

**STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS**

**FOR THE MINNESOTA DEPARTMENT OF NATURAL RESOURCES**

In the Matter of the Proposed Amendments to  
Rules Governing Limits for Taking Sunfish,  
Crappie, Lake Trout, and Catfish in Inland  
and Boundary Waters

**REPORT OF THE  
ADMINISTRATIVE LAW JUDGE**

Hearings concerning the above rules were held by Administrative Law Judge Steve M. Mihalchick on September 3, 2002, at 10:00 a.m. at the Veterans Service Building in St. Paul, on September 3, 2002, at 7:00 p.m. at the Radisson Duluth in Duluth, and on September 4, 2002, at 7:00 p.m. at the Holiday Inn in Detroit Lakes.

The hearings and this Report are part of the rulemaking process that must occur under the Minnesota Administrative Procedure Act (APA)<sup>[1]</sup> before an agency can adopt rules. The legislature has designed that process to ensure that state agencies—here, the Department of Natural Resources (the DNR or the Department)—meet all the requirements that the APA specifies for adopting rules. Those requirements include determinations that the proposed rules are necessary and reasonable and that any modifications that the agency may have made after the proposed rules were initially published do not result in them being substantially different from those originally proposed. The APA requires a public hearing on proposed rules if 25 or more people request a hearing. More than 25 such requests were received in this matter.

Steve Hirsch, Assistant Director of Fisheries, and Paul Radomski, Fisheries Research Biologist, appeared at all the hearings to present the DNR's justifications for the rules and to respond to questions. Kathy A. Lewis, Transaction Manager, appeared at the hearing in St. Paul to present the procedural documentation.

Two people attended the hearing in St. Paul, no one attended in Duluth, four people attended in Detroit Lakes. All signed the hearing registers.<sup>[2]</sup> After waiting until several minutes after 7:00 p.m., the hearing in Duluth was cancelled. The hearings in St. Paul and Detroit Lakes continued until all interested persons had an opportunity to be heard concerning the proposed rule amendments.

At the request of the DNR, the Administrative Law Judge extended the comment period to 20 days, until September 24, 2002, to allow interested persons and the Department to submit written comments. During this initial comment period the Administrative Law Judge received two written comments from interested persons and one from the Department of Natural Resources.<sup>[3]</sup>

No additional comments were received during the five-working-day response period required by Minn. Stat. § 14.15, subd. 1, and the hearing record was closed on October 1, 2002. On October 31, 2002, the Chief Administrative Law Judge extended

the period allowed for the Administrative Law Judge to complete this Report to November 8, 2002.

## NOTICE

The Department of Natural Resources must make this Report available for review by anyone who wishes to review it for at least five working days before the DNR takes any further action to adopt final rules or to modify or withdraw the proposed rules. If the Department of Natural Resources makes changes in the rules, it must submit the rules, along with the complete hearing record, to the Chief Administrative Law Judge for a review of those changes before it may adopt the rules in final form.

After adopting the final version of the rules, the Department of Natural Resources must send the order adopting rules to the Administrative Law Judge. Provided that the agency has taken all of the required steps to adopt the rule, the Office of Administrative Hearings will request certified copies of the rule from the Revisor of Statutes and file them with the Secretary of State.

Based upon all the testimony, exhibits, and written comments, the Administrative Law Judge makes the following:

## FINDINGS OF FACT

### Rulemaking Legal Standards

1. Under Minn. Stat. § 14.14, subd. 2; and Minn. R. 1400.2100, one of the determinations that must be made in a rulemaking proceeding is whether the agency has established the need for and reasonableness of the proposed rules by an affirmative presentation of facts. In support of a rule, an agency may rely on legislative facts, namely general facts concerning questions of law, policy and discretion, or it may simply rely on interpretation of a statute, or stated policy preferences.<sup>[4]</sup> The Department prepared a Statement of Need and Reasonableness (SONAR)<sup>[5]</sup> in support of its proposed rules. At the hearings, the Department relied upon the SONAR as its affirmative presentation of need and reasonableness for the proposed amendments, supplemented by comments and answers by Department staff at the public hearings and by the Department's written post-hearing submission.

