

APPENDIX II-G

COVER SHEET FOR FINAL PROPOSAL

Notice Number **2022-26** Rule Number **Fis 602.01 - .04; Fis 603.03; Fis 603.17; Fis 605.02; Fis 605.03; Fis 607.04**

| | |
|---|--|
| <p>1. Agency Name & Address:</p> <p>NH Fish and Game Department 11 Hazen Drive Concord, NH 03301</p> | <p>2. RSA Authority: RSA 206:10, I; RSA 207:14, II; RSA 211:62, I</p> <p>3. Federal Authority: _____</p> <p>4. Type of Action:</p> <p><input type="checkbox"/> Adopt</p> <p><input type="checkbox"/> Amendment (only if Initial Proposal was filed before 9/27/20.)</p> <p><input type="checkbox"/> Repeal</p> <p><input checked="" type="checkbox"/> Readoption</p> <p><input type="checkbox"/> Readoption w/amendment</p> |
|---|--|

5. Short Title: **Marine Fishing Rules**

6. Contact person for copies and questions:

| | | | |
|----------|---|----------|------------------------------|
| Name: | Cheri Patterson | Title: | Marine Division Chief |
| Address: | NH Fish & Game Department Region 3 225 Main Street Durham, NH 03824-4732 | Phone #: | 868-1095 |

7. The rulemaking notice appeared in the Rulemaking Register on **2-24-22**

SEE THE INSTRUCTIONS--PLEASE SUBMIT ONE COPY OF THIS COVER SHEET AND ONE COPY OF THE FOLLOWING: (optional to number correspondingly)

8. The "Final Proposal-Fixed Text," including the cross-reference table required by RSA 541-A:3-a, II as an appendix.

9. Yes N/A Incorporation by Reference Statement(s) because this rule incorporates a document or Internet content by reference for which an Incorporation by Reference Statement is required pursuant to RSA 541-A:12, III.

10. Yes N/A The "Final Proposal-Annotated Text," indicating how the proposed rule was changed because the text of the rule changed from the Initial Proposal pursuant to RSA 541-A:12, II(d).

11. Yes N/A The amended fiscal impact statement because the change to the text of the Initial Proposal affects the original fiscal impact statement (FIS) pursuant to RSA 541-A:5, VI.

Notice Number

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Rule Number

Fis 602.01 - .04; Fis 603.03;
Fis 603.17; Fis 605.02;
Fis 605.03; Fis 607.04

| | |
|---|--|
| <p>1. Agency Name & Address:</p> <p>NH Fish and Game Department 11 Hazen Drive Concord, NH 03301</p> | <p>2. RSA Authority: RSA 206:10, I; RSA 207:14, II; RSA 211:62, I</p> <p>3. Federal Authority: _____</p> <p>4. Type of Action:</p> <p>Adoption _____</p> <p>Repeal _____</p> <p>Readoption <u> X </u></p> <p>Readoption w/amendment _____</p> |
|---|--|

5. Short Title: **Marine Fishing Rules**

6. (a) Summary of what the rule says and of any proposed amendments:

Chapter Fis 600 pertains to marine or saltwater fishing by setting forth definitions for the locations, equipment, and common terms used in this activity; describing those activities that are prohibited; setting rules and limits for the taking of specified species, including shellfish; setting restrictions on certain bodies of water; requiring reports and permits for certain crustaceans, as well as rules for the processing of those species; and rules regarding marine plants.

This proceeding proposes to readopt specific sections of Fis 600 that address restrictions on certain marine fishing practices, including to prevent nets from closing off streams, in Fis 602.01; close areas around fishways to fishing in Fis 602.02; restrict release of living marine plants and animals without permission in Fis 602.03; prohibit commercial, party, or charter vessels from depositing dead fish or parts in inshore waters in Fis 602.04; require release of salmon caught in marine waters in Fis 603.03; limit harvest of sea urchins in Fis 603.17; identify oyster harvest containers in Fis 605.02; prohibit transfer of oysters, eggs, and larvae without the Fish and Game Director’s permission in Fis 605.03; and limit the harvest of whelk in Fis 607.04.

