

**STATE OF MINNESOTA**

**DEPARTMENT OF NATURAL RESOURCES**

**DIVISION OF FISH AND WILDLIFE**

**IN THE MATTER OF PROPOSED ADOPTION OF**

**AQUATIC WILDLIFE RULES FOR NORTHERN PIKE AND BORDER  
WATER RULES**

**STATEMENT OF NEED AND REASONABLENESS**

**June 18, 2012**

## **Minnesota Department of Natural Resources**

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

#### **Proposed Amendment to Rules Relating to Northern Pike and Border Waters, *Minnesota Rules*, parts 6262.0575, 6264.0300, 6264.0400, 6266.0400**

### **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 rules and amendments to existing rules cover a variety of areas pertaining to aquatic wildlife rules, including legislatively mandated changes to northern pike length based regulations, making boundary waters rules consistent with the bordering state, eliminating obsolete rules, and making rules consistent with legislative changes.

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

A “request for comments” was published in the *State Register* on March 19, 2012. This notice described the general areas of the proposed rules, the persons affected by the proposed rules, and the statutory authority for the proposed rules. 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: fishing groups, darkhouse fishing groups, spearing groups, and northern pike anglers, states and other agencies with management authority on Lake Superior and border waters. 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.

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

#### Northern Pike

Five people commented on the fact that they thought the legislation should be repealed. They indicated that the legislature should leave the regulation of fishing up to the Department and not get involved. One person commented that the Department should do more to manage the fish communities. They gave an example of a lake in northern Minnesota where the sunfish populations were not doing as well anymore and thought it was because of the northern pike. Two people commented that they agreed with the legislation. One person commented that we

did not meet the legislative directive through this process. Two people asked to be sent the emergency rules that had been done earlier.

#### Consistent regulations on border waters

Two people requested that we take a look at the South Dakota border water rules dealing with seasonal closures and spearing. They would like to see consistent regulations on the border waters.

#### Other nonrelated comments

One person asked if this was the rule package that was covering fishing contests. They were told that it was dealing with northern pike and we never heard back from them.

One person asked for the definition of “immediately released” to be changed.

### **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**

General authority to adopt these rules is found in Minnesota Statutes, section 97A.045, subs. 1, 2, 3, 4, and 5. Statutory authority for particular provisions of the proposed rules is listed below.

<u>Rule Part</u>	<u>Statute sections</u>
6262.0575	14.386, 97A.045, 97C.001, 97C.005, 97C.401
6264.0300	14.386, 97A.045, 97C.001, 97C.005
6264.0400	14.386, 97A.045, 97C.001, 97C.005
6266.0400	97A.045, 97C.045, 97C.395, 97C.401

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

The 2011 legislature passed a law (Laws of Minnesota 2011, First Special Session, Chapter 2, Article 5, Sec. 55 ) that limited the number of length based regulations and narrowed the definition of allowable special or experimental regulations for northern pike under *Minnesota Rules*, chapter 6264. To comply with the directive to have these changes done by November 2011, the Department adopted northern pike regulation changes using the emergency rule process in Minnesota Statutes, section 84.027, subd. 13(b). These rule changes were published in the State Register, volume 36, pages 501-506, on October 31, 2011. Since then, the Department

has been using other rulemaking processes to make these changes permanent. Therefore, the Department met the 18-month deadline to publish a notice of intent pursuant to Minnesota Statutes, section 14.125, and retains its authority to adopt these rules.

All other rules being proposed will amend rules for which the statutory authorities have not been revised in any way by the legislature since 1995 and therefore the 18-month deadline to publish a notice of intent pursuant to Minnesota Statutes, section 14.125, does not apply; or previous rulemaking efforts since 1995 satisfied the requirements of Minnesota Statutes, section 14.125, and thus the department retains such statutory authorities.

This rulemaking includes repeals of rules that can be found in Minnesota Rules, parts 6264.0300 and 6264.0400 consistent with changes in statutes, therefore the 18-month deadline to publish a notice of intent pursuant to, Minnesota Statutes, section 14.125, does not apply.

