

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

**IN THE MATTER OF THE PROPOSED AMENDMENT OF**  
**RULES RELATING TO**  
**AQUATIC WILDLIFE AND PERMITS**  
**STATEMENT OF NEED AND REASONABLENESS**

**December 23, 2010**



## Minnesota Department of Natural Resources

### STATEMENT OF NEED AND REASONABLENESS

#### **Proposed Amendment to and Repeal of Rules Relating to Wildlife and Permits, *Minnesota Rules*, parts 6212.1400, 6212.1500, 6212.1700, 6262.0100, and 6262.0500**

### INTRODUCTION

#### **Purpose**

The primary purpose of the game and fish rules is to preserve, protect, and propagate desirable species of wild animals and native plant communities while ensuring recreational opportunities for those who enjoy wildlife-related activities and continued use of these resources.

#### **Scope**

The proposed amendments to existing rules cover a variety of areas pertaining to fish and aquatic wildlife including:

#### Licenses and Permits

- Changes to clarify conditions of scientific, exhibition, propagation and educational permits and reduce redundant language.

#### Fishing Regulations and Requirements

- Establish requirements for keeping fish carcasses when preparing a meal on the ice or water when special size restrictions apply.
- Establish guidelines for what configurations and types of terminal fishing tackle are considered legal to use.
- Closing Lake Christina in Grant and Douglas Counties to taking and possession of fish to accommodate waterfowl management goals.
- Changes in trout season and allowed angling equipment for SE Minnesota streams.

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

A request for comments was published in the State Register on March 14, 2005. This notice described the specific areas of the proposed rules, the statutory authority for each proposed change, and the parties that could be affected by the proposed rules. The Department of Natural Resources (DNR) also provided additional notice to people who may be affected by the rules by sending the request for comments and additional information to a number of angling groups, other environmental and social organizations, businesses, individuals, educational institutions, and representatives from bordering states. The DNR also published a statewide news release that described major parts of the proposed rule changes with instructions on how to provide comments. The DNR web site described major parts of the proposed rule and was used to take comments directly related to the proposed changes.

In addition to the request for comment period, a number of meetings were held in St. Paul with fishing tournament representatives, night bowfishing groups, catfish anglers interested in

using larger bullheads and with angling groups wanting to legalize fishing tackle referred to as “a quick strike rig”. A series of other meetings throughout the last two years have also taken place with tournament organizers to help draft language for fishing contests. At this time, we are not moving ahead with the fishing contest proposed rules due to questions related to statutory authority.

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

In 2007, a portion of this rule package was completed: turtles, mussels, commercial fishing, core lake designations for commercial areas, permanent and seasonal fishing closures, changing or adding to existing fishing regulations to reflect statute changes, and other technical changes. As of March 2010, the portion dealing with bullheads and suckers is currently at the request to adopt phase. The package was split due to needing to work with constituent groups, especially surrounding the tournament rules, to develop a proposal that would be viewed as reasonable.

Organizations and individuals contacted during the request for comment period included: organizations representing private and commercial riparian owners, such as the Minnesota Lakes Association and Minnesota Resort Association; media groups such as In-Fisherman, Lund Boat, various newspapers, and Gemini Sport Marketing; conservation groups such as the Izaak Walton League, Sierra Club, Fish and Wildlife Legislative Alliance, and Audubon Society; Minnesota Sportfishing Congress; Minnesota Tourism; Minnesota Inland Commercial Fishermen’s Association; licensed commercial fish and turtle operators; Minnesota Aquaculture Association; licensed bait dealers/harvesters; North Shore Charter Captains Association; the chamber of commerce in several cities; woman angler associations; Rainy Lake Sportfishing Club; fishing tournament organizers; individuals interested in whitefish netting; United Northern Sportsmen; businesses, individuals, and local sports groups; Minnesota Council of Trout Unlimited; Minnesota Trout Association; Native American councils; Southeast Asian and Hispanic organizations; and border state staff who are responsible for fishing and public waters rules and regulations.

