

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

The Wisconsin Natural Resources Board proposes an order to renumber NR 58.32 (6), (7), (11), and (12); to renumber and amend NR 58.31, 58.32 (1), (2), and (8), and 58.34 (2); to amend NR 58.30, 58.32 (note), 58.33 (title), (1) (intro.), and (2) (title), 58.34 (1), 58.35 (1) and (2) (intro.), 58.36, 58.37, and 58.38; to repeal and recreate subchapter III (title) of chapter NR 58; and to create NR 58.31 (2), 58.32 (1) and (11), 58.33 (3), 58.34 (2), 58.35 (3), and 58.38 (1) to (4), relating to the implementation and administration of grants for endangered resources.

ER-39-07

Analysis Prepared by Department of Natural Resources

Statutes Interpreted: In promulgating this rule, s. 227.11, Stats., has been interpreted as allowing the Department of Natural Resources (DNR) the authority to develop rules to establish and implement grant programs. Section 23.09 (2), Stats. has been interpreted to allow the DNR to preserve rare species.

The purpose of the federal statutes authorizing the State Wildlife Grants Program (SWG) is to provide federal money to states for cost-effective conservation aimed at preventing wildlife from becoming endangered. Projects supported by this program protect and restore important lands and waters, collect information on what kinds of wildlife are in trouble, and develop partnerships to protect declining species and habitats on public and private lands. By emphasizing a proactive approach, the SWG helps us take action to protect wildlife and habitats before they become too rare and costly to protect.

Statutory Authority: The federal statutes that authorize the promulgation of the rule for the SWG include the Department of the Interior and Related Agencies Appropriations Act of 2002, Public Law 107-63; Title I; Land and Water Conservation Fund Act of 1965; 16 U.S.C. Sections 4601-4 to 4601-11. The state statutes that authorize the promulgation of this rule include ss. 23.09 (2) and 227.11, Stats.. These sections grant rule-making authority to the DNR to establish and implement endangered species grant programs.

Explanation of Agency Authority: The DNR receives annual funding from the U.S. Fish and Wildlife Service to develop the SWG. SWG was authorized by Congress to provide technical and financial assistance to individuals and organizations that are willing to partner with their states to maintain and enhance habitat for Species of Greatest Conservation Need (SGCN). These animal species (birds, fish, mammals, insects, and crustaceans), which are identified by each state, include state and federally-listed species and other species with small and/or declining numbers in the state.

Related Statute or Rule: ch. 50, Wis. Admin. Code, Administration Of Outdoor Recreation Program Grants And State Aids, is similar to this proposed rule in that it establishes procedures for implementation of various aids programs administered by the DNR.

Plain Language Rule Analysis: The current administrative rules for Endangered Resources Grant Programs, ch. NR 58, Wis. Adm. Code, are intended for grants to fund research, management and educational activities pertaining to Wisconsin's rare flora and fauna and natural communities, and to fund grants under the Landowner Incentive Program. The purpose of ch. NR 58, as currently written, is too broad to apply to SWG. For SWG to be in accordance U.S. Fish and Wildlife Service's goals for the program, the DNR proposes to amend ch. NR 58 by revising subchapter III to include this new program.

The proposed SWG subchapter amendment is intended to establish this new program, which is funded by the U.S. Fish and Wildlife Service. The SWG is intended for management, restoration, protection of land, and other activities to benefit SGCN and their habitat. SGCN are identified by Wisconsin's Wildlife Action Plan (WAP) and include species listed as endangered, threatened, and candidate or special

concern at the state or federal level. The new program will provide a 50% to 100% cost share to agencies, landowners, and organizations who meet the criteria of the program.

The biggest threat facing most SGCN is loss or degradation of habitat. Habitat supporting rare species has been and continues to be converted to other land uses such as crop production, pasture, or development. Invasion by shrubs and trees due to lack of fire in the prairie and savanna habitats and the spread of other invasive species in both proposed program areas has degraded habitat for rare species. Fragmentation has also made rare species populations more susceptible to disturbance and reduced the ability of those populations to rebound after natural disturbances. Without addressing this habitat loss and degradation, populations of SGCN are expected to decline.

SGCN are defined in Wisconsin's WAP, which has been approved by the U.S. Fish and Wildlife Service. The WAP is a statewide effort to identify the animal species (including invertebrates) that are of greatest conservation need. The SGCN list includes all of the animal species currently listed as threatened or endangered in Wisconsin or at the federal level, and it also includes many more species that often "fall between the cracks" for funding and conservation attention. The resulting WAP presents priority conservation actions to protect the species and their habitats and will play the fundamental role in guiding the SWG.

