

**Background Report
Draft Rule Chapter 68F-20
Consent Agenda Item (4)
June 27, 2012**

NOTICE OF PROPOSED RULE

FISH AND WILDLIFE CONSERVATION COMMISSION

AQUATIC PLANTS

RULE NO: RULE TITLE:

68F-54.001: Program Criteria and Standards

68F-54.003: Definitions

68F-54.0035: Waters Eligible and Eligibility Criteria for Aquatic Plant Management Funds

68F-54.005: Approval, Allocation, and Disbursement Procedures for Aquatic Plant Management Funds

PURPOSE AND EFFECT: The purpose and effect of this rule amendment is to clarify that the program does not operate as a grants program but rather operates as a cost reimbursement program utilizing government agencies and private sector contractors to manage aquatic plants in public water bodies. Further, additional waters are being added to the list of waters eligible for funding of aquatic plant management.

SUMMARY: References to grant(s), grantee, and other terms related to grants, are changed to contract(s), contractor(s), and other contract related terms. Clarifies that when the U.S. Environmental Protection Agency approves the use of an aquatic herbicide in potable waters and requires no water use restrictions after its application to potable waters, the product may be used without complying with the setback distances or the water treatment plant notification procedures stated in this rule. Definitions no longer used in the rule are eliminated and definitions are added for terms that are new to the rule. Forms that are no longer used are eliminated. Commission managed lands and state-owned springs or spring runs are added to the list of waters that are eligible for funds to manage aquatic plants.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business. A SERC has not been prepared by the agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: the nature of the rule and the preliminary analysis conducted to determine whether a SERC was required.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for lower cost regulatory alternatives must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 369.20, 369.22, 379.1025 FS.

LAW IMPLEMENTED: 369.20, 369.22, 403.088, 120.60 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: William Caton, Section Leader Invasive Plant Management Section, 3900 Commonwealth Blvd. MS 705, Tallahassee, FL. 32399-3000.

THE FULL TEXT OF THE PROPOSED RULE IS AS FOLLOWS:

68F-54.001 Program Criteria and Standards.

(1) The ~~State of Florida Legislature, and the United States Army Corps of Engineers~~ provide ~~provide~~ funds to the Commission annually through the ~~Invasive Aquatic Plant Control Management Trust Fund to water management districts and local governments to implement maintenance programs~~ for the management of aquatic plants. ~~After federal and state appropriation, the Corps and the Florida Legislature provide funds to the commission annually for this purpose.~~

(2) Funds are allocated by the ~~Ceommission~~ to government agency and private sector contractors ~~grant applicants, after evaluation of workplans workplan and associated budgets budget requests submitted~~ for eligible waters, in accordance with eligibility standards and priorities established in this chapter. The ~~Ceommission~~ then monitors and assists contractors grantees to ensure the appropriate management of aquatic plants and funds.

(3) No change.

(4) Applying the maintenance program management policy to noxious aquatic plants shall include the following

actions:

(a)-(d) No change

(e) Coordinating with and seeking comments from stakeholders including other agencies and local governments.

(f) ~~In cooperation with the Corps, water management districts and local governments, the Commission is authorized to contract with government agencies and private sector organizations for the management of aquatic plants in waters of the state.~~

(g) The Commission is authorized to reimburse any government agency or private sector company with which it has entered into a contractual agreement to disburse funds to any water management district or local government charged with the responsibility of manage managing aquatic plants, subject to the eligibility requirements of this chapter.

(h) The Commission is responsible for determining that funds are spent in accordance with ~~the annual workplans workplan, task assignments and contracts grant agreement, Chapter 16A-11, F.A.C. (Grant and Contract Accountability Policy which is available from the section), and O.M.B. Circular A-87 effective date 28 January 1981 (Federal Office of Management and Budget Cost Principles Manual for State and Local Governments, which is hereby incorporated by reference and is available from the section). The commission shall follow the criteria in this chapter for the disbursement of funds.~~

(i) The commission shall reimburse contractors disburse funds to the program grantees based on the available funds, program eligibility, program priorities, and the method of reimbursement allocation as defined in this chapter. To compensate for limitations in the planning cycle prior to the end of the fiscal year, the Commission is authorized to review allocations to contractors contract grantees to determine if additional funds are needed or if excess funds are available for reallocation to management programs efforts in need of additional funds.