### **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 rules would affect individuals, spearing groups, sport anglers, who fish and boat on those waterbodies with northern pike regulations and other border and inland waters.

#### **“(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 rules will not result in additional costs to the DNR or other agencies. Many of the changes are for programs that are already in place. In addition, 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. 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”**

There are no less costly methods or alternatives.

Most of the proposed rules will not be more intrusive to persons affected by the rules.

#### **“(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”**

Alternatives to what is being proposed would be to leave these rules unchanged resulting in not meeting the requirements as set by the 2011 legislature, and the DNR in making decisions that affect the public without having the best information available. Standardizing the rules on the other border regulations also greatly simplifies the sport fishing regulations on those border waters.

**“(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 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 governmental units, businesses, or individuals”**

The probable consequences of not adopting these rules are that the Department will not have met the mandates of the 2011 legislature. The border water changes would reduce the ability of the Department to be able to successfully manage and protect the natural resources under our jurisdiction and 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.

**“(8) an assessment of any cumulative effect of the state’s rule changes with other related federal and state regulations**

The proposed rules cover areas that are not addressed by federal law or other Minnesota state laws; 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. In many cases the proposed rules allow the DNR to be more flexible and to consider multiple standards and criteria to administer program areas that benefit the resource and its’ user groups.

The proposed changes in the border waters regulations simplify and clarify those regulations for those who fish those waters.

## **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 rule making.
- Sending the notice of intent to adopt rules with or without a public hearing to all those who filed comments on the proposed rules in response to the Request for Comments.
- A news release that details 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.

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 the authority for implementing and enforcing these laws is part of the Department's mandate.

## **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. These rules do not apply to businesses. Consequently, 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.

### **LIST OF 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:

Linda Erickson- Eastwood and Al Stevens  
DNR Division of Fish and Wildlife, Section of Fisheries  
500 Lafayette Road  
St. Paul, MN 55155-4025

Norm Haukos  
DNR Division of Fish and Wildlife, Section of Fisheries  
Ortonville Area  
811 Pine Avenue  
Ortonville, Minnesota 56278

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

#### **6262.0575 FISHING REGULATIONS FOR INLAND WATERS.**

Subps. 3 and 7. The proposed changes drop the northern pike length based regulations for those water bodies. These regulations are being dropped after staff reviewed the biological data and determined that the regulations were not working. It is reasonable and necessary to drop regulations that are found to not be working as originally proposed.

Subp. 8. The proposed changes move northern pike catch-and-release language from Minnesota Chapter 6264 to Minnesota Chapter 6262 and modify the definition of electronic devices to be more inclusive. The 2011 legislature passed a law (Laws of Minnesota 2011, First Special Session, Chapter 2, Article 5, Sec. 55) that narrowed the definition of allowable special or experimental regulations for northern pike under *Minnesota Rules*, chapter 6264. Those regulations dealing with catch and release appear to no longer be allowed by this legislation as part of *Minnesota Rules*, chapter 6264 and need to be moved.

Annie Battle is a small lake with unique northern pike fish populations that are an important component of the fish communities. The northern pike fish population is vulnerable to overharvest by anglers and if not protected could result in the loss of northern pike in this system. It is our understanding that the legislation was passed to address northern pike spearing

interests associated around length based regulations and not catch-and-release. Consequently, Annie Battle is not a spearing destination and being dropped on November 1, 2011 was an unintended result of the passed legislation.

The northern pike regulations need to be moved into *Minnesota Rules*, Chapter 6262 to ensure that these vulnerable fish populations have no lapse in protection. The emergency rule making process as described in *Minnesota Statutes*, Chapter 14 was used to temporarily move this regulation as mandated by the 2011 legislation. The movement of this regulation is necessary and reasonable to ensure long-term protection of the northern pike in this lake. It is also reasonable and necessary to keep all the regulations for this lake in one place to ensure that a complete regulation history is available in one place. This provides for better compliance by the anglers and easier enforcement of the laws.