Although Wisconsin has a number of programs for land managers, few of these specifically target SGCN. For instance, the DNR turkey and pheasant stamp cost-share programs may tangentially benefit SGCN, but this is not their primary goal. The DNR forest stewardship program includes endangered and threatened species as a component of their program, but this component is not currently funded. In addition, many Natural Resources Conservation Service (NRCS) programs are based on set distances from a stream rather than the habitat needs of SGCN. NRCS's Wildlife Habitat Incentive Program and the U.S. Fish and Wildlife Service's Partners for Fish and Wildlife do focus directly on rare species, but are limited by funding. Wisconsin's WAP has developed works to complement these programs without duplicating their efforts.

The proposed change to ch. NR 58 will establish the SWG and will enable the DNR to provide direct financial assistance to environmental organizations, governmental agencies, universities and colleges and private individuals to aid them in managing and restoring habitat for SGCN.

Summary of, and Comparison with, Existing or Proposed Federal Regulations: The federal rule establishes the federal SWG, but there are no federal rules because the grants are administered by the states. The proposed state rules do not relieve individuals from the restrictions, requirements and conditions of federal statutes and regulations.

Comparison with Rules in Adjacent States: The proposed rule changes are non-controversial in nature and do not represent policy or significant changes that differ from surrounding states. Other states in the Midwest that have SWG grants from U.S. Fish and Wildlife include Illinois, Iowa, Michigan, Minnesota, Missouri, and Ohio. These states do not have administrative rules pertaining specifically to SWG. Michigan, however, was considering developing rules.

Summary of Factual Data and Analytical Methodologies: The proposed rule changes are based solely on the need to establish SWG and to create the mechanism to enable the DNR to provide funds to partners through a grant process.

Analysis and Supporting Documents Used to Determine Effect on Small business or In Preparation of Economic Impact Report: No information included

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Section 1. NR 58, subch. III (title) is repealed and recreated to read:

Subchapter III – Federal Grant Programs

Section 2. NR 58.30 is amended to read:

NR 58.30 Purpose. The purpose of this subchapter is to establish rules for the implementation and administration of a grant ~~program~~ programs to fund management, restoration and protection activities pertaining to Wisconsin's natural communities and rare flora and fauna on private land, or Wisconsin's species of greatest conservation need as identified in the Wisconsin wildlife action plan, or both.

Section 3. NR 58.31 is renumbered NR 58.31(1) and, as renumbered, is amended to read:

NR 58.31 Applicability. (1) This subchapter applies to all applicants for, and recipients of, grant awards made under the landowner incentive program and the state wildlife grants program. ~~The landowner incentive program was~~ These programs were established through the Department of the Interior and Related Agencies Appropriations Act of 2002, Public Law 107-63; Title I; Land and Water Conservation Fund Act of 1965, USC ss. 4601-4 through 4601-11.

Section 4. NR 58.31(2) is created to read:

NR 58.31(2) Funds from the following sources may be distributed by grant programs covered under this subchapter:

(a) Funding allocated from programs established under Section 387 of the Federal Agricultural Improvement and Reform Act of 1996 and reauthorized in the Farm Security and Rural Investment Act of 2002, Title II; Subtitle F, Sec. 2502: "*Sec. 1240N. Wildlife Habitat Incentive Program*".

(b) Department budget appropriation 116, s. 20.370(1)(fe), Stats., general purpose revenue match.

(c) Department budget appropriation 163, s. 20.370(1)(fs), Stats., checkoff, license plate, and miscellaneous revenue.

(d) Department budget appropriation 161, s. 20.370(1)(mu), Stats., fish and wildlife account.

(e) Department budget appropriation 137, s. 20.370(1)(lk), Stats., gaming revenue.

(f) Department gift money under s. 20.370(1)(gr), Stats., expressly designated for the purpose of grant awards.

Section 5. NR 58.32(1), (2), (6) to (8), (11) and (12) are renumbered NR 58.32(2), (14), (7), (8), (6), (12) and (13), respectively, and subs. (2), (6) and (14), as renumbered, are amended to read:

NR 58.32(2) "At-risk species" means any flora or fauna species listed as endangered or threatened at the state or federal level, special concern species, or species of greatest conservation need.

(6) "~~Program~~" "LIP" means the landowner incentive program.

(14) "~~Comprehensive wildlife conservation plan~~" "Wisconsin wildlife action plan" means the statewide plan prepared by the department to identify which native Wisconsin species are of greatest conservation need. The plan presents priority conservation actions to protect the species and their habitats.

Section 6. NR 58.32(1) and (11) are created to read:

NR 58.32(1) "Advisory team" refers to the state wildlife grant program advisory team created in s. NR 58.33 (3).

(11) "SWG" means the state wildlife grants program.

