

SUBJECT: Request adoption of Board Order WT-09-08, revisions to NR 190, 191 and 195 relating to lake and river protection grants and NR 198 relating to aquatic invasive species control grants.

FOR: DECEMBER, 2008 BOARD MEETING

TO BE PRESENTED BY: Carroll Schaal, WT/4

SUMMARY:

In 2004, under State Statutes 23.22 (2)(c) Invasive Species, the Department promulgated rules for a cost share program for assisting public and private entities in controlling aquatic invasive species as NR 198 Aquatic Invasive Species (AIS) Control Grants. 2007 Act 20 increased the cost share rates, removed priority for local government sponsors and increased the allocation by \$2.8 million annually. The Bureau of Watershed Management is seeking adoption of revisions to NR 198 that incorporate the new statutes and make additional changes that include larger maximum grant awards, an expanded list of potential sponsors, create incentives and priorities for projects that integrate AIS control with other environmental protections, and allow communities that are successfully and compliantly managing existing populations of AIS to recoup their aquatic plant management permit fees.

Additional revisions in the NR 198 revision are also proposed for the closely related lake and river grant programs NR 190, 191 and 195 to provide uniformity. These changes increase the value of donated labor used for local match from \$8/hr to \$12/hr, require application materials be submitted in electronic format and to include additional information about public access.

Public hearings were held this summer and generally welcomed by the citizens and organizations controlling AIS. There was considerable concern expressed with the expansion of sponsors to include the Department and other State and federal agencies and the inclusion of incentives and priorities for non-AIS control activities. The final proposal restricts and defines these provisions more narrowly to address these concerns. If adopted, the new rules will be in place for the 2009-10 grant cycle.

RECOMMENDATION: Adopt Board Order WT-09-08, revisions to NR 190, 191 and 195 relating to lake and river protection grants and NR 198 aquatic invasive species control grants

LIST OF ATTACHED MATERIALS:

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|----|-------------------------------------|---|-----|-------------------------------------|----------|
| No | <input type="checkbox"/> | Fiscal Estimate Required | Yes | <input checked="" type="checkbox"/> | Attached |
| No | <input checked="" type="checkbox"/> | Environmental Assessment or Impact Statement Required | Yes | <input type="checkbox"/> | Attached |
| No | <input type="checkbox"/> | Background Memo | Yes | <input checked="" type="checkbox"/> | Attached |

APPROVED:

_____ /s/ Bureau Director, Russell Rassmussen - WT/4	_____ 11/10/08 Date
_____ /s/ Administrator, Todd Ambs - AS/5	_____ 11/12/08 Date
_____ /s/ Secretary, Matt Frank	_____ 11/19/08 Date

cc: Laurie J. Ross - AD/8	Carroll Schaal - WT/4	Tom Nowakowski - CF/8
Carol Turner - LS/5	Julia Riley - WT/4	

DATE: November 3, 2008

TO: Natural Resources Board

FROM: Matthew Frank, Secretary

SUBJECT: Adoption of Board Order WT-09-08, revisions to NR 190 Lake Management Planning Grants, NR 191 Lake Protection and Classification Grants and NR 195 River Protection Grants and NR 198 Aquatic Invasive Species Control Grants.

Why the rule revision is being proposed

This proposed order implements enabling legislation and facilitates investing a \$2.8 million increase in the annual funding allocation for the control of aquatic invasive species (AIS). The management of AIS will be improved statewide through this revision by allowing larger, more efficient prevention and control projects, lowering local costs, and providing a greater diversity of sponsors and eligible activities. The proposed changes create incentives for projects that couple long-term prevention with control.

Wisconsin Administrative Codes NR 190, 191, 195 are all related grant programs that have similar general provisions, largely the same set of sponsors and managed by the same staff. For consistency, minor revisions to policies common in all these codes are proposed to be consistent with changes proposed in NR 198.

Summary of the proposed rule

Proposed changes to NR 190, 191, 195 and 198 will:

- Increase the value of hourly donated, non-professional labor that can be used as local match from either \$8 or the federal minimum wage to \$12.
- Require that application materials not part of a required form be submitted in an electronic format and that they include more specific information on the public access sites on the affected water bodies.

To achieve the goals of larger, more efficient prevention and control projects, lower local costs, and a greater diversity of sponsors and eligible activities changes to NR 198 will:

- Change the maximum state cost share rate for all projects from 50% to 75% as allowed under recent changes in the enabling legislation.
- Create incentives for sponsors who are implementing water quality and habitat improvements in addition to controlling AIS.
- Increase the maximum amount of the state funds available per grant for all project types to allow larger grants.
- Expand sponsorship to include universities, colleges and technical schools, federally regulated hydropower corporations and state and federal government agencies that manage natural resources. Defines the nonprofit organizations that can apply for grants.

- Allow for a cash advance for early detection and response projects.
- Create a new subchapter that allows the department to reimburse sponsors who are successfully and ecologically containing established infestations under a department approved plan for the costs of permit application and required monitoring and reporting.
- Create a new subchapter that allows the department to solicit and fund research and demonstration projects that will advance statewide knowledge and improve AIS management techniques.
- Add priorities that encourage sponsors to integrate watershed pollution control and habitat protection and restoration efforts into their projects.
- Change wording and language to improve clarity and understanding and other housekeeping items.

These changes promote consistency among water-related grant programs and improve the Department's ability to track and maintain public water access sites. It will allow better investment of funds to control aquatic invasive species. State and federal properties and other situations where the absence of a willing local sponsor prevents action will be more efficiently addressed. More sponsors and higher project maximum costs and cost share rates will increase the scope and scale of projects allowing more activity to be included in one grant and therefore reducing the number of grants to be managed. These changes will allow the department to support essential prevention activities such as boat landing inspections on regional scales rather than on a lake by lake basis, reducing the number of small grants being administered for the same activities. The addition of incentives, new priorities and reimbursement of aquatic plant management permit fees for AIS maintenance and containment will help encourage the integration of AIS control with other environmental protection activities and reward those who are managing AIS in an environmentally-sound manner.

How does the proposal affect existing policy?

It increases the information required in a grant application. It eases the financial burden on grant sponsors by decreasing the local match requirement, increasing the value of sponsor-donated labor and allowing a cash advance for early detection projects. It broadens the scope and scale of projects the Department can support by increasing maximum grant amounts, expanding the number of eligible sponsors, expanding the list of eligible project activities and adds new funding opportunities for the maintenance and containment of AIS and for research and demonstration projects.

Hearing Synopsis

Public hearings were held in 2008 on July 22nd in Eau Claire, the 23rd in Spooner, the 29th in Rhinelander, 30th in Oshkosh and August 5th in Watertown. Thirty-three public appearance slips were submitted at the hearings; 19 of them at Rhinelander the best attended hearing. In addition, 32 sets of written comments were received before the end of the public comment period. Nearly all the attendees and comments were from lake organizations or town and county government. Four private contractors from the aquatic plant management industry also weighed in. None of the oral or written testimony received registered opposition to the rule and most commended the Department's efforts overall. The most common concerns expressed related to expanded sponsorship and the added application requirements and incentives related to water quality and habitat protection. A summary of the public

comments on a specific rule policy and staff's proposed response to how those comments have been addressed in the proposed final rule are discussed on the attached Response Summary. In formulating the final proposal staff met and consulted informally with members of the Wisconsin Association of Lakes, Wisconsin Association of Conservation Employees and other affected groups and individuals who provided comments.

