



**MINNESOTA POLLUTION  
CONTROL AGENCY**

## Wild Rice Waters

Catherine Neuschler and Gerald Blaha

Wild Rice Task Force

October 26, 2018

# Presentation Overview

- Beneficial use and legislative directive
- Two-part approach to designating wild rice waters
  - Initial list
    - Data sources
    - Role of and comparison to MDNR report listed waters
  - Future additions
    - Discussion of criteria
- Comments received and ALJ report
- [WR] waters

# Beneficial Use: Clarifying Where it Is

- We had the existing beneficial use: “the harvest and use of grains from this plant serve as a food source for wildlife and humans”
  - Applicable to “waters used for production of wild rice”
- Legislature directed MPCA to “designat[e] waters containing natural beds of wild rice as waters subject to a standard”
  - “the commissioner of the Pollution Control Agency shall establish criteria for the waters...The criteria shall include, but not be limited to, history of wild rice harvest, minimum acreage, and wild rice density”

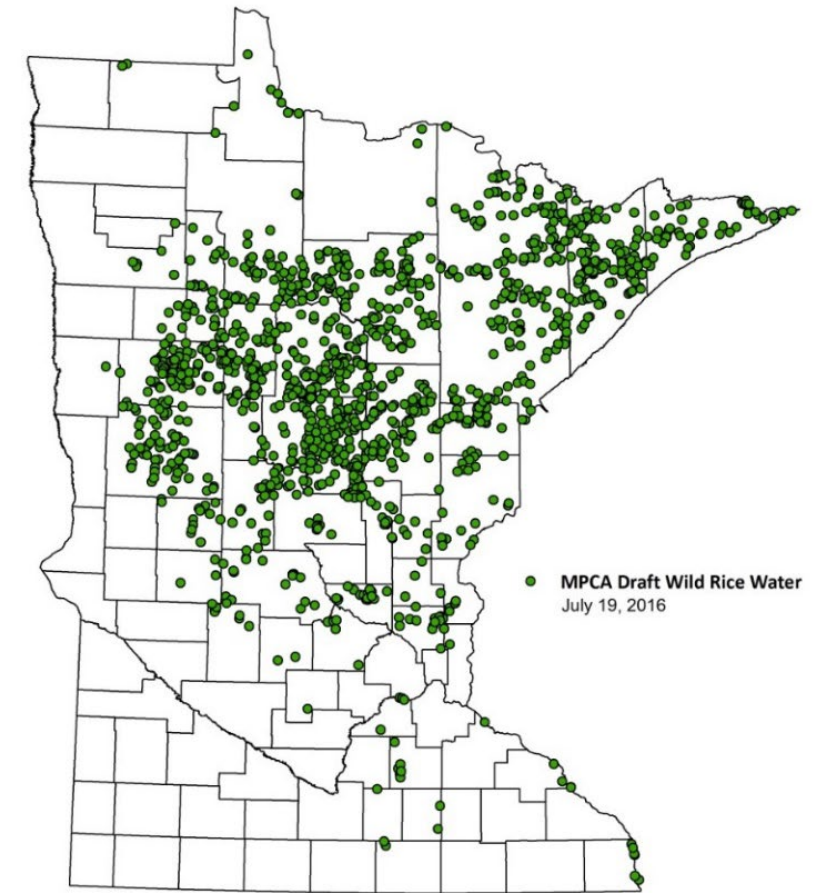
# Beneficial Use: Clarifying Where it Is

- Goal: clarify where the wild rice beneficial use applies
  - Document where wild rice is an existing use (on/after November 28, 1975)
- MPCA proposed a two part solution:
  - 1) An initial listing of waters
  - 2) Criteria and process for listing waters in future



# Wild Rice Waters: Initial List

- Initial list was developed through a review of available information
  - Historical and current compilations of information about wild rice
  - Call for data to gather information we did not have
  - Reviewed sources to what waters supported the wild rice beneficial use an existing use

