

5-4-2007



Minnesota Department of Natural Resources

500 Lafayette Road
St. Paul, Minnesota 55155-40__

May 2, 2007

Legislative Reference Library
645 State Office Building
100 Constitution Avenue
St. Paul, Minnesota 55155

Re: In The Matter Of The Proposed Rules Of The State Department Of Natural Resources
Relating to Fish and Aquatic Wildlife

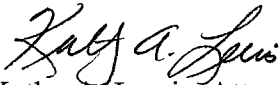
Dear Librarian:

The Minnesota Department of Natural Resources intends to adopt rules relating to ecological services. We plan to publish a Dual Notice in the April 30, 2007 issue of the State Register.

The Department has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Department is sending the Library a copy of the Statement of Need and Reasonableness at the time we are mailing our Notice of Intent to Adopt Rules.

If you have any questions, please contact me at 651-259-5404.

Sincerely,


Kathy A. Lewis, Attorney
Transactions Manager

Cc: L. Erickson-Eastwood

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STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES
DIVISIONS OF FISH AND WILDLIFE AND ENFORCEMENT
IN THE MATTER OF PROPOSED ADOPTION OF
FISH AND AQUATIC WILDLIFE
STATEMENT OF NEED AND REASONABLENESS

March 19, 2007

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 and native plant communities while ensuring recreational and commercial opportunities for those who enjoy wildlife-related activities and continued use of these resources.

Scope

The proposed amendments cover a variety of areas pertaining to fish and aquatic wildlife. The proposed amendments will:

Minnows

- Change minnow rules to allow angling for minnows in closed waters.
- Close the Cedar River watershed (Dodge, Freeborn, and Mower counties) to commercial minnow harvest except by special permit and recreational harvest to protect slender madtoms.
- Make technical changes and references for invasive species terminology.

Turtles

- Adopt western painted turtle size limit, as currently provided in emergency rule.

Mussels

- Make technical corrections dealing with the mussel closure on the Minnesota -Wisconsin border waters.

Commercial Fishing Operations

- Repeal the issuance of a Class A permit to use an artificial light to take turtles to reflect statute changes.
- Eliminate the Lake of the Woods helper license references to reflect statute changes.
- Repeal rules relating to licensing setlines on inland Mississippi River waters to reflect statute changes.
- Add core lakes to commercial fishing operation area number 12.
- Repeal inland commercial fishing operation areas 26, 27, 28, and 29 that are located in northeast Minnesota to better reflect current harvest conditions.
- Make technical changes and references for invasive species terminology.

Fishing Regulations and Requirements

- Establish winter trout fishing for trout lakes in Aitkin County and Blue Lake in Hubbard County.
- Repeal duplicative rules dealing with muskellunge seasons and limits. Close fishing for muskie during the winter season and standardize size limits.
- Establish permanent and seasonal closures of fishing on various water bodies, including but not limited to Melrose Lake in Wright Co.
- Establish night bowfishing opportunities.

- Establish seasonal and permanent closures of water bodies and posting requirements for posting closures and boating restrictions as authorized under Minnesota Statutes, section 97C.025
- Close or open whitefish/tullibee netting on a variety of lakes or move lakes from one schedule to another.
- Establish or clarify fish use, fish possession, shipping, and transportation requirements, such as transportation of sturgeon.
- Change or add to existing fishing regulations to reflect recently enacted statute changes, make existing emergency rules permanent, or make changes to improve consistency between existing regulations. Changes include, but are not limited to, bag limits, seasons, and size limits for sturgeon, northern pike, and walleye.

Designated Waters

- Designate fish spawning areas and fish preserves.
- Change existing regulations by adding connected waters or tributaries to reduce angler confusion and provide for better management. Water bodies may include but are not limited to Little Osakis, Lake of the Woods and Rainy River.
- Change or add to existing fishing regulations to reflect recently enacted statute changes, make existing emergency rules permanent, or make changes to improve consistency between existing regulations. Changes include, but are not limited to sturgeon, Mille Lacs Lake, and southeastern trout streams.

Boundary Waters Fishing Regulations

- Change or add to existing fishing regulations to reflect recently enacted statute changes, make existing emergency rules permanent, or make changes to improve consistency between existing regulations. Changes include, but are not limited to fish culling, Minnesota-Wisconsin border water sturgeon regulations, North Dakota border water limits and seasons on walleye and northern pike, and Canada border fishing restrictions for walleye and sturgeon.
- Make technical corrections for cross-referencing water bodies and species that are regulated under Chapter 6264, such as Lake of the Woods and 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 March 14, 2005. This notice described the specific areas of the proposed rules, the statutory authority for each proposed change, and the parties that could be affected by the proposed rules. The Department of Natural Resources (DNR) 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, other environmental and social organizations, businesses, individuals, and representatives from bordering states. The DNR also published a statewide news release that described major parts of the proposed rule changes with instructions on how to provide comments. The DNR web site described major parts of the proposed rule and was used to take comments directly related to the proposed changes.

In addition to the "request for comment period", minnow dealers that would be affected by the proposed closures of waters in southeastern Minnesota were contacted and asked to comment on the rule language. We also conducted a series of meetings with the bowfishing organizations to discuss night bowfishing opportunities and regulations associated with opening up such an opportunity.

Organizations and individuals contacted included: organizations representing private and commercial riparian owners, such as the Minnesota Lakes Association and Minnesota Resort Association; conservation groups such as the Izaak Walton League, Sierra Club, Fish and Wildlife Legislative Alliance, and Audubon Society; Minnesota Sportfishing Congress; Minnesota Office of Tourism; Minnesota Inland Commercial Fishermen's Association; licensed commercial fish and turtle operators; Minnesota Aquaculture Association; licensed bait dealers/harvesters; North Shore Charter Captains Association; the chamber of commerce in several cities; woman angler associations; Rainy Lake Sportfishing Club; fishing tournament organizers; bowfishing organizations; individuals interested in whitefish netting; United Northern Sportsmen; businesses, individuals, and local sports groups; Minnesota Council of Trout Unlimited; Minnesota Trout Association; Native American councils; Southeast Asian and Hispanic organizations; and border state staff who are responsible for fishing and public waters rules and regulations.

Upon completion of the analysis of comments and during the review of proposed rule changes, it was decided that special use and fishing contest permits, using larger bullheads for bait, clarification of legal fishing equipment, clarification on number of hooks and lines, and expansion of the SE trout stream fishing opportunities that were referred to in the request for comments would be handled in a subsequent rule making action to allow additional time to work through the issues related to those topics.

Despite the extensive outreach done by the DNR, very little input was received regarding the proposed rule changes. The comments received for those portions of the rule that are moving ahead at this time are summarized below.

Changes in commercial turtle harvest: One person commented that they thought it should be legal to use artificial lights to commercially take turtles. Another person commented that they were not in favor of using lights and would like to see stricter regulations governing the harvest of turtles.

Changes in trout fishing opportunities: Four people supported the idea of opening up additional lakes to winter trout fishing. One person was not in favor of opening up Blue Lake in Aitkin County. A person requested that the Metro trout lakes be opened up to "tube" fishing.

Changes in muskie size limits and seasons: Six people commented in favor of a winter fishing closure. Ten people are in favor of an increasing the minimum size limit for muskie with most of them suggesting 48 inches. Two people suggested that we legalize quick-strike rigs. Two people are not in support of catch and release fishing for muskie on the rivers. Two people indicated that they thought the current regulations were fine. Three people would like to see spearing banned on all lakes with muskie. Two people suggested that we establish more muskie waters. One person suggested that we implement a muskie stamp to pay for this program.

Changes in whitefish netting opportunities: Two people commented that they were not in favor of closing lakes to this activity. Three people commented in support of the closures. Two people requested that we consider opening Little Bass (Itasca County) and Welsh (Cass County) to this activity. One person recommends no net loss of the number of water bodies that allow this activity.

Other fishing regulations: Five people commented that they support any clarifications and stronger restrictions that will protect the resource. One person doesn't want us to allow angling for minnows.

One person asked to have the language that requires a patch of skin left on fillets be removed. One person wants us to ban the use of cell phones while fishing. Five people suggested various season and size limit changes for a number of game fish species including walleye and northern pike. One person supports the Red Lake regulations being proposed. One individual would like to see us license fishing guides. One person suggested that we have a season closure for panfish. One person feels that we should have different daily and possession limits for all fish, but especially panfish. One person commented that they would like to eliminate culling on walleye, perch, and crappie. One group was in favor of simplification of regulations.

Additional notice -- notice plan

Additional notice on the proposed rules will be provided to persons or classes of persons who could be affected. Our notice plan involves sending the dual notice of intent to adopt rules with or without a public hearing to all of the previously mentioned groups: angling groups, other environmental and social organizations, businesses, individuals, state legislators who have an interest in these topics, and staff from bordering states that are responsible for rule making. A news release that details the major parts of the rule will be issued statewide. The DNR web site will be used to inform the public of our intent to adopt rules. Requests for hearings will need to be provided in writing. Notice would also be provided to appropriate legislators as required by Minn. Stat., sec. 14.116. The Department of Agriculture will also be notified as required.

