

RULEMAKING NOTICE FORM

Notice Number

Rule Number **Fis 401.011, 401.021, 401.031, 401.06, 401.151, 408.181, 402.06, 403.03, 405.07, 405.08, 406.01(d); 406.02(a), 406.03(a), 406.05(a)&(h), 407.01(d), 407.03(e), 502.081(b)(2), 503.06, 807.04(e), 1104.04 and 1104.07**

<p>1. Agency Name & Address:</p> <p>NH Fish and Game Department 11 Hazen Drive Concord, NH 03301</p>	<p>2. RSA Authority: <u>206:10; 207:14</u></p> <p>3. Federal Authority: _____</p> <p>4. Type of Action:</p> <p>Adoption <u>XX</u></p> <p>Amendment <u>XX</u></p> <p>Repeal _____</p> <p>Readoption <u>XX</u></p> <p>Readoption w/amendment <u>XX</u></p>
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5. Short Title: **Fish and Game 2011 fishing rules**

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

The Department is proposing changes to the fishing rules for 2011 to include:

the adoption of definitions for artificial bait, bait, cast of artificial flies, tandem fly, and trolling (Fis 401.011, 401.021, 401.031, 401.151 and 401.181);

to readopt with amendment Fis 401.06 relative to the fly fishing definition;

readopt with amendment Fis 402.06 relative to the release of fish to specify the species of live fish persons are prohibited from having in their possession;

readopt with amendment Fis 403.03 relative to black bass to establish different daily bag limits in lakes and ponds and rivers and streams for bass taken through the ice and before and after the catch and release period of May 15 to June 15 [NOTE: While this rule pertains to all the bag limits for bass, the only change proposed is for the bag limit/size limit for bass taken through the ice or January 1 to March 31 in rivers and streams];

readopt with amendment Fis 405.07 relative to hooks and other devices for attachment of bait to require only a single hook with a single hook point whenever bait is used;

adopt Fis 405.08 relative to trolling to only allow one artificial bait, one fly, one tandem fly or one bait to be used per rod;

amend Fis 406.01(d), the lakes and ponds table, to change fishing rules for Clement Pond/Joe Silvia Lake (Hopkinton), Grassy Pond (Rindge), Warren Lake (Alstead), and Gregg Lake (Antrim) so that from ice-in to ice-out no person can take black bass from 15 to 20 inches and the daily limit for black bass is 3 fish, of which only 1 can be larger than 20 inches; and change the rules for Clarksville Pond (Clarksville), Fish Pond (Columbia), Bean Pond (Ossipee), Little Pond (Sandwich), and Hildreth Reservoir (Warren) from trout pond

regulations to general fishing regulations. These changes include readopting Fis 406.02(a), 406.03(a), 406.05(a) and the amendment of 406.05 to add new paragraph (h);

amend Fis 407.01(d), the rivers and streams table, to open the Pemigewasset River, from the Route 104 Bridge downstream to the Ayers Island Dam, to ice fishing. This also includes the readoption of Fis 407.03(e);

amend Fis 502.81 relative to bait sales records to eliminate the requirement to specify quantity of fish species by quarts;

readopt with amendment Fis 503.06 relative to bass tournaments to restrict the number of weigh-ins a tournament may have to one per calendar day;

amend Fis 807.04(e) relative to aquaculture licensees who are stocking trout to better define the meaning ‘private manmade farm ponds’ and replacing the language with ‘non-public bodies of water that are closed systems’;

readopt with amendment Fis 1104.04 relative to bait dealer’s license to only require the signature of a conservation officer on the initial application only; and

Readopt with amendment Fis 1104.07 relative to importing bait fish to no longer specify that the quantity of imported fish shall be in quarts.

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

The rules would affect persons fishing, persons participating in bass tournaments and bait dealers.

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 401.011, 401.021, 401.031, 401.06, 401.151, 408.181, 403.03	206:10		
Fis 402.06	206:10; 207:14		
Fis 405.07, 405.08, 406.01(d); 406.02(a), 406.03(a), 406.05(a) & (h), 407.01(d), 407.03(e)	206:10		
Fis 502.081(b)(2)	206:10; 214:35		
Fis 503.06	206:10; 211:16-b		
Fis 807.04(e)	206:10; 211:62-e		

Fis 1104.04	214:34		
1104.07	214:34-d		

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**

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**Subject line: 2011 Fishing
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: **June 28, 2010**

Fax

E-mail

Other format
(specify):

9. Public hearing scheduled for:

Date and Time: **June 16, 2010 6:30pm**

Place:

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

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

FIS # **10:055**, dated **05/05/10**

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 and the existing 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):

There are no additional costs or benefits attributable to the proposed rules.