(5) Herbicide Management Standards:

(a) No change.

(b) Herbicides with label label restrictions for potable water use which do not indicate a potable water intake setback distance must not be used to manage floating plants within 0.5 miles of a functioning potable water intake permitted by the Department of Environmental Protection in a lake or within 2.0 miles upstream or 0.5 miles downstream of a functioning potable water intake permitted by the Department of Environmental Protection in a river system. There are no setback requirements when using herbicides that do not have restrictions on the label for potable water use.

(c) When used to manage aquatic vegetation other than floating plants, herbicides with without label restrictions for potable water use which do not indicate a potable water setback distance must not be used within 2.0 miles of a functioning potable water intake permitted by the Department of Environmental Protection in a lake or within 2.0 miles upstream or 0.5 miles downstream of a functioning potable water intake permitted by the Department of Environmental Protection in a river system. There are no setback requirements when using herbicides that do not have restrictions on the label for potable water use.

(d) When management activities, using a herbicide with without label restrictions for potable water use which does not have a potable water setback distance, are to take place within 2.0 miles of a functioning potable water intake permitted by the Department of Environmental Protection in a lake, or within 2.0 miles upstream or 0.5 miles downstream of a functioning potable water intake permitted by the Department of Environmental Protection in a river system, written notice by certified mail must be given to the operator of the water treatment plant and to the section at least one week prior to the treatment activity, unless an alternative notification system has been previously approved by the Commission. There are no requirements to notify water treatment plant operators or the section when using herbicides that do not have restrictions on the label for potable water use.

(e) When more than one herbicide is registered for use in an aquatic site, the Commission shall require the use of the herbicide which it determines has the least adverse effect upon human health, safety, recreational uses, non-target plants, fish, and wildlife. In determining which herbicide shall be used, the following criteria shall be considered:

1.- 3. No change.

(f) – (g) No change.

(h) Management activities using herbicides shall not be permitted in manatee aggregation sites when manatees

are present except when automatic herbicide spreaders operating on timing devices have been authorized in the workplan by a permit.

(i) When manatees are sighted in a control area, all herbicide control operations must cease immediately, (except when automatic herbicide spreaders operating on timing devices have been authorized in the workplan by a permit), and shall not be resumed until all manatees have left the control area of their own volition. No manatee may be herded or harassed into leaving the control area.

(j) No change.

(6) Mechanical and Physical Management Standards:

(a) Mechanical aquatic plant management operations shall be conducted in a manner which will not cause further significant spread of noxious aquatic plant species. All cut or harvested aquatic vegetation shall be deposited as prescribed in the workplan permit. No substrate is authorized to be recontoured or removed under an aquatic plant management workplan permit.

(b) No change.

(7) Biological Management Standards:

(a) The use of fish as biological management for aquatic plants requires authorization a permit from the Commission which has statutory authority for the regulation of the use of fish.

(b) No change.

Rulemaking Specific Authority 370.021(1), 369.20, 369.22 FS. Law Implemented 403.088, 369.20, 369.22 FS. History--New 1-7-87, Amended 5-30-93, Formerly 16C-54.001, 62C-54.001, Amended _____.

68F-54.003 Definitions.

