

# Commissioner's Orders

Various agency commissioners are authorized to issue "commissioner's orders" on specified activities governed by their agency's enabling laws. See the *Minnesota Statutes* governing each agency to determine the specific applicable statutes. Commissioners' orders are approved by assistant attorneys general as to form and execution and published in the *State Register*. These commissioners orders are compiled in the year-end subject matter index for each volume of the *State Register*.

## Department of Natural Resources

### FINDINGS OF FACT AND ORDER: Amending the Commissioner's Designation Order for 56 Scientific and Natural Areas to Require Nontoxic Ammunition While Taking Game in Minnesota Scientific and Natural Areas

**DATE:** June 27, 2023

**Decision:** Hunters taking game on any of the fifty-six (56) Scientific and Natural Areas ("SNAs") designated as open to hunting by Commissioner's Order are required to use nontoxic ammunition. 1

1 Because shot is a subset of ammunition, the term ammunition as used throughout this document refers to both shot and non-shot ammunition.

#### FINDINGS OF FACT & ANALYSIS

Based on the information in the administrative record and on file and retained at the Minnesota Department of Natural Resources' ("DNR") Division of Ecological and Water Resources and as more fully set forth herein, the DNR finds that substantial evidence in the administrative record supports the required use of nontoxic ammunition by persons to take a wild animal on any of the fifty-six (56) SNAs where hunting is allowed by an Order of the Commissioner.

#### I. History

##### A. Background

1. The DNR manages approximately 192,000 acres of public land designated as SNAs. These SNAs "are exceptional places where native plants and animals flourish; where rare species are protected; and where we can know, and study, Minnesota's fascinating natural features." (MNDNR Website)
2. The Commissioner, by order in accordance with Minn. Stat. § 84.033, has the authority to designate SNAs and has the authority to manage all activities on designated SNAs in a manner consistent with the purpose of each SNA. Minn. Stat. § 86A.05, subd. 5, and (c) (specifying the Commissioner's management authority). Through the Commissioner's authority to manage SNAs, the DNR has fifty-six (56) SNAs, which are the subject of this order, that are designated as open to hunting. Minn. R. 6136.0550, subp. IC (authorizing the Commissioner, in an SNA designation order, to permit hunting in SNAs).
3. The use of lead ammunition is common in the hunting of both big game and upland game species and results in deposition of lead in the natural environment.
4. Lead, a common toxin found in lead ammunition, is harmful to both humans and wildlife. Gagan, Flora. Deepesh, Gupta & Archana, Tiwari, *Toxicity of lead: a review with recent updates*, 5 *Interdisciplinary Toxicol.* 47 (2012) (discussing human health impacts of lead), Arnemo, Jon *et al.* *Health and Environmental Risks from Lead-based Ammunition: Science Versus Socio-Politics*, 13 *Eco. Health*, 618 (2015) (discussing impact of lead on wildlife and the environment), The Wildlife Society, Fact Sheet: *Effects of Lead (Pb) Exposure on Wildlife* (March 2017) (available at [https://wildlife.org/wp-content/uploads/2017/05/FactSheet-Pb\\_FINAL.pdf](https://wildlife.org/wp-content/uploads/2017/05/FactSheet-Pb_FINAL.pdf)) (discussing the impact of lead exposure on wildlife).

**35 (Cite 47 SR 35)**

*B. 2021 Petition to Adopt Rules Requiring the Use of Nontoxic Fishing Tackle and Nontoxic Ammunition.*