Environmental Assessment

The proposed rule is a type III action under ch. NR 150, Wis. Adm. Code, and will not require an environmental assessment.

Small business and regulatory analysis

Small business is not directly affected by the rule because grants are issued only to governmental units or nonprofit organizations. Therefore, under s. 227.114, Stats., an initial regulatory flexibility analysis is not required.

Contacts for more information on the proposal are Carroll Schaal, Lake Partnership Team Leader (608) 261-6423 or Carroll.Schaal@wisconsin.gov.

Fiscal Estimate — 2007 Session

<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected <input type="checkbox"/> Supplemental	LRB Number Bill Number	Amendment Number if Applicable Administrative Rule Number WT-09-08
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Subject
 Aquatic Invasive Species Control Grants

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(6)(as)

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% to 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 and require electronic applications. (These changes are proposed for NR 190 Lake Management Planning, NR 191 Lake Protection and Classification Grants, and NR 195 River Protection Grants too).
5. Establishing a new category of AIS grants that reimburses grantees for maintenance costs that are incurred while managing established infestations of aquatic invasive species and a new category describing how research and demonstration projects can be developed and proposed.
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 (NCO).
9. Adding priorities and incentives for projects that integrate with pollution control, habitat protection and that use a bidding process to develop their budget.

Long-Range Fiscal Implications

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

Fiscal Estimate — 2007 Session

Page 2 Assumptions Narrative Continued

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number WT-09-08

Assumptions Used in Arriving at Fiscal Estimate – Continued

State Fiscal Effect:

Although a rule change is required, item 1 above has already been implemented by the Department because the change has already been made in statute by Act 20. Items 2 through 8 above are expected to generate additional demand for AIS grants by an amount that cannot be specifically estimated. In addition, since Act 20 did not provide additional staff or funding for administering the AIS grant program, the costs associated with handling the additional demand for AIS grants will be absorbed with existing staff and within the existing budget.

Local Fiscal Effect:

The rule package makes it easier for local units of government to leverage grant funds and thus provides a greater financial incentive for local units to apply for grants.

Fiscal Estimate Worksheet — 2007 Session
 Detailed Estimate of Annual Fiscal Effect

Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number WT-09-08

Subject
 Aquatic Invasive Species Control Grants

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

Annualized Costs:		Annualized Fiscal Impact on State Funds from:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
State Operations — Salaries and Fringes		\$	\$ -
(FTE Position Changes)		(FTE)	(- FTE)
State Operations — Other Costs			-
Local Assistance			-
Aids to Individuals or Organizations			-
Total State Costs by Category		\$	\$ -
B. State Costs by Source of Funds		Increased Costs	Decreased Costs
GPR		\$	\$ -
FED			-
PRO/PRS			-
SEG/SEG-S			-
State Revenues	Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Revenue	Decreased Revenue
GPR Taxes		\$	\$ -
GPR Earned			-
FED			-
PRO/PRS			-
SEG/SEG-S			-
Total State Revenues		\$	\$ -

Net Annualized Fiscal Impact

	<u>State</u>	<u>Local</u>
Net Change in Costs	\$ _____	\$ _____
Net Change in Revenues	\$ _____	\$ _____

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

RESPONSE SUMMARY

to

Public Comments on Proposed Revisions to Chapter NR 190, 191 and 195 Relating to Lake and River Protection Grants and NR 198 Relating to Aquatic Invasive Species Control Grants and

COMMENT: We applaud the legislature for boosting aquatic invasive species (AIS) funding and increasing the cost share rate and DNR for undertaking a needed rule revision. It is good to see improvements in AIS funding for Wisconsin.

COMMENTS on added application requirements. If the Department requires applications in an electronic format of its choosing, then it must be able to accept formats other than Microsoft and in turn, assure that all its required forms are also available and accessible in an electronic format.

Response: No change. The policy change requires the use of format specified by the Department. While State government is PC-based an unlocked Adobe PDF format, which can be created on other operating platforms is preferred. We do not think that assuring in advance whatever is submitted is a format the Department can utilize is unreasonable. There is an ongoing project department-wide to convert the most commonly used paper forms and processes to electronic format. Currently there are 2267 electronic forms available within DNR and more are added each year.

COMMENT: Object to the application requirements that information on platted access and road rights of ways adjacent to public waters be provided. Making this information public will only work to increase AIS introductions by providing more pathways for AIS.

Response: No change. These types of dedicated public access sites are being lost throughout the state mostly because their locations are not well known. Gathering access information is an important duty of the Department in order to track and safeguard against unlawful abandonment of public access. The Department has no plans to widely publicize and promote these sites for public access. Additionally NR 1.91(4)(a) establishes the Department's policy on decisions regarding provision of natural resource enhancements such as grants for AIS control. Reasonable public boating access is required for providing such enhancements.

COMMENTS regarding maximum grant award amounts: Increasing the size of grants is needed though concerned that more money overall will be needed. Reduce the maximum grant award (cap) for Education, Planning and Protection (EPP) from \$200,000 to \$100,000. These activities are less expensive compared to control projects. Large caps and increased cost share rates will limit broad distribution of funds. Reasonable caps (unspecified) should be placed on all projects. Is \$4,000 enough for an effective paid water craft, boat landing inspection program? Increase early detection grants to \$30,000 (from proposed \$20,000).

Response: Change is proposed. The overall cap proposed for EPP projects is now \$150,000 instead of \$200,000. The final rule proposes two classes of EPP projects and associated caps: projects requesting \$50,000 and greater and those requesting less than \$50,000. No other changes to maximum grant awards are proposed at this time.

We reviewed past grant awards and found there are two levels of projects consistently proposed that indicate creating the EPP classes make sense. There are large multi-year, county, regional, multi-lake or statewide projects that may include long term staffing and

smaller single waterbody or town projects that seek aid for watercraft inspection, education projects or management plans. Both are priority activities addressing the problem at different scales that should not “compete” for the same funding. We believe that \$4000 is a reasonable support for seasonal staffing for a single landing. Additional out reach activities beyond watercraft inspections are not subject to this cap. Early detection projects are intended as a temporary bridge until other longer term grants can be applied for and by definition are not large in scale.

COMMENT: Complete agreement on allowing a cash advance for early response projects.

COMMENTS regarding expanded sponsorship. Understand why sponsorship should be expanded but concerned with the Department, federal agencies and the University competing for grants by being a grant sponsor. This allows for 100% state funding of some projects for DNR when other sponsors must provide 25% non state funding. Instead, encourage and expand local sponsorship and partnerships with local government. It is inappropriate for DNR to evaluate its own grants or those from other state agencies. The funding available to DNR and Universities should be capped to avoid charges of inside influence. The DNR, federal agencies and the UW System should not be eligible sponsors because they have the capacity to out compete and will demoralize volunteer-based organizations and will reduce the amount of money available to other sponsors working on the front line of AIS prevention and control. These organizations already have access to other funding sources not available to lake organizations and detract from local efforts. The intent and types of projects and activities that are appropriate for these entities to sponsor should be clearly specified and not wide open. They have high overhead costs that may be redundant for state agencies to claim as costs. To address the concerns we have heard from our constituents on expanded eligibility under this section, it may be appropriate to establish caps of maximum funding levels.

