

COVER SHEET FOR FINAL PROPOSAL

Notice Number **2010-25**

Rule Number **Fis 602.06, 602.07, 602.18, 603.04, 604.02**

1. Agency Name & Address:

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

2. RSA Authority: **206:10; 211:62 I, II.**

3. Federal Authority: _____

4. Type of Action:

- Adoption
 - Amendment
 - Repeal
 - Readoption
 - Readoption with amendment
-

5. Short Title: **Fish and Game: Marine rules relative to gear restrictions, salters and the Winnicut River**

6. Contact person for copies and questions:

Name: Sandra Falicon

Title: Legislative/Rules Coordinator

Address:

NH Fish and Game Dept
11 Hazen Drive
Concord, NH 03301

Phone #: 603-271-3511

7. Yes No Agency requests Committee legal counsel review and delayed Committee review pursuant to RSA 541-A:12, I-a.

8. The rulemaking notice appeared in the Rulemaking Register on April 2, 2010.

**SEE THE INSTRUCTIONS--PLEASE SUBMIT 2 COPIES OF THIS COVER SHEET AND 2 COPIES OF THE FOLLOWING:
(and numbered correspondingly)**

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

10. The full text of the RSA passage granting rulemaking authority.

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

12. 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(e).

13. 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.

206:10 Powers and Duties. –

I. It shall be the duty of the executive director to function as the chief administrator of the commission and to protect, propagate and preserve the fish, game and wildlife resources of the state and to protect and conserve non-game birds of the state. The executive director shall, subject to the limitations hereinafter set forth, have the power and authority to adopt and enforce rules, pursuant to RSA 541-A, for the adequate and effective control, management, restoration, conservation, and regulation of the fish, game, bird and wildlife resources of the state, including rules designed to prohibit or otherwise regulate non-agricultural activities which may cause the introduction or spread of infectious disease in the state's wildlife resources. Such power and authority shall include the right to open and close the season for taking fish, game, birds, and wildlife, the right to fix the size, number and weight limits, and other conditions governing the method and manner of taking the same. Such power and authority may be exercised with reference to the state as a whole, or for any specified county or part thereof, or for any lake, pond, stream or part thereof.

II. [Repealed.]

III. [Repealed.]

IV. The executive director of the fish and game department, after notice and hearing pursuant to RSA 541-A, may impose an administrative fine not to exceed \$2,000 for each offense upon any person who violates any provision of this title, any rule adopted under this title, or the terms or conditions of any permit or contract entered into under the authority of this title. Rehearings and appeals from a decision of the executive director under this paragraph shall be in accordance with RSA 541. Any administrative fine imposed under this section shall not preclude the imposition of further penalties under this title. The proceeds of administrative fines levied pursuant to this paragraph shall be deposited into the fish and game reserve fund. The executive director shall adopt rules, under RSA 541-A, relative to:

(a) A schedule of administrative fines which may be imposed under this paragraph for violation of this title; and

(b) Procedures for notice and hearing prior to the imposition of an administrative fine consistent with RSA 541-A:16-21.

Source. 1935, 123:1. 1937, 188:1. 1941, 49:1. RL 240:10. RSA 206:10. 1975, 124:1. 1977, 111:3, 459:2. 1978, 40:3, II. 1979, 6:1; 104:2. 1981, 108:2; 568:130, I. 1985, 291:26. 1986, 214:18. 1993, 235:1. 1994, 62:1, eff. Jan. 1, 1995. 1998, 252:6, 9, eff. Aug. 24, 1998. 2003, 66:1, eff. July 26, 2003. 2006, 14:4, eff. July 1, 2006.

211:62 Authority for Regulating Taking, Inspection and Processing of Marine Species.

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I. Rules relating to the taking, inspection, and processing of marine species may be made by the executive director of the fish and game department with the approval of the fish and game commission, and upon the advice and cooperation of the advisory committee on marine fisheries.

II. The rules relating to marine species may include, but are not limited to, the following:

(a) The size, number, sex, and quantity that may be taken;

(b) The areas to be opened or closed to their taking;

(c) The manner of their taking;

(d) The transportation of marine species within and through the state of New Hampshire;

(e) The sale, inspection, and processing of marine species; and

(f) Appropriate definitions.

III. Existing rules shall continue in effect until the effective date of new rules adopted in accordance with RSA 541-A.

IV. Conservation officers shall have the authority granted to public health officers and agents under RSA 143:4; RSA 143:23 through 28; and RSA 146:20, for the purpose of enforcing laws and rules pertaining to marine species.

V. Rules pertaining to marine species managed under the Atlantic States Marine Fisheries Compact under RSA 213 shall be exempt from the rulemaking requirements of RSA 541-A. The executive director may adopt such rules after notice and hearing as determined by the executive director to be practicable. Rules adopted under this paragraph shall be filed with the director of legislative services and with the joint legislative committee on administrative rules.

Source. 1957, 251:1. 1959, 194:1. 1963, 320:1. 1967, 411:1. 1983, 229:1. 1990, 178:2. 1991, 229:7-9. 1995, 82:1, eff. July 15, 1995. 2004, 166:10, eff. May 24, 2004.

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Readopt with amendment Fis 602.06 and 602.07, effective 8-19-02 (Doc #7753), to read as follows:

Fis 602.06 Gill Netting Restriction.

