CHAPTER Fis 1000 CONSERVATION OF THREATENED AND ENDANGERED SPECIES

**Readopt Fis 1001.01 to Fis 1001.05, eff. 4-18-17 (Doc #12161), cited and to read as follows:**

PART Fis 1001 PROTECTED SPECIES

Fis 1001.01 Endangered.

(a) Under the authority of RSA 212-A: 6, IV(a), the following species, listed by common and scientific names, shall be considered endangered throughout its entire range within the state:

Table 1000.1 Endangered Species

| Common Name | Scientific Name |
|---|---|
| Dwarf wedgemussel | *Alasmidonta heterodon* |
| Brook floater mussel | *Alasmidonta varicosa* |
| Cobblestone tiger beetle | *Cicindela marginipennis* |
| Puritan tiger beetle | *Cicindela puritana* |
| Frosted elfin butterfly | *Callophrys irus* |
| Karner blue butterfly | *Lycaeides melissa samuelis* |
| White Mountain fritillary | *Boloria titania montinus* |
| Persius duskywing skipper | *Erynnis persius* |
| Rusty Patched Bumblebee | *Bombus affinis* |
| American brook lamprey | *Lethenteron appendix* |
| Shortnose sturgeon | *Acipenser brevirostrum* |
| Marbled salamander | *Ambystoma opacum* |
| Blanding's turtle | *Emydoidea blandingii* |
| Eastern box turtle | *Terrapene carolina* |
| Eastern hognose snake | *Heterodon platirhinos* |
| Timber rattlesnake | *Crotalus horridus* |
| Northern harrier | *Circus cyaneus* |
| Golden eagle | *Aquila chrysaetos* |
| Common nighthawk | *Chordeiles minor* |
| Piping plover | *Charadrius melodus* |
| Upland sandpiper | *Bartramia longicauda* |
| Roseate tern | *Sterna dougallii* |
| Least tern | *Sterna antillarum* |
| Eastern small-footed bat | *Myotis leibii* |
| Little brown bat | *Myotis lucifugus* |
| Northern long-eared bat | *Myotis septentrionalis* |
| Tri-colored bat | *Perimyotis subflavus* |
| New England cottontail | *Sylvilagus transitionalis* |
| Canada lynx | *Lynx canadensis* |
| Eastern wolf | *Canis lupus* |

Fis 1001.02 Threatened.

(a) Under the authority of RSA 212-A: 6, IV (a), the following species, listed by common and scientific names in Table 1000.2 shall be considered threatened throughout its entire range within the state:

Table 1000.2 Threatened Species

| Common Name | Scientific Name |
|---|---|
| Eastern pond mussel | *Ligumia nasuta* |
| Pine pinion moth | *Lithophane lepida lepida* |
| Ringed boghaunter | *Williamsonia lintneri* |
| White Mountain arctic | *Oeneis melissa semidea* |
| Hessel's hairstreak | *Callophrys hesseli* |
| Bridle shiner | *Notropis bifrenatus* |
| Atlantic sturgeon | *Acipenser oxyrinchus* |
| Round whitefish | *Prosopium cylindraceum* |
| Fowler's toad | *Anaxyrus fowleri* |
| Spotted turtle | *Clemmys guttata* |
| Black racer | *Coluber constrictor* |
| Pied-billed grebe | *Podilymbus podiceps* |
| Common loon | *Gavia immer* |
| Peregrine falcon | *Falco peregrinus* |
| Common tern | *Sterna hirundo* |
| Red knot | *Calidris canutus* |
| Cliff swallow | *Petrochelidon pyrrhonota* |
| Purple martin | *Progne subis* |
| Cerulean warbler | *Setophaga cerulea* |
| Eastern meadowlark | *Sturnella magna* |
| Grasshopper Sparrow | *Ammodramus savannarum* |

Fis 1001.03 Scientific Permit to Take Endangered or Threatened Wildlife.

(a) For the purpose of this section, "scientific purposes" means the identification, study, inventory, distribution, classification, restoration, and-management of endangered wildlife, threatened wildlife, or both.

