

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF FISH AND WILDLIFE

IN THE MATTER OF PROPOSED ADOPTION OF

AQUATIC WILDLIFE RULES FOR SE TROUT FISHING

REGULATIONS

STATEMENT OF NEED AND REASONABLENESS

November 27, 2013

Minnesota Department of Natural Resources

STATEMENT OF NEED AND REASONABLENESS

Proposed Amendment to and Repeal of Rules Relating to Fishing Regulations for Trout in Southeast Minnesota, *Minnesota Rules*, chapters 6262 and 6264

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 recreational fishing in trout waters in SE Minnesota and eliminating obsolete rules.

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; while, 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 is being 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 other rules have some controversy and need 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, e-mail 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>
6262.0200	97C.395, 97C.401, 97C.411, 97C.415, 97C.041
6264.0400	97C.001, 97C.005

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

All 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 6264.0400 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, and people who fish for trout. 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.

“(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 proposed rules will not result in additional costs to the DNR or other agencies. The changes are to programs that are already in place. There is already extensive monitoring of the trout 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.

The proposed rules will less intrusive to anglers affected by the rules. Fishing opportunities are expanded for trout fishing by opening presently closed areas, by expanding the season, and lifting some gear restrictions.

The proposed rules may be more intrusive to landowners who now do not have streams open for winter trout fishing. For most water bodies it is assumed that anglers will take advantage of these new fishing opportunities.

“(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 trout fishing opportunities. Redoing the SE Minnesota trout regulations would greatly simplify the sport fishing regulations.

“(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 consequences of not adopting these rules is the inability of the Department to be able to successfully manage and protect the natural resources under our jurisdiction and to provide the best fishing 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 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 where resource conservation, safety, and equitable use were not compromised. A primary objective of the proposed rules regarding SE Minnesota trout 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 SE Minnesota trout resources simplify and clarify the regulations.

The proposed changes for opening SE Minnesota trout 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 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. 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
DNR Division of Fish and Wildlife, Section of Fisheries
500 Lafayette Road
St. Paul, MN 55155-4025

Steve Klotz
DNR Division of Fish and Wildlife, Section of Fisheries
23785 Grosbeak Rd
Lanesboro, MN 55949

RULE-BY-RULE ANALYSIS

6262.0200 FISHING REGULATIONS FOR INLAND WATERS.

Subpart 1. General inland fishing regulations.

Item B1. This proposed change expands the catch and release season in southeast Minnesota for brown trout. Assessments of trout streams in southeast Minnesota have indicated expanding trout populations throughout the region over the past decade or more. Long-term monitoring assessments being done by staff in the southeast for the trout populations (some with more than 20 years of data) indicate no effect to the population with the current catch-and-release regulations. Goals developed within the Fisheries Long-Range Plan for Trout Stream Resource Management in Southeast Minnesota 2010-2015 and Progress Report (MN DNR 2011) set the stage for the implementation of these expanded angling opportunities with little or no risk

to the trout fishery. Therefore, it is reasonable and necessary to provide additional angling opportunities that will not harm the fish populations.

Item C1. This proposed change expands the catch and release season in the southeast Minnesota for brook trout. See explanation above under Item B1.

Item D1. This proposed change expands the catch and release season in the southeast Minnesota for rainbow trout. See explanation above under Item B1.

6264.0400 DESIGNATED SPECIAL MANAGEMENT WATERS

Subp. 36. This language is proposing to eliminate language that refers to a portion of the law that is being repealed. It is reasonable and necessary to eliminate obsolete language.

Subp. 37. This language is proposing to eliminate language that refers to a portion of the law that is being repealed. It is reasonable and necessary to eliminate obsolete language.

Subp. 114. This language is proposing to establish a catch & release (C&R) season for trout within the boundaries of selected state parks in southeast Minnesota (SEMN). The proposed rule change will extend the existing fall C&R season in SEMN State Parks to December 31, thus providing year-round angling opportunities for trout within State Park boundaries. The proposal is consistent with “new management approaches” outlined in the Long-Range Plan for Trout Stream Resource Management in Southeast Minnesota 2010-2015 and Progress Report (2011). The proposal is also consistent with the primary purpose of the game and fish rules. Data in area files has indicated that no negative impacts to the resources should be expected. This proposal will allow evaluation of a “year-round” trout angling opportunity thus providing a basis for discussion of potential future expansion outside of State Parks. The proposed rule is necessary and reasonable in that it provides additional angling opportunities while it continues to protect the resource.

Repealer Summary

Part 6264.0400, Subp, 3. This language is no longer needed with opening up winter trout fishing on all designated trout streams in SE Minnesota. It is necessary and reasonable to eliminate obsolete language.

CONCLUSION

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

November 27, 2013

/s/ Tom Landwehr, Commissioner

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

MN DNR Long-Range Plan for Trout Stream Resource Management in Southeast Minnesota 2010-2015

MN DNR Lake Management Plans, various years

MN DNR Area Files and Survey Data, various years

MN DNR Progress Reports for Trout, Lanesboro Area Fisheries Office 2011