Response: Change is proposed. To address the concerns the rule now proposes to limit state, federal, university, college, school and hydropower corporate sponsors to a total amount of \$200,000 per year in the EPP category. These same sponsors are now only eligible for control projects where they are the most suited sponsor, such as ownership of the shore or bed of an infested water body, or where a conventional local sponsor can not be found. Cumulative annual funding for research and demonstration projects is proposed to be capped at \$500,000 per year and require the Department to biannually solicit and consider input on research needs from sponsors and the Council on Invasive Species.

From the Education, Planning and Prevention standpoint, the intent for expanded sponsorship for statewide organizations is to more efficiently address and support statewide issues and needs rather than through many separate individual initiatives. For example, development and printing of a manual or fact sheet for statewide use, regional training and education for watercraft inspections or a broad-scale education campaign.

There is a need for the Department to directly manage projects on lakes and waters where it is the primary riparian. There are approximately 60 lakes in the Northern Region greater than 50 acres with public access that are completely surrounded by State land. There are several notable state lands with lakes elsewhere such as Kettle Moraine, Devils and Yellowstone Lake State Parks as well as countless wetlands and streams on state property that may need AIS management. It is unreasonable to expect that local groups to step up and sponsor projects on these waters and that the Department will not manage some of these highly used, potentially “source” waters.

Also, early response to new introductions is widely regarded as the most effective AIS control strategy. There are instances every year of new AIS populations being discovered on lakes that do not have a management organization and where the local town or county government is not prepared to act.

The Department is subject to the same 25% local match requirement as other sponsors which limits local match to something other than “state funds administered by the Department”. This will require either seeking additional grants or local contributions. Other state, university and federal government sponsors would also need to find eligible match. We can not restrict legitimate agency overhead anymore than we can restrict a profit margin for private companies acting as consultants.

COMMENTS regarding expanded sponsorship: Hydropower corporations should not be eligible grant sponsors. Federal Energy Regulatory Commission licenses for these facilities require that they control AIS at their own expense. Reimbursement for lost power generation during a drawdown to control AIS should be an eligible expense.

Response: Change is proposed. We have relegated these entities to the same restrictions on sponsorship as state and federal agencies.

We have since heard from one corporation that they would not sponsor a grant due to the negative impression that might come from “competing” against local lake groups for funding so the Department doesn’t expect these organizations to be sponsoring many grants. However, impoundments are more problematic and prone to AIS problems than any other waterbodies and in many cases are not supported by functioning organizations. We do not want to establish express eligibility for the compensation for lost power generation using a drawdown as a management technique at this time. We will investigate the terms of any license and consider the legality of funding any project sponsored by a hydropower corporation.

COMMENT: The expanded definition of a nonprofit conservation organization is supported. There is concern that the expanded NCO definition is too tied to entities with a purpose to acquire or manage property. The definition should be explicitly broader for organizations with interest in education and support of management but not active in management activities themselves.

Response: Change is proposed. The definition was modified to include a broader purpose relating to control or prevention of AIS.

COMMENTS regarding cost share incentives for comprehensive projects. Providing a higher cost share rate (50% vs 75%) for projects that also address habitat and water quality degradation wrongly implies that AIS infestations are caused by these other human induced problems. They are not necessary for an effective AIS control plan. Funding these additional activities will increase the costs of projects and take money and attention away from dealing directly with AIS. This money should only be used for AIS control. This will force sponsors to seek out other grant funding. Cost share rates should be consistent. Everyone should receive 75% state cost share for controlling AIS, this requirement creates an additional financial burden. These added incentives only apply to control projects on waters with AIS, so protection projects on waters without AIS such as on most of the northern waters, will be less competitive and not receive funding for these activities which will help protect them from AIS. The Education, Planning and Prevention projects should include the same incentives. We think this wording is confusing with the first sentence regarding 50% cost share seemingly contrary to the second in

regard to 75%. An alternative approach would increase the maximum grant award to \$250,000 for sponsors that qualify and want to implement these additional activities.

Response: Change is proposed. We have dropped the differential cost share rate for these activities. All projects are eligible for the full 75%. We have retained the emphasis on making projects that are multi-dimensional a higher priority for funding. We have also clarified that to receive cost-sharing for other activities, they need to be in the approved plan and need to relate to prevention or control of AIS.

As stated above, there are clearly correlations between disturbed systems and the increased risk of new invasions and the extent and vigor of established AIS populations. Since an approved plan is required for control projects, sponsor plans will have already identified these needs. This section is intended to provide an incentive and funding mechanism for implementing those activities.

COMMENTS regarding cost share incentives for bidding projects: Some bidding or other means to control costs should be required but a differential cost share rate is not the way to do it. Oppose creating a cost share incentive (50% vs 75%) for projects that have used a competitive bidding process to select an herbicide applicator. It will open the door to substandard contractors and waste money. This is a barrier to innovation which may be more costly in the long run. This will threaten existing relationships between sponsors and contractors.

Response: Change is proposed. As stated above we have dropped the differential cost share rate. We retained the intent of the requirement which is to help contain costs by requiring sponsors to demonstrate they sought bids or competitive quotes or took other actions to seek the best price when selecting consultants and services.

We have seen a wide range of costs for similar treatments on different lakes and different contractors with no discernable differences in effectiveness. The state of Minnesota has bid herbicide treatment projects on a state-wide basis and is paying considerably less on a per acre effort than the average costs that Wisconsin has paid through AIS grants. The Department will explore other options for assisting sponsors in procuring services in the most cost effective means possible such as developing a schedule of reasonable rates for certain services based on past grant awards, surveys, statewide bid solicitations and contractor certification.

COMMENTS regarding priorities: Agree that “points” should be given for these activities but not funding from this source. We’re in support of more comprehensive or “wholistic” management approaches overall but concerned that it will detract from a focus on AIS management. Priority should not be given to projects that integrate watershed pollution control and shoreland and shallow area restoration. It unnecessarily diverts money and energy for the purpose of controlling AIS and is ambiguous and not pertinent to early detection and response or planning, prevention and education projects. Perhaps this should only apply to maintenance level management projects. “Advancing knowledge and understanding” is not an appropriate priority. Higher priority should be given to non infested lakes and CBCW prevention efforts. Lakes with first time herbicide treatment shouldn’t receive a priority or only if they demonstrate successful treatment the first time. The priority for local government should not be removed. Retain a priority for local governments with successful programs or approved plans.

Response: Change is proposed. We have retained the ability to consider these factors in awarding grants but have re-worded it to make a tighter connection to activities that have an impact on AIS management.

We maintain that organizations that have established themselves as good environmental stewards and can demonstrate that by showing that they have worked for other environmental improvements aside from control of one plant or animal should receive a higher priority for funding. We also believe healthy ecosystems with good habitat help prevent AIS from establishing and if they become established help to prevent the AIS from imposing ecological degradation or negatively impacting beneficial uses. AIS establishment and expansion are symptoms of degradation that dictate that management at the whole scale is warranted. Since large scale herbicide treatment projects require a DNR approved plan that must address these types of activities, we do not think that cost sharing and implementing them is a large burden and will improve environmental conditions overall. To get the added priority the sponsor only need demonstrate some level of implementation. The Department sought the removal of local government priority in statute and think priorities should be based on the value of each project and not who is the sponsor.