(b) In accordance with RSA 212-A:7, II the executive director shall issue a scientific permit to take endangered wildlife species as specified in Fis 1001.01 or threatened wildlife species as specified in Fis l001.02 for scientific purposes based upon a finding that the activity:

(1) Will not diminish the viability of the population of the species; -

(2) Utilizes methods which minimize the number of individuals to be taken; and

(3) Will provide the department with information or data useful for the management of the species.

(c) Applicants for a permit to take for scientific purposes endangered wildlife, threatened wildlife, or both shall make a written request to the executive director that includes the following information:

(1) Name, address, telephone number, and email contact information for the applicant;

(2) The organization, agency, or institution with which the applicant is affiliated, if any;

(3) Scope of the proposed activity and reason for proposed scientific study;

(4) The species to be taken and methods of take;

(5) The maximum number of individuals of each species to be taken;

(6) The location(s) from which the taking shall occur; and

(7) The intended disposition of all specimens taken.

(d) A scientific permit to take endangered wildlife, threatened wildlife, or both shall be a letter of authorization from the executive director that includes the following:

(1) The name and address of the permittee;

(2) The species authorized to be taken;

(3) The number of individuals of each species authorized;

(4) The disposition of the specimens;

(5) The time period during which the permit shall be valid;

(6) Methods of take;

(7) Other requirements as necessary to protect the species; and

(8) The signature of the executive director.

(e) By January 31 of the year following the each calendar year for which they hold a permit, permittees shall file a written progress report of the study with the executive director which includes:

(1) The species;

(2) The number of individuals taken;

(3) The date and location where species were taken;

(4) The disposition of the individuals; and

(5) Other results of the study, including a final report of findings upon completion of the research and other data as required by the permit.

Fis 1001.04 Research Notification.

(a) Any individual, agency, organization, or institution intending to undertake field research in New Hampshire on any wildlife listed as endangered as specified in Fis 1001.01 or threatened as specified in Fis 1001.02 which does not involve capture or taking of specimens shall specify in writing to the executive

director the species, nature, location, and time period of such research, and the names of the principal investigator(s).

(b) The principal investigator(s) shall file with the executive director an annual summary of progress by January 31 of the year following the calendar year for which they hold a permit and a final report of findings upon completion of the research.

Fis 1001.05 Bats in Structures.

(a) Except as set forth in this section, no person shall take a bat listed in Fis 1001.01 or Fis 1001.02.

(b) Between the dates of May 15 and August 15, inclusive, in any year, no bat listed in Fis 1001.01 or Fis 1001.02 shall be removed or excluded from any structure occupied by humans or livestock unless:

(1) Action is taken pursuant to (c) below;

(2) Between the dates of May 15 and August 15, inclusive, in any year a licensed wildlife control operator reports in writing to the department that no bat pups were present in the structure at the time removal or exclusion techniques were employed; or

(3) Between the dates of August 1 and August 15, inclusive, in any year a licensed wildlife control operator reports in writing to the department that bat pups were observed flying for two weeks or more prior to the time removal or exclusion techniques were employed.

(c) Pursuant to RSA 212-A:7, II and 50 C.F.R. Part 17.40(o), individual bats, including those listed in Fis 1001.01 and Fis 1001.02 above, may be removed or excluded at any time from -any man-made structure in order to:

(1) Protect the health and safety of the occupant(s);

(2) Prevent the transmission of disease; or

(3) To comply with the requirements of 21 U.S.C. Section 331, et. seq. and regulations at 21 C.F.R. Part 507.17 and 507.19 designed to prevent the contamination of food or agricultural products meant for human or animal

(d) Unless acting pursuant to Fis 1001.05 (c), bats shall be controlled exclusively by exclusion techniques.

(e) All persons acting to exclude bats shall do so in accordance with the publication "Acceptable Management Practices for Bat Control Activities in Structures - A Guide for Nuisance Wildlife Control Operators", dated April 1, 2015, available as noted in Appendix A.

(f) Any action taken by a wildlife control operator licensed pursuant to Fis 308 on a bat shall be reported to the department as required by Fis 308.06, including information as to whether the specimen was transmitted to the Department of Health and Human Services for testing, and the result of the test.

