| Notice Number | **2021-88** | Rule Number | **Fis 1000** |
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|---|---|
| 1. Agency Name & Address:<br>**NH Fish and Game Department**<br>**11 Hazen Drive**<br>**Concord, NH 03301** | 2. RSA Authority: **RSA 212-A:4**<br>3. Federal Authority:<br>4. Type of Action:<br>Adoption **xx**<br>Repeal<br>Readoption **xx**<br>Readoption w/amendment |

5. Short Title: **Conservation of Threatened and Endangered Species**

6. (a) Summary of what the rule says and of any proposed amendments:

**Chapter Fis 1000 contains the rules of the Fish and Game Department (Department) on conservation of threatened and endangered species. The Department proposes to:**

**a) Readopt without change the existing Part Fis 1001 on protected species, containing Fis 1001.01 through Fis 1001.05, so these sections will have the same expiration date as the proposed new rules Fis 1002.01 through Fis 1005.03.**

**b) Adopt Part Fis 1002 through Part Fis 1005 containing new rules Fis 1002.01 through Fis 1005.03. The Department currently conducts reviews of proposed actions by state agencies on state owned property, and proposed actions by private and public applicants for permits on private and public lands. The purpose of each review is to determine if the proposed actions would jeopardize the continued existence of state threatened or endangered species, or would result in the destruction or modification of habitat of such species that is determined to be critical. The review produces recommendations to applicants and other state agencies for conservation measures at each site. Proposed Fis 1002.01 through Fis 1002.12 set forth definitions. Proposed Fis 1003.01 and 1003.02 set forth standards applicable to all projects. Proposed Fis 1004.01 through Fis 1004.12 set forth criteria and procedures used in the conduct of these reviews, how recommendations are made, and provide for staff review of objections to the recommendations. Proposed Fis 1005.01 through Fis 1005.03 describe formal processes to contest recommendations in an adjudicative proceeding, or by further appeal pursuant to RSA 541.**

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

**Applicants to state agencies seeking approval or permits for the public or private use of land that could impact state threatened or endangered species. This includes state agencies, municipalities, and owners and developers of private property in New Hampshire.**

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

| **Rule** | **Specific State or Federal Statutes or Federal Regulations 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 |

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Michael Marchand**

Address: **11 Hazen Drive**

**Concord, NH 03301**

Title: **Supervisor VI**

Phone #: **603-271-2461**

Fax#: **None**

E-mail: **comments@wildlife.nh.gov**

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: **Friday, October 8, 2021**

☐ Fax ☒ E-mail ☐ Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Thursday, September 30, 2021 at 2:00 PM**

Place: **Fish and Game Headquarters Building, 11 Hazen Drive, Concord, NH 03301**

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

FIS # **21-071** , dated **07/27/2021**

**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 to the existing rules. Not applicable to parts Fis 1002, Fis 1003, Fis 1004, and Fis 1005, as these are new 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 rule(s):**

Currently, the Fish and Game Department conducts reviews of proposed actions by state agencies on state owned property, and proposed actions by private and public applicants for permits on private and public lands. The new rules proposed under parts Fis 1002, Fis 1003, Fis 1004, and Fis 1005, are firsts for this program. The purpose of the review is to determine if the proposed actions would jeopardize the continued existence of state threatened or endangered species at the site, or the destruction or modification of the habitat of such species that is determined to be critical. The review produces recommendations to applicants and other state agencies for conservation measures at each site. The new rules set forth definitions, criteria and procedures used in the conduct of these reviews, how recommendations are made, and provides for administrative review of the recommendations.

There are no revenues collected by the Department directly related to the conduct of these reviews, including fees from referring state agencies, fees from private or public applicants to such state agencies, or fees from other public entities. Presently the costs of the reviews are borne in part by contributions from the public to the nongame program, in part by matching funds received from the general fund pursuant to RSA 212-B:6, and in part by the state wildlife grant as received from the U.S. Fish and Wildlife Service. In accordance with the restrictions contained in RSA 212-A: 15, no costs are charged to the Fish and Game fund. The number of referrals from state agencies in a given year is indeterminable. Historically, in FY 2021 (7/1/20- 6/30/21) a total of 3,804 projects were checked for the presence of rare species. Of these, 1,866 (49% of all submitted projects) were flagged as having potential impacts to threatened and endangered species, and were reviewed by the Department. During the period of May 1, 2020 to April 30, 2021 the nongame program charged 3,778 staff hours to the function, at a cost of $257,474.

In 2021 and beyond, it is anticipated that the number of referrals will increase as the economy recovers and development of land for housing and other purposes increases. It is also anticipated that infrastructure projects funded in whole or in part by the federal American Rescue Plan and other federal sources will increase the number of referrals. To the extent that referral volume increases, and additional resources are required to conduct the reviews, permission will be sought to accept and expend federal funds made available for this purpose. The permission will be sought using existing processes of the Legislative Fiscal Committee and Governor and Council.

The costs of an administrative adjudicatory hearings function required to review recommendations offered by the program will be borne by existing staff within existing appropriations.

**A. To State general or State special funds:**

No cost or benefit to the state general fund relative to the Fish and Game Department, however the Department states it is possible there may be impacts to the state general fund from other state agencies referring matters to the Department for review. As these vary with the individual proposal, potential costs are indeterminable.

**B. To State citizens and political subdivisions:**

Although the applicant receives a review from the Department upon a referral, there is no cost to the applicant for the conduct of the review. The Department makes no comment as to the cost to an applicant of this review in the overall context of the request for a state issued permit, as each case is

different in its level of complexity, and differs as to the conservation measures that may be required to protect threatened and endangered species.

There is no cost to the political subdivisions of the state arising from these proposed rules, unless such political subdivision is an applicant for a permit from a state agency. If such a subdivision is an applicant, there are no funds due to the Fish and Game Department for a review of the project. The Department states any costs that the applicant political subdivision might incur with other agencies during the process of review cannot be predicted, as each case is different.

**C. To independently owned businesses:**

To the extent that any applicant for a state issued permit is required to undergo a review for potential impacts to threatened and endangered species, there is no direct cost to the applicant for the conduct of the review proposed by these rules. The Department states any potential costs to the applicant for implementation of conservation measures recommended, and then incorporated into a state issued permit, including the cost of reporting and record keeping requirements incorporated into those permit conditions, is indeterminable.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

**The proposal does not impose any programs, responsibilities, or administrative duties upon any political subdivision of the state, and thus does not violate the N.H. Constitution, Part I, Article 28-a.**