

Minnesota Department of Natural Resources
500 Lafayette Road • St. Paul, MN • 55155-40



April 9, 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 State Game Refuges and Taking Big and Small Game; Governor's Tracking #AR 510

Dear Librarian:

The Minnesota Department of Natural Resources intends to adopt rules relating to State Game Refuges and Taking Big and Small Game. We plan to publish a Dual Notice of Intent to Adopt Rules in the April 12, 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 Dual Notice. A hard copy of the SONAR is also included with this letter.

If you have questions, please contact me at 651-259-5197.

Yours very truly,

A handwritten signature in black ink that reads "Jason Abraham". The signature is written in a cursive style with a long horizontal line extending to the right.

Jason Abraham, Rules/Furbearer Specialist
Minnesota Department of Natural Resources

JA:abd

Enclosure: Statement of Need and Reasonableness



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

**IN THE MATTER OF PROPOSED ADOPTION OF
REFUGE, SMALL GAME, DEER, BEAR AND GOOSE RULES**

STATEMENT OF NEED AND REASONABLENESS

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GENERAL PROVISIONS

I. INTRODUCTION

Purpose

The primary purpose of the game and fish rules is to preserve, protect, and propagate desirable species of wild animals while ensuring recreational opportunities for people who enjoy wildlife-related activities. The proposed rules, and amendments to existing rules, cover a variety of areas pertaining to wildlife, including: special provisions for a game refuge; bear hunting baiting, outfitting and hunting regulations; game species that may be taken by falconry; repealing provisions for taking furbearers in national wildlife refuges or waterfowl production areas; modifying trap tending intervals, the use and placement of body-gripping traps and marking of muskrat houses; predator control (repealing obsolete language), special provisions for early season goose hunting; creating a standard opening date and bag limit for the mourning dove season.

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

A first request for comments was published in the *State Register* on August 31, 2009. The 60-day comment period ended on Oct. 29. This notice described the general areas of the proposed rules, the statutory authorities for adopting the rules, and a listing of the parties that could be affected by the proposed rules. A copy of the request for comments, as well as a draft of the proposed rules was available for public review and comment on the DNR's Internet website. A copy of the request for comments and a cover letter was sent to persons and associations who have requested to be notified of DNR rulemaking as provided by Minn. Stat., sec 14.14, subd. 1a. In addition, a copy of the request for comments and a cover letter were sent to individuals and organizations that could be affected by or would have interest in the proposed rules including people who purchased the following licenses in 2008: resident bear hunting outfitters (105); master bear hunting outfitters (20); ginseng buyer/seller (64); ginseng harvest permit (23). A copy of the request for comments and a cover letter were also sent to leaders of the following groups: Ducks Unlimited, Delta Waterfowl, Minnesota Waterfowl Association, Minnesota Deer Hunters Association, Bluffland Whitetails Association, Minnesota Trappers Association, Minnesota Fur Harvesters, Minnesota Bear hunting Guides Association, Born Free USA/Animal Protection Institute, Humane Society of the United States and the Institute for Justice. A DNR news release was also distributed to media statewide. A summary of the news release was distributed to electronically to 7,000 people who signed up for a DNR e-mail list serve.

The DNR received comments from 18 groups and individuals in response to the request for comments. Six people or groups commented that they were generally supportive of the rulemaking efforts and 12 commented that they generally oppose the revisions. Many of the groups and individuals also made comments on specific parts of the rule revisions being considered. The comments received are summarized below. Since many comments included multiple parts, the number of responses summarized is greater than the total numbers of responses

In the request for comments, the DNR indicated that it was considering changes that

would modify provisions for bear hunting, baiting and outfitting. The DNR received a number of comments regarding changes in these provisions, including:

- Five comments were in support of limiting the number of bait stations that bear hunters and outfitters could establish each season. Two people suggested limiting hunters to two baits each, while one person suggested that four baits would be more appropriate.
- One person commented in opposition to limiting the number of bait stations that bear hunters and outfitters could establish each season. This person suggested that bait station limits should apply only on public land and that each guide should be assigned a limited amount of public land.
- Three people indicated their support for rules that would prohibit bear “feeding” prior to the time period that bear baiting is legal.
- Three people suggested changing bear license lottery rules to allow the purchase of un-purchased licenses.
- Two people indicated their support for bear guide qualifications. The Minnesota Bear Guide Association indicated their support for guide qualifications only for those bear hunters who have not been guiding continuously over the past five years.
- One person indicated their support for increased penalties for bear bait tampering.
- One person indicated support for requiring GPS coordinates for bear bait station registration.
- One person indicated support for listing allowable bait materials more clearly in the regulations.
- One person indicated support for limiting the amount of bait that could be placed
- The Minnesota Bear Guide Association indicated the requirement to record the harvest of a bear on the bear guide report form within 24 hours is onerous and that five days would be more appropriate. The guide association also indicated that the requirement to include names and DNR numbers on bait signs placed for clients is unnecessary and could lead to harassment. The guide association also indicated that bear hunters should be allowed to place a small temporary sign on commonly used trails to alert forest users of a bear hunter in the area.

In the request for comments, the DNR indicated that it was considering changes in how the ginseng harvest is managed. Changes to rules concerning ginseng harvest are no longer being proposed. Comments regarding this change included:

- Two people indicated their opposition to closing wildlife management areas to the harvest of ginseng because they haven't observed a decrease in the abundance of this plant.
- One person indicated that harvesters take ownership of the species and re-plant seeds from harvested plants as required by regulations.
- One person indicated their support for prohibiting ginseng harvest on all public land.

In the request for comments, the DNR indicated that it was considering modifying intervals for tending certain traps, the use and placement of body-gripping traps and the marking of muskrat houses. Comments regarding this change included:

- One person indicated that the term "occupied" should be better defined in rules that govern the placement of body-gripping traps near buildings occupied by humans or livestock. The person is concerned because trapping near seasonally occupied cabins would be prohibited under the proposed language.
- One person indicated that the opening indicated in the proposed rule that allows a three-day check on certain types of weasel boxes is too small.