COMMENTS on new subchapter V Maintenance and Containment Projects. This is a worthy idea but lacks specifics and the funding is too limited. This only allows sponsors to receive reimbursement for permits fees and not the full costs of control when they have reached a “maintenance” level of AIS. The threshold for when a lake is in AIS maintenance needs to be defined. AIS management is never ending and the state should not deny funding for the full cost of on-going control. Funding needs to be available for control efforts for the long term. Suggest “resolving” the shoreland restoration, lake stewardship and water quality incentives and priority issues above by making them a requirement for reimbursement under this section only. This is more consistent with the long term control concept offered here than with initial control efforts. Subchapter V is poorly constructed and should be removed. Maintenance and containment assistance is available under NR 7 Recreational Boating Facilities. New subchapter V that allows sponsors to receive reimbursement of permits fees is acceptable but opens the door to waste thousands of dollars on other activities including annual plant surveys which will take funding away from addressing the problems. It is not clear what priority these projects have. They will mostly be in southern waters.

Response: Change is proposed. We have restructured the priorities section to indicate that these are the lowest priority projects. We have defined the maintenance level of control as having achieved the target goal set in an approved plan and made changes to clarify the language in this subchapter. The proposal limits the maximum reimbursement to the cost of the permit fee and clarifies that monitoring and other costs are only used as match.

Over time as more projects reach this level, we think this section may be expanded to cover some level of treatment costs, perhaps at a reduced cost share rate, but we do not think that the program has reached that maturity. Because the variety of types of AIS (plant, animal) and associated habitats (lake, streams, wetlands) it is difficult to be as specific as desired in rules and therefore reverting to the plan that is specific to the type of AIS and habitat is reasonable.

COMMENTS on research and demonstration projects. Applied effective research is needed but we are concerned about costs and focus. Research should be restricted or biennially capped

to assure a balance of funding for other needs. Research and demonstration projects are necessary and needed but should be capped at: \$150,000 per project; 15% of available funds; or \$500,000 overall. Research and demonstration projects should be removed or reconstructed with more detail and limitations. DNR has sole discretion on funding these projects. There are other sources of funding for these activities. Research and demonstration projects should not be removed from the Established Population Control Project section (sub IV). This affects most taxpayers and much can be learned from these projects. Local residents should provide input on what type of research is needed and how much is necessary. Putting it in a separate category will diminish innovation. Good applied research is essential and needed on the ever expanding list of AIS and the challenges of developing effective prevention and control efforts. However, it should come from other funding sources or be limited or more specifically controlled in the AIS grants and should not be sponsored by Universities. Research should be explicitly broad to include social sciences and not just control technology.

Response: Change is proposed. To address the concerns we propose an overall cap of \$500,000 per fiscal year or about 12% of the total allocation. To assure research is connected to local projects, the Department proposes to solicit research needs year-round from sponsors and consult with the Council on Invasives Species bi-annually. The purpose statement has been amended to explicitly include economic and social issues and the subchapter format has been restructured and expanded similar to the other subchapters to improve clarity.

There are many aspects of controlling AIS that need research and there may be new AIS coming in the future. By having consistent monitoring and reporting requirements, all projects contribute to a better understanding of AIS control and prevention. However, some research can not be done effectively in the context of a community-based project.

COMMENT: Make I-LIDS (a remote video surveillance device) an eligible cost. We appreciate the opportunity to have been part of the pilot project. They are an important and cost-effective supplement to watercraft inspectors and law enforcement and should become an eligible component of the grant program.

Response: An addition is proposed that says if a sponsor is already participating in watercraft inspection effort (Clean Boats, Clean Waters or CBCW) then they are eligible for reimbursement of the initial installation costs and set up of a video surveillance system. The annual lease, all operation and maintenance costs will be the sponsor's responsibility for all years after.

Our evaluation of the Burnett pilot project found that these devices can be useful as a deterrent and can help encourage good boater behavior. Their ultimate use in effective enforcement of AIS transport laws has yet to be determined. However, our first funding priority will continue to be for supporting volunteer-based watercraft inspection efforts through CBCW.

COMMENT: Remove the inappropriate inclusion of "protection and improvement of aquatic resources" as describing a management plan for AIS control. Revise this language to better clarify "improvement" which is a subjective term. A watershed pollution control strategy and shoreland and shallow area protection and restoration should not be a requirement of an AIS control plan.

Response: No change. We do not agree this is an inappropriate inclusion. The intent is to be broad and inclusive as it relates to a plan and therefore we are comfortable with it being subjective in this context. Disturbances in the lands draining to aquatic ecosystems can cause excessive contributions of nutrients and sediment that can harm native species and create niches for colonization by invasive species. The interface between uplands and shallow water areas are particularly vulnerable to colonization by invasive aquatic plants. Protecting water quality and native habitat supports AIS management.

COMMENT: Define “baseline data”.

Response: Change is proposed. This terminology now reads “survey data”.

COMMENT: NR 198.43(m) should not be repealed but modified to address a contingency response to a reestablished population.

Response: We concur. The intent was to consolidate the long term monitoring requirement into one provision but a contingency plan for *responding* to a reestablished population revealed by such monitoring is still needed and should not have been deleted.

COMMENT: Remove the inclusion of federal plans as the basis for an eligible project. The state should not subsidize federal activities.

Response: No change. Other nonfederal sponsors may choose to implement a recommendation in a federal plan. This provision is also consistent with federal agencies as sponsors.

The following are “open” comments not directed at a proposed revision

COMMENT: NR 198.43(2)(d) states that a plan approved for payment under NR 190 (Lake Management Planning Grants) is not an approved plan under this rule. It should be changed to the contrary. We should not approve payment on plans that don’t meet the chapter’s requirements.

Response: No change. The plan that is approved for payment may not address the issues or contain the requirements needed for funding under this chapter. Lake plans under NR 190 are not required to meet the standards of this chapter and may not even address AIS. Therefore a blanket inclusion is not appropriate.

COMMENT: Reduce the local share to 10%.

Response: No change. The cost share is set at 25% by statute

COMMENT: Create a clean landings program with AIS funds, perhaps reimbursing towns, for inspecting and raking out and removing AIS from boat landings.

Response: No change. These activities, better defined, are currently eligible. The Department welcomes a town to sponsor a pilot project to serve as a model.

COMMENT: Allow AIS funds to subsidize the NW Lakes Conference, and other similar venues that focus on AIS to reduce attendance fees at these important education and training events.

Response: No change. These are currently eligible activities.

COMMENT: Mandate linkage to the federal Stop Aquatic Hitchhikers™ campaign for all AIS funded public information. Consistency of AIS related messages and brand recognition are important when communicating with busy/preoccupied people and would reinforce Wisconsin's recognized leadership in the fight against AIS by promoting even greater public AIS awareness and message retention on the part of Wisconsin taxpayers and visitors alike.

Response: No change. While we agree with the premise, mandatory compliance with the federal trademarked campaign isn't an appropriate solution. Many communities have already developed a strong affiliation to Wisconsin's Clean Boats, Clean Waters promotional identity. The Clean Boats, Clean Waters program is currently studying "branding" and consistent messaging. This process should be allowed to continue to see what other alternatives there are to instituting a statewide mandate for Stop Aquatic Hitchhikers™.

COMMENT: Please review the plan approval process, some plans are never approved, eliminate the 45 day review period if you can't meet it. This causes delays and waste money and builds resentment to DNR. Remove this requirement or make plans automatically approved if not reviewed within the 45 days.

