usually those where the abundance of commercial species justifies annual commercial harvest. The proposed changes in this subpart are necessary and reasonable because they delete lakes where commercial species are no longer abundant enough to justify annual commercial fishing and add lakes where commercial species abundance is high and commercial fishing occurs annually by permit under part 6260.0300.

Subp. 33. **Inland Commercial Fishing Area No. 33.** The proposed change in this subpart would remove Sullivan Lake from the list of core waters for this commercial fishing area. This change is necessary and reasonable because populations of commercial species in Sullivan Lake are not high enough to be commercially fished on an annual basis. It is preferable to allow commercial fishing on this lake by permit under part 6260.0300 during those years when populations of commercial species are high enough to warrant commercial harvest.

#### **6262.0200 FISHING REGULATIONS FOR INLAND WATERS**

##### **Subpart 1. General inland fishing regulations.**

B. Brown trout. The first proposed change in clause (1) is to delete language that excepts the Knife River above Lake County Road 9 from the aggregate possession limit of five for stream trout (brown trout, rainbow trout, brook trout, and splake). Currently, there is no

posted boundary on the Knife River; however, County Road 9 is used in existing rule language as a dividing line for brook trout regulations. Upstream of County Road 9 brook trout regulations are the same as for Lake Superior tributaries above the posted boundaries and downstream of County Road 9 the brook trout regulations are the same as for Lake Superior tributaries below the posted boundaries. As a result, the aggregate bag limit for stream trout in the Knife River is five downstream of County Road 9 and 10 upstream of County Road 9. If the proposed language is adopted, the Department will put a posted boundary sign at Lake County Road 9 and, consequently, there will be no change in aggregate possession limits for stream trout. This change is reasonable because it simplifies rule language with no substantive change in fishing regulations.

The second proposed change in clause (1) is to change the possession limit for brown trout in Lake Superior tributaries from three over 16 inches to one over 16 inches. This possession limit is already in place on Lake Superior tributaries above the posted boundaries and other trout streams in Minnesota. Brown trout have become rare in Lake Superior tributaries and the number over 16 inches is very limited. The proposed change is necessary to better distribute the limited number of large brown trout among anglers. The proposed change is reasonable because it will make brown trout regulations on Lake Superior tributaries below the posted boundaries more consistent with regulations above the posted boundaries and on other trout streams.

The proposed language in clause (3) would result in two changes for brown trout seasons in southeast Minnesota streams: 1) an early catch and release season with barbless hooks only from April 1 to the current trout season opener (Saturday nearest April 15); and 2) catch and release only and barbless hooks only for the last two weeks of the existing trout season (September 15 through September 30). The early catch and release season is reasonable because it will provide additional recreational opportunity without impacting trout populations. Special catch and release seasons have been allowed on some southeast Minnesota trout streams during the winter months (January 1 through March 31) with no detrimental impacts to trout populations (Hayes 1990; Bushong et al. 1996). The catch and release provision for the last two weeks of the existing season is necessary and reasonable to reduce harvest of large brown trout. Brown trout begin concentrating in spawning areas during the latter part of September and become more vulnerable to angling. In addition, this provision is necessary and reasonable to reduce the harvest of fall-stocked brown trout. Brown trout are stocked in late September in some southeast Minnesota trout streams to provide an early spring fishery the following year. These fish are vulnerable to harvest immediately after stocking and, if significant numbers are taken in September, the management objective of the stocking will not be met (DNR file information). The barbless hook provision for the catch and release seasons is necessary and reasonable to prevent excessive hooking mortality of released trout (Taylor and White 1992; Dotson 1982) and to be consistent with other experimental and special regulation on southeast Minnesota trout streams.

