

May 27, 2014

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

Re: In the Matter of the Proposed Rules of the Department of Natural Resources Relating to Fishing, Aquatic Plants, and Border Waters; Revisor's File No. R-4114

Dear Librarian:

The Minnesota Department of Natural Resources intends to adopt rules relating to aquatic regulation. We plan to publish a Dual Notice of Intent to Adopt Rules without a Public Hearing in the May 12, 2014, issue of the State Register.

The Department has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Department is sending the Library an electronic copy of the Statement of Need and Reasonableness.

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

Yours truly,

/s/ Linda Erickson-Eastwood
Fisheries Program Supervisor

Attached: Statement of Need and Reasonableness

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF FISH AND WILDLIFE

IN THE MATTER OF PROPOSED ADOPTION OF

AQUATIC WILDLIFE RULES FOR FISHING REGULATIONS,

AQUATIC PLANTS, AND

BORDER WATER REQUIREMENTS

STATEMENT OF NEED AND REASONABLENESS

March 10, 2014

Minnesota Department of Natural Resources

STATEMENT OF NEED AND REASONABLENESS

Proposed Amendment to Rules Relating to Fishing Regulations, Aquatic Plants and Other Requirements, *Minnesota Rules*, chapters 6212, 6262, 6264, 6266, and 6280

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 recreational fishing in trout waters in northern Minnesota, recreational fishing in other waters of Minnesota, 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 December 10, 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 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. A copy of the request for comments was sent to individuals and organizations who could be affected by or would have interest in the proposed rules including: fishing, conservation and environmental organizations; tribal governments; states and other agencies with management authority on 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 parts of the proposed rule and directed people on how to provide comments related to the proposed changes. In addition, meetings have been held for the last two years with the public, state park user groups, landowners, angling organizations, and local units of government to get input on the proposed changes for SE Minnesota trout regulations.

The comments received during the comment period are summarized as follows.

- A total of 49 comments were received from people that supported all of the recommendations that were being proposed for trout fishing in SE Minnesota.
- Removing the barbless hook restrictions for trout fishing were supported by 59 comments from the public. We also had 12 people comment that they did not support this change.
- Support of a new state park trout season was evident with 68 comments being received from the public. However, we also received six comments from people who did not support this change.
- Simplification of the gear restrictions on SE Minnesota trout streams was supported by 54 comments from people. Two people were not supportive of such a change.

- Sixty-nine people supported extending the SE Minnesota trout catch-and-release season. One person did not support this extension.
- Support for bringing all of the SE Minnesota designated trout streams into the winter season was provided by 76 people; nine people did not want this to happen.
- Fifty-five people commented that they would like to see more trout lakes in the north opened to winter trout fishing. However, many of them did have a few that they did not want opened up due to fishing pressure already being too high. Six people were against opening up any of them.
- Standardization of walleye regulations on the border was supported by 13 people. Four people were not supportive.
- Closing flathead harvest during the winter was supported by 20 people.
- Opening up fishing for lake sturgeon in currently closed areas was supported by ten people.
- Three people commented that they did not want to see changes happen to whitefish netting.
- One person asked us to consider moving to two lines for summer fishing.

This rule package was split into two segments: SE Minnesota related trout regulations and all the other items that were in the “Request for comments.” The package is being split so that the SE trout regulations are not held up and might be able to be in place by the spring of 2014. The rules in this package had some controversy and needed additional work before moving forward.

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, email linda.erickson-eastwood@state.mn.us, phone 651-259-5206, and fax 651-297-4916.

STATUTORY AUTHORITY

General authority to adopt these rules is found in Minnesota Statutes, section 84.027, subd 2 and 13; and 97A.045, subds. 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>
6212.0100 -1300	97A.485
6262.0100.....	97A.445, subd. 1
6262.0200.....	97C.395, 97C.401, 97C.411, 97C.415, 97C.041
6262.0300.....	97C.315, 97C.395, 97C.401, 97C.415
6262.0500.....	97C.325, 97C.345, 97C.395
6262.0575.....	97C.001, 97C.005, 97C.025, 97C.401
6262.0600.....	97C.041, 97C.381

6262.0800.....	97C.345, 97C.395, 97C.805
6264.0125.....	97C.025
6264.0400.....	97C.001, 97C.005
6266.0100.....	97A.045
6266.0200.....	97C.045, 97C.395, 97C.401
6266.0300.....	97C.045, 97C.395, 97C.401
6266.0400.....	97C.045, 97C.395, 97C.401
6266.0500.....	97C.045, 97C.395, 97C.401
6266.0700.....	97C.045, 97C.395, 97C.401
6280.0250.....	103G.615

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

All rules, except for 6262.0100, 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.

Changes to 6262.0100 dealing with Take a Kid Fishing were completed by doing a Commissioner’s Order and were exempted from the 18-month deadline.