(a) The taking, transporting or possessing of Atlantic cod, Atlantic wolffish, Atlantic halibut, ocean pout, haddock, pollock, white hake, redfish, American plaice, windowpane, witch, winter and yellowtail flounders shall be prohibited on board any boat rigged for gill netting not in accordance with 50 CFR 648.80(a)(3)(iii) and (iv).

(b) The mesh size referred to in paragraph (a) shall be measured in accordance with 50 CFR 648.80(f)(1).

(c) No person shall take any species of fish listed in Fis 602.06(a) by gill netting during April, May and June.

(d) Gill nets used for the taking of finfish, except as specified in (e), shall be subject to the following:

- (1) No more than 25 gill nets shall be used in state waters; and
- (2) Gill nets shall not be longer than 300 feet in length.

(e) Gill nets used for the taking of finfish from the waters of the Great Bay estuarine system inland of the Memorial Bridge in Portsmouth, Little Harbor and its tributaries inland of its most seaward jetty, Rye Harbor and its tributaries inland of its most seaward jetty, and inland of the Hampton Harbor Bridge shall be subject to the following:

- (1) Gill nets shall have a mesh size no larger than 3 inches;
- (2) Gill nets shall be no longer than 100 feet in length and no wider than 7 feet in width;
- (3) Gill netting shall only be permitted from April 16 through October 31;
- (4) Gill netting shall only be permitted between 2 hours before sunrise until 2 hours after sunset, except as provided in RSA 211:48-b; and
- (5) Any person using a gill net to take finfish shall be within unaided eyesight of the net. Unaided eyesight means unaided by devices such as binoculars or spotting scope.

Fis 602.07 Mobile Gear Restriction.

(a) The taking, transporting or possessing of Atlantic cod, Atlantic wolffish, Atlantic halibut, ocean pout, haddock, pollock, white hake, redfish, American plaice, windowpane, witch, winter and yellowtail flounders shall be prohibited on board any boat rigged for mobile gear, including but not limited to, purse seine, Scottish seine, beam trawl, midwater trawl, otter trawl, pair trawl, or drag seine in any form not in accordance with 50 CFR 648.80 (a)(3)(i) - (iii).

(b) The mesh openings referred to in paragraph (a) shall be measured in accordance with 50 CFR 648.80 (f)(2).

Readopt Fis 602.18 effective 8-19-02 (Doc #7753), as cited to read as follows:

Fis 602.18 Hook Vessel Restrictions.

(a) "Hook gear" means fishing gear that is comprised of a hook or hooks attached to a line and includes but is not limited to longline, setline, jigs, troll line, rod and reel and line trawl.

(b) Any vessel commercially rigged for hook gear shall:

- (1) Use circle hooks of size 12/0 when using bait;
- (2) Not use more than 800 circle hooks; and
- (3) Have fairlead rollers that have at least 6 inch spacing between the rollers.

(c) No person shall take commercially, any species of fish listed in Fis 602.06(a) by hook gear during April, May, and June.

Readopt with amendment Fis 603.04, effective 5-27-04 (Doc #8087) and amended 6-21-07 (Doc #8913), to read as follows:

Fis 603.04 Salters.

(a) "Salters" means any species of trout which spends part of its life cycle in brackish or salt water under the jurisdiction of the state.

(b) Taking of salters shall be done by angling, as defined in RSA 207:1, I, and only by anglers licensed under RSA 214:1, except as follows:

- (1) Berry Brook shall be closed to all fishing inland of, but not including, the Brackett Road bridge to the beginning of the prominent large rock area in the brook located at the edge of where the marsh and woods meet from March 2 through August 15;
- (2) Fishing in Berry Brook shall be permitted during the open season, August 16 through March 1, by single hook artificial lures and flies only; and
- (3) The area from the beginning of the prominent large rock area in the brook located at the edge of where the marsh and woods meet, upstream to Sagamore Road shall be closed to all fishing all year.

(c) The daily creel limit shall be one fish except as provided in Fis 604.02.

(d) There shall be no closed season for the taking of salters, except in those areas described in Fis 603.04(b).

Readopt with amendment Fis 604.02 effective 10-22-08 (Doc #9299), to read as follows:

Fis 604.02 Winnicut River.

(a) The Winnicut River in Greenland from the Rte. 33 bridge to the south side of the Boston and Maine railroad bridge over the Winnicut River shall be subject to the following restrictions:

(1) Open to the taking of all species of fish by angling only except above and below the fish ladder as provided in Fis 602.02(a)(7); and

(2) The taking of salters as defined in Fis 603.04, shall be subject to the following:

a. There shall be no closed season; and

b. The daily limit of salters taken in this portion of the Winnicut River shall not exceed 5 fish or 5 pounds and shall be included in the freshwater brook trout limit as in Fis 403.11.

APPENDIX

Rule(s)	State Statute (RSA)	Federal Statute	Federal Regulation
Fis 602.06	RSA 211:62		
Fis 602.07	RSA 211:62	16 USC 1801	50 CFR 648
Fis 602.18	RSA 211:62	16 USC 1801	50 CFR 648
Fis 603.04	RSA 206:10 and RSA 211:62		
Fis 604.02	RSA 206:10 and RSA 211:62		