2. The question of whether a rule has been shown to be reasonable focuses on whether it has been shown to have a rational basis, or whether it is arbitrary, based upon the rulemaking record. Minnesota case law has equated an unreasonable rule with an arbitrary rule.<sup>[6]</sup> Arbitrary or unreasonable agency action is action without consideration and in disregard of the facts and circumstances of the case.<sup>[7]</sup> A rule is generally found to be reasonable if it is rationally related to the end sought to be achieved by the governing statute.<sup>[8]</sup> The Minnesota Supreme Court has further defined an agency's burden in adopting rules by requiring it to "explain on what evidence it is relying and how the evidence connects rationally with the agency's choice of action to be taken."<sup>[9]</sup>

3. An agency is legally entitled to make choices between possible approaches so long as its choice is rational. It is not the role of the Administrative Law Judge to determine which policy alternative presents the “best” approach, since this would invade the policy-making discretion of the agency. The question is, rather, whether the choice made by the agency is one that a rational person could have made.<sup>[10]</sup>

4. In addition to need and reasonableness, the Administrative Law Judge must also assess whether the rule adoption procedures were properly followed and whether any parts of the proposed rules are improper because a rule grants undue discretion, the agency lacks statutory authority to adopt a rule, a rule is unconstitutional or otherwise illegal, a rule constitutes an undue delegation of authority to another entity, or because the proposed language of a rule does not constitute a rule.<sup>[11]</sup>

### **Procedural Requirements**

5. As explained in Findings 35 through 41 below, In 1999 and 2000, the DNR began developing proposed rules on fishing limit changes and engaged in extensive solicitation of public comments. As part of that effort, on October 9, 2000, the Department published a Request for Comments at 25 *State Register* 811 on its planned amendment of the existing rules governing limits on taking fish.<sup>[12]</sup>

6. The Department ultimately drafted its proposed rules and, on June 10, 2002, the Office of the Revisor of Statutes approved the DNR’s proposed rules for publication in the *State Register*.<sup>[13]</sup>

7. By letter dated June 17, 2002, the Department filed the following documents with the Chief Administrative Law Judge:

- a. a copy of the proposed rules certified by the Revisor of Statutes;
- b. a copy of a Dual Notice of Hearing proposed to be issued (the Dual Notice); and
- c. a copy of the SONAR.

The letter described the Department’s additional notice plan and requested that the Office of Administrative Hearings approve the additional notice plan and the Dual Notice. On June 25, 2002, the Office of Administrative Hearings did so.<sup>[14]</sup>

8. On July 2, 2002, the Department sent a copy of the SONAR to the Legislative Reference Library.<sup>[15]</sup>

9. On July 3, 2002, the Department mailed the Dual Notice and SONAR to legislators as required by Minn. Stat. § 14.116.<sup>[16]</sup>

10. On July 5, 2002, the Department mailed the Dual Notice to all persons its rulemaking list and to all parties identified in its notice plan.<sup>[17]</sup>

11. On July 15, 2002, the Department published the Dual Notice and the proposed rules at 27 *State Register* 87.<sup>[18]</sup>

12. On July 16, 2002, the Department issued statewide news releases to the media and on its Web site announcing the proposed rules.

13. In response to the notices, the Department received over 25 requests for a hearing.<sup>[19]</sup>

14. On August 16, 2002, the Department mailed a Notice of Hearing to all persons who requested a hearing.<sup>[20]</sup>

15. At the St. Paul hearing, the Department placed the following documents into the record:

a. The Request for Comments, as published in the *State Register* on October 9, 2000;<sup>[21]</sup>

b. The proposed rules, including the Revisor's approval, dated June 10, 2002;<sup>[22]</sup>

c. The SONAR signed and dated June 10, 2002;<sup>[23]</sup>

d. A copy of the transmittal letter and a certificate, as signed and dated July 2, 2002, showing that the agency sent a copy of the SONAR to the legislative reference library;<sup>[24]</sup>

e. The Dual Notice signed and dated July 1, 2002, as mailed;<sup>[25]</sup>

f. The Dual Notice, as published in the *State Register* on July 15, 2002;<sup>[26]</sup>

g. The Office of Administrative Hearings' approval of the notice plan and dual notice, as signed and dated June 25, 2002;<sup>[27]</sup>

h. A Certificate of Mailing of the Dual Notice and a Certificate of Department Mailing List, as signed and dated July 3, 2002;<sup>[28]</sup>

