RULEMAKING NOTICE FORM

Notice Number	Rule Number **Fis 402.07, 601.01- 601.04, 602.01-.04, 603.03, 603.06, 603.09, 603.17, 604.01, 605.02, 605.03, 606.06, 607.04 and 611.01**

1. Agency Name & Address:

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

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

3. Federal Authority:

4. Type of Action:

Adoption	
Amendment	
Repeal	
Readoption	**XX**
Readoption w/amendment	**XX**

5. Short Title: **Fish and Game Dept – Wiswall Dam fishway closure; groundfish spawning closure; and readoption of various marine rules**

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

The Department is proposing to:

Readopt with amendment Fis 402.07 to close the freshwater in the area 50' above the Wiswall Dam on the Lamprey River in Durham year round and 200' below the dam April 1 through July 31;

Readopt with amendment Fis 603.09 to close the portion of the Gulf of Maine Cod Spawning Protection Area described in 50 CFR 648.81 (o) (1) that is in the jurisdiction of the state to the taking and possession of groundfish.

Readopt with no change the following definitions for coastal waters: Fis 601.01 "Coastal and estuarine waters", Fis 601.02 "Net", Fis 601.03 "Seine" and Fis 601.04 "Weir";

Readopt with no change Fis 602.01 relative to the prohibition for the closing off streams in the coastal and estuarine waters; Fis 602.02 relative to the closed areas around fishways in the estuarine waters; Fis 602.03 relative to the import, export, transport and release of marine species; Fis 602.04 relative to the prohibition for dumping of fish; Fis 603.03 relative to the taking of salmon and Fis 603.06 relative to the taking of smelt in coastal and estuarine waters; Fis 603.17 relative to the taking of sea urchins; Fis 604.01 relative to the fishing restrictions on Berry Brook; Fis 605.02 relative to the identification of oyster containers, Fis 605.03 relative to the taking of certain oysters; Fis 606.06 relative to the taking of clam worms; Fis 607.04 relative to the taking of whelks; and Fis 611.01 relative to seaweed.

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

These rules will affect persons taking marine species as well as persons fishing in the freshwater section of the Lamprey River near Wiswall Dam in Durham.

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 402.07	RSA 206:10		
Fis 601.01- 601.04	RSA 211:62		
Fis 602.01	RSA 211:62		
Fis 602.02	RSA 206:10 and RSA 211:62		
Fis 602.03	RSA 207:14 and RSA 211:62		
Fis 602.04	RSA 206:10 and RSA 211:62		
Fis 603.03	RSA 206:10 and RSA 211:62		
Fis 603.06, 603.09, 603.17, 604.01	RSA 211:62		
Fis 605.02, 605.03	RSA 211:62 and RSA 211:62-a		
Fis 606.06	RSA 211:62 and RSA 211:64-b		
Fis 607.04	RSA 211:62		
Fis 611.01	RSA 211:62 and RSA 207:48 through 207:54		

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: 2012 various 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: **January 17, 2012**

☒Fax ☒E-mail ☐Other format (specify):

9. Public hearing scheduled for:

Date and Time: **January 3, 2012 7 pm**

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

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

FIS # **11:166** , dated **11/9/11**

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):
   There is no difference in cost when comparing proposed rules to existing rules.

2. Cite the Federal mandate. Identify the impact on state funds:
   While there is no Federal mandate, the Department is proposing to close the state portion of the cod spawning area so that it is compatible with the closure in Federal waters. There is 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 with amendment of Fis 402.07, 603.09 and readoption of Fis 601.01-601.04, 602.01-.04, 603.03, 603.06, 603.17, 604.01, 605.02, 605.03, 606.06, 607.04 and 611.01 relating to the Lamprey River and various marine fisheries 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 with amendment Fis 402.07, effective 1-1-04 Doc #7926), as amended effective 3-7-09 (Doc #9405), to read as follows:

Fis 402.07 Fishways Closed.