Statutory Authority

Statutory authority for the various provisions of the proposed rules is listed below. The citation of Minn. Stat., secs. 97C.001, subd. 3 and 97C.005, subd. 3 applies only to the waters that have been designated as experimental or special management waters:

<u>Rules Part</u>	<u>Minnesota Statutes, sections</u>
6254.0300	84D.12; 97C.505, subd.1 and 3; 97A.045, subd. 2; 97A.501, subd. 1 & 2
6256.0500	97C.605, subd. 3 and 6; 97A.045, subd. 2
6258.0500	97C.701, subd. 1; 97C.705, subd. 2;
6260.0300	97C.605, subd. 4; 97C.811, subd. 3
6260.1700	97C.825, subd. 97A.475 subd. 30-37; 97C.841
6260.1900	97C.801, subd. 1
6260.2400	97C.811, subd. 3; 97C.815, subd. 1
6262.0200	97A.045, subd. 2 and 3; 97C.401, subd.2
6262.0500	97A.045, subd. 2; 97A.101, subd. 1; 97C.025; 97C.005
6262.0550	97A.045, subd. 2; 84.027, subd. 13; 97C.401
6262.0575	97A.045, subd. 2; 97C.401, subd. 1; 97C.505, subd. 1
6262.0600	97B.106; 97C.045; 97C.345, subd 2(b); 97C.375
6262.0800	97C.345; 97C.805; 97C.401, subd. 1
6262.0900	97A.045; 97C.401; 97C.405
6262.1000	97C.411; 97C.087; 97C.085; 97A.551, subd. 6
6262.3200	97A.551
6262.3250	97A.551
6264.0025	97C.001, subd. 3; 97C.005, subd. 3

6264.0100	97C.025
6264.0300	97C.001, subd. 3; 97C.005, subd. 3
6264.0400	97C.411; 97C.087; 97C.085; 97A.551; 97A.045, subd. 2; 97C.001, subd. 3; 97C.005, subd. 3;
6266.0100	97A.045, subd. 4
6266.0300	97A.045
6266.0400	97A.045; 97C.001, subd. 3; 97C.005, subd. 3
6266.0500	97A.045, subd. 4, 97C.087
6266.0700	97A.045, subd. 4; 97C.411; 97C.087; 97C.085; 97A.551 ; 97C.001; 97C.005; 97C.401

II. REGULATORY ANALYSIS

Description of the Classes of Persons Affected by the Proposed Rules

The proposed rule to allow people to angle for minnows (6262.0575) in closed waters will benefit anglers by providing additional opportunities to harvest creek chubs.

The proposed rule to close waters to minnow harvest (6254.0300 and 6262.0575) would affect minnow dealers, anglers who harvest minnows, and businesses associated with the bait industry in southeastern Minnesota. Dealers and anglers who harvest in the Cedar River drainage would no longer be able to do so without a permit or would need to find other water bodies. This proposed closure would have minimal impact on those people and businesses that rely on those waters to support their livelihoods.

The proposed changes to ensure that the recently adopted legislative changes to minimize the spread of invasive species are incorporated into the appropriate portions of Minnesota Rules Chapters 6266 will benefit commercial operations because it will ensure that operators are aware of the changes.

The proposed change related to a size limit on western painted turtles (6256.0500) will minimally affect turtle harvesters and associated businesses, since they proposed the change.

The proposed changes to eliminate some core commercial operation areas (6260.2400) will have minimal affect on commercial operators. Currently, no one is assigned to these areas. Opportunities to net these areas will instead be handled through the permit process.

The proposal to add lakes to commercial operations area 12 will be a benefit to the commercial operator assigned to this area since he will no longer have to apply for a permit to harvest in those waters.

The change being made for clarifying the closing of commercial mussel harvest (6258.0500) on the Mississippi River would have a minimal affect on commercial mussel operators since the area has already been closed for a year.

The changes proposed in 6260.0300, 6260.1700, 6260.1900, 6262.0500, 6262.0550, 6262.0900, 6262.1000, 6262.3200, 6262.3250, 6264.0025, and 6264.0100 are technical in nature and would have minimal affect on commercial operations, anglers and associated angling businesses.

The change in 6262.0200 to open waters up to winter trout fishing should benefit trout anglers.

The proposed changes dealing with angling seasons, clarifications to existing size and bag limits, tagging, regulations for muskellunge, and for various lakes (6262.0200, 6264.0300, and 6264.0400) should have minimal impacts on anglers and associated businesses. These changes should benefit enforcement agencies and anglers since they would foster better compliance with regulations by making them more consistent.

The proposed changes in 6262.0600 would affect people who do bowfishing. The change would

establish additional opportunities for this activity which will be beneficial to that group.

The proposed changes in 6262.0800 would affect people who sport gill net for whitefish and cisco. The change includes eliminating harvest opportunities by closing 13 lakes to netting and the addition of two lakes to the lists of lakes where sport gill netting is allowed.

The proposed changes for border waters (6266.0100, 6266.0300, 6266.0400, 6266.0500, and 6266.0700) are not expected to have a significant impact on anglers or associated businesses. Many of the changes are technical in nature. The changes should result in more common regulations and less confusion for anglers.

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

The proposed fish rules would result in no costs to the DNR 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 significant positive or negative direct impacts anticipated for state revenues as a result of these rules since the DNR already enforces and monitors these laws. DNR revenues will be minimally affected since a \$5.00 fee will be collected for tag applications for the harvest of sturgeon (6262.1000, 6262.3200, 6264.0400, 6266.0500, and 6266.0700) as approved by the legislature (Laws of 2005, 1st Special Session, Chapter 1, Art.2, Sec. 115) All the other proposed fish 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 would result in stricter and therefore more intrusive limits and seasons on fish and turtles. However, it has long been recognized by fisheries professionals that harvest restrictions are necessary to provide a sustainable fisheries resource (*Inland Fisheries Management in North America 1993*). The best option for reducing harvest and maintaining fish and other aquatic animal populations is, by definition, more intrusive than alternatives, because "less intrusive" proposals would usually not provide the necessary reductions in harvest.

Examples of the more intrusive regulations that are being imposed are as follows:

An option considered and rejected for protecting turtle populations that would have been very intrusive was to eliminate harvest. Season restrictions and size limits could achieve the necessary protection of turtle populations and would be less intrusive than closing the harvest (6256.0500). Closing the harvest would have eliminated commercial opportunity and would have had a greater negative economic impact than the proposed size limit reductions. However, the proposed size limit on turtles is more restrictive than the current language that has no size limit requirement for western painted turtles

The proposed requirement for a permit to harvest minnows (6254.0300) in Cedar Creek watershed is more restrictive than the current language that does not require a permit to harvest minnows. But also less restrictive than totally closing minnow harvest on those waters to protect another species.

The other changes in the proposed rules that have more restrictive limits on fish or equipment specifications are minor and would be relatively unobtrusive to anglers and commercial operations (6260.2000, item I, 6262.0800, 6262.3200, 6264.0300). For example, the proposal to change packaging requirements (6262.3250) to require additional information be included will take minimal effort on the anglers part to do, but will allow for easier enforcement of the laws.

Examples of some of the less intrusive methods that were considered follow.

The proposed change in opening up winter angling on some trout lakes, allowing angling for minnows on closed waters, and opening up night bowfishing (6262.0200, 6262.0575, and 6262.0600) are less restrictive than the current language which has these trout lakes closed, doesn't allow angling on closed minnow waters, and doesn't allow night bowfishing.

Less intrusive alternatives were also chosen for some of the proposed fish rules. The proposal to implement a permit requirement to harvest minnows in southeastern Minnesota (6254.0300) instead of closing it to harvest is an example. This requirement will allow harvest to occur but also protect the slender madtom by issuing only to those that can demonstrate they can tell the difference. This will ensure protection of the population with minimal impact to the commercial operator. Another example is the dropping of sauger from the Lake of the Woods/Rainy River system size limit (6264.0400, subp 33). These lakes are managed cooperatively with Canada under a system of safe harvest levels. Recently, the walleye harvest on the Minnesota waters exceeded our safe harvest level (DNR Lake Management Report). To meet the harvest allocation for the walleye fishery and simplify the regulations, a walleye/sauger protected size limit of 19.5 to 28.0 inches was considered. Based on creel and population data (DNR Lake Management Report), staff determined that the management objective of maintaining the current walleye harvest allocation on this system could be met with a less intrusive option. The proposal was changed to exclude sauger from the size limit because it would provide the necessary walleye reduction while allowing the less intrusive opportunity to harvest more sauger.

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

The major alternatives to size limits and possession limits being applied to fish and turtles 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 operators are allowed to engage in harvest activities (*Inland Fisheries Management in North America 1993*). 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 and creel surveys from the DNR to determine when harvest limits were reached. It would also require additional staff time devoted to issuing special licenses, permits, or doing lotteries.

Probable Costs of Complying with the Proposed Rules

The types of restrictions being proposed for harvest of fish and turtles do not result in increased costs for the public.

