

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

The Wisconsin Natural Resources Board proposes an order to repeal NR 58.04, 58.06(4) to (7), 58.08(3) and (5), 58.09(title) and (1), 58.11(2)(c) to (e); to renumber NR 58.08(6), 58.09(2)(a) to (d) and 58.10; to amend ch. NR 58(title), 58.01, 58.06(1), 58.07, 58.09(1), 58.10(1)(intro.), 58.11(1)(intro.), 58.14(2) and 58.15(1); to repeal and recreate NR 58.02, 58.03(8) and 58.08(4); and to create NR 58, subch. I (title), 58.05(1)(g), 58.09(4)(title) and (5), 58.10(2) and NR 58, subchs. II and III relating to the implementation and administration of grants for Endangered Resources.

ER-26-05

Analysis Prepared by Department of Natural Resources

Statutory Authority: The federal statutes that authorize the promulgation of the rule for the Landowner Incentive Program 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 through 11. The state statutes that authorize the promulgation of this rule include Section 23.09 (2), Stats., and Section 227.11, Stats.. These sections grant rule-making authority to the department to establish and implement endangered species grant programs.

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

The purpose of the federal statutes authorizing the Landowner Incentive Program is to aid states in establishing or supplementing existing landowner incentive programs that provide technical or financial assistance including habitat protection and restoration, to private landowners for the protection and management of habitat to benefit at-risk species on private lands.

Plain Language Rule Analysis: The Bureau of Endangered Resources received funding from the U.S. Fish and Wildlife Service to develop the foundation of the Landowner Incentive Program (LIP). LIP was authorized by Congress to provide technical and financial assistance to private landowners who are willing to partner with their states to maintain and enhance habitat for "at-risk species". These rare animals (birds, fish, mammals, insects, and crustaceans) and plants, which are identified by each state, include state- and federally-listed species, and other species with small and/or declining numbers in the state.

The current administrative rules for Endangered Resources Small Grants Program, ch. NR 58, Wis. Adm. Code, are intended for grants to fund research, management and educational activities pertaining to Wisconsin's natural communities and rare flora and fauna. The purpose of ch. NR 58, as currently written, is too broad to apply to the LIP. For LIP to be in accordance U.S. Fish and Wildlife Service's goals for the program, the department proposes to amend ch. NR 58 and create a subchapter specifically for this new program. The department proposes to create a total of three subchapters in ch. NR 58. These subchapters include general provisions, the endangered resources small grants program and the landowner incentive grant program.

Both the general provisions and the endangered resources small grants program subchapters are drawn directly from the text in current version of ch. NR 58. Only minor changes to the text such as renumbering and updating of cross-references were necessary in creating these two subchapters. The general provisions subchapter includes information that will apply to both the endangered resources small grants and the landowner incentive programs. Text that pertained specifically to the endangered resources small grants program was moved to the small grants program subchapter. For instance, the small grants

program does not distinguish between public and private land in determining the eligibility for grant assistance. This section was moved to the small grants program subchapter because it would not apply to LIP, which is specifically for private land.

The proposed LIP subchapter is created to establish this new program which is funded by the U.S. Fish and Wildlife Service. The program is intended for management, restoration and protection of private land with habitat for at-risk species. At-risk species are defined by the department to include species listed as endangered, threatened, candidate or special concern at the state or federal level; or species identified by the Comprehensive Wildlife Conservation Plan. The new program will provide a 75% cost share to private landowners and organizations who meet the criteria of the program.

The biggest threat to most rare species 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 at-risk species are expected to decline.

Wisconsin's LIP seeks to promote the land ethic and stewardship of private lands by developing relationships between private landowners and resource managers and by providing financial incentives to private landowners to improve habitat for species-at-risk. Over 85% of Wisconsin's land is in private ownership and the DNR estimates that approximately 90% of at-risk species have populations on private land. Supporting private landowners in managing and restoring habitat for at-risk species is an essential part of the strategy to preserve biodiversity in Wisconsin.

To most effectively manage for rare species and habitats, private landowners and land managers need technical and financial assistance that specifically targets at-risk species. Management and restoration of habitat for at-risk species often requires site specific plans tailored to the unique threats on the property and the biological needs of the at-risk species as well as funds to buy native seed mixes, conduct prescribed burns, or remove woody vegetation. LIP will provide private landowners with this opportunity.