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

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

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

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

person asked to have the language that requires a patch of skin left on fillets be removed. One person wants us to ban the use of cell phones while fishing. One individual would like to see us license fishing guides. One person suggested that we have a season closure for panfish. One person feels that we should have different daily and possession limits for all fish, but especially panfish. One person commented that they would like to eliminate culling on walleye, perch, and crappie. One group was in favor of simplification of regulations.

## REVIEW OF DOCUMENTS

Sources cited in this document may be reviewed on workdays between 8:00 am and 4:30 p.m. in the Section of Fisheries Management office at the DNR headquarters, 500 Lafayette Road, St. Paul, Minnesota.

## ALTERNATIVE FORMAT

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

## STATUTORY AUTHORITY

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

<u>Rules Part</u>	<u>Statutes sections</u>
6212.1400	84D.11, 97A.401, 97A.418
6212.1500	97A.401, 97A.418
6212.1700	97A.401, 97A.418
6262.0100	97A.045, subd. 2; 97A.551; 97C.205, 97C.315
6262.0500	97A.045, subd. 2; 97C.325, subd. d; 97C.001, subd 3; 97C.005, subd 3; 97C.401, subd. 1

Under these statutes, the Department has the necessary statutory authority to adopt the proposed rules. This rulemaking is an amendment of rules for which the statutory authorities have not been revised in any way by the legislature since 1995 and so 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.

## 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 to repeal redundant or obsolete language and clarify permits for the taking, disposal, transport, and possession of protected wild animals for propagation, research, scientific programs, exhibition, and educational purposes and permits for pets (6212.1400, 6212.1500 and 6212.1700) should benefit the media, educational outlets, and other associated businesses since the changes will make it clear who can get these types of permits and under what conditions.

The proposed changes to clarify what types and configurations of terminal fishing tackle are considered legal to use as bait (6262.0100) will be beneficial to anglers since it will clarify what items are legal to use in the state. It may also increase sales for fishing related businesses since there will be new items that will now be legal to use in Minnesota.

The proposed changes to require anglers to keep fish carcasses of those fish with size limits (6262.0100) while they are on the water or ice will have minimal impact. Anglers are currently not allowed to dispose of the carcasses in the water and so must already keep them until they can dispose of them legally. Requirements to package them so that they are intact and able to be separated will be an inconvenience to anglers when filleting fish.

The proposed changes (6262.0500) to close Lake Christina (Grant and Douglas Counties) should have minimal impact to anglers. This lake has been reclaimed many times to kill the fish so that waterfowl can be more successful. Fisheries has not and does not plan to manage the lake as a fishing lake. What anglers have experienced in the past is a fishable population based on fish migrating into the area and not having the lake winterkill.

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

The proposed fish rules would result in no costs to the DNR or other agencies. There is already extensive monitoring of the fish populations that would be affected by the proposed rules and no additional monitoring is planned if the rules are adopted.

There are no significant positive or negative direct impacts anticipated for state revenues as a result of these rules since the DNR already enforces and monitors these laws and already charges a fee to cover costs for tournament permits. The exhibition/educational and pet permits will not affect revenues since no fees are assessed. All the other proposed rules are not anticipated to have any effects on state revenues.

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

Some of the proposed rules would result in stricter and therefore more intrusive conditions on permits and requirements for anglers. However, it has long been recognized by fisheries professionals that restrictions are necessary to provide a sustainable fisheries resource (*Inland Fisheries Management in North America* 1993). The best option for maintaining fish and other aquatic animal populations is, by definition, more intrusive than alternatives, because “less intrusive” proposals would usually not provide the necessary protections. Examples of some of the less intrusive methods that were considered follow.

The proposed rules for clarifying permit conditions (6212.1400, 6212.1500, and 6212.1700) are less intrusive on permit applicants than the current language because they open up the opportunity to the media.

The proposed clarifying language for fishing tackle defined as legal to use (6262.0100) is less intrusive because it allows certain fishing tackle to be used in Minnesota.

