



## Minnesota Department of Natural Resources

500 Lafayette Road  
St. Paul, Minnesota 55155-40\_\_

February 22, 2010

Legislative Reference Library  
Attention: Jess Hopeman  
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 Taking Bullheads; Governor's Tracking #AR 200

Dear Librarian:

The Minnesota Department of Natural Resources intends to adopt rules relating to Taking Bullheads. We plan to publish a Dual Notice of Intent to Adopt Rules in the March 1, 2010, 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 an electronic copy of the Statement of Need and Reasonableness at the same time we are mailing our Notice of Hearing.

If you have questions, please contact me at 651-259-5206.

Yours very truly,

A handwritten signature in black ink, appearing to read "Linda Erickson-Eastwood".

Linda Erickson-Eastwood  
Fisheries Program Manager

Enclosure: Statement of Need and Reasonableness



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

**IN THE MATTER OF THE PROPOSED AMENDMENT OF**  
**RULES RELATING TO**  
**TAKING BULLHEADS**  
**STATEMENT OF NEED AND REASONABLENESS**

**February 3, 2010**

## **Minnesota Department of Natural Resources**

### **STATEMENT OF NEED AND REASONABLENESS**

#### **Proposed Permanent Rules Relating to Taking Bullheads *Minnesota Rules, parts 6262.0100 and 6262.0600***

### **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 opportunities for those who enjoy wildlife-related activities and continued use of these resources.

#### **Scope**

The proposed rules are about establishing transportation and possession requirements for live white suckers over 12 inches and using larger bullheads alive for bait.

#### **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, educational institutions, 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, a number of meetings were held in St. Paul with fishing tournament representatives, night bowfishing groups, catfish anglers interested in using larger bullheads and with angling groups wanting to legalize fishing tackle referred to as “a quick strike rig”. A series of other meetings throughout the last two years have also taken place with tournament organizers to help draft language for fishing contests.

Due to the need for additional public input and further analysis, the agency has decided not to go forward with rule changes for winter trout fishing opportunities or barbless hook requirements in southeast Minnesota. Staff and angling groups will instead embark on an educational effort about barbless hooks and winter fishing. DNR staff agrees that additional public participation would be beneficial before making any additional rule changes to trout fishing in Southeast Minnesota.

In December 2007, a portion of this rule package was completed: turtles, mussels, Mississippi River commercial fishing operations, changes in core lakes for commercial fishing areas, permanent and seasonal fishing closures, changing or adding to existing fishing regulations to reflect statute changes, and other technical changes. The package was split into three parts due to needing to work with constituent groups, especially surrounding the tournament rules, to develop a proposal that would be viewed as reasonable. This package is the second of the three

parts for this rule making process and will only include the bullhead and sucker proposed rule changes.

Organizations and individuals contacted during the request for comment period included: private and commercial riparian owners, such as the Minnesota Lakes Association and Minnesota Resort Association; media groups such as In-Fisherman, Lund Boat, various newspapers, and Gemini Sport Marketing; conservation groups such as the Izaak Walton League, Sierra Club, Fish and Wildlife Legislative Alliance, and Audubon Society; Minnesota Sportfishing Congress; Minnesota 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; 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.

Despite the extensive outreach done by the DNR, very little input was received regarding the proposed rule changes. The comments received during the comment period are summarized as follows.

Changes in trout fishing opportunities: Four people commented that they favored requiring barbless hooks at all times on all streams. The Minnesota Trout Association sent a letter requesting that we consider a number of changes to seasons, fishing methods, etc. to simplify the regulations. One person recommended that we open up all streams to winter catch-and-release fishing with only artificial lures, and expand the season to the inland opener.

Changes in use of larger bullheads for catfish bait: Twenty people favored the idea of making it legal to allow the use of live bullheads larger than 7-inches in length for catfish bait. One person was not in favor of allowing the use of larger bullheads.

Closure of Lake Christina: One individual commented that they did not support the fishing closure.

Changes in fishing tournament permit conditions: This topic generated the most comments about what the rules would or would not encompass. Four people are in favor of clarifying the existing rules. Six people were not in favor of any limits on pre-fishing activities. Seven people requested that the DNR not consider identification stickers for participants. Three individuals requested that we no longer limit tournament permits. Six people commented that they thought the DNR should limit permits during high use time and limit access to high use areas within the lake. Three people suggested that all tournaments be required to get permits. Five people felt that the regulations needed to be tightened up on tournaments and that better enforcement was needed. One person suggested that the organizers of tournaments should be required to notify the public of the events ahead of time by posting accesses and letters to landowners. Three tournament participants felt that these changes were unfair and singled them out against other user groups. One person suggested that a process be defined for those who wanted to appeal denied permits or conditions established in the permit. One person felt that the current regulations were adequate and no additional changes or clarifications were needed. Five individuals were against any limits on parking at boat access areas. Three people indicated that parking at access sites should be limited