The definition of electronic devices is being modified to be consistent with the language for Black Bass Lake (subp. 10). The Black Bass Lake language was adopted at a later date and is more comprehensive of the various technologies that fall under “other sonars”. It is reasonable and necessary to whenever possible simplify regulations for anglers by making them consistent. This provides for better compliance by the anglers and easier enforcement of the laws. As mentioned earlier, the fish populations in this small lake are vulnerable to overharvest. These new technologies can provide the angler with an advantage that could threaten these fish populations by allowing overharvest. It is necessary and reasonable to ensure that the anglers know what is included in this definition so that these types of equipment are not used and the fish populations are protected from overharvest.

Subps. 9-14. The proposed changes move northern pike catch-and-release and reduced bag limit lakes from Minnesota Chapter 6264 to Minnesota Chapter 6262. The 2011 legislature passed a law (Laws of Minnesota 2011, First Special Session, Chapter 2, Article 5, Sec. 55 ) that narrowed the definition of allowable special or experimental regulations for northern pike under *Minnesota Rules*, chapter 6264. Those regulations dealing with catch and release and reduced bags appear to no longer be allowed by this legislation as part of *Minnesota Rules*, chapter 6264 and need to be moved.

Those lakes with catch-and-release or reduced bag limits are small lakes with unique northern pike fish populations that are an important component of those fish communities. The northern pike fish populations are vulnerable to overharvest by anglers and if not protected could result in the loss of northern pike in these systems. It is our understanding that the legislation was passed to address northern pike spearing interests associated around length based regulations and not catch-and-release or reduced bags. Consequently, these lakes are not spearing destinations and being dropped on November 1, 2011 was an unintended result of the passed legislation.

Those lakes under catch-and-release or reduced bag limits need to be moved into *Minnesota Rules*, Chapter 6262 to ensure that these vulnerable fish populations have no lapse in protection. The emergency rule making process as described in *Minnesota Statutes*, Chapter 14 was used to temporarily move these regulations as mandated by the 2011 legislation. The movement of these regulations is necessary and reasonable to ensure long-term protection of the northern pike in these lakes. It is also reasonable and necessary to keep all the regulations for these lakes in one place to ensure that a complete regulation history is available in one place. This provides for better compliance by the anglers and easier enforcement of the laws.



## **Repealer Summary**

**Repeal Minnesota Rules 6262.0575, Subp. 7.** The proposed rule eliminates the northern pike regulations. The change is necessary and reasonable because it has been found that the proposed rule is not working as proposed.

**Repeal Minnesota Rules 6264.0300 Subp. 33.** The proposed language is technical in nature. This language is being moved into Minnesota Rules, chapter 6262. The change in location is necessary and reasonable to ensure that it is consistent with Laws of Minnesota 2011, First Special Session, Chapter 2, Article 5, Sec. 55. It is also reasonable and necessary to ensure that all regulations for a waterbody can be found in one location. This provides for better compliance by the anglers and easier enforcement of the laws.

**Repeal Minnesota Rules 6264.0400 Subp. 22.** The proposed language is technical in nature. This language is being moved into Minnesota Rules, chapter 6262. The change in location is necessary and reasonable to ensure that it is consistent with Laws of Minnesota 2011, First Special Session, Chapter 2, Article 5, Sec. 55. It is also reasonable and necessary to ensure that all regulations for a waterbody can be found in one location. This provides for better compliance by the anglers and easier enforcement of the laws.

**Repeal Minnesota Rules 6264.0400 Subp. 49.** The proposed language is technical in nature. This language is being moved into Minnesota Rules, chapter 6262. The change in location is necessary and reasonable to ensure that it is consistent with Laws of Minnesota 2011, First Special Session, Chapter 2, Article 5, Sec. 55. It is also reasonable and necessary to ensure that all regulations for a waterbody can be found in one location. This provides for better compliance by the anglers and easier enforcement of the laws.