This rulemaking includes repeals of rules that can be found in Minnesota Rules, parts 6212.0100, 6212.0200, 6212.0300, 6212.0400, 6212.0500, 6212.0600, 6212.0700, 6212.0800, 6212.0900, 6212.1000, 6212.1100, 6212.1200, and 6212.1300 that deal with removing obsolete rules; 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, anglers, whitefish and cisco netters, and people who fish for trout, bass, sturgeon, and catfish. Businesses that sell angling licenses may be affected. Individuals and businesses, such as resorts, motels, stores, and guides that provide goods or services to anglers may be affected. Individuals and businesses that use or own property on or bordering Minnesota waters may be affected. The public and businesses that receive aquatic plant permits might be affected. Groups that organize events for children could be affected.

“(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 DNR would incur some minimal costs when initially posting or removing signage on waterbodies that will be getting new regulations and for those that will be newly opened and/or

closed to fishing. Some savings over time will be incurred as less maintenance for signage will need to take place.

The other proposed rules will not result in additional costs to the DNR or other agencies. Many of the changes are to programs that are already in place or may be slightly increased. 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.

“(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. The small increased cost is necessary if the DNR is to provide more opportunity and flexibility and is essential if anglers are to abide by the laws protecting these important resources.

Most of the proposed rules will not be more intrusive to persons affected by the rules. Fishing opportunities are expanded for trout, bass, and lake sturgeon fishing by opening presently closed areas or expanding the season.

Closing of winter fishing for flathead catfish is more intrusive, but is necessary to protect this unique resource. All other methods that would provide this protection to catfish are just as intrusive. The closure will be less costly than other methods since it would not require as much monitoring or reporting as other methods, such as limited access.

“(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 a lack of flexibility for fish harvest, and for the DNR in making decisions that affect the public without having the best information available. If left unchanged, some rules would continue to limit fishing opportunities. Standardizing the rules on the border regulations 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 should not have any costs associated with them that would be passed on to affected parties. The proposed rules do not involve any new regulatory, permit, or license fees or any other charges to the public. Minnesota Statutes, section 16A.1285, does not apply because the rules do not set or adjust fees or charges.

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

The probably consequence of not adopting these rules are: (1) the inability of the Department to be able to successfully manage and protect the natural resources under our jurisdiction, and (2) 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, while also accommodating some demands for more specialized regulations that protect resources and provide additional angling and commercial 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 where resource conservation, safety, and equitable use were not compromised. A primary objective of the proposed rules regarding trout, bass, and lake sturgeon fishing is to provide more flexibility and simplicity of rules for those who wish to participate in those activities. 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 for closing and opening trout, bass, lake sturgeon, and catfish areas to angling in general provide the public with greater angling opportunity, while at the same time protecting those areas where fish are most vulnerable to harvest.

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.
- News releases that detail the major parts of the rule will be issued statewide.
- Using DNR web site to inform the public of our intent to adopt rules and take requests for hearings.

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

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

Our Notice Plan does not include notifying the Commissioner of Agriculture because the rules do not affect farming operations per Minnesota Statutes, section 14.111.

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 Administrative Law Judge 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. 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 Neil Vanderbosch
DNR Division of Fish and Wildlife, Section of Fisheries
500 Lafayette Road
St. Paul, MN 55155-4025

Jack Lauer
DNR Division of Fish and Wildlife, Section of Fisheries
261 Hwy 15 South
New Ulm, MN 56073

Tim Goeman
DNR Division of Fish and Wildlife, Section of Fisheries
1201 E Hwy 2
Grand Rapids, MN 55744

Henry Drewes
DNR Division of Fish and Wildlife, Section of Fisheries
2115 Birchmont Beach Rd NE
Bemidji, MN 56601

RULE-BY-RULE ANALYSIS
6262.0200 FISHING REGULATIONS FOR INLAND WATERS.

Subpart 1. General inland fishing regulations.

Item A (1) This rule proposes to remove the catch and release (C&R) season for smallmouth bass in the Northeast part of the state. The current fall smallmouth bass closure (catch and release only from mid-September to the end of February) took effect in 1998. The closure was enacted to protect fall and winter concentrations of smallmouth bass. Avid supporters believed that smallmouth bass in hibernacula were at risk from increased angler exploitation which, because they were often mature fish, may reduce the number of quality-sized individuals in a population. Staff have documented in DNR Lake Management Plans widespread expansion of this species in the northeast into waters that have other native species such as walleye and lake trout. Department data shows that smallmouth bass are generally abundant and are the most caught species after mid-September in this region. Consequently, the C&R season for smallmouth bass unnecessarily limits angling opportunity to harvest bass. It is reasonable and necessary to open up smallmouth fishing in this area since the species is expanding into waters and competing with other native species for food and habitat resources (Jackson 2002, Liao et al. 2002, Vander Zanden et al. 1999). This change is reasonable and necessary because it will provide expanded angling opportunities to a species that no longer needs to be protected during this time period.