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

Two alternatives are: 1) limited entry where only a certain number of anglers or permits are allowed to engage in these activities (*Inland Fisheries Management in North America 1993*), and 2). Eliminate permits all together. Alternative one could achieve the purpose of the proposed rules. However, this proposal was not considered because it is considered to be unnecessarily intrusive. Limited entry would also require more monitoring from the DNR to determine who and how many would be allowed to participate in these activities. Alternative two would not achieve the purpose of the proposed rules or adequately protect natural resources.

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

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

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

## **PERFORMANCE-BASED RULES**

The agency’s objective with regard to recreational fishing and commercial fishing is to provide for resource conservation, public safety, and equitable use, while maintaining flexibility for anglers and businesses to participate in a variety of opportunities for use and enjoyment of the aquatic resources consistent with state and federal law. To the extent possible, the DNR attempts to maintain simplicity and understandability of regulations, balanced against the demand for more specialized regulations to protect resources and provide additional opportunities for use of these resources. The agency also attempts to balance the economic and social impacts against the biological requirements necessary to meet goals that conserve and protect the aquatic resources.

In developing the proposed rules, the agency sought to make the rules less restrictive and more business friendly where resource conservation, safety, and equitable use were not compromised. Good examples include:

- The proposed changes to clarify what types and configurations of terminal fishing tackle are considered legal to use (6262.0100) will be beneficial to anglers and businesses since it will now be clear what items are legal to use in the state.
- Businesses might have increased sales of these items since more anglers will now buy them for use in Minnesota.

The proposed rules to repeal redundant or obsolete language and clarify permits for the taking, disposal, transport, and possession of protected wild animals for propagation, research, scientific programs, exhibition, and educational purposes and permits for pets (6212.1400, 6212.1500 and 6212.1700) should benefit the media, educational outlets, and other associated businesses since the changes will make it clear who can get these types of permits, what activities are eligible, and under what conditions.

### **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.
- 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**

As required by *Minnesota Statutes*, section 14.131, the Department will consult with the Minnesota Management and Budget (MMB). We will do this by sending the MMB copies of the documents that we send to the Governor's Office for review and approval on the same day we send them to the Governor's office. We will do this before the Department's publishing the Notice of Intent to Adopt. The documents will include: the Governor's Office Proposed Rule and SONAR



Form; the proposed rules; and the SONAR. The Department will submit a copy of the cover correspondence and any response received from Minnesota Management and Budget to OAH at the hearing or with the documents it submits for ALJ review.

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

As required by *Minnesota Statutes*, section 14.128, subdivision 1, the agency has considered whether these proposed rules will require a local government to adopt or amend any ordinance or other regulation in order to comply with these rules. The Department has determined that they do not because all authority to regulate these activities lies with the Department and not local units of government.

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

#### **Agency Determination of Cost**

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

The Department has made this determination based on the probable costs of complying with the proposed rule based on the fact that the rules do not impact small business or cities but instead are to be complied with by specific user groups.

### **LIST OF WITNESSES**

If the rules go to public hearing, the witnesses below may testify on behalf of the DNR in support of the need and reasonableness of the rules. The witnesses would be available to answer questions about the development and content of the rules. The witnesses for the DNR include:

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

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

Don Pereira, Fisheries  
Department of Natural Resources  
500 Lafayette, Box 20

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

#### **6212.1400 GENERAL RESTRICTIONS FOR POSSESSION PERMITS.**

The DNR issues approximately 208 possession permits for wild animals (171 by Fish & Wildlife Division; 37 by Ecological Resources Division) to a variety of organizations/groups for a number of reasons that are beneficial to both the agency and the organizations/groups that are being issued the permit:

Approx. # permits/year	Permittees	Benefit to the State for issuing permit
35	For display (zoos, nature centers, Cabela's, NW Sportshow, etc.)	Interests and helps educate the public about natural resources and wildlife
27	Misc. schools and learning centers	Educates students about the environment and helps them in career choices
48	Colleges and universities	Educates students who may be potential DNR employees. Conduct studies that are informative to DNR Fisheries and increases our knowledge about aquatic ecosystems, birds, and nongame species (sometimes the studies are on contract to the DNR)
10	Engineering companies (Barr, Blue Water Science, etc.)	Most do studies for cities to help them plan for growth and development
18	Filming purposes (Schara, Lindner, Lund, In Fisherman, etc.)	They film interesting and educational items that promote recreational activities and recruits the public into doing these activities, some publications also assist in educating or informing the public on key natural resources issues or topics.
26	Govt. groups for study (USFWS, USGS, PCA, National Park Service, Indian Bands, Raptor Center, NSP, etc.)	These groups have jurisdiction in different geographical areas, but need to get permits in order to do their work. This work is often used to further inform DNR staff and provide for better critical decision-making.
18	Misc. groups (private individuals and groups)	Public relations Power companies for nest removal
26	Fishing waivers (most are to schools)	Introduces potential new anglers to fishing and teaches them how to care for the environment – helps make them more responsible adults, able to make more informed choices

Current language provides for permits that restrict activities and who are allowed to receive permits to possess, transport, take, and dispose of protected wild animals. The current language does not provide the criteria that would be considered to determine if a permit should be issued or the conditions that may be implemented on the permit. It is also unclear in current language if permits can be used to regulate media activities, even though permits are commonly used for this purpose. The proposed language provides for permits to conduct otherwise prohibited activities provided they will not harm the resources or be detrimental to the species. The proposed language also proposes combining the permit language of MR 6212.1400 and 6212.1500 to reduce redundant language and putting all criteria for these types of permits in one area.

**Subpart 1.** The proposed language is a technical change because it eliminates text that originally referenced 6212.1500 and 6212.1700 that are being repealed. This change is needed and reasonable because it eliminates obsolete language.

**Subpart 2, Items A-E.** The proposed language combines the language of eligible activities that were found in MR 6212.1400 and 6212.1500, while making it clear that permits can be issued to media outlets to possess fish when conducting educational programs or to promote outdoor recreation in the fields of biology or natural history. This subpart also outlines what criteria will be considered in issuing these permits, and possible conditions that may be put on the permit. This change is needed and reasonable because it clarifies the permitting process and provides guidelines for those groups to work from while protecting the resource.

**Item A.** The proposed language is technical in nature because it adds propagation, exhibition, and scientific programs that were originally found in 6212.1500 to the list of eligible activities in 6212.1400. This change is needed and reasonable because it eliminates redundant language and is consistent with the intent of the original language.

**Item B.** This proposal adds media outlets to the list of permit applicants that may be eligible for a permit to possess fish. About eighteen requests from the media are reacted to each year. Those that have been approved were those cases where the media outlet requested the taking of fish out of season to film them for outdoor programs. It was brought to our attention that the rules were unclear as to whether media outlets could be permitted to do this type of work. It was determined by the agency that allowing the media to get permits under this part would help to promote outdoor recreation activities and possibly recruit and retain anglers. This change is needed to make it clear that media outlets are allowed this opportunity to conduct educational programs and to promote outdoor recreation. It is reasonable to open this opportunity up to the media because the activities that they are doing will not harm the resource and has been found to be one avenue for recruiting and retaining anglers.

**Item C.** The proposed language clarifies that permittees described in Items A and B must have appropriate and adequate facilities to care for, exhibit or store specimens. This language is necessary and reasonable to ensure that detrimental impacts to the species and resources are minimized or null.

**Item D.** The proposed language clarifies that the commissioner can deny a permit if it will cause harm to the natural resources. This is a technical change in that it adds language to this part that was originally in 6212.1500. This change is needed and reasonable because it eliminates redundant language and is consistent with the intent of the original language.

The proposed language goes on to provide the criteria used to determine if a permit should be issued and the conditions that may be placed on a permit. It is necessary and reasonable to identify the purposes, decision-making criteria, and restrictions for these permits so the public is aware of why these permits are issued and to help the DNR be more consistent in the issuance or denial of these permits. It is necessary and reasonable to allow permits for public use activities to give the DNR flexibility in how wild animals are managed and to enable restrictions to be implemented that will protect the species and the resource.