The DNR also indicated in the request for comments that it was considering modifying provisions for taking antlerless deer by lottery. Comments regarding this change included:

- One person indicated support for allowing muzzleloader hunters to apply for an antlerless permit without purchasing a muzzleloader license.
- One person said the "muzzleloader rule change is a really bad idea" They offered no further clarification.

The DNR also indicated in the request for comments that it was considering modifying provisions for taking Canada geese. Comments regarding this change included:

- One person indicated their support for extending the Canada goose season through Jan. 1.

Since 2005, a total of 29 public meetings, attended by more than 800 people, have been held in various areas of the state that included many of the subjects covered by these proposed rules. For issues in the proposed rules that have had previous public input, summaries of the input received are included in Appendix A.

Additional notice

A notice of intent to adopt rules with or without a public hearing will be sent to the same individuals and groups who received the request for comments and to additional individuals and groups who commented after the request for comments was published. The notice will be available for public review and comment on the DNR's Internet web site and will be linked to the proposed rules published in the *State Register*. The notice, proposed Rules, and SONAR will be sent to legislators as required under Minnesota Statutes, section 14.116. A DNR news release will be published when the notice of intent to adopt rules is published.

Statutory Authority

This rulemaking amends and repeals rules and so Minnesota Statutes, section 14.125, does not apply. The adoption of the proposed rules is authorized by *Minnesota Statutes*, sections;

<u>Rules Part</u>	<u>Minnesota Statutes, Sections</u>
6230.0400	86A.06, 97A.091, 97A.137
6232.2100	97B.301, 97B.311
6232.3200	97B.411, 97B.425
6232.3500	97B.425, 97B.431
6234.0800	97A.091
6234.2100	97B.921, 97B.925
6234.2200	97B.605, 97B.611, 97B.615, 97B.621, 97B.625, 97B.631, 97B.635, 97B.911, 97B.915, 97B.921, 97B.925
6234.2500	97B.671
6234.3000	97B.671
6240.0250	97B.731
6240.1200	97B.803
6240.1700	97B.803
6240.1750	97B.803

II. REGULATORY ANALYSIS

Description of the Classes of Persons Affected by the Proposed Rules

The proposed rules would affect those who hunt small game on the Lac qui Parle game refuge and wildlife management area, hunt deer during the muzzleloader season, guide bear hunters or hunt bear, hunt mourning doves, hunt mourning doves with falcons, trap certain species of fur-bearing animals, or hunt Canada geese during the September season. The proposed regulations will also affect some non-hunters and non-trappers who object to hunting and trapping or to the expansion of hunting and trapping opportunities.

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

The proposed rules will not result in additional costs to the DNR or other agencies. The proposed changes to rules for taking furbearers on national wildlife refuges will eliminate

unnecessary state rules on federally managed lands and improve efficiency by reducing the possibility of conflicting state and federal rules. For other species, there is already extensive monitoring of the wildlife populations and enforcement of the rules for species that would be affected by the proposed rules.

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

The changes to the Lac qui Parle state game refuge have been in place through temporary rule for at least the past five years and will have no added costs. The rules provide as much access for anglers and small game hunters as possible while limiting waterfowl disturbance during the peak of fall migration.

Changes to rules on establishing bear bait stations may result in additional costs for those hunters who after being selected by lottery, purchase a bear hunting license only after seeing bear hunting activity at previously established bait stations. While requiring the purchase of a bear hunting license before establishing a bait station could be considered more intrusive to individual hunters, the requirement will likely improve the chances of being selected for all hunters as only hunters who are prepared to purchase a license will enter the lottery. In 2008, 32 percent of hunters who were successful in the bear hunting license lottery failed to purchase a license (Garshelis 2009). Limiting bear hunters to three bait stations is more restrictive, but not more intrusive as a 2001 survey showed that bear hunters establish an average of 2.7 baits per season (Garshelis, 2002). The limit also prevents hunters from establishing numerous bait stations in an area to pre-empt other hunters. Rule changes on the display of signs at bait stations are less intrusive because they allow hunters or outfitters to use their full name and DNR number or driver's license number rather than their street address and telephone number as previously required.

Changes to rules for issuing bear hunting outfitter licenses are no more intrusive than the existing rules. A provision that allows the addition of persons to a master bear hunting outfitters licenses at any time allows more opportunity for outfitters than is currently available under existing rule. Changes to bear hunting outfitter reporting requirements do not require outfitters to supply any more information than the existing rule. Bear hunting outfitters are currently required to complete and submit a form at the end of each season. Information required to complete the form is the same as the information specified in the rule. Additional requirements to complete portions of the form prior to hunting and 24 hours after the harvest of a bear are necessary to document that an outfitter is being employed by a hunter. The requirement to retain records for three years is similar to record-keeping requirements for commercial licenses for aquaculture and game farms. Requirements for training in first aid and bear hunter outfitting as well as eligibility for a big game license and successfully passing a written exam are necessary to ensure that state-licensed bear hunting outfitters are at least minimally competent to safely lead hunters in the woods.

Adding mourning dove to the list of species that may be taken by falconry is less restrictive than the current rule. Repealing special provisions for taking beaver and otter on federally managed

lands is neither more nor less intrusive or costly because federal regulations already exist to manage beaver and otter harvest on federal lands. Changes to rules governing the use of traps are, for the most part, less restrictive than existing rules. Rule changes that add restrictions on the placement of body gripping traps are necessary to prevent the incidental catch of domestic animals near rural residences and barns.

Changes to rules on predator control are simply repealing rule parts that are duplicated elsewhere in rule. Provisions that establish a standard mourning dove season are no more restrictive than currently allowed under temporary rule. Changes to provisions for taking geese are less restrictive than existing rule, allowing hunters to hunt over water in more areas of the state and hunt with an increased the bag limit in some areas.

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

Most of the proposed rule changes are to improve population management, to provide biologically sustainable use of wildlife resources, to reduce restrictions for resource users or the DNR, or to provide technical corrections or clarifications to existing rules.

Protection of wildlife resources cannot be achieved solely by non-regulatory means, although part of this rulemaking is designed to eliminate procedures that have been found to be unnecessary for resource protection and management. Some of the proposed rule provisions are corrections, clarifications, or technical changes that do not have a substantive effect on current regulations. The alternative would be to leave these provisions uncorrected or unclear, but the proposed rule was considered the best way to make the existing rules more understandable and accurate.