These sections of Chapter Fis 600 are set to expire February 28, 2022, and are being filed pursuant to RSA 541-A:14-a, I so that the rules will continue to be in effect during the duration of this readoption proceeding.

6. (b) Brief description of the groups affected:

Any commercial or recreational marine fishing interests or activities.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

| Rule | Specific State Statutes which the Rule Implements |
|------------|---|
| Fis 602.01 | RSA 206-10, I; RSA 211:62 |
| Fis 602.02 | RSA 206:10; I; RSA 211:62 |
| Fis 602.03 | RSA 206:10; I; RSA 207:14; RSA 211:62 |
| Fis 602.04 | RSA 206:10; I; RSA 211:62 |
| Fis 603.03 | RSA 206:10; I; RSA 211:62 |
| Fis 603.17 | RSA 206:10; I; RSA 211:62 |

| Rule | Specific State Statutes which the Rule Implements |
|-------------|--|
| Fis 605.02 | RSA 206:10; I; RSA 211:62; RSA 211:62-a |
| Fis 605.03 | RSA 206:10; I; RSA 211:62; RSA 211:62-a |
| Fis 607.04 | RSA 206:10; I; RSA 211:62 |

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Cheri Patterson** Title: **Marine Division Chief**
Address: **NH Fish & Game Department** Phone #: **868-1095**
Region 3 Fax#: **868-3305**
225 Main Street E-mail: **Cheri.a.patterson@wildlife.nh.gov**
Durham, NH 03824-4732
TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **April 12, 2022**

Fax E-mail Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Tuesday, April 5, 2022 at 6:00 pm**
Place: **Urban Forestry Center, 45 Elwyn Road, Portsmouth, NH 03801**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # 22:020, dated 02/15/2022

1. **Comparison of the costs of the proposed rule(s) to the existing rule(s):**
There is no difference in cost when comparing the proposed rules to the existing rules.
2. **Cite the Federal mandate. Identify the impact on state funds:**
No federal mandate, no impact on state funds.
3. **Cost and benefits of the proposed rule(s):**
 - A. **To State general or State special funds:**
None.
 - B. **To State citizens and political subdivisions:**
None.
 - C. **To independently owned businesses:**
None.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

This proposal does not mandate any new, expanded, or modified programs or responsibilities to any political subdivision in such a way as to necessitate additional local expenditures by the political subdivisions, and therefore does not violate Part I, Article 28-a of the New Hampshire Constitution.

Readopt Fis 602.01 to Fis 602.04, eff. 2-29-12 (Doc #10095), cited and to read as follows:

PART Fis 602 PROHIBITED MARINE ACTIVITIES

Fis 602.01 Closing Off Streams.

Edit. Suggestion: "No person(s)" and (b).

(a) No person, or combination of persons, shall set or arrange a weir or net in any river or stream at any time to extend greater than from one shoreline to the thread or middle line of the stream.

(b) No person shall set a weir or net within 1000' of another net. The distance between nets shall be measured in linear feet along the thread of the stream.

Edit. delete and insert "feet"

(c) The above requirements shall not apply to the so-called bow net fishery conducted on the ice for smelt.

Unclear/Edit. It is unclear why this is being used. Consider deleting it.

Fis 602.02 Fishways Closed.

(a) In addition to the restrictions and closures specified in Fis 402.07 the waters surrounding any dam which contains a fishway shall be closed to all fishing as described below:

Edit. Here and (2)-(8) aren't written as rules, and saying "closed to all fishing" is redundant as it appears in the intro language. Consider: "Lamprey river, from the upstream..""