**Repeal Minnesota Rules 6264.0400 Subp. 61.** The proposed language is technical in nature. This language is being moved into Minnesota Rules, chapter 6262. The change in location is necessary and reasonable to ensure that it is consistent with Laws of Minnesota 2011, First Special Session, Chapter 2, Article 5, Sec. 55. It is also reasonable and necessary to ensure that all regulations for a waterbody can be found in one location. This provides for better compliance by the anglers and easier enforcement of the laws.

**Repeal Minnesota Rules 6264.0400 Subp. 97.** The proposed language is technical in nature. This language is being moved into Minnesota Rules, chapter 6262. The change in location is necessary and reasonable to ensure that it is consistent with Laws of Minnesota 2011, First Special Session, Chapter 2, Article 5, Sec. 55. It is also reasonable and necessary to ensure that all regulations for a waterbody can be found in one location. This provides for better compliance by the anglers and easier enforcement of the laws.

**Repeal Minnesota Rules 6264.0400 Subp. 109.** The proposed language is technical in nature. This language is being moved into Minnesota Rules, chapter 6262. The change in location is necessary and reasonable to ensure that it is consistent with Laws of Minnesota 2011, First Special Session, Chapter 2, Article 5, Sec. 55. It is also reasonable and necessary to ensure that all regulations for a waterbody can be found in one location. This provides for better compliance by the anglers and easier enforcement of the laws.

**Repeal Minnesota Rules 6266.0400 Subp. 9.** The proposed rule eliminates liberalized fishing on the border waters. South Dakota has already made these changes. The Department is proposing that we also adopt these changes to be consistent with South Dakota. By adopting the same regulations, we can reduce angler confusion regarding liberalized fishing on the Minnesota–South Dakota border waters. This change is necessary and reasonable in that it makes the laws

on the boundary waters between the states consistent. This provides for better compliance by the anglers and easier enforcement of the laws.

**Repeal Minnesota Rules 6266.0400 Subp. 13.** The proposed rule eliminates seasonal closures on the border waters. South Dakota has already made these changes. The Department is proposing that we also adopt these changes to be consistent with South Dakota. By adopting the same regulations, we can reduce angler confusion regarding seasonal closures on the Minnesota –South Dakota border waters. This change is necessary and reasonable in that it makes the laws on the boundary waters between the states consistent. This provides for better compliance by the anglers and easier enforcement of the laws.

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

June 18, 2012

/s/ Tom Landwehr, Commissioner

## Minnesota Department of Natural Resources

### Division of Fish and Wildlife

#### **DUAL NOTICE: Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, And Notice of Hearing If 25 or More Requests For Hearing Are Received**

##### **Proposed Amendments to Rules Relating to Northern Pike and Border Waters, *Minnesota Rules*, part 6262.0575**

**Proposed Repeal of Rules Relating to Northern Pike and Border Waters, *Minnesota Rules*, parts 6262.0575, subpart 7; 6264.0300, subpart 33; 6264.0400, subparts 22, 49, 61, 97, and 109; 6266.0400, subparts 9 and 13; and Expedited Emergency Rules published in the State Register, Volume 36, pages 501 and 505, on October 31, 2011, *Minnesota Rules*, part 6262.0575, subparts 3, 7, 9, and 10**

**Introduction.** The Department of Natural Resources intends to adopt rules without a public hearing following the procedures in the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2300 to 1400.2310, and the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28. If, however, 25 or more persons submit a written request for a hearing on the rules by 4:30 p.m. on Thursday, November 15, 2012, the Department will hold a public hearing starting at 1:00 p.m. on Tuesday, November 27, 2012, at the following locations:

In person: 6<sup>th</sup> floor main conference room, DNR Central Office, 500 Lafayette Road, Saint Paul, Minnesota 55155-4010; and

Video-conference sites:

DNR Southern Regional Office, 261 Highway 15 South, New Ulm, MN 56073

To find out whether the Department will adopt the rules without a hearing or if it will hold the hearing, you should contact the agency contact person or check online at <http://www.dnr.state.mn.us/input/rules/rulemaking.html> after November 15, 2012, and before November 27, 2012.