The proposed conditions that the DNR may include on permits include: limits on the number of people, seasonal, daily or other time-related restrictions, geographical restrictions, restrictions on how authorized activities are conducted, limits on the quantity of animals or other resources that are collected, and the requirement to deposit voucher specimens at the University of Minnesota. These conditions are needed and reasonable to protect wild animals during permitted activities while we enhance our knowledge of the species.

The ability to limit the number of people authorized by the permit is necessary and reasonable to minimize the human disturbance caused by the permitted activities. The ability to

have time-related restrictions is necessary and reasonable because some species of animals may be more vulnerable to disturbance at certain times of the year or day. The ability to restrict the geographical area where the activities are conducted is necessary and reasonable because certain portions of the state or water body may have rare features that are vulnerable to any disturbance. The ability to restrict how authorized activities are conducted is necessary and reasonable to ensure that methods used to collect samples or data do not harm the natural resources or the species. The ability to limit the number of animals, animal parts, eggs, etc. that are collected is necessary and reasonable to prevent depletion of rare features and protect native species. The requirement to deposit voucher specimens at the University of Minnesota is necessary and reasonable to help advance the understanding of the animals that are acquired. It will also provide a central data location that will help benefit Minnesota's educational institutions. These conditions are reasonable because they reflect past practices and are not overly restrictive.

**Item E.** The proposed language provides specific criteria the commissioner shall consider when making a decision on issuing a permit. Previously it was not clear to permit applicants what criteria would be used. This language is needed to make it clear and easier to understand what considerations will be used. These considerations are reasonable to protect wild animals. The proposed criteria that the DNR will consider to determine if a permit should be issued are necessary and reasonable to ensure that the activities allowed through a permit do not damage the resource or are detrimental to the species, that the activities help to improve management or understanding of that species, that there is not a reasonable alternative that would avoid the use of that species, that the activity does not interfere with existing studies regarding that species or its management, that it is necessary to conduct the activity in order to accomplish the goal of the permit, and that the applicant has the credentials to successfully accomplish the activity. These changes are needed to clarify the conditions and specific criteria the commissioner shall consider

**Subpart 5.** The proposed language is a technical change because it eliminates text that was originally referenced in 6212.1500 and 6212.1700 that is being repealed. This change is needed and reasonable because it eliminates obsolete language.

**Subpart 8.** The proposed language is a technical change because it eliminates text that was originally referenced 6212.1500 and 6212.1700 that are being repealed. This change is needed and reasonable because it eliminates obsolete language.

**Subpart 9.** The current language prohibits taking or possessing protected wild animals as pets. This language conflicts with chapter 6238, which provides for issuing permits to take raptors for falconry. The proposed language specifies that chapter 6238 is an exception for the prohibition on taking wild animals as pets. The proposed change is necessary and reasonable to be consistent with existing rules in chapter 6238.

## **6212.1500 SCIENTIFIC, EXHIBITION, PROPAGATION, AND EDUCATIONAL PERMITS.**

This language repeals the rule language that was combined in the new 6212.1400. It is necessary and reasonable to expect that redundant language would be repealed.

## **6212.1700 PERMITS FOR DEER AS PETS**

This language repeals the rule language that established the criteria for keeping deer as pets. The purpose of the repeal of this part is to eliminate obsolete criteria for keeping deer as pets. The legislature amended *Minnesota Statutes* section 97A.401, subd 3(b) to disallow the issuance of permits to keep deer as pets (Laws 2003, chapter 128, art. 1, section 55). Consequently, this rule is in conflict with later legislation that bans this activity. It is necessary and reasonable to expect that obsolete language would be repealed.

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

**Subpart 5, Item D.** The proposed language adds language about keeping the fish carcasses when exercising the opportunity to fix a meal of fish with those species regulated by a size limit when a boat is moored or when a person is on the ice. Angler noncompliance on some waters with protected species size limits has been shown in DNR Research study 602 to be substantial. Only a few lakes have had creel surveys since regulation implementation, and this preliminary data suggest that we have some problems with anglers illegally harvesting protected-sized fish. Noncompliance can have a significant impact on a regulation's effectiveness. Research indicates that the benefits of size-based regulations are lost if more than 15% of the protected-sized fish which are caught are harvested illegally (Gigliotti and Taylor 1990 and Hill, et al, 1975).