Other rules relate to where and how hunting for various species can occur. Changes are generally to improve population management while maintaining or increasing hunting opportunities. While alternate methods such as voluntary restraint on total harvest are sometimes used on private holdings or where there is strong peer pressure to adhere to voluntary guidelines, managing wildlife populations for public benefits on a statewide or national basis requires regulations on when, where, how much, and by whom harvest of wildlife can take place. Wildlife harvest regulations are to prevent over or under harvests, to distribute harvest geographically, to provide equitable opportunities, and to address other issues of conservation, public safety, and fair chase. No alternative to regulated harvest is available that will achieve the same outcomes.

Probable Costs of Complying with the Proposed Rules

The restrictions being proposed do not result in increased costs to the public. Changes in harvest regulations and seasons that result in fewer restrictions and more opportunities should enhance incomes of those selling hunting and trapping products and services related to these activities.

Probable Costs or Consequences of not adopting the proposed rules

The consequences of not adopting many of the proposed rules will be unnecessary restrictions and fewer opportunities for hunters and trappers in Minnesota, and reduced incomes for those selling hunting and trapping products and services. The consequences of not adopting

some of the proposed rules will be a diminishment of the department's ability to responsibly manage wildlife populations. For example, the changes to parts 6240.1200, 6240.1700 and 6240.1750 are needed to increase the harvest of resident Canada geese in areas where their numbers pose a nuisance in parks and on golf courses and damage native plant species, agricultural crops or ornamental landscaping.

Assessment of Differences between the Proposed Rules and Existing Federal Regulations

The proposed wildlife rules repeal *Minnesota Rules*, part 6234.2100, subparts 5 and 6. Subpart 5 duplicates U.S. Code title 16 section 718d subsection C, which states that land acquired as a waterfowl production is not subject to the inviolate sanctuary provisions of the migratory bird act and therefore is open to public hunting and trapping. Repealing subpart 6 will give federal wildlife managers more flexibility in allowing beaver and otter harvest on national wildlife refuges statewide. Aside from that, the proposed wildlife rules cover areas that are not addressed by federal law, except for the portions relating to migratory birds. The federal government retains primary management authority for migratory birds, which are protected under international treaty and federal law and rule. These species readily migrate across state and international borders and federal oversight is necessary. The federal government establishes the outside parameters within which the state must establish specific seasons, zones, bag limits, and other restrictions for migratory game birds. States select specific seasons and limits within the federal guidelines. Federal law stipulates that state regulations can be no more liberal than federal regulation frameworks, but can be more restrictive. State law requires migratory bird regulations to be consistent with federal law (Minn. Stat. Sec. 97B.731 and Sec. 97B.803). The state waterfowl hunting regulations that are the subject of this rule are established within the allowable frameworks established by federal law and regulation, and are fully consistent with federal and state law.

Proposed Rules Effect on Farming Operations

The proposed rules will not affect farming operations.

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

Minnesota Statutes, Section 14.002 establishes legislative policy that rules and regulatory programs emphasize superior achievement in meeting the agency's regulatory objectives, as well as providing maximum flexibility for the regulated party and the agency in meeting those objectives.

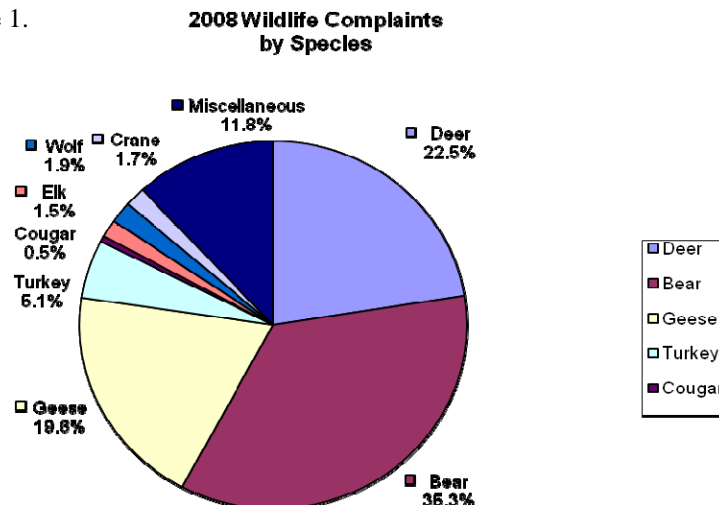
The agency mission is to work with the citizens to protect and manage the state's natural resources, to provide outdoor recreation opportunities, and to provide for commercial uses of natural resources. The Division of Fish and Wildlife mission is to provide sustainable wildlife benefits to the people of Minnesota by conserving, managing, and enhancing wildlife populations and their habitats, with an emphasis on maintaining Minnesota's hunting and trapping heritage. The objective of the division with regard to hunting and trapping regulations is to provide for sustainable resource conservation, public safety, and equitable use opportunities, consistent with

state and federal law. To the extent possible, the DNR attempts to maintain simplicity and understandability of regulations, balanced against the complexity needed to accommodate the demand for specialized regulations to provide a wider variety of specific opportunities.

In developing the proposed rules, the agency sought to make the rules less restrictive where resource conservation, safety, and equitable use opportunities allowed. An example is in changes to special provisions for taking geese during the September goose seasons. The proposed rules would allow hunters to take geese within 100 yards of surface waters in the southeast and Twin Cities metro goose zones. The proposed rules also increase the daily bag limit to five geese

during the early season. Both rule changes are aimed at reducing the state's population of resident giant Canada geese. These birds accounted for a large percentage of complaints about wildlife depredation in 2008 (Figure 1). The proposed rule changes will likely result in lower or stable resident Canada goose populations over time and will not affect migratory goose populations, which begin to arrive after the Sept. 22 close of the early goose season.

Figure 1.



Another example is the change to trapping regulations to allow three days between checks of foothold traps that are set in a manner that excludes all furbearer species except long, short-tailed and least weasels. The rule change applies only to traps with a jaw spread of 4.75 inches or less or rat-type snap traps that are in containers with an opening of no more than two inches in height and or width and are designed to immediately kill the animal.