**Agency Contact Person.** Submit any comments or questions on the rules or written requests for a public hearing to the agency contact person. The agency contact person is: Linda Erickson-Eastwood at Fisheries Section, Minnesota Department of Natural Resources, 500 Lafayette Road, St. Paul, Minnesota 55155-4020, 651-259-5206, [linda.erickson-eastwood@state.mn.us](mailto:linda.erickson-eastwood@state.mn.us). TTY users may call the Department of Natural Resources at 651-296-5484 or 1-800-657-3929.

**Subject of Rules and Statutory Authority.** The proposed rules and amendments to existing rules cover a variety of areas pertaining to aquatic wildlife rules, including changes to northern pike length-based regulations as required by the legislature, making boundary waters rules consistent with the bordering state, eliminating obsolete rules, and making rules consistent with other legislative changes.

General authority to adopt these rules is found in Minnesota Statutes, section 97A.045, subdivisions. 1, 2, 3, 4, and 5. Statutory authority for particular provisions of the proposed rules is listed below.

<u>Rule Part</u>	<u>Statute sections</u>
6262.0575	14.386, 97A.045, 97C.001, 97C.005, 97C.401
6264.0300	14.386, 97A.045, 97C.001, 97C.005
6264.0400	14.386, 97A.045, 97C.001, 97C.005
6266.0400	97A.045, 97C.045, 97C.395, 97C.401

A copy of the proposed rules is published in the *State Register*, posted on the DNR website at <http://www.dnr.state.mn.us/input/rules/rulemaking.html>, and attached to this notice as mailed.

**Comments.** You have until 4:30 p.m. on Thursday, November 15, 2012, to submit written comment in support of or in opposition to the proposed rules or any part or subpart of the rules. Your comment must be in writing and received by the agency contact person by the due date. Comment is encouraged. Your comments should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed. You are encouraged to propose any change that you desire. You must also make any comments about the legality of the proposed rules during this comment period.

**Request for a Hearing.** In addition to submitting comments, you may also request that the Department hold a hearing on the rules. You must make your request for a public hearing in writing, which the agency contact person must receive by 4:30 p.m. on Thursday, November 15, 2012. You must include your name and address in your written request. In addition, you must identify the portion of the proposed rules that you object to or state that you oppose the entire set of rules. Any request that does not comply with these requirements is not valid and the agency cannot count it when determining whether it must hold a public hearing. You are also encouraged to state the reason for the request and any changes you want made to the proposed rules.

**Withdrawal of Requests.** If 25 or more persons submit a valid written request for a hearing, the Department will hold a public hearing unless a sufficient number of persons withdraw their requests in writing. If enough requests for hearing are withdrawn to reduce the number below 25, the agency must give written notice of this to all persons who requested a hearing, explain the actions the agency took to effect the withdrawal, and ask for written comments on this action. If a public hearing is required, the agency will follow the procedures in *Minnesota Statutes*, sections 14.131 to 14.20.

**Alternative Format/Accommodation.** Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request or if you need an accommodation to make this hearing accessible, please contact the agency contact person at the address or telephone number listed above.

**Modifications.** The Department may modify the proposed rules, either as a result of public comment or as a result of the rule hearing process. It must support modifications by data and views submitted to the agency or presented at the hearing. The adopted rules may not be substantially different than these proposed rules unless the Department follows the procedure under *Minnesota Rules*, part 1400.2110. If the proposed rules affect you in any way, the Department encourages you to participate in the rulemaking process.

**Cancellation of Hearing.** The Department will cancel the hearing scheduled for November 27, 2012, if the agency does not receive requests for a hearing from 25 or more persons.

If you requested a public hearing, the agency will notify you before the scheduled hearing whether the hearing will be held. You may also call the agency contact person at 651-259-5073 after Thursday, November 15, 2012, or check the DNR website at <http://www.dnr.state.mn.us/input/rules/rulemaking.html> to find out whether the hearing will be held.