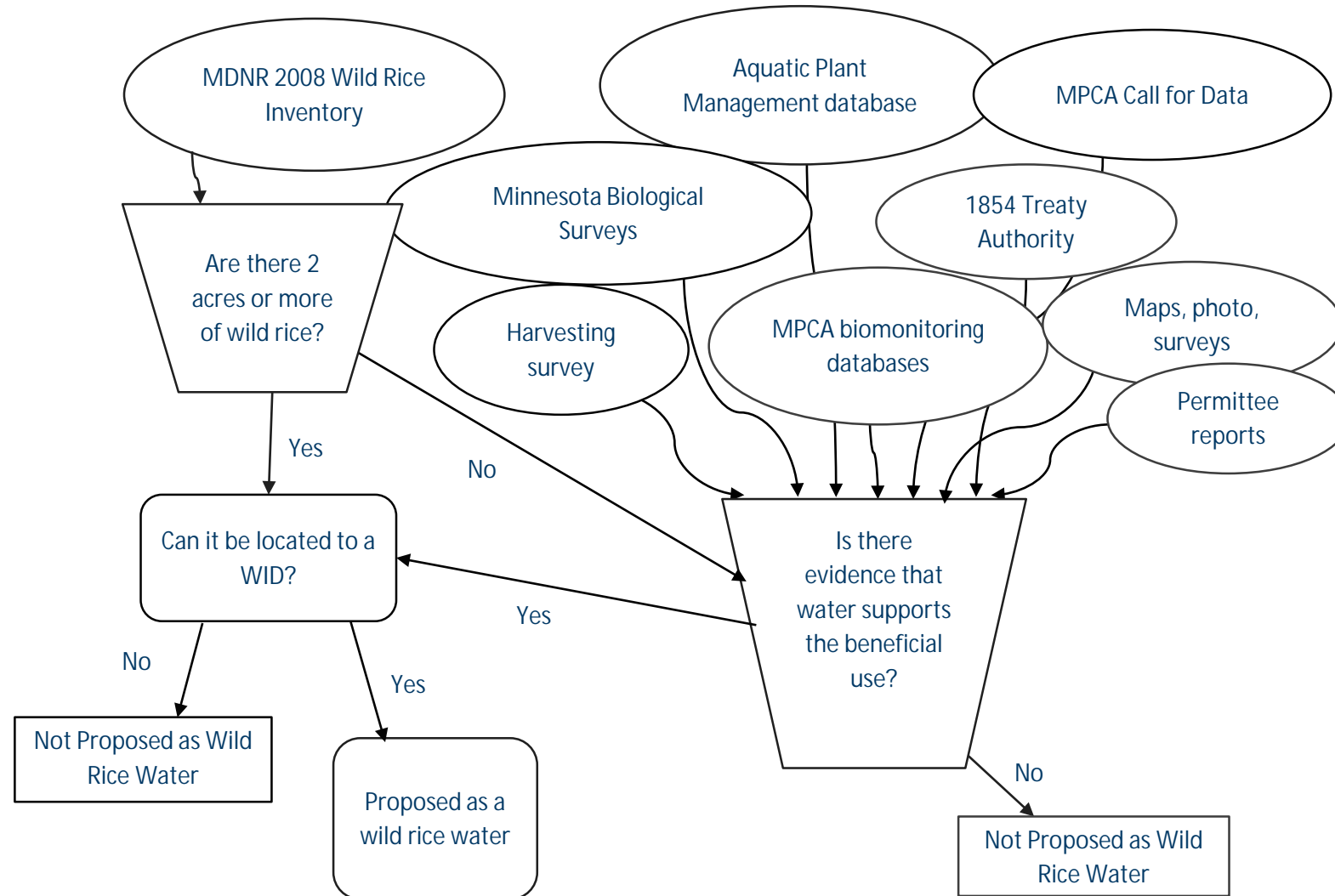


Minnesota Pollution Control Agency

0 10 20 40 60 80 Miles