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 adoption of Fis 401.011, 401.021, 401.031, 401.151, 401.181, Fis 405.08; readoption with amendment of Fis 401.06, Fis 402.06, Fis 403.03, Fis 405.07, Fis 503.06 and Fis 1104.07; amendment of Fis 406.01(d), Fis 406.02(a), 406.03(a), 406.05(a), 406.05(h); Fis 407.01(d), Fis 502.81 Fis 807.04(e); and readoption of Fis 407.03(e) and 1104.04 relating to fishing 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.

Adopt Fis 401.011, 401.021 and 401.031 to read as follows:

Fis 401.011 "Artificial bait" means any fishing bait constructed by humans as an imitation or substitute for natural bait or fish forage and includes, but is not limited to spinners, spoons, poppers, plugs, jigs and plastic, rubber or other artificial imitations of natural bait. "Artificial bait" does not include "fly" as defined in RSA 207:1 VII.

Fis 401.021 "Bait" means dead or live natural bait whether in part or whole and includes but is not limited to fish, mollusks, crustaceans, amphibians, invertebrates, reptiles, or their progeny or eggs, and power bait or any ingestible substance.

Fis 401.031 "Cast of artificial flies" means no more than 3 flies.

Readopt with amendment Fis 401.06, effective 1-1-06 (Doc #8442), to read as follows:

Fis 401.06 "Fly fishing" means fishing by trolling or casting with only fly rod, fly reel, and fly line combination with an artificial fly **or cast artificial of flies** attached and does not include the use of spinning, spincast, and casting rods and reels and lead core lines.

Adopt Fis 401.151 and 401.181 to read as follows:

Fis 401.151 "Tandem fly" means two single pointed hooks dressed with feathers, hair, thread, tinsel or any similar material to which no spinner, spoon or similar device is added.

Fis 401.181 "Trolling" means angling by trailing a line from a vessel (defined in RSA 270-D:1 XI) being propelled by machinery, electric, or manual power.

Readopt with amendment Fis 402.06, effective 1-1-05 (Doc #8119), to read as follows:

Fis 402.06 Release of Fish.

(a) No live fish shall be released in any waters of the state unless they shall be returned into the waters from where taken except as permitted by the executive director under a permit to release specified in Fis 805.

(b) No person shall have live fish in their possession when leaving the freshwaters of the state, ~~except those species allowed to be possessed and used as live fish for bait or the person is participating in a permitted fishing tournament.~~ **lake trout, landlocked salmon, brook trout, black bass, northern pike, or black crappie in their possession, except if the person is participating in a permitted bass tournament or holds a current aquaculture permit, importation permit, possession permit or permit to release for the fish in possession.**

Readopt with amendment Fis 403.03, effective 1-1-2006 (Doc #8442), to read as follows:

Fis 403.03 Black Bass (Micropterus dolomieu, M. salmoides).

(a) **In lakes and ponds,** ~~the~~ daily bag limit for black bass shall be:

a. From ice-in to ice-out 2 fish, of which only one bass may be greater than 16 inches;

b. ~~From ice in-out~~ to May 14 and June 16 to June 30, 2 fish; and

c. From July 1 to ice-in, 5 fish.

(b) **In rivers and streams, the daily bag limit shall be:**

a. From January 1 to March 31, 2 fish of which only one bass may be greater than 16 inches;

b. From April 1 to May 14 and June 16 to June 30, 2 fish; and

c. From July 1 to December 31, 5 fish.

(b) Between May 15 to June 15 all black bass shall be immediately released unharmed at the site of catch to the waters from which taken.

(c) The daily limit for black bass from July 1 to until ice in shall be 5 fish.

Readopt with amendment Fis 405.07, effective 1-1-07 (Doc #8671) to read as follow:

Fis 405.07 Hooks or Other Devices for Attachment of Bait.

~~While ice fishing~~ **taking fish**, only a single hook with a single hook point, ~~per ice fishing device,~~ shall be used for bait.

~~While taking fish in open water, 2 hooks may be used with bait per line, one with a single hook point and the other with no more than 3 hook points.~~

Adopt Fis 405.08 to read as follows:

Fis 405.08 Trolling. When trolling to take fish, only one artificial bait, one fly, one tandem fly or one bait shall be used per rod.

Amend Fis 406.01(d) Table 400.1 Ponds and Lakes Table, effective 1-1-06 (Doc #8442), as amended effective 1-1-07 (Doc #8671), as amended effective 1-1-08 (Doc #9005), as amended effective 1-1-09 (Doc #9249), by amending the ponds listed, and cited and to read as follows:

Fis 406.01 Applicability.