**Notice of Hearing.** If 25 or more persons submit valid written requests for a public hearing on the rules, the Department will hold a hearing following the procedures in *Minnesota Statutes*, sections 14.131 to 14.20. The Department will hold the hearing on the date and at the time and place listed above. The hearing will continue until all interested persons have been heard. Administrative Law Judge Manuel J. Cervantes is assigned to conduct the hearing. Judge Cervantes can be reached at the Office of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, Saint Paul, Minnesota 55164-0620, telephone 651-361-7945 and FAX 651-361-7936.

**Hearing Procedure.** If the Department holds a hearing, you and all interested or affected persons, including representatives of associations or other interested groups, will have an opportunity to participate. You may present your views either orally at the hearing or in writing at any time before the hearing record closes. All evidence presented should relate to the proposed rules. You may also submit written material to the Administrative Law Judge to be recorded in the hearing record for five working days after the public hearing ends. At the hearing the Administrative Law Judge may order that this five-day comment period is extended for a longer period but not more than 20 calendar days. Following the comment period, there is a five-working-day rebuttal period when the agency and any interested person may respond in writing to any new information submitted. No one may submit additional evidence during the five-day rebuttal period. The Office of Administrative Hearings must receive all comments and responses submitted to the Administrative Law Judge no later than 4:30 p.m. on the due date. All comments or responses received will be available for review at the Office of Administrative Hearings. This rule hearing procedure is governed by *Minnesota Rules*, parts 1400.2000 to 1400.2240, and *Minnesota Statutes*, sections 14.131 to 14.20. You may direct questions about the procedure to the Administrative Law Judge.

The agency requests that any person submitting written views or data to the Administrative Law Judge before the hearing or during the comment or rebuttal period also submit a copy of the written views or data to the agency contact person at the address stated above.

**Statement of Need and Reasonableness.** The statement of need and reasonableness summarizes the justification for the proposed rules, including a description of who will be affected by the proposed rules and an estimate of the probable cost of the proposed rules. It is now available from the agency contact person. You may review or obtain copies for the cost of reproduction by contacting the agency contact person or checking the DNR website <http://www.dnr.state.mn.us/input/rules/rulemaking.html>,

**Lobbyist Registration.** *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. Ask any questions about this requirement of the Campaign Finance and Public Disclosure Board at Suite #190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone 651-296-5148 or 1-800-657-3889.

**Adoption Procedure if No Hearing.** If no hearing is required, the agency may adopt the rules after the end of the comment period. The Department will submit the rules and supporting documents to the Office of Administrative Hearings for review for legality. You may ask to be notified of the date the rules are submitted to the office. If you want either to receive notice of this, to receive a copy of the adopted rules, or to register with the agency to receive notice of future rule proceedings, submit your request to the agency contact person listed above.

**Adoption Procedure After a Hearing.** If a hearing is held, after the close of the hearing record, the Administrative Law Judge will issue a report on the proposed rules. You may ask to be notified of the date that the Administrative Law Judge's report will become available, and can make this request at the hearing or in writing to the Administrative Law Judge. You may also ask to be notified of the date that the agency adopts the rules and the rules are filed with the Secretary of State by requesting this at the hearing or by writing to the agency contact person stated above.

**Order.** I order that the rulemaking hearing be held at the date, time, and location listed above.

September 5, 2012

/s/ Tom Landwehr, Commissioner

1.1 **Department of Natural Resources**1.2 **Proposed Permanent Game and Fish Rules: Northern Pike and Border Waters**1.3 **6262.0575 WATERS WITH RESTRICTIONS ON TAKING FISH.**1.4 [For text of subps 1 and 2, see M.R.]