Section 7. NR 58.32 (Note) is amended to read:

Note: Copies of the ~~Comprehensive Wildlife Conservation Plan~~ Wisconsin wildlife action plan (also known as the comprehensive wildlife conservation plan) and the Wisconsin Natural Heritage inventory (NHI) Working List are available from the Bureau of Endangered Resources, Department of Natural Resources, P.O. Box 7921, Madison, WI 53707. ~~Wisconsin natural heritage~~ The NHI working list contains species known or suspected to be rare in the state and natural communities native to Wisconsin. It includes species legally designated as endangered or threatened and special concern species. The NHI program in the Bureau of Endangered Resources maintains and updates the list.

Section 8. NR 58.33(title), (1)(intro.) and (2)(title) are amended to read:

NR 58.33(title) ~~Landowner incentive program~~ Program guidance / Advisory team. (1) CREATION; COMPOSITION. (intro.) ~~Department landowner incentive program staff~~ For each grant program, department staff shall assemble a guidance or advisory team which may include representatives of the following groups:

(2) (title) ROLE OF THE LIP GUIDANCE TEAM.

Section 9. NR 58.33(3) is created to read:

NR 58.33(3) ROLE OF THE SWG ADVISORY TEAM. The team shall make recommendations to department program staff to fund proposals.

Section 10. NR 58.34(1) is amended to read:

NR 58.34 (1)(title) LIP ELIGIBLE APPLICANTS. Private landowners and organizations interested in managing and restoring habitat on private land for at-risk species are eligible to apply for a LIP grant under this subchapter. Proposals that enhance, protect or restore habitat on private land that benefits at-risk species will be considered for funding.

Section 11. NR 58.34(2) is renumbered NR 59.34(3) and, as renumbered, is amended to read:

NR 58.34(3) (title) GRANT PROGRAM SPECIAL EMPHASIS. Special emphasis may be placed, on an annual basis, on one or more geographic areas, species, at-risk or natural communities targeted by the grant program if designated in the application. The grant program guidance or advisory team and department program staff ~~shall~~ may develop special emphasis based on gaps in existing funding for at-risk species work ~~on private land~~ and the need for protection of habitat of at-risk species based on threats to their habitat.

Section 12. NR 58.34(2) is created to read:

NR 58.34(2) SWG ELIGIBLE APPLICANTS. Private landowners and organizations proposing projects to benefit species of greatest conservation need, as defined in the Wisconsin wildlife action plan, are eligible to apply for a SWG grant.

Section 13. NR 58.35(1) and (2)(intro.) are amended to read:

NR 58.35 Grant selection process. (1) ~~A subcommittee of the~~ The grant program guidance team, ~~or a subcommittee of the grant program guidance team,~~ shall rank the grants according to criteria specified in the grant application materials.

(2)(intro.) In addition to the grant selection criteria in s. NR 58.08, factors considered in ranking LIP grant proposals include ~~but are not limited to~~ any of the following:

Section 14. NR 58.35(3) is created to read:

NR 58.35(3) In addition to the grant selection criteria in s. NR 58.08, factors considered in ranking SWG grant proposals include any of the following:

- (a) The extent to which the proposal furthers the objectives as stated in the application materials.
- (b) The degree to which the project complements other efforts and makes efficient use of all other available funding sources.
- (c) The degree to which the project assists local or regional decision making or formation of a strategy to protect the species and natural communities identified in the Wisconsin wildlife action plan.
- (e) The degree to which the project will provide a long term or permanent benefit for one or more species or natural communities identified within the Wisconsin wildlife action plan.
- (f) The level of community support and commitment, including past efforts to benefit one or more species or natural communities identified in the Wisconsin wildlife action plan.
- (g) Proposals that provide cost sharing.

Section 15. NR 58.36 is amended to read:

NR 58.36 Grant calculation. The LIP grant under this subchapter shall be 75% or less of the actual eligible costs as provided in s. NR 58.05.

Section 16. NR 58.37 is amended to read:

NR 58.37 Grant awards. No LIP award may exceed \$25,000

Section 17. NR 58.38 is amended to read:

NR 58.38 Grant conditions. In addition to the conditions listed in s. NR 58.06, ~~the grant period may not exceed 3 years.~~ all of the following grant conditions apply to program grants:

Section 18. NR 58.38 (1) to (4) are created to read:

NR 58.38(1) DURATION. The grant period may not exceed 3 years.

(2) PUBLICATIONS. The grantee shall do all of the following:

(a) Provide the department with one copy of all publications and news releases which result from the project grant.

(b) Include in all publications and news releases which result from the project grant acknowledgement of the grant program administered by the department as a source of funding for the project.

(3) DATA AVAILABILITY. The grantee shall make all data requested by the grant program available for incorporation into the natural heritage inventory and the Wisconsin EcoAtlas.

(4) SITE VISIT. The grantee shall allow department personnel to visit the project site at reasonable times with prior notice.

Section 19. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Section 20. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on May 28, 2008.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Matthew J. Frank, Secretary

(SEAL)