Assessment of Differences between the Proposed Rules and Existing Federal Regulations

The proposed rules (6254.0300 and 6262.0575, Sub. 5) for closing minnow harvest where slender madtoms have been documented would bring state-allowed activities into compliance with Federal Endangered Species regulations.

The rest of 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 dealing with tagging involve an application fee of \$5.00 that was approved by the legislature (Laws of 2005, 1st Special Session, Chapter 1, Article 2, Sec. 115) The other proposed rules do

not involve any new regulatory, permit or license fees, or any other charges to the public. Minnesota Statutes, section 16A.1285, does not apply because the rules do not set or adjust fees or charges.

Proposed Rules Affect on Farming Operations

The proposed rules dealing with turtle sizes could effect turtle farming operations.

III. Description of How the Agency Considered and Implemented the Policy to Adopt Rules that Emphasize Superior Achievement in Meeting the Agency's Regulatory Objective and Maximum Flexibility for the Regulated Party and the Agency in Meeting these Goals

The agency's objective with regard to recreational fishing and commercial fishing is to provide for resource conservation, public safety, and equitable use, while maintaining flexibility for anglers and businesses to participate in a variety of opportunities for use and enjoyment of the aquatic resources consistent with state and federal law. To the extent possible, the DNR attempts to maintain simplicity and understandability of regulations, balanced against the demand for more specialized regulations to protect resources and provide additional opportunities for use of these resources. The agency also attempts to balance the economic and social impacts against the biological requirements necessary to meet goals that conserve and protect the aquatic resources.

In developing the proposed rules, the agency sought to make the rules less restrictive and more business friendly where resource conservation, safety, and equitable use were not compromised. Good examples include the Lake of the Woods and Rainy River regulation change that eliminated sauger from the size limit to allow additional harvest opportunities for sauger while still meeting the walleye harvest allocation.

In the case of more restrictive provisions, the agency sought to make sure that regulatory consistency and resource protection were addressed. For example, on the border water regulation changes, we worked with the border states to match proposed changes. Using one set of fishing regulations for border waters is simpler for anglers and still meets management goals that seek to protect the aquatic resources. It also adds flexibility for anglers who wish to fish both sides of a border water without having to become familiar with where the state boundaries fall.

The DNR has promoted voluntary catch and release and selective harvest to help promote a conservation ethic among anglers, and to counter the effects of increased fishing pressure. However, when over-harvest results in declining trends for a specific fish species on a specific water body, voluntary compliance cannot be relied on to achieve the necessary harvest reductions (Gigliotti & Taylor 1990). Typically, when new rules on harvest are established and enforced, acceptance and compliance by the public must evolve over time before the regulation reaches its full effectiveness. There is little doubt that the role of regulations in fisheries management needs to increase as fishing pressure increases and anglers use more advanced technology. Without setting and enforcing more restrictive fishing regulations, over-harvest would occur on more and more waters.

Consultation with the MN Dept. of Finance on Local Government Impacts

The proposed rules are not anticipated to have any impact on local government units. Dept. of Finance review is attached.

Determination if First Year Cost of Complying with Proposed Rules Would Exceed \$25,000 for Any Business with Less Than 50 Full-time Employees or Any Statutory or Home Rule Charter City with Less Than 10 Full-time Employees

The proposed rules are not anticipated to increase costs by more than \$25,000 for businesses with less than 50 full-time employees or statutory or home rule charter cities with less than 10 full-time employees by more than \$25,000.

IV. RULE-BY-RULE ANALYSIS

6254.0300 WATERS CLOSED TO COMMERCIAL TAKING OF MINNOWS SUBP. 3

The proposed language is designed to close the commercial taking of tadpole madtoms (*Noturus gyrinus*) or stonecats (*Noturus flavus*), except by special permit, on streams within the range of the slender madtom. In Minnesota, the slender madtom (*Noturus exilis*), a Species of Special Concern (MR Section 6134), is found in Otter Creek (Cedar River watershed) in Dodge, Freeborn, and Mower counties, where a small population exists. Stonecats are very difficult to distinguish from slender madtoms in the field. A special permit requirement would provide an opportunity to educate those who wished to harvest in these areas about key identification characteristics. This rule is necessary and reasonable in order to avoid harvest pressure being placed upon Minnesota's very limited slender madtom population.

6256.0500 COMMERCIAL TAKING OF TURTLES Subp. 9

The proposed change would place a size limit on the Western Painted Turtle (*Chrysemys picta*). The language is a compromise with the industry on how to limit harvest and protect this species' population, and was adopted by emergency rule in 2004 and again in 2006. This change will increase the likelihood that the commercial harvest of turtles in Minnesota is conducted in a sustainable manner. Two considerations point to the need to limit the commercial harvest of turtles in Minnesota: (1) recent scientific research demonstrates that the commercial harvest of turtles in northern latitudes is not sustainable (Congdon et. al 1987,1993,1994; Brooks et al., 1988; and Gibbs and Amato, 2000); and (2) With the closure of commercial harvest in Wisconsin (1999) and Nebraska (2001), Minnesota, Iowa, and Michigan (snapping turtle only) are the only midwest states that still allow this activity. These changes are necessary and reasonable since they allow a portion of the population to be harvested, while leaving a portion of the reproductive population in the wild so that replacement can occur.

6258.0500 HARVEST SITES FOR PERMITTEES Subp. 3

The proposed change would no longer allow mussel harvest to be permitted on Minnesota-Wisconsin border waters. The requests for permits to harvest mussels has gone from 18 individuals to none in 2000 (DNR license data.) Only one permit has been issued since 2000. In 2004, the permanent rulemaking process was used to eliminate the reference in the MN-WI border waters that allowed commercial harvest. It was assumed that this closed all harvest; however, it was later determined that we did still have the ability to issue permits.

Mussels are a very long-lived, slow growing species that require fish to serve as hosts for the dispersal of young. They are relatively immobile which makes them susceptible to rapid changes in habitat and water quality. One-half of the state's mussel species are classified as special concern, threatened or endangered in Chapter 6134. Data indicates that mussel populations have declined both in abundance and

size structure both in Minnesota (Hart, et al. 2001) and throughout North America (Anthony, et al. 2001.)

Commercial harvest has also been shown to impact native populations in Lake Pepin and near Prairie duChien, WI (various DNR data.) The three-ridge mussel (*Amblema plicata*) is the most common and commercially valuable mussel species remaining in the Minnesota-Wisconsin border waters. Modeling of the three-ridge mussel populations on Lake Pepin suggests that even a 5% exploitation rate of adult mussels can cause extirpation over a period of years (Hart, et al 2002.)

The accidental introduction of zebra mussels (*Dreissena ploymorpha*) has had a profound negative impact on native mussels. Research indicates the commercial mussel harvesting operations that result in the handling and disturbance of a variety of species and sizes of mussels can increase the rate and extent of colonization by zebra mussels. High mortality of native mussels of all sizes and species occurs under heavy zebra mussel infestation (Hart, et.al 2002.)

The proposed change is necessary to protect the long-term survival of these animals and provide for the recovery of native populations. It is reasonable to close these waters to commercial harvest permits at this time because it would affect only one person and we would still be below the 50% cap allowed for closures. Wisconsin DNR has a similar harvest closure. This change is reasonable so that Minnesota's regulations are consistent with Wisconsin's.

6260.0300 COMMERCIAL FISHING PERMIT ISSUANCE Subp.2

The proposed change would repeal the ability to issue Class A permits for turtle harvest at night with artificial lights. During meetings conducted in the course of rulemaking in 2002, industry representatives who pointed out that "night-lighting" of turtles was no longer common practice and agreed to this change. The 2002 legislature consequently repealed the authority in Minnesota Statutes Section 97C.605, subd. 4 to issue such permits (Laws of Minnesota 2002, Chapter 351, Section 23.) It is necessary and reasonable to repeal obsolete and outdated rules.

6260.1700 COMMERCIAL FISHING ON LAKE OF THE WOODS Subp. 8

The proposed change would replace the term "helper" with "apprentice". It is necessary and reasonable to make this language change because in 1996 the legislature changed the terms in 97A.475, subds. 30 – 37 (Laws of Minnesota 1996, Chapter 410, Sec. 29 -36.) from "helper" to "apprentice". This change will make the statute and rules consistent.

6260.1900 COMMERCIAL FISHING ON INLAND MISSISSIPPI RIVER Subps 2- 4

The proposed change would repeal sections 2 through 4. It is necessary and reasonable to make this language change because in 1996 the legislature changed the language to no longer allow these activities (Laws of Minnesota 1996, Chapter 216, Sec. 90) This change will make the statute and rules consistent.

6260.2400 DESCRIPTION OF INLAND COMMERCIAL FISHING AREAS Subps 13 and 26-29

The proposed changes would repeal Inland Commercial Core Fishing Areas Nos. 26 through 29 and add three lakes to Inland Commercial Fishing Area No. 12.