(a) In addition to the restrictions and closures specified in Fis 602.02 the waters surrounding any dam which contains a fishway shall be closed to all fishing as described below:

(1) The Merrimack River as follows:

a. The Amoskeag Dam in Manchester shall be closed to all fishing from the upstream side of the Amoskeag dam to the upstream side of the Amoskeag bridge and the area between the west bank of the river and the island adjacent to the powerhouse for a distance of 500' downstream from the Amoskeag powerhouse and fishway entrance; and

b. The Garvins Falls Dam in Bow shall be closed to all fishing from below the Garvins Falls canal wall, including the fish bypass plunge pool, to a point 300' downstream to the main river;

(2) The Nashua River as follows:

a. Jackson Mills Dam in Nashua shall be closed to all fishing in the waters between 200 feet above and 200 feet below the dam; and

b. Mine Falls Dam in Nashua shall be closed to all fishing in the waters 200 feet below the dam; and

(3) The Pemigewasset River shall be closed to all fishing as follows:

a. From the Ayers Island Dam in Bristol to a point 300 feet downstream delineated by posts set above the high water mark on each bank of the river; and

b. The Eastman Falls Dam in Franklin shall be closed to all fishing 150 feet downstream marked with posts on both sides of the river**; and**~~.~~

(4) The Lamprey River as follows:

a. The Wiswall Dam in Durham shall be closed to all fishing in the waters 50 feet above the Wiswall Dam year round and closed to all fishing 200 feet below Wiswall Dam between April 1 and July 31.

Readopt Fis 601.01, 601.02, 601.03, 601.04, and 602.01, effective 5-27-04 (Doc #8087), to read as follows:

Fis 601.01 "Coastal and estuarine waters" means all waters within the rise and fall of the tide, and water below any fishway or dam which is normally the dividing line between tide water and fresh water, or below any tidal bound which has been legally established in streams flowing into the sea under the jurisdiction of the state.

Fis 601.02 "Net" means any open fabric constructed of materials such as but not limited to string, cord, thread, wire, knotted or woven together in such a way as to be capable of entraining or entrapping fin fish.

Fis 601.03 "Seine" means the same thing as "net".

Fis 601.04 "Weir" means a fixed position fish trap consisting of a lead of net strung from poles, usually wooden, with a pocket of net within which the fish are contained.

Fis 602.01 Closing Off Streams.

(a) No person, or combination of persons, shall set or arrange a weir or net in any river or stream at any time to extend greater than from one shoreline to the thread or middle line of the stream.

(b) No person shall set a weir or net within 1000' of another net. The distance between nets shall be measured in linear feet along the thread of the stream.

(c) The above requirements shall not apply to the so-called bow net fishery conducted on the ice for smelt.

Readopt Fis 602.02, effective 5-27-04 (Doc #8087), as amended effective 6-21-07 (Doc #8913), as and amended effective 1-2-08 (Doc #9056), to read as follows:

Fis 602.02 Fishways Closed.

(a) In addition to the restrictions and closures specified in Fis 402.07 the waters surrounding any dam which contains a fishway shall be closed to all fishing as described below:

(1) Lamprey River - Closed to all fishing from the upstream side of the Route 108 Bridge to 275 feet below the downstream side of the Macallen dam, tidal water, in the town of Newmarket;

(2) Exeter River - Closed to all fishing from the upstream side of the High Street Bridge to the downstream side of the Chestnut Street String Bridge, on the Squamscott River, in the town of Exeter;

(3) Exeter River - Closed to all fishing from the upstream side of the Pickpocket Dam and fishway including a 50 foot radius in front of the fishway on the upstream side to the downstream side of the Cross Roads Bridge in the towns of Brentwood and Exeter;

(4) Taylor River - Closed to all fishing from the upstream side of the fishway and dams including a 50 foot radius in front of the fishway on the upstream side to a line perpendicular to the south end of the south overflow culvert on Route 95 to the opposite side of the river, east;

(5) Cocheco River - Closed to all fishing from the upstream side of the Central Avenue Bridge to the downstream side of the Washington Street Bridge in the town of Dover;

(6) Oyster River - Closed to all fishing from the upstream side of the dam and fishway, including a 50 foot radius in front of the fishway on the upstream side to the downstream side of Route 108 bridge in the town of Durham; and

(7) Winnicut River - closed to all fishing within a 25 foot radius in the front of the fishway downstream in the tidal waters and within a 6 foot radius in front of the fishway opening upstream.

(8) Salmon Falls River – closed to all fishing from the upstream side of the Route 4 Bridge to 150 feet downstream of South Berwick dam in the town of Rollinsford.

(b) American eels (*Anguilla rostrata*), may be taken by use of traps, pots, or spears, within the tidal portions of the areas described in Fis 602.02(a) from June 15 to October 1.