In Wisconsin, the coordinator for LIP is working with a guidance team of agency and non-governmental organizations familiar with the resources of the state and existing cost-share programs for private lands to develop the program. The guidance team is included in the new subchapter for LIP in ch. NR 58. The guidance team has identified gaps in existing funding for rare species and will tailor LIP to address these gaps. Species that will be defined as at-risk will include species on the Wisconsin Natural Heritage Inventory working list. The Wisconsin Natural Heritage working list includes federally listed and state endangered, threatened and special concern species. It also identifies the species that are listed as critically imperiled, imperiled, or vulnerable according to NatureServe. NatureServe coordinates a network of natural heritage programs that collect data about rare and endangered species and threatened ecosystems. The Wisconsin heritage program is housed in the DNR's Bureau of Endangered Resources.

Species at-risk will also include those identified in the Comprehensive Wildlife Conservation Plan (CWCP) that is currently in development. The CWCP is a statewide effort to identify the animal species (including invertebrates) that are of greatest conservation need. The Species of Greatest Conservation Need (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 CWCP will present priority conservation actions to protect the species and their habitats and will play an important role in guiding LIP.

Although Wisconsin has a number of programs for private landowners, few of these specifically target at-risk species. For instance, the DNR turkey and pheasant stamp cost-share programs may tangentially benefit at-risk species 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 at-risk species. 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 LIP will develop ways to complement these programs without duplicating their efforts.

The proposed changes to ch. NR 58 will establish LIP and will enable the department to provide direct financial assistance to private landowners to aid them in managing and restoring habitat for at-risk species. Wisconsin LIP will provide 75% cost share and the private landowner will be responsible for 25% of the project cost which can be met through in-kind or financial contributions.

The program will directly benefit private landowners by providing them with a new opportunity to manage natural communities on their land with funding from a federal program. This proposal will also be of interest to governmental agencies and environmental organizations across the state.

Federal Regulatory Analysis: The federal rule establishes the federal Landowner Incentive Program 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.

State Regulatory Analysis: 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 mid-west that have LIP 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 LIP. Michigan, however, was considering developing rules.

Summary of Factual Data: The proposed rule changes are based solely on the need to establish LIP and to create the mechanism to enable the department to provide funds to private landowners through a grant process.

Anticipated Private Sector Costs: These rules do not have a significant fiscal effect on the private sector. Additionally, no significant costs are associated with compliance to these rules.

Initial Flexibility Analysis: These rules are applicable to applicants for endangered resources grants and impose no compliance or reporting requirements for small businesses, nor are any design or operation standards contained in the rule.

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Section 1. Chapter NR 58 (title) is amended to read:

ENDANGERED RESOURCES ~~SMALL GRANTS PROGRAM~~ GRANT PROGRAMS

Section 2. Chapter NR 58, subch. I (title) is created to read:

Subchapter I – General Provisions

Section 3. NR 58.01 is amended to read:

NR 58.01 Purpose. The purpose of this chapter is to establish rules for the implementation and administration of a grant ~~program~~ programs to fund research, protection, management and educational activities pertaining to Wisconsin's natural communities and rare flora and fauna.

Section 4. NR 58.02 is repealed and recreated to read:

NR 58.02 Applicability. This chapter applies to all endangered resources grant programs under this chapter.

Section 5. NR 58.03(8) is amended to read:

NR 58.03(8) "Natural heritage inventory database" has the meaning specified in s. NR ~~51.22(5)~~ 51.002(20).

Section 6. NR 58.04 is repealed.

Section 7. NR 58.05(1)(g) is created to read:

NR 58.05 (1)(g) Costs of contracts or subcontracts to qualified vendors to perform project activities.

Section 8. NR 58.06(1) is amended to read:

NR 58.06 (1) DURATION. ~~The grant period shall be determined by the following: (a)~~ The grantee may not begin work described under the grant agreement until the grant agreement has been signed by the department and the grantee.

~~(b) The grant period may not exceed 3 years.~~

Section 8m. NR 58.06(4) to (7) are repealed.

Section 9. NR 58.07 is amended to read:

NR 58.07 Grant application. (1) APPLICATION AVAILABILITY. Applicants shall obtain application forms and instructions from the Bureau of Endangered Resources, Department of Natural Resources, P.O. Box 7921, Madison, WI 53707.

(2) CONTENTS. The application shall include:

(a) A project narrative, objectives, methods, timetable and budget and appendices, in the format provided in the instructions; and

(b) For state employees only, a completed and approved outside employment form.

(3) ADDITIONAL INFORMATION. The department may request additional information from the applicant upon receipt of the application.

(4) DEADLINE. Applications are due by the date provided in the application instructions.

Section 10. NR 58.08(3) is repealed.

