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☛ Details: Emergency Rules by Department of Natural Resources.

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2007-08

(session year)

Joint

(Assembly, Senate or Joint)

Committee for Review of Administrative Rules...

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**ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
AMENDING AND CREATING RULES**

The Wisconsin Natural Resources Board proposes an emergency order to amend NR 20.05 (6) and (7) and 20.20 (73) (h) and create NR 19.05 (3) (e) and (f), 19.055 (5) and 20.14 (9) and (10), relating to control of fish diseases and invasive species.

FH-40-07A(E)

Analysis Prepared by the Department of Natural Resources

1. Statutes interpreted: Sections 23.09 (2) (intro), 23.22 (2) (a), 29.014 (1), 29.039 (1), 29.041 and 227.11 (2) (a), Stats.

2. Statutory Authority: Sections 23.09 (2) (intro), 23.091, 23.11 (1), 23.22 (2) (a) and (b) 6., 27.01 (2) (j), 29.014 (1), 29.041, 29.039 (1), 29.509 (4) and (5), 227.11 (2) (a), and 227.24 (1) (a), Stats.

3. Explanation of agency authority to promulgate the rules under the statutory authority: Section 23.09 (2) (intro), Stats., grants the department general authority to adopt rules for the protection, development and use of forests, fish and game, lakes, streams, plant life, flowers and other outdoor resources in this state. Section 23.091, Stats., authorizes the department to acquire, develop, operate and maintain state recreation areas, to establish use zones within state recreation areas providing for the full range of recreational uses, including hunting and fishing, and to promulgate rules to control uses within zones and limit the number of persons using any zone.

Section 23.11 (1), Stats., gives the department the authority to have and take the general care, protection and supervision of all state parks, of all state fish hatcheries and lands used therewith, of all state forests, and of all lands owned by the state or in which it has any interests, along with such further powers as may be necessary or convenient to enable it to exercise the functions and perform the duties required of it by ch. 23, Stats., and by other provisions of law. Section 23.22 (2) (a) and (b) 6., Stats., confer on the department the authority to establish a statewide program to control invasive species in this state, including rules to classify invasive species for purposes of the program. Section 27.01 (2) (j), Stats., grants the department authority to promulgate rules necessary to govern the conduct of state park visitors, and for the protection of state park property, or the use of facilities, including the use of boats and other watercraft on lakes or rivers within the limits of a state park, and the use of roads, trails or bridle paths.

Sections 29.014 (1) and 29.041, Stats., grant rule making authority to the department to establish and maintain open and closed seasons for fish and any bag limits, size limits, rest days and conditions governing the taking of fish that will conserve the fish and game supply and ensure the citizens of this state continued opportunities for good fishing, and provide that the department may regulate fishing on and in all interstate boundary waters and outlying waters. Section 29.039 (1), Stats., authorizes the department to develop conservation programs to ensure the perpetuation of nongame species, require harvest information and establish limitations relating to taking,

possession, transportation, processing and sale or offer for sale, of nongame species. Minnows are nongame fish species.

Section 29.509 (4) and (5), Stats., require bait dealers to keep records as required by the department and authorize the department to issue permits for the taking of bait from specified waters and to restrict the number of permits that may be issued for any designated body of water. Section 27.01 (2) (j), Stats., grants the department authority to promulgate rules necessary to govern the conduct of state park visitors, and for the protection of state park property, or the use of facilities, including the use of boats and other watercraft on lakes or rivers within the limits of a state park, and the use of roads, trails or bridle paths.

Finally, s. 227.11 (2) (a), Stats., expressly confers rulemaking authority on the department to promulgate rules interpreting any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

4. Related statute or rule: None.

5. Plain language analysis of the proposed rule: This emergency rule amends the emergency measures put into effect November 2, 2007 by Order No. FH-40-07(E) for the control and prevention of Viral Hemorrhagic Septicemia (VHS) in fish in waters of the state.

SECTION 1 of the Order adds 2 new exemptions to s. NR 19.05 (3), which generally prohibits live fish or live fish eggs that were taken from or possessed on any inland or outlying water or its bank or shore from being transported away from that water, bank or shore. The new exceptions are for:

- live minnows possessed on a waterbody if they were obtained from a Wisconsin bait dealer and have not been exposed to water or fish from that waterbody, and
- live minnows possessed on a waterbody if they were obtained from a Wisconsin bait dealer and will be used for bait only on the same waterbody.

