

December 20, 2021

Thomas E. Casey  
Board Chair  
Friends of Minnesota Scientific and Natural Areas  
2854 Cambridge Lane  
Mound, MN 55364

RE: Petition for Adoption of Rules Requiring Non-toxic Fishing Tackle and Non-toxic Ammunition in MN State Parks and SNAs

Dear Mr. Casey:

The Minnesota Department of Natural Resources (DNR) received a petition on October 18, 2021 from Friends of Minnesota Scientific and Natural Areas, a non-profit corporation (“Friends”), requesting that the agency initiate rulemaking to ban the use of lead shot and bullets and lead fishing tackle in Scientific and Natural Areas (SNAs) and Minnesota State Parks (the “Petition”).

The DNR has carefully considered this Petition. The DNR has determined that, over the next year, it will implement two changes to require the use of non-toxic ammunition at certain SNAs and State Parks through orders or DNR procedures that do not require changes to Minnesota rules or statutes. Specifically, the DNR may allow hunting in SNAs in the Commissioner’s designation order for the SNA, and SNA designations are exempted from rulemaking in accordance with Minn. Stat. § 84.033 and § 86A.05, subd. 5. The DNR will identify all SNAs that allow hunting and require the use of non-toxic bullets and non-toxic shot on those lands. The DNR will also require the use of non-toxic bullets and non-toxic shot at State Parks when it issues permits for special hunts. The DNR may include requirements for non-toxic bullets and non-toxic shot in these permits in accordance with Minn. R. 6100.0550. At the present time, the DNR will not require the use of non-toxic bullets and non-toxic shot on Minnesota State Park lands that are designated in Minnesota Session Laws as open to hunting, but will continue to encourage their use.

The DNR also intends to continue efforts to encourage the use of non-toxic fishing tackle. The DNR supports the work that is underway through the Minnesota Pollution Control Agency’s “Get the Lead Out” program. We also sell and encourage the use of non-toxic tackle at all Minnesota State Parks.

While the DNR will implement the actions outlined above, the DNR denies the Petition for rulemaking with respect to the prohibition of lead or other toxic shot, bullets or tackle at SNAs and State Parks for the following reasons:

- 1) Rulemaking is not necessary to implement the requirements for use of non-toxic ammunition at certain SNAs and State Parks as described above. See Minn. Stat. § 14.09 (requiring that the petitioner explain the need for a proposed rule); Minn. R. 1400.2040 (same); Minn. Stat. § 14.131 (requiring an agency to consider the need for a proposed rule).

2) To completely ban the use of lead or other toxic ammunition and tackle on all SNAs and State Park lands necessitates statute or rule changes that warrant a comprehensive exploration of the full spectrum of such changes. The DNR must adhere to the Legislature's directive to consider persons who will be affected by the proposed rule, alternative means of achieving the purpose of the proposed rule, or cumulative effects of the proposed rule per Minn. Stat. § 14.131. Given the number of stakeholders potentially affected by such changes, and the Minnesota Legislature's clear indication that it believes a broad ban on lead such as that called for in the petition is a matter for the Legislature, the DNR concludes that this proposal would be more appropriately addressed by the Legislature. See e.g. DNR's Findings of Fact and Order Regarding Petition for Adoption of Rules Requiring Non-Toxic Fishing Tackle and Non-Toxic Ammunition dated November 4, 2019 ("Prior Order")(Attached as *Exhibit A*).

3) This petition is Friends' second petition to the DNR to initiate rulemaking with respect to non-toxic bullets, shot and fishing tackle. See *Exhibit A: Prior Order*. While DNR acknowledges that Friends' has narrowed its request for rulemaking, some of the findings outlined by DNR in the Prior Order have not changed, including those outlined in items 4-6 below.

4) Your request includes letters of support from several organizations including Minnesota Environmental Partnership, the Humane Society, the Animal Law Section of the Minnesota State Bar Association, the Minnesota Herpetological Association, the Vadnais Lake Area Watershed Management Organization, and the Izaak Walton League, and from former DNR employee Carroll Henderson.

While DNR appreciates the views expressed by these individuals and organizations, as described in the Prior Order, these letters "reflect a small segment of the persons and organizations in Minnesota with a strong interest in the question of whether and how the state should regulate the use of lead tackle, lead ammunition, and lead shot in the taking of fish and wildlife in Minnesota." *Exhibit A: Prior Order* at ¶ 38. DNR concludes it is necessary to have a larger conversation on this topic.

5) With respect to the argument that DNR is required to adopt rules based on Minn. Stat. § 97A.045, subd. 1(a), the Minnesota Environmental Policy Act, the Minnesota Constitution, or the public trust doctrine, I refer you to the discussion in the Prior Order. *Exhibit A: Prior Order* at ¶ 47. I also note that Friends does not cite any authority for the proposition that failure to adopt a rule is a "state action significantly affecting the quality of the environment" under Minn. Stat. § 116D.04, subd. 6. Further, although the Minnesota Supreme Court has adopted the wildlife trust doctrine, that doctrine requires the Legislature and not its state agencies, to set limits it "sees fit to impose" to protect wildlife for public benefit. *State v. Rodman*, 59 N.W. 1098 (Minn. 1894). And while it is true that the Legislature has delegated to the commissioner the authority to manage wildlife for public benefit, the DNR has determined that the lead ammunition and tackle topic is more appropriately addressed by the Legislature. *Exhibit A: Prior Order* at ¶¶ 48 through 53.

6) Finally, as described in the Prior Order, Friends has not provided DNR with any information about the costs of complying with the proposed rule. Without this information, DNR is not able to move forward with rulemaking. Minn. Stat. § 14.131, subd. 5 (requiring the agency to consider "the probable costs of complying with the proposed rule"). *Exhibit A: Prior Order* at ¶¶ 31 through 32 and 40 through 43.

For the reasons described in items 1-6 above and set forth in further relevant detail in *Exhibit A*, DNR **denies** the Petition in full.

Though the DNR has denied the petition for rulemaking, we will immediately begin the process of implementing the changes at SNAs and State Parks as outlined above. Additionally, the DNR is committed to working with the petitioners, legislators, tribal governments, wildlife watchers, tackle and ammunition producers, hunters and anglers to facilitate an inclusive conversation over the next year about any actions that would be above and beyond those that we have outlined in this letter.

Sincerely,



Sarah Strommen  
Commissioner  
Minnesota Department of Natural Resources

Attachment *Exhibit A*