**Adopt Fis 1002 through Fis 1005 to read as follows:**

PART Fis 1002 DEFINITIONS

Fis 1002.01 "Action Area" means all areas of land and waters to be affected directly or indirectly by the proposed action, approval, permit or other written authorization under review, and not merely the immediate area actually disturbed or altered by the proposed action.

Fis 1002.02 "Applicant" means any person or legal entity who seeks a permit, approval, or other written authorization from a state agency as a prerequisite to conducting a proposed action.

Fis 1002.03 "Agent" means a person who has been duly authorized in writing by an applicant, owner, or permit holder, as applicable, to interact with the department regarding the action, approval, permit, or other authorization under review.

Fis 1002.04 "Conservation measures" means actions which serve to avoid, minimize, or mitigate potential adverse impacts to, and to promote the recovery of or enhance the survival of, threatened or endangered species.

Fis 1002.05 "Consultation" means the review by department staff of a proposed action as a condition of a required state agency permit, approval, or other written authorization in order to evaluate potential adverse impacts of the proposed action to threatened and endangered species, and the need for conservation measures to avoid, minimize, or mitigate such adverse impacts.

Fis 1002.06 "Department" means the New Hampshire Fish and Game Department.

Fis 1002.07 "Habitat determined to be critical" means a geographical area of land or waters designated by the executive director of the department that currently or historically provide(s) physical or biological features essential to the conservation of an endangered or threatened species and may require the deployment of conservation measures to avoid, minimize, or mitigate adverse impacts to threatened and endangered species.

Fis 1002.08 "Harm" means any act which kills or injures individuals of a threatened or endangered species, or which acts to destroy, degrade, or adversely modify the habitat supporting the species by interfering with breeding, hibernation, reproduction, feeding, sheltering, migration or overwintering behaviors that are a part of the species' normal or traditional life cycle and that are essential to its survival and perpetuation.

Fis 1002.09 "Jeopardize the continued existence of" means to engage in an action that reasonably would be expected, directly or indirectly, to reduce the likelihood of both the survival and recovery of a threatened or endangered species' population by reducing the reproduction, numbers, or distribution of that species.

Fis 1002.10 "NHB DataCheck tool" means an online data screening tool provided by the department of environmental services and the natural heritage bureau of the department of natural and cultural resources where the public can screen for known locations of rare species and exemplary natural communities.

Fis 1002.11 "Owner" means the person or legal entity who holds record title to the real property on which the work that is the subject of the action, approval, permit or other written authorization under review has occurred or is proposed to occur.

Fis 1002.12 "Project Parcel" means the real property of an owner on which the work that is the subject of the proposed action, approval, permit or other written authorization under review has occurred or is proposed to occur.

PART Fis 1003 STANDARDS APPLICABLE TO ALL PROJECTS

Fis 1003.01 Avoidance of Harm. Pursuant to RSA 212-A:9, III, all persons implementing any permit, approval, or written authorization provided by a New Hampshire state agency shall take reasonable and prudent action to avoid, minimize, or mitigate harm to threatened and endangered species, or other potential adverse impacts to wildlife.

Fis 1003.02 General Requirements.

(a) All personnel at a site shall comply with all terms, conditions, and stipulations in regulatory permits and other written project authorizations to eliminate or reduce potential adverse impacts to endangered and threatened species.

(b) All permit holders shall be under a continuing duty to report the take of any threatened or endangered species, regardless of the cause, and regardless of whether the take was intentional, to the NH fish and game department immediately at NHFGreview@wildlife.nh.gov, or by phone at 603-271-2461.

(c) Following a report of take, all permit holders shall be under a continuing duty to preserve any remains of a threatened and endangered species, unless otherwise instructed by staff of the department.

(d) All permit holders shall permit staff of the department to access a permitted site in order to investigate reports of sightings, take, or other impact to threatened and endangered species.

(e) Any permit condition(s) or other requirement(s) relative to implementing and maintaining permanent methods of protecting threatened and endangered species shall survive the expiration of the underlying permit and any suspension, revocation, or refusal to renew the underlying permit.

(f) The consideration or grant of a permit by a referring state agency, whether or not in accordance with any recommendations made by the department, shall not limit the department in the exercise of any authority granted to it by law.