1. On October 18, 2021, the Commissioner received a Petition to “Adopt[] Rules Requiring Nontoxic Fishing Tackle and Nontoxic Ammunition in MN State Parks and SNAs” (“2021 Petition”) brought by Thomas E. Casey on behalf of the Friends of Minnesota Scientific & Natural Areas (FMSNA) and twenty-two additional organizations (“2021 Petitioners”).<sup>2</sup>
2. FMSNA filed a Petition in 2019 (2019 Petition) that among other things requested that the DNR adopt rules prohibiting the taking of wild animals while possessing or using ammunition containing toxic materials. The DNR denied the 2019 Petition, noting that the requested rule would more appropriately be addressed by the Minnesota Legislature. Although the 2021 Petition was narrower in scope than the 2019 Petition, the 2021 Petition, if granted in its entirety, would “necessitate statute or rule changes that warrant a comprehensive exploration of the full spectrum of such changes.” To grant the 2021 Petition in its entirety would have been contrary to the legislature’s clear indication that it believes a broad ban on lead, such as called for in the 2021 Petition, requires input from a wide array of stakeholders and that the legislature is the appropriate body to consider such a broad ban. 2021 Letter Decision.
3. On December 20, 2021, the Commissioner sent a letter decision to Mr. Casey and his clients (“2021 Letter Decision”) which provided that: a. Over the next year, DNR will require the use of nontoxic ammunition at State Parks when it issues permits for special hunts within the boundary of a State Park in accordance with the Commissioner’s authority to issue special event permits. Minn. R. 6100.0550, subp. 1. The Commissioner determined that rulemaking was not necessary to implement these special use permit restrictions.
4. b. The DNR will not require the use of nontoxic ammunition on Minnesota State Park lands that are designated in Minnesota Session Laws as open to hunting but will continue to encourage its use on these lands.
5. c. Over the next year, the DNR will, by Commissioner’s Order, require the use of nontoxic ammunition for hunting on those SNAs that have been acquired and designated by the Commissioner in accordance with the requirements of Minn. Stat. § 84.033 and § 86A.05, subd. 5. Rulemaking is not necessary to control the use of nontoxic ammunition on these SNAs.
6. d. The DNR will continue to encourage the use of nontoxic fishing tackle and will sell and encourage the use of nontoxic tackle at all State Parks.
- 7.

The 2021 Petitioners did not appeal the 2021 Letter Decision.

## **II. Law and Analysis**

1. SNAs are established and administered to “protect and perpetuate in an undisturbed natural state those natural features which possess exceptional scientific and educational value[s].” Minn. Stat. § 86A.05, subd. 5(a).
2. The Commissioner is required to manage SNAs in a manner consistent with the purpose of the SNA designation and “to preserve, perpetuate and protect from unnatural influences the scientific and educational resources within them.” Minn. Stat. § 86A.05, subd. 5(c).
3. It is unlawful for any person to “destroy, injure, damage, molest or remove any natural resource[]” within an SNA except as authorized by permit or designation order. Minn. R. 6136.0400, subp.2.
4. Ammunition containing lead is toxic to wildlife and humans and is not naturally occurring within SNAs. Toxic ammunition can cause the destruction of, injury to, or molestation of wildlife and the degradation of habitat in an SNA within the meaning of Minn. R. 6136.0400, subp. 1 (prohibiting the destruction, injury, damage, or molestation of the natural resources within the SNA). See ¶¶ 3 and 4.
5. The deposition of toxic ammunition on the lands within SNAs undermines the exceptional scientific and educational values for which these lands were designated as SNAs and the Commissioner’s ability to manage SNAs in a manner consistent with the purpose of the SNA designation - “to preserve, perpetuate and protect for unnatural influences the scientific and educational resources within them.” Minn. Stat. § 86A.05, subd. 5(c).

**36 (Cite 47 SR 36)**

3 Minnesota Statute 86A.05, subd. 5(d) also authorizes the Commissioner to alter a designation by Commissioner's order.

1. The use of nontoxic ammunition to take a wild animal within SNAs will reduce the exposure of wildlife to the toxins contained ammunition and will eliminate the deposition of toxins associated with ammunition within SNAs. *See e.g.* ¶ 3 and 4.
2. Minnesota Statute § 84.033, subd. 1 authorizes the Commissioner to acquire lands “suitable and desirable” for SNAs and further authorizes the Commissioner to designate said land as an SNA by written order published in the State Register. The “[d]esignations of scientific and natural areas are exempt from the rulemaking provisions of chapter 14.” *Id.*
3. Hunting is prohibited on SNAs unless specifically authorized by the Commissioner in a written permit or in the designation order establishing the SNA and its use; Minn. R. 6136.0550, subp. 1C.
4. The Commissioner has designated, by Commissioner's order, fifty-six (56) SNAs that are open to firearm hunting. Those SNAs are:
  - a. Antelope Valley SNA (Yellow Medicine County)
  - b. Avon Hills Forest SNA (Steams County)
  - c. Badoura Jack Pine Woodland SNA (Hubbard County)
  - d. Big Island SNA (St. Louis County)
  - e. Black Lake Bog SNA (Pine County)
  - f. Boltuck-Rice Forever Wild SNA (Itasca County)
  - g. Brownsville Bluff SNA (Houston County)
  - h. Caldwell Brook Cedar Swamp SNA (Koochiching County)
  - i. Cannon River Turtle Preserve SNA (Goodhue County)
  - j. Cedar Rock SNA (Redwood County)
  - k. Crystal Springs SNA (Washington County)
  - l. Dinner Creek SNA (Becker County)
  - m. Englund Ecotone SNA (Benton County)
  - n. Felton Prairie SNA (Clay County) (Bicentennial unit)
  - o. Franconia Bluffs SNA (Chisago County)
  - p. Gustafson's Camp SNA (Lake of the Woods County)
  - q. Hemlock Ravine SNA (Carlton County)
  - r. Hovland Woods SNA (Cook County)
  - s. Iron Springs Bog SNA (Clearwater County)
  - t. Itasca Wilderness Sanctuary SNA (Clearwater County)
  - u. Joseph A. Tauer Prairie SNA (Brown County)
  - v. King's and Queen's Bluffs SNA (Winona County)
  - w. La Salle Lake SNA (Hubbard County)
  - x. Ladies Tresses Swamp SNA (Itasca County)
  - y. Lake Alexander Woods SNA (Morrison County)
- 29.

