

Minnesota Department of Natural Resources

Division of Fish and Wildlife

NOTICE OF INTENT TO ADOPT EXPEDITED RULES WITHOUT A PUBLIC HEARING

Proposed Amendment to Rules Governing Fishing Regulations for Inland Waters, *Minnesota Rules*, part 6262.0200; Revisor's ID Number R-4826

Introduction. The Department of Natural Resources (Department) intends to adopt rules under the expedited rulemaking process following the rules of the Office of Administrative Hearings, *Minnesota Rules*, part 1400.2410, and the Administrative Procedure Act, *Minnesota Statutes*, section 14.389. You may submit written comments on the proposed expedited rules until Friday, September 20, 2024.

Department Contact Person. Submit comments, questions, or a request for hearing on the rules to Shannon Fisher, Fisheries Populations Monitoring and Regulations Manager, at Minnesota Department of Natural Resources, 500 Lafayette Road, St. Paul, Minnesota 55155, telephone 651-259-5206, or email shannon.fisher@state.mn.us.

Subject of the Expedited Rules. The proposed expedited rules adjust Minnesota's fishing regulations for inland waters.

- 1. Season clarification for largemouth and smallmouth bass.** The Department proposes to use the term "through" instead of "to" consistently to define season end dates. The current use of "to" in some rules is unclear because it could mean an angler can harvest until 11:59 P.M. on the season end date listed or it could mean 11:59 P.M. on the day prior to the closing date listed. The amendments in this section replace the word "to" with "through" and include a specific time for clarity and consistency across fishing regulations.
- 2. Stream trout rules updates.** The stream trout rules updates include four components.
 - a. The first is adding Dakota County to the list of counties that have an open stream trout season from January 1 through October 15 of each year. This season includes catch-and-release only from January 1 up to but not including the Saturday harvest opener in April and from September 15 through October 15.
 - b. The second part of the update is language consolidation. Brook trout, brown trout, rainbow trout and splake are listed separately in rule. The language for each trout type is the same and the daily and possession limits are "in aggregate." Therefore, these sections are consolidated into a single set of rules that covers brook trout, brown trout, rainbow trout, and splake.

- c. The third component is a change to the April season opener. New language establishes the season opener on the second Saturday in April, instead of the current language which is for the Saturday closest to April 15.
 - d. The last component is season clarifications converting the use of “to” to “through” (see item 1 above).
- 3. Season clarification for lake trout.** The only updates for lake trout are three “to” and “through” adjustments (see item 1 above).
 - 4. Season clarification for walleye and sauger.** The only change proposed for walleye and sauger is season clarification converting the use of “to” to “through” (see item 1 above).
 - 5. Corrections to northern pike season and zones.** The northern pike season was adjusted by changing “to” to “through” to ensure that the correct season dates are defined (see item 1 above). The other update here is the modification of northern pike zone boundary definitions. The proposed new zone boundary language: 1) clarifies that the western-most boundary begins at the South Dakota border on State Highway 12 in Ortonville, 2) adjusts the boundary within the metro area from the "near or north banks" of the Minnesota and Mississippi rivers to a series of roadways above the floodplain, and 3) clarifies the intersection with the Canada border.
 - 6. Clarification of muskellunge rules.** To remove uncertainty from the previously combined muskellunge-tiger muskellunge rule, the two are being split into separate listings. The season was also clarified by change “to” to “through” (see item 1 above) and changing the end date from December 1 to November 30.
 - 7. Establishing a daily/possession limit and season for tiger muskellunge rules.** This new listing establishes a separate daily and possession limit for tiger muskellunge (northern pike-muskellunge hybrids), establishes that the open season shall run from the first Saturday in June through November 30, and removes the list of metro lakes managed for tiger muskellunge.
 - 8. Establishing a daily/possession limit and season for yellow bass.** Yellow bass are listed as a game fish, and therefore should have an established bag limit and harvest season. Because many anglers may not be able to tell the difference between white bass and yellow bass, we are proposing that the bag limit be considered in aggregate and with a continuous season. A combined bag limit of 30 is proposed across the species range. In some instances where yellow bass are proliferating, special regulations with higher bag limits may be used.
 - 9. Sunfish clarification.** Sunfish are defined in *Minnesota Statutes*, sec. 97A.015, subd. 46, but are not defined in *Minnesota Rules*, chapter 6262. This change ensures that it is clear which species are included in the sunfish rule.
 - 10. Catfish rules.** The intent of this language adjustment is to simplify and separate species-specific (channel catfish and flathead catfish) regulations that are currently combined within one species-group (catfish). The splitting of catfish into two separate species rules is based on angler input and biological differences. The change allows the DNR to set different management goals for each species and permit more angling opportunities.