It was found by the DNR that in one-half of our creel surveys (4 out of 8) that this noncompliance rate of 15% was exceeded. The percent of the harvest that was composed of protected-sized fish ranged from 2 to 87%. There are a number of noteworthy angler demographic trends related to noncompliance. For example, although angler-based noncompliance can be quite high, comparatively few angler parties may be responsible for an appreciable portion of the number of noncompliant fish harvested. For example, of the 15 parties that harvested noncompliant fish on Green Lake (Hinckley, 13-041) in 1998, 3 parties (10 anglers) were responsible for 59% of the total number of noncompliant crappie harvested. Of the 64 and 63 angler parties responsible for noncompliance on Green Lake (Hinckley, 13-041) in 1999 and 2000, 6 parties each year, representing 17 and 13 anglers respectively, harvested 36% and 35% of the total noncompliant crappie harvested. In addition, angler parties not specifically targeting fish species with protective length limits were responsible for a large majority of the noncompliant harvest on Lake Chisago (13-021) and Green (Spicer, 34-079). Angler parties not specifically targeting largemouth bass on Lake Chisago comprised 74% of those fishing parties that possessed noncompliant fish in 2000. The rule language is clearly necessary to further educate anglers about special and experimental length-based regulations, especially those that are established on designated waters and the need to comply with those regulations if fishing is to improve on these water bodies. It is also necessary because it will provide enforcement a better tool to assist in the enforcement of these regulations, especially on designated water bodies. The language is reasonable because it does not put any undue burden on anglers who wish to have a meal of fish, since they already must package the offals to transport them off the ice for disposal.

**Subpart 6, Items A– C.** As companies produce more types of terminal tackle for recreational angling, the DNR is receiving more calls to determine what legal methods for taking fish are. Currently, no definition exists for the term artificial bait that is used throughout our rules and statutes. In the past, it was understood that this term was referring to flies, spoons, and jigs.

Now there are hundreds of configurations of terminal fishing tackle that often are combinations or new configurations of the old standards. The proposed language would clarify what multiple hook configurations are considered legal to use in Minnesota.

**Item A.** The proposed language would allow anglers to use up to three single or multiple hooks, on a single line so long as the hooks total configuration is nine inches or less in length. This change was the result of requests from anglers to make it legal to use a so-called “quick strike rig” and “worm harness.” A quick strike rig is a type of tackle in which anglers typically insert a second hook in a large bait allowing a quicker hook set, thereby reducing fatal hooking injuries to vital organs and gills. These types of rigs are typically used while fishing for large northern pike or muskie. A “worm harness” is a type of tackle in which three multiple hooks on a single line are inserted into a worm. This language is needed to clarify and specifically describe what methods and where they are considered legal in Minnesota. The proposed change is reasonable to accommodate a safer method of taking fish and to provide a legal definition for common practice.

**Item B.** The proposed language would make using one bare single or multiple hook that becomes a part of an artificial bait and is no more 3-inches or less from the artificial hook in length legal in Minnesota. This change was the result of requests from anglers to make it legal to use a so-called “stinger hook” legal. A stinger hook rig is a bare hook that trails behind the artificial hook and allows a second chance to hook the fish. These types of rigs are typically used while fishing for bass. This language is needed to clarify and specifically describe what methods are considered legal in Minnesota. The proposed change is reasonable to accommodate a using such a method and provide a legal definition for commonly used tackle.

**Item C.** The proposed language clarifies that artificial bait and three artificial flies are allowed to be used on trout streams, but restricts all other types of tackle on designated trout streams. This language is needed to protect trout fisheries. The language is reasonable because it clarifies what is allowed already by law.