(c) No person shall be on or in a fishway without written permission from the executive director or his agent. The request for permission shall be made in writing and shall include the purpose of the request. A valid request shall be for activities such as scientific research or maintenance.

(d) No person or persons shall take fin fish in fishways.

Readopt Fis 602.03, 602.04, 603.03, 603.04 and 603.06, effective 5-27-04 (Doc #8087), to read as follows:

Fis 602.03 Import, Export, Transport and Release.

(a) No person shall bring, or have brought, into the state, nor transport, or caused to be transported, from the state to any other state or country, nor take from one point within the state to any other point within the state, any living marine plant, or marine animal, for release, without first procuring written permission to do so from the director.

(b) Applicants shall request permission in writing and shall include the name of the species involved, when and where the release shall occur, the names of the persons involved, and an explanation of why the release is necessary. Permission shall be granted if the director determines no adverse environmental harm will occur.

Fis 602.04 Dumping of Fish.

(a) No person on any commercial fishing vessel or party/charter vessel shall deposit upon the shores, in the bays, harbors or rivers of the state any dead fish, or parts thereof, or fish smothered or injured to such an extent that they will die.

(b) Nothing in this section shall be construed to restrict the use of fish, or parts thereof, for chum or bait.

Fis 603.03 Salmon.

(a) The taking of any species of sea-run salmon, which spends part of its life cycle in fresh, brackish or salt water under the jurisdiction of the state, shall be permitted. Such taking shall be done only by angling, as described in RSA 207:1, I, and only by anglers licensed under RSA 214:1.

(b) Any salmon taken by any method not described in RSA 207:1, I, shall be immediately released back into the waters from which it was taken.

(c) The daily bag limit shall be 2 fish.

(d) Salmon less than 15 inches long shall not be taken.

(e) Snagging or foul-hooking of salmon shall be prohibited, and any salmon foul-hooked or snagged shall be immediately released unharmed.

(f) Salmon shall not be taken through the ice.

Fis 603.06 Smelt.

(a) Taking of salt water smelt, by use of net or weir, shall not be permitted between March 1 and December 15, in the waters under the jurisdiction of the state which lie north of the so-called Memorial Bridge in Portsmouth.

(b) The daily limit for smelt taken by any method from coastal and estuarine waters shall be 10 quarts liquid measure of whole, head and tail intact, smelt.

Readopt with amendment Fis 603.09, effective 10-26-10 (Doc #9805), 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

Fish Species	Minimum Total Length Limit
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

Fish Species	Minimum Total Length Limit
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 recreational fishing only when no fishing method other than recreational fishing has been employed during the trip.

(f) Fillets of all groundfish species 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) The waters of the state that are included in the Gulf of Maine Cod Spawning Protection Area described in 50 CFR 648.81 (o) (1) shall be:

(1) Closed to all fishing from April 1 through June 30, except by:

a. Fishing with a line in hand or rod in hand with gear that has no weights, weighted hooks, or weighted lines attached; and

b. Commercial vessels using gear described in 50 CFR 648.2;

(2) Closed to the taking and possession of groundfish, as defined in Fis 601.08, from April 1 through June 30 except possession is permitted only if transiting the area with groundfish caught outside the Gulf of Maine Cod Spawning Protection Area and provided:

a. Commercial vessels have gear stowed in accordance with the provisions of 50 CFR 648.23 (b); and

b. Private recreational or charter/party vessels that have all bait and hooks removed from fishing rods or handlines and the groundfish species on board have been gutted.

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

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

(~~l~~**m**) The taking of winter flounder by recreational 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~~**n**) 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) 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; and

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

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

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

(~~q~~**r**) No person shall take or possess Atlantic wolffish.

Readopt Fis 603.17, 604.01, 605.02, 605.03, 606.06, 607.04 and 611.01, effective 5-27-04 (Doc #8087), to read as follows:

Fis 603.17 Sea Urchins.

(a) No person shall take or possess sea urchins (*Strongylocentrotus droebachiensis*) having shells less than 2 inches in the longest diameter, exclusive of spines, to an amount of more than 5 percent of any bulk pile.

(b) The 5 percent tolerance shall be determined by numerical count of not less than one peck nor more than 3 pecks taken at random from various parts of the bulk pile or by the entire pile if it is less than one peck. Sublegal sea urchins shall be culled immediately after capture and returned immediately to the sea.