i. A Certificate of Mailing of the Dual Notice and the SONAR to legislators,<sup>[29]</sup>

j. A copy of the statewide news release, dated July 16, 2002, announcing the proposed rules, and a paper copy of information on the rules on the Department's web page;<sup>[30]</sup>

k. Written comments and requests for hearing received in response to the dual notice;<sup>[31]</sup>

l. A Certificate of Mailing a revised Notice of Hearing to those persons who requested a hearing and the revised Notice of Hearing,<sup>[32]</sup> and

m. The opening statement of Steve Hirsch.<sup>[33]</sup>

16. The Department has complied with all applicable procedural requirements necessary for the adoption of the proposed rules.

### **Nature of the Proposed Rules**

17. The proposed amendments will affect portions of Minn. R 6262.0200, *Fishing Regulations for Inland Waters*, and portions of Minn. R 6266.0700, *Taking of Fish on Minnesota-Canada Boundary Waters*. The current inland waters daily and possession limit for lake trout is reduced from three to two, for crappies from 15 to 10, and for sunfish from 30 to 20. The inland waters daily and possession limit for flathead and channel catfish remains at five, but the limit of one over 24 inches is extended statewide and now only two of the five may be flathead catfish. The current Boundary Waters daily and possession limit for lake trout is reduced from three to two. The current Boundary Waters daily and possession limit for crappies is reduced from 30 to 10 and the current separate limit for Black Bay on Rainy Lake of 15 is eliminated.<sup>[34]</sup> The DNR determined that it was not necessary to change the limits on bass, northern pike, walleye/sauger, or stream trout at this time.

18. The primary purpose of the proposed changes in fish limit rules is to maintain sustainable harvest levels and to stabilize declining trends in the average size of certain fish. The regulatory policy for the program is essentially one of ensuring recreational opportunities for anglers, preventing unnecessary depletion or extinction of fish species, and promoting the propagation and reproduction of the species.<sup>[35]</sup>

### **Statutory Authority**

19. Minn. Stat. § 97A.045, subd. 2, states that the Commissioner of DNR may protect a species of wild animal (which includes fish) by reducing limits in areas of the state if the Commissioner determines the action is necessary to prevent unnecessary depletion or extinction, or to promote the propagation and reproduction of the animal.

20. Minn. Stat. § 97C.401, subd. 1, states that the Commissioner shall, 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.

21. Minn. Stat. §§ 97A.045, subd. 2, and 97C.401, subd. 1, authorize the DNR to adopt the proposed rules.

### **Regulatory Analysis**

22. The Administrative Procedure Act, at Minn. Stat. § 14.131, requires an agency adopting rules to consider the following six factors in its Statement of Need and Reasonableness (SONAR):

- a. 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.
- b. 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.
- c. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.
- d. 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.
- e. The probable costs of complying with the proposed rule.
- f. 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.

23. In the SONAR, the DNR notes that the proposed rule changes in daily and possession limits would affect anglers and could also impact angling-related businesses should some anglers choose to fish in states with higher limits. The DNR stresses that the current Minnesota limits for the four targeted fish species have been in place so long that they have become familiar and institutionalized. Catfish limits have remained the same for 36 years; lake trout limits have remained the same for 38 years; sunfish limits have remained the same for 51 years; and crappie limits have remained the same for 70 years.<sup>[36]</sup>

24. The DNR also notes dramatic changes in the sport and culture of fishing in Minnesota since these limits were last changed. As an example, people no longer need to fish for subsistence, although keeping some fish for a meal is still important to many anglers. The cultural trend has now focused on the quality aspects of fishing to the extent that anglers expect the DNR to ensure and improve such qualities as average fish size and the number of fish caught per hour. However, the DNR points out that it has identified increased pressures on the fisheries resources which make it difficult to now meet angler expectations. One option the DNR would like to pursue is to reduce the daily and possession limits in an effort to stabilize or reduce the fish harvest, thus decreasing the cause of increased pressures on the fisheries.<sup>[37]</sup>

The DNR identifies three major factors that over time have caused increasing pressure on the fisheries resources. They include: (1) increased angling pressure; (2) advances in fishing technology; and (3) degradation of fisheries habitat.