Item A (2) This part of the rule proposes a catch and release season for bass statewide for inland waters prior to the harvest season. Bass populations are generally expanding across Minnesota. A statewide bass angler survey in 2012 (Schroeder 2012) indicated a moderate level of support for some form of catch and release season for bass. The Minnesota Bass Advisory Committee, comprised of representatives of the State's primary bass organizations, has long advocated for an early catch and release season. Other northern latitude states (New York and Michigan) have recently made similar changes to their season structure in response to expanding

bass populations, and to provide bass anglers with additional angling opportunity with low risk to bass fisheries (Jackson et. al. 2013; Jackson et. al. 2008; Einhouse et. al 2002; and, Bremigan et. al. 2008). Recent work by Philipp (2012) suggests through a conceptual model there may be some potential for genetic shift in bass populations exposed to catch and release angling during spawning. Research and management staffs have documented sufficient recruitment in most of Minnesota bass lakes and rivers. In addition, harvest rates from creel surveys are routinely low (less than 10% of overall catch). Jackson et al (2013) and Einhouse et al (2002) suggested in New York's Lake Erie, that the smallmouth bass population actually increased in abundance since the opening of an early catch and release bass season (since 1994). Similarly, Gwinn and Allen (2010) suggested that seasonal closures would have little benefit on most largemouth bass fisheries, provided overall harvest rates are low. Therefore, it is reasonable and necessary to offer increased recreational opportunities without significant harm to bass populations in Minnesota.

Item B3, item d. This rule is proposing to open winter trout fishing on most lakes in Beltrami, Cass, Crow Wing, and Hubbard Counties. In trying to determine if these fisheries should be opened, the staff looked at the area data to determine the potential for excessive harvest, reduced size structure, and subsequent effects to summer angling quality. Staff also looked at the increased potential for invasive movement, pollution, and litter if these water bodies were opened to angling. In general, the staff found that most of the trout lakes that were closed to winter fishing are marginal put and take fisheries. Management on many now consists of stocking yearlings to provide catchable size trout. The few lakes where staff decided from the data to maintain winter closure are lakes where winter angling may impact summer opportunities and/or lakes that have carry over potential to grow larger fish. It is necessary and reasonable to provide increased angling opportunities where the fish populations can sustain angling pressure while protecting those that can't.

Item C3, item d. See explanation above under Item B3, item d.

Item D3, item d. See explanation above under Item B3, item d.

Item H (1). This part of the rule is proposing to increase the minimum size limit of Muskie from 48 to 50 inches for inland waters. Minnesota's contemporary muskellunge management program has focused on creating and maximizing trophy muskellunge populations through conservative regulations and progressive propagation (MN DNR Long Range Plan for Muskellunge and Northern Pike 2008). As a part of trophy muskie management, staff do try and determine what effect muskie would have on other species within the system. Studies have shown that muskie do not affect other species. Knapp, et. al (2008) evaluated seven fish species catch per unit effort (CPUE) before and after muskie stocking. The species examined were: northern pike, walleye, yellow perch, bluegill, black crappie, white sucker, and tullibee. The lack of consistent negative changes in mean CPUE after stocking suggests these fish species have generally coexisted well with muskellunge in these lakes at the densities that have resulted from stocking. Consequently, raising the size limit should not be detrimental to the fish community structure.

The 48-inch minimum length limit (MLL) was implemented on brood-source lakes only in 1990, but 55 additional waters followed in 2007. The 48-inch MLL became a statewide regulation in 2010. The 48-inch MLL allows for the legal harvest of muskellunge before reaching trophy size (Schroeder et al. 2007). Muskellunge exceeding 50 inches have been

documented in the majority (72%) of designated muskellunge waters where assessment data are available (DNR Area Files)

Additionally, growth potential estimated from cleithra collected from taxidermists indicated 40% of female muskellunge (N=191) in Minnesota waters had an ultimate length of at least 55 inches (Younk and Pereira 2007). Increasing the statewide MLL to 50 inches is needed and reasonable to allow more individual muskellunge to reach a size considered trophy by the majority of muskellunge anglers. The recycling of these fish is essential to maintaining Minnesota's status as a destination fishery because a significant investment of time and resources is needed to grow just one trophy muskellunge. It is needed and reasonable to limit harvest upon populations capable of producing these trophy fish through increased size regulation. It is also reasonable and necessary to use the most cost-effective and assured action to allow these populations to maintain and reach their maximum size potential.

Item M. This rule is proposing to implement a winter closure on inland waters for flathead catfish to protect vulnerable flathead catfish from exploitation during their winter inactive months. Flathead catfish are native to rivers and lakes in the lower Great Lakes and Mississippi River basin. In Minnesota, they are common in the Minnesota River, Mississippi River below Lock and Dam #1, and the St. Croix River below Taylors Falls. They become mostly inactive when water temperatures drop below 50°F [10°C] (Brown, et al., 2005; Daugherty and Sutton, 2005; Eggleton and Schramm, 2004; Lee and Terrell, 1987; Vokoun and Rabeni, 2006). At these cold water temperatures, the flathead catfish metabolic rate and physiology changes to an inactive state, where they are known to go into stasis and stack-up in preferred woody river habitats or in deep holes during the winter months, under the ice. Observations of flathead catfish in their under-ice winter habitat have been cited in scientific literature, by DNR investigations, and via underwater camera equipment (<http://www.youtube.com/watch?v=12TqEEGInhg>). It is also well documented that while flathead catfish remain in stasis, they do not actively feed until water temperatures warm up during early spring months (Brown et.al. 2005).