Subpart 13. Inland Commercial Fishing Area No. 12. The proposed language would add three lakes to the core waters in Otter Tail County, Inland Commercial Fishing Area No. 12 (Franklin, Lizzie and South Lida). The addition of these lakes corresponds with the locations of existing lakes in Commercial Fishing Area No. 12. These lakes have been routinely harvested for rough fish through the application of a

Class B permit. The addition of these lakes would eliminate the need for the commercial operator to apply for annual Class B permits on these lakes. The rough fish populations in these three lakes are comparable or higher than populations in other core waters in Area No. 12 (DNR Lake Management Reports) and at this time are underutilized. It is reasonable to make these fish available to the commercial operator on a continuous basis as part of his license. The language is necessary to make these lakes that contain sustainable populations of underutilized rough fish core waters so they are available for continuous commercial operations during the open season (Labor Day through Walleye Opener).

Subpart 26, 27, 28, and 29. Inland Commercial Fishing Areas 26-29. The primary commercial fish harvested in Inland Commercial Fishing Areas Nos. 26-29 are also important prey and forage for the game fish being managed in these lakes. Lake data (DNR Lake Management Reports) indicates that the lakes listed in the core commercial fishing areas cannot support commercial harvest at a level that would support a licensee being assigned to that area and produce enough food for the fish population. Consequently, any needed commercial harvest in the area is conducted on an intermediate basis and accomplished through a Class B permit. These commercial areas are very close to Lake Superior, which already has a number of invasive species that we do not want to spread inland. A report by Claudi et al, (1999) indicated that a primary vector for movement of invasive species was commercial equipment. It is reasonable to eliminate these core areas because no one has been assigned to them since 1979, and limited commercial harvest may still occur under other permitting authority. It is necessary to eliminate these areas to protect the fishery from over-harvest and possible introductions of invasive species.

6262.0200 FISHING REGULATIONS FOR INLAND WATERS.

Sub. 1, Items B through D – trout. The proposed language would open up lakes in Aitkin county and Blue Lake (Hubbard County) to winter trout fishing opportunities.

The proposed language in Subpart 1, B through D for brown trout, brook trout, splake, and rainbow trout would result in opening up lakes currently closed to winter trout fishing. Blue Lake is a two-story lake managed and stocked biennially with trout. The Aitkin County lakes are also stocked on a biennial basis. Lake data (DNR Lake Management Reports) indicates that the trout fishery in Blue Lake and the Aitkin County lakes could sustain additional fishing pressure during the winter months. DNR biologists believe there is adequate survival and good growth and condition of stocked trout, while angler harvest appears to be low. Allowing harvest during the winter season would result in better utilization of the stocked trout. In addition, opening up all of the lakes in Aitkin County would make it consistent with other nearby lakes in Pine, Stearns, Seven County Metro Area, and northeast Minnesota. The change is necessary and reasonable because it would provide additional winter fishing opportunities that are beneficial to anglers and associated fishing industries, without impacting the fisheries resource.

Sub. 1, Item I – muskellunge. The proposed language would close the statewide muskellunge harvest season three months earlier than what was previously allowed. It would also require a 40 –inch minimum size limit on Shoepac Lake. The early season closure was presented to the Department of Natural Resources by the Muskie Alliance. The Muskie Alliance is an umbrella organization that represents the majority of muskellunge angling groups in the state. Such a closure would eliminate harvest of muskellunge through the ice. The change is necessary because it would provide additional protection to this valuable trophy species when they are most vulnerable to harvest. It is reasonable to close the harvest on the December 1 date as it corresponds with other muskellunge closures (MR Section 6264.0400, subparts 22, 27, and 28) that will eliminate angler confusion. This is also the typical start of the winter fishing season when incidental catches of muskellunge can occur by anglers not targeting this species.

The repeal of the Shoepac 30-inch minimum size limit would create a standard size limit around the state for muskie harvest, except on waters with special or experimental regulations. This change is necessary and reasonable to make the laws consistent across the state for a species, less confusing laws to anglers, and provide for easier enforcement of the laws.

6262.0500 WATERS CLOSED TO TAKING FISH.

Subp. 1, Item M. This language would repeal the fishing closure below Sandstone Power Dam. It is necessary and reasonable to do this since the dam no longer exists.

Subp. 1, Item V. The proposed language would put into permanent rule the closure of a 10-acre portion of the Mississippi river within the area known as the Zebulon Pike Reservoir. The 10-acre portion of the Zebulon Pike Reservoir has been posted closed to fishing since 1985 using Minnesota Statutes, section 97C.025. The closure was done to protect muskellunge. The area known as Zebulon Pike Reservoir is a prime muskellunge water that regularly produces trophy-sized fish. Illegal activities, which resulted in the loss of large muskellunge, were a primary reason for the initial closure of this 10-acre area. Additionally, DNR field data supports the fact that this area is a significant muskellunge spawning area. The closure is necessary to protect muskellunge concentrations that utilize the area for spawning and extensively at other times of the year. It also offers the necessary protection to muskellunge so that anglers will have the opportunity to catch trophy-sized fish in other parts of the Mississippi River system. The language is reasonable because the area has been closed since 1985. It is also not overly restrictive, since the Zebulon Pike Reservoir area contains over 1,100 acres of water and the closure only effects 0.9 percent of the total river area.

Subp. 2, Item A– Cook County. Some of the proposed language is technical in nature in that it moves the existing closure for Gauthier Creek into item A. The proposed language also establishes in permanent rule three water bodies to the Cook County seasonal closures (Granite River, the Little Gunflint – Little North channel, and Cross River). Granite River, the Little Gunflint – Little North channel, and Cross River has been posted closed to fishing, all or in part, in at least some years since 1967, using Minnesota Statutes, section 97C.025. Since 1989 these water bodies have been closed every year during roughly the same time period to protect concentrations of spawning walleye. The Granite River and the Little Gunflint – Little North Channel are Canadian border waters. Posting of those waters has been done in cooperation with the Ontario Ministry of Natural Resources (OMNR) since 1990, with posting dates selected to match the dates used by the OMNR to post the Ontario sides of the waters. It was recently brought to our attention that waters posted under Minnesota Statutes, section 97C.025, item A(1) should be designated by rule. As such, we did an emergency rule that was adopted on May 8, 2006 establishing the above water bodies in 6262.0500, subp. 2, item A because they were posted every year.

Areas are sometimes closed to fishing or motorboat operation to protect concentrated fish populations that are vulnerable to harvest or human disturbance. Since weather and water temperature dictate when fish will spawn and how long they will be in the area (*Biology of Fishes 1979*), it is impossible to predict exactly when areas will have to be closed and for how long. However, those areas that we have a long history of closing on an annual basis to protect concentrations of fish are listed with specific dates in Minnesota Rules part 6262.0500, subpart 2. Those waters that we don't post annually will be designated as spawning beds or fish preserves in Minnesota Rules Chapter 6264.

This language is necessary to ensure that these areas can be posted to protect concentrations of fish from harvest or human disturbance to ensure a sustainable fish population. It is also necessary because the current emergency rule is considered ongoing and needs to be incorporated into permanent rule. The

language is reasonable because it does establish in rule existing closures that the public and anglers have come to expect, and with which local resorts, property owners, and anglers have agreed. It is also necessary and reasonable to organize existing laws so that they are clearer and less confusing.

Subp. 2, Item D– Lake Christina. The proposed language would repeal the seasonal closure on this lake. In recent years, the water quality and aquatic plant densities in the lake have deteriorated. In response, migratory waterfowl use decreased. The Department of Natural Resources, Section of Wildlife Management, treated the lake in 2003 with the fish toxicant, rotenone, to eliminate fish life and restore waterfowl habitat. Since the treatment, the water clarity and aquatic plant abundance appears to be responding and waterfowl have returned to the area. Additional fish barriers were also installed in the watershed to reduce the likelihood of fish moving back into the lake. The lake will no longer be managed for a recreational fishery and game fish will not be restocked into the lake. It is necessary and reasonable to repeal this language, because the future management of the lake will focus on wildlife habitat as a Waterfowl Management Area and will no longer be managed for angling. With the new management emphasis and no fish to protect, the Department no longer has the statutory authority to seasonally close the area to fishing.

Subp. 2, Item E– Gauthier Creek. This proposed language is technical in nature and moves Item E into Item A creating one area to find all of Cook County seasonal closures. It is necessary and reasonable to make this move to make the laws more user friendly and less confusing.

Subp. 2, Item G– Goodhue Co. The proposed language establishes in permanent rule the seasonal closure for the Cannon River and Hay Creek floodplain. This area was closed to fishing in 1983 as part of a negotiated agreement with the Red Wing Wildlife Protection League (who owns most of the affected area) to protect spawning fish in the Mississippi River. The establishment of this spawning area closure was directly related to public concerns about the year-round fishing season for all gamefish species in the Minnesota-Wisconsin boundary waters of the Mississippi River. During these public discussions, DNR also agreed to establish a seasonal fish refuge on a portion of the Mississippi River below Lock and Dam 3, if the State of Wisconsin established a similar closure. The language for this refuge was established in MN Statutes, section 97C.015, subds. 1– 3 in 1986, but because the State of Wisconsin never passed similar legislation, no refuge was ever established on the river. The Mississippi River Fish Refuge statute was repealed in 2005.