- 11. Removal of old perch regulations language.** We propose removing certain language from the current perch regulations that became obsolete in 2000 and 2001 and is no longer applicable.
- 12. Sturgeon clarification.** Current sturgeon regulations reference simply “sturgeon.” However, in the Minnesota-Wisconsin boundary water rules, lake sturgeon and shovelnose sturgeon have different regulations. To avoid confusion and clarify that the rule applies to multiple species of sturgeon, we are adding “lake and shovelnose” to sturgeon. “To” and “through” season clarifications are also addressed (see item 1 above).
- 13. Removal of species from list.** The daily/possession limits and harvest seasons for species classified as “rough fish” are listed here. Several species (burbot, whitefish, and cisco) have been re-classified from “rough fish” to “game fish” and can be removed from this list because daily/possession limits are established. Gar also have a daily and possession limit and can be removed from the list as well.
- 14. Establishing daily/possession limit and season for American eel.** A daily/possession limit has not been established for American eel. American eel are rare in the state. The proposed daily/possession limit of zero effectively prohibits the harvest of American eel in Minnesota waters – reflecting their rare status and need for protection.
- 15. Establishing a daily/possession limit and season for burbot.** Burbot was reclassified from rough fish to game fish by the Minnesota legislature in 2020. The species is increasingly targeted by anglers and is also subject to population challenges due to warming lake conditions. Recent research has suggested that some populations (e.g., Bad Medicine Lake), are experiencing substantial exploitation. Because predatory fishes, such as burbot, tend to be present in limited numbers, the use of daily and possession limits is a commonly applied management tool to create sustainable fisheries. Based on engagement feedback and biological data, we are proposing a daily and possession limit of four.
- 16. Establishing an angling daily/possession limit and season for lake whitefish.** Lake whitefish, like burbot, have gained substantial attention as a targeted species by Minnesota anglers; and the species was reclassified from rough fish to game fish by the Minnesota legislature in 2020. The species is also subject to population challenges due to warming lake conditions. To protect lake whitefish populations from overexploitation and based on our public engagement, we are proposing a daily and possession limit of 15 for angling. Because whitefish less than or equal to 7 inches in length are considered minnows, the limit of 15 only applies to whitefish greater than 7 inches.
- 17. Establishing an angling daily/possession limit and season for cisco.** Cisco, also known as tullibee, have gained substantial attention as a targeted species by Minnesota anglers; and the species was reclassified from rough fish to game fish by the Minnesota legislature in 2020. The species is also subject to population challenges due to warming lake conditions. To protect cisco populations from overexploitation, we propose establishing a daily/possession limit. Based on engagement, we are proposing a daily and possession limit of 15 for angling. Cisco less than or equal to 7 inches in total length are considered bait in Minnesota, so the limit only applies to cisco greater than 7 inches in total length.
- 18. Addition of paddlefish regulations to rule.** Minnesota Statutes, sec. 97C.411, establishes that paddlefish may not be taken, bought, sold, transported or possessed except as

provided by rule of the commissioner. Paddlefish rules were added to the Minnesota-Wisconsin boundary waters rules and should also be clarified in the inland fishing rules to emphasize that the species may not be targeted, taken, or possessed.

19. Addition of gar regulations to rule. Minnesota Statutes, sec. 97C.401, subd. 3 requires the DNR to establish an annual special regulation for a daily and possession limit for longnose and shortnose gar. Rather than re-establishing this rule annually, we propose establishing a gar bag limit in permanent rule.