Because of the relative dormancy exhibited by flathead catfish during winter months, angling for this species is not supported by Minnesota fisheries professionals and stakeholders from the Minnesota Catfish Workgroup. It is deemed as unethical and not in the spirit of "fair chase" for recreational angling and is especially true if trophy flathead catfish are removed from the system by illegal snag-hooking or spear. Flathead catfish are prized by anglers, and may therefore have positive impacts in terms of ecotourism (Page and Burr, 2011). It is necessary and reasonable to provide a specified season of protection to guarantee future survival, reproduction, and abundance of spawning adult flathead catfish.

Item P. This rule proposes a statewide catch and release season on inland waters for sturgeon and does not allow the extension thru the weekend if the closure lands on a Saturday. Commercial over-fishing, loss of connectivity, and degraded habitat stressed and/or extirpated lake sturgeon from all of Minnesota's watersheds in the late 1800s and early 1900s. When commercial fishing became better regulated (moratorium on harvest), connectivity improved, and water-quality regulations were imposed, natural populations began to recover. In some watersheds re-introduction of lake sturgeon took place. These actions have resulted in a positive turn in stock status around the state. With lake sturgeon being listed as a species of special concern and the long-lived life history of the species, careful consideration must be made to the regulations that govern their management.

While most of the populations within Minnesota are in a state of recovery (DNR area

data), angler reports are increasing and the recreational popularity has increased in recent years. Catch and release angling will provide anglers with increased opportunities to enjoy these emerging fisheries with little risk of impacting stock recovery. Fishing will remain closed during the time when lake sturgeon are most vulnerable; staging in advance of spawning and during the spawning period. It is reasonable and necessary to provide additional angling opportunities for species that can sustain these angling pressures.

Subp. 2. Taking of smelt from inland waters. This proposed change is to limit where nets may be used for smelt fishing on Grindstone Lake, Pine Co. This proposal makes smelting the same as Lake Superior. The proposed regulation protects other non-target game fish species that commonly utilize inland streams for spring time spawning or foraging. Examples would be stream trout, northern pike and walleye that commonly frequent inland streams in the spring when smelt are spawning. Under the current regulation anglers seining for smelt in or near a stream can legally block off the entire stream stopping fish movement into or within the stream. That disrupts fish spawning activities for both smelt and other game species. The proposed regulation would eliminate that practice. The blocking off of an inland stream by anglers using a seine causes intense angler conflicts, reduces other smelters fishing opportunities, and blocks fish spawning and foraging movements. The proposed regulation is necessary and reasonable in that it will simplify smelting regulations and eliminate angler conflicts, and protects spawning fish.

6262.0300 Subp. 6, items A, B, C, D, G, and H. FISHING REGULATIONS FOR LAKE SUPERIOR.

The changes proposed for this subpart are technical in nature. The language clarifies that those limits and seasons also apply to the Lake Superior proper and eliminates duplicative language in regards to the single hook requirement. It is reasonable to clarify language for better compliance and enforcement. It is also reasonable and necessary to eliminate duplicative language dealing with the single hook restrictions on the tributaries.

6262.0500 Subp. 2b, item 3 WATERS CLOSED TO TAKING FISH.

The proposed rule is technical in nature since it is only moving the Pike River closure from MR 6264.0125, item III to this section. This language was established for the following reasons:

- The Pike River, a tributary to Lake Vermilion, is home to a significant walleye spawning run. Each spring this run concentrates a sizeable number of walleye in a relatively small area making them highly vulnerable to over-exploitation.
- Walleye from the Pike River spawning run are used by DNR Fisheries to collect gametes for the propagation of Pike River strain walleye. The Pike River is currently the only source of genetically appropriate walleye eggs and progeny for the stocking of waters in the Rainy River drainage. The long-term health of this spawning run is extremely important to the State and its angling constituents.
- Currently, the Pike River is closed on an annual basis (due to reasons stated above). It is reasonable and necessary to move this language because it will have no additional impact on the angling season, but will result in improved efficiencies and cost savings by eliminating what has become an annual public notification process.

6262.0575 WATERS WITH RESTRICTIONS ON TAKING FISH.

Subp. 8 This rule is technical in nature. It is taking fishing regulations for Annie Battle Lake that have been in two different locations and bringing them into one location. It is needed and reasonable to clarify and simplify regulations for better compliance and ease of enforcement.

Subp. 14. This rule is technical in nature. It is taking fishing regulations for La Salle Lake that have been in two different locations and bringing them into one location. It is needed and reasonable to clarify and simplify regulations for better compliance and ease of enforcement.

6262.0600 SEASONS AND METHODS FOR TAKING ROUGH FISH.

Subp. 1a. The rule is proposing to eliminate language dealing with archery, seines and trap seasons. The archery season portion of this is language is obsolete in that subpart 2 that it is referenced has been repealed. In addition, these methods of taking rough fish are covered in Minnesota Rules Chapter 6260 as part of the commercial fishing laws and in Minnesota Statute 97C.376. By removing this language it will eliminate any confusion. It is reasonable and necessary to ensure whenever possible to provide clarification and consistency between rules to reduce confusion. It is also reasonable and necessary to eliminate obsolete laws.