C. Brook trout and splake. The proposed change in clause (1) is to delete language

that excepts the Knife River above Lake County Road 9 from provisions that apply to Lake Superior tributaries below posted boundaries and Lake Superior tributaries with no posted boundaries. As described under paragraph B above, the Knife River currently has no posted boundary. The existing exception language in clause (1) allows for brook trout regulations above County Road 9 to be the same as for Lake Superior tributaries above posted boundaries. However, if the proposed language is adopted, the Department will put a posted boundary sign at County Road 9. As a result, there would be no substantive change in brook trout regulations above County Road 9. The proposed change is reasonable because it simplifies rule language with no substantive change in fishing regulations.

The proposed changes in clauses (2) and (3) delete language referring to the Knife River and its tributaries above County Road 9 and complement the proposed change in clause (1). The existing language in these clauses is not necessary if a posted boundary sign is placed at County Road 9. In addition, the season specified in clause (3) is not necessary because it is included in part 6262.0500, subp. 2, paragraph G. The proposed change is reasonable because it simplifies rule language with no substantive change in fishing regulations.

The proposed language in clause (4) would result in changes for brook trout seasons in southeast Minnesota streams that were previously described for brown trout under paragraph B above. The early catch and release season is reasonable because it will provide additional recreational opportunity without impacting trout populations. Special catch and release seasons have been allowed on some southeast Minnesota trout streams during the winter months (January 1 through March 31) with no detrimental impacts to trout populations (Hayes 1990; Bushong et al. 1996). The catch and release provision for the last two weeks of the existing season is necessary and reasonable to protect concentrations of spawning brook trout. Brook trout begin concentrating in spawning areas during the latter part of September and become more vulnerable to angling. The barbless hook provision for the catch and release seasons is necessary and reasonable to prevent excessive hooking mortality of released trout (Taylor and White 1992; Dotson 1982) and to be consistent with other experimental and special regulation on southeast Minnesota trout streams.

D. Rainbow trout (including steelhead). The major proposed change in clause (2) would allow catch and release only for rainbow trout in Lake Superior tributaries above the posted boundaries. Unclipped rainbow trout (unclipped means the fins are not clipped prior to stocking) are stocked in streams upstream of the posted boundaries to supplement the natural reproduction that occurs downstream of the posted boundaries. Currently there is a catch and release only provision for unclipped rainbow trout in Lake Superior and its tributaries below the posted boundaries and a 16 inch minimum size limit for rainbow trout in Lake Superior tributaries above the posted boundaries. The 16 inch minimum size limit was intended to protect stocked rainbow trout from harvest to allow them to migrate downstream to Lake Superior where they can grow to a much larger size. Harvest of rainbow trout over 16 inches was allowed because these fish have likely become stream residents that will not migrate to the lake. However, very few steelhead that become stream residents grow to over 16 inches; therefore, the

16 inch minimum size limit precludes most harvest of these fish already. The proposed change to catch and release only is necessary and reasonable because it will provide a consistent regulation for unclipped rainbow trout in Lake Superior and the entire length of its tributaries without significantly reducing harvest opportunities.

The other proposed change in clause (2) is to delete language referring to the St. Louis River upstream of the Fond du Lac Dam. The proposed change is reasonable and will not affect anglers because there are no rainbow trout in this portion of the St. Louis River.

The proposed language in clause (3) would result in changes for rainbow trout seasons in southeast Minnesota streams that were previously described for brown trout under paragraph B and brook trout under paragraph C. The early catch and release season is reasonable because it will provide additional recreational opportunity without impacting trout populations. Special catch and release seasons have been allowed on some southeast Minnesota trout streams during the winter months (January 1 through March 31) with no detrimental impacts to trout populations (Hayes 1990; Bushong et al. 1996). Rainbow trout are not fall spawners and do not successfully spawn in southeast Minnesota trout streams. However, the catch and release provision for the last two weeks of the existing season is necessary to protect concentrations of spawning brown trout and brook trout as described earlier. It is reasonable to include rainbow trout in this provision to prevent confusion among anglers and reduce enforcement problems. The barbless hook provision for the catch and release seasons is necessary and reasonable to prevent excessive hooking mortality of released trout (Taylor and White 1992; Dotson 1982) and to be consistent with other experimental and special regulation on southeast Minnesota trout streams.