PART Fis 1004 CONSULTATION

Fis 1004.01 Consultation Pursuant to RSA 212-A: 9, III, an applicant, as herein defined, shall request site specific consultation with the department if required by a state agency as part of a request for issuance of a permit, approval, or other written authorization from that state agency.

Fis 1004.02 Calculation of Time.

(a) Any deadline or time period established in these rules shall be computed in accordance with RSA 21:35, provided that a deadline or time period established by statute shall be extended only if the statute expressly provides for such an extension.

Fis 1004.03 Information Required for Consultation.

(a) In all cases where consultation is required, all information shall be provided to the department in electronic format at wildlife@wildlife.nh.gov , or in paper format at:

NH Fish and Game Department
Attn. Wildlife Division, Nongame Program
11 Hazen Drive
Concord, N.H. 03301

(b) In all communications, the NHB DataCheck tool results letter number shall be included in the email subject line and documents.

(c) The following information shall be provided to the department:

(1) A checklist, setting forth all of the information required to commence a site specific consultation, is available from the department at wildlife@wildlife.nh.gov .

(2) The checklist shall be completed, showing which information is present, and which is absent.

(3) A copy of the department of natural and cultural resources NHB DataCheck results letter, dated within one year of the date of the consultation request, and which includes the DataCheck search number;

(4) The applicant's full name;

(5) The applicant’s mailing address;

(6) The applicant’s telephone number and email address to be used for the purpose of contact;

(7) If the applicant is a corporation, firm, partnership, association, institution, or public or private agency, the name, mailing address, and email address of the person who will respond to requests for information on behalf of the applicant;

(8) The name, mailing address, and email address of any person acting as an agent of the applicant, or any consultant who will submit information to the department on behalf of the applicant.

(9) Description of the proposed action;

(10) Description of the project parcel by reference to street address and town, and a geographical information system defined project boundary, if feasible;

(11) A listing of any state or federal permits which have been applied for, have been granted, or which will be necessary for the proposed action to proceed;

(12) The current condition of the action area prior to any proposed modifications, including a description of actions within the preceding 24 months that have altered the site, including but not limited to, timber harvests, significant impact from storms, removal of gravel or stone, or addition or removal of structures;

(13) Any habitat features supporting or that could support threatened and endangered species that have been identified; and

(14) A description of any conservation measures proposed by the applicant to avoid, minimize, or mitigate potential harm to threatened and endangered species and habitat determined to be critical, including but not limited to:

a. Design modifications to proposed actions to protect species from harm.

b. Modifications to proposed actions such as alteration of the timing of proposed actions to protect species from harm;

c. Design crossing structures to maintain and enhance habitat quality and accommodate movement of species;

d. Education and training for construction personnel as to what construction activities have the potential to cause adverse impacts to species;

e. Signage to identify specific locations where construction activities must avoid potential adverse impacts to species;

f. Continued research and monitoring of identified species;

g. Protection or restoration of wildlife corridors;

h. Maintenance, enhancement, or protection of habitat buffer areas; or

i. Habitat protection, management, or restoration.

(d) An applicant seeking consultation to meet permit requirements under Env-Wt 311, Env-Wq 1406.06, or Env-Wq 1502.02, shall provide the following additional information to the department to initiate consultation:

(1) A topographic map identifying the action area at a scale of 1:24,000 or closer, and which shows property lines and the limits of proposed disturbance;

(2) An aerial photograph identifying the current condition of the action area at a scale of 1:24,000 or closer and which shows property lines and the limits of proposed disturbance;

(3) Site photographs with a photograph location plan, showing existing conditions, habitat features, and possible locations of identified threatened and endangered species, if known;

(4) Project site plan sheets showing the area of proposed disturbance and location of any proposed new or modified structures;

(5) Any reports created to assess the site, including but not limited to wetland assessments, vernal pool surveys, or other site visit observations;

(6) Any other available information, from whatever source, that describe the potential impacts of the proposed action on listed species or habitat.

(e) Consultation sought for an "after the fact" permit shall provide the following additional information to the department to initiate consultation:

(1) If pursuant to Env 311.12:

a. A restoration plan for all impacted jurisdictional areas to be restored, prepared by a licensed professional, with a wetland delineation stamped by a certified wetland scientist;

b. A monitoring plan designed to ensure that the restoration is successful; and

c. An explanation as to why work was performed prior to having a permit.