**37 (Cite 47 SR 37)**

z. Lester Lake SNA (Hubbard County)

aa. Little Too Much Lake SNA (Itasca County)

bb. Lost 40 SNA (Itasca County)

cc. Lost Lake Peatland SNA (St. Louis County) (portions not legislatively established as Peatland SNAs set forth in Minn. Stat. § 84.035.)

dd. Lutsen SNA (Cook County)

ee. Maurice O'Link Ribbed Fen SNA (Beltrami County)

ff. McGregor Marsh SNA (Aitkin County)

gg. Mille Lacs Moraine SNA (Crow Wing County)

hh. Mississippi Oxbow SNA (Itasca County)

ii. Moose Mountain SNA (St. Louis County)

jj. Mound Prairie SNA (Houston County) (Parcel 1 of unit designation order)

kk. Mound Spring Prairie SNA (Yellow Medicine County)

ll. Myhr Creek Ridge SNA (Cook County)

mm. Pine and Curry Island SNA (Lake of the Woods County)

nn. Potato Lake SNA (Itasca County)

oo. Prairie Coteau SNA (Pipestone County)

pp. Prairie Creek Woods SNA (Rice County)

qq. Prairie Smoke Dunes SNA (Norman County)

rr. River Warren Outcrops SNA (Renville County)

ss. Rushford Sand Barrens SNA (Fillmore County)

tt. Sand Lake Peatland SNA (Lake County) (portions not legislatively established as Peatland SNAs set forth in Minn. Stat. § 84.035.)

uu. Santee Prairie SNA (Mahnomon County)

vv. Savage Fen SNA (Scott County)

ww. Spring Beauty Northern Hardwoods SNA (Cook County)

xx. St. Wendel Tamarack Bog SNA (Steams County)

yy. Two Rivers Aspen Parkland SNA (Roseau County)

zz. Uncas Dunes SNA (Sherburne County)

aaa. Wabu Woods SNA (Itasca County)

bbb. Watrous Island SNA (Koochiching County)

ccc. Yellow Bank Hills SNA (Lac qui Parle County)

ddd. Zumbro Falls Woods SNA (Wabasha County)

1. Minnesota Statute §86A.05, subd. 5(d) precludes the Commissioner from altering a designation or use of a SNA without notice and hearing.

2. Each of the fifty-six (56) SNAs that are identified in Paragraph 16 have a designated use that permits hunting. This designated use is not altered by this order. This order limits the type of ammunition that can be used

**38 (Cite 47 SR 38)**

within an SNA to take a wild animal (i.e., the method of take).

18. The term “take” as used in this order is as defined in Minn. Stat. § 97A.015, subd. 47 (defining taking) and includes pursuing a wild animal or attempting to take a wild animal.

19. The Minnesota legislature established eighteen (18) peatlands as Peatland SNAs. Minn. Stat. § 84.036. Hunting is allowed on all Peatland SNAs designated by the legislature. Minn. Stat. § 84.035, subd. 5.b. The Commissioner’s authority to designate Peatland SNAs is limited to parcels of land within a legislatively designated Peatland SNA. Minn. Stat. § 84.035, subd. 10. Lands acquired under subdivision 10(b) are required to be managed as peatland under Minn. Stat. § 84.035, subd. 5(b), legislatively designating Peatland SNAs as open to hunting. Because the management of these lands is set by statute, the Commissioner has no legal authority to modify the use of these lands by Commissioner’s Order.