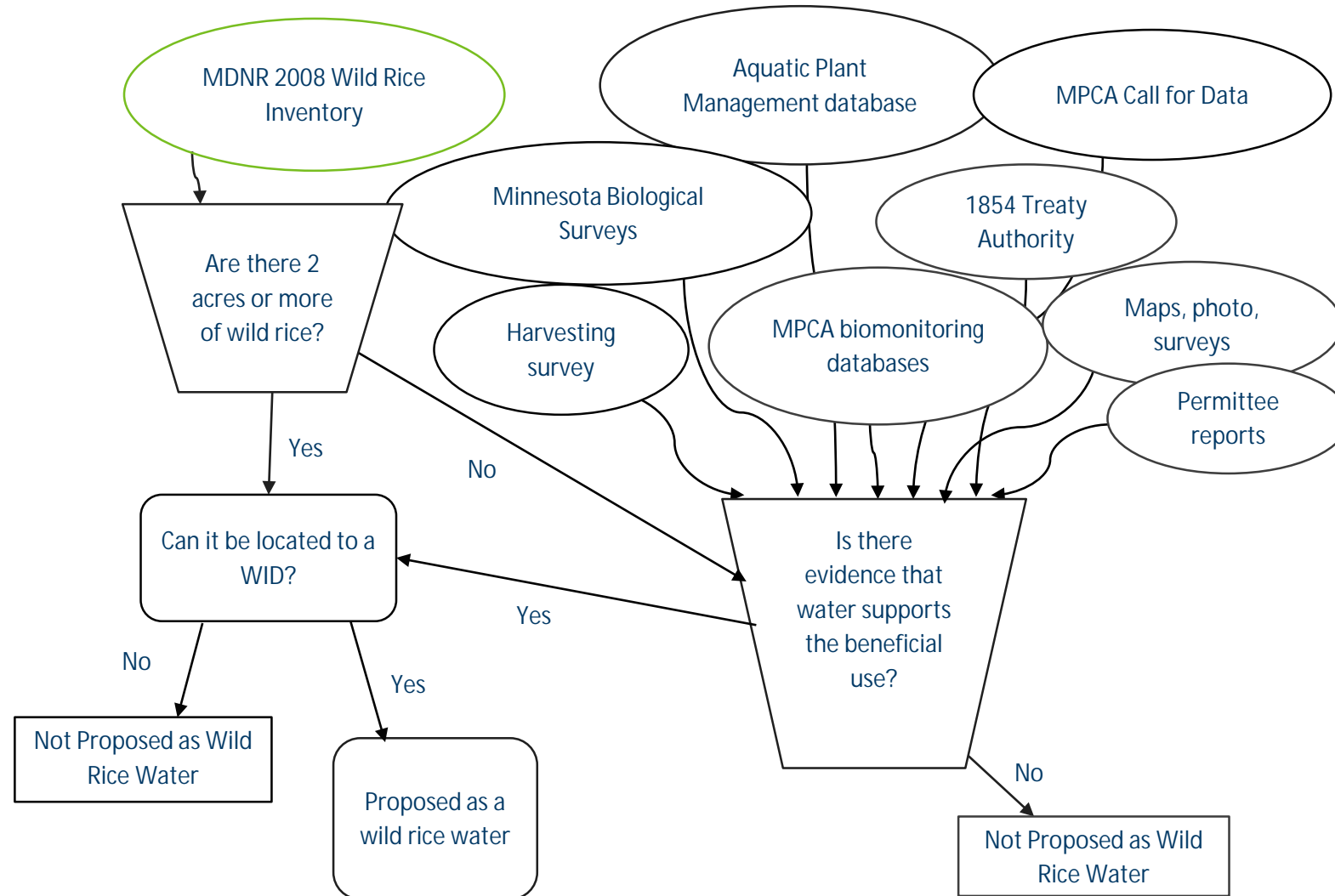
# Initial Wild Rice Waters List: Review of Information