(1) Lamprey River - Closed to all fishing from the upstream side of the Route 108 Bridge to 275 feet below the downstream side of the Macallen dam, tidal water, in the town of Newmarket;

(2) Exeter River - Closed to all fishing from the upstream side of the High Street Bridge to the downstream side of the Chestnut Street String Bridge, on the Squamscott River, in the town of Exeter;

(3) Exeter River - Closed to all fishing from the upstream side of the Pickpocket Dam and fishway including a 50 foot radius in front of the fishway on the upstream side to the downstream side of the Cross Roads Bridge in the towns of Brentwood and Exeter;

(4) Taylor River - Closed to all fishing from the upstream side of the fishway and dams including a 50 foot radius in front of the fishway on the upstream side to a line perpendicular to the south end of the south overflow culvert on Route 95 to the opposite side of the river, east;

(5) Cochecho River - Closed to all fishing from the upstream side of the Central Avenue Bridge to the downstream side of the Washington Street Bridge in the town of Dover;

(6) Oyster River - Closed to all fishing from the upstream side of the dam and fishway, including a 50 foot radius in front of the fishway on the upstream side to the downstream side of Route 108 bridge in the town of Durham;

(7) Winnicut River - closed to all fishing within a 25 foot radius in the front of the fishway downstream in the tidal waters and within a 6 foot radius in front of the fishway opening upstream; and

(8) Salmon Falls River – closed to all fishing from the upstream side of the Route 4 Bridge to 150 feet downstream of South Berwick dam in the town of Rollinsford.

(b) American eels (*Anguilla rostrata*), may be taken by use of traps, pots, or spears, within the tidal portions of the areas described in Fis 602.02(a) from June 15 to October 1.

Edit. Either use "his or her" or delete.

(c) No person shall be on or in a fishway without written permission from the executive director or his agent. The request for permission shall be made in writing and shall include the purpose of the request. A valid request shall be for activities such as scientific research or maintenance.

Unclear. It is unclear why this is present.

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(d) No person or persons shall take fin fish in fishways.

Fis 602.03 Import, Export, Transport, and Release.

(a) No person shall bring, or have brought, into the state, nor transport, or caused to be transported, from the state to any other state or country, nor take from one point within the state to any other point within the state, any living marine plant, or marine animal, for release, without first procuring written permission to do so from the director.

(b) Applicants shall request permission in writing and shall include the name of the species involved, when and where the release shall occur, the names of the persons involved, and an explanation of why the release is necessary. Permission shall be granted if the director determines no adverse environmental harm will occur.

Fis 602.04 Dumping of Fish.

Edit. Insert a comma.

Edit. Use "or"

(a) No person on any commercial fishing vessel or party/charter vessel shall deposit upon the shores, in the bays, harbors or rivers of the state any dead fish, or parts thereof, or fish smothered or injured to such an extent that they will die.

(b) Nothing in this section shall be construed to restrict the use of fish, or parts thereof, for chum or bait.

Readopt Fis 603.03, eff. 2-29-12 (Doc #10095), to read as follows:

Edit. Insert a comma.

Fis 603.03 Salmon.

(a) The taking of any species of sea-run salmon, which spends part of its life cycle in fresh, brackish or salt water under the jurisdiction of the state, shall be permitted. Such taking shall be done only by angling, as described in RSA 207:1, I, and only by anglers licensed under RSA 214:1.

(b) Any salmon taken in coastal and estuarine waters shall be immediately released back into the waters from which it was taken.

(c) Snagging or foul-hooking of salmon shall be prohibited, and any salmon foul-hooked or snagged shall be immediately released unharmed.

Readopt Fis 603.17, eff. 2-29-12 (Doc #10095), to read as follows:

Edit. Consider "Sea urchins not meeting this requirement shall"

Fis 603.17 Sea Urchins.

(a) No person shall take or possess sea urchins (*Strongylocentrotus droebachiensis*) having shells less than 2 inches in the longest diameter, exclusive of spines, to an amount of more than 5 percent of any bulk pile.

(b) The 5 percent tolerance shall be determined by numerical count of not less than one peck nor more than 3 pecks taken at random from various parts of the bulk pile or by the entire pile if it is less than one peck. Sublegal sea urchins shall be culled immediately after capture and returned immediately to the sea.

(c) Sea urchins shall only be taken as follows:

Edit. Use commas rather than parenthesis.