Response: No change. We acknowledge that work load is an issue but as the program matures, the initial flurry of planning should subside some. Plans are an essential component of the program and we are dedicated to improving our review time.

COMMENT: Take steps to see that trailers leaving infested lakes are inspected. Stiffer fines are needed for transporting AIS. We need more aggressive ticketing and to close landings on infested lakes.

Response: No change. We understand the concern but it is not germane to the rule being proposed.

COMMENT: Additional funding is needed for harvesting equipment. The Recreational Boating Fund (RBF) is not cost-sharing this equipment as in the past.

Response: No change. Aquatic plant harvesting is generally an annual nuisance control activity and an indiscriminant tool in that it also removes native plants. This activity does not fit within the current restorative purpose of the grant program with the exception of the new Subchapter V Maintenance and Containment, where the permit fees for a harvesting operation may be eligible for reimbursement. Perhaps in the future this section could include some allowance for additional harvesting costs. However, despite the current policy of the Water Way Commission that oversees the RBF program, state statute 30.92 requires that 40% of its available funding be directed to projects on inland lakes and that the acquisition of capital equipment necessary to control and remove invasive aquatic plants are an eligible use of the funds. It should be noted that AIS management plans required by the RBF to be eligible for a harvesting equipment grant are an eligible activity under NR 198 and 190 and that the cost of harvester *operation* is an eligible *project* cost if identified in the approved control plan.

COMMENT: Buffalo Lake wants to be able to get funding for the reintroduction of Lotus in addition to removing plants.

Response: Change is proposed. While the reintroduction of native plants is eligible under NR 198 and 191 we made this more explicit in the final proposal.

Wisconsin Legislative Council Rules Clearinghouse Report

Comments from the Legislative Council dealt exclusively with form, style, placement, clarity, grammar, punctuation and use of plain language. All the suggestions were incorporated in the final text.

Public Comments on Order WT-09-08 were received from the following:

Northern & Northeastern

Ted Ritter, Vilas County Land & Water Conservation Department
John Ney, Gilmore Lake Assoc. Douglas County
Dave Ferris, Burnett County LCD
Jennifer Holman, Oneida County LCD
Chuck Their, Vilas County Lakes Assoc.
Robert Williams, Oneida Co. Lakes and Rivers Assoc. Inc
Chris & Jan Wise, Sayner
Susan Johnson, Legend Lake & Chute Lake PRD
Gary DeFere, Shawano
Bob Nicholson, Two Sisters Lake Property Owners Assoc.
Lisa Gabriel, AIS Coordinator, Washburn Co.
Diane Hanson, Lincoln Co. LCD
John Ney, Gilmore Lake Assoc. Douglas Co
Radley Z. Watkins, Hazelhurst
Rick Pyle, Three Lakes Waterfront Assoc. Oneida Co.
Sheehan Donoghue, Sayner
Earl Cook, Wisconsin Assoc. of Lakes
Amy Kelsy, Polk Co. LCD
Jim Brakken, Bayfield Co. Lakes Forum, Cable
Bill Dorgan, Lake 26, Burnett Co.
Steve Riley, VP Namekagon Lake Association
Jim Davidson, Matthews Lake Assc, Washburn Co.
Bob Polkinghorn, Webster
Dennis Wagoner, President, Big Wood Lake Assoc. Burnett Co.
Joe Mass, Cloverleaf Lakes Assoc. Shawano Co
Fred Kruger, Burnett Co.
Eric Lindberg, Environmental Sentry Protection, LLC, Plymouth, MN

Central, Southern and South Central

Jim Kannenberg, Germantown
Jeffery Thornton, Waukesha
Kathy Aron, Aron & Associates, Burlington
Dave Katt, Kettle Moraine Lake, Fond du Lac
Bill Lewis, Buffalo Lake PRD, Montello

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

The State of Wisconsin Natural Resources Board adopts an order to **repeal** NR 198.15(2) and 198.42(1)(d) to **renumber** NR 190.05(2) and (3), 190.15(3) to (5), 191.05 (4) to (9), 195.07(2) and (3), 198.12(5) to (10), 198.15(3), 198.23(3) to (8), 198.43(1)(d) to (m) and 198.44(3) to (5); to **amend** NR 190.005(1)(e)2., 190.15(2)(g), 191.05(3)(g), 191.06(1)(h)2., 195.10(1)(f)2., ch. NR 198 (title), 198.10, 198.11, 198.13(1), 198.13(3), 198.14(1)(intro.), (e), and (f)2., 198.14(2)(d), 198.15(1)(intro.), 198.21, 198.22(1) (a), 198.23(1) (note), (2) (a) and (f), NR 198 subch. III (title), 198.30, 198.31, 198.32(intro.), (1) (intro.), (a), (2), (5) and (6), 198.33(1) (note), (4) and (5), NR 198 subch. IV (title), 198.41, 198.42(1)(a) and (c), 198.43(1)(c) and 198.44(1)(note), (2)(g) and (h); to **repeal and recreate** NR 198.15(1)(a) to (d), and 198.33(2)(c); and to **create** NR 190.05(2), 190.15(3), 191.05(4), 195.07(2), 198.12(5), (7) and (11), 198.14(1)(h) and (note), 198.15(1)(e) and (2)(j), 198.23(3), 198.33(6), 198.43(1)(d), 198.44(2)(k), 198.44(3) and NR 198 subchs. V and VI relating to aquatic invasive species prevention and control grants.

WT-09-08

Analysis Prepared by the Department of Natural Resources

Statutes interpreted: ss. 23.22(2) (c), 23.24, 281.68, 281.69 and 281.70, Stats.

Statutory authority: ss. 23.22(2) (c), 227.11(2) (a), 281.68, 281.69, and 281.70, 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 2007 Wisconsin Act 20 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. Sections 281.68, 281.69 and 281.70, Stats., direct the department to promulgate rules for lake management planning, lake protection and classification and river protection grants.

Related statute or rule: The proposed 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 proposal makes minor changes to these programs for consistency. This proposed 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: Proposed revisions to chs. NR 190, 191, 195 and 198 will:

1. Increase the value of hourly donated, non-professional labor that can be used as local match from \$8 to \$12.
2. Require that application materials not part of a required form be submitted in an electronic format.
3. Require grant applicants to provide specific information to the department about the location and extent of public access to the waterbody that is the focus of the project.

The objectives of the proposed rule changes to ch. NR 198 are to:

4. 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.
5. Increase the maximum amount of the state funds available for projects.
6. Allow for a cash advance for early detection and response projects.
7. Expand sponsorship to include, on a limited basis, universities, colleges and technical schools, hydroelectric corporations and other branches of state and federal government that manage natural resources.
8. Broaden the eligibility criteria for nonprofit organizations to include more eligible sponsors.
9. Create a new subchapter (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 fees.
10. Create a new subchapter (subch. VI) that allows the department to solicit and fund research and demonstration projects that will advance statewide knowledge and improve aquatic invasive species (AIS) management techniques.
11. Add priorities and incentives that encourage sponsors to integrate watershed pollution control, habitat protection and restoration efforts into their projects.
12. Change wording and language to improve clarity and other housekeeping items.

Chapters NR 190, 191 and 195, Wis. Adm. Code, are all related grant programs that have similar general provisions, largely the same set of sponsors and managed by the same staff. For consistency, minor revisions to policies in NR 198 common to these other codes are proposed.