# Initial Wild Rice Waters List: Information Sources

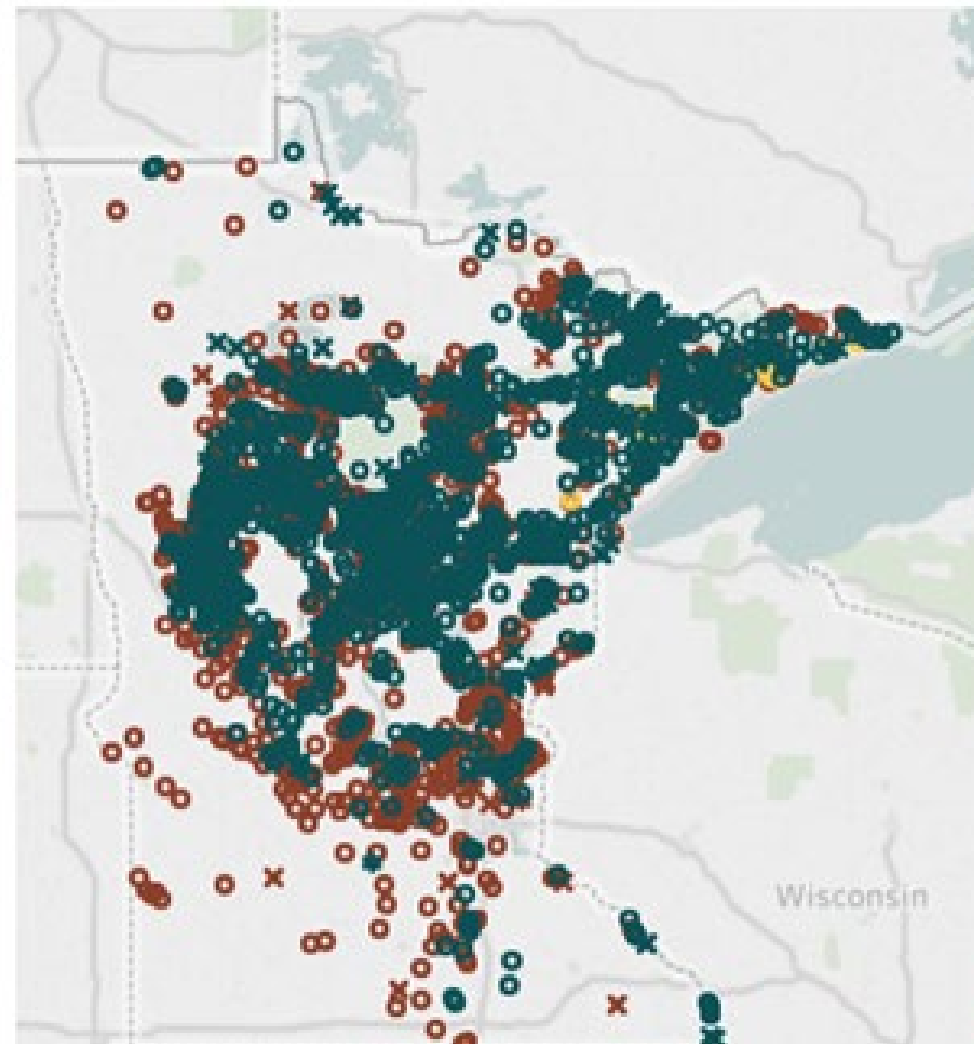
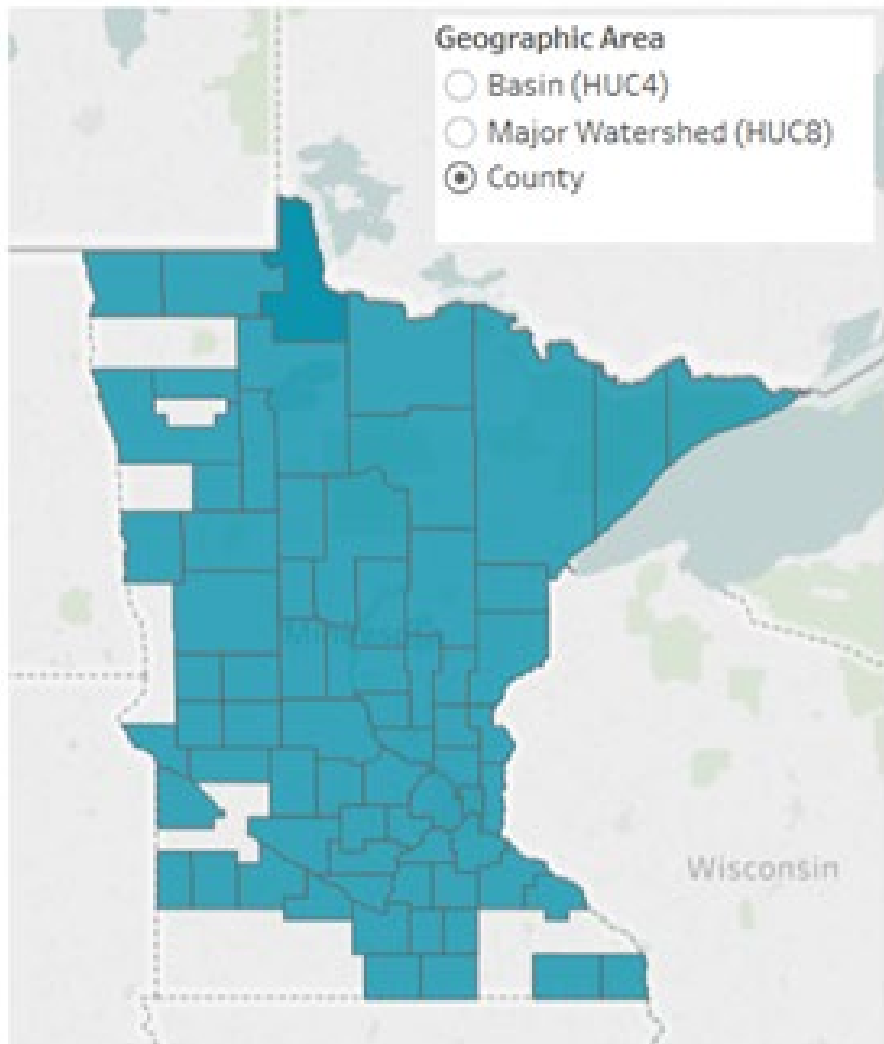
- Key Source: Natural Wild Rice in Minnesota—A Wild Rice Study Report to the Legislature (2008)
  - Considered to be the most comprehensive wild rice inventory available
    - 1286 waters; 777 with acreage estimates
  - Directive was for DNR to prepare a report on:
    - the current location and estimated acreage and area of natural stands
    - potential threats to natural stands
    - recommendations on protecting and increasing natural wild rice stands in the state
  - This report was not compiled for regulatory purposes