25. The proposed rules will result in no costs to the Department nor other agencies. Existing monitoring programs are deemed adequate and will continue to be

used. The DNR points out that the proposed reduction in fish limits may reduce fishing license revenues with respect to non-resident anglers in particular should they decide to fish in other states offering higher limits. The DNR cannot, however, predict the number of currently licensed anglers that would elect not to buy a license if the proposed rules are implemented.<sup>[38]</sup> Without the proposed changes, the decline in the fishing stock and quality will discourage fishing. Moreover, any decline in fishing interest might be counterbalanced by increased fishing interest from those who support the changes and, eventually, by the intended improvement in the fishing stock.

26. Based on simulation modeling, drastic reductions in limits would be more effective in reducing the fish harvest and would better maintain or improve fish populations. However, the DNR rejected this method. It was deemed too restrictive and too great a limit change to implement in one step, given the long-standing nature of the current limits. Therefore, the proposed limit reductions are considered by the DNR to be the best balance between the long-term need to better control fish harvest and the need to address social and economic considerations to ensure good public acceptance of the limit changes. Other options the DNR considered but did not select included seasonal restrictions and size limits.<sup>[39]</sup>

27. The DNR also considered quotas, where a certain level of harvest is allowed and after which all harvest activity is curtailed for the remainder of the season, and limited entry, where only a certain number of anglers are allowed to engage in harvest activities. These alternatives could achieve the purpose of the proposed rules, however, neither is proposed because they are considered unnecessarily intrusive and require substantial monitoring from the DNR to determine when harvest limits are reached.<sup>[40]</sup>

28. The proposed limit reductions will not result in increased costs for the public. Also, the proposed rules do not involve any new regulatory permit, license fees, or any other charges to the public.<sup>[41]</sup>

29. The proposed rules cover an area that is not addressed by federal law; therefore, this consideration is not applicable.<sup>[42]</sup>

30. The Administrative Law Judge finds that the Department has considered and satisfied the requirements of Minn. Stat. § 14.131.

## **Performance-Based Rules**

31. The Administrative Procedure Act<sup>[43]</sup> also requires an agency to describe how it has considered and implemented performance based regulatory systems. A performance based rule is one that emphasizes superior achievement in meeting the agency's regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals rather than imposition of specific criteria.<sup>[44]</sup>

32. The DNR's objective with regard to recreational fishing is to provide for resource conservation, public safety, and equitable use, while maintaining a variety of opportunities for anglers and businesses to use the State's aquatic resources. In

developing the proposed rules, the Department sought to balance the need to reduce fish harvest with social and economic values that weighed against drastic changes in fish limits. Without public acceptance, the ultimate goal of using limit reductions to reduce harvest will not be realized. Furthermore, the DNR rules would likely be changed by the legislature if the proposed rules were too widely opposed by anglers.<sup>[45]</sup>

### **Affect on Farming Operations**

33. The proposed rules will not affect farming operations. Therefore, no notice to the Commissioner of Agriculture was required under Minn. Stat. § 14.111.

### **Additional Notice**

34. Minn. Stat. §§ 14.131 and 14.23 require that the SONAR contain a description of the agency's efforts to provide additional notice to persons who may be affected by the proposed rules.

35. Beyond the statutory requirements, the Department provided additional notice by sending the request for comments and additional information to a number of angling groups, other environmental and social organizations, businesses, individuals, and legislators. The Department also published a statewide news release and posted a forum on its web site to take comments directly related to the proposed rule.

36. The DNR also conducted extensive public outreach to get input on limit changes, including discussions at the 1999 and 2000 Fisheries Roundtable, an annual forum hosted by the DNR, Division of Fisheries that includes a cross section of anglers, fishing groups, guides, resort owners, outdoor writers, and legislators. At the 2000 Roundtable, volunteers were asked to participate in a citizen advisory committee, formed to help guide the public input process to review fish limits and make recommendations to the DNR. The committee included 17 people who met with the Division of Fisheries four times from July 2000 through May 2001. The Division provided biological and sociological information at these meetings and the committee made their initial recommendations for limit changes to the DNR in November 2000. Final committee recommendations were made to the DNR at the last meeting on May 1, 2001 after reviewing a summary of all public input received to date. The DNR reviewed the committee recommendations and developed the proposed rule changes addressed in the SONAR.