E. Lake trout. The proposed language in this paragraph is a minor technical change that would add East Bearskin to the list of lakes partly outside of the Boundary Waters Canoe Area Wilderness (BWCAW). East Bearskin Lake is partially outside the BWCAW, but has not been previously included in this paragraph because lake trout were not present. In recent years, the Department has started a lake trout stocking program in East Bearskin Lake; therefore, it is necessary and reasonable to list the lake in the appropriate lake trout season category.

**Subp. 3. Fishing Regulations for Pool 3 of the Mississippi River.** Pool 3 of the Mississippi River encompasses 18 miles and goes from the dam at Red Wing upstream to the dam at Hastings. Fishing on Pool 3 has been complicated by the fact that Minnesota-Wisconsin boundary water regulations apply from Red Wing to Prescott, while inland regulations apply from Prescott to Hastings. To further complicate matters, anglers freely move between Pool 3 and the St. Croix River, which is also governed by boundary water regulations. The proposed language in this subpart would change fishing regulations on the 4-mile inland portion of Pool 3 to make them consistent with regulations on the boundary water portion of Pool 3. The proposed changes are necessary and reasonable to simplify fishing regulations for anglers and eliminate the enforcement problems that are occurring when anglers can easily travel between several waters with different regulations.

## **6262.0300 FISHING REGULATIONS FOR LAKE SUPERIOR**

### **Subp. 6. Lake Superior open season, daily, and possession limits.**

C. Brown trout. The proposed language in this paragraph would change the possession limit for brown trout in Lake Superior from three over 16 inches to one over 16 inches. This would complement the proposed change in part 6262.0200, subp. 1, paragraph B, clause (1). As mentioned previously, this possession limit is already in place on Lake Superior tributaries above the posted boundaries and other trout streams in Minnesota. Brown trout have become rare in Lake Superior and the number over 16 inches is very limited. The proposed change is necessary to better distribute the limited number of large brown trout among anglers. The proposed change is reasonable because it will make brown trout regulations on Lake Superior more consistent with regulations on Lake Superior tributaries above the posted boundaries and on other trout streams.

## **6262.0500 WATERS CLOSED TO THE TAKING OF FISH**

Subp. 1. **Waters permanently closed to taking of fish.** The proposed language in this subpart would clarify the commissioner's authority to allow taking of commercial fish species by permit in waters otherwise closed to the taking of fish. The proposed change is necessary and reasonable to clarify that the commissioner has authority to allow commercial taking when it fits with fisheries management objectives or when it could allow utilization of a fisheries resource that would otherwise be wasted.

The proposed change in paragraph V would close two sections of the Knife River in Lake County to fishing at all times. The upstream and downstream limits of these sections are marked with cables that are strung across the river. These portions of the Knife River are extremely important steelhead spawning and nursery areas. Steelhead have been declining in Lake Superior and the Knife River is Minnesota's most important stream for steelhead reproduction because it has far more miles available for spawning than any of Minnesota's other North Shore streams. The proposed changes are necessary to provide maximum protection for these important spawning and nursery areas. The proposed changes are reasonable because most of the Knife River remains open to anglers during established seasons.

### **Subp. 2. Waters seasonally closed to taking fish.**

G. Lake County. The proposed language in this paragraph deletes the current season for the two parts of the Knife River that would be closed to fishing continuously under the proposed changes described above in subp. 1, paragraph V. The need and reasonableness of the proposed changes has been described in that section.