1.5 Subp. 3. **Conservation lakes.** While on or fishing in the following waters, the  
 1.6 possession limit for sunfish is five, the possession limit for crappie is five, the possession  
 1.7 limit for yellow perch is ten, the possession limit for walleye is two, and the possession  
 1.8 limit for largemouth bass is one. ~~All northern pike in possession while on or fishing in~~  
 1.9 ~~the following waters must be less than 24 inches in length or greater than 30 inches in~~  
 1.10 ~~length. All northern pike that are from 24 inches to 30 inches in length, inclusive, must be~~  
 1.11 ~~immediately returned to the water.~~ A person's possession limit may not include more than  
 1.12 one northern pike over 30 inches in length. The possession limit for northern pike is three.

1.13 Name	Location	County
1.14 Little Sauk Lake	T.128, R.34W, S.32	Todd

1.15 [For text of subps 4 to 6, see M.R.]1.16 Subp. 7. [See repealer.]

1.17 Subp. 8. **Annie Battle Lake including inlets and outlets.** While on or fishing in the  
 1.18 following waters, the daily and possession limit for sunfish is five and for black crappie  
 1.19 is five. All black crappie in possession must be 11 inches or greater in length. All black  
 1.20 crappie less than 11 inches in length must be immediately returned to the water. Angling  
 1.21 for northern pike and largemouth bass is limited to catch and release only, whereby any  
 1.22 northern pike or largemouth bass caught must be immediately returned to the water.  
 1.23 Catch and release angling for northern pike and largemouth bass is legal during the open  
 1.24 season for these species in inland waters. It is unlawful for anyone to have in possession,  
 1.25 regardless of where taken, any northern pike or largemouth bass while on or fishing in

2.1 the following waters. A person may not possess a motorized ice auger or electronic  
 2.2 fish finding devices while on or fishing in the following waters. Electronic fish finding  
 2.3 devices include depth finders; fish finders; underwater videos or cameras; sonars; global  
 2.4 positioning systems; and temperature, oxygen, and pH meters.

2.5	<u>Name</u>	<u>Location</u>	<u>County</u>	<u>End Date</u>
2.6	A. <u>Annie Battle Lake</u>	<u>T.133, R.39,40,</u>	<u>Otter Tail</u>	<u>3/1/2013</u>
2.7		<u>S.13,18,19,24</u>		
2.8	B. <u>Annie Battle inlet stream</u>	<u>T.133, R.40, S.24</u>	<u>Otter Tail</u>	<u>3/1/2013</u>
2.9	<u>beginning at the exit point</u>			
2.10	<u>of Molly Stark Lake to</u>			
2.11	<u>the confluence with Annie</u>			
2.12	<u>Battle Lake</u>			
2.13	C. <u>Annie Battle outlet stream</u>	<u>T.133, R.40, S.12</u>	<u>Otter Tail</u>	<u>3/1/2013</u>
2.14	<u>beginning at the northwest</u>			
2.15	<u>exit of Annie Battle Lake</u>			
2.16	<u>to Blanche Lake</u>			

2.17 **Subp. 9. Largemouth bass and northern pike catch and release and spearing**  
 2.18 **ban regulations.** While on or fishing in the following waters, angling for largemouth bass  
 2.19 and northern pike is limited to catch and release only, whereby any largemouth bass and  
 2.20 northern pike caught must be immediately returned to the water. Catch and release angling  
 2.21 for largemouth bass and northern pike is legal during the open season for these species in  
 2.22 inland waters. It is unlawful for anyone to have in possession, regardless of where taken,  
 2.23 any largemouth bass or northern pike while on or fishing in these waters. Spearing is  
 2.24 prohibited from December 1 to the last Sunday in February.

2.25	<u>Name</u>	<u>Location</u>	<u>County</u>
2.26	<u>Stieger</u>	<u>T.116, R.24, S.11,12,13,14</u>	<u>Carver</u>

2.27 **Subp. 10. Black Bass Lake.** While on or angling in the following waters, the daily  
 2.28 and possession limit for sunfish is five and angling for northern pike and largemouth  
 2.29 bass is limited to catch and release only, whereby any northern pike or largemouth bass



3.1 caught must be immediately returned to the water. A person may not possess a motorized  
 3.2 ice auger or electronic fish finding devices while on or fishing in the following waters.  
 3.3 Electronic fish finding devices include depth finders; fish finders; underwater videos or  
 3.4 cameras; sonars; global positioning systems; and temperature, oxygen, and pH meters.

