

RULEMAKING NOTICE FORM

Notice Number _____

Rule Number **Fis 601.05 – 601.07, 602.05, 602.09, 602.10, 603.18, 604.02, 607.02 & 610.01**

1. Agency Name & Address:

**NH Fish and Game Department
11 Hazen Drive
Concord, NH 03301**

2. RSA Authority: 211:62 I. & II.

3. Federal Authority: _____

4. Type of Action:

Adoption _____

Amendment _____

Repeal _____

Readoption XX

Readoption w/amendment XX

5. Short Title: Various Marine Rules

6. (a) Summary of what the rule says and the effect of the rule on those regulated:

The Department is readopting various marine rules that have were recently adopted as interim rules because they had expired or were about to expire. (Fis 601.05- 601.07, 602.05, 602.10, 603.18, 604.02 and 610.01) relative to definitions, gear restrictions, goosefish, and shellfish.

The Department is readopting with amendment Fis 602.09 relative to marking and tending gear (pots, traps and nets) to further modify the breaking strength for weak links on gill nets because previously, the proposed federal rules had a 600 lb break ing strength for both trap buoys and gillnets. The final federal rule, which was implemented after out last rulemaking proceeding had been finalized, had an 1100 lb. break strength for gill nets.

Fis 607.02 relative to the manner and methods for taking scallops is being readopted with amendment to specify a daily limit of 200 pounds per day. Any persons currently taking scallops under a federal fishery permit are already restricted to the daily limit.

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

These rules affect persons required using pots, traps and nets as well as those taking scallops, goose fish or shell fish.

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

Rule(s)	State Statute (RSA)	Federal Statute	Federal Regulation
Fis 601.05 – 601.07, 602.05, 604.02, & 610.01	211:62		
Fis 602.09	211:62	16 U.S.C. Sec 1361	50 CFR Part 229
Fis 602.10	211:62	16 USC Sec 5101	50 CFR Part 697
Fis 603.18 & 607.02	211:62 and 211:27	16 USC Sec 5101	50CFR Part 648

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

Name: **Sandra Falicon** Title: **Legislative/Rules Coordinator**
Address: **NH Fish and Game Department** Phone #: **603-271-3511**
11 Hazen Drive Fax#: **603-271-1438**
Concord, NH 03301 E-mail: comments@wildlife.state.nh.us
Ref: Marine rules
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: September 15, 2008

Fax E-mail **Ref: Marine rules** Other format (specify):

9. Public hearing scheduled for:

Date/Time & **September 2, 2008 7pm**
Place: **Urban Forestry Center**
45 Elwyn Road
Portsmouth, NH 03801

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

FIS # 08:162 , dated 8/1/2008

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:

The proposed readoption with amendment of Fis 602.09 and 607.02 and the readoption of Fis 601.05 – 601.07, 602.05, 602.10, 603.18, 604.02 & 610.01 relating to marine rules does not violate the New Hampshire Constitution, Part 1, Article 28-a. The rules do not impose any programs or responsibilities on any political subdivision of the state nor is any political subdivision involved in the process from an administrative perspective.

Readopt Fis 601.05, 601.06, 601.07 and 602.05, effective 7/24/08 (doc #9216), to read as follows:

Fis 601.05 "Waters under the jurisdiction of the state" means those waters described in RSA 1:14 and 1:15.

Fis 601.06 "Single hook artificial lure" means a lure with one single hook with not more than 3 hook points.

Fis 601.07 "Mobile gear" means fishing gear that is mechanically or manually drawn, pulled or dragged through the water for the purpose of entrapping and taking of marine species. The term includes but is not limited to purse seine, Scottish seine, beam trawl, midwater trawl, otter trawl, pair trawl, or drag seine in any form. The term does not include cast nets, dip nets held in hand, hook and line, and seines less than 50 square feet, and stationary gill nets anchored on each end.

Fis 602.05 Seining Restriction.

(a) Seines used for the taking of marine species from estuarine and harbor waters of the state shall not be greater than 50 square feet. The mesh size shall be no smaller than 1/2 inch. For purposes of this section, "harbor waters" means any waters of a harbor inland of the most seaward jetty or daymarker.

(b) Seines shall only be manually drawn, pulled, or dragged through the water.

Readopt with amendment Fis 602.09, effective 1/1/08 (Doc #9014), to read as follows:

Fis 602.09 Marking and Tending of Gear.

(a) It shall be required of anyone taking crustaceans or finfish to identify all pots, traps or nets left unattended in the following manner:

(1) All fixed gear shall have the name of the owner permanently affixed.