Under current rules, any foothold trap must be checked each calendar day, regardless of how they are set. These rules are aimed at protecting animal welfare by requiring that animals held in foothold traps be reduced to possession or released within a one day of capture. Foothold traps set in weasel boxes as described above act as body-gripping traps and kill the animal immediately. Therefore, the department has proposed rules that are less restrictive, allowing trappers to check foothold traps set within narrowly prescribed circumstances every three days, which is consistent with the check required for body gripping traps.

CONSULTATION WITH MMB ON LOCAL GOVERNMENT IMPACT

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. These proposed rules do not require a local government to adopt or amend any ordinance or other regulation in order to comply with these rules.

COST OF COMPLYING FOR SMALL BUSINESS OR CITY

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 proposed rules do not require any action by local government to comply with these rules.

III. RULE-BY-RULE ANALYSIS

Scope

Areas covered by the proposed rules include the following:

- Special provisions for Lac qui Parle Game Refuge
- Taking antlerless deer during the muzzleloader season
- Establishing, registering and identifying bear bait stations
- Applications and requirements for master bear hunting and bear hunting outfitter licenses
- Requirements for bear hunting outfitter activity reports
- Allowing the taking of mourning dove by falconry
- Repealing provisions for taking otter and beaver on federal lands
- Allowing a three-day check for foothold traps in containers
- Placement of body-gripping traps within the road right-of-way near buildings
- Requirements for marking muskrat houses during the trapping season
- Repealing duplicate subparts in predator control provisions
- Establishing a standard opener and bag limit for doves
- Taking Canada geese near water in September

- Increasing the bag limit for Canada geese in the southeast zone during September
- Increasing the season length for Canada geese in the northwest goose zone

6230.0400 SPECIAL PROVISIONS FOR STATE GAME REFUGES.

Subp. 21. Lac qui Parle Game Refuge, Chippewa and Lac qui Parle counties. The purpose of the change to this subpart is to limit the application of special hunting provisions within the refuge to only the time that the Canada goose season is open in this refuge. It is necessary in order to allow hunting of other species of small game and to allow fishing before and after the Canada goose season closes. The primary purpose of the refuge and West Central Goose Zone is to the limit harvest of Eastern Prairie Population (EPP) Canada geese that use Lac qui Parle as a feeding and staging area during migration and that are vulnerable to overharvest. It is reasonable because after the limited Canada goose season closes, there are still opportunities for fishing and hunting other species of small game that can be harvested without detriment to the population of migrating EPP geese.

6232.2100 MUZZLELOADER SEASONS AND AREAS

Subp. 3 Legal deer by muzzleloader. The proposed amendment to this subpart would require muzzleloader hunters to obtain an either-sex permit before harvesting antlerless deer in lottery deer permit areas. Until 2008, when a version of this rule went into effect under the DNR's expedited emergency rule authority, muzzleloader hunters were allowed to harvest either-sex deer statewide during the muzzleloader season, regardless of whether they were hunting an intensive, managed or lottery permit area. In 2008 only muzzleloader hunters who had not purchased a regular firearms deer license were allowed to harvest either sex deer statewide. In 2009, the DNR expanded the temporary rule to require that all muzzleloader hunters obtain an either-sex permit before harvesting antlerless deer in lottery permit areas. This amendment is necessary because deer hunters, beginning in 2000 have been able to participate in both the muzzleloader and the firearms deer seasons under certain licenses. Starting in 2003, changes to deer licenses allowed more flexibility for hunters and there was a significant increase in the number of hunters who hunted both muzzleloader and firearms deer seasons. As a result, the proportion of deer taken during the muzzleloader season compared to the overall deer harvest has increased from an average of 1.9 percent from 1997-2002 to an average of 4.4 percent from 2003-2008 (2008 Deer Harvest Report). While muzzleloader hunters harvest a relatively small number of deer compared to firearms hunters, the harvest of additional antlerless deer by muzzleloaders does have an impact in lottery permit areas, where deer density is low. In 2009, the DNR significantly restricted the harvest of antlerless deer in 11 permit areas in southwest Minnesota because of low deer density. The proposed amendment is reasonable because it will help maintain sustainable deer populations by limiting the antlerless harvest in areas where deer density is low and deer are vulnerable to over harvest.

6232.3200 BAIT STATIONS AND GARBAGE DUMPS

The proposed changes to this part are to clarify and modify provisions for establishing, maintaining and signing bait stations for bear hunting. They are necessary and reasonable to conform to statutory changes, changes to the electronic licensing system (ELS) and to equitably distribute hunting opportunities among bear hunters by reducing instances of pre-emption.

Subp. 1. Bait station restriction.

Item B. The proposed addition to this subpart would specifically prohibit any bear baiting-related action by anyone who does not have a valid bear license or is not operating under the direction of a person with a valid bear license. It is necessary because *Minnesota Statutes*, section 97B.401 prohibits only the placement of bait on or after August 14 by anyone who does not possess a bear hunting license or is operating under the direction of a person with a bear hunting license. It is reasonable to not only prohibit the placement of bait, but to also prohibit baiting-related activity, such as signing, servicing or maintaining bait stations by any person except those with valid bear hunting licenses or who are operating under the direction a person with a valid bear hunting license. This would prevent an outfitter or an individual hunter from pre-empting other hunters by establishing numerous signs and stations where no bait is actually placed.

Item C. The purpose of the proposed addition of this subpart is to equitably distribute bear hunting opportunities by limiting the number of bait stations to three that an individual hunter or bear hunting outfitter may establish. It is necessary because a few bear hunting outfitters and some individual bear hunters have adopted the practice of saturating popular public hunting areas with bait stations in an effort to pre-empt other hunters from establishing bait stations and hunting an area. An example of this is in Kittson County, where two bear hunting outfitters have established bear bait stations in such a manner and in sufficient numbers to force individual hunters off public land and onto private land in surrounding areas (D. Pietruszewski, personal communication, 2009). It is reasonable because bear hunting outfitters would still be allowed to establish three bait stations under their outfitters license plus three bait stations for each individual client. Individual bear hunters establish an average of 2.7 bait stations each year (Garshelis, 2002).