3.5	<u>Name</u>	<u>Location</u>	<u>County</u>
3.6	<u>Black Bass Lake</u>	<u>T.42, R.27, S.11-14</u>	<u>Mille Lacs</u>

3.7 Subp. 11. Sunfish and crappie possession limits and catch and release fishing for  
 3.8 northern pike and largemouth bass. While a person is on or fishing in the following  
 3.9 waters, the daily and possession limit for sunfish is ten and for crappie is five and fishing  
 3.10 for northern pike and largemouth bass is limited to catch and release only, whereby any  
 3.11 northern pike or largemouth bass caught must be immediately returned to the water.  
 3.12 Catch and release fishing for northern pike and largemouth bass is legal during the open  
 3.13 season for these species in inland waters. It is unlawful for anyone to have in possession,  
 3.14 regardless of where taken, any northern pike or largemouth bass while on or fishing in  
 3.15 the following waters.

3.16	<u>Name</u>	<u>Location</u>	<u>County</u>
3.17	<u>A. Fladmark</u>	<u>T.135, R.42, S.13,14,24</u>	<u>Otter Tail</u>
3.18	<u>B. Twenty One</u>	<u>T.135, R.42, S.16,21</u>	<u>Otter Tail</u>

3.19 Subp. 12. Rochester Area Lakes regulations.

3.20 A. The Rochester Area Lakes are the five waters listed in item C. Daily and  
 3.21 possession limits provided in item B apply to the five waters listed in item C as a whole.

3.22 B. While a person is on or fishing in the Rochester Area Lakes:

3.23 (1) the daily and possession limit for sunfish, black crappie, white crappie,  
 3.24 and yellow perch in aggregate is ten, of which not more than five may be black crappie or  
 3.25 white crappie in aggregate;

4.1 (2) the daily and possession limit for largemouth bass and smallmouth bass  
 4.2 in aggregate is one; and

4.3 (3) the daily and possession limit for northern pike is one.

4.4 C. The Rochester Area Lakes include the following waters:

<u>Name</u>	<u>Location</u>	<u>County</u>
4.5 <u>Gamehaven</u>	<u>T.106, R.13,14, S.25,30,31,36</u>	<u>Olmsted</u>
4.6 <u>(Willow Reservoir</u>		
4.7 <u>No. 4)</u>		
4.8 <u>Cascade Ponds</u>	<u>T.107, R.14, S.33,34</u>	<u>Olmsted</u>
4.9 <u>Manor Woods</u>	<u>T.107, R.14, S.33</u>	<u>Olmsted</u>
4.10 <u>Pond</u>		
4.11 <u>Silver Lake</u>	<u>T.107, R.14, S.25,26,35,36</u>	<u>Olmsted</u>
4.12 <u>Silver Creek</u>	<u>T.107, R.13, S.26,27</u>	<u>Olmsted</u>
4.13 <u>Reservoir No. 2</u>		

4.15 Subp. 13. Lester Lake catch and release regulations. While a person is on or  
 4.16 angling in the following waters, angling is limited for all species to catch and release only,  
 4.17 whereby any species that are caught must be immediately returned to the water.

<u>Name</u>	<u>Location</u>	<u>County</u>
4.18 <u>Lester Lake</u>	<u>T.142, R.32, S.5,6</u>	<u>Hubbard</u>

4.20 **REPEALER.** Minnesota Rules, parts 6262.0575, subpart 7; 6264.0300, subpart 33;  
 4.21 6264.0400, subparts 22, 49, 61, 97, and 109; and 6266.0400, subparts 9 and 13, are  
 4.22 repealed. The expedited emergency amendments to part 6262.0575, subparts 3, 7, 9,  
 4.23 and 10, published in the State Register, volume 36, pages 501 and 505, on October 31,  
 4.24 2011, are repealed.