SECTION 2 of the Order creates a new exemption to s. NR 19.05 (3), which requires generally that any person who removes a boat, boat trailer, boating equipment or fishing equipment from any inland or outlying water or from its bank or shore must immediately drain all water from the boat, boat trailer, boating equipment or fishing equipment, including water in any bilge, ballast tank, bait bucket, live well or other container, unless it has been exempted in writing by the department after determining that it will not allow VHS virus to be transported to other waters. The immediate drainage requirement also applies to containers and fishing equipment used by bank or shore anglers. The new exemption applies to water in a container that holds live minnows obtained from a Wisconsin bait dealer, if the container holds no other fish, contains 2 gallons or less of water, and is used to transport only minnows that have not been exposed to water or to fish from that inland or outlying water, or that will be used for bait only on the same inland or outlying water, its bank or shore.

SECTION 3 of the Order clarifies that minnows possessed by an angler while on a water that has no open season for minnow harvesting are not illegal to possess if the minnows were purchased from a Wisconsin bait dealer. It also clarifies that minnows purchased from a Wisconsin bait dealer do not count toward an angler's daily bag limit.

SECTION 4 adds a provision to the current rule governing minnow collection, reiterating the requirement that prohibits a person from setting, using or operating any net, trap or similar device for the taking of minnows, or fishing for minnows except suckers for any purpose using any gear

from any water listed in or identified by the Department under s. NR 20.14 (9) as a water where the VHS virus may be present. It also adds language reiterating that no person may transport any live suckers harvested from any waters listed in or identified by the Department under s. NR 20.14 (9) away from those waters.

SECTION 5 clarifies, in the open and closed season table in s. NR 20.20 (73), that there is a closed season on taking all species of minnows except suckers on any water listed in or identified by the department under s. NR 20.14 (9) as having the VHS virus present, and that suckers harvested from waters of the state may not be transported away from those waters alive.

6. Summary of and preliminary comparison with any existing or proposed federal regulation: In late 2006 the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (USDA APHIS) issued an emergency order limiting the movement of live fish from Ontario or Quebec into the United States and limiting the interstate movement of live fish. That order does not apply to fish moved within the boundaries of individual states, and there are no known or proposed federal regulations that would do so.

7. Comparison of similar rules in adjacent states (Minnesota, Iowa, Illinois and Michigan): In late 2006 the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (USDA APHIS) issued an emergency order limiting the movement of live fish from Ontario or Quebec into the United States and limiting the interstate movement of live fish among the eight Great Lakes states and from those states to other parts of the United States. That order does not apply to fish moved within the boundaries of individual states.

The Wisconsin Department of Agriculture, Trade, and Consumer Protection is a partner in this area. Under its regulations, no fish may be imported for stocking, use as bait, or fish farming without a permit from DATCP, and it has revised its Administrative Code to require testing for VHS virus in all fish proposed for importation from VHS-affected waters outside of Wisconsin. DATCP is also developing emergency rules to provide additional protections against the spread of the virus.

New regulations have been put into effect in New York, Pennsylvania, Ohio, and Michigan. Michigan is the only adjoining state that has enacted new regulations to address the VHS threat. Like ours, Michigan's regulations also limit the movement of live fish, fish eggs, and water from one water body to another. Michigan's approach to minimizing the risk of spread of the virus in bait fish differs from ours. 1) Their new regulations apply only to bait species on a "prohibited species" list. 2) They provide a system of certification so that anglers can obtain bait that has been certified as disease-free. 3) They classify their waters as affected ("positive management area"), at risk ("surveillance management area"), or disease-free ("VHS-free management area"). The allowed use of bait then depends on the species, the certification status, the source of the bait, and location of the lake or stream where the bait will be used.