Subp. 1d. The rule is proposing to add the requirement of a barb on the arrows that are used to harvest fish by bow and arrow. This language was unintentionally deleted when changes were being made to Minnesota Statutes, section 97C.376, regarding bow fishing and during the Department's August 2012 permanent rule making process. The barb on an arrow acts the same as a barb on a fishing hook. The barb aids in the hooking of the fish so that it can be harvested. People who use arrows without barbs lose more fish when bow fishing. It is necessary and reasonable to require a barb to decrease the "want and waste" of this fishery resource through accidental loss of fish.

6262.0800, Subp 3. OPEN SEASONS FOR TAKING WHITEFISH AND CISCOES.

The proposed change to this subpart includes adding Spring Lake, Itasca Co., to those lakes open for netting whitefish and ciscoes. We have received requests to open Spring Lake for tullibee netting. The lake was closed in 1991, the reason stated was; "There is very little use of this lake by sport netters. The cisco population should be protected to best serve as a forage species for the northern pike." The netting history indicates the lake has an abundant population of small northern pike. The cisco population has been variable but often is above the median for the lake class. There is no public access on the lake and use would likely be low. The most recent test netting (1999) sampled tullibee at over 5 fish per gill net, above the lake class median. The tullibee in Spring Lake varied in length from 7 to over 17 inches and the fish were free of parasites, indicating a healthy population that can be utilized by sport netters. It is necessary and reasonable to add this lake to this schedule to provide an additional sport gill netting opportunity without jeopardizing the northern pike population.

6264.0400 DESIGNATED SPECIAL MANAGEMENT WATERS

Subps. 40 and 107. These language changes are technical in nature. It clarifies that the Moody Creek portion of Splithand Lake has always been a part of these rules based on the legal description. This is needed and necessary to provide clear direction that this area is part of those walleye regulations. It will also help in the enforcement of these regulations.

6266.0100 Subp. 2, item C GENERAL REGULATIONS FOR TAKING FISH ON BOUNDARY WATERS WITH ADJACENT STATES.

The proposed rule change clarifies that there is no “culling” on the border, but that fish can be released at the end of the fishing trip. This language is being added to assist with enforcement of minimum size limits on walleye, largemouth bass and smallmouth bass on the border waters with Wisconsin. Enforcement officers’ report seeing some anglers return fish to the water immediately before coming along side anglers’ boats for inspection of their catch. The officers presume that anglers are attempting to throw back fish that are below the lengths of minimum size restrictions. It is reasonable to require no sorting of fish to aid in compliance with minimum size restrictions designed to meet management objectives. It is also reasonable to continue to match Wisconsin law that restricts recreational anglers from sorting fish. It is reasonable and necessary to clarify existing rules so that it is clear that no culling is allowed on these border waters, but that they do have the option to release fish at the end of the trip that will not be utilized.

6266.0200 TAKING OF FISH ON MINNESOTA-IOWA BOUNDARY WATERS

Currently Iowa is also working to change their regulations to what is being proposed. To allow the least amount of time that our regulations would be inconsistent, the Department is proposing an effective date for these rule changes to be March 1, 2015.

Subp. 2, items A – H. The language proposed in these items will establish seasons and limits that will be consistent with the Iowa regulations. For several species, a continuous angling season is proposed to expand angling opportunities to accommodate fishing during certain times of the year when it was once closed (e.g., walleye & northern pike). Possession limits are being changed in order to protect over-harvest of walleye, sunfish, bass, perch, and crappie. The overall fishery on the Iowa/Minnesota boundary waters is a healthy, self-sustaining fish population that will be able to withstand continuous angling pressure given an expanded recreational opportunity. It is reasonable and necessary to adopt consistent seasons and minimums with other states to simplify regulations on the border and to align fish management and angling opportunities. Consistent regulations also provide for better angler compliance and enforcement thereof.

Subp. 2 Item I. This language is being added so that muskie regulations stay consistent with the Iowa regulations. Muskie regulations in the inland waters of Minnesota are being changed (see above 6262.0200, Subp. 1, Item H (1)). This language is needed to ensure that the regulations on the border waters with Iowa are consistent. The overall fishery is primarily on the Iowa side of the boundary waters. It is a healthy, fish population that is managed through stocking by the Iowa Department of Natural Resources. On occasion some individual fish move into Minnesota waters. It is reasonable and necessary to adopt consistent seasons and minimums with other states to simplify regulations on the border and to align fish management and angling opportunities. Consistent regulations also provide for better angler compliance and enforcement thereof.

Subp. 4 The proposed language provides for a continuous season for spearing of unprotected fish (carp, buffalo, sheepshead, dogfish, gar, or quillback) without limit. This is consistent with what is being practiced by Iowa currently. The time of day for spearing is not of concern in the management of these fisheries on these border waters. It is reasonable and necessary to adopt consistent seasons and minimums with other states to simplify regulations on

the border. Consistent regulations also provide for better angler compliance and enforcement thereof.

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

Subp. 2, Item J. The proposed rule establishes the inland lake sturgeon regulations on the border waters. See explanation above under 6262.0200, Subp. 1, item P.