37. The DNR gathered public input on fish limits in three ways:

- a. input from the 60-day Request for Comments period;
- b. input solicited at 19 public meetings held around the state in February and March of 2001; and
- c. input via contract with the University of Minnesota to perform a randomized survey of resident metro area anglers, resident non-metro area anglers, non-resident anglers, and resort owners.

38. The results from the Request for Comments indicated 80 percent of the 1,595 respondents supported some reduction in fish limits for one or more species, but the amount of support for reduced limits varied widely among species. The greatest support for reduced limits was for sunfish and crappie, with a median suggested limit of approximately 2/3 the current limit. Approximately 18 percent of the respondents opposed any reductions in limits.

39. The 19 public input meetings showed lake trout as having the highest level of support for the recommended changes, while sunfish and crappies had the lowest level of support. The amount of support for the various recommendations varied widely by region of the state and tended, with the exception of lake trout, to be inversely proportional to the abundance of the species in the region.

40. The citizen advisory committee final recommendations for changes in fish limits for lake trout recommended reducing the limit from 3 to 2. For crappie, the committee recommended reducing the limit from 15 to 10, and to consider a size limit. For sunfish, the committee recommended reducing the limit from 30 to 20, and to consider a size limit.

41. The University of Minnesota survey indicated that respondents tended to prefer to keep fish limits the same and indicated minimum acceptable possession limits of at least two-thirds of the existing limits.<sup>[46]</sup>

### **Analysis of the Proposed Rules**

42. The need to reduce the limits arises from a decline in the number a size of fish being caught in Minnesota. This decline is described generally in the SONAR as follows:

Increased fishing pressure and resulting fish harvest affect fish populations in a number of ways, but the two impacts that are most noticed by anglers are decreased average size of fish and decreased catch rates. These effects have been documented on a number of DNR creel surveys and other studies of various Minnesota lakes, but a study of a long-standing fishing contest provides one of the best illustrations of how average fish size has declined in Minnesota over time (Olson and Cunningham 1989).

In the Olson-Cunningham study, the DNR reviewed records of a fishing contest that had been conducted by Fuller's Tackle Shop in Park Rapids, Minnesota since 1915. The study showed that there were declining trends in the number of large-size fish and mean weight of fish for most of the species included in the contest (lake trout and catfish were not included in the contest). These trends were particularly apparent for northern pike, crappie, and sunfish. While declining trends in size were also apparent for walleye and largemouth bass, they were less dramatic than for the other species.

Reductions in the average size of game fish species diminish the recreational value and quality of angling. Declines in northern pike size have greatly reduced the trophy potential of that species across Minnesota. Declines in average size of the panfish species such as crappie and bluegill can cause those populations to lose their value to most anglers.<sup>[47]</sup>

### **Lake Trout**

43. Lake trout are largely confined to about 110 lakes in the northeast part of the state, much of which is within the remote lakes in the Boundary Waters Canoe Area Wilderness. They are particularly vulnerable to over-harvest because of their slow growth, late sexual maturity, low reproductive potential, and a slow replacement rate. The available data does not show distinct trends in decreased average size of lake trout, but it does show that sustainable harvest levels have been approached or exceeded on a number of the state's major lake trout fisheries.<sup>[48]</sup>

44. The proposed limit reduction from three to two was modeled and is predicted to reduce harvest by a substantial 29%. This level of reduction will more likely keep lake trout harvest at a sustainable level.<sup>[49]</sup> The proposed lake trout limit reduction is reasonable.

### **Sunfish and Crappie**

45. It had been believed that sunfish and crappie needed to be harvested at high levels to prevent over-population by small fish. Thus limits were set fairly high. However, it has now been shown to the contrary that increased harvest of these fish has led to decreased average size because anglers keep the largest fish available. The current limits have not been sufficient to prevent declining trends in average size. Modeling indicates that the proposed limit reductions for sunfish and crappie may reduce the harvest of these fish by three to four percent. DNR believes that that will not be sufficient to stop the declining average size statewide, but that it should help.

46. All of the public comments at the hearings, and many submitted to the DNR prior to the hearing, concerned the sunfish and crappie limit reductions, and particularly focused on crappies. Most of the people making these comments saw no indication of declining average size where they fished. Most sought these fish for food and often froze them to be eaten days and months later. Reduced limits would interfere with their traditional fishing habits. Several people suggested that reducing the limits would not achieve the desired results because people would simply fish more often or ignore the limits more often. Some suggested other changes to address the problems.