8. Summary of the factual data and analytical methodologies that the agency used in support of the proposed rule and how any related findings support the regulatory approach chosen for the rule: The World Health Organization for Animal Health (OIE) lists VHS as a "notifiable" disease, meaning that outbreaks must be reported immediately. On April 4, 2007 the Natural Resources Board adopted Order FH-22-07(E) to control the spread of the VHS virus in Wisconsin. Provisions of that rule were clarified and expanded in NRB Order FH-25-07(E), adopted on April 25, 2007. At the time those rules were adopted, VHS virus had caused fish kills in the lower Great Lakes, but had not been documented west of Lake Huron. Department

biologists believed it was probably already in Lake Michigan, and possibly in Lake Superior and the Mississippi River.

On May 11, the University of Wisconsin Veterinary Diagnostic Lab informed the department that samples of freshwater drum taken from Little Lake Butte des Morts had tested positive for the VHS virus. For purposes of controlling the spread of the disease, it was then reasonable to regard Lake Winnebago and the majority of the Fox/Wolf River system as infected, and prudent to assume that the virus might appear in any inland water. Accordingly, Order FH-28-07(E) was adopted, expanding the geographic applicability of the emergency rules to include the Lake Winnebago and the Fox/Wolf River system.

The Aquatic Animal Health Code of the OIE provides specific guidance regarding the management of VHS. The rules proposed in this Order are consistent with that code. USDA APHIS has adopted emergency regulations to limit the transfer of VHS virus among states or into the United States from Ontario or Quebec. The rules proposed in this Order expand those protections by reducing the risk of spread of the virus from infected to uninfected waters.

9. Any analysis and supporting documentation that the agency used to determine in the rule's effect on small businesses under s. 227.114, Stats., or that was used when the agency prepared an economic impact report: The small business most affected by the rule are wild-bait harvesters and all other businesses that provide supplies and services to sport fishers. The harvesters will be negatively affected by limitations on where bait may be withdrawn from, while all other sport fishing-related businesses would be hurt by the effects of VHS if it is allowed to spread freely across the state. We have learned through the implementation of permitting requirements under the prior emergency rules that there are approximately 88 individuals who make a living harvesting wild bait. Most of those are very small operations. Sport fishing is a 2.9 billion dollar industry that supports more than 31,000 jobs in Wisconsin and generates over \$200,000,000 in state tax revenue.

10. Effect on small business, including how the rule will be enforced: The most significant economic impact of the rule will be on businesses involved in bait harvest, importation, culture, or sale. Businesses handling bait harvested in VHS-affected areas will be adversely affected, while those involved in culturing bait in fish farms may benefit. The rule will also make it harder for some crayfish trappers to obtain fish for use as bait in their traps, but allows other types of bait to be used in lieu of fish. Similarly, the rule will make it harder for some turtle trappers to obtain fish for use as bait, but current rules already allow the use of other types of bait. The rule will be enforced by department conservation wardens, county district attorneys, and county circuit courts through the use of citations and civil or criminal complaints under the provisions of ch. 29, Stats.

11. Agency contact person:

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SECTION 1. NR 19.05 (3) (e) and (f) are created to read:

NR 19.05 (3) (e) Live minnows that were obtained from a Wisconsin bait dealer and subsequently possessed by the person while on an inland or outlying water, its bank or shore, if the minnows have not been exposed to water or fish from that inland or outlying water.

(f) Live minnows that were obtained from a Wisconsin bait dealer and subsequently possessed by the person while on an inland or outlying water, its bank or shore, if the minnows will be used for bait only on the same inland or outlying water, its bank or shore.

SECTION 2. NR 19.055 (5) is created to read:

NR 19.055 (5) Subsection (1) does not apply to water in a container that holds live bait minnows obtained from a Wisconsin bait dealer, if the container holds no other fish, contains 2 gallons or less of water, and is used to transport only live minnows that have not been exposed to water or fish from that inland or outlying water describe or will be used for bait only on the same inland or outlying water, its bank or shore.

SECTION 3. NR 20.05 (6) and (7) are amended to read:

NR 20.05 (6) Fish for, possess or control fish in excess of the daily bag limit authorized in s. NR 20.20 for that water while on the waters, banks or shores of waters or while fishing except as authorized on specific waters by s. NR 20.35, 20.36 or 20.37 and minnows described in s. NR 19.05 (3) (e) or (f).

