

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF FISH AND WILDLIFE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES
PRESCRIBING METHODS AND CRITERIA FOR
PUBLIC INITIATION OF EXPERIMENTAL AND SPECIAL
MANAGEMENT WATERS DESIGNATION AND PUBLIC
PARTICIPATION IN THE EVALUATION OF EXPERIMENTAL AND
SPECIAL MANAGEMENT WATERS

STATEMENT OF NEED AND REASONABLENESS

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The Legislative Commission to
Review Administrative Rules

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INTRODUCTION

The fisheries resources of Minnesota have been impacted by habitat degradation, increased fishing pressure, and technological advances in fishing gear. Experimental or special regulations can be used to maintain or improve fishing quality, particularly where fishing pressure has affected fish populations.

Legislation passed in 1985 authorized the commissioner of natural resources (hereafter referred to as the commissioner) to designate up to 100 lakes and 25 streams as experimental waters (Minnesota Statutes section 97C.001). The intent was to authorize the commissioner to experiment with regulations on specified waters with the goal of improving fishing on those waters.

Currently the Minnesota Department of Natural Resources (hereafter referred to as the department) has 54 lakes and 10 streams designated as experimental waters. During the past year the department has gone through an internal review process with existing experimental waters to ensure that evaluation plans are adequate and objectives are clear, and to help determine if the regulations should be continued, modified, or dropped.

To ensure consistency in the way future experimental waters

designations are adopted, the department has also established an internal review process for new proposals. This process involves review of proposals by a committee of department fisheries personnel to ensure that there are adequate baseline data, a clear objective, a well defined need for the proposed regulation, a likelihood that the regulation will work, a good evaluation plan, and a specified end date.

The importance of obtaining adequate public comment on experimental waters designation proposals cannot be overstated. Experimental waters designations have the potential to dramatically alter historical fishing patterns on public waters and can be very controversial with anglers. An example of this occurred recently in southeast Minnesota, where existing experimental waters designations on trout streams became controversial when some anglers felt that restrictions against bait fishing and trout harvest were discriminatory.

Recognizing this, the 1992 legislature modified Minnesota Statutes section 97C.001 to include additional requirements for public notice of proposed experimental waters designation. Prior to this change, the department was required to issue a legal notice and have a public input meeting in the area affected by the proposal. The new legislation requires the department to post informational signs at access points on the proposed experimental waters for at least 90 days before the public input

meeting and issue news releases at least once between 30 and 60 days before the meeting, and once between 7 and 30 days before the meeting.

Other legislative changes to Minnesota Statutes section 97C.001 provided that the commissioner develop an evaluation plan and specify a termination date for all experimental waters and that, on the termination date, the commissioner shall vacate or extend the experimental waters designation or designate the experimental waters as special management waters under Minnesota Statutes section 97C.005. The intent is that experimental waters designation is treated as an experiment and, when results are obtained, a decision is made whether the regulations should be dropped, modified, or made more permanent by placing them in the special management waters category.

The additional legislative requirements for public input apply to all stages of this process including experimental waters designation, discontinuation, or modification and special management waters designation. Minnesota Statutes sections 97C.001 and 97C.005 also specify that the commissioner shall by rule establish methods and criteria for public initiation of experimental and special management waters designation and public participation in the evaluation of experimental and special management waters. This mandate has resulted in guidelines that the department proposes to adopt by rule.

The proposed rule describes a process for submission of experimental and special management waters designation proposals by the public and for evaluation of those proposals by the commissioner. It also provides for public participation in the evaluation of experimental and special management waters. Public participation in evaluation refers to public review, comments, and questions regarding experimental or special management waters, and should not be confused with scientific evaluations conducted by the department to determine if a regulation has achieved biological objectives. The purpose of the rule is to ensure that there is adequate public involvement during all steps of the designation process for experimental and special management waters.

GENERAL PROVISIONS

Statutory authority

Minnesota Statutes sections 97C.001 and 97C.005 authorize the commissioner to adopt rules to establish methods and criteria for public initiation of experimental and special management waters designation and for public participation in the evaluation of experimental and special management waters.

Definitions

The definitions of experimental and special management waters are provided by Minnesota Statutes sections 97C.001 and 97C.005. Experimental and special management waters will usually have

fishing regulations which differ from statewide regulations.

Experimental waters are distinguished from special management waters because an experiment is being conducted to evaluate the regulations. Experimental waters designation will have a specified end date at which time a decision will be made whether the designation should be discontinued, modified, or changed to special management designation (Minnesota Statutes section 97C.001, subd. 1).

Special management waters designation is considered more permanent than experimental waters designation and will include waters where experimental designation was proven successful, designated trout waters, and other special management situations (Minnesota Statutes section 97C.005, subd. 1). Special management waters may be evaluated by the department, but are not considered experimental.

**PUBLIC INITIATION OF EXPERIMENTAL AND
SPECIAL MANAGEMENT WATERS DESIGNATION**

Proposals for experimental or special management waters designation may be submitted by the public at any time.