Subp. 2a. **Waters closed to possession of fish.** The proposed change in paragraph C would close Ida Lake in Blue Earth County and Loon Lake in Waseca County to the possession of largemouth bass and northern pike until March 1, 2000. The fish populations in these lakes



had become unbalanced and were recently removed by chemical means. The lakes have been restocked with game fish species and the populations are currently developing. The proposed changes are necessary to allow the game fish populations to develop fully before they become subject to angler harvest. The proposed changes are reasonable for anglers because they will result in a better quality fishery that provides more recreational opportunity.

The proposed change in paragraph D would close the Otter Tail River to the possession of smallmouth bass until March 1, 2008. This provision has been previously implemented through the expedited emergency rulemaking process under the authority of Minn. Stat., sec. 84.027, subd. 13. Following relicensing of the Otter Tail Power Company in 1991 by the Federal Regulatory Commission, minimum stream flows were established for a 13-mile stretch of the Otter Tail River which improved conditions for smallmouth bass. Adult smallmouth bass were then stocked in 1992 and protected by a no-harvest regulation until 1994. A 1996 DNR fisheries assessment showed that smallmouth bass from the 1992 stocking had migrated downstream and successfully reproduced. The fishery was "discovered" and verified angler reports indicated that numbers of adult smallmouth bass were being taken before the expedited emergency rule was promulgated. Numbers of smallmouth bass in the Otter Tail River are currently very limited, consisting of fish from the 1992 stocking and one or two years of natural reproduction. The proposed changes are necessary to give the smallmouth bass population a chance to become established before being subject to angler harvest. The proposed changes are reasonable for anglers because they will result in a better quality fishery that provides more recreational opportunity.

#### **6262.0600 SEASONS AND METHODS FOR TAKING ROUGH FISH**

The proposed changes are necessary to clarify seasons and methods for taking roughfish. Minn. Stat., sec. 97C.345 specifies when it is unlawful to take fish by spear, fish trap, dip net and seine, and when it is lawful to possess spears, dip nets, bows and arrows, and spear guns on or near waters. Minn. Stat., sec. 97C.371, subd. 4 specifies the season for spearing through the ice. However, an open season for all time periods and all methods is not specified in statute. The proposed rule changes are reasonable because they specify a season for taking fish by the above described methods that is consistent with existing statutory language.

#### **6262.0650 DAILY AND POSSESSION LIMIT OF ROUGH FISH TAKEN BY SPEARING, HARPOONING, ARCHERY, AND DIP NETS**

The proposed change adds harpooning, archery, and dip nets to the methods subject to the rough fish limits specified in the rule part. Under current language, rough fish taken by spearing are subject to the limits in this rule part, but there are no limits specified for the other methods. It is necessary to establish a limit for rough fish taken by harpooning, archery, and dip nets to prevent undue depletion and waste of these species. The change is reasonable because the limits are consistent with those for spearing and will still allow substantial harvest.

## 6262.0800 OPEN SEASONS FOR TAKING WHITEFISH AND CISCOES

Subp. 2. **Schedule I.** The proposed changes clarify that the commissioner may or may not open a lake listed in this subpart to sport gill netting for whitefish and ciscoes. The changes also add Big Turtle Lake in Itasca County (currently in schedule II, subp. 3) and Upper Red Lake in Beltrami County (currently in schedule III, subp. 4) to schedule I in this subpart.

It is necessary to give the commissioner authority to keep lakes in this schedule closed for three primary reasons. First, game fish numbers may be too low in a given year to withstand the incidental mortality that gill nets can cause. Sport gill netters target whitefish and ciscoes and, under normal conditions, they inadvertently kill low numbers of game fish. While this does not normally cause a significant impact, if game fish numbers in a lake are low, even a small amount of incidental gill net mortality may be harmful to the population. Second, weather conditions during some years have the potential to keep game fish in shallow water and increase the potential for incidental gill net mortality. Third, whitefish or ciscoe numbers may be too low to withstand harvest by gill nets. The commissioner would use these three criteria in determining if a season should be opened or not. The proposed change is reasonable because it is consistent with Minn. Stat., sec. 97C.805, subd. 1, paragraph (b), which gives the commissioner authority to close lakes open to whitefish/ciscoe netting if necessary to protect game fish populations.