(2) High flier buoys, as customarily used on longline gear, shall be marked with the name of the owner;

(3) Pot or trap trawls shall be marked at each end with at least a single buoy made of highly visible material;

(4) Gill nets and longline sets 6,000 feet or less shall be buoyed on each end to support a vertical shaft at least 5 feet high with a radar reflector of at least 100 square inches reflective area; and

(5) Flags and pennants affixed to buoys marking a string of gear as required by this section shall be of uniform color;

(6) ~~Beginning April 1, 2008, W-~~weak links with a maximum breaking strength ~~of 600~~ 1100 pounds shall be used in gillnet panels and on all flotation and/or weighted devices attached to the buoy line of gillnets set seaward of 72 COLREGS demarcation line and seaward of Hampton and Rye and Hampton Harbor entrances.

(7) Weak links with a maximum breaking strength of 600 pounds shall be used on all flotation and/or weighted devices attached to the buoy line at the buoys of all other fixed gear set seaward of 72 COLREGS demarcation line and seaward of Hampton and Rye and Hampton Harbor entrances; and

(78) Beginning November 1, 2008, groundlines between traps or gillnet panels shall be sinking or neutrally buoyant for all gear set seaward of 72 COLREGS demarcation line and seaward of Hampton and Rye and Hampton Harbor entrances.

(b) It shall be required of anyone fishing unattended pots or traps to conform to the requirement set forth in RSA 211:33.

(c) Tending of pots and traps, excepting weirs, shall be restricted to the period from one hour before sunrise to sunset.

Readopt Fis 602.10, 603.18, and 604.02 effective 7/24/08 (doc #9216), to read as follows:

Fis 602.10 Lobster Trap Construction.

(a) No person shall fish for or take lobsters unless the trap is equipped with unobstructed escape vents or gaps in the parlor section which shall have:

(1) A rectangular or oblong escape vent not less than 1 15/16 inches by 5 3/4 inches located next to the bottom edge;

(2) At least 2 circular escape vents not less than 2 7/16 inches in diameter;

(3) A gap caused by raising, modifying or separating horizontal laths to comply with paragraphs (1) or (2);

(4) A gap caused by separating or modifying vertical laths to comply with paragraph (1);

(5) A gap caused by separating both ends of 2 laths 1 3/4 inches on the top of the parlor section next to the middle bow or supporting frame and directly over the parlor head; or

(6) In a wire or plastic trap, a gap created by cutting vents in the side or end to comply with paragraphs (1) or (2).

(b) No person shall set, raise, haul, or transfer any lobster trap unless the trap is equipped with an escape vent as required in this section or has been exempted under (c) below.

(c) The executive director shall exempt specific trap designs from the escape vent requirements of this section if it is statistically proven that the specific trap design will only take crabs and is incapable of taking lobsters. Any such trap design shall be approved by the executive director in writing after inspection by an agent for the executive director.

(d) In addition to the escape vents required in (a) all traps used to fish for or take lobsters shall have at least 2 runners or sills and an escape panel designed as follows:

(1) For a rectangular wire or plastic mesh trap:

a. At least 2 parallel runners or sills attached to the bottom of the trap running along the entire length of the exterior.

b. An unobstructed escape panel which shall be:

1. Located in the parlor section on the sides or end;

2. Hinged at the top of positively buoyant panels or at the bottom of negatively buoyant panels;

3. Tied with an untreated natural fiber such as cotton, sisal, hemp or jute not exceeding 3/16 inches in diameter before immersion in sea water, or a piece of non-stainless, uncoated ferrous metal wire not exceeding 3/32 inches in diameter; and

4. Of sufficient size to create an opening of at least 3-3/4" x 3-3/4" when the panel is removed or opened.

(2) Any non-rectangular wire or plastic mesh trap shall have at least 2 runners or sills and shall have an escape panel designed to create a space of at least 3-3/4" x 3-3/4" when open.

(3) The construction design of the runners, or sills, and the escape panels of a non-rectangular wire or plastic mesh trap shall be approved in writing by the executive director after inspection by his agent shows that the design of the trap will fish the same as the criteria for traps under (d)(1), above.

(4) Nothing shall be placed in the parlor section of any rectangular wire or plastic mesh trap, whatever the design, which would obstruct the 3-3/4" x 3-3/4" escape panel after disintegration of the natural fiber or other material.

(5) For a wood lath half-round or so-called "round" or wood rectangular trap:

a. Every wood lath half round or so-called "round" or wood rectangular trap shall have at least 2 parallel runners or sills on the bottom, running the entire length of the trap exterior.

b. Every wood lath half-round or so-called "round" or wood rectangular trap shall have an unobstructed escape panel which shall be:

1. Created by one untreated, softwood lath running the full length of the parlor section, which shall:

(i) Have the same dimensions as the other laths on the trap;

(ii) Not be located where it will rest on the sea-bottom; and

(iii) After disintegration, leave a space of at least 3.0 inches between adjacent laths; and

2. An opening of at least 3.0 inches between adjacent laths, running the length of the parlor section which is laced with an untreated natural fiber such as cotton, sisal, hemp, or jute not exceeding 3/16 inches in diameter before immersion in sea water; and

c. Nothing shall be placed in the parlor section of a wood lath half-round or so-called "round" or wood rectangular trap which might obstruct the 3 inch opening after disintegration of the untreated lath or natural fiber lacing.