based on some formula. Five individuals thought that a fee should be charged for the permits to cover administration costs. Three people wanted to see clarifications based on species specific criteria. Two people suggested better coordination of allowed tournaments on border waters. Four people suggested that we no longer allow off-site weigh-ins. Four other people felt that we should allow off-site weigh-ins with restrictions to protect the resource and ensure fish are not stressed or killed. The Sportsmen's Club of Lake Vermillion submitted recommendations for restrictions just for Lake Vermillion and indicated that we should base our clarifications so that they can be considered on a lake-by-lake basis. Five people had comments that they want us to discontinue issuing permits for tournaments and make them illegal because they are ignoring the rules, exploiting the resource, and participants' actions are detrimental to the resource and other anglers' experiences.

Other fishing regulations commented on but not part of this rule package: Five people commented that they support any clarifications and stronger restrictions that will protect the resource. 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. 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.

## **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.

## **ALTERNATIVE FORMAT**

Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, Braille, or cassette tape. To make a request, contact Linda Erickson-Eastwood at Department of Natural Resources, 500 Lafayette Road, Saint Paul, Minnesota 55155-4020, e-mail [linda.erickson-eastwood@state.mn.us](mailto:linda.erickson-eastwood@state.mn.us), phone 651-259-5206, and fax 651-297-4916]. TTY users may call the Department of Natural Resources at 1-800-657-3929 or 651-296-5484.

## **STATUTORY AUTHORITY**

Statutory authority for the various provisions of the proposed rules is listed below. The citations of *Minnesota Statutes*, sections 97C.001, subdivision 3, and 97C.005, subdivision 3, applies only to the waters that have been designated as experimental or special management waters.

<u>Rules Part</u>	<u>Statutes sections</u>
6262.0100	97A.045, subd. 2; 97A.551; 97C.001, 97C.005, 97C.205, 97C.315, 97C.401
6262.0600	97C.041; 97C.345;

Under these statutes, the Department has the necessary statutory authority to adopt the proposed rules.

## **REGULATORY ANALYSIS**

### **“(1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule”**

The proposed changes dealing with use of bullheads for bait and transport of fish alive that are over 12 inches (6262.0100, 6262.0600) should be beneficial to businesses and anglers by providing larger sized bait for angling to attract larger fish to be caught. This change will provide businesses an additional item for their sales that was not available before and allow anglers to legally transport these fish alive. The change associated with not allowing bullheads to be transported alive north of Highway 210 should have minimal to no impact since there is very little to no demand or market for this product in this area of the state.

### **“(2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues”**

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 and already charges a fee to cover costs for tournament permits. The exhibition/educational and pet permits will not affect revenues since no fees are assessed. All the other proposed rules are not anticipated to have any affects on state revenues.

### **“(3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule”**

Some of the proposed rules would result in stricter and therefore more intrusive conditions on permits; requirements for anglers and minnow businesses. However, it has long been recognized by fisheries professionals that restrictions are necessary to provide a sustainable fisheries resource (Inland Fisheries Management in North America). The best option for maintaining fish and other aquatic animal populations is, by definition, more intrusive than alternatives, because “less intrusive” proposals would usually not provide the necessary resource protections. Examples of some of the less intrusive methods that were considered follow.

The proposed change allowing larger sized bullhead (up to ten inches) for bait and the ability to transport alive white suckers over 12 inches with a sales receipt (6262.0100 and 6262.0600) is less restrictive than the current language, which is seven inches for bullhead species and options are not available to move fish alive that are over seven inches. In addition the method for taking larger bullheads will be less intrusive since the anglers will have more options than just hook and line to capture these fish.

**“(4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule”**

Two alternatives are: 1) limited entry where only a certain number of anglers or permits are allowed to engage in these activities (*Inland Fisheries Management in North America*), and 2). Eliminate permits or use all together. Alternative one could achieve the purpose of the proposed rules. However, this proposal was not considered because it is considered to be unnecessarily intrusive. Limited entry would also require more monitoring from the DNR to determine who and how many would be allowed to participate in these activities. Alternative two would not achieve the purpose of the proposed rules.

**“(5) the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals”**

The types of restrictions being proposed do not result in increased costs for the public, anglers, businesses, or fishing contest organizers.

The 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.

**“(6) the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals”**

The probably consequences of not adopting these rules is the inability of the Department to be able to successfully manage and protect the natural resources under our jurisdiction to provide the best fishing and commercial opportunities possible.

**“(7) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference”**

The proposed rules cover areas that are not addressed by federal law; therefore, this consideration is not applicable for those portions of the rule.