Regarding changes just to NR 198, 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 (AIS) 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 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 prevention and control techniques. Broadening the eligibility of nonprofit corporations expands sponsorship to include groups that do not have land trust functions, but do have strong interests in controlling aquatic invasive species.

The addition of incentives and new priorities will encourage the integration of AIS control with other complimentary environmental protection activities and reward those that are managing AIS in an environmentally-sound manner.

The proposed subchapter V allows the department to reimburse community-based project sponsors who control and contain established 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. The Illinois Clean Lakes Program reimburses sponsors who have developed an approved lake planning study up to \$10,000 (50% cost-share) for costs associated with control of nuisance aquatic vegetation and/or algae growth. These projects must be justified by an attainment of significant public recreational lake use (e.g., swimming, fishing, boating), and conducted where a watershed management plan to control and reduce incoming pollutants (e.g., sediment, nutrients) is being implemented. Iowa does not list any grant programs or administrative codes that address invasive species on its DNR website.

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.

Agency contact:

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

SECTION 1. NR 190.005(1)(e)2. is amended to read:

NR 190.005(1) (e) 2. The maximum value of donated labor requirements is ~~\$8~~ \$12 per hour.

SECTION 2. NR 190.05(2) and (3) are renumbered NR 190.05(3) and (4).

SECTION 3. NR 190.05(2) is created to read:

NR 190.05(2) All required application material that is not included on a department-provided form shall be submitted in an electronic format specified by the department.

SECTION 4. NR 190.15(2) (g) is amended to read:

NR 190.15(2)(g) A description of the existing and proposed availability of public access to, and public use of, the lake or lakes including a map of the project lake identifying boat landings, public parks, platted access sites and road ends or rights of way providing public access to the water.

SECTION 5. NR 190.15(3) to (5) are renumbered (4) to (6).

SECTION 6. NR 190.15(3) is created to read:

NR 190.15(3) All required application material in sub. (2) that is not included on a department-provided form shall be submitted in an electronic format specified by the department.

SECTION 7. NR 191.05(3) (g) is amended to read:

NR 191.05(3)(g) A description of the existing and proposed availability of public access to, and public use of, the lake or lakes including a map of the project lake identifying boat landings, public parks, platted access sites and road ends or rights of way providing public access to the water.

SECTION 8. NR 191.05 (4) to (9) are renumbered (5) to (10).

SECTION 9. NR 191.05(4) is created to read:

NR 191.05 (4) All required application material in sub. (3) that is not included on a department-provided form shall be submitted in an electronic format specified by the department.

SECTION 10. NR 191.06(1) (h) 2. is amended to read:

NR 191.06(1) (h) 2. The maximum value of donated, non-professional, labor shall be ~~8~~ 12 per hour. For counties conducting projects requiring compliance with USDA ~~natural resource conservation service~~ Natural Resources Conservation Service standards, the donated labor rate established for that county by the Farm Service Agency may be used.

SECTION 11. NR 195.07(2) and (3) are renumbered (3) and (4).

SECTION 12. NR 195.07(2) is created to read:

NR 195.07(2) All required application material that is not included on a department-provided form shall be submitted in an electronic format specified by the department.

SECTION 13. NR 195.10(1) (f) 2. is amended to read:

NR 195.10(1) (f) 2. The maximum value of donated, non-professional, labor shall be ~~equal to the prevailing federal minimum wage requirements~~ \$12 per hour.

SECTION 14. Chapter NR 198 (title) is amended to read:

Chapter NR 198
AQUATIC INVASIVE SPECIES PREVENTION AND CONTROL GRANTS

SECTION 15. NR 198.10 and 198.11 are amended to read:

NR 198.10 Purpose. The purpose of this chapter is to establish procedures for awarding cost-sharing grants to public and private entities ~~including local governmental units~~ for the prevention and control of aquatic invasive species as provided for in s. 23.22(2)(c), Stats. Grants made under this ~~program will assist local governments and other interests in efforts to~~ chapter help eligible sponsors prevent and control the spread of aquatic invasive species in the waters of the state. These grants will assist ~~local~~ efforts to provide information and education on the types of existing and potential aquatic

invasive species in Wisconsin, the threats they pose for the state's aquatic resources and the techniques available for their control. These grants will also assist in planning and conducting projects that will prevent the introduction of aquatic invasive species into waters where they currently are not present, controlling and reducing the risk of spread from waters where they are present and restoring native aquatic communities.

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. 23.0955 (1), Stats.,~~ and river management organizations, as defined in s. NR 195.02(2), state and federal natural resource agencies and hydroelectric corporations licensed by the federal energy regulatory commission, applying for financial assistance under s. 23.22(2)(c), Stats., for an aquatic invasive species prevention or control project for any surface waters of the state including lakes, rivers, streams, wetlands and the Great Lakes.

SECTION 16. NR 198.12(5) to (10) are renumbered NR 198.12(6), (8) to (10), (12) and (13) and subs. (9) and (10), as renumbered, are amended to read:

NR 198.12(9) "Pioneer ~~infestation population~~," means a small ~~population community~~ of aquatic invasive species in the early stages of colonization, or re-colonization, in a particular ~~water body~~ waterbody or portion thereof. For rooted aquatic plants, a pioneer ~~infestation~~ population is a localized ~~bed that~~ population has been present less than 5 years, or is a re-colonization following the completion of an established ~~infestation population~~ control project under subch. IV, and is less than 5 acres in size or less than 5% of ~~lake the littoral~~ area which ever is greater.

(10) "Project" means an activity to prevent or control aquatic invasive species, including education that is approved for grant funding.

SECTION 17. NR 198.12(5), (7) and (11) are created to read:

NR 198.12(5) "Littoral area" has the meaning given in s. NR 191.22(5).

(7) "Natural resource agency" means a government agency that manages lakes, rivers, streams, wetlands, forests, plants, soils or agricultural lands.

(11) "Qualified nonprofit organization" means a nonprofit corporation, a charitable trust or other nonprofit association whose purposes include the prevention and 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. Qualified nonprofit organizations include qualified nonprofit conservation organizations as defined in s. 23.0955(1), Stats.

SECTION 18. NR 198.13(1) is amended to read:

NR 198.13(1) Accounting for all project funds shall conform to generally accepted accounting principles and practices, and shall be tracked by the sponsor in a separate account. Documents to support grant expenditures shall be maintained in sufficient detail to show that grant funds are used for the purpose for which the grant was made. All financial records, including bid summaries, invoices and canceled checks or bank statements, that support all project costs claimed by the sponsor shall be maintained and available for inspection for 3 years after the date the department makes the final payment. Sponsors shall comply with all applicable state and federal regulations regarding bidding and awarding contracts, wage and labor rates.

SECTION 19. NR 198.13(3) is amended to read:

NR 198.13 (3) The sponsor may request, for good cause, a grant agreement amendment for expenditures in excess of those identified as estimated costs in the grant agreement. The sponsor shall submit a request before the ~~project end date~~ end of the grant period.

SECTION 20. NR 198.14(1) (intro.), (e) and (f) 2. are amended to read:

NR 198.14(1) ELIGIBLE COSTS. (intro.) Reasonable and necessary project costs, which are consistent with the approved project, as determined by the department, and incurred during the ~~project grant~~ period are eligible for reimbursement. Eligible costs include:

(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 up to 12 months prior to the application deadline.~~ Costs incurred up to 12 months prior to the application deadline are eligible for reimbursement.

