

RULEMAKING NOTICE FORM

Notice Number	Rule Number	Fis 601.08, Fis 603.09, Fis 606.01 – 606.05 and Fis 606.07
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<p>1. Agency Name & Address:</p> <p style="text-align: center;">NH Fish and Game Department 11 Hazen Drive Concord, NH 03301</p>	<p>2. RSA Authority: <u>211:62 I.</u></p> <p>3. Federal Authority: _____</p> <p>4. Type of Action:</p> <p style="padding-left: 20px;">Adoption _____</p> <p style="padding-left: 20px;">Amendment _____</p> <p style="padding-left: 20px;">Repeal _____</p> <p style="padding-left: 20px;">Readoption <u>XX</u></p> <p style="padding-left: 20px;">Readoption w/amendment <u>XX</u></p>
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5. Short Title: **Fish & Game - Marine Rules relative to groundfish, clams and other mollusks.**

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

The Fish and Game Department is proposing to:

Readopt with amendment Fis 601.08, the definition of groundfish to add Atlantic wolfish and Atlantic halibut;

Readopt with amendment Fis 603.09, relative to groundfish to:

- establish a minimum length for Atlantic halibut of 41 inches;
- require that groundfish which are filleted maintain at least 2 square inches of contiguous skin intact to enable specie identification;
- extend the closure for recreational fishing for cod from the end of March until April 15;
- clarify the vessel limits for groundfish for vessels with or without limited access permits;
- limit the possession of Atlantic halibut to one fish per trip and require that the head and tail remain intact while on or leaving the waters of the state; and
- to prohibit the take and possession of Atlantic wolfish by commercial and recreational fishing.

Readopt the following:

Fis 606.01, relative to the restrictions for taking quahogs, razor clams and surf and mahogany quahogs;

Fis 606.02 relative to the seasons and methods for taking clams, mussels and other mollusks;

Fis 606.03 relative to the requirements for identification on clam containers;

Fis 606.04 relative to the restrictions and limits for the possession of clams;

Fis 606.05 relative to restrictions on the sale of clams; and

Fis 606.07 relative to the requirement that clam licenses be in plain view while clamming.

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

The rules would affect persons taking groundfish or clams, mussels or other mollusks.

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 601.08; Fis 603.09	211:62		
Fis 606.01 – 606.05 and Fis 606.07	211:62		

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
11 Hazen Drive
Concord, NH 03301**

Phone #: **603-271-3511**

Fax#: **603-271-1438**

E-mail: **comments@wildlife.nh.gov**

Subject line: various 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 24, 2010**

Fax

E-mail

Other format (specify):

9. Public hearing scheduled for:

Date and Time: **September 13, 2010 6:30pm**

Place: **Urban Forestry Center
45 Elwyn Road
Portsmouth, NH 03801**

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

FIS # **10:103**, dated **8/13/2010**

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):
When compared to the existing rules, the proposed rules may reduce revenue to independently owned businesses by \$5, 000 or less per year.
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 rules(s):
 - A. To State general or State special funds:
None.
 - B. To State citizens and political subdivisions:
None.
 - C. To independently owned businesses:
The Fish and Game Department estimates that the proposed rule prohibiting the taking and possessing of Atlantic wolffish may reduce revenues to the entire commercial fish industry by \$5,000 or less per year.

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

The proposed relating to the propose readoption with amendment of Fis 601.08 and 603.09 and the readoption of Fis 606.01 through Fis 606.05 and Fis 606.07 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.

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Readopt with amendment Fis 601.08, effective 5-27-04 (Doc #8087), to read as follows:

Fis 601.08 "Groundfish" means a group of fish which includes Atlantic cod (*Gadus morhua*), **Atlantic wolffish (*Anarhichas lupus*)**, **Atlantic halibut (*Hippoglossus hippoglossus*)**, **ocean pout (*Zoarces americanus*)**, haddock (*Melanogrammus aeglefinus*), pollock (*Pollachius virens*), American plaice (*Hippoglossoides platessoides*), redfish (*Sebastes marinus*), white hake (*Urophycis tenuis*), summer flounder (*Paralichthys dentatus*), yellowtail flounder (*Pleuronectes ferruginea*), winter flounder (*Pleuronectes americanus*), windowpane flounder (*Scophthalmus aquosus*), and witch flounder (*Glyptocephalus cynoglossus*).

