

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Amendment
to Game and Fish Rules Governing Taking
Fish on Minnesota-South Dakota
Boundary Waters

**ORDER ON REVIEW
OF RULES UNDER
MINN. STAT. § 14.389
AND MINN. R. 1400.2410**

On January 4, 2019, the Minnesota Department of Natural Resources (Department) filed documents with the Office of Administrative Hearings (OAH) seeking review and approval of the above-entitled rules under Minn. Stat. § 14.389 (2018) and Minn. R. 1400.2410 (2017).

Based upon a review of the written submissions by the Department, and the contents of the rulemaking record,

IT IS HEREBY DETERMINED THAT:

1. The proposed rules were adopted in compliance with the procedural requirements of Minn. Stat. § 14.001-.70 (2018), Minn. R. 1400.2000-.8613 (2017).
2. Pursuant to Minn. Stat. §§ 84.027, subd. 13a(b), 97A.045, subd. 4 (2018), the Department has the statutory authority to adopt these proposed rules using the expedited rulemaking process.

IT IS HEREBY ORDERED THAT:

The proposed rule parts are **APPROVED**.

Dated: January 15, 2019


KIMBERLY MIDDENDORF
Administrative Law Judge

NOTICE

Minn. R. 1400.2410, subp. 8 provides that an agency may ask the Chief Administrative Law Judge to review a rule that has been disapproved by a Judge. The request must be made within five working days of receiving the Judge's decision. The Chief Administrative Law Judge must then review the agency's filing, and approve or disapprove the rule within 14 days of receiving it.

MEMORANDUM

The Department proposes to amend Minn. R. 6266.0400, subp. 2 (2017), which sets open seasons for taking certain species of fish on Minnesota-South Dakota boundary waters. Under the current rule, walleye, sauger, northern pike, and small and large mouth bass cannot be taken while the season is closed in March and part of April. The proposed rule would eliminate closed seasons for those species on Minnesota-South Dakota boundary waters. The Department is authorized to adopt these rules using the expedited process under Minn. Stat. §§ 14.389, 84.027, subd. 13a. The Department published a Notice of Intent to Adopt Expedited Rules without a Public Hearing in the State Register on September 24, 2018, and submitted the proposed rules to the OAH for review as to their legality on January 4, 2019.

Minn. Stat. § 97A.045, subd. 4 provides, in relevant part, that “[t]he commissioner may regulate the taking, possession, and transportation of wild animals from state . . . boundary waters” including “special seasons for taking fish[.]” The Department’s notice of intent to adopt expedited rules without a public hearing contained a clerical error that misidentified the statutory authority to adopt the expedited rule. In its notice, the Department cited Minn. Stat. § 97A.055, subd. 4 (2018) as its authority for the rule. The Department subsequently notified the Office of Administrative Hearings of this clerical error and identifies Minn. Stat. § 97A.045, subd. 4, as the source of authority to adopt these proposed rules.

The Department’s clerical error did not deprive any person or entity of an opportunity to participate meaningfully in the rulemaking process. It therefore constitutes harmless error under Minn. Stat. § 14.26, subd. (3)(d)(1). The rule is approved as to legality.

K. J. M.