(2) If pursuant to Env-Wq 1503.31:

a. A current conditions plan that clearly identifies all disturbances and construction performed without a permit;

b. A description of all prior disturbances on the property; and

c. An explanation of why work was performed prior to having a permit.

Fis 1004.04 Signatures and Certifications Required.

(a) Each document, or group of documents intended as a single submission, that is submitted to the department, including but not limited to applications, requests, and reports, shall:

(1) If submitted in paper format, be signed and dated by the applicant, owner or the agent of either; and show the typed or printed name and title, if applicable, of the individual who signed; or

(2) If submitted in electronic format, be electronically signed and dated by the applicant, owner or the agent of either; and show the name and title, if applicable, of the individual who signed.

(b) Each physical or electronic signature required by (a), above, shall constitute certification by the signer that:

(1) The information contained in or otherwise submitted with the document is true, complete, and not misleading to the best of the signer's knowledge and belief; and

(2) The signer understands that the submission of false, incomplete, or misleading information constitutes grounds for the department to:

a. Report the full circumstances of the submission to the referring state agency for action in the pending or completed request for a permit or other action;

b. Revoke a finding of completeness of the request for site specific consultation; and

c. Withdraw any recommendations made to the referring state agency under this part.

Fis 1004.05 Processing of Requests for Site Specific Consultation.

(a) The department shall perform an initial review of the material submitted in support of a request for consultation for completeness within 30 days of its receipt.

(b) A complete request for site-specific consultation shall consist of the following:

(1) A completed application checklist as specified in Fis 1004.03;

(2) The plans and other information specified in Fis 1004.03, as applicable;

(3) If the applicant has authorized another to act as the applicant's agent, a copy of the written authorization; and

(4) If the applicant is not the owner and the owner has authorized another to act as the owner's agent, a copy of the written authorization.

(c) If the application does not contain everything necessary to commence a site-specific consultation, the department shall use the contact information provided on the checklist submitted to notify the applicant, or its authorized agent of:

(1) What is missing; and

(2) The deadline for submitting the missing components, established based on the type and volume of the missing component(s).

(d) Notice to an applicant or an authorized agent via telephone, electronic mail, or an unreturned letter sent to the address on the checklist shall suffice as notice that a submission is incomplete.

(e) Upon notifying an applicant that the application is incomplete, the department shall suspend further processing of the application pending receipt of the information missing from the application.

(f) No portion of the time between the date a notice is provided pursuant to (d) above and the date the applicant responds shall be included in computing the time limits specified in RSA 541-A:29 for processing the application.

Fis 1004.06 Requests for Additional Information.

(a) If additional information is required for the department to perform its review, the department shall notify the applicant in writing of the additional information needed, which may include, but is not limited to:

(1) Full size paper format copies of reports, documents, or plan sets, as may be needed to fully understand the documents at a full size scale;

(2) The potential need for assessment of habitat features supporting threatened and endangered species that have been identified, or the conservation measures proposed by

the applicant, by an individual who demonstrates adequate training and experience with the species identified to offer a professional opinion on these issues to the department; or

(3) The potential need for specialized targeted surveys of threatened and endangered species within the project parcel or other portion of the action area to which the applicant or the public has a right of access, by an individual who demonstrates specialized experience with survey methodology around the species identified.

Fis 1004.07 Response to Notice of Missing Information or Request for Additional Information.

In response to any notice of missing information, or to any request for additional information under this part, the applicant shall:

(a) Specifically identify how each request or comment has been addressed;

(b) If revised plans and specifications are being submitted, call attention to the changes on the revised plans and specifications and add a revision date to each page that has been changed;

(c) Sign the submittal in accordance with Fis 1004.05; and

(d) Send a copy of the response, with a cover letter stating the reason(s) for providing the additional information, to the referring state agency for inclusion in the record of the permit proceeding.

Fis 1004.08 Revisions and Updates to Requests for Consultation.

(a) Prior to the provision of recommendations to the referring state agency, the applicant may substitute a revised plan for the plan submitted with the referral, provided that the applicant consents to a reasonable extension of time to permit the department to review any significant alterations to the scope or nature of the project.