(6) Any other type of wooden trap shall have runners or sills as described in (5)b.1. and an unobstructed escape panel laced with an untreated natural fiber such as cotton, sisal, hemp or jute not exceeding 3/16 inches diameter before immersion in sea water to provide a minimum opening of at least 3 3/4" x 3-3/4" in the parlor section when lacing disintegrates.

(e) The executive director shall exempt a specific trap design from the provisions of Fis 602.10(d) if the trap design will take only crabs and is incapable of taking lobsters.

(f) Any such trap design that meets the requirements of (e) above shall be approved by the executive director in writing after inspection by his agent.

Fis 603.18 Goosefish.

(a) No person shall take or possess goosefish (*Lophius americanus*) less than 17 inches total length or goosefish tails less than 11 inches as measured from the anterior portion of the fourth cephalic dorsal spine to the end of the caudal fin.

(b) Goosefish livers landed shall not exceed 25% of the total weight of goosefish tails or 10% of the total weight of whole goosefish on any trip. If a vessel lands both goosefish tails and whole goosefish the following weight ratio shall not be greater than 10%.

(c) To calculate the weight ratio for goose liver to both goosefish tails and whole goosefish, a person shall multiply the weight of goosefish tails by 2.57 and add the product to the weight of whole goosefish, then divide this number into the weight of the goosefish livers as in the formula: Weight of livers/((weight of tails X 2.57) + weight of whole fish).

Fis 604.02 Winnicut River. The Winnicut River in Greenland from the Winnicut River dam and fish ladder to the south side of the Boston and Maine railroad bridge over the Winnicut River shall be open to the taking of all species of fish by angling only except as provided in Fis 602.02(a)(7).

Readopt with amendments Fis 607.02, effective 4-1-05 (Doc #8302), to read as follows:

Fis 607.02 Sea Scallops.

(a) Taking of sea scallops (*Placopecten magellanicus*) from the waters under the jurisdiction of the state shall be prohibited from April 15 to October 31.

(b) Scallops shall only be taken by hand or by dredge.

(c) The scallop dredge shall:

(1) Be no larger than 4 feet wide;

(2) Have a dredge ring size of ~~3 1/2 inches, except after April 14, 2005 have a dredge ring size of~~ 4 inches;

(3) Have a minimum mesh size of ~~6 inches, except after April 14, 2005 have a minimum mesh size of~~ 10 inches; and

(4) Have no obstructions, chafing gear or liners attached.

(d) No possession of other marine species including lobsters, finfish or shellfish shall be allowed while taking scallops by dredge, except surf clams and mahogany quahogs in accordance with Fis 606.01.

(e) Only one dredge shall be used to take scallops.

(f) The minimum shell height for Atlantic sea scallops shall be 3 1/2 inches. There shall be no tolerance for the shell height and scallops shall be landed in the shell when taken by hand.

(g) No person shall take or possess more than 200 pounds of scallops per day.

(gi) Scallops taken in accordance with 50 CFR ~~650-648~~ and taken from outside the jurisdiction of the state may be landed or transported in New Hampshire.

Readopt Fis 610.01, effective 7/24/00 (Doc #9216), to read as follows:

Fis 610.01 Clams, Mussels and Oysters.

(a) All containers, bags or receptacles containing clams, mussels or oysters, shucked or unshucked shall at all times bear a label or tag legibly marked with the name and address of the producer and the shipper. In addition the label or tag shall be marked with the number of the department of health and human service's shellfish certificate, the location where taken, the date when taken and the clams, mussels or oysters shall be in accordance with RSA 143:21 in order to be possessed in the state of New Hampshire.

(b) In accordance with Fis 610.01(a) all labels or tags shall remain attached to any container, bag or receptacle of clams, mussels or oysters until they are processed and in compliance with the provisions of RSA 143:22.

(c) An accurate daily record shall be kept by all certified establishments listing the names and addresses of all persons from whom lots of shellfish are received, the location of the source of each lot, and the names and addresses of all persons to whom lots are shipped or sold. Such records shall be kept on file for 60 days and shall be open to inspection by agents of the fish and game department at any time.

APPENDIX

Rule(s)	State Statute (RSA)	Federal Statute	Federal Regulation
Fis 601.05 – 601.07, 602.05, 604.02, & 610.01	211:62		
Fis 602.09	211:62	16 U.S.C. Sec 1361	50 CFR Part 229
Fis 602.10	211:62	16 USC Sec 5101	50 CFR Part 697
Fis 603.18 & 607.02	211:62 and 211:27	16 USC Sec 5101	50CFR Part 648