Section 11. NR 58.08 (4) is repealed and recreated to read:

NR 58.08 (4) The history and capacity of the grantee to achieve the project objectives.

Section 12. NR 58.08 (5) is repealed.

Section 13. NR 58.08(6) is renumbered to NR 58.08(3).

Section 14. NR 58.09 (title) and (1) are repealed.

Section 15. NR 58.09(2) (a), (b), (c) and (d) are renumbered NR 58.09 (1), (2), (3) and (4).

Section 16. NR 58.09 (1) as renumbered is amended to read:

NR 58.09 Grant payment. (1) INITIAL PAYMENTS. Upon acceptance of the grant offer, the grantee may request up to 50% of the total amount of the grant by submitting an advance payment request. ~~If desired, the grantee may receive 100% of the grant in accordance with par. (c).~~

Section 17. NR 58.09 (4)(title) is created to read:

NR 58.09(4) (title) UNEXPENDED MONIES RETURNED.

Section 18. NR 58.09(5) is created to read:

NR 58.09(5) PAYMENTS FOR PROJECT MODIFICATIONS. Payments may not be paid for project modifications unless approved by the department.

Section 19. NR 58.10 (intro.), (1), (2), (3), (4) and (5) are renumbered NR 58.10 (1) (intro.), (a), (b), (c), (d) and (e).

Section 20. NR 58.10 (1)(intro.) as renumbered is amended to read:

NR 58.10 (1)(intro.) The grantee and the department shall develop and approve a grant agreement which shall specify terms for all conditions listed under s. NR 58.06 and all of the following:

Section 21. NR 58.10(2) is created to read:

NR 58.10(2) The grantee shall execute and deliver a release, as part of the grant agreement, discharging the state of Wisconsin, its officers, agents and employees from all liabilities, obligations and claims arising out of the project work or under the grant, subject only to any exceptions specified in the release.

Section 22. NR 58.11(1)(intro.) is amended to read:

NR 58.11 (1)(intro.) INTERIM REPORTS. ~~Each~~ The department may require one or more interim reports. As requested by the department, each grant recipient shall submit to the department one or more interim reports which contain details of progress, findings, problems and other information regarding the status of the project as stated in the grant agreement.

Section 22m. NR 58.11(2)(c) to (e) are repealed.

Section 23. NR 58.14 (2) is amended to read:

NR 58.14 (2) JUSTIFICATION. The department may terminate the grant in whole or in part and ~~the grant recipient shall return the grant amount received by the grantee~~ the grantee shall repay the department any grant money that was not spent or that was inappropriately spent plus interest at 5% annually accrued within 3 years of the date the grant agreement was executed if the department determines ~~that any of the following~~ :

- (a) There has been no substantial progress made on the project by the grantee, without good cause; ~~or~~ _
- (b) There is substantial evidence that the grant was obtained by fraud; ~~or~~ _
- (c) There is substantial evidence of gross abuse or corrupt practices in the administration of the project; ~~or~~ _
- (d) The grantee has failed to comply with the provisions of this chapter or of the grant agreement.
- (e) The grantee has not completed the grant project within the grant period and failed to amend or extend the grant period through an agreement between the department and the grantee.

Section 24. NR 58.15(1) is amended to read:

NR 58.15(1) The ~~award~~ grant may be terminated under s. NR 58.14.

Section 25. Chapter NR 58, subch. II is created to read:

Subchapter II – Endangered Resources Small Grants Program

NR 58.20 Purpose. The purpose of this subchapter is to establish rules for the implementation and administration of the small grants program to fund research, management and educational activities pertaining to Wisconsin's natural communities and rare flora and fauna.

NR 58.21 Applicability. This subchapter applies to all applicants for, and recipients of, grant awards made pursuant to s. 20.370 (1) (fe), Stats.

NR 58.22 Eligibility for grant assistance. (1) ELIGIBLE APPLICANTS. ~~The~~ All of the following applicants are eligible for a grant:

- (a) County, city, village, town and tribal governmental agencies.
- (b) Individuals.
- (c) Nonprofit organizations.
- (d) Educational institutions.

(2) ELIGIBLE PROJECTS. Projects which have as their objective one or more of the following shall be eligible for a grant under this chapter:

- (a) Identification, protection and management of native plant and animal species and natural communities.
- (b) Enhancement and restoration of populations and habitats of rare and endangered species.
- (c) Promotion of knowledge, appreciation and stewardship of Wisconsin's native species and ecosystems.