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

SECTION 21. NR 198.14(1)(h) and (note) are created to read:

NR 198.14(1) (h) Watershed pollution control, native vegetation restoration and protection and other complimentary activities that help control aquatic invasive species or resist future colonization.

Note: A bid summary may be considered by the department as a demonstration by the sponsor of what are reasonable project costs.

SECTION 22. NR 198.14(2)(d) is amended to read:

NR 198.14(2)(d) Aquatic plant management activities that provide temporary or single season relief from nuisance conditions including plant harvesting operations, herbicide treatments and other control methods unless they are approved under an ~~rapid~~ early response project in subch. III or recommended in a department approved plan under subch. IV.

SECTION 23. NR 198.15(1)(intro.) is amended to read:

NR 198.15 (1)(intro.) ~~Priorities for~~ The order of priority for funding projects include projects that do any of the following is:

SECTION 24. NR 198.15(1) (a) to (d) are repealed and recreated to read:

NR 198.15(1) (a) Control pioneer populations of aquatic invasive species

(b) Prevent the spread of aquatic invasive species to unpopulated waters.

(c) Control established populations of aquatic invasive species and restore native aquatic species communities.

(d) Provide research and demonstration that advances the state's knowledge and understanding of aquatic invasive species control.

SECTION 25. NR 198.15(1) (e) is created to read:

NR 198.15(1) (e) Ongoing maintenance to contain aquatic invasive populations within a waterbody.

SECTION 26. NR 198.15(2) is repealed.

SECTION 27. NR 198.15(3) is renumbered NR 198.15(2) and pars. (c), (d), (g) and (h), as renumbered, are amended to read:

NR 198.15(2) (c) The degree to which the project protects or improves the aquatic ecosystem's diversity, function, ecological stability or recreational uses.

(d) The extent of the ~~infestation~~ population in the ~~water body~~ waterbody.

(g) The degree to which the proposed project ~~complements~~ includes or is complemented by other management efforts including watershed pollution prevention and control, native vegetation protection and restoration and other actions that help control aquatic invasive species or resist future colonization.

(h) Community support and commitment, including past efforts to prevent or control aquatic invasive species.

SECTION 28. NR 198.15(2) (j) is created to read:

NR 198.15(2) (j) The degree to which the project will advance the knowledge and understanding of the prevention and control of aquatic invasive species.

SECTION 29 NR 198.21 is amended to read:

NR 198.21 Applicability. This subchapter applies to all sponsors ~~for and recipients~~ of aquatic invasive species education, prevention and planning grants. Combined total grant awards to state, federal and hydroelectric corporation sponsors, including universities, colleges and schools, may not exceed \$200,000 in any one state fiscal year.

SECTION 30. NR 198.22(1) (a) is amended to read:

NR 198.22(1)(a) The dissemination of information about aquatic invasive species consistent with the department's statewide education strategy for preventing and controlling invasive species including, but not limited to, attending or conducting workshops, training or coordinating volunteer monitors and other education programs.

SECTION 31. NR 198.23(1) (note) and (2) (a) and (f) are amended to read:

NR 198.23(1) Note: Forms may be obtained free of charge from the department's website, <http://dnr.wi.gov/org/caer/cfa/Grants/Lakes/invasivespecies.html>, or at the following DNR region headquarters located at:

1. Southeast -- 2300 N. Dr. Martin Luther King Jr. Dr., Box 12436, Milwaukee 53212
2. South Central -- 3911 Fish Hatchery Road, Fitchburg 53711
3. Northeast -- 2984 Shawano Ave., Box 10448, Green Bay, WI 54313
4. Northern/Rhineland -- 107 Sutliff Ave., Rhineland 54501
5. Northern/Spooner -- 810 West Maple St., Spooner 54801
6. West Central -- 1300 W. Clairemont Ave., Call Box 4001, Eau Claire 54702

(2)(a) A brief description of the project's goals and objectives including a description of the waters on which the project will take place and how the results of the project will lead to the prevention or control of aquatic invasive species.

(f) A description of the existing and proposed availability of public access to, and public use of, the waterbody including a map of the project waterbody identifying boat landings, public parks, platted access sites and road ends or rights of way providing public access to the water.

SECTION 32. NR 198.23(3) to (8) are renumbered NR 198.23(4) to (9), and subs. (6), (7) and (8), as renumbered, are amended to read:

NR 198.23(6) ~~The~~ Except as limited in sub. (7), the total state share of the cost of an education, prevention and planning project may not exceed ~~50%~~ 75% of the total project cost.

(7) The maximum amount of a grant award shall be ~~\$75,000~~ \$150,000. Applications shall be separated into 2 classes. The 2 classes consist of those requesting less than \$50,000 in state share and those requesting \$50,000 or more in state share. Each class of projects shall be evaluated separately and have equal priority for funding.

Note: For example, \$200,000 is allocated to the Education, Prevention and Planning projects. The \$200,000 would be distributed evenly between applications for less than \$50,000 and applications for \$50,000 or more. The applications would compete against other application in each class for the \$100,000 distributed to that class.

(8) 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. Remote image recording devices may be installed at landings to aid an existing watercraft inspection program. Only the first year costs of purchase or lease and installation are eligible for reimbursement. The costs for remote image recording devices will not be considered part of the annual \$4,000 limit.

SECTION 33. NR 198.23(3) is created to read:

NR 198.23(3) All required application material in sub. (2) that is not included on a department-provided form shall be submitted in an electronic format specified by the department.

SECTION 34 Chapter NR 198, subch. III (title) is amended to read:

Subchapter III - Early Detection and ~~Rapid~~ Response Projects

SECTION 35 NR 198.30 and 198.31 are amended to read:

NR 198.30 Purpose. Grants awarded under this subsection are intended to provide for the early identification of and ~~rapid response to control of pioneer infestations~~ populations of aquatic invasive species before they become established. These projects are intended for waters where the presence of aquatic invasive species is relatively new and the area of coverage is limited such that there is a high likelihood that they can be removed or significantly reduced and managed at low densities.

NR 198.31 Applicability This subchapter applies to all sponsors applying for a grant for an early detection and ~~rapid~~ response project.

SECTION 36. NR 198.32(intro.), (1) (intro.), (a), (2), (5) and (6) are amended to read:

NR 198.32 Eligible projects. (intro.) Early detection and ~~rapid~~ response projects provide a means for sponsors to ~~quickly~~ effectively control recently discovered aquatic invasive species ~~infestations~~ populations and later receive reimbursement from the department for a portion of the cost of the project by following the procedure described in this section. The procedure is as follows:

(1)(intro.) The sponsor shall immediately notify the department when a pioneer ~~infestation~~ population is suspected in a waterbody. The sponsor shall collect a specimen and submit it to the department using the following procedures:

(a) Collect an entire intact adult specimen. For plants include the roots, stems, and flowers and fruits if available. ~~Try to find plants flowering or fruiting.~~

(2) The department shall verify the species and may authorize control if it is determined to be a controllable pioneer-~~infestation~~ population. For authorized projects, the department shall specify the conditions and procedures under which the project may take place and issue any required permits.

(5) Following authorization, the sponsor shall complete a grant application for the project and may request an advance partial payment.

