

**RULEMAKING NOTICE FORM**

Notice Number \_\_\_\_\_

Rule Number **Fis 1900** \_\_\_\_\_

<p>1. Agency Name &amp; Address:</p> <p><b>NH Fish and Game Department 11 Hazen Drive Concord, NH 03301</b></p>	<p>2. RSA Authority: <u>206:10</u></p> <p>3. Federal Authority: _____</p> <p>4. Type of Action:</p> <p>Adoption _____</p> <p>Amendment _____</p> <p>Repeal _____</p> <p>Readoption <u>XX</u></p> <p>Readoption w/amendment _____</p>
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5. Short Title: **Fish and Game –rules relative to Commercial Fisherman Sustainability**

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

**The Department is proposing to readopt the interim rules relative to the commercial fisherman sustainability compensation, as regular rules, to establish eligibility criteria and application procedures for eligible lobster harvesters and for commercial groundfish harvesters to receive federal funds to compensate for impacts as a result of federal fisheries and marine mammal protection regulations.**

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

**These rules affect lobster harvesters and for commercial groundfish harvesters that were effected by the impacts of federal fisheries and marine mammal protection regulations.**

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
<b>Fis 1901.01, 1901.02, 1901.03</b>	<b>206:10</b>		

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.nh.gov**  
**Subject line: Fish.**  
**Sustainability Funds**  
 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: **February 28, 2011**

Fax  E-mail  Other format (specify):

9. Public hearing scheduled for:

Date and Time: **February 18, 2011 3pm**  
 Place: **NH Fish and Game – Region 3**  
**225 Main St**  
**Durham, NH 03824 4732**

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

FIS # 11:002 , dated 01/14/11

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 rule to the interim 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 rules(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 of Fis 1900 relating to fisherman sustainability fund 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 1900, effective 10-2-2010 (Doc #9797) to read as follows:

CHAPTER Fis 1900 COMMERCIAL FISHERMAN SUSTAINABILITY  
COMPENSATION

PART Fis 1901 COMMERCIAL FISHERMAN SUSTAINABILITY COMPENSATION

Fis 1901.01 Commercial Fisherman Sustainability Compensation – Lobster  
Harvesters.

(a) Commercial fisherman sustainability compensation funds are to compensate trap/pot lobster harvesters affected by the federal implementation of National Oceanic and Atmospheric Administration Fisheries Atlantic Large Whale Take Reduction Plan requiring broad-based sinking groundlines in 2008/2009.

(b) Any NH resident who meets the criteria below may apply for commercial fisherman sustainability funds for lobster harvesters:

(1) Held a limited commercial or a commercial lobster license pursuant to RSA 211:18 III, purchased trap tags pursuant to Fis 602.16, and landed lobster harvested by trap acknowledged by reports pursuant to Fis 608.01 or 608.04 in 2008 and 2009; or

(2) Held a commercial saltwater license or wholesale marine species license pursuant to RSA 211:49-b or RSA 211:49-c and a NOAA northeast federal fishery permit indicating American lobster - trap – area 1, purchased trap tags pursuant to Fis 602.16, and landed lobster in NH harvested by trap acknowledged by lobster dealer reports pursuant to Fis 608.04 in 2008 and 2009.

(c) Any resident who receives a notification of authorization from the department that they are eligible to apply for funds because the department records indicate they meet the qualifications may apply by submitting an application to the department with the following:

- (1) Name;
- (2) Date of birth;
- (3) Corporation name, if applicable;
- (4) Street address;
- (5) Mailing address;
- (6) Home phone number;

- (7) Work or cell phone number;
- (8) NH lobster license number or 2008 and 2009 NOAA northeast federal fishery permit number.
- (9) NH resident 2008 and 2009 commercial saltwater or wholesale marine species license number.
- (10) Highest number of traps legally fished in 2009; and
- (11) Dated signature of applicant and title, if applicable, certified that it is truthful subject to the penalties for making unsworn false statement statements under RSA 641:3.

(d) Any person not provided a notification of authorization from the NH fish and game department and who wishes to apply shall submit, in addition to the application in (c), the following:

- (1) For persons meeting the criteria of (b)(1):
  - a. A copy of their 2008 and 2009 NH limited commercial or commercial lobster license;
  - b. A copy of their 2008 and 2009 Stoffel Seal order form for trap tags and a copy of the certified check, money order, or credit card statement indicating payment by the applicant; and
  - c. All copies of their required state lobster reports pursuant to Fis 608.01 or NOAA Form No. 88-30 fishing vessel trip reports, if applicable, from 2008 and 2009.
- (2) For persons meeting the criteria of (b)(2):
  - a. A copy of their 2008 and 2009 NH resident commercial saltwater or NH wholesale marine species license;
  - b. A copy of their 2008 and 2009 NOAA northeast federal fishery permit indicating American lobster - trap – area 1;
  - c. A copy of their 2008 and 2009 Stoffel Seal order form for trap tags and a copy of the certified check, money order, or credit card statement indicating payment by the applicant; and
  - d. A copy of all their NH lobster dealer reports with the applicants transactions pursuant to Fis 608.04 from 2008 and 2009.

(e) Applications shall be:

(1) Mailed to the

NH Fish and Game Department – Marine Division  
Commercial Fisheries Sustainability Compensation Program  
225 Main Street  
Durham, NH 03824 ; and

(2) Be post marked no later than November 1, 2010.