Areas are sometimes closed to fishing or motorboat operation to protect concentrated fish populations that are vulnerable to harvest or human disturbance. Since weather and water temperature dictate when fish will spawn and how long they will be in the area (*Biology of Fishes 1979*), it is impossible to predict exactly when areas will have to be closed and for how long. However, those areas that we have a long history of closing on an annual basis to protect concentrations of fish are listed with specific dates in Minnesota Rules part 6262.0500, subpart 2. Those waters that we don't post annually will be designated as spawning beds or fish preserves in Minnesota Rules Chapter 6264.

This language is necessary to ensure that this area can continue to be posted to protect concentrations of fish from harvest or human disturbance to ensure a sustainable fish population. It is also necessary because the current emergency rule is considered ongoing and needs to be incorporated into permanent rule. The language is reasonable because it establishes in rule existing dates that are very much accepted by the public and anglers who use the area.

Subp. 3 Seasonal restrictions on taking fish and motorboat operations. This proposed language establishes criteria under which water bodies may be posted closed to fishing or posted with motorboat restrictions as authorized in Minnesota Statutes, section 97C.025. The DNR has been using Minnesota

Statutes, section 97C.025 to post areas for over 20 years. It was recently brought to our attention, that waters being posted under Minnesota Statutes, section 97C.025, item A(1) needed to be designated by rule and that we needed criteria for posting under items A(1) and A (2) that would inform the public of how we determined when postings would occur under this section. As such, we did an emergency rule that was adopted on May 8, 2006 that included in Minnesota Rule, Chapter 6262.0500, subd. 3 the conditions used in determining when postings will be done for those water bodies.

Areas are sometimes closed to fishing or motorboat operation to protect concentrated fish populations that are vulnerable to harvest or human disturbance. Since weather and water temperature dictate when fish will spawn and how long they will be in the area (*Biology of Fishes 1979*), it is impossible to predict in advance when some areas will need to be closed and for how long. Those areas that we have a long history of closing on an annual basis to protect concentrations of fish are listed with specific dates in Minnesota Rules part 6262.0500, subpart 2. Those waters that we don't do annually are being designated as spawning beds or fish preserves in Minnesota Rules Chapter 6264. Some examples of the need to close fishing to protect fish are indicated below.

The recovery of walleye in Red Lake (Beltrami County) relies on protecting spawning fish and minimal mortality of these fish. Due to the efforts associated with the recovery plan, significant numbers of walleye are again concentrating in tributaries for spawning. The proposed fishing closures for Red Lake would facilitate the recovery of the Red Lake walleye by protecting them from incidental catch. It is necessary and reasonable to close areas of highly concentrated spawning walleye until the population is fully recovered.

Several other lakes and streams in Minnesota also need to be seasonally closed to the taking of fish to protect concentrated populations of walleye, bluegill, and crappie from being harvested during the first week or two of the season. For some areas it is important to also ensure that human activities don't interfere with the incubation of eggs. Many of these areas in the past were being posted in agreement with the local resorts, property owners, and anglers. This language is necessary to ensure that these areas can be posted to protect concentrations of fish from harvest or human disturbance to ensure a sustainable fish population, and that the public has ample knowledge of what will be considered and how they will be notified. It is also necessary because the current emergency rule is considered ongoing and needs to be incorporated into permanent rule. The language is reasonable because weather and water temperature are just a few of the indicators that are monitored to determine when fish will be concentrated, and the duration for which they will be in the area. The proposed language does establish in rule existing practices that have resulted in little conflict with the public and anglers.

6262.0550 Waters with restrictions on Taking Fish.

The proposed language would put into permanent rule the Ogechie Lake regulations adopted each year utilizing the emergency rule process. Ogechie is one of the lakes that fall into the 1837 Treaty area. The Federal District Court ruled in 1999 (Supreme Court ruling in *Mille Lacs Band of Chippewa v. Minnesota*, 119 S.Ct. 1187) that the Mille Lacs Band, Fond Du Lac Band, and six Wisconsin Bands of Chippewa could harvest fish and wildlife in the 1837 Treaty area. The Ogechie regulations were based on a safe harvest level should the band choose to exercise its rights on this lake (DNR Large Lake Management Report). Mille Lacs and Ogechie lakes are the only lakes within the 1837 Treaty area that the Indian bands have declared in the past that could exceed the safe harvest exploitation rate. The nature of the fisheries in these waters is such that the bulk of the harvest often occurs during the first four to six weeks of the season. For the past few years, the regulations for Ogechie have not varied. Consequently, it was suggested by the Attorney

General's Office that we consider putting these regulations into permanent rule, because the conditions for emergency rule were not likely to be met. The language is necessary and reasonable to ensure that total harvest on the affected lake does not exceed target harvests for the season and that we comply with the court ruling. In addition, the public, businesses, anglers, and Indian bands have accepted these regulations for the last three years.

6262.0575 WATERS WITH RESTRICTIONS ON TAKING FISH

Subp 5. Minnows in Southwestern counties. The proposed language would allow recreational bait harvest using hook and line. In 2004, the permanent rulemaking process was used to close this area to recreational harvest to protect the Topeka shiner. This inadvertently eliminated the ability for a group of anglers to angle for creek chubs, which are technically a minnow species. Research indicates that allowing angling would not pose any threat to the Topeka Shiner. The Topeka shiner was listed by the U.S. Dept. of Interior as an Endangered Species in 1998. This status protects the species from any taking. The federal Endangered Species Act (Sec. 3(18)) defines "take" as "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Creek chubs are not a part of this federal law and being able to angle for them will not violate the endangered species laws to protect Topeka Shiners. The proposed rule is necessary to reopen this angling opportunity. The proposed rule is reasonable because it is less restrictive and would allow anglers to participate in a traditional practice while still avoiding any circumstances, which would be a violation of federal law.

Subp 6. Minnows in Southeastern counties. The need and reasonableness for this change is provided in Section 6254.0300 Waters Closed to Commercial Taking of Minnows, subp. 3.

6262.0600 SEASONS AND METHODS FOR TAKING ROUGH FISH.

Subp. 1. This proposed language would establish a June-August season for night bowfishing. The current law only allows bowfishing to occur between sunrise and sunset from May 1 through the third Sunday in February. This change is needed to allow night bowfishing to occur in the state. It is reasonable to restrict night bowfishing to a June-August season to protect concentrations of game fish that occurs mostly during the evening hours for spawning and feeding from accidental taking and being disrupted. This time period will allow bow anglers adequate opportunities to participate in this activity and harvest fish.

Subp. 1, Item B. The proposed language allows the exception for people with disabilities to be able to use crossbows for bowfishing. The proposed language would make this provision consistent with the language that already exists in 97B.106. It is necessary and reasonable to adopt consistent regulations to reduce angler confusion and allow for easier enforcement of the laws.

Subp. 2. Night Bowfishing The proposed language establishes restrictions on equipment and methods of taking fish for night bowfishing and those water bodies where night bowfishing will be allowed. Minnesota had allowed night bowfishing between 1919 through 1945 in various manners. From 1919-1929 this activity was allowed statewide. Due to landowner complaints and user conflicts, night bowfishing was restricted to designated sections of the state and into a shorter season from 1929-1943. Night bowfishing was later restricted to specific lakes from 1943-1945. The use of lights was no longer allowed in 1945, which closed the ability to participate in night bowfishing. These restrictions and final closure was a result of illegal activity and user and landowner conflicts.

A lot of changes have taken place since that initial closure. Technologies and equipment used are much quieter today than in the past. Landowners around our lakes have come to accept that anglers will be out on the lakes throughout the night. This is also an angling opportunity that is growing in popularity and is gaining acceptance by others who utilize or live on those water bodies that allow day bowfishing currently. However, due to the negative history of bowfishing in the state, we feel that the proposed restrictions associated with equipment, methods of taking, and which water bodies will be open to night bowfishing are needed to reduce user conflicts and assure landowners on the lakes have minimal disruptions. The restrictions are also needed to ensure that the species being harvested are taken in a humane manner. The noise restrictions are reasonable because they are consistent with other water surface use restrictions already in law. The restrictions on methods of taking fish at night are also consistent with current laws for bowfishing during the day. The water bodies were selected based on having an adequate fishery available for this activity, that harvest of these species was already occurring on these lakes, minimal housing development had occurred, landowners were supportive of the activity, it was not a water body already closed to spearing or bowfishing, and the activity would not impact other management efforts. The list of lakes was chosen in consultation with representatives from the bowfishing groups. The number of lakes selected to be open to this activity are adequate to meet the demands of the anglers as well as distributed around the state.

6262.0800 OPEN SEASONS FOR TAKING WHITEFISH AND CISCOES.

The proposed change in the title is technical in nature. It is needed and reasonable so that the intent of what is covered under this part is more understandable.