Readopt with amendment Fis 603.09, effective 1-1-10 (Doc #9610), to read as follows:

Fis 603.09 Groundfish Restrictions.

(a) For the purpose of this section, "recreational fishing" means the taking of fish by angling **and spearfishing** for personal use only and which are not sold.

(b) No person shall take or possess fish, except by recreational fishing as specified in (c), less than the minimum **total** lengths specified in Table 600.00-a:

Table 600.00-a Commercial Size Limits

<u>Fish Species</u>	<u>Minimum Total Length Limit</u>
Atlantic cod	22 inches
Haddock	18 inches
Pollock	19 inches
Winter flounder	12 inches
Yellowtail flounder	13 inches
American plaice	14 inches
Redfish	9 inches
Atlantic halibut	41 inches

(c) No person shall take or possess fish by recreational fishing less than the minimum **total** lengths specified in Table 600.00-b:

Table 600.00-b Recreational Size Limits

<u>Fish Species</u>	<u>Minimum Total Length Limit</u>
Atlantic cod	24 inches
Haddock	18 inches
Pollock	no minimum length
Winter flounder	12 inches
Yellowtail flounder	13 inches
American plaice	14 inches
Summer flounder	15 inches
Redfish	9 inches
Atlantic halibut	41 inches

(d) Summer flounder shall only be taken by recreational fishing.

(e) Vessels engaged in fishing shall possess fish the minimum size for ~~angling~~ **recreational fishing** only when no fishing method other than ~~angling~~ **recreational fishing** has been employed during the trip.

(f) Fillets of all groundfish species ~~shall have skin intact to allow for positive identification.~~ **that are skinned shall retain at least 2 square inches of contiguous skin intact that enable the identification of fish species.**

(g) Cod shall have head and tail intact or as fillets no less than 14 inches in length while on or leaving the waters of the state.

(h) Haddock shall have head and tail intact or as fillets no less than 12 inches in length while on or leaving the waters of the state.

(i) During the months of April, May and June cod, haddock and winter flounder shall only be taken by recreational fishing.

(j) During the months of November through ~~March~~ **April 15** no person shall take cod by recreational fishing.

(k) The recreational **fishing** daily limit for cod shall be no more than 10 cod.

(l) The taking of winter flounder by recreational ~~fishermen~~ **fishing** shall be subject to the following:

(1) The daily limit shall be no more than 8 winter flounder; and

(2) The taking of winter flounder shall not be permitted from May 15 through May 24.

(m) Persons only licensed to commercially take finfish under RSA 211:49-a and RSA 211:49-b shall be restricted to daily limits per vessel as follows:

~~(1) A 500 pound limit for cod taken by gill net;~~

~~(2) A 300 pound limit for cod taken by hook gear as specified in Fis 602.18; and~~

~~(3) The weight limits for other finfish species in accordance with the weight limits for limited access vessels pursuant to 50 CFR 648.86 **for common pool vessels** or **50 CFR 648.87 (c)(2)(ii)(A) for sector vessels.**~~

(2) The weight limits for vessel without a federal Northeast multispecies permit shall be as follows:

a. A 500 pound limit for cod taken by gill net; or

b. A 300 pound limit for cod taken by hook gear as specified in Fis 602.18.

(n) Commercial vessels that have not been assigned a federal groundfish permit may possess a maximum of 250 lbs of winter flounder per vessel.

(o) The possession limit for Atlantic halibut on all vessels shall be no more than one fish per trip.

(p) Atlantic halibut shall have head and tail intact while on or leaving the waters of the state.