20. Minnesota is the home to eleven federally recognized tribes: the Bois Forte Band of Chippewa, the Fond du Lac Band of Lake Superior Chippewa, the Grand Portage Band of Lake Superior Chippewa, the Leech Lake Band of Ojibwe, the Lower Sioux Indian Community, the Mille Lacs Band of Ojibwe, the Prairie Island Indian Community, the Red Lake Nation, the Shakopee Mdewakanton Sioux Community, the Upper Sioux Community, and the White Earth Nation.

21. The state has no jurisdiction over tribal members taking a wild animal within the boundary of a reservation. *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 331- 33 n. 15 (1983). Nor may the state limit the method of tribal harvest within a ceded territory in which a tribe has retain off reservation hunting, fishing, and gathering rights. *Puyallup Tribe v. Department of Washington*, 391 U.S. 392, 398-99 (1968). Tribal members must, however, comply with the applicable tribal code. *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 331-33 n. 15 (1983).

### Conclusions

1. As set forth in ¶¶ 3 and 4, the use of lead ammunition to take a wild animal may be toxic to wildlife, wildlife habitat, and humans.
  2. As set forth in ¶¶ 3 and 4, the use of lead ammunition to take a wild animal within SNAs undermines the purpose for which the lands were designated as SNAs and the Commissioner’s ability to manage SNAs in accordance with the requirements of Minn. Stat. § 86A.05, subd. 5.
  3. As set forth in ¶¶ 3 and 4, the use of lead ammunition to take a wild animal within an SNA may lead to the destruction, injury, damage, or molestation of the natural resources within the SNA in contravention of the requirements of Minn. R. 6136.0400, subp.1.
  4. As set forth in ¶¶ 3 and 4, the elimination of the use of lead ammunition while taking a wild animal within SNAs will reduce the exposure of wildlife and humans to toxins contained in that ammunition and the deposition of toxins within SNAs.
  5. As set forth in ¶¶ 2 and 13, the Commissioner has the authority to acquire land for SNAs, to establish SNAs and to designate the use of SNAs.
  6. As set forth in ¶¶ 2 and 15, the Commissioner has, by Commissioner’s order, established fifty-six (56) SNAs that include a designated use of hunting. *Id.*
  7. As set forth in ¶ 17, an order requiring the use of nontoxic ammunition to take a wild animal within an SNA is a change in the method of take, not a change in designation and, therefore, a public hearing is not required prior to the adoption of an order altering the method of take in an SNA.
  8. As set forth in ¶ 19, the Commissioner has no legal authority to issue Commissioner’s orders covering all lands
- 39 (Cite 47 SR 39)**

within a Peatland SNA designated by the legislature and, therefore, has no authority to regulate the method of take within all Peatland SNAs.

9. As set forth in , ¶ 21, the Commissioner has no legal authority to manage the take of wild animals by tribal members within the boundaries of a reservation and, therefore, has no legal authority to regulate the method of tribal take in SNAs within the boundaries of a reservation or on property held in trust for a tribe.

10. As set forth in , ¶ 21, to the extent that a tribe has retained hunting, fishing, and gathering rights within a ceded territory, the Commissioner has very limited authority to regulate the method of the take of wild animals by tribal members in SNAs within the ceded territory. Said tribal members are subject to the harvest code adopted by the band retaining off reservation rights.

11. Any “findings of fact” that might properly be termed “conclusions” and any “conclusion” that might properly be termed “findings of fact” are hereby adopted as such.

### **Order**

Based on the substantial evidence in the administrative record on file at the DNR and the factual and legal findings contained herein, the Commissioner makes the following ORDER:

1. Effective immediately upon publication of this Order in the State Register, the possession of lead ammunition or discharge of a firearm loaded with lead ammunition in any of the fifty-six (56) SNAs listed below is prohibited.