(6) The sponsor shall report to the department the results of the completed project and request reimbursement for the remainder of the state's share of the project.

SECTION 37. NR 198.33(1) (note) is amended to read:

NR198.33 (1) Note: Forms may be obtained free of charge from the department's website, <http://dnr.wi.gov/org/caer/cfa/Grants/Lakes/invasivespecies.html>, or at the following DNR region headquarters located at:

1. Southeast -- 2300 N. Dr. Martin Luther King Jr. Dr., Box 12436, Milwaukee 53212
2. South Central -- 3911 Fish Hatchery Road, Fitchburg 53711
3. Northeast -- 2984 Shawano Ave., Box 10448, Green Bay, WI 54313
4. Northern/Rhineland -- 107 Sutliff Ave., Rhineland 54501
5. Northern/Spooner-- 810 West Maple St., Spooner 54801
6. West Central -- 1300 W. Clairemont Ave., Call Box 4001, Eau Claire 54702

SECTION 38. NR 198.33(2) (c) is repealed and recreated to read:

NR 198.33(2) (c) A signed and dated resolution from the sponsor authorizing the application and identifying a representative to act on its behalf.

SECTION 39. NR 198.33(4) and (5) are amended to read:

NR 198.33(4) The department shall issue grant awards for authorized projects in the order they are received until all the annual funding allotted for early detection and ~~rapid~~ response projects is awarded. The grant period for early detection and ~~rapid~~ response projects shall begin on the date control is authorized under s. NR 198.32(2).

(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 40. 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 41. Chapter NR 198, subch. IV (title) is amended to read:

Subchapter IV – Established ~~Infestation~~ Population Control Projects.

SECTION 42. NR 198.41 is amended to read:

NR 198.41 Applicability. This subchapter applies to all sponsors applying for grants for implementing a project to control an established population of aquatic invasive species. State, federal and hydroelectric corporation sponsors, including universities, colleges and schools may only sponsor projects under this subchapter where they are the majority owner of the shorelands adjacent to the public water with an established population or owner of a wetland with an established population or where all other potential sponsors have declined sponsorship of the project.

SECTION 43. NR 198.42(1) (a) and (c) are amended to read:

NR 198.42(1) (a) A department-approved project recommendation included in a management plan adopted by the sponsor for the control of aquatic invasive species and the protection and improvement of aquatic resources.

(c) Other projects that are recommended in or authorized under a statewide or federal management plan for control of aquatic invasive species.

SECTION 44. NR 198.42(1) (d) is repealed.

SECTION 45. NR 198.43(1) (c) is amended to read:

NR 198.43(1)(c) A thorough characterization of the waterbody's aquatic ecosystem's historical and current condition, including at least one year of current base line survey data quantifying the extent of the ~~infestation~~ population.

SECTION 46. NR 198.43(1) (d) to (m) are renumbered NR 148.43(1) (e) to (n) and pars. (g), (L) and (m) as renumbered, are amended to read:

NR 198.43(1) (g) Identification of the management objectives needed to maintain or restore the beneficial uses of the aquatic ecosystem including shoreland and shallow area protection and restoration.

~~(L) A prevention strategy to~~ for effectively monitoring and preventing the re-introduction of the aquatic invasive species after the initial control and to reasonably assure that new introductions of aquatic invasive species will not ~~infest~~ populate the waterbody.

~~(m) A contingency strategy for effectively monitoring and preventing~~ responding to the re-introduction of the aquatic invasive species after the initial control.

SECTION 47. NR 198.43(1) (d) is created to read:

NR 198.43(1) (d) An assessment of the sources of watershed pollution and a strategy for their prevention and control.

SECTION 48. NR 198.44(1) (note) is amended to read:

NR 198.44(1) Note: Forms may be obtained free of charge from the department's website, <http://dnr.wi.gov/org/caer/cfa/Grants/Lakes/invasivespecies.html>, or at the following DNR region headquarters located at:

1. Southeast -- 2300 N. Dr. Martin Luther King Jr. Dr., Box 12436, Milwaukee 53212
2. South Central -- 3911 Fish Hatchery Road, Fitchburg 53711
3. Northeast -- 2984 Shawano Ave., Box 10448, Green Bay, WI 54313
4. Northern/Rhineland -- 107 Sutliff Ave., Rhineland 54501
5. Northern/Spooner -- 810 West Maple St., Spooner 54801
6. West Central -- 1300 W. Clairemont Ave., Call Box 4001, Eau Claire 54702

SECTION 49. NR 198.44(2) (g) and (h) are amended to read:

NR 198.44(2) (g) Copies of all permits or pending permit applications necessary to complete the project. No grant may be awarded until all the necessary permits and approvals for the project have been obtained. For multiple year projects, the provisions of this section only apply to the first year of permitted activity.

(h) A description of the existing and proposed availability of public access to and public use of, the waterbody including a map of the project waterbody identifying boat landings, public parks, platted access sites and road ends or rights of way providing public access to the water.

SECTION 50. NR 198.44(2) (k) is created to read:

NR 198.44(2) (k) If the sponsor is a state, federal, hydroelectric corporation sponsor, university, college or school sufficient information to determine that they are a majority owner of shorelands adjacent to the public water with an established population, an owner of a wetland with an established population or that all other potential sponsors have declined sponsorship of the project.

SECTION 51. NR 198.44(3) to (5) are renumbered NR 198.44(4) to (6), and sub. (6), as renumbered, is amended to read:

NR 198.44(6) 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 52. NR 198.44(3) is created to read:

NR 198.44(3) All required application material in sub. (2) that is not included on a department-provided form shall be submitted in an electronic format specified by the department.

SECTION 53. Chapter NR 198, subch. 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 intended only for waters where management activity has achieved the target level of control identified in an approved plan that meets the criteria of s. NR 198.43. Ongoing maintenance is needed to contain these populations so they do not re-establish throughout the waterbody, spread to other waters, or impair navigation and 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 subch. 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) Claims for reimbursement 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 its knowledge the project was completed in compliance with permit conditions and according to its 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 region staff.

(3) The department shall review the claim and may approve it for a grant award.

(4) The standard state reimbursement 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. The maximum state share of a grant awarded under this subchapter shall not exceed the cost of the permit application fee.

SECTION 54. Chapter NR 198, subch. VI is created to read:

Subchapter VI Research and Demonstration Projects

NR 198.60 Purpose. Research and demonstration projects are intended as a cooperative activity between sponsors and the department. Such projects shall be designed to increase scientific understanding of the ecological and economic implications of aquatic invasive species and their management and to assess experimental and innovative techniques for their prevention, containment and control.

NR 198.61 Applicability. This subchapter applies to all sponsors applying for grants for a research and demonstration project.

NR 198.62 Applications and grant awards. (1) Proposals for research projects may be submitted to the department at anytime and shall include the goals and objectives of the project, a brief description of the methods, estimated costs and a time line for completion.

(2) The department may solicit research proposals through a request for proposal process.

(3) Prior to each biennium the department will consult with the invasive species council on needed aquatic invasive species research.

(4) The department has sole discretion to choose to support the project and will work with the sponsor to develop a study design and complete a grant application.

(5) No more than \$500,000 shall be awarded annually for projects under this subchapter.

SECTION 55. EFFECTIVE DATE. The rule shall take effect the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

SECTION 56. BOARD ADOPTION. The rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Matthew J. Frank, Secretary

(SEAL)