Statutory Authority. The statutory authorities to adopt these rules include the following:

Minnesota Statutes, section 97A.045, directs the commissioner to do all things the commissioner determines necessary to preserve, protect, and propagate desirable species of wild animals, and to make special provisions for the management of fish and wildlife to ensure recreational opportunities for anglers and hunters. The commissioner may protect a species of wild animal in the state by prohibiting or allowing taking of the animal whether or not the animal is protected under the game and fish laws. The commissioner may regulate the taking, possession, and transportation of wild animals from state and international boundary waters. The commissioner may prescribe the form of permits, licenses, and tags issued under the game and fish laws.

Minnesota Statutes, section 97C.401, requires the commissioner to, by rule, prescribe the limits on the number of each species of fish that may be taken in one day and the number that may be possessed.

Under Minnesota Statutes, section 84.027, subdivision 13a (b), the commissioner may use the expedited permanent process in section 14.389 to adopt rules that are authorized under Minnesota Statutes, chapters 97A and 97C, subject to the notice and public hearing provisions of section 14.389, subdivision 5.

Publication of proposed rules. A copy of the proposed rules is published in the State Register and attached to this notice as mailed. A free copy of the rules is available upon request from the department contact person listed above. The proposed expedited rules may be viewed on the [DNR rulemaking webpage](https://mndnr.gov/input/rules) at mndnr.gov/input/rules.

Comments. You have until 4:30 p.m. on Friday, September 20, 2024, to submit written comment in support of or in opposition to the proposed expedited rules and any part or subpart of the rules. Your comment must be in writing and received by the department contact person by the due date. The Department encourages comment. Your comment should identify the portion of the proposed expedited rules addressed and the reason for the comment. In addition, you are encouraged to propose any change desired. You must also make any comments that you have on the legality of the proposed rules during this comment period. If

the proposed expedited rules affect you in any way, the Department encourages you to participate in the rulemaking process.

Request for Hearing. In addition to submitting comments, you may also request that a hearing be held on the rules. You must make your request in writing and the department contact person must receive it by 4:30 p.m. on Friday, September 20, 2024. Your written request must include your name and address. You must identify the portion of the proposed rules to which you object or state that you oppose the entire set of rules. Any request that does not comply with these requirements is not valid and the Department cannot count it for determining whether it must hold a public hearing. You are also encouraged to state the reason for the request and any changes you want made to the proposed rules.

Withdrawal of Requests. If 50 or more persons submit a valid written request for a hearing, a public hearing will be held unless a sufficient number withdraw their requests in writing. If enough requests for hearing are withdrawn to reduce the number below 50, the Department must give written notice of this to all persons who requested a hearing, explain the actions the Department took to effect the withdrawal, and ask for written comments on this action. If the Department is required to hold a public hearing, it will follow the procedures in *Minnesota Statutes*, section 14.131 to 14.20.

Modifications. The Department may modify the proposed expedited rules using either of two avenues: The Department may modify the rules directly so long as the modifications do not make them substantially different as defined in *Minnesota Statutes*, section 14.05, subdivision 2, paragraphs (b) and (c). Or the Department may adopt substantially different rules if it follows the procedure under *Minnesota Rules*, part 1400.2110. If the final rules are identical to the rules originally published in the State Register, the Department will publish a notice of adoption in the State Register. If the final rules are different from the rules originally published in the State Register, the Department must publish a copy of the changes in the State Register.

Alternative Format. Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request, please contact the department contact person at the address or telephone number listed above.

Lobbyist Registration. *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. You may direct questions regarding this requirement to the Campaign Finance and Public Disclosure Board at: Suite #190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone (651) 539-1180 or 1-800-657-3889.

Adoption and Review of Expedited Rules. If no hearing is required, the Department may adopt the rules at the end of the comment period. The Department will then submit rules

and supporting documents to the Office of Administrative Hearings for review for legality. You may ask to be notified of the date that the Department submits the rules. If you want to be so notified or want to receive a copy of the adopted rules or want to register with the Department to receive notice of future rule proceedings, submit your request to the department contact person listed above.

7/31/2024

/s/ SARAH STROMMEN

Sarah Strommen, Commissioner of Natural Resources