NR 58.23 Grant conditions. In addition to the conditions listed in s. NR 58.06, all of the following grant conditions apply to the small grants program:

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

(2) PUBLICATIONS. The grantee shall:

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

(b) Include in all publications and news releases which result from the project grant acknowledgement of the endangered resources fund as a source of funding for the project.

(3) DATA AVAILABILITY. The grantee shall make data collected under this program available for incorporation into the natural heritage inventory database.

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

NR 58.24 Grant awards. No award may exceed \$10,000.

NR 58.25 Grant selection criteria. In addition to the factors listed in s. NR 58.08, factors considered in awarding grants shall include but are not limited to the following:

(1) The extent the project will lead to increased useful, scientific knowledge based upon existing and anticipated research, management or educational activities.

(2) The extent to which the proposed project corresponds to the objectives stated in s. NR 58.22 (2).

(3) The extent to which the proposed project avoids negative impact on existing resources.

NR 58.26 Final report. In addition to the items listed in s. NR 58.11(2), the final report shall include all of the following:

(1) Documentation of all public information and educational activities which were conducted throughout the project.

(2) Conclusions reached or products developed as a result of the project.

(3) An appendix that includes all references and supporting documents appropriate to the final report.

Section 26. Chapter NR 58, subch. III is created to read:

Subchapter III – Landowner Incentive Program

NR 58.30 Purpose. The purpose of this subchapter is to establish rules for the implementation and administration of a grant program to fund management, restoration and protection activities pertaining to Wisconsin's natural communities and rare flora and fauna on private land.

NR 58.31 Applicability. This subchapter applies to all applicants for, and recipients of, grant awards made under the landowner incentive program. The landowner incentive program was 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 Sections 4601-4 through 11.

NR 58.32 Definitions. In addition to the definitions in s. NR 58.03, the following definitions apply to this subchapter:

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

(2) "Comprehensive wildlife conservation 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.

(3) "Endangered species at the federal level" means species listed in 50 CFR Sections 17.11-.12.

(4) "Endangered species at the state level" means species listed in s. NR 27.03 (2).

(5) "Guidance team" refers to the landowner incentive program guidance team created in s. NR 58.33.

(6) "Natural communities" include the following:

(a) Aquatic habitat.

(b) Barrens.

(c) Grasslands.

(d) Northern forests.

(e) Savannas.

(f) Southern forests.

(g) Wetlands.

(h) Other rare natural communities including: algific talus slope, alvar, bedrock glade, bedrock shore, clay seepage bluff, dry cliff, felsenmeer, forested ridge and swale, great lakes alkaline rockshore, great lakes beach, great lakes dune, inland beach, moist cliff, talus forest.

(7) "Private land" means any land not owned by a governmental entity.

(8) "Program" means the landowner incentive program.

(9) "Special concern species" are those species for which there appears to be some problem of abundance or distribution. These species are listed on the Wisconsin natural heritage working list.

(10) "Species of greatest conservation need" refers to the list of species in the comprehensive wildlife conservation plan.

(11) "Threatened species at the federal level" means species listed in 50 CFR Sections 17.11-.12.

(12) "Threatened species at the state level" means species listed in s. NR 27.03 (3).

Note: Copies of the Comprehensive Wildlife Conservation Plan and the Wisconsin Natural Heritage Working List are available from the Bureau of Endangered Resources, Department of Natural Resources, P.O. Box 7921, Madison, WI 53707. Wisconsin natural heritage 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 natural heritage inventory program in the Bureau of Endangered Resources maintains and updates the list.

NR 58.33 Landowner incentive program guidance team. (1) CREATION; COMPOSITION. Department landowner incentive program staff shall assemble a guidance team which may include representatives of the following groups:

(a) Department of Natural Resources.

(b) Natural Resources Conservation Service.

(c) United States Fish and Wildlife Service.

(d) National and statewide non-governmental conservation organizations.

(e) Any other individual or groups determined appropriate by program staff.

(2) **ROLE OF THE TEAM.** The team shall make recommendations to department program staff to help guide the program, designate the species or communities of special emphasis and fund proposals.

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

(2) Special emphasis may be placed, on an annual basis, on one or more species at-risk or natural communities if designated in the application. The guidance team and department program staff shall 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.

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

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

- (a) Proposals that enhance, protect or restore habitat benefiting at-risk species.
- (b) Proposals for private land with existing at-risk species populations.
- (c) Proposals that provide private landowner cost-share greater than 25%.

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

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

NR 58.38 Grant conditions. In addition to the conditions listed in s. NR 58.06, the grant period may not exceed 3 years.

Section 27. EFFECTIVE DATE. This 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 28. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on October 26, 2005.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)