Subp. 2 Registration of bait station. The proposed amendment to this subpart would make the registration procedures for bear bait stations consistent with the DNR's electronic licensing system, which uses a DNR number to verify licenses that individuals have obtained. It is necessary and reasonable because the DNR number is issued with all hunting licenses, including bear hunting and bear outfitting. It is easy for hunters to include the number with their bait station registration information and simplifies the verification of licensure for conservation officers.

Subp. 3. Display of sign The proposed amendment to item A and the proposed addition of item F would prevent the display of signs other than specified to mark bear bait stations on public lands. It is necessary on public lands to prevent the display of signs that are intended to keep

hunters and others away from areas where a hunter has established a bear bait station. It is reasonable because the proliferation of large bear bait warning signs has become prevalent in some areas (J. Dunn, personal communication, 2009). The purpose of bear bait station signs is to identify the person responsible for the establishment, maintenance and clean up of the bait site. The purpose of the sign is not to convey the presence of a bear baiting site to other hunters or those who may be using public land for hiking or wildlife observation during the hunting season. Moreover, because bear bait ‘warning’ signs are not required, the signs could be considered litter on public lands.

Item B. The proposed changes and the addition of sub items 1 and 2 are to clarify requirements for bear bait sign information for bear hunters and bear hunting outfitters. The proposed changes would also reduce the amount of personal information required on the signs. It is necessary to eliminate requirements for listing home addresses and telephone numbers to protect the identities of hunters and guides who are required to post signs at their bear baiting stations. These bait stations are often located on land that is accessible to the general public at any time. It is reasonable to eliminate these requirements because home addresses, telephone numbers and other information of outfitters and guides can be easily obtained by law enforcement personnel using DNR numbers or driver’s license numbers to search state databases. Moreover, allowing hunters and guides the option of using either a DNR or driver’s license number eliminates the need to display a driver’s license number, which some people consider sensitive personal information.

6232.3500 BEAR HUNTING GUIDING

Subparts 1 -2a. The purpose of the proposed changes to these subparts is to use terms consistent with changes to statute and create guidelines for a master bear hunting outfitter license, which would allow the addition of persons to the license at any time during the bear hunting season. They are necessary and reasonable to conform to statutory change (*Minnesota Statutes*, section 97B.431; Laws 2008, chapter 368, art 2, section 55) The DNR published a notice of adoption in the State Register using its expedited emergency game and fish rulemaking authority under *Minnesota Statutes*, section 84.027 on April 20, 2009 (republished April 27). This is in compliance with the requirements of *Minnesota Statutes*, section 14.125. The DNR retains the statutory authority to subsequently amend part 6232.3500, including transferring the rule from expedited emergency rule status to permanent rule status.

Subp. 3. Required reporting by bear hunting outfitters and master bear hunting outfitters. The proposed additions of items B-E define the content of a mandatory outfitters’ report and establish requirements for timely record keeping and preservation of records. They are necessary and reasonable to compel timely, accurate record keeping and simplify enforcement of bag limits, zone boundaries and proposed baiting restrictions.

Item B. The proposed addition of this item would set forth in rule specific information that outfitters must record on the mandatory annual report form. For the past several years, this

information has been part of a mandatory annual report although the contents of the report were not detailed in rule. It is necessary to define the content of the report to create a consistent template that cannot be easily changed. Because outfitters can act as a proxy for the hunter by establishing and maintaining bait stations when the hunter is not present, it is reasonable to require documentation of an arrangement between outfitters and clients. It is also reasonable to document the harvest of a bear and the areas hunted.

Item C. The proposed addition of this item would require outfitters to document the arrangement with their clients before any hunting activity takes place. It is necessary because outfitters may act as a proxy for clients by scouting bear hunting locations and establishing and maintaining bait stations when the client is not present. It is reasonable to require documentation of this agreement in advance of hunting activity because the proposed changes to *Minnesota Rules 6232.3200*, subpart 1, item C would allow outfitters to establish three bait stations for each client in addition to the three bait stations they are allowed to establish under their outfitter or master outfitters license.

Item D. The proposed addition of this item would require outfitters to document within 24 hours, the completion of their arrangement with a client. It is necessary to compel documentation that a hunt arrangement has ended whether through the successful harvest of a bear hunting, by mutual agreement of the client and outfitter or at the end of the season before the information is lost or forgotten. It is reasonable to allow conservation officers to easily see how many active clients an outfitter is working with at any point during the season to enforce restrictions on baiting as well as the bag limit on bear. It is also reasonable because the bear hunting guides are currently required to submit the annual activity report no later than 10 days following the close of season, typically in late-October. The majority of bear hunting and bear hunting guiding activity occurs in the first one or two weeks of the season, Sept. 1 -14. If guiding activity is not captured at the time of the activity the information is frequently lost and reports are not submitted. For the period from 2004 through 2008, 136 bear hunting guide reports were submitted late. This is from a total pool of approximately 899 guides. Annual average is 27 late reports from a pool of 180, or about a 15 percent rate of late reporting. All late reports are routed to field staff to investigate. A very conservative estimate is 80 officer hours are spent annually on follow-up. Late reports that are completed after enforcement follow-up are known to contain inaccurate documentation of actual guiding activity. The timeline requirements should help to reduce late reporting and inaccurate reporting of outfitter activities.

Item E. The purpose of the proposed subpart is to require outfitter to keep records accessible to the commissioner for three years. It is necessary and reasonable to be consistent with record keeping requirements for other commercially licensed entities such as game farms, aquaculture operations and shooting preserves.

Subp. 5. Requirements for issuance of bear hunting outfitters or master bear hunting outfitters license. The proposed subpart would establish requirements for bear hunting outfitter and master bear hunting outfitter licenses. The proposed addition is necessary to verify that bear hunting outfitter applicants are at minimally qualified to safely lead hunters in the field. It is also necessary to assure that outfitters could properly respond to a health emergency or accident. It is

reasonable because the state of Minnesota provides bear hunting and master bear hunting outfitter licenses. The DNR also provides a list of outfitter and master outfitter license holders upon request from the general public. Both of these actions at least tacitly imply that bear hunting and master bear hunting outfitters are minimally qualified to provide responsible assistance to members of the bear hunting hunting public. Because there currently are no qualifications to obtain a master bear hunting or bear hunting outfitters license, this subpart would allow outfitters to operate for one year while they are in the process of meeting these qualifications for a license.