Subpart. 2. Schedule I. The proposed changes in this subpart add Devils Track Lake (Cook County) to the list of lakes open to gill netting for whitefish or cisco and removes Upper Red Lake (Beltrami County) and Reilley Lake (O'Reilly; Itasca County) from the list. Devils Track Lake has a good whitefish population and it is reasonable to add this lake to this schedule to provide additional sport gill netting opportunity. It is necessary and reasonable to remove Reilley Lake from this list since the whitefish populations are declining and they are now heavily infested with the tapeworm, *Triaenophorus spp.* (DNR Lake Management Report). This tapeworm exists in a cyst form in the cisco or whitefish meat. Fish heavily infested with these cysts are unsightly and people will not harvest or eat them.

The walleye population on Red Lake had crashed and it has been closed to fishing and netting to allow the reestablishment of this fishery. Data (DNR Lake Management Report) indicates that limited recreational walleye harvest can be sustained and we recently opened the lake to angling. Harvest on the lake will be based on target harvest goals. It is necessary to remove Upper Red Lake from this sport-gillnetting list since walleye populations are not yet at a point that will support both whitefish netting and angling activities because of the incidental netting mortality that will occur. It is reasonable to close Upper Red Lake since people will still have the opportunity to angle for these species while the walleye fishery continues to recover.

Subpart. 3. Schedule II. The proposed changes in this subpart include the addition of Elbow (St. Louis County) and the removal of Burgen (Douglas County), East and West Fox (Crow Wing County), Island (Itasca County), Little Jessie (Itasca County), Latoka (Douglas County.), Mitchell (Crow Wing County), Nisswa (Crow Wing County), Osakis (Douglas and Todd County), Roy (Cass and Crow Wing County), Serpent (Crow Wing County), and Victoria lakes (Douglas County). Elbow Lake has a good whitefish population and it is reasonable to add this lake to this schedule to provide additional sport gill netting opportunity. It is necessary and reasonable to remove East and West Fox, Island, Little Jessie,

Latoka, Nisswa, Osakis, Roy, Serpent, and Victoria lakes from this list since the cisco populations have declined to a point that they can no longer support netting activities (DNR Lake Management Report). It is necessary and reasonable to remove Burgen and Mitchell lakes from this list since the cisco populations have declined to a point that they can no longer support netting activities and continue to provide the necessary food for the northern pike population (DNR Lake Management Report.)

6262.0900 SEASONS AND LIMITS.

This language repeals the rule language dealing with muskie limits and seasons because it is already covered in MR 6262.0200, Subp. 1, Item I. It is necessary and reasonable to expect that obsolete or redundant language would be repealed or deleted.

6262.1000 SPECIAL SPECIES MANAGEMENT TAGS

The proposed change would make permanent the rules that were previously adopted under the process prescribed by Minn. Stat., sec. 14.389 to incorporate specific changes set forth in law. The 2005 legislature authorized the use of the expedited rule process (Laws of Minnesota 2005, Chapter 146, Section 2 and Laws of Minnesota 2005, First Special Session, Chapter 1, Article 2, Sec. 90, 100, and 101) to establish a process to administer requirements for application and tagging of specific fish species as currently passed in the 2005 legislative session. These changes would make those rules permanent. These rules provide the same application options for fisheries management that are available for wildlife management in Minnesota. The desire to consider an application process for tags came about as a way to better monitor lake sturgeon harvest due to the restoration work being done on the Minnesota – Ontario border. Lake sturgeon numbers have increased in recent years, but the population is still recovering and requires additional protection for its long-term health. At present, there are high numbers of smaller fish, but few larger fish (over 55 inches in length). A recovered population would have many fish larger than 72 inches in length. As the lake sturgeon population recovery continues, angling interest has also grown. With large increases in angler numbers, management of this species has become increasingly difficult. Harvest is presently regulated with a size limit and a one fish per year bag limit. It is reasonable and necessary to have provisions for a special fish management tags as a means to collecting additional harvest data on a fishery and a way to improve management of a species and enforcement of rules and statutes.

6262.3200 PREPARATION AND PACKING OF FISH FOR TRANSPORTATION Subp. 5.

The proposed language would clarify restrictions associated with transporting and packaging of special fish management species. The 2005 legislature authorized the use of the expedited rule process (Laws of Minnesota 2005, Chapter 146, Section 2 and Laws of Minnesota 2005, First Special Session, Chapter 1, Article 2, Sec. 90, 100, and 101) to establish a process to administer requirements for application and tagging of special fish management species as was passed in the 2005 legislative session. The 2006 legislature also modified the statute (Laws of 2006, First Session, Chapter 281 Article 2, Section 34) to allow for the commissioner to prescribe the methods of packing and transportation of fish that fall under these provisions. It is reasonable and necessary to have provisions for the packaging and transportation of a special fish management species as a means to inform those who will want to package these fish and improve management and enforcement of the new laws to help govern the harvest of this species.

Additional justification for the need and reasonableness of this part can be found under 6262.1000.

6262.3250 LABELING AND PACKING OF FISH UNDER A FISH PACKER LICENSE. Item D (4)

The proposed language would clarify how species with size limits or those fish harvested from designated waters should be packaged. Angler noncompliance on some designated waters has been shown in DNR Research study 602 to be substantial. Only a few lakes have had creel surveys since regulation implementation, and this preliminary data suggest that we have some problems with anglers illegally harvesting protected-sized fish. Noncompliance can have a significant impact on a regulation's effectiveness. Research indicates that the benefits of size-based regulations are lost if more than 15% of the protected-sized fish which are caught are harvested illegally (Gigliotti and Taylor 1990).

It was found by the DNR that in one-half of our creel surveys (4 out of 8) that this noncompliance rate of 15% was exceeded. The percent of the harvest that was composed of protected-sized fish ranged from 2 to 87%. There are a number of noteworthy angler demographic trends related to noncompliance. For example, although angler-based noncompliance can be quite high, comparatively few angler parties may be responsible for an appreciable portion of the number of noncompliant fish harvested. For example, of the 15 parties that harvested noncompliant fish on Green Lake (Hinckley, 13-041) in 1998, 3 parties (10 anglers) were responsible for 59% of the total number of noncompliant crappie harvested. Of the 64 and 63 angler parties responsible for noncompliance on Green Lake (Hinckley, 13-041) in 1999 and 2000, 6 parties each year, representing 17 and 13 anglers respectively, harvested 36% and 35% of the total noncompliant crappie harvested. In addition, angler parties not specifically targeting fish species with protective length limits were responsible for a large majority of the noncompliant harvest on Lake Chisago (13-021) and Green (Spicer, 34-079). Angler parties not specifically targeting largemouth bass on Lake Chisago comprised 74% of those fishing parties that possessed noncompliant fish in 2000. The rule language is clearly necessary to further educate anglers about special and experimental length-based regulations, especially those that are established on designated waters and the need to comply with those regulations if fishing is to improve on these water bodies. It is also necessary because it will provide enforcement a better tool to assist in the enforcement of these regulations, especially on designated water bodies. The language is reasonable because it does not put any undue burden on anglers and fish packers who wish to package their fish for transportation or shipping.

6264.0025. DESIGNATED WATERS

The proposed language is technical in nature and clarifies the authority under Minnesota Statutes, sections 97C.001 and 97C.005 that rules may be established in Chapter 6264 that are different and take precedence over rule language in other chapters. The relationship of the rules under Chapter 6464 to border water rules (Chapter 6266) and inland water rules (Chapter 6262) has always been confusing to the public. Consequently, duplication of Chapter 6264 rule language within other rule chapters became common practice to ensure that the correct rules were being followed. Over time, these cross-references have become difficult to manage and staff have missed updates that were needed to one chapter or the other. The proposed change is necessary and reasonable because it will eliminate this duplicative language and help clarify that Chapter 6264 should always be consulted to determine if water bodies or species may have different rules that take precedence. The proposed clarification to the language will also help in the enforcement of the Chapter 6264 rules in association with rules in other chapters of the law.

6264.0100 DESIGNATED SPAWNING BEDS AND FISH PRESERVES.

The proposed rule language would designate water bodies identified as spawning beds and fish preserves. These water bodies may be closed on a seasonal basis when needed to protect concentrations of fish. The need and reasonableness for this language can be found under 6262.0500, subp. 3.

6264.0300 DESIGNATED EXPERIMENTAL REGULATIONS Subp. 39

The proposed language adds Little Osakis Lake to the current walleye minimum size limit on Osakis Lake. Osakis Lakes' regulations were adopted using the process outlined in Minnesota Statutes, 97C.001. Public meetings were held which explained the regulation and was supported by the majority of comments received during the comment period. Little Osakis Lake is a water body that has a direct connection to Osakis Lake. DNR staff and the public involved in the process believed that Little Osakis Lake would be included in the new regulation. However, a review of the rule adoption process revealed that the procedures for posting, news releases, and the public meeting did not specifically address Little Osakis Lake as required. Consequently, the existing rule was adopted to cover only Osakis Lake. The proposed language is necessary to ensure that consistent regulations exist on these connected water bodies so that the regulation has a chance of meeting the established management goals for walleye as defined in the DNR Lake Management Report. It is reasonable because the public and anglers already believed that the regulation would apply to both water bodies and it will reduce confusion for anglers going between the connected waters.