(d) The taking of fish from a lake or pond or its tributaries shall be in compliance with the restrictions set forth in the rules cited in Table 400.01, the Ponds and Lakes Table, as follows:

Table 400.1 PONDS AND LAKES TABLE

POND/LAKE NAME(S)	TOWN(S)	POND RULES	TRIBUTARY RULES
Fish Pond	Columbia	Fis 406.0205(a)	Fis 406.06(a)
Bean Pond	Ossipee	Fis 406.0205(a)	Fis 406.06(a)
Clarksville Pond	Clarksville	Fis 406.0305(a)	Fis 406.06(a)
Clement Pond/Joe Silvia Lake	Hopkinton	Fis 406.05(ah)	Fis 406.06(a)
Grassy Pond	Rindge	Fis 406.05(ah)	Fis 406.06(a)
Gregg Lake	Antrim	Fis 406.05(ah)	Fis 406.06(a)
Hildreth Pond	Warren	Fis 406.0205(a)	Fis 406.06(a)
Little Pond	Sandwich	Fis 406.0205(a)	Fis 406.06(a)
Warren Lake	Alstead	Fis 406.05(ah)	Fis 406.06(a)

Readopt Fis 406.02(a), effective 1/1/09 (Doc 9249), cited and to read as follows:

Fis 406.02 Trout Waters.

(a) The taking of fish from this waterbody as referenced in Table 400.01 in Fis 406.01(d) shall be subject to the following restrictions:

- (1) This waterbody shall be managed as trout water;
- (2) The open season for taking all species except salmon and smelt shall be from the 4th Saturday in April through October 15;
- (3) The daily limit for brook trout shall be 5 fish or 5 pounds of fish whichever limit shall first be reached;
- (4) The open season for taking smelt shall be June 16 through October 15;
- (5) The open season for taking salmon shall be from the 4th Saturday in April to September 30;
- (6) The daily bag limit for salmon shall be 2 fish;
- (7) The minimum length for salmon shall be 15 inches;
- (8) The use or possession of live fish, or the eggs thereof, for bait shall be prohibited, however the use of salmon eggs shall be permitted; and
- (9) The daily limit for all other species shall be as provided in Fis 403.

Readopt Fis 406.03(a), effective 1/1/07 (Doc #8671), cited and to read as follows:

Fis 406.03 Fly-Fishing Waters.

(a) The taking of fish from this waterbody as referenced in Table 400.1 in Fis 406.01(d) shall be subject to the following restrictions:

- (1) This waterbody shall be managed for trout;
- (2) The open season for taking all species, except salmon and smelt, shall be from the 4th Saturday in April through October 15 by fly fishing only;
- (3) The open season for taking smelt shall be June 16 through October 15 and shall be by fly fishing only;
- (4) The daily limit for brook trout shall be 5 fish or a total of 5 pounds of fish whichever limit shall first be reached;
- (5) The daily limit for all other species shall be as provided in Fis 403.

Readopt Fis 406.06(a), effective 1/1/09 (Doc #9249), to read as follows:

Fis 406.05 Other Waterbodies.

(a) The taking of fish from this waterbody, as referenced in Table 400.1 in Fis 406.01(d), shall be subject to the following restrictions:

- (1) The waterbody shall be open to the taking of all species, except salmon, lake trout and smelt, all year round by all legal methods;
- (2) The open season for taking smelt shall be June 16 through March 14;
- (3) The open season for taking salmon shall be April 1 through September 30;
- (4) The open season for taking lake trout shall be January 1 through September 30;
- (5) The daily bag limit for salmon and lake trout shall be no more than 2 fish whether 2 of a single species or one of each species;
- (6) The minimum length for salmon shall be 15 inches;
- (7) The daily limit for brook trout in open water shall be 5 fish or 5 pounds of fish whichever limit shall first be reached and 2 fish through the ice;
- (8) The minimum length for lake trout shall be 18 inches;
- (9) The daily limit for all other species shall be as provided in Fis 403; and
- (10) No more than 6 ice fishing devices shall be used to take fish while ice fishing, except that in addition a person may use 6 cusk fishing devices to take cusk as specified in Fis 405.04.