(b) Once the process of consultation is initiated, the applicant shall be under a continuing duty to provide the department with updates to any report or other information from any source pertaining to:

(1) Observed occurrences of threatened and endangered species on the site;

(2) Observed impacts to habitat or travel corridors that potentially impact the identified species;

(3) All comments received from the local conservation commission, local planning board, local river management advisory committee, or other agency reviewing the proposal if the comment pertains to impacts upon threatened and endangered species; and

(4) Project design changes which may result in potential impacts to threatened and endangered species, whether suggested to avoid harm to the species, or which could serve to increase the potential of adverse impacts to species.

(c) If additional information is provided directly to the department during the process of consultation, the applicant shall also provide a copy to the state permitting agency, if applicable, for inclusion into the record of the pending permit application.

Fis 1004.09 Failure to Provide Information. The department shall not deliver recommendations to the applicant or the referring state agency if:

(a) The applicant fails to provide the complete set of information as requested in the notice sent pursuant to Fis 1004.05; or,

(b) The applicant fails to file a complete response to a request for additional information as specified in the request sent pursuant to Fis 1004.06;

(c) A partial response to a request for additional information shall be sufficient to allow the department to continue the processing of the request if the applicant:

(1) Provides as much information as is reasonably available;

(2) Explains why the remaining information cannot be provided within the specified time; and

(3) Agrees in writing to extend the time to complete the department's review thereof, and the decision of the referring agency on the underlying permit application, until a reasonable time after the requested information is in fact provided to the department.

Fis 1004.10 Requests to Extend Deadlines.

(a) An applicant may request an extension of any deadline to provide information to the department.

(b) Each request for a deadline extension shall be filed in writing, signed as required by Fis 1004.05 and contain the following information:

(1) The name, mailing address, and daytime telephone number of the requestor and, if available, the requestor's e-mail address;

(2) A brief description of the application to which the request relates, such as project name and town;

(3) The date of the notice of incompleteness or request for additional information in which the deadline for which an extension is being sought was established;

(4) The deadline that was established;

(5) A full explanation of why an extension is needed;

(6) If the extension is not needed for all of the missing components or additional information, the specific item(s) to which the request applies; and

(7) The alternative deadline proposed by the requestor.

(c) If the deadline extension does not apply to all of the missing components or additional information, the applicant shall submit the item(s) to which the request does not apply by the deadline originally established.

(d) The department shall extend a deadline for completing an application or submitting additional information if a complete request for deadline extension was submitted prior to the established deadline, and:

(1) In order to submit the missing component(s) or additional information, the applicant requires information from a third party not under the applicant's control, and the applicant has not received the information despite making diligent efforts to obtain it; or

(2) The applicant has otherwise been prevented by circumstances beyond the applicant's control from obtaining or preparing the missing component(s) or additional information.

(e) A deadline shall not be extended for more than one year past the original date established in the notice of incompleteness or request for additional information.

(f) The department shall deny a request for a deadline extension if:

(1) The request for extension is not submitted prior to the deadline;

(2) The applicant is unwilling to submit the information that has been requested; or

(3) The alternative deadline requested is a date that is more than one year past the original date established by the department for submission of the information.

(g) The department shall notify the person requesting the deadline extension of its decision in writing, setting forth:

(1) If the request is denied, the department shall identify the specific reason(s) for the denial; or

(2) If the request is granted, the department shall establish the new deadline in the notice.

Fis 1004.11 Department Consultation Response.

(a) The department shall provide recommendations in writing to the applicant evaluating the adequacy of all conservation measures proposed by the applicant within the 60 calendar days following a finding of completeness pursuant to Fis 1004.05 above.

(b) To the extent that the proposed actions, inclusive of proposed conservation measures, appreciably jeopardize the continued existence of threatened or endangered species, the department shall so indicate in writing to the applicant and the referring state agency, giving specific reasons for such findings.

Fis 1004.12 Further Consultation.

(a) The applicant may request further consultation with the department in writing within 10 business days following receipt of the written recommendations provided in Fis 1004.11(a).