# Initial Wild Rice Waters List: Review of Information





# Wild Rice Waters



Select Status

(All)

Status

PWRW

7050

II

Select Waterbody Type

(All)

Waterbody Type

○ Lake

□ Riparian wetland

+ Riparian, stream wetland

× Stream

\* Wetland

To export subset of data, click on the table, then click on "Download" button in the gray bar at the bottom of the page and choose "Crosstab".

# Wild Rice Waters: By the Numbers

- MPCA's complete database includes 2,347 waters - tribal and non-tribal waters
  - 1,251 lakes, wetlands, or stream reaches were proposed as wild rice waters
  - The remainder are "II" or tribal waters
    - Leech Lake, Fond du Lac, and Grand Portage requested that we not include waters wholly within their reservations on our list in rule
- The MDNR 2008 report listed 1,286 wild rice locations - tribal and non-tribal waters
  - Of these, 777 had estimated wild rice acreages
  - 950 of the 1,286 MDNR 2008 waters were proposed as wild rice waters by the MPCA
  - The remaining 336 waters are maintained as Insufficient Information waters in the MPCA wild rice database

# Wild Rice Waters: Listing Additional Waters

- MPCA envisioned additions to the initial list
  - Proposed that additional waters would be added through future rulemaking
  - Internal database tracks “II” or “insufficient information” waters
    - Those that might demonstrate the beneficial use
- Various criteria proposed for future listing of waters
  - Historical information did not necessarily have information to allow it to be reviewed against threshold criteria



# Listing Additional Waters: Criteria Considered

- March 2015 – List any water that “contains a self-perpetuating population of wild rice plants, either currently present or that have been present in the given water body since November 28, 1975.”
  - Minimum of 8,000 wild rice stems over the surface of a lake, wetland, or reservoir; or 800 wild rice stems over a river-mile



A wild rice water with about 2 stems per square meter, or about 8,000 stems in one acre.