## **PERFORMANCE-BASED RULES**

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.

## **ADDITIONAL NOTICE**

Additional notice on the proposed rules will be provided to persons or classes of persons who could be affected, using the following methods:

- Sending the notice of intent to adopt rules with or without a public hearing to all those previously mentioned groups who have a role or interest in these areas being adopted.
- Sending information to a number of parties: angling groups, other environmental and social organizations, businesses, individuals, state legislators who have an interest in these areas, and staff from bordering states that are responsible for rulemaking.
- News releases that detail the major parts of the rule will be issued statewide.
- Using DNR web site to inform the public of our intent to adopt rules and take requests for hearings.

Our Notice Plan also includes giving notice required by statute as follows:

- We will mail the rules and Notice of Intent to Adopt to everyone who has registered to be on the Department's rulemaking mailing list under *Minnesota Statutes*, section 14.14, subdivision 1a.
- We will also give notice to the Legislature per *Minnesota Statutes*, section 14.116.

Our Notice Plan does not include notifying the Commissioner of Agriculture because the rules do not affect farming operations per *Minnesota Statutes*, section 14.111 due to the fact that it is the angler and minnow dealers who will be restricted and do not fall under private aquaculture.

Our Notice Plan does not include notifying the state Council on Affairs of Chicano/Latino People because the rules do not have their primary effect on Chicano/Latino people per *Minnesota Statutes*, section 3.922.

## **CONSULTATION WITH MMB ON LOCAL GOVERNMENT IMPACT**

The proposed rules are not anticipated to have any impact on local government units.

As required by *Minnesota Statutes*, section 14.131, the Department will consult with the Minnesota Management and Budget (MMB). We will do this by sending the MMB copies of the documents that we send to the Governor's Office for review and approval on the same day we send them to the Governor's office. We will do this before the Department's publishing the Notice of Intent to Adopt. The documents will include: the Governor's Office Proposed Rule and SONAR Form; the proposed rules; and the SONAR. The Department will submit a copy of the cover correspondence and any response received from Minnesota Management and Budget to OAH at the hearing or with the documents it submits for ALJ review.

## **DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION**

As required by *Minnesota Statutes*, section 14.128, subdivision 1, the agency has considered whether these proposed rules will require a local government to adopt or amend any



ordinance or other regulation in order to comply with these rules. The Department has determined that they do not because all authority to regulate these activities lies with the Department and not local units of government.

## **COST OF COMPLYING FOR SMALL BUSINESS OR CITY**

### **Agency Determination of Cost**

As required by *Minnesota Statutes*, section 14.127, the Department has considered whether the cost of complying with the proposed rules in the first year after the rules take effect will exceed \$25,000 for any small business or small city. The Department has determined that the cost of complying with the proposed rules in the first year after the rules take effect will not exceed \$25,000 for any small business or small city.

The Department has made this determination based on the probable costs of complying with the proposed rule, as described in the Regulatory Analysis section of this SONAR on pages 5-6.

## **LIST OF 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 DNR include:

Linda Erickson-Eastwood, Fisheries  
Department of Natural Resources  
500 Lafayette, Box 20  
St. Paul, MN 55155

Pat Watts, Enforcement  
Department of Natural Resources  
500 Lafayette, Box 20  
St. Paul, MN 55155

Roy Johannes, Fisheries  
Department of Natural Resources  
500 Lafayette, Box 20  
St. Paul, MN 55155

## **RULE-BY-RULE ANALYSIS**

### **6262.0100 GENERAL RESTRICTIONS ON TAKING FISH**

**Subpart 4.** The proposed language adds to the exceptions the changes being implemented in 6262.0600 to allow the transport of larger suckers and bullheads as bait. This language is a technical change. This change is necessary and reasonable so that these two rules do not conflict and that it makes it clear that the live transport of bigger bullheads not considered minnows and suckers over 12 inches that have been purchased is allowed and is an exception to this part.

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

Catfish anglers who are interested in catching larger catfish by being able to utilize larger bullheads for bait have requested that we change the current size limit on bullheads. In addition,

northern pike anglers who fish with large suckers have requested to be able to transport alive suckers that are 12 inches and larger and that have been legally purchased from a Minnesota vendor. Current laws prohibits the live transport of bullheads seven inches and larger and suckers 12 inches and larger. The proposed language would provide ways to accommodate the ability to possess, transport, and use bullheads up to ten inches for bait and transport suckers 12 inches and larger alive.

**Subpart 1.** The proposed language is a grammatical change that was recommended by the Revisor's office. This change is technical in nature. It is needed and reasonable because it makes the sentence read clearly.