(7) Possess Except for minnows purchased from a Wisconsin bait dealer, possess or control fish unless they are included as part of the daily bag limit. Fish that are not released immediately shall be included as part of the daily bag limit.

SECTION 4. NR 20.14 (9) and (10) are created to read:

NR 20.14 (9) Notwithstanding any other provision in this chapter or chs. NR 21 to 23, use or operate any net, trap or similar device for the taking of minnows, or fish for minnows except suckers for any purpose using any gear in Lake Michigan, Green Bay, Lake Superior, the Mississippi River, Lake Winnebago, the Fox River from Lake Winnebago to Green Bay, or any bay, slough or backwater of these waters, or any water connected to these waters, upstream to the first dam or other obstruction impassible to fish, or in any other water where the department has determined that the Viral Hemorrhagic Septicemia virus is present based on test results or other empirical evidence. If the department determines that the Viral Hemorrhagic Septicemia virus is

present in any additional water body, it shall promptly notify the public of its determination by issuing a press release, by publication in the official state newspaper, and by such other means as the department determines are reasonably likely to inform the public.

(10) Transport away from the water or its bank or shore any live sucker taken from Lake Michigan, Green Bay, Lake Superior, the Mississippi River, Lake Winnebago, the Fox River from Lake Winnebago to Green Bay, or any bay, slough or backwater of these waters, or any water connected to these waters, upstream to the first dam or other obstruction impassible to fish, or from any additional water where the department has determined under sub. (9) that the Viral Hemorrhagic Septicemia virus is present.

SECTION 5. NR 20.20 (73) (h) is amended to read:

(73) SPECIES OR WATERS NOT LISTED IN SUBS. (1) TO (72)

COUNTY AND SPECIES	WATERS	AUTHORIZED METHODS	OPEN SEASON (both dates inclusive)	DAILY BAG LIMIT	MINIMUM LENGTH OR OTHER SIZE RESTRICTIONS (INCHES)
(h) Minnows	1. Lake Superior, its bays and tributaries	a. None.	No open season	-----	-----
	2. Green Bay, Lake Michigan	a. Dip netting <u>and hook and line</u> for suckers only. <u>Unless authorized under s. NR 19.05(3), no person may transport live suckers away from Green Bay or Lake Michigan.</u>	Continuous	None	None
	3. Lake Michigan tributaries, major Green Bay tributaries	a. Hook and line, <u>minnow dip netting, minnow trapping and minnow seining</u> for suckers only. <u>Unless authorized under s. NR 19.05(3), no person may transport live suckers away from Lake Michigan tributaries or major Green Bay tributaries or any water connected to these waters, upstream to the first dam or other obstruction impassible to fish.</u>	Continuous	600 suckers in total	None

		no person may transport live suckers away from any waters of the state.			
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SECTION 6. STATEMENT OF EMERGENCY. The Department of Natural Resources finds that an emergency exists and the foregoing rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is:

The World Health Organization for Animal Health (OIE) lists Viral Hemorrhagic Septicemia (VHS) as a "notifiable" disease, meaning that outbreaks must be reported immediately. On May 11, the Department received notice that freshwater drum collected from Little Lake Butte des Morts (part of the Lake Winnebago system) were infected with the VHS virus. On May 23, May 24, and June 1, respectively, the Department learned that brown trout from Lake Michigan, smallmouth bass from Sturgeon Bay, and lake whitefish from Lake Michigan had tested positive for the virus.

Earlier, VHS had been discovered in the Great Lakes, and was known to be moving from the lower lakes (Ontario and Erie), where it has already caused large-scale fish kills, via Huron, where it has been present since 2005, to the upper lakes (Michigan and Superior). Lake Michigan is connected to the Mississippi River by the Chicago Sanitary and Ship Canal and Illinois River, allowing fish and fish diseases to reach the Mississippi drainage basin. Information obtained pursuant to an emergency rule that took effect May 17 revealed that 88 bait dealers harvest live-wild minnows from a large number of state waters, including waters that are near or connected to the Mississippi river, the Lake Winnebago system, Green Bay and Lakes Michigan and Superior.