Amend Fis 406.05 effective 1/1/08 (Doc #9005), and amended effective 1/1/2009 (Doc 9249), by inserting new paragraph (h), to read as follows:

(h) The taking of fish from this waterbody, as referenced in Table 400.1 in Fis 406.01(d), shall be subject to the following restrictions:

- (1) The waterbody shall be open to the taking of all species, except salmon, lake trout and smelt, all year round by all legal methods;**
- (2) The open season for taking smelt shall be June 16 through March 14;**
- (3) The open season for taking salmon shall be April 1 through September 30;**
- (4) The open season for taking lake trout shall be January 1 through September 30;**
- (5) The daily bag limit for salmon and lake trout shall be no more than 2 fish whether 2 of a single species or one of each species;**
- (6) The minimum length for salmon shall be 15 inches;**
- (7) The daily limit for brook trout in open water shall be 5 fish or 5 pounds of fish whichever limit shall first be reached and 2 fish through the ice;**
- (8) The taking of black bass shall be subject to the following:**
 - a. From ice-in to ice-out:**
 - 1. The taking of black bass from 15 to 20 inches in length shall be prohibited; and**
 - 2. The daily limit of black bass shall be 3 fish, of which only one may be larger than 20 inches.**
 - b. From ice-out to May 14 and June 16 to June 30 the daily bag limit shall be 2 fish; and**
 - c. From July 1 to ice-in the daily bag limit shall be 5 fish;**
- (9) The minimum length for lake trout shall be 18 inches;**
- (10) The daily limit for all other species shall be as provided in Fis 403; and**
- (11) No more than 6 ice fishing devices shall be used to take fish while ice fishing, except that in addition a person may use 6 cusk fishing devices to take cusk as specified in Fis 405.04.**

Amend Fis 407.01(d) Table 400.2 Rivers and Steams Table, effective 1-1-06 (Doc #8442), as amended effective 1-1-07 (Doc #8671), as amended effective 1-1-08(Doc #9005) and as amended 1-1-09 (Doc #9249), by amending the rules on the Pemigewasset River, cited and to read as follows:

Fis 407.01 Applicability.

(d) The taking of fish from rivers and streams shall be in compliance with the restrictions set forth in the rules cited in Table 400.2, the Rivers and Streams Table, as follows:

Table 400.2 RIVERS AND STREAMS TABLE

STEAM/RIVER NAMES(S)	TOWN(S)	LIMITATIONS
Pemigewasset		
- from the headwaters to the Ayers Island Dam Route 104 bridge in Bristol/New Hampton	Ashland, Bridgewater, New Hampton, Bristol	Fis 407.02 (i)
-from the Route 104 bridge in Bristol/New Hampton to Ayers Island Dam	Bristol, New Hampton	Fis 407.03 (e)
- from the closed section below Ayers Island Dam to the Eastmans Falls Dam in Franklin	Bristol, Hill, New Hampton, Sanbornton, Franklin	Fis 407.03 (e)
- from the posts 150' below the Eastman Falls Dam in Franklin to the Route 3 and 11 bridge in Franklin	Franklin	Fis 407.03 (d)
- from the Route 3 and 11 bridge in Franklin to the confluence of the Pemigewasset River and the Winnepesaukee River	Franklin	Fis 407.03 (e)

Readopt Fis 407.03 (e) effective 1-1-08 (Doc #9005), as amended effective 1-1-09 (Doc #9249), cited and to read as follows:

Fis 407.03 Other Waters.

(e) The taking of fish from this waterbody as referenced from Table 400.2 in Fis 407.01(d) shall be subject to the following restrictions:

- (1) There shall be no closed season for all species except smelt;
- (2) The open season for salmon shall be year round except that salmon taken from October 1 through March 31 shall be immediately released;
- (3) Salmon shall be taken in accordance with Fis 411;
- (4) The daily limit for trout shall be 5 fish or 5 pounds of fish, whichever limit shall first be reached;

- (5) The taking of brook trout, lake trout, lake trout hybrids and salmon between 2 hours after sunset and one hour before sunrise shall be prohibited; and
- (6) The daily limit for all other species shall be as provided in Fis 403.

Amend Fis 502.081 (b)(2), effective 9-29-07 (Doc #8997), cited and to read as follows:

Fis 502.081 Wholesale Bait Sales Records.

(b) The dated bill of sale or record of transaction shall include:

- (2) The quantity ~~in quarts by species and an estimate of the number of fish per quart;~~

Readopt with amendment Fis 503.06, effective 1-1-05 (Doc #8119), as amended effective 8-30-08 (Doc #9250), and as amended effective 1-1-09 (Doc #9249) to read as follows:

Fis 503.06 Bass Tournament.