**Subpart 3, Items a - f.** The proposed language provides a means and criteria for anglers to possess, transport, and use larger bullheads (7.0 - 10 inches) as live bait in portions of Minnesota where bullheads are indigenous. Current rules allow the use and live transportation of bullheads seven inches and smaller since they are classified as minnows in Minnesota Statutes section 97A.015, subdivision 29. Anglers targeting large catfish primarily on the Mississippi, St. Croix and Minnesota Rivers requested this change so they could enhance their angling experiences.

**Item A.** The proposed language sets the number of bullheads seven to ten inches in length that a person may possess. This number was set so that the general public is not competing with the commercial bait industry. The possession limit is consistent with the existing statewide possession limit for bullheads. A maximum size of ten inches was chosen to minimize the accidental or intentional establishment of bullhead populations in other water bodies. The DNR is concerned about the expansion of the species outside of its native range. Bullheads larger than ten inches are more likely to reproduce and establish populations if released than the current size of bullheads permitted for angling. The proposed language is needed to limit the number and size of bullheads that can be taken by the angling public and used for live bait. The language is reasonable because it duplicates existing law as to possession limits, while being less restrictive on the size.

**Item B.** The proposed language provides the legal means of taking bullheads by either angling, dip net, or seines in the manner prescribed for non-commercial harvest of minnows. Other means such as commercial seining, trap nets and changing the standard minnow gear were considered; however, these items would have increased the by-catch of game fish and other non-game fish species, which may potentially harm those species through delayed handling mortality. The proposed language is needed and reasonable to protect game fish populations.

**Item C.** The proposed language recognizes bullheads taken under this subpart as part of the statewide daily and possession limits for bullheads. This language is needed and reasonable because it is consistent with other rules and will be less confusing for anglers

**Item D.** The proposed language specifies the means of transporting bullheads to prevent escape. The transportation of live fish is limited to those individuals that are properly licensed or have a permit stating how fish should be transported. In situations where individuals are transporting live fish, it is important to maintain the live fish in a secure confinement during transport so that they are not accidentally released into the wild. This language is needed and reasonable to ensure that bullheads are not accidentally introduced into other water bodies.

**Item E.** The proposed language allows the commissioner to inspect bullheads that are being held or transported for live bait. Monitoring and evaluation of a new activity is an important part of knowing the success or failure of the change. The DNR has to rely on enforcement to ensure that the individuals participating in this activity are following the guidelines established in

this rule change. This language is needed and reasonable to assist in the enforcement of the possession, transport, and size restrictions.

**Item F.** The proposed language prohibits transport and import of these larger bullheads by anglers, but continues to allow these activities for the commercial industry with the appropriate commercial license or permit. This language is needed to prevent the spread of invasive species and pathogens. The proposed language is needed and reasonable as a means of accommodating anglers seeking large catfish while also preventing the spread of invasive species, pathogens and distribution of bullheads in other water bodies.

**Subpart 4.** The proposed language does not allow the transportation of live bullheads regardless of size north of State Highway 210. Bullheads are considered an undesirable species and significantly alter water chemistry and fish communities when present (Eddy and Underhill, 1974). Introduction of bullheads into waters north of State Highway 210 will be detrimental to those waters. This language is needed to prevent the accidental or intentional transfer of bullheads to the northern part of the state. The language is reasonable because Highway 210 is a commonly used geographic reference for anglers and closely matches the northern most extent of existing bullhead populations. At this time no demand or market for this species has developed in this area. Prohibiting the transfer of bullheads is a reasonable measure to limit expansion of bullheads and possible degradation of water quality and fish communities by their accidental introduction (Inland Fisheries Management in North America, 1993).

**Subpart 5.** The proposed language clarifies that suckers over 12 inches that are legally purchased maybe transported alive with a current sales receipt. Currently, the law allows aquaculture businesses to sell to vendors suckers over 12 inches to be sold as bait (*Minnesota Statutes*, section 17.4982, subdivision. 18). However, the transportation rules (*Minnesota Statutes*, section 97C. 205, and *Minnesota Rules*, part 6262.0100, subpart 4) for a person requires these fish to be transported dead. The reason that anglers buy these larger suckers is primarily as a bait to attract larger northern pike and muskie. As such, it is preferred that these fish be alive. Suckers are not considered an undesirable species and do not significantly alter water chemistry and fish communities when present. This language is needed and reasonable to allow the live transport of these legally purchased fish.

## CONCLUSION

Based on the foregoing, the proposed rules are both needed and reasonable.

February 3, 2010

/s/ Mark Holsten, Commissioner

**PUBLISHED REFERENCES CITED IN THE STATEMENT OF NEED AND REASONABLENESS**

Eddy, Samuel and Underhill, James 1974, Northern Fishes Publisher University of Minnesota Press, Minneapolis.

Inland Fisheries Management in North America. 1993. Publisher American Fisheries Society.