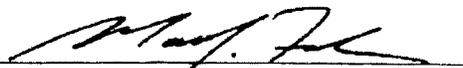
Twenty-seven species of Wisconsin fish have been identified as susceptible by the OIE or USDA APHIS, including most of our most important recreational and commercial species. It is expected the USDA APHIS will soon expand its emergency order limiting the interstate transportation of these species to apply to all fish species. The VHS virus can be transported from infected areas to areas where it is not yet present via live fish, fish eggs, refrigerated or frozen dead fish, or water where infected fish have been present. The presence of VHS virus in Wisconsin is therefore a threat to the public health or safety or to the environment.

SECTION 7. EFFECTIVE DATE. This rule shall take effect upon publication, as provided in s. 227.24 (1) (d), Stats. Notwithstanding the effective date of these rules, they shall remain in effect only for 150 days from November 2, 2007, the effective date of Order No. FH-40-07(E), unless extended pursuant to s. 227.24 (2), Stats.

SECTION 8. BOARD ADOPTION. The foregoing emergency rule was approved and adopted by the State of Wisconsin Natural Resources Board on March 26, 2008.

Dated at Madison, Wisconsin March 27, 2008.

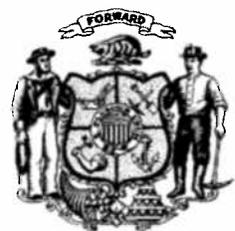
STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By 
Matthew J. Frank, Secretary

(SEAL)



WISCONSIN STATE LEGISLATURE



**ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
REPEALING, RENUMBERING, AMENDING AND CREATING RULES**

The Wisconsin Natural Resources Board proposes an order to **repeal** NR 198.15(2), to **renumber** NR 198.12(6) to (10), to **amend** NR 198.11, 198.14(1)(e) and (f) 2, 198.23 (5) to (7), 198.33 (5), and 198.44(5) and to **create** NR 198.12(6) and (7), 198.33(6) and NR 198, subch. V relating to grants for the control of aquatic invasive species.

WT-10-08(E)

Analysis Prepared by the Department of Natural Resources

Statutes interpreted: s. 23.22(2)(c) and 23.24, Stats.

Statutory authority: ss. 23.22(2)(c), 227.11(2)(a) and 227.24(1)(a), Stats.

Explanation of agency authority: This order implements s. 23.22(2)(c), Stats., which directs the department to promulgate rules to establish a procedure to award cost-sharing grants to control invasive species. The rules must establish the criteria for determining eligible projects and eligible public and private grant recipients, allow cash and non-cash contributions as eligible costs share and consider the recommendations of the Invasive Species Council. Amendments under Act 20 of 2007 increased the state cost-share rate from 50% to 75% and eliminated a priority for grants awarded to units of local government. The Act also increased the annual appropriation from \$1.5 million in FY06, to 3.3 \$million in FY07 to \$4.3 million in FY08 and each fiscal year thereafter.

Related statute or rule: The rule's general provisions and structure are similar to the Department's lake and river grant programs rules, chs. NR 190, 191 and 195 which is intended to provide consistency in grant administration. This rule will also assist the department in achieving the statutory goals of s. 23.24, Stats., which designates invasive plants and provides the authority to regulate how these plants are controlled.

Plain language analysis: The objectives of the order for ch. NR 198 are to:

1. Implement changes in enabling legislation that increase the maximum state cost share rate from 50% to 75% and eliminate priority for local government sponsored projects.
2. Increase the maximum amount of the state funds available for projects.
3. Increase the value of donated, non-professional labor that can be used as local match from \$8 to \$12.
4. Allow for a cash advance for early detection and rapid response projects
5. Expand sponsorship to include universities, colleges and technical schools, hydro-electric corporations and other branches of state and federal government that manage lands or natural resources.
6. Broaden the definition of the nonprofit conservation organization.
7. Create a new subch. V that allows the department to disburse funds to sponsors who are successfully and ecologically containing established infestations under a department approved plan to help offset the costs of permit application and required monitoring and reporting.

Increasing the cost share rate and maximum amount of a grant award will improve efficiency and allow the scope and scale of the projects to be commensurate with the scale at which aquatic invasive species prevention and control issues need to be approached.