47. Al Kelly of Minneapolis was concerned that the DNR's rationale for lowering the limits was based on a report co-authored by a DNR regional fisheries manager and others that concluded that lower limits would increase angler satisfaction over time, because the limits would be attained more often.<sup>[50]</sup> However, the rationale for limit reductions given in that report is not what the DNR used to justify the proposed

rule amendments. The SONAR makes no mention of lowering limits to increase angler satisfaction by making it easier to catch the limit.<sup>[51]</sup> At the hearing, Mr. Hirsch specifically denied that the report was a basis for the reduced limits being proposed.

48. Leland Morr and others suggested that the DNR consider limit changes on individual lakes where there is a problem, instead of making a statewide change. The DNR responded in its post-hearing comments that it agrees that special regulations on individual lakes are a good fish management tool and in fact has used this approach extensively to improve fishing on specific lakes and streams. However, there has been a statewide decline in average size of crappie and sunfish and the DNR does not have the resources to implement special regulations for these fish on a broad enough scale to affect the statewide trend.<sup>[52]</sup>

49. The DNR acknowledged that anglers tend to view panfish species such as crappie and bluegill as food fish more than other game fish, but report that maintaining average size of these species is also important to anglers. Anglers routinely complain about “stunted” populations of crappie and bluegill and actively seek out lakes that produce the largest fish. The DNR believes that as average size of crappie and bluegill decreases, they will reach a point where they become unacceptable to most anglers resulting in the loss of the recreational value of the fishery.<sup>[53]</sup>

50. Harold Johnson testified that it did not seem quite fair to crappie anglers to change the limits on some species, but not others. The DNR responded that it is necessary and reasonable to decide whether or not to lower limits for each species based on the criteria identified in the SONAR. Some species of fish have been less affected by fishing pressure than others. For example, the DNR did not document declining statewide trends in average size for walleye or largemouth and smallmouth bass. Therefore, the conclusion was that statewide limit changes for these species were not necessary at this time.<sup>[54]</sup>

51. Mr. Morr and Stan Meyer felt that the proposed rule amendments would have a negative impact on local economies. The DNR acknowledged that the proposed rules could affect angling-related businesses if some anglers choose to fish in states that have higher limits, but does not anticipate a measurable economic impact to the state as a result of the proposed rule amendments. The DNR pointed out again that extensive public input was obtained to develop proposals that balance the need to reduce fish harvest with social and economic considerations. The DNR rejected options such as larger reductions in limits, shortening fishing seasons, establishing harvest quotas, and regulating the number of anglers that are allowed to fish (limited entry). All of these options would have met the biological goal of reducing fish harvest, but were considered to be socially and economically undesirable.<sup>[55]</sup>

52. The DNR has demonstrated that the proposed sunfish and crappie limit reductions are reasonable.

## **Catfish**

53. Channel and flathead catfish are two of Minnesota's largest game fish with current state records of 38 and 70 pounds, respectively. Flathead catfish are restricted to the lower Mississippi, Minnesota, and St. Croix River systems. Channel catfish are found in those waters and also in the Red River of the North and St. Louis River systems. The Minnesota River is nationally renowned for its trophy flathead catfish fishery and the Red River is similarly known for its trophy channel catfish fishery. (The Red River is a Minnesota-North Dakota border water and already has a one-over-24 inch provision for catfish.) Both catfish species are vulnerable to angling pressure because of their narrow distribution in the state, and because their populations are often characterized by low reproductive potential, late sexual maturity, and slow growth.<sup>[56]</sup>

54. The trophy element of the fisheries in rivers such as the Minnesota and Red is particularly vulnerable to angling because large, old fish take a long time to replace. Catfish are very popular among anglers on certain waters, and anecdotal information suggests that the popularity of catfish is increasing. Numerous magazine articles have promoted catfish in recent years and have also promoted Minnesota as a state with a lightly exploited, high quality catfish fishery. While catfish populations are currently in good shape, it would be relatively easy for anglers to over-harvest large catfish if fishing pressure increases. The proposed rules are intended to limit the harvest of large catfish and conserve Minnesota's world-class catfish fisheries.<sup>[57]</sup> The proposed changes are reasonable.