6264.0400 DESIGNATED SPECIAL MANAGEMENT WATERS

Subp. 4. This language makes all but the walleye portions of the Mille Lacs Lake emergency regulations that are adopted each year permanent. The walleye portion that must be set each year is being repealed. Mille Lacs Lake is one of the lakes that fall within the 1837 Treaty area. The Federal District Court ruled in 1999 (Supreme Court ruling in Mille Lacs Band of Chippewa v. Minnesota, 119 S.Ct. 1187) that the Mille Lacs Band, Fond Du Lac Band, and six Wisconsin Bands of Chippewa could harvest fish and wildlife in the 1837 Ceded Territory. The Mille Lacs Lake proposed walleye regulations are based on a safe harvest level determined each year by a technical committee made up of both DNR and Indian band staff. The courts directed the State of Minnesota and the Indian bands to maintain exploitation rates of walleye at or below 24% in the treaty area. The state regulates non-band harvest to insure compliance with the court ordered 24% exploitation rates both on Mille Lacs Lake and connected waters to the posted boundaries. The bands are not required to declare their harvest intentions until mid-March, so final harvest threshold levels to be included in the proposed walleye rules are not available until that time. Mille Lacs and Ogechie lakes are the only lakes that the Indian bands have declared in the recent past that could exceed the walleye exploitation rate. The proposed repeal of the walleye language is necessary because the nature of the fisheries in these waters is such that the bulk of the harvest often occurs during the first four to six weeks of the season. To ensure that total harvest on the lake is at or below the 24% exploitation rate for the season, it is essential to have the sport angler regulations in place by the May opener, which can only be accomplished using the emergency rule process. Consequently, the walleye rules for Mille Lacs Lake will always need to be changed each year by the emergency rule process to meet the court requirements. It is reasonable to repeal the walleye rules because it will create less confusion as to what the current walleye regulations are on Mille Lacs.

The Mille Lacs Lake regulations dealing with northern pike, northern cisco (tulibee), and smallmouth bass were based on a safe harvest level should the band choose to exercise its rights on this lake (DNR Large

Lake Management Report). Mille Lacs and Ogechie lakes are the only lakes within the 1837 Ceded Territory that the Indian bands have declared in the recent past that could exceed the safe harvest exploitation rate for these species. For the past three years, the regulations for species other than walleye and the culling rule have not varied. Consequently, it was suggested by the Attorney General's Office that we consider putting these regulations into permanent rule, because conditions for emergency rule were not likely to be met. The language is necessary and reasonable to ensure that total harvest on the affected lake meets target harvests for the season and that we comply with the court ruling. In addition, the public, businesses, anglers, and Indian bands have accepted these regulations. The addition of the connected waters is necessary and reasonable to ensure that the rules will meet the harvest allocations and has been accepted by the anglers.

Subp. 32. This change in language is technical in nature because the requirement to sign and date the license was no longer required when the legislature passed the law to establish the special fish management tag. The need and reasonableness for this change can be found under 6262.1000. It is necessary and reasonable to repeal obsolete language as needed.

Subp. 33. The proposed change would clarify the walleye and sauger combination limit of four fish for the Lake of the Woods and Rainy River system. The change also makes permanent the emergency rule that eliminated sauger from the size limit restrictions.

Rainy River and Lake of the Woods are border waters that must meet a safe harvest allocation for walleye as agreed to by Ontario and Minnesota. The exempt rule making process was used to adopt two rule subparts that set a walleye protected size limit of 19.5-28 inches and a bag limit of 4 fish in the aggregate for the system. In trying to enforce the law, we have found that the current way the laws are structured does not provide the four fish bag limit for the system. By combining the separate subparts, the rule will be clear that the two water bodies are being managed as one system and that the walleye bag limit for the system regardless of where they are taken from Lake of the Woods or the Rainy River is four. The rule that set the bag limit and size limit for walleye is necessary to meet safe harvest allocations and protect the high quality walleye fishery. The proposed language is reasonable since it is what we took to the public meetings and had agreement on by the majority of the constituent groups when the law was originally adopted through the exempt rule making process.

The exempt rule that set the size limit for walleye was needed to meet safe harvest allocations and protect the high quality walleye fishery. The sauger was included in combination with the walleye protected size limit to simplify the regulation and was not needed to reduce sauger harvest or to protect the sauger population (DNR Large Lake Management Data). Inadvertently, we outlawed the ability to cook a meal while on the ice because current rules require that all species with a size limit remain whole while on this water body. An emergency rule was then done in 2005 to eliminate sauger from the size limit. The proposed change will make the emergency rule permanent. The proposed change is necessary to allow anglers to fillet and eat a meal of sauger on the ice, and to avoid any negative impacts to local businesses that rely on this fishery. The change is reasonable because it is less restrictive than what is required in current law and by maintaining the ability to fillet sauger as currently allowed will minimize any confusion by the anglers.

Subp. 34. The proposed change is technical in nature and repeals the language for the Rainy River that was incorporated into 6264.0400, Subp. 33. The need and reasonableness for that change is in that section. It is necessary and reasonable to repeal obsolete language as needed.

Subp. 55. The proposed language that clarifies locations is technical in nature. The proposed language also adds a number of connected waters to the current northern pike size limit on Lake of the Woods and Rainy River. The Lake of the Woods and Rainy River northern pike regulations were adopted

using the process outlined in Minnesota Statutes, 97C.005. Public meetings were held which explained the regulation and was supported by the majority of comments received during the comment period. The water bodies being added to this rule are directly connected to Lake of the Woods and Rainy River. Staff and the public involved in the process just assumed that these water bodies would be included in the regulation. However, a review of the rule adoption process revealed that the procedures for posting, news releases, and the public meeting did not specifically address these water bodies as required. Consequently, the existing rule was adopted to cover only Lake of the Woods, Rainy River, Winter Road River, Baudette River, and Warroad River. The language is necessary to ensure that consistent regulations exist on these connected water bodies so that the regulation has a chance of meeting the established management goals for northern pike as defined in the DNR Lake Management Report. It is reasonable because the public and anglers assumed that the regulation would apply to both water bodies and it will reduce confusion for anglers going between the connected waters.

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

Subp 2, Item C. The proposed language eliminates the requirement that fish may not be released after being possessed. The DNR adopted this rule under the assumption that it was consistent with how the rules for the bordering states had been adopted. However, it was brought to our attention after the rule was adopted that the provision that one could not release the fish after possession was not consistent with the other states' border water rules. The border water states had not adopted this provision because they wanted anglers to have the option at the end of the day to release fish if they were not going to utilize them. The proposed rules are needed and reasonable because they would maintain simple and consistent regulations on border waters, be much less confusing for the angling public, and helps reduce enforcement problems.

Subp. 4. This proposed language is technical in nature. The need and reasonableness for this provision can be found under 6264.0025.

6266.0300 TAKING OF FISH ON MINNESOTA-NORTH DAKOTA BOUNDARY WATERS.

Subp. 2, Items A and B. The proposed language would make permanent the existing emergency rule that established a continuous walleye and northern pike harvest season and a bag limit of 3 fish for each species on the associated border waters.

In 1998 North Dakota implemented a continuous angling season, which resulted in two years of inconsistent regulations. In March 2000, Minnesota and North Dakota agreed to implement what was termed a Red River Spring Conservation Season (SCS) for both walleye and northern pike. The SCS regulation established a reduced walleye and northern pike harvest and size limit from March 1 through the first Friday in May: For walleye the regulation was a 3 fish limit with only 2 less than 18-inches and 1 over 28-inches. For northern pike the regulation was a 3 fish limit with none over 27-inches. After the May date, the walleye limit reverted to 5 and the northern pike to 3. These regulations were a compromise between the two states. The regulations were in place for approximately four angling seasons.

Though there was high angler acceptance for the SCS regulations, North Dakota proposed in 2003 returning to a continuous season with a limit of 3 fish for both walleye and northern pike. Minnesota preferred retaining the current SCS based on fish and angler data that had been collected during this time

(DNR field data). Teleconference calls between the two states took place on November 5, December 1, and December 11, 2003 to discuss the issue and work out a compromise. The proposed language is what both states agreed to implement as a way to provide consistent and simple regulations. The regulation was implemented through the emergency rule process for the 2004 angling season. Shortly after the adoption of the emergency rule, the current longer rule making process was begun. The proposed rules are needed and reasonable because they would maintain simple and consistent regulations on border waters, be much less confusing for the angling public, and helps reduce enforcement problems.

6266.0400 TAKING OF FISH ON MINNESOTA-SOUTH DAKOTA BOUNDARY WATERS.

Subp. 2, Items A through E The proposed language would reduce possession limit for walleye, crappie, and sunfish on the Minnesota-South Dakota border waters. The language would also change the harvest season on these waters for walleye, northern pike, and bass. DNR fish population data indicates that the reduced bag limits are needed to maintain a quality fishery. The data also showed that harvest pressure was low enough in early April that the season could be opened earlier without harming the resource. Negotiations with South Dakota have resulted in an agreement to have consistent regulations that provide adequate protection for the resource. South Dakota has made the proposed regulation changes 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 seasons and limits on the same water and angler confusion. It is also reasonable because the season is less restrictive than what is currently in law.