Subp. 2, Item L. The proposed rule establishes the inland muskie regulations on the border waters. See explanation above under 6262.0200, subp. 1, item H (1)

Subp. 3. The proposed rule is eliminating the restriction on darkhouse spearing and modifying the season to be consistent with other regulations. Elimination of the darkhouse restriction is a technical change since the Department is proposing to open darkhouse spearing on these border waters. The season change is reasonable and necessary to maintain similar regulations on the border to reduce angler confusion and assist in the enforcement of the laws.

Subp. 8. The proposed rule would establish a darkhouse spearing season and list of species and limits for this activity. The regulation restrictions are consistent with the inland darkhouse spearing for Minnesota. The exceptions are not allowing the spearing of catfish and not putting the one over 30 inch restriction on the taking of northern pike. The Red River and Bois de Sioux Rivers on the border with North Dakota contain trophy catfish and are viewed as a world class fishery. At 50 degree or colder water temperatures, catfish metabolic rate and physiology changes to an inactive state, where they are known to go into stasis under the ice making them vulnerable to harvest. It is necessary and reasonable to protect these species to guarantee future survival, reproduction, and abundance of spawning adult trophy catfish. This proposed change is reasonable in that it does open up additional spearing opportunities without jeopardizing a trophy species. It also is necessary and reasonable to be more liberal than the inland rules since it does not apply the one over 30 inch restriction to the taking of northern pike which can sustain itself under these harvest conditions.

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

Subp. 2, item I. The proposed rules establish the inland catfish regulation on the border waters. See explanation above under 6262.0200, Subp. 1, item M.

Subp. 2, item J. The proposed rule establishes the inland catch and release lake sturgeon regulations on the border waters. See explanation above under 6262.0200, Subp. 1, item P.

Subp. 3. The proposed rule expands the spearing season on the border waters. This proposed change will create additional spearing opportunities for anglers on the border. Those fish populations that can be speared on these waters are very abundant and can withstand additional utilization. Many of these species are short lived and underutilized at this time. It is needed and necessary to provide consistency with South Dakota regulations. This will help simplify regulations and make it easier for anglers to comply.

Subp. 5. The proposed rule establishes a darkhouse spearing season. This proposed change will create additional spearing opportunities for anglers that are consistent with the

Minnesota's inland regulations. The exceptions are not allowing the spearing of catfish on the Bois de Sioux River from the White Rock Dam to the border and not putting the one over 30 inch restriction on the taking of northern pike. Those fish populations that are being considered for spearing on these waters are maintaining a stable and adequate population represented by year-classes from limited natural reproduction and periodic stocking. While northern pike can withstand additional utilization through spearing, continued annual netting assessments will continue to inform staff and help monitor standing stocks. Many of these species are short lived and underutilized at this time. It is necessary and reasonable to protect catfish that utilize those water bodies as a refuge. This waterbody connects to the Red River. The Red River is unique in its size structure and numbers of catfish. The Red River is considered a trophy catfish destination area and attracts anglers from around the world. By not allowing darkhouse spearing in the Bois de Sioux from the White Rock Dam to the border, we can help guarantee future survival, reproduction, and abundance of spawning adult catfish. This proposed change is reasonable in that it does open up additional spearing opportunities without jeopardizing a trophy species. It also is more liberal than the inland rules since it does not apply the one over 30 inch restriction to the taking of northern pike which can sustain itself under these harvest conditions.

6266.0500, Subp. 3 TAKING OF FISH ON MINNESOTA-WISCONSIN BOUNDARY WATERS.

Currently Wisconsin has agreed to work on changing their regulations to what is being proposed for items E and F. To allow the least amount of time that our regulations would be inconsistent, the Department is proposing an effective date for these rule changes to be March 1, 2015.

Item D. The proposed rules establish the inland catfish regulations on the border waters. See explanation above under 6262.0200, Subp. 1, item M.

Item E (1). The proposed rule establishes the inland catch and release lake sturgeon regulations on the St. Louis and all waters below Red Wing Dam on the Wisconsin border waters. See explanation above under 6262.0200, Subp. 1, item P.

Item E (2). The proposed rules establish a closed season for sturgeon above Red Wing Dam that will coincide with the closed seasons for game fish, including walleye, sauger, largemouth bass, smallmouth bass, muskellunge, and northern pike on the St. Croix River. This will facilitate enforcement of angling regulations for all species. It is reasonable and necessary to provide additional angling opportunities for species that can sustain these angling pressures and simplify regulations.

Item F. The proposed rule establishes a catch and release season with a fixed end date, even if it falls on a Saturday for shovelnose sturgeon above Red Wing dam. Shovelnose and lake sturgeon look similar and are fished in similar ways (Northern Fishes). It is reasonable and necessary to have both species open to catch and release fishing to reduce the complexity of the regulations and be easier for anglers who can't tell the difference to comply.

Item N. The proposed rules establish a 50 inch minimum size limit for Muskie. See explanation above under 6262.0200, Subp. 1, item H. To give Wisconsin more time to work with Iowa to establish a consistent rule along the border, we are delaying the effective date of this regulation to provide the minimum amount of time that the rules would be inconsistent.