## **6262.0500 WATERS CLOSED TO TAKING FISH**

**Subpart 1, Item F.** The proposed language would establish a year-round fishing closure on Lake Christina, Grant and Douglas counties. Lake Christina is a 4,000 acre shallow lake located in Grant and Douglas counties in west-central Minnesota. The lake has an average depth of only 4-5 feet and has the potential to support extensive beds of submergent vegetation important in diets of migrating diving ducks. It is nationally recognized as a critical staging area for migrating waterfowl. Lake Christina has been formally designated as a Wildlife Management Lake according to *Minnesota Statutes*, section 97A.101 subdivision 2. Most of the lake is also a designated Waterfowl Feeding and Resting Area (*Minnesota Statutes*, section 97A.095 subdivision 2).

Lake Christina was reclaimed in 2003 using Environmental Trust Fund dollars. In recent years, the water quality and aquatic plant densities in the lake have deteriorated. In response, migratory waterfowl use decreased. The DNR- Section of Wildlife Management, treated the lake with the fish toxicant, rotenone, to eliminate fish life and restore waterfowl habitat. Since the treatment, the water clarity and aquatic plant abundance appears to be responding and waterfowl have returned to the area. Additional fish barriers were also installed in the watershed to reduce the likelihood of fish moving back into the lake. The lake will no longer be managed for a recreational fishery and game fish will not be restocked into the lake. Historically, the lake has oscillated between two alternative conditions, a clear-water (macrophyte state), and a turbid-water (phytoplankton) state. Research here and elsewhere indicates that abundance of planktivorous and/or benthivorous fish play key roles in favoring, and sometimes inducing, shifts toward the turbid state (with concurrent loss of plants). The DNR has reclaimed the lake three times (1965, 1987, and 2003); in each case, the lake has shifted quickly from a turbid-water state to a clear-water state with abundant plants. Closing the lake to the taking of fish year-round will reduce disturbance of existing submerged plant beds due to physical disturbance of motorboats. Owing to

the lakes' shallow depth and poorly consolidated bottom sediments, boat traffic probably uproots existing plants and resuspends bottom sediment, further contributing to turbid-water conditions (Aasplund et al. 1997). Second, it is plausible that a relatively high standing stock of piscivores increases predation on planktivorous and benthivorous species, maintaining at least some constraints on the latter populations. Historical evidence indicates that dense populations of planktivorous and benthivorous fishes were previously abundant during shifts to turbid water and losses of submergent plants (Mehner et al. 2002, Lathrop et al. 2002). The Section of Wildlife believes that protecting the piscivores by restricting fishing may provide considerable benefits and may help maintain Lake Christina in the current clear water state with abundant submergent vegetation. The language is needed to ensure that unwanted fish species are not reintroduced to this system. It is reasonable to close this lake to fishing because the future management of the lake will focus on wildlife habitat as a Waterfowl Management Area and will no longer be managed for angling.

### **Repealer Summary**

#### **6212.1500 SCIENTIFIC, EXHIBITION, PROPAGATION, AND EDUCATIONAL PERMITS**

This language repeals this section on issuing permits that was incorporated into 6212.1400. It is necessary and reasonable to repeal redundant laws.

#### **6212.1700 PERMITS FOR DEER AS PETS**

This language repeals this section on issuing permits for deer as pets that is in conflict with later legislation that bans this activity. It is necessary and reasonable to repeal obsolete laws.

### **CONCLUSION**

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

December 23, 2010

/s/ Laurie Martinson, Deputy Commissioner

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

Fish management data from various area offices, Minnesota Dept. Natural Resources, St. Paul, personal comm.

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

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Gigliotti, L. M., and W. W. Taylor. 1990. The effect of illegal harvest on recreational fisheries. *North American Journal of Fisheries Management* 4:106-110.

Lathrop, R.C. 2002. Stocking piscivores to improve fishing and water quality: a synthesis of the Lake Mendota biomanipulation project. *Freshwater Biology*, 47, 2410-2424.

Mehner, T., J.O. Benndorf, P. Kasprzak, and R. Koschel. 2002. Biomanipulation of lake ecosystems: successful applications and expanding complexity in the underlying science. *Freshwater Biology*, 47, 2453-2465.

Hill, T.K., and E.W. Shell. 1975. Some effects of a sanctuary on an exploited fish population. *Transaction of the American Fisheries Society* 104:441-445.

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