6234.0800 HUNTING BY FALCONRY

Subp. 4. Open season and hours for migratory game birds. The proposed addition to this subpart would allow the harvest of mourning dove by falconry. It is necessary to be consistent with statute and current rule. Current rule in this part allows the harvest by falconry of all other migratory species that are defined as game birds in *Minnesota Statutes* 97A.015 sub. 24. In 2004, mourning doves were added to the list of species defined as game birds under this subdivision. It is reasonable because the U.S. Fish and Wildlife Service, which retains primary management authority for migratory birds, established the outside parameters for a mourning dove season in the state. The DNR since 2004 has used temporary rule authority to set bag limits and establish a season within the federal framework for the harvest of mourning doves by firearm. A similar federal framework allows the harvest of migratory game birds by falconry and it is also reasonable to allow falconry hunters opportunities that are consistent with opportunities afforded firearms hunters.

6234.2100 SPECIAL PROVISIONS FOR TAKING BEAVER AND OTTER .

Subp. 5. Taking in federal waterfowl production areas. [REPEALER] The purpose of the repeal of this part is to eliminate duplication of federal regulations. It is necessary and reasonable because U.S. Code title 16, section 718d subsection C states that land acquired as a waterfowl production area is not subject to the inviolate sanctuary provisions of the migratory bird act and therefore is open to public hunting and trapping.

Subp. 6. Taking in national wildlife refuges. [REPEALER] The purpose of the repeal of this part is to eliminate rules that close national wildlife refuges to the taking of beaver. The change is necessary because without it, all but six of the state's national wildlife refuges would be closed to the taking of beaver. It is reasonable because beaver are generally considered abundant statewide and do not need protection in addition to the existing season structure and provisions in rule and statute. Beaver harvest may be regulated on individual units of national wildlife refuges under federal regulations as the U.S. Fish and Wildlife Service deems necessary.

6234.2200 USE OF TRAPS

Subp. 2. Trap-tending interval; nondrowning sets. The purpose of the change to this subpart is to allow a three-day check for small foothold traps being used as body-grippers in boxes designed

to exclude all species except long and short-tailed weasels. It is necessary to clarify existing rule and *Minnesota Statutes* section 97B.931 subd 2, which allow a three-day check for body-gripping, conibear hunting-type traps. It is reasonable because traps set as specified in item A would act as a body-gripping trap, killing the animal humanely and quickly upon entering the box (Association of Fish Wildlife Agencies, 2006). Moreover, boxes built to the specifications outlined in items A and B would exclude all species except long and short-tailed weasels. Allowing a three-day check for body-gripping traps that kill instantly and humanely is consistent with existing rule and statute.

Subp. 7. Placement of body-gripping traps. The proposed amendments to this subpart would restrict the placement of the largest size of body-gripping traps that can be legally set on dry land in Minnesota. It is necessary to reduce the possibility of accidentally catching dogs, cats or other domestic animals. It is also reasonable because domestic animals are more likely to be present within 500 feet of buildings. It is also reasonable to restrict the placement of these traps at the openings of smaller culverts since domestic animals sometimes travel through and would have little chance of avoiding a body-gripping trap set directly in the opening. Moreover, this restriction is only a slight limitation of trapping in certain areas and can be avoided with landowner permission. Also, there remain numerous areas throughout the state where 6-1/2 inch body gripping traps may be legally set on dry land.

Subp. 9. Preemption of trapping site. The proposed amendment to this subpart would prohibit the practice of marking muskrat houses during the trapping season for the sole purpose of preempting other trappers. It is necessary because one of the section of wildlife's objectives with regard to hunting and trapping regulations is to provide equitable use opportunities consistent with state and federal law. The change is reasonable because current rule allows trappers to mark dozens of muskrat houses on the opening day of trapping season only to come back later and actually set traps in or near the houses. A single trapper can gain exclusive use of a large slough or lake simply by placing a stake by each muskrat house. Other trappers would assume that each staked house contained a trap and would not set traps in that area.

6234.2500 USE OF SNARES BY PREDATOR CONTROLLERS. [Repealer] The subpart would be repealed because it is redundant. It is necessary and reasonable because the language is duplicated in *Minnesota Rules* part 6234.3200

6234.3000 CERTIFICATION FOR PREDATOR CONTROL.

Subp. 5. Inactivity in predator control program. [Repealer] The subpart would be repealed because it is redundant. It is necessary and reasonable because the language is duplicated in *Minnesota Rules* part 6234.3000 subpart 4.

6240.0250 TAKING MOURNING DOVES

Subp. 1. **Open season.** The proposed subpart would allow a 60-day mourning dove season beginning on Sept. 1 with a daily possession limit of 15 birds. The possession limit would be twice the daily bag limit as prescribed in *Minnesota Rules*, 6240.0200, subp. 2. It is necessary to provide hunting opportunities on a consistent basis as the DNR has done through temporary rule since 2004 when the Minnesota legislature defined mourning doves as a migratory game bird, as cited in 6234.0800 subpart 4. It is reasonable because the U.S. Fish and Wildlife Service, which retains primary management authority for doves and other migratory birds, established the outside parameters for a mourning dove season in the state. It is also reasonable because the mourning dove is one of the most widely distributed and abundant birds in North America (Peterjohn et al.1994). Although not known precisely, the fall population for the United States was estimated to be about 475 million in the 1970s (Dunks et al. 1982, Tomlinson et al. 1988). In recent years, less than 6 percent of the North American fall population of mourning doves was estimated to have been harvested annually. As one of the most abundant species in both urban and rural areas of North America, it is familiar to millions of people. Maintenance of mourning dove populations in a healthy, productive state is a primary management goal.

