

CHAPTER Fis 1000 CONSERVATION OF ENDANGERED AND THREATENED SPECIES

Statutory Authority: RSA 212-A

We propose to readopt without amendment the current Fis 1001.01 through Fis 1001.05 so they will have the same expiration date as the following new rules.

Readopt Fis 1001.01 to Fis 1001.05, eff. 4-18-17 (Doc #12161)

[START OF PROPOSED NEW RULES]

Adopt Fis 1002 and Fis 1003 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, and not merely the immediate area actually disturbed or altered by the proposed project.

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

Fis 1002.03 “Conservation measures” means actions which serve to avoid, minimize, or mitigate anticipated negative impacts to, and to promote the recovery of or enhance the survival of threatened or endangered species in the action area.

Fis 1002.04 “Consultation” means the review by department staff of a proposed action as a condition of a required state agency permit, approval, or other 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 1002.05 “Department” means the New Hampshire Fish and Game Department.

Fis 1002.06 “Habitat determined to be critical” means “a geographical area that currently or historically provide(s) physical or biological features essential to the conservation of an endangered or threatened species, and may require specific management considerations.

Fis 1002.7 “Harm” means any act which actually 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 its normal or traditional life cycle and that are essential to its survival and perpetuation.

Fis 1002.08 “Jeopardize the continued existence of” means to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably 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.

PART Fis 1003 – CONSULTATION

Fis 1003.01 Consultation

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

Fis 1003.02 Information Required for Consultation.

(a) In all cases where consultation is offered, the following information shall be provided to the department in electronic format that references in any files or subject headings the Natural Heritage Bureau datacheck letter ID number:

- (1) A copy of the department of natural and cultural resources Natural Heritage Bureau DataCheck results letter, dated within one year of the date of the consultation request;
- (2) The applicant's full name;
- (3) The applicant's mailing address;
- (4) The applicant's telephone number and email address to be used for the purpose of contact;
- (5) 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;
- (6) 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.
- (7) Description of the proposed project purpose;
- (8) Description of the action area including project location by reference to street address, or a geographical information system set of coordinates;
- (9) A listing of any state or federal permits which have been applied for, have been granted, or which will be necessary for project approval;
- (10) The current condition of the action area prior to any proposed modifications;
- (11) Any habitat features supporting threatened and endangered species that have been identified; and
- (12) 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 construction actions such as alteration of the timing of land disturbance to protect species from harm;
 - c. Design crossing structures to accommodate movement of species;

- d. Education and training to construction personnel and signage to identify sensitive resources;
- e. Continued research and monitoring of identified species;
- f. Protection or restoration of wildlife corridors;
- g. Maintenance, enhancement, or protection of habitat buffer areas; or
- h. Habitat protection, management, or restoration.

(b) An applicant seeking consultation to meet permit requirements under Env-Wt 311, Env-Wq 1406.06, or Env-Wq 1500, 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; and
- (6) Any other available information, from whatever source, that describe the effects of the proposed action on listed species or habitat.

Fis 1003.03 Requests for Additional Information.

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

(b) 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 action area, by an individual who demonstrates specialized experience with survey methodology around the species identified.

Fis 1003.04 Updates to Information Provided During Consultation.

(a) 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 that has been submitted to support the review.

(b) The applicant shall be under a continuing duty to provide the department with any new information received 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, or other agency reviewing the proposal if the comment pertains to impacts upon threatened and endangered species; and
- (4) Project design changes that could impact threatened and endangered species, whether suggested to avoid harm to the species, or which could serve to increase the risk of harm 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 1003.05 Department Consultation Response.

(a) The department shall provide comments in writing to the applicant evaluating the adequacy of all proposed conservation measures recommended to prevent jeopardy to the continued existence of the threatened or endangered species, destruction or modification of habitat of such species present in the action area, or other identified risks of harm to the species.

(b) To the extent that the proposed conservation measures do not prevent the harms identified in (a), the department shall, if practicable, identify conservation measures that could serve to provide an adequate level of protection for such species for the action area.

(c) To the extent that the department is unable to recommend conservation measures that could serve to provide an adequate level of protection for such species for the action area, the department shall so indicate writing to the applicant.

(d) If applicable, the department shall also provide its response to the state agency engaged in permitting for the action area.

Fis 1003.06 Further Consultation.

(a) The applicant may request in writing further consultation with the department following receipt of its written department response of recommended conservation measures.

(b) The state agency engaged in permitting the proposed action may request in writing further consultation with the department following receipt of written of department recommended conservation measures.

(c) The department shall be free to update its comments and recommendations following receipt of new information from either the applicant or the state agency engaged in permitting the proposed action.