6266.0500 TAKING OF FISH ON MINNESOTA- WISCONSIN BOUNDARY WATERS.

Subp. 2. Items D and E. The proposed language makes changes to bring the minnow and rough fish definitions into compliance with rules that govern invasive species (Chapter 84D).

Subp. 3, Item E The proposed language is technical in nature and clarifies that the recently enacted special species management tags do apply to the Minnesota-Wisconsin border waters. The need and reasonableness for this change may be found under 6262.01000.

6266.0700 TAKING OF FISH ON MINNESOTA-CANADA BOUNDARY WATERS SUBP 2

Subp 2. Species, seasons, and limits on Minnesota-Canada Boundary Waters. The proposed changes are technical in nature. All the changes for Items A(2), 3, 4, Items B, D are making the border water regulations consistent with regulations already adopted in Chapter 6264. The proposed language also eliminates the Sea Gull River and Gull River from the border waters listing for walleye regulations, because they are inland waters and the regulations listed in this section are a repeat of what is already found in 6262.0200, subp. Item G. The proposed rules are needed and reasonable because they would maintain simple and consistent regulations on border waters, be much less confusing for the angling public, and helps reduce enforcement problems. Additional information on the need and reasonableness for changes can be found under 6264.0025, 6264.0400, and 6262.01000.

Repealer Summary

6260.1900 Commercial fishing on inland Mississippi river subp. 2

This language repeals the restriction on use of bait for setlines. It is necessary and reasonable to repeal obsolete laws.

6260.1900 Commercial fishing on inland Mississippi river subp. 3

This language repeals the setline markings. It is necessary and reasonable to repeal obsolete laws.

6260.1900 Commercial fishing on inland Mississippi river subp. 4

This language repeals the lifting and set times. It is necessary and reasonable to repeal obsolete laws.

6260.2400 Description of inland commercial fishing areas subp 26

This language repeals commercial area #26. The need and reasonableness for this change is provided in section 6260.2400.

6260.2400 Description of inland commercial fishing areas subp 27

this language repeals commercial area #27. The need and reasonableness for this change is provided in section 6260.2400.

6260.2400 Description of inland commercial fishing areas subp 28

This language repeals commercial area #28. The need and reasonableness for this change is provided in section 6260.2400.

6260.2400 Description of inland commercial fishing areas subp 29

This language repeals commercial area #29. The need and reasonableness for this change is provided in section 6260.2400.

6262.0500 Waters closed to taking fish subp.1, item m.

This language repeals the closure below the sandstone power dam. It is necessary and reasonable to repeal obsolete laws.

6262.0500 Waters closed to taking fish subp. 2, item d.

This language repeals the seasonal closure on Lake Christina. The need and reasonableness for this language is provided in section 6262.0500.

6262.0500 Waters closed to taking fish subp. 2, item e

This language is being moved to ms 6262.0500 subp. 2, item a. The need and reasonableness for this change is provided in 6262.0500.

6262.0900 Seasons and limits.

This language repeals the muskellunge season and limits that are covered under 6262.0200, subp. 1, item I. It is necessary and reasonable to repeal redundant laws.

6264.0400 Designated special regulations subp. 34.

This language repeals the rainy river walleye and sauger season and limits that are covered under 6264.0400, subp. 33. It is necessary and reasonable to repeal redundant laws.

6266.0700 Taking of fish on Minnesota-Canada Boundary Waters subp. 2, item a(2)

This language repeals the lake of the woods walleye and sauger season and limits that are covered under 6264.0400, subp. 33. It is necessary and reasonable to repeal redundant laws.

6266.0700 Taking of fish on Minnesota-Canada Boundary Waters subp. 2, item a(4)

This language repeals the rainy river walleye and sauger season and limits that are covered under 6264.0400, subp. 33. It is necessary and reasonable to repeal redundant laws.

6266.0700 Taking of fish on Minnesota-Canada Boundary Waters subp. 2, item a(5)

This language repeals the sea gull river and gull lake walleye and sauger season and limits that are covered under 6262.0200, item g. It is necessary and reasonable to repeal redundant laws.

6266.0700 Taking of fish on Minnesota-Canada Boundary Waters subp. 2, Item B

This language repeals the sturgeon season and limits that are covered under 6264.0400, Subp. 32. It is necessary and reasonable to repeal redundant laws.

6266.0700 Taking of fish on Minnesota-Canada Boundary Waters subp. 2, Item A(2)

This language repeals the Lake of the Woods walleye and sauger season and limits that are covered under 6264.0400, Subp. 33. It is necessary and reasonable to repeal redundant laws.

Emergency Rules

6256.0500, subp. 9; published SR Vol. 30 page 1292, May 30, 2006

This language will be replaced by a permanent rule that will establish a Western painted turtle size limit.

6262.0500, subps. 1-3; published SR Vol. 30 page 1216, May 8, 2006

This language will be replaced by a permanent rule that establishes permanent seasonal closures for subp. 2 and criteria for posting restrictions on water bodies as it relates to taking fish and motorboat operations under subp. 4.

6262.0550; published SR Vol. 30 page 1191, May 1, 2006

This language will be replaced by a permanent rule that establishes the northern pike length limits on Ogechie Lake.

6262.1000; published SR Vol. 30 page 704, January 3, 2006

This language will be replaced by the permanent rules that describe the conditions for special fish management tags.

6264.0150; published SR Vol. 30 page 1216, May 8, 2006

This language will be replaced by the permanent rule 6264.0125 that designates spawning beds and fish preserves.

6264.0400, subp. 4 Items E-K; published SR Vol. 30 page 1191, May 1, 2006

This language will be replaced by the permanent rule for Mille Lacs Lake, except for the walleye limits. Walleye are managed under a safe harvest quota as established by the courts and will continue to be done by emergency rule.

6264.0400, subp. 33; published SR Vol. 31 page 207, August 14, 2006

This language will be replaced by a permanent rule for Lake of the Woods and Rainy River walleye and sauger limits and sizes.

6266.0300, subp. 2; published SR Vol. 30 page 673, December 27, 2005

This language will be replaced by the permanent rule for the walleye and northern pike season and limit changes on the North Dakota border waters.

6266.0400, subp. 2; published SR Vol. 31 page 1139, February 20, 2007

This language will be replaced by the permanent rule for walleye, northern pike, and bass season and limit changes for South Dakota border waters.

Review of Documents

Sources cited in this document may be reviewed on workdays between 8:00 am and 4:30 p.m. in the Section of Fisheries Management office at the DNR headquarters, 500 Lafayette Road, St. Paul, Minnesota.

Upon request, this document and others can be made available in an alternative format, such as large print, Braille, or cassette tape. To make such a request, please contact Linda Erickson-Eastwood, by writing to 500 Lafayette Rd, Box 20, St Paul, MN, calling 651-259-5206 or toll free outside the metro area 1-888-646-6367 or TTY 651-296-5484 or toll free TTY 1-800-657-3929, or email to linda.erickson-eastwood@dnr.state.mn.us.

Witnesses

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

Linda Erickson-Eastwood, Program Manager
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Al Stevens, Program Consultant
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Roy Johannes, Commercial Fisheries Consultant
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Richard Baker, Non-game Research Coordinator
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Based on the foregoing, the DNR's proposed rules are both necessary and reasonable.

Mark Holsten

Dated:

4/9/07

By: Mark Holsten, Commissioner
Department of Natural Resource

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January 19, 2007

TO: Linda Erickson-Eastwood, Program Manager
Department of Natural Resources

FROM: Marsha Battles-Jenks
Executive Budget Officer
Department of Finance

RE: M.S. 14.131 Review of Proposed Rules Governing Fish and Aquatic Wildlife

BACKGROUND

The Department of Natural Resources (DNR) proposes to amend the above-referenced rules governing fish and aquatic wildlife. The proposed changes amend existing rules and establish new rules for minnow harvesting, painted turtle size limits, commercial fishing operations and other fishing regulations; changes or adds to the list of designated waters, establishes uniform fishing regulations with border states and repeals obsolete rules. Pursuant to M.S. 14.131, the DNR has asked the Commissioner of Finance to help evaluate the fiscal impact and fiscal benefit of the proposed rules on local units of government.

EVALUATION

On behalf of the Commissioner of Finance, I have reviewed the proposed rule and related Statement of Need and Reasonableness (SONAR) to explore the potential impact of the proposed changes on local units of government. Based on this information, I believe that the proposed rule will have minimal fiscal impact on local units of government. My evaluation is summarized below:

- 1) This rule modifies regulations governing possession and size limits for fish and other aquatic wildlife; designates certain waters for modified regulations; modifies the fishing season for certain species of fish; and restricts the use of certain equipment in harvesting aquatic wildlife. Parties affected by the proposed rule are sport and commercial fishermen and turtle farming operations.
- 2) Enforcement of the proposed rule would be the sole responsibility of the DNR and does not result in increased costs to local units of government for local enforcement.

Based on this information, I believe that the proposed rule will have minimal fiscal impact on local units of government.

Cc: Mike Roelofs, Department of Finance