6240.1200 SPECIAL PROVISIONS ON TAKING GEESE DURING EARLY SEASONS.

Subp. 1 **Taking near water.** The proposed amendments to this subpart would allow the taking of Canada geese over water during the early goose season in the southeast and metro goose zones while prohibiting the taking of geese within 100 yards of water in the Ocheda Refuge in Nobles County. It is necessary to reduce populations of resident Canada geese in the southeast and metro goose zones while protecting important water roosting areas, thereby providing a refuge for resident birds in Nobles County. It is reasonable to reduce the number of resident Canada geese in the southeast and metro goose zones because the birds are the source of numerous complaints from farmers, residents and business owners. In 2008, the birds made up 19 percent of wildlife nuisance complaints registered with the DNR (Reindl, Koelbl-Crews and Benson. 2008). It is also reasonable to increase the harvest of resident Canada geese by allowing overwater hunting during the September season because hunting is the DNR's primary means of controlling wildlife populations and is less intrusive than issuing permits to allow shooting out of season and is less costly than goose capture operations. September Canada goose seasons to target resident geese because migratory geese don't begin to arrive until mid October. It is reasonable to prohibit the harvest of Canada geese over water in the Ocheda Refuge during the early season to allow some harvest of resident geese while limiting disturbance of water roosting sites within the refuge. Limiting the disturbance of roosting sites holds birds in the area longer and provides increased opportunity for hunters in nearby fields during the regular goose season, when hunting is prohibited on the refuge.

6240.1700 TAKING GEESE IN THE SOUTHEAST ZONE EARLY SEASON

Subp. 2. **Daily limit.** The proposed amendment to this subpart would allow the taking of five Canada geese in the southeast goose zone during the September goose season. It is necessary to reduce populations of resident Canada geese in the southeast goose zone. It is reasonable because

geese are primary sources of wildlife complaints as cited in 6240.1200, subpart 1 and because September goose seasons target resident geese since migratory geese don't arrive in southeast Minnesota until October. Also, the limit of 5 birds during the early season is consistent with the remainder of the state.

6240.1750 TAKING GEESE IN NORTHWEST GOOSE ZONE.

Subp. 1 and 2. **Open season** and **Daily limits.** The proposed amendments to these subparts would add seven days to the early goose season in the northwest goose zone and increase the bag limit to five birds. Both amendments have been in place through temporary rule for the past several years. It is necessary to reduce populations of resident Canada geese in the northwest goose zone. It is reasonable because geese are primary sources of wildlife complaints as cited in 6240.1200, subpart 1 and because September goose seasons target resident geese since migratory geese don't arrive in southeast Minnesota until October. Also, the limit of 5 birds during the early season is consistent with the remainder of the state.

Repealer. The analysis for the rule parts being repealed is found above under the applicable rule number.

OTHER CONSIDERATIONS

Review of Documents

Sources cited in this document may be reviewed on work days between 8:00 a.m. and 4:30 p.m. in the Division of Fish and Wildlife at DNR Headquarters, 500 Lafayette Road, St. Paul, Minnesota, 55155.

Alternate 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 Jason Abraham, Division of Fish and Wildlife, Department of Natural Resources, 500 Lafayette Road, Saint Paul, Minnesota 55155-4020, telephone: 651-259-5197, facsimile number: 651-297-4961, e-mail: Jason.abraham@dnr.state.mn.us. TTY users may call the Department of Natural Resources at 651-296-5484 or 800-657-3929.

Witnesses

If these 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 will be available to answer questions about the development and content of the rules. The witnesses for the Department of Natural Resources include:

Steve Merchant, Wildlife Program Manager
DNR Division of Fish and Wildlife
500 Lafayette Road
St. Paul, MN 55155-4020

Ed Boggess, Policy Manager
DNR Division of Fish and Wildlife
500 Lafayette Road
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Jason Abraham, Furbearer Program Coordinator
DNR Division of Fish and Wildlife
500 Lafayette Road
St. Paul, MN 55155-4020

Steve Cordts, Waterfowl Program Consultant
Wetland Wildlife Populations and Research Group
DNR Division of Fish and Wildlife
Bemidji, MN 56601

Lou Cornicelli, Big Game Program Consultant
DNR Division of Fish and Wildlife

500 Lafayette Road
St. Paul, MN 55155-4020

Ray Norrgard, Wetland Wildlife Program Consultant
DNR Division of Fish and Wildlife
500 Lafayette Road
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Bill Penning, Farmland Wildlife Program Leader
DNR Division of Fish and Wildlife
500 Lafayette Road
St. Paul, MN 55155-4020

Dan Stark, Wolf/Bear Program Leader
DNR Division of Fish and Wildlife
500 Lafayette Road
St. Paul, MN 55155-4020

Pat Watts
DNR Division of Enforcement
500 Lafayette Road
St. Paul, MN 55155

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

By: _____
Mark Holsten, Commissioner
Department of Natural Resources

Dated: _____

References

Association of Fish and Wildlife Agencies, August, 2006. Best Management Practices: Trapping Weasels in the United States, five pages.

Dunks, J.H., R.E. Tomlinson, H.M. Reeves, D.D. Dolton, C.E. Braun and T.P. Zapatka. 1982. Mourning dove banding analysis, Central Management Unit, 1967-77. Special Scientific Report--Wildl. No. 249. U.S. Fish and Wildlife Service, Washington, D.C., USA.

Garshelis, D. 2002, 2009. Status of Minnesota Black Bears, 2001, 2008. Reports to Bear Committee, Minnesota Department of Natural Resources, 28, 23 pages.

Minnesota Department of Natural Resources, 2008. Minnesota Deer Harvest Report, Division of Fish and Wildlife, section of wildlife management, 40 pages.

Peterjohn, B.G., J.R. Sauer and W.A. Link. 1994. The 1992 and 1993 summary of the North American breeding bird survey. *Bird Populations* 2:46-61.

Reindl, N., K. Koelbl-Crews, S. Benson. 2008. Wildlife Damage Complaints Report, Minnesota Department of Natural Resources, section of wildlife management, 10 pages.

Appendix A. Summaries of public input related to the proposed rules

2005. In 2005, 14 public input meetings were held in February and March. More than 700 people attended and completed a questionnaire regarding their level of support for specific proposals. Topics included that are subject to this rule are changes to the bear hunting season (Questionnaires in East Grand Forks, Roseau and Thief River Falls were limited to questions outside the scope of this rule.) Those who could not attend a meeting were asked to comment via e-mail. The e-mail address was publicized on the DNR website and in a news release distributed to media statewide.