Increasing the volunteer labor rate will encourage more voluntary citizen participation in projects, make projects more affordable for sponsors and allow more efficient use of local cash in projects.

Expanding sponsorship to state and federal agencies will allow better aquatic invasive species (AIS) control within state and federal properties and other critical situations in the absence of a willing sponsor. The inclusion of universities, colleges and technical schools will increase efficiency for AIS prevention through statewide support to watercraft inspection networks, public education campaigns, volunteer monitors, information management as well as research and demonstration of AIS control techniques. Redefining nonprofit corporations expands sponsorship to include groups that do not have land trust functions but do have strong interests in controlling aquatic invasive species.

New Subchapter V allows the department to reimburse community-based project sponsors who control and contain establish populations of AIS in an environmentally sound manner according to a department approved plan. Previously, these "maintenance" level activities did not qualify for grants. Under the revision, grant funds will help offset the costs of aquatic plant management permit application fees and the costs of monitoring and reporting compliance.

Comparison to federal regulations: Similar programs on the federal level are generally directed at assisting state programs for AIS control. Some habitat restoration grants administered through agencies such as the U.S. Fish and Wildlife Service are available locally and can be used to address AIS issues.

Comparison with rules in adjacent states: Minnesota has a small grant program for reimbursing the costs of treatments for Eurasian Water milfoil. They also have a program for "high-intensity Eurasian water milfoil technical assistance". Michigan has a small grants program (\$500 to \$2500) for activities very similar to those included in subchapter II. However, neither state has promulgated administrative rules for their programs. Michigan's program is administered through a contract with a non-profit organization.

Summary of factual data and analytical methods: None.

Analysis to determine effect on small business: None.

Anticipated costs incurred by private sector: These rules affect potential sponsors of management activities on the state's lakes, rivers and wetlands. The effects are believed to be positive, by providing state cost-sharing for activities that many local entities are conducting. While the grant program is voluntary, there will be some increased cost to sponsors associated with the development of plans and for monitoring and reporting activities that are required for some projects under subchapters III and IV. However, cost sharing is available for these requirements as well. It is believed that these increased costs will be offset by the financial assistance available through the grants.

Effect on small business: Small business is not directly affected by the rule because grants are issued only to governmental units, educational institutions, qualified non-profit organizations and FERC-licensed hydroelectric corporations. Therefore, under s. 227.114, Stats., an initial regulatory flexibility analysis is not required. Environmental consultants and companies involved in nuisance species control should benefit from an increase in project activity resulting from an increase in the supply of money for these kinds of projects.

Emergency rule: The department interprets the substantial increase in AIS grant funding as a strong message from the Legislature that concern over the welfare of our public waters is growing, along with the expectation that these additional funds be put to work as soon as possible. The timeline for permanent rule promulgation and the lack of staff to provide support to eligible sponsors may impede the Department's ability to fully and responsibly invest the authorized spending by the end of the biennium because of the current rule's limitations. Therefore, the Department is considering a request for enacting the proposed rule as an emergency rule to allow immediate implementation of the policies that will most aide in effective and efficient investment of these funds. Given that the appropriation from which these

funds are spent is a biennial appropriation, meaning that any unspent funds at the end of the biennium automatically lapse back to the Water Resources Account of the Conservation Fund, an emergency rule will help to minimize or eliminate the amount of funds that are lapsed. The Bureau will be promulgating these changes and additional proposals as a permanent rule for public hearing at the next Board meeting.

Agency contact:

Carroll Schaal
Phone: (608) 261-6423
Email: carroll.schaal@wisconsin.gov.

SECTION 1. NR 198.11 is amended to read:

NR 198.11 Applicability and eligible sponsors. This chapter applies to all counties, cities, towns, villages, tribes, public inland lake protection and rehabilitation districts, and town sanitary districts and other local governmental units as defined in s. 66.0131(1)(a), Stats., qualified lake associations as defined in s. 281.68 (1) (b), Stats., that charge an annual membership fee of not less than \$5 and not more than \$50, qualified school districts as defined in s. 281.68 (3m) (c), Stats., private and public colleges, universities and technical schools, qualified nonprofit conservation organizations ~~as defined in s. 23.0055 (1), Stats.~~, and river management organizations, as defined in s. NR 195.02(2), state and federal natural resource or land management agencies and FERC-licensed hydroelectric corporations, applying for financial assistance under s. 23.22(2)(c), Stats., for an aquatic invasive species prevention or control project for any waters of the state including lakes, rivers, streams, wetlands and the Great Lakes.