(f) No application shall be accepted if the applicant has:

(1) Any state or federal reporting deficiencies or inaccuracies in 2008 or 2009;

(2) Any conviction for commercial fisheries violations in 2008 or 2009 from any state or federal agencies;

(3) Previous compensation for gear or groundline replacement from other sources or

(4) Indicated the highest reported traps fished exceeds the number of trap tags ordered minus the 10% trap tag overage of the trap limit allowed in accordance with Fis 602.13.

(g) The disbursement formula for the \$409,088 in the fund shall be as follows:

(1) The amount of compensation per reported trap fished shall be calculated by dividing the total grant amount of \$409,088 by the total maximum number of reported traps fished in 2009 from all qualified as eligible; and

(2) The individual harvester compensation shall be the highest number of reported traps fished in 2009 per licensee multiplied by the compensation per reported trap fished derived from (g)(1).

Fis 1901.02 Commercial Fisherman Sustainability Compensation – Commercial Groundfish Harvester.

(a) Commercial fisherman sustainability compensation funds for commercial groundfish harvesters shall be used to compensate those NH licensed harvesters who held a National Oceanic and Atmospheric Administration (NOAA) Multispecies Permit with Category A Days-at-Sea Limited Access Permit, and were affected by the implementation of Framework 42 to the Northeast Multispecies Fishery Management Plan in 2009.

(b) Any person who meets the criteria below may apply for commercial fisherman sustainability compensation for groundfish harvesters:

(1) For residents who held a 2009 NOAA multispecies limited access permit with category-A Days-at-Sea and had groundfish landings from NOAA seafood dealer reports in 2009 or leased category-A Days-at-Sea in 2009.

(2) For nonresidents who held:

a. A 2009 NOAA multispecies limited access permit with category-A Days-at-Sea , which indicated a homeport in NH on the permit;

b. A 2009 commercial saltwater license or wholesale marine species license pursuant to RSA's 211:49-a, 211:49-aa, 211:49-b, or, 211:49-c; and

c. Had groundfish landings from either NOAA seafood dealer reports in NH or reported a NH port as port landed on NOAA Form No. 88-30 fishing vessel trip report during 2009.

(c) Any person who receives a notification of authorization from the department that they are eligible to apply for compensation because the department records indicate they meet the qualifications may apply by submitting an application to the department with the following:

(1) Name;

(2) Date of birth;

(3) Corporation name, if applicable;

(4) Social security number or federal tax identification number, so that the department can issue form 1099-MISC at the end of the year;

(5) Street address;

(6) Mailing address;

(7) Home phone number;

(8) Work or cell phone number;

(9) Vessel name;

(10) Federal permit number;

(11) Home port;

(12) Indication if Category-A Days-at-Sea were leased and number of category-A Days-at-Sea allocated in 2009;

(13) NOAA seafood dealer identification number of 2009 dealer groundfish transactions;

(14) Dealer name;

(15) Dealer address; and

(16) Dated signature of applicant and title, if applicable, certified that it is truthful subject to the penalties for making unsworn false statement statements under RSA 641:3;

(d) Any person not provided a notification of authorization from the NH fish and game department and wishes to apply shall submit, in addition to the application in (c), the following:

(1) For residents meeting the criteria of (b)(1) a copy of their 2009:

a. NOAA multispecies limited access permit(s) with category-A Days-at-Sea; and

b. A copy of NOAA's letter of confirmation of lease of northeast multispecies Days-at-Sea agreement.

(2) For nonresidents meeting the criteria of (b)(2):

a. A copy of their 2009 NH commercial saltwater license or wholesale marine species license;

b. A copy of their 2009 NOAA multispecies category A Days-at-Sea permit(s); and

c. A copy of their NOAA category A Days-at-Sea documentation showing allotment of Days-at-Sea.

(e) A separate application shall be submitted for each NOAA multispecies limited access permit.

(f) Applications shall be mailed to the

NH Fish and Game Department – Marine Division  
Commercial Fisheries Sustainability Assistance Program  
225 Main Street, Durham, NH, 03824

and be post marked no later than November 1, 2010.

(g) No application shall be accepted if the applicant has:

- (1) Any state or federal reporting deficiencies or inaccuracies in 2009;
- (2) Any conviction for commercial fisheries violations in 2009 from any state or federal agencies; or
- (3) Previous commercial groundfish fisheries related compensation from other sources since 2004.

(h) Disbursement formula for the \$409,088 in the fund shall be as follows:

- (1) The amount of compensation per Day-at-Sea shall be calculated by dividing the total grant amount of \$409,088 by the total number of category A Days-at-Sea in 2009 from all vessels qualified as eligible; and
- (2) The individual applicant's compensation shall be the number of category-A Days-at-Sea associated with an applicant's permit(s) in 2009 multiplied by the compensation per Day-at-Sea derived from (h)(1).

Fis 1901.03 Hearings and Appeals.

(a) Hearings and appeals shall be conducted in accordance with RSA 541-A and Fis 200.

**APPENDIX**

<b>Rule(s)</b>	<b>State Statute (RSA)</b>	<b>Federal Statute</b>	<b>Federal Regulation</b>
Fis 1901.01, 1901.02, 1901.03	206:10		