~~(1) "Amendment" means a formalized modification of an existing grant agreement.~~

~~(2) "Applicant" means any water management district or local government charged with the responsibility of managing aquatic plants which has requested financial assistance for such management from the commission.~~

~~(1)(3) "Aquatic plant" means any plant, including a floating, emersed, submersed or ditchbank species, growing in or closely associated with an aquatic environment, and includes any part or seed of such plant. This includes those species listed in Section 369.251, F.S.~~

~~(2)(4) "Budget" means the detailed anticipated expenditures including anticipated federal, state or local funds which are within the categories designated eligible by this chapter for the fiscal year for which funding is being allocated requested.~~

~~(3) "Commission" means the Florida Fish and Wildlife Conservation Commission.~~

~~(5) "Section" means the Invasive Plant Management Section, an administrative subdivision of the Florida Fish and Wildlife Conservation Commission located at 3900 Commonwealth Blvd., MS 705, Tallahassee, FL 32399-3000, Telephone (850)245-2809.~~

~~(4)(6) "Connection" means any depression, ditch, canal, culvert, pipe, or any other natural or man-made conveyance, whether permanent or intermittent, which joins the surface water of one waterbody to the surface water of another waterbody in such a manner as to allow the interchange of water between the waterbodies. Waterbodies with conveyances which are subject to man-made controls, including but not limited to dams, weirs, water control gates, and valves, which are preventing the interchange of water between waterbodies at the time of the use of a herbicide for aquatic plant management activities and throughout any water use restriction periods required by the herbicide product label, shall not be considered to be connected.~~

~~(5) "Contract" means a written agreement which outlines the obligations of the Commission and the contractor and constitutes an aquatic plant control permit under 68F-20.002(8), F.A.C.~~

~~(6) "Contractor" means any government agency or private sector company with which the Commission has entered into a contractual agreement to reimburse eligible costs associated with managing aquatic plants.~~

~~(7) – (8) No change.~~

~~(9) "Commission" means the Florida Fish and Wildlife Conservation Commission.~~

~~(9)(10) "Ditchbank species" means those plants usually growing not directly in water but near water's edge at normal water level.~~

~~(11) "District" means any one of the five water management districts listed in Section 373.069, F.S.~~

~~(10)(12) "Eligible costs" means costs identified by the contract O.M.B. Circular A-87, Chapter 16A-11, F.A.C.,~~

or the grant agreement as being reimbursable.

~~(11)~~(13) "Federal funds" means those aquatic plant management funds provided by the Corps.

~~(12)~~(14) "Fiscal year" means the ~~state~~ federal fiscal year, ~~July~~ ~~October~~ 1 through ~~June~~ ~~September~~ 30.

~~(15)~~ "Flood-control waters" means any permanent waterbody which is primarily used to manage the flow of water to protect human health and safety, and prevent injury to plant life, animal life, and property.

~~(16)~~ "Grant agreement" means a written agreement which outlines the obligations of the commission and the grantee.

~~(17)~~ "Grantee" means any applicant which has been approved for aquatic plant management funding.

~~(13)~~(18) "Herbicide" means any chemical product used to chemically control or regulate aquatic plant growth.

~~(14)~~(19) "Local government" means a county or municipal government.

~~(15)~~(20) "Maintenance program" means a method for the management of aquatic plants in which techniques are used in a coordinated manner, ~~on a continuous or periodic basis, in order to maintain the target plant population at the lowest feasible level~~ funding and technology will permit as determined by the Commission.

~~(16)~~(21) "Manatee aggregation site" means a specific area within a waterbody or canal system where manatees periodically congregate, as identified by the section in consultation with the U.S. Fish and Wildlife Service and the Commission's Imperiled Species Management Section.

~~(22)~~ "Native aquatic plant" means any aquatic plant that is indigenous to the State of Florida, as determined by the commission. ~~In making this determination, the commission shall consider data contained in generally accepted scientific literature.~~

~~(17)~~(23) "Noxious aquatic plant" means any part, including but not limited to seeds or reproductive parts, of an aquatic plant which has the potential to hinder the growth of beneficial plants, to interfere with irrigation or navigation, or to adversely affect the public welfare or the natural resources of this state.

~~(24)~~