Proposals for unique fishing regulations on individual waters will usually be considered for experimental waters designation, because it is the department's position that these types of regulations need to be evaluated to determine if they are successful.

Proposals need to specify the waters which would be affected and include a clear description of suggested regulation changes. The objective of the proposal must be clearly stated and some documentation of public support should be provided (e.g. letters from organizations, petitions, etc.).

Public proposals will be evaluated by the same criteria used to evaluate department proposals. Proposals must be consistent with biological principals and there must be a well defined need for the proposed regulation change. Needs may include things such as protection of a fish population that is declining or is vulnerable to decline, improvement of fishing quality, and expansion or diversification of fishing opportunities.

Proposals must be compatible with existing statutory limitations placed on the department and with department programs currently in place. In addition, proposals should be acceptable from a social standpoint. If a proposal has merit but would be unpopular with large numbers of people, the originator of the proposal or the department may consider a public information effort to see if the proposal can be made more acceptable.

Since experimental waters designation will require evaluation, necessary funding must be available before proposals are accepted. Cost sharing for evaluations between interested organizations and the department is one option which can be

considered if department funds are lacking.

A proposal may be accepted, denied, or modified based on the criteria listed in the rule. A three month review time by the department is necessary because, in many instances, a thorough review of existing information and public opinion will be necessary. If the commissioner suggests a modification, the originator of the proposal may decide if they want to accept the modification or drop the proposal. The commissioner will provide a written explanation for determinations involving denial or modification of proposals.

Acceptance of the proposal is only the first step in determining if the experimental or special management waters designation will be implemented. Public proposals which are accepted by the commissioner will be reviewed by the department in the same manner that department proposals are reviewed. This involves review and comment by a regulations committee comprised of department fisheries personnel. For experimental waters designations, the review will be technical. This will include analysis of the objective of the proposal and the existing data base, and development of an evaluation plan with simulation modeling. This is necessary to ensure that a proposal has a good chance of achieving its objective. For proposed special management waters designations, the review will usually focus more on results of past evaluations and compatibility with

department programs and management plans.

During the review process, information may surface which indicates that the proposal has a poor chance of success and should be dropped or modified. If the commissioner determines that a modification is necessary, the originator of the proposal may decide if they want to accept the modification or drop the proposal.

Once department review is finished, proposals are subject to public notice and meeting requirements as provided by Minnesota Statutes sections 97C.001, subd. 2 and 97C.005, subd. 1. These requirements involve posting information signs at access points on the waters proposed for designation, issuing at least two news releases, and holding at least one public input meeting in the area where the proposed designation would occur.

A proposal will be implemented if it is approved through the department's internal review process and is generally accepted during the public notification process. It is expected that proposals will vary in degree of controversy. Some will probably be readily accepted; however, the public may be divided on others. The commissioner will have to analyze criteria in this rule very carefully before making a decision regarding a controversial proposal. Adequate protection of the fisheries resource is the most important criteria to consider in all cases.

**PUBLIC PARTICIPATION IN THE EVALUATION OF
EXPERIMENTAL AND SPECIAL MANAGEMENT WATERS**

The department will conduct biological evaluations of all new experimental waters designations to determine if objectives of have been achieved. However, experimental waters designation may impact the public in ways that are not adequately evaluated by a biological evaluation. As a result, when deciding whether an experimental waters designation should be vacated, extended, or changed to special management waters designation, the department needs to consider public review, comments, and questions along with the biological information.

Unlike experimental waters designations, special management waters designations have no specified end date and are not necessarily being evaluated. However, the public may wish to review special management waters designations. In such cases, the commissioner may hold meetings to allow public review, comment, and questions concerning special management waters designations.

Public review of experimental and special management waters is not considered a voting process, although dominant public opinions or comments must be seriously considered. Resource protection remains the most important consideration, because a healthy fisheries resource will provide the best long term benefits to the greatest number of people.

OTHER CONSIDERATIONS

Fiscal note

If the adoption of a rule will require the expenditure of public money by local public bodies, the adopting agency may be required to prepare a fiscal note as provided by Minnesota Statutes, sections 14.11, subd. 1, and 3.982, giving an estimate of the total cost to all local public bodies. This rule will not require the expenditure of public money by local public bodies; therefore, no fiscal statement is required.

Agricultural land impacts

If the adoption of a rule will adversely affect agricultural land, the adopting agency is required to comply with state policy on the preservation of agricultural land according to Minnesota Statutes, sections 14.11, subd. 2 and 17.80-84, and is subject to certain review and notification procedures. This rule will not affect agricultural land.

Small business considerations

When an agency proposes a new rule which may affect small businesses as provided by Minnesota Statutes section 14.115, the agency is required to consider several methods for reducing the potential impact. This rule will not affect small businesses.

Public Hearing Witnesses

If this rule proposal is taken to public hearing the witnesses for the rule will include Jack Skrypek (Fisheries Chief), Ron Payer (Fisheries Operations Manager), and Steve Hirsch (Fisheries Program Manager).