(c) Sea urchins shall only be taken as follows:

(1) By hand or by pot from October 1 through March 15; or

(2) By a single sled from December 15 through March 15 as follows:

a. The effective fishing width of the sled shall be 48 inches or less;

b. The sled shall consist of a metal frame, 4 feet wide or less, followed by a checkerboard sweep either of twine or 1/4 inch chain;

c. The sweep shall be 36 inches or less in length with a maximum of 7 inch mesh, followed by a twine bag;

d. A tow bar shall be welded to the front of the frame with straps spaced to act as runners;

e. The sled shall not be used in the following waters:

1. The Great Bay estuarine system inland of the Memorial Bridge in Portsmouth;

2. Little Harbor and its tributaries inland of its most seaward jetty;

3. Rye Harbor and its tributaries inland of its most seaward jetty; and

4. Inland of the Hampton Harbor Bridge; and

(3) No possession of other marine species including lobsters, finfish or shellfish shall be allowed.

(d) No person shall take or possess sea urchins from March 16 to September 30.

Fis 604.01 Berry Brook. Berry Brook in Rye shall be subject to the same provisions specified in Fis 603.04.

Fis 605.02 Identification of Oyster Containers.

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

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

Fis 605.03 Restriction on Certain Taking.

(a) No person shall transplant oysters, or take the eggs or larvae thereof, or take metamorphosed oysters, called "set" or "spat", without first obtaining written permission from the director. Applicants shall request permission in writing and shall include origin of the oysters, the transplant site, the names of people involved, and why the transplanting or taking of eggs, larvae or spat is necessary. Permission shall be granted if the director determines no adverse environmental harm will occur.

(b) Nothing in this section shall prohibit a properly licensed person who is observing all provisions of this part, from engaging in the practice known as cleansing.

Fis 606.06 Clam Worms.

(a) Residents shall be permitted to take clam worms as provided in RSA 211:64-b.

(b) Properly licensed diggers shall be permitted to take clam worms for sale or use, except in areas posted as closed to all digging.

(c) There shall be no limits on size or quantity of worms taken under paragraph (b) above.

(d) Clam worms shall be dug only with hand held tools with handle lengths not to exceed 18 inches.

Fis 607.04 Waved Whelk (*Buccinmum undatum*) and Stimpson's Whelk (*Colus stimpsoni*).

(a) Persons taking whelks for purposes of sale shall be subject to the following:

(1) One pot, trap or other contrivance for taking or holding whelks shall be fished on a single line and buoy;

(2) When pots, traps, or other contrivances are set on trawls, buoys plainly marked shall be set on both ends of the trawl;

(3) Each buoy and trap shall be permanently marked with the letter "W" and the first initial and complete last name of the licensee;

(4) No person shall raise, haul, or transfer any whelk trap from any coastal waters from sunset to one hour before sunrise; and

(5) No person shall possess any whelk with an overall shell length of less than 2.5 inches.

(b) The provisions of (a)(3),above, shall not apply to the by-catch of whelks taken from lobster traps by licensed lobster fishermen.

(c) Persons taking whelks for personal use and not for sale shall be subject to the following:

(1) Only residents shall take whelks;

(2) Persons shall take no more than 5 whelks per day; and

(3) The minimum shell height for whelks shall be 2.5 inches.

Fis 611.01 Seaweeds or Marine Plants.

(a) "Seaweeds" means any marine algae in the classes Chlorophyceae, Xanthophyceae, Phaeophytaceae, and Rhodophyceae including rockweeds and sea moss.

(b) The collection of seaweeds shall be in accordance with RSA 207:48 through RSA 207:54.

APPENDIX

Rule(s)	**State Statute (RSA)**	**Federal Statute**	**Federal Regulation**
Fis 402.07	RSA 206:10		
Fis 601.01- 601.04	RSA 211:62		
Fis 602.01	RSA 211:62		
Fis 602.02	RSA 206:10 and RSA 211:62		
Fis 602.03	RSA 207:14 and RSA 211:62		
Fis 602.04	RSA 206:10 and RSA 211:62		
Fis 603.03	RSA 206:10 and RSA 211:62		
Fis 603.06, 603.09, 603.17, 604.01	RSA 211:62		
Fis 605.02, 605.03	RSA 211:62 and RSA 211:62-a		
Fis 606.06	RSA 211:62 and RSA 211:64-b		
Fis 607.04	RSA 211:62		
Fis 611.01	RSA 211:62 and RSA 207:48 through 207:54		