## **Effective Date**

55. The proposed amendments are made effective May 10, 2003. That is the fishing opener and is reasonable.

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

## **CONCLUSIONS**

1. The Department gave proper notice in this matter.
2. The Department has fulfilled the procedural requirements of Minn. Stat. § 14.14 and all other procedural requirements of law or rule.
3. The Department has demonstrated its statutory authority to adopt the proposed rules, and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat §§ 14.05, subd. 1, 14.15, subd. 3, and 14.50 (i) and (ii).
4. The Department has demonstrated the need for and reasonableness of the proposed rules by an affirmative presentation of facts in the record within the meaning of Minn. Stat. §§ 14.14, subd. 4 and 14.50 (iii).

5. Any Findings that might properly be termed Conclusions and any Conclusions that might properly be termed Findings are hereby adopted as such.

6. A Finding or Conclusion of need and reasonableness in regard to any particular rule subsection does not preclude and should not discourage the Department from further modification of the proposed rules based upon an examination of the public comments, provided that the rule finally adopted is based upon facts as appearing in this rule hearing record.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

### RECOMMENDATION

**IT IS HEREBY RECOMMENDED** that the proposed amended rules be adopted.

Dated: November 8, 2002.

S/Steve M. Mihalchick

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STEVE M. MIHALCHICK  
Administrative Law Judge

Reported: Tape-recorded (2 tapes), no transcript prepared.

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[1] Minn. Stat. §§ 14.131 through 14.20.

[2] Exhibit 14.

[3] Exhibits 15, 16, and 17.

[4] *Mammenga v. Department of Human Services*, 442 N.W.2d 786 (Minn. 1989); *Manufactured Hous. Inst. v. Pettersen*, 347 N.W.2d 238, 244 (Minn. 1984).

[5] Exhibit 3.

[6] *In re Hanson*, 275 N.W.2d 790 (Minn. 1978); *Hurley v. Chaffee*, 231 Minn. 362, 43 N.W.2d 281, 284 (1950).

[7] *Greenhill v. Bailey*, 519 F.2d 5, 19 (8<sup>th</sup> Cir. 1975).

[8] *Mammenga*, 442 N.W.2d at 789-90; *Broen Mem'l Home v. Minnesota Dept. of Human Services*, 364 N.W.2d 436, 444 (Minn. Ct. App. 1985).

[9] *Manufactured Hous. Inst. v. Pettersen*, 347 N.W.2d at 244.

[10] *Federal Sec. Adm'r v. Quaker Oats Co.*, 318 U.S. 218, 233 (1943).

[11] Minn. R. 1400.2100.

[12] Exhibit 1.

[13] Exhibit 2.

[14] Exhibit 7.

[15] Exhibit 4.

[16] Exhibit 9.

[17] Exhibit 8.

- [18] Exhibit 6.
- [19] Exhibit 11.
- [20] Exhibit 12.
- [21] Exhibit 1.
- [22] Exhibit 2.
- [23] Exhibit 3.
- [24] Exhibit 4.
- [25] Exhibit 5.
- [26] Exhibit 6.
- [27] Exhibit 7.
- [28] Exhibit 8.
- [29] Exhibit 9.
- [30] Exhibit 10.
- [31] Exhibit 11.
- [32] Exhibit 12.
- [33] Exhibit 13.
- [34] Exhibit 2.
- [35] Exhibit 3 at 1.
- [36] Exhibit 3 at 4.
- [37] Exhibit 3 at 4.
- [38] Exhibit 3 at 5.
- [39] Exhibit 3 at 5.
- [40] Exhibit 3 at 6.
- [41] Exhibit 3 at 6.
- [42] Exhibit 3 at 6.
- [43] Minn. Stat. § 14.131.
- [44] Minn. Stat. § 14.002.
- [45] Exhibit 3 at 6-7.
- [46] Exhibit 3 at 1-3.
- [47] Exhibit 3 at 7-8.
- [48] Exhibit 3 at 9.
- [49] Exhibit 3 at 9.
- [50] Exhibit 16.
- [51] Exhibit 17 at 1-2.
- [52] Exhibit 17 at 2.
- [53] Exhibit 17 at 2.
- [54] Exhibit 17 at 3.
- [55] Exhibit 17 at 3.
- [56] Exhibit 13 at 10-11.
- [57] Exhibits 3 at 11 and 13 at 4-5.