6266.0700 Subp. 2 TAKING OF FISH ON MINNESOTA-CANADA BOUNDARY WATERS.

Item C. The proposed regulation establishes the fact that the walleye and sauger season do not extend beyond April 14. Closing the season on April 14th regardless of whether it falls on a Saturday is consistent with the Ontario season on these shared border waters. It is necessary and reasonable to reduce the complexity of the regulations and make it easier for anglers to comply when fishing these border waters. This is especially true of waters that have both inland and border regulations that apply to different bays of the same water body.

Item C (1a). The proposed regulation clarifies that the statewide inland walleye regulation of only 1 over 20 inches that is set in statute does apply to these border waters unless a special or experimental length regulation is in place. It is necessary and reasonable to reduce the complexity of the regulations and make it easier for anglers to comply when fishing these border waters. This is especially true of waters that have both inland and border regulations that apply to different bays of the same water body.

Item C (2). This regulation is proposing a catch and release season with a fixed end day, even if it falls on a Saturday for sturgeon on all waters that are not currently being regulated under special regulation management (MR 6264.0400). The Department cooperatively manages the resource with Ontario. The current goal for sturgeon is to re-establish and maintain self-sustaining stocks of lake sturgeon in all suitable habitats in Lake of the Woods and Rainy River. These stocks provide a recreational fishery, with opportunities to encounter large fish (>72"). Age, size, abundance, and genetic diversity are approaching those found in lightly exploited populations. Growing popularity of lake sturgeon as a recreational resource was observed in the late 1990s and early 2000s. During this period harvest began to exceed the allowable harvest agreed on by the Border Waters Fisheries Committee. To reduce harvest to a level that would allow a sustaining recovery, regulations were restricted. Current rules for sturgeon on the border waters only apply to Lake of the Woods, Rainy River, Rainy Lake, Namakan Lake, Sand Point Lake, and Little Vermilion Lake, Loon River, Lac la Croix. They don't include inland tributaries such as the Rapid, Bigfork, or Little Fork Rivers, Crane Lake, Vermilion River. It is reasonable and necessary to provide additional recreational fishing opportunities for anglers for a species that will be managed within sustainable levels.

Item C (3). This regulation is proposing a season change for Lake trout for border waters entirely within the Boundary Waters Canoe Area Wilderness. The inland rules were changed for these waters a couple of years ago by the legislature. This change makes the inland and border rules consistent. It is reasonable and necessary to provide consistency in rules whenever possible to reduce complexity of the regulations and make it easier for anglers to comply when fishing these waters. This is especially true of waters that have both inland and border regulations that apply to different bays of the same water body.

Item C (6). The proposed regulation establishes the muskie inland regulations on the border waters. See explanation above under 6262.0200, subp 1, item P.

6280.0250, subp. 4, item D. STANDARDS FOR AQUATIC PLANT MANAGEMENT PERMIT ISSUANCE.

This rule proposes to remove obsolete language that prohibits plant control in areas designated for the protection of lotus. The rule prohibits the issuance of aquatic plant

management permits in areas designated for the protection of Lotus (*Nelumbo lutea*). However, the DNR does not have statutory authority to designate areas for the protection of Lotus and the current rules sufficiently protect Lotus by requiring a permit for control that would exceed a channel 15 feet wide extending to open water (6280.0250, subp. 1, item H.). Control of Lotus using herbicides, or in excess of the control allowed without permit would require an aquatic plant management permit. It is necessary and reasonable to eliminate obsolete language.

Repealer Summary

Chapter 6212.0100. The County auditors are no longer involved with the issuance and selection of license agents or subagents. All rules needed for the sale and selection of licenses and license agents are covered under Minnesota Rule Chapter 6213 or Minnesota Statutes when the new Electronic Licensing System was established. It is necessary and reasonable to eliminate obsolete language.

Chapter 6212.0200. We no longer have “paper” licenses or “books” of licenses. We no longer have paper copies or reports to be returned to DNR from county auditors. It is necessary and reasonable to eliminate obsolete language.

Chapter 6212.0300. We no longer have “paper” licenses or “books” of licenses. We no longer have paper copies or reports to be returned to DNR from county auditors. It is necessary and reasonable to eliminate obsolete language.

Chapter 6212.0400. We no longer have “paper” licenses or “books” of licenses. We no longer have paper copies or reports to be returned to DNR from county auditors. It is necessary and reasonable to eliminate obsolete language.

Chapter 6212.0500. All rules needed for the sale and selection of licenses and license agents are covered under Minnesota rule Chapter 6213 or statutes when we went to the new Electronic Licensing System. It is necessary and reasonable to eliminate obsolete language.

Chapter 6212.0600. All rules needed for the sales of duplicate licenses are covered under Minnesota rule Chapter 6213 or statutes when we went to the new Electronic Licensing System. It is necessary and reasonable to eliminate obsolete language.

Chapter 6212.0700. We no longer have “paper” licenses or “books” of licenses. We no longer have paper copies or reports to be returned to DNR from county auditors. All rules needed for the sale and selection of licenses and license agents are covered under Minnesota rule Chapter 6213 or statutes when we went to the new Electronic Licensing System. It is necessary and reasonable to eliminate obsolete language.