(b) The state agency engaged in permitting the proposed action may request further consultation with the department in writing within 10 business days following receipt of the written recommendations provided in Fis 1004.11(a).

(c) A request for further consultation by either the applicant or the referring state agency shall be deemed a request for a 30 day extension of the 60 day deadline provided in Fis 1004.11(a).

(d) At any time during the extension period, or any further extension thereof requested by the applicant, the department shall be free to modify its comments and recommendations, in whole or in part, following receipt of new or additional information from either the applicant or the state agency engaged in permitting the proposed action.

(e) At any time during the extension period, or any further extension thereof requested by the applicant, the department shall advise the referring state agency that no modifications to comments or recommendations shall be offered if it determines that the requested changes do not avoid and minimize harm to the identified species or habitat under review.

## PART 1005 ADMINISTRATIVE REVIEW OF RECOMMENDATIONS

Fis 1005.01 Request to Commence an Adjudicative Proceeding.

(a) Any person who is aggrieved by a recommendation of the department under these rules may request the commencement of an adjudicative proceeding within 30 days of receipt of written notice of the recommendation, or any modification thereof, by letter addressed to the executive director at 11 Hazen Drive, Concord, NH 03301, containing the following information:

(1) The name of the claimant who is aggrieved by the decision;

(2) A concise description of the reason or reasons why the decision is believed to be in error;

(3) A current residential address; and

(4) A current telephone number and email address, if available.

(b) Persons who fail to file a letter requesting the commencement of an adjudicative proceeding within the 30-day time period shall be deemed to have waived their right to a hearing unless upon petition the executive director finds that the period to file should be extended as a result of:

(1) A showing that the person did not in fact receive the notice of the recommendation and notice of right to request the commencement of an adjudicative proceeding sent pursuant to Fis 1004.12; or

(2) A showing of excusable neglect, resulting from extended travel, a health problem, or other condition that resulted in the person not receiving actual notice of the decision prior to the expiration of the appeal period.

Fis 1005.02 Adjudicative Proceeding.

(a) Any adjudicative proceeding under this section shall be conducted pursuant to Fis 200, by the executive director or by a presiding officer appointed to conduct the hearing.

(b) The executive director or presiding officer shall consider all claims of error offered by the claimant, and shall only order a modification of any recommendation made upon a finding that the claimant has shown:

(1) A mistake of fact on a significant finding that serves as the basis of a recommendation;

(2) A mistake in applying a federal, state or local statute, rule, or regulation that serves as the basis of a recommendation; or

(3) Identification of one or more conservation measures that could serve to provide an adequate level of protection for threatened and endangered species in the action area that differ from those recommended by department review staff.

Fis 1005.03 Further Appeal. Any person aggrieved may seek further review in accordance with the requirements of RSA 541 of any decision by the executive director to deny relief in an adjudicative proceeding held pursuant to Fis 1005.02.

## APPENDIX A
## INCORPORATION BY REFERENCE INFORMATION

| Rule | Title | Obtain at: |
|---|---|---|
| Fis 1001.05(e) | White-nose Syndrome Conservation and Recovery Working Group. April 1, 2015. Acceptable Management Practices for Bat Control Activities in Structures- A Guide for Nuisance Wildlife Control Operators. U.S. Fish and Wildlife Service, Hadley, MA. | U.S. Fish and Wildlife Service, Hadley, MA, no cost; or www.whitenosesyndrome.org/node/1147 |

**Edit.** Given the CFR in the citation, insert "or Federal Regulations".

## APPENDIX B
## STATUTES IMPLEMENTED

| Rule | Specific State or Federal Statutes which the Rule Implements |
|---|---|
| Fis 1001.01 and 1001.02 | RSA 212-A:6 |
| Fis 1001.03 and 1001.04 | RSA 212-A:7, II |
| Fis 1001.05 | RSA 212-A:7, II; 50 C.F.R. Part 17.40(o) |
| Fis 1002.01 through Fis 1002.12 | RSA 212-A:4 |
| Fis 1003.01 and Fis 1003.02 | RSA 212-A:9, III |
| Fis 1004.01 through Fis 1004.12 | RSA 212-A:9, III |
| Fis 1005.01 through Fis 1005.03 | RSA 541-A:29, RSA 541 |