(p) No person shall take or possess Atlantic wolffish.

Readopt Fis 606.01 through 606.05 and 606.07, effective 1/1/03 (Doc # 7809), to read as follows:

Fis 606.01 Restrictions on Certain Clam Species.

(a) There shall be no open season for quahogs, little necks or cherrystone clams (*Mercenaria mercenaria*).

(b) Razor clams (*Ensis directus*), surf clams (*Spisula solidissima*), mahogany quahogs (*Arctica islandica*) and blue mussels (*Mytilus edulis*) may be taken without a license only:

- (1) By residents;
- (2) For personal use; and
- (3) By hand or with handheld tools.

(c) No person shall use any dredge in the taking of surf clams, sea clams, or hen clams (*Spisula solidissima*), or black clams or mahogany quahogs (*Arctica islandica*) that has a blade or knife which is greater than 48 inches in maximum width or a hydraulic dredge with a blade, knife or manifold which is greater than 48 inches in maximum width.

Fis 606.02 Taking of Mollusks.

(a) The taking of clams (*Mya arenaria*) shall only be permitted, between one-half hour before sunrise and sunset on Saturdays, from the day after Labor Day to May 31.

(b) Mollusks shall not be taken from areas which are unclassified or are classified as "prohibited" by the commissioner of the department of environmental services or posted as closed, or marked with red stakes.

(c) Mollusks shall not be taken by recreational ~~harvestors~~ **harvesters** from areas classified as restricted or conditionally restricted by the commissioner of the department of environmental services.

(d) Commercial harvesting and marketing from restricted areas shall be allowed under certain conditions specified in He-P 2150 of the department of health and human services.

(e) Clams shall be dug only with hand held tools with handle lengths not to exceed 18 inches.

(f) The taking of mussels in the Hampton/Seabrook estuary shall only be permitted, between one-half hour before sunrise and sunset on Saturdays, from the day after Labor Day to May 31.

Fis 606.03 Identification of Clam Containers.

(a) Any container used in the taking of clams, whether on the flats, on a dock or landing, or in a boat, shall be clearly identified by marking thereon the owner's clam license number, either by attaching a waterproof tag containing such number to said container, or by painting such number on the outside of said container.

(b) By applying for a clam license, the licensee shall be deemed to have consented to submit to department inspection for the identifying number referred to in paragraph (a) above.

Fis 606.04 Possession of Clams.

(a) No person shall possess or take, in one calendar day, more than 10 quarts liquid measure, of unshucked clams, while on or leaving any clam flats or any waters under the jurisdiction of the state.

(b) Possession of shucked clams, while on or leaving any clam flats or any waters under the jurisdiction of the state, shall be prohibited.

(c) No person shall possess any clams taken from the flats or the waters under the jurisdiction of the state, unless they are in a container identified as provided in Fis 606.03. The licensee shall accompany said clams at all times while possessing and transporting them.

(d) Any firm, corporation or person shucking clams (*Mya arenaria*) in a commercial operation, or dealing with clams in a wholesale or retail business shall not be subject to the 10 quart possession limit, provided the clams are possessed in full compliance with Fis 610.

Fis 606.05 Sale of Clams Restricted.

(a) Clams (*Mya arenaria*) taken or possessed under this PART shall not be bought, sold, offered for sale, exchanged or traded.

(b) No person shall possess quahogs, littlenecks, cherrystones (*Mercenaria mercenaria*) less than one inch in shell thickness.

(c) Clams (*Mya arenaria*) less than two inches in length shall have been taken in compliance with the laws and rules of the state of origin.

Fis 606.07 Display of Clam Licenses. Clam licensees shall wear said licenses in plain view, either on the cap or hat, or on the front of the outer garment, while engaged in taking clams.

APPENDIX

Rule(s)	State Statute (RSA)	Federal Statute	Federal Regulation
Fis 601.08; Fis 603.09	211:62		
Fis 606.01 – 606.05 and Fis 606.07	211:62		