It is necessary to include Upper Red Lake in schedule I, rather than schedule III, because the walleye population there is extremely low at present (DNR management files and large lake reports). As a result, any incidental gill net mortality for walleye is potentially harmful and the commissioner needs the authority to keep the gill netting season closed. The proposed change is reasonable because current language in subp. 4 (which would be repealed under the current proposal) has been included in this subpart to continue to allow one end of a gill net to be set deeper than 6 feet in Upper Red Lake.

It is necessary to include Big Turtle Lake in this schedule to provide more flexibility in setting the gill net season and minimize the incidental capture of game fish species. This change is reasonable because sport gill netters will still be able to utilize the lake and 48-hour requirement to post the season dates ensures that they will be notified when the season is opened.

There is an additional minor change in this subpart to delete the terms "whitefish" and "ciscoe" from the minimum mesh size requirements. These terms were originally included because whitefish are generally larger than ciscoe and, therefore, a larger gill net mesh size is allowed in lakes that have whitefish. However, in some lakes the larger gill net mesh size is allowed because they have large ciscoes. Therefore the proposed change is reasonable to avoid confusion over why a particular mesh size is allowed.

Subp. 3. **Schedule II.** The proposed changes in this subpart include the addition of North Long Lake in Crow Wing County, the deletion of Big Turtle Lake in Itasca County, and the deletion of the terms "whitefish" and "ciscoe" in the mesh size requirements as in subpart 2.

North Long Lake has a good ciscoe population and it is reasonable to add the lake to this schedule to provide additional sport gill netting opportunity. It is necessary and reasonable to remove Big Turtle Lake from this subpart and add it to subpart 2 for reasons already stated under subpart 2. It is reasonable to delete the terms "whitefish" and "ciscoe" from the minimum mesh size headings for the reasons stated under subpart 2.

Subp. 4. **Schedule III.** The proposed rule changes would repeal this subpart, which provides a season and other provisions for gill netting on Upper Red Lake, because the lake would be moved to schedule I under subpart 2. As mentioned under subpart 2, the walleye population in Red Lake is very low and it is expected that it will take a long time to recover. It is necessary to repeal the established gill net season on Red Lake and give the commissioner authority to close or shorten the season as long as walleye numbers remain low.

### **6262.3050 REQUIRED RECORD KEEPING**

The proposed rule language includes a minor change that is necessary to clarify the responsibility of licensed Lake Superior fish guides to provide reports to the DNR within existing time lines. Current language requires that reports be submitted on or before the tenth day of each month. However, in a recent court case involving reports that were not received on time, the judge dismissed the case (State of Minnesota vs. Richard Brummer, File No: TX96-61-63-89, February 14, 1997, 6th Judicial District Court, St. Louis County). The judges stated in her memorandum that there was no specific definition in statute that aided in defining delivery of fishing reports. In the absence of specific language on reports, the judge referred to part 6200.0200 which addresses application deadlines and states that applications meet the deadline if they are postmarked by the deadline date. The judge concluded that the state failed to prove beyond a reasonable doubt that the defendant had not mailed the report by the deadline. Therefore, the proposed changes are necessary to make existing reporting requirements more enforceable by clarifying that reports have to be received at the appropriate office by the deadline date. The proposed changes are reasonable because they do not significantly alter the existing deadlines for submission of reports.

It should be noted that other parts of the proposed rule include similar changes in reporting requirements for various other commercial licensees. The rationale behind all reporting requirement changes is the same as for this part; therefore, this part will be referenced for the need and reasonableness of those changes.