- a. Antelope Valley SNA (Yellow Medicine County)
- b. Avon Hills Forest SNA (Stearns County)
- c. Badoura Jack Pine Woodland SNA (Hubbard County)
- d. Big Island SNA (St. Louis County)
- e. Black Lake Bog SNA (Pine County)
- f. Boltuck-Rice Forever Wild SNA (Itasca County)
- g. Brownsville Bluff SNA (Houston County)
- h. Caldwell Brook Cedar Swamp SNA (Koochiching County)
- i. Cannon River Turtle Preserve SNA (Goodhue County)
- j. Cedar Rock SNA (Redwood County)
- k. Crystal Springs SNA (Washington County)
- l. Dinner Creek SNA (Becker County)
- m. Englund Ecotone SNA (Benton County)
- n. Felton Prairie SNA (Clay County) (Bicentennial unit)
- o. Franconia Bluffs SNA (Chisago County)
- p. Gustafson’s Camp SNA (Lake of the Woods County)
- q. Hemlock Ravine SNA (Carlton County)
- r. Hovland Woods SNA (Cook County)
- s. Iron Springs Bog SNA (Clearwater County)
- t. Itasca Wilderness Sanctuary SNA (Clearwater County)

**40 (Cite 47 SR 40)**

- u. Joseph A. Tauer Prairie SNA (Brown County)
- v. King's and Queen's Bluffs SNA (Winona County)
- w. La Salle Lake SNA (Hubbard County)
- x. Ladies Tresses Swamp SNA (Itasca County)
- y. Lake Alexander Woods SNA (Morrison County)
- z. Lester Lake SNA (Hubbard County)

- aa. Little Too Much Lake SNA (Itasca County)
- bb. Lost 40 SNA (Itasca County)
- cc. Lost Lake Peatland SNA (St. Louis County) (portions not legislatively established as Peatland SNAs set forth in Minn. Stat. § 84.035.)
- dd. Lutsen SNA (Cook County)
- ee. Maurice O'Link Ribbed Fen SNA (Beltrami County)
- ff. McGregor Marsh SNA (Aitkin County)
- gg. Mille Lacs Moraine SNA (Crow Wing County)
- hh. Mississippi Oxbow SNA (Itasca County)
- ii. Moose Mountain SNA (St. Louis County)
- jj. Mound Prairie SNA (Houston County) (Parcel 1 of unit designation order)
- kk. Mound Spring Prairie SNA (Yellow Medicine County)
- ll. Myhr Creek Ridge SNA (Cook County)
- mm. Pine and Curry Island SNA (Lake of the Woods County)
- nn. Potato Lake SNA (Itasca County)
- oo. Prairie Coteau SNA (Pipestone County)
- pp. Prairie Creek Woods SNA (Rice County)
- qq. Prairie Smoke Dunes SNA (Norman County)
- rr. River Warren Outcrops SNA (Renville County)
- ss. Rushford Sand Barrens SNA (Fillmore County)
- tt. Sand Lake Peatland SNA (Lake County) (portions not legislatively established as Peatland NAs set forth in Minn. Stat. § 84.035.)
- uu. Santee Prairie SNA (Mahnommen County)
- vv. Savage Fen SNA (Scott County)
- ww. Spring Beauty Northern Hardwoods SNA (Cook County)
- xx. St. Wendel Tamarack Bog SNA (Steams County)
- yy. Two Rivers Aspen Parkland SNA (Roseau County)
- zz. Uncas Dunes SNA (Sherburne County)
- aaa. Wabu Woods SNA (Itasca County)
- bbb. Watrous Island SNA (Koochiching County)
- ccc. Yellow Bank Hills SNA (Lac qui Parle County) **41 (Cite 47 SR 41)**

ddd. Zumbro Falls Woods SNA (Wabasha County)

1. For the purposes of this order, nontoxic ammunition is defined as bullets, slugs, muzzleloader ammunition, shot, and other single projectiles made entirely of nontoxic material approved by the U.S. Fish and Wildlife Service. See <https://www.fws.gov/story/2022-04/nontoxic-shot-regulations-hunting-waterfowl-and-coots-us>.
2. This Order does not apply to any of the eighteen (18) legislatively established Peatland SNAs set forth in Minn. Stat. § 84.035.
3. This Order does not apply to tribal members taking game in SNAs located within the boundary of their reservation or on property held in trust for a tribe nor does it apply to tribal members taking game in SNAs located outside of the boundary of their reservation or property held in trust but within a ceded territory in which the tribe has retained hunting, fishing, or gathering rights in the territory ceded by that tribe.

Approved and adopted this 27th day of June, 2023.

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

By: Sarah Strommen

Commissioner

Commissioner of Natural Resources