SECTION 2. NR 198.12(6) to (10) are renumbered NR 198.12(8) to (12).

SECTION 3. NR 198.12(6) is created to read:

NR 198.12 (6) "Natural resource agency" means a government agency that is charged with the responsibility for the management of lakes, rivers, streams, wetlands, forests, plants, soils or agricultural lands.

SECTION 4. NR 198.12(7) is created to read:

NR 198.12(7) "Nonprofit conservation organization" means a nonprofit corporation, a charitable trust or other nonprofit association whose purposes includes the acquisition or management of property for conservation purposes including the control of aquatic invasive species and that is described in section 501 (c) (3) of the internal revenue code and is exempt from federal income tax under section 501 (a) of the internal revenue code.

SECTION 5. NR 198.14(1)(e) is amended to read:

NR 198.14(1)(e) Reasonable costs necessary to complete an application and comply with a permit application required to implement a project ~~awarded a grant if the costs are incurred within 12 months prior to the application deadline.~~ Costs up to 12 months prior to the application deadline are eligible for reimbursement.

SECTION 6. NR 198.14(1)(f)2 is amended to read:

NR198.14(1)(f)2. The maximum value of donated non-professional labor shall be ~~\$8~~ \$12 per hour.

SECTION 7. NR 198.15(2) is repealed.

SECTION 8. NR 198.23(5) to (7) are amended to read:

NR 198.23(5) The total state share of the cost of an education, prevention and planning project may not exceed ~~50%~~ 75% of the total project cost.

(6) ~~The~~ Except as limited in sub. (7), the maximum amount of a grant award shall be ~~\$75,000~~ \$200,000.

(7) State share of the costs of a watercraft inspection program is limited to ~~\$2,500~~ \$4,000 annually for each public boat launch facility not to exceed ~~50%~~ 75% of the total project cost up to the maximum grant amount.

SECTION 9. NR 198.33 (5) is amended to read:

NR 198.33(5) The total state share of the cost of an early ~~infestation control~~ detection and response project may not exceed ~~50%~~ 75% of the total project costs up to maximum of ~~\$10,000~~ \$20,000.

SECTION 10. NR 198.33(6) is created to read:

NR 198.33(6) Notwithstanding s. NR 198.13(2), the department may distribute up to 25% of the state share of the project costs to the sponsor following acceptance of the grant agreement by the sponsor.

SECTION 11. NR 198.44(5) is amended to read:

NR 198.44(5) The state share of the cost of the project may not exceed ~~50%~~ 75% of the total project costs up to a maximum state share of ~~\$75,000~~ \$200,000.

SECTION 12. Subchapter V is created to read:

Subchapter V – Maintenance and Containment Projects

NR 198.50 Purpose. Grants awarded under this subchapter are intended to provide sponsors limited financial assistance for the ongoing control of a suppressed established aquatic invasive species population. These projects are generally intended for waters where management activity has achieved a desired level of control but complete eradication is not an achievable or reasonable goal. Ongoing maintenance is needed to contain these populations so they do not re-establish throughout the waterbody, spread to other waters, and impair navigation or other beneficial uses of the waterbody.

NR 198.51 Applicability. This subchapter applies to all sponsors applying for a grant for a maintenance and containment project that is in compliance with an approved plan under subchapter IV.

NR 198.52 Eligible activities. Activities eligible for funding under this subchapter may include any of the following:

- (1) Application fees for aquatic plant management permits issued by the department.
- (2) Surveying, monitoring, reporting and record-keeping required by the department.
- (3) Other activities determined necessary by the department.

NR 198.53 Applications and grant awards. (1) Claim forms will be provided to eligible sponsors with the department approved ch. NR 107 or 109 permit. Claims may be submitted any time after the permitted activities are completed and the necessary compliance reports are submitted to the department.