The proposed changes also include changes in the criteria used to invalidate licenses of Lake Superior fish guides if they fail to submit reports. Current language requires that license applications be invalidated for up to three years if any report is not submitted. The Department feels that this is unnecessarily stringent and has proposed that license applications not be invalidated unless reports have not been submitted at least three times in a two-year period. This is a reasonable change because failure to submit a single report could result from simple oversight and, under existing language, it could affect a guide's livelihood for three years.

## **6266.0500 TAKING OF FISH ON MINNESOTA-WISCONSIN BOUNDARY WATERS**

Subp. 3. **Species, seasons, and limits on Minnesota-Wisconsin boundary waters.** The proposed language would increase the minimum size limit for muskellunge in the Minnesota-Wisconsin boundary waters from 36 to 40 inches. Muskellunge fisheries are managed for their trophy potential and the 40 inch minimum size limit, which is in place on most of Minnesota's inland waters and the Wisconsin side of the Minnesota-Wisconsin boundary waters, has shown potential to increase the average size of muskellunge caught by anglers. The proposed changes are necessary to improve the quality of the muskellunge fishery and prevent enforcement problems that could occur if muskellunge size limits differed on the Minnesota and Wisconsin portions of the boundary waters. The proposed changes are reasonable and more understandable for anglers because they are consistent with the muskellunge minimum size limits on Minnesota's inland waters.

## **6266.0600 MINNESOTA-WISCONSIN BOUNDARY WATERS COMMERCIAL REGULATIONS**

Subp. 3. **Commercial fishing restrictions.** The proposed change in this part would clarify the responsibility of commercial fishing operators on the Minnesota-Wisconsin boundary waters to provide reports within established time lines. The need and reasonableness of the proposed change has been documented in the section under part 6262.3050. In addition, the proposed changes are necessary to clarify when reports are due.

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

Subp. 2. **Species, seasons, and limits on Minnesota-Canada boundary waters.** The proposed language would reduce the aggregate possession limit for walleye and sauger in the Rainy River from six to two from March 1 through April 14. The Rainy River is a boundary water shared by Minnesota and Ontario that flows into Lake of the Woods. The March-April harvest of walleye on the Rainy River is considered to be part of the Lake of the Woods fishery because most of the fish taken are Lake of the Woods walleye that are starting their spawning run. The target harvest level (a scientific estimate of the "safe" harvest level) for walleye on Lake of the Woods is 430,000 pounds annually (Minnesota Department of Natural Resources Special Publication No. 151 1997). The current annual harvest of walleye on Lake of the Woods is slightly higher than the target harvest (434,000 pounds). The March-April harvest of walleye on the Rainy River averages 20,000 pounds/year and is as high as 40,000 pounds in some years (DNR file information). The proposed change is necessary to help keep the walleye harvest on Lake of the Woods within the target harvest level. The proposed change is reasonable because if the target harvest is exceeded too often or by too large a margin, walleye harvest restrictions that affect the entire summer and winter fishery of Lake of the Woods may become necessary. Such restrictions would impact many more anglers and fishing related businesses than the proposed restrictions.

In addition, Ontario has made the proposed regulation change on their side of the river, therefore, the proposed change is necessary and reasonable to maintain consistent regulations on the boundary waters and prevent problems with enforcement of different limits on the same water.

[Repealed]

## 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 in the DNR 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:

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Roy Johannes, Commercial Fisheries Program Coordinator  
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Richard Baker, Heritage Zoologist  
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Mark Heywood, Regional Fisheries Manager  
DNR Section of Fisheries  
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Robert Strand, Regional Fisheries Manager  
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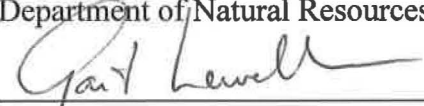
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Based on the foregoing, the department's proposed rules are both necessary and reasonable.

Rodney W. Sando, Commissioner  
Department of Natural Resources

By:

  
Gail Lewellan, Assistant Commissioner  
for Human Resources and Affair

Dated: February 3, 1998

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