Chapter 6212.0800. We no longer have “paper” licenses or “books” of licenses. We no longer have paper copies or reports to be returned to DNR from county auditors. All rules needed for the sale and selection of licenses and license agents are covered under Minnesota rule Chapter 6213 or statutes when we went to the new Electronic Licensing System. It is necessary and reasonable to eliminate obsolete language.

Chapter 6212.0900. We no longer have “paper” licenses or “books” of licenses. We no longer have paper copies or reports to be returned to DNR from county auditors. All rules needed for the sale and selection of licenses and license agents are covered under Minnesota rule Chapter 6213 or statutes when we went to the new Electronic Licensing System. It is necessary and reasonable to eliminate obsolete language.

Chapter 6212.1000. We no longer have “paper” licenses or “books” of licenses. We no longer have paper copies or reports to be returned to DNR from county auditors. All rules needed for the sale and selection of licenses and license agents are covered under Minnesota rule Chapter 6213 or statutes when we went to the new Electronic Licensing System. It is necessary and reasonable to eliminate obsolete language.

Chapter 6212.1100. We no longer have “paper” licenses or “books” of licenses. We no longer have paper copies or reports to be returned to DNR from county auditors. All rules needed for the sale and selection of licenses and license agents are covered under Minnesota rule Chapter 6213 or statutes when we went to the new Electronic Licensing System. It is necessary and reasonable to eliminate obsolete language.

Chapter 6212.1200. We no longer have “paper” licenses or “books” of licenses. We no longer have paper copies or reports to be returned to DNR from county auditors. All rules needed for the sale and selection of licenses and license agents are covered under Minnesota rule Chapter 6213 or statutes when we went to the new Electronic Licensing System. The fee for a duplicate ski pass was somehow mistakenly added in rule and has since been moved to statute. It is necessary and reasonable to eliminate obsolete language.

Chapter 6212.1300. We no longer have “paper” licenses or “books” of licenses. We no longer have paper copies or reports to be returned to DNR from county auditors. All rules needed for the sale and selection of licenses and license agents are covered under Minnesota rule Chapter 6213 or statutes when we went to the new Electronic Licensing System. It is necessary and reasonable to eliminate obsolete language.

Chapter 6262.0100, subp. 3. This language for setting “Take a Kid” days was replaced by the 2013 legislation (Laws 2013, chapter 121, section 32) that amended Minnesota Statutes, section 97A.445, subd. 1 to allow these dates to be done through Commissioner’s Order. It is necessary and reasonable to eliminate obsolete language.

Chapter 6262.0500, subp. 2A, item A. This language for Mink and Somers Lakes in Wright County has an expiration date which has since passed. It is necessary and reasonable to eliminate obsolete language.

Chapter 6262.0500, Subp. 2A, item B. This language for Annie Battle Lake in Ottertail County is duplicative of what is already in Chapter 6262.0575, Subp. 8 and it is obsolete since other changes are being made in Chapter 6262.0575. It is necessary and reasonable to eliminate obsolete language.

Chapter 6264.0125, Item III. This closure for Pike River happens every year so the language is being moved to MR 6262.0500 to be listed with other yearly closures. The need and reasonableness of this move can be found in that section.

Chapter 6264.0400, Subp. 112. This language for Annie Battle Lake is being moved to another section for consolidation purposes. The need and reasonableness of this move can be found in that section.

Chapter 6264.0400, Subp. 113. This language for La Salle Lake is being moved to another section for consolidation purposes. The need and reasonableness of this move can be found in that section.

CONCLUSION

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

March 10, 2014

/s/ Tom Landwehr, Commissioner

NON-PUBLISHED REFERENCES CITED IN THE STATEMENT OF NEED AND REASONABLENESS

MN DNR Long Range Plan for Muskellunge and Northern Pike 2008

MN DNR Lake Management Plans, various years

MN DNR Area Files and Survey Data, various years

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Minnesota Department of Natural Resources

Division of Fish and Wildlife

**CERTIFICATE OF MAILING THE STATEMENT OF NEED AND REASONABLENESS
TO THE LEGISLATIVE REFERENCE LIBRARY**

**Proposed Amendment to and Repeal of Rules Relating to Fishing Regulations,
Aquatic Plants, and Border Water Requirements, *Minnesota Rules*, chapters 6212, 6262,
6264, 6266, and 6280**

**Proposed Repeal of Rules Relating to Fishing Regulations and Licenses and Permits,
Minnesota Rules, parts 6212.0100, 6212.200, 6212.0300, 6212.0400, 6212.0500, 6212.0600,
6212.0700, 6212.0800, 6212.0900, 6212.1000, 6212.1100, 6212.1200, 6212.1300, 6262.0100,
6262.0500, 6264.0125, and 6264.0400**

I certify that on May 27, 2014, when the Statement of Need and Reasonableness became available to the public, I submitted an electronic copy of the Statement to the Legislative Reference Library via email to sonars@lrl.leg.mn. I delivered this copy to comply with Minnesota Statutes, sections 14.131 and 14.23. A copy of the email message is attached to this Certificate.

 5-27-14

Colleen Telander
Office Administrative Specialist, Intermediate
Minnesota Department of Natural Resources
Fish and Wildlife – Fisheries Research