(2) A complete claim shall contain the following information:

(a) The name of the waterbody on which the project took place and a statement by the sponsor that to the best of their knowledge the project was completed in compliance with their permit conditions and according to their department approved plan.

(b) The amount of the claim for reimbursement or the actual cost incurred if the request is greater than the standard reimbursement.

(c) The signature of a representative authorized by resolution to act on behalf of the sponsor.

(d) A completed compliance check list to be signed by department region staff.

- (3) The department shall review the claim and may approve it for a grant award.
- (4) The standard state share of the cost for a maintenance and control project will be determined by the department based on the application fee and specified monitoring and reporting in the permit or the department approved plan.

SECTION 13. STATEMENT OF EMERGENCY. The substantial increase in grant funding is a strong message from the Legislature that concern over the welfare of our public waters is growing, along with the expectation that these additional funds be put to work as soon as possible. The appropriation from which these funds are spent is a biennial appropriation, meaning that any unspent funds at the end of the biennium automatically lapse back to the Water Resources Account of the Conservation Fund. The timeline for permanent rule promulgation and the lack of staff to provide support to eligible sponsors may impede the Department's ability to fully and responsibly invest the authorized spending by the end of the biennium because of the current rule's limitations. An emergency rule will help to minimize or eliminate the amount of funds that are lapsed.

SECTION 14. EFFECTIVE DATE. This rule shall take effect on July 1st, 2008 as provided in s. 227.24(1)(d), Stats.

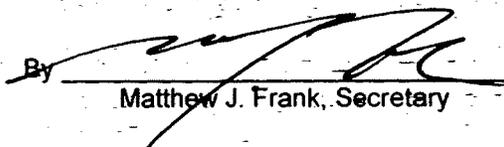
SECTION 15. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on March 26, 2008.

Dated at Madison, Wisconsin

March 31, 2008

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By


Matthew J. Frank, Secretary

(SEAL)

Fiscal Estimate — 2007 Session

Original Updated
 Corrected Supplemental

LRB Number	Amendment Number If Applicable
Bill Number	Administrative Rule Number WT-10-08E

Subject
 Aquatic Invasive Species Control Grants (NR 198)

Fiscal Effect

State: No State Fiscal Effect
 Indeterminate

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Increase Costs — May be possible to absorb within agency's budget.

Yes No

Decrease Costs

Local: No Local Government Costs
 Indeterminate

1. Increase Costs
 Permissive Mandatory
 2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others Lake Districts
 School Districts WTCS Districts

Fund Sources Affected
 GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations
 s. 20.370(4)(ma) and s. 20.370(4)(aq)

Assumptions Used in Arriving at Fiscal Estimate

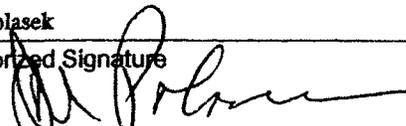
The proposed emergency rule package makes changes to the aquatic invasive species (AIS) grants program as a result of changes that were included in 2007 Act 20, the 2007-09 biennial budget act. The changes in the package include the following:

1. Increasing the cap on the state cost-share rate from 50% 75%.
2. Deleting a requirement that grants be awarded to local government units.
3. Increasing maximum amount of dollars (i.e. grant cap) that can be awarded for a grant.
4. Increasing the value for volunteer labor that can be used as local match.
5. Establishing a new category of AIS grants that reimburse grantees for maintenance costs that are incurred while managing established infestations of aquatic invasive species.
6. Allowing a cash advance for early detection and rapid response projects.
7. Expanding sponsorship to include universities, colleges and technical schools, hydro-electric corporations and other branches of state and federal government that manage lands or natural resources.
8. Broadening the definition of a nonprofit conservation organization.

State Fiscal Effect:

Although a rule change is required, item 1 has already been implemented by the Department since the change was made in statute by Act 20. Items 2 through 8 are expected to increase the number of grant applications. However, since Act 20 did not include additional staff and funding for regional staff to provide technical assistance to develop or implement AIS treatment plans or additional staff and funding for Community Financial Assistance (CFA) to process the grants, the costs associated with the increased grant applications will be absorbed with existing staff and within the existing budget.

Long-Range Fiscal Implications

Prepared By: Joe Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 02-18-08