(1) By hand or by pot from October 1 through March 15; or

(2) By a single sled from December 15 through March 15 as follows:

a. The effective fishing width of the sled shall be 48 inches or less;

- b. The sled shall consist of a metal frame, 4 feet wide or less, followed by a checkerboard sweep either of twine or 1/4 inch chain;
- c. The sweep shall be 36 inches or less in length with a maximum of 7 inch mesh, followed by a twine bag;
- d. A tow bar shall be welded to the front of the frame with straps spaced to act as runners; and
- e. The sled shall not be used in the following waters:
 - 1. The Great Bay estuarine system inland of the Memorial Bridge in Portsmouth;
 - 2. Little Harbor and its tributaries inland of its most seaward jetty;
 - 3. Rye Harbor and its tributaries inland of its most seaward jetty; and
 - 4. Inland of the Hampton Harbor Bridge; and

Edit. Insert a comma.

- (3) No possession of other marine species including lobsters, finfish or shellfish shall be allowed.
- (d) No person shall take or possess sea urchins from March 16 to September 30.

Readopt Fis 605.02 and Fis 605.03, eff. 2-29-12 (Doc #10095), to read as follows:

Fis 605.02 Identification of Oyster Containers.

- (a) Any container used in the taking of oysters, whether on the flats, on a dock or in a boat shall be clearly identified by marking thereon the owner's oyster license number, either by attaching a waterproof tag containing such number to said container, or by painting such number on the outside of the container.
- (b) By applying for an oyster license, the licensee shall be deemed to have consented to submit to department inspection for the identifying number referred to in paragraph (a).

Fis 605.03 Restriction on Certain Taking.

- (a) No person shall transplant oysters, or take the eggs or larvae thereof, or take metamorphosed oysters, called "set" or "spat", without first obtaining written permission from the director. Applicants shall request permission in writing and shall include origin of the oysters, the transplant site, the names of people involved, and why the transplanting or taking of eggs, larvae or spat is necessary. Permission shall be granted if the director determines no adverse environmental harm will occur.
- (b) Nothing in this section shall prohibit a properly licensed person who is observing all provisions of this part, from engaging in the practice known as cleansing.

Readopt Fis 607.04, eff. 2-29-12 (Doc #10095), to read as follows:

Fis 607.04 Waved Whelk (*Buccinum undatum*) and Stimpson's Whelk (*Colus stimpsoni*).

- (a) Persons taking whelks for purposes of sale shall be subject to the following:

- (1) One pot, trap or other contrivance for taking or holding whelks shall be fished on a single line and buoy;
- (2) When pots, traps, or other contrivances are set on trawls, buoys plainly marked shall be set on both ends of the trawl;

Edit. Insert a comma.

(3) Each buoy and trap shall be permanently marked with the letter "W" and the first initial and complete last name of the licensee;

(4) No person shall raise, haul, or transfer any whelk trap from any coastal waters from sunset to one hour before sunrise; and

(5) No person shall possess any whelk with an overall shell length of less than 2.5 inches.

(b) The provisions of (a)(3),above, shall not apply to the by-catch of whelks taken from lobster traps by licensed lobster fishermen.

(c) Persons taking whelks for personal use and not for sale shall be subject to the following:

(1) Only residents shall take whelks;

(2) Persons shall take no more than 5 whelks per day; and

(3) The minimum shell height for whelks shall be 2.5 inches.

APPENDIX

| Rule | Specific State Statutes which the Rule Implements |
|-------------|--|
| Fis 602.01 | RSA 206:10, I; RSA 211:62 |
| Fis 602.02 | RSA 206:10; I; RSA 211:62 |
| Fis 602.03 | RSA 206:10; I; RSA 207:14; RSA 211:62 |
| Fis 602.04 | RSA 206:10; I; RSA 211:62 |
| Fis 603.03 | RSA 206:10; I; RSA 211:62 |
| Fis 603.17 | RSA 206:10; I; RSA 211:62 |
| Fis 605.02 | RSA 206:10; I; RSA 211:62; RSA 211:62-a |
| Fis 605.03 | RSA 206:10; I; RSA 211:62; RSA 211:62-a |
| Fis 607.04 | RSA 206:10; I; RSA 211:62 |