# Listing Additional Waters: Criteria Considered

- July 2016 – Criteria for future is to list any lake, stream, or wetland with at least one of the following attributes:
  - It contains a natural bed of wild rice of at least:
    - 0.25 acres in area with a stem density of at least 8 stems per square meter; or
    - 0.5 acres in area with a stem density of at least 4 stems per square meter.
  - It has a documented history of wild rice harvest occurring after November 28, 1975

# Listing Additional Waters: Moving Away from Criteria

- Concerns were expressed over the potential criteria
  - Stem counts were developed due to difficulty in measuring density; but did not align with legislative direction
  - Tribes expressed concern over later density and acreage criteria – feeling that the criteria were not well supported, difficult to measure, and did not ensure protection of wild rice
- MPCA moved away from specific criteria
  - Based on concerns
  - To be more consistent with how the initial list was drafted

# Wild Rice Waters: Adding Waters

- Final proposal was that MPCA would use the triennial standards review to ask for evidence about the beneficial use existing in other waters
  - “Definitive” proof would be history of harvest or 2 acres of rice - MPCA would propose to add these waters
    - But 2 acres is not required to demonstrate the beneficial use
  - Other evidence providing a reasonable basis showing the beneficial use exists – MPCA would consider these waters
  - Intent to be broad on “evidence” – oral histories, written records, photographs, field surveys, etc.

# Wild Rice Waters: Comments Received

- MPCA's list of waters is too broad
  - There should be specific criteria to classify water bodies as wild rice waters and MPCA should have done notice and comment on the criteria first
  - Designating a water must be based on acreage and density and history of harvest
  - Designating a wild rice water should require the actual presence of wild rice in a water body
- MPCA's list of waters is too limited
  - All waters on the DNR2008 inventory should be designated
  - Any amount of wild rice is important and worth protecting
  - Include all waterbodies that have ever supported natural stands of wild rice
  - Density is subjective and should not be considered in designating wild rice waters



# Wild Rice Waters: Comments Received and ALJ

- MPCA's listing/delisting process
  - "A new use cannot be added to a water without a use attainability analysis"
  - "Waters included in MDNR2008 inventory have been designated and cannot be undesignated without a use attainability analysis"
- The Administrative Law Judge concluded the MPCA proposed list of wild rice waters excludes a number of waters where wild rice is an existing use and is therefore not in compliance with the Clean Water Act
  - Identified by 1854 Treaty list and MDNR2008 inventory



## Additional Notes on [WR] Waters

# [WR] Waters

- In 1997/1998 Great Lakes rulemaking, MPCA added a narrative standard and listed waters where it applies
- Narrative standard applies to “selected wild rice waters have been specifically identified [WR] and listed in part 7050.0470, subpart 1”
  - MPCA interprets these as a subset of water used for production of wild rice
- Listed [WR] waters are all located in the Lake Superior basin
  - MPCA has always intended to consider listing [WR] waters in other basins
- Only list of wild rice waters



Credit: U.S. Fish and Wildlife Service

# [WR] Waters

1. Artichoke Lake, 69-0623-00
2. Bluebill Lake, 38-0261-00
3. Breda Lake, 69-0037-00
4. Cabin Lake, 38-0260-00
5. Caribou Lake, 16-0360-00
6. Christine Lake, 16-0373-00
7. Fourmile Lake, 16-0639-00
8. Hay Lake, 69-0435-00
9. Lieung (Lieuna) Lake, 69-0123-00
10. Long Lake, 69-0044-00
11. Marsh Lake, 16-0488-00
12. Moore Lake, 16-0489-00
13. Northern Light Lake, 16-0089-00
14. Papoose Lake, 69-0024-00
15. Rice Lake, 16-0453-00
16. Round Island Lake, 38-0417-00
17. Round Lake, 69-0048-00
18. Seven Beaver Lake, 69-0002-00
19. St. Louis River – Headwaters, 04010201-631
20. Stone Lake, 69-0686-00
21. Stone Lake (Skibo Lake), 69-0046-00
22. Stone Lake (Murphy Lake or Tommila Lake), 69-0035-00
23. Swamp River (Reservoir), 16-0901-00
24. White Pine Lake, 16-0369-00

# Questions



# Are these wild rice waters?



“Sparse” Wild Rice Density  
Turpela Lake – St Louis County  
September 2012



“Sparse to Moderate” Wild Rice Density  
Big Rice Lake – St Louis County  
September 2012

# Are these wild rice waters?



“Moderate” Wild Rice Density  
Little Rice Lake – St Louis County  
August 2012



“Dense” Wild Rice  
Lake Itasca – Clearwater County  
August 2011