Proposal	Location	Support		Oppose		No Opinion		% Support W/Opinion
		No.	%	No.	%	No.	%	
9. Require a bear hunting license prior to establishing or maintaining a bear bait station. Also require a person to have a valid bear license number in their possession while maintaining a bait station. .	Total	309	64%	63	13%	111	23%	83%
	Ada	2	100%	0	0%	0	0%	100%
	Aitkin	16	100%	0	0%	0	0%	100%
	Appleton	22	59%	4	11%	11	30%	85%
	Blackduck and Bemidji	21	78%	3	11%	3	11%	88%
	Cambridge	26	55%	6	13%	15	32%	81%
	New York Mills	97	56%	21	12%	56	32%	82%
	Perham	13	100%	0	0%	0	0%	100%
	St. Paul	30	60%	6	12%	14	28%	83%
	Stewartville	25	78%	6	19%	1	3%	81%
	Two Harbors	5	45%	6	55%	0	0%	45%
	Warroad	30	59%	10	20%	11	22%	75%
	Email	22	96%	1	4%	0	0%	96%

Proposal	Location	Support		Oppose		No Opinion		% Support W/Opinion
		No.	%	No.	%	No.	%	
10. Limit the number of bait stations per hunter to three. The current average is 2.7 baits/bear hunter. This change would take effect in the 2006 bear hunting season.	Total	295	60%	49	10%	144	30%	86%
	Ada	2	100%	0	0%	0	0%	100%
	Aitkin	14	88%	1	6%	1	6%	93%
	Appleton	22	61%	1	3%	13	36%	96%
	Blackduck and Bemidji	20	74%	1	4%	6	22%	95%
	Cambridge	26	55%	5	11%	16	34%	84%
	New York Mills	93	53%	22	13%	61	35%	81%
	Perham	12	100%	0	0%	0	0%	100%
	St. Paul	25	51%	7	14%	17	35%	78%
	Stewartville	27	71%	4	11%	7	18%	87%
	Two Harbors	4	36%	5	45%	2	18%	44%
	Warroad	29	56%	2	4%	21	40%	94%
Email	21	95%	1	5%	0	0%	95%	

11. Limit the size of bait station signs and prohibit the placement of warning signs that mark the generic location of bear baits. This change would take effect in the 2006 bear hunting season.	Total	248	52%	38	8%	189	40%	87%
	Ada	2	100%	0	0%	0	0%	100%
	Aitkin	14	88%	0	0%	2	13%	100%
	Appleton	18	49%	2	5%	17	46%	90%
	Blackduck and Bemidji	14	52%	3	11%	10	37%	82%
	Cambridge	24	50%	3	6%	21	44%	89%
	New York Mills	77	45%	15	9%	81	47%	84%
	Perham	11	100%	0	0%	0	0%	100%
	St. Paul	25	51%	5	10%	19	39%	83%
	Stewartville	22	69%	0	0%	10	31%	100%
	Two Harbors	8	73%	1	9%	2	18%	89%
	Warroad	18	35%	7	13%	27	52%	72%
Email	15	88%	2	12%	0	0%	88%	

Proposal	Location	Support		Oppose		No Opinion		% Support W/Opinion
		No.	%	No.	%	No.	%	
8. Require individuals to obtain liability insurance and attend other courses prior to becoming a bear hunting guide. This change would take effect in the 2006 bear hunting season.	Total	202	46%	53	12%	187	42%	79%
	Ada	0		0		0		
	Aitkin	11	69%	1	6%	4	25%	92%
	Appleton	16	42%	6	16%	16	42%	73%
	Blackduck and Bemidji	16	62%	4	15%	6	23%	80%
	Cambridge	22	46%	4	8%	22	46%	85%
	New York Mills	65	37%	16	9%	95	54%	80%
	Perham	1	100%	0	0%	0	0%	100%
	St. Paul	23	48%	4	8%	21	44%	85%
	Stewartville	17	53%	5	16%	10	31%	77%
	Two Harbors	3	30%	5	50%	2	20%	38%
	Warroad	23	55%	8	19%	11	26%	74%
	Email	5	100%	0	0%	0	0%	100%

2007. In 2007, nine public input meetings were held in February and March. About 80 people attended and completed a questionnaire regarding their level of support for specific proposals. The topic subject to this rule was changes to regulations for body-gripping traps. Those who could not attend a meeting were asked to comment via e-mail. The e-mail address was publicized on the DNR website and in a news release distributed to media statewide.

Proposal	Location	Support		Oppose		No Opinion		% Support W/Opinion
		No.	%	No.	%	No.	%	
2. Further regulate conibear land sets in an effort to reduce non-target animal take.	Total	76	33%	120	52%	36	16%	39%
	Detroit Lakes	8	18%	29	64%	8	18%	22%
	Glenwood	4	36%	4	36%	3	27%	50%
	Brainerd	1	13%	7	88%	0	0%	13%
	Rochester	12	38%	17	53%	3	9%	41%
	Little Falls	11	46%	11	46%	2	8%	50%
	Slayton	8	24%	18	53%	8	24%	31%
	St. Paul	7	30%	9	39%	7	30%	44%
	Tower	1	8%	12	92%	0	0%	8%
	Austin	7	78%	0	0%	2	22%	100%

	Email - Mail	17	52%	13	39%	3	9%	57%
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2009. In 2009, six public input meetings were held in February and March. About 30 people attended and completed a questionnaire regarding their level of support for specific proposals. The topic subject to this rule was changes to regulations for goose hunting in the Metro and Southeast goose zones. Those who could not attend a meeting were asked to comment via e-mail. The e-mail address was publicized on the DNR website and in a news release distributed to media statewide.

Proposal	Location	Support		Oppose		No Opinion		% Support W/Opinion
		No.	%	No.	%	No.	%	
3. Should the DNR allow over water hunting of Canada geese during the early goose seasons in the metro and southeast goose zones?	Total	623	72%	141	16%	106	12%	82%
	Grand Rapids	0	0%	0	0%	11	100%	Not asked
	Tower	0	0%	0	0%	50	100%	Not asked
	St. Paul	5	71%	2	29%	0	0%	71%
	Duluth	0	0%	0	0%	14	100%	Not asked
	New Ulm	7	39%	4	22%	7	39%	36%
	Rochester	17	85%	2	10%	1	5%	89%
	Online Survey	594	79%	133	18%	23	3%	82%