(a) In addition to the general restrictions specified in Fis 503.01 – Fis 503.05, bass tournaments shall also be subject to the following:

- (1) Black bass shall only be held in a functional live well;
- (2) Each participant shall not hold more than the daily limit of black bass;
- (3) Culling of black bass shall be permitted only during permitted bass tournaments;
- (4) Culled black bass shall be released immediately into the same body of water from which it was caught, and in a physical state as to reasonably insure its survival;
- (5) Black bass entered for the weigh – in at bass tournaments shall be released unharmed into the same water body where caught as follows:
 - a. In lakes and ponds not less than 300 feet away from shoreline; and
 - b. In rivers at mid-channel not less than 300 feet away from the weigh-in site; and
- (6) Boats designated by the bass tournament sponsor may hold more than the daily limit of black bass solely for the purpose of releasing black bass after weigh-in.

(7) There shall be no more than one weigh-in per calendar day in a bass tournament;

~~(7)~~ Bass tournaments held May 15 to June 15 shall be subject to the following:

- a. Black bass shall be immediately released at location of capture;
 - b. Prior to release, black bass may be quickly measured or weighed;
 - c. Black bass shall not be held in a live-well or otherwise retained longer than the time required for the fish to be measured or weighed prior to immediate release; and
 - d. Weigh-ins shall not be allowed during these tournaments.
- (b) Applications and issuance for bass tournaments shall subject to the following:
- (1) Applications for bass tournaments shall be accepted beginning October 1 for permits requested for the following year;
 - (2) Applications for each bass tournament event received between October 1 and December 1 shall be assigned a computer generated random number;
 - (3) Applications for each bass tournament event received after December 1 shall be issued a sequential number on a first come-first served basis; and
 - (4) When there are multiple requests for bass tournaments on the same date and waterbody, preference shall be given to the application(s) for a bass tournament or bass tournaments with the lowest assigned number(s).
- (c) Applicants for a bass tournament permit who are conducting club level events with 15 or less boats per event may list up to 12 club level events on one bass tournament application.
- (d) There shall be no fee for bass tournaments where all fish are measured or weighed at the location of capture and immediately released at the location of capture.
- (e) Bass tournaments held on Umbagog Lake, Province Lake, Balch Pond, Horn Pond, Great East Lake, Milton Watershed, Lower Kimball Pond and Spaulding Pond shall be subject to the following:
- (1) The minimum length of black bass shall be 12 inches;
 - (2) Black bass shall be taken only by artificial lures and flies;
 - (3) From April 1 through May 14 and June 16 through November 30 permittees may hold up to 3 black bass in a live well and submitted for the bass tournament; and
 - (4) From May 15 through June 15 all black bass shall be immediately released unharmed at the site of catch.
- (f) The number of boats participating in a permitted bass tournament shall not exceed the maximum number listed on the fishing tournament permit application.

Amend Fis 807.04 (e), effective 6-5-07 (Doc #8893), cited and to read as follows:

Fis 807.04 Conditions of the Inland Aquaculture License.

(e) Aquaculture licensees shall be subject to the requirements for importing and releasing fish under Fis 803 and 805 except that aquaculture licensees may stock brook trout, rainbow trout, or brown trout from their facility into ~~private manmade farm ponds~~ **non-public bodies of water that are closed systems** without a permit to release fish.

Readopt with amendment Fis 1104.04 and Fis 1104.07, effective 9-28-04 (Doc #8183), to read as follows:

Fis 1104.04 Bait Dealer's License.

(a) Applicants for the resident and non-resident wholesale or retail bait dealer's license under RSA 214:34 shall provide, in addition to the information required by RSA 214:8, the following:

- (1) The applicant's date of birth;
- (2) An indication as to which bait dealer's license is being applied for;
- (3) An indication as to whether the applicant will be buying bait from an out-of-state source;
- (4) An indication as to whether the applicant will net or trap bait;
- (5) The signature of a conservation officer **on the initial application only**; and
- (6) The signature of applicant subject to the penalties for making unsworn false statements under RSA 641:3.

Fis 1104.07 Importing Bait Fish.

(a) Applicants for a permit to import bait fish under RSA 214:34-d shall make application on a form which includes:

- (1) The date of application;
- (2) The quantity ~~in quarts~~ by species of bait fish to be imported per importation;
- (3) The name and address of the source the bait fish is to be imported from;
- (4) The location to which said bait fish will be delivered, and the date said delivery is to occur;
- (5) The name and location of the water of origin for the bait fish to be imported, except for the natal waters of origin specified in Fis 502.07(g); and
- (6) The permittee's bait dealer's license number, signature and address.

APPENDEX

Rule(s)	State Statute (RSA)	Federal Statute	Federal Regulation
Fis 401.011, 401.021, 401.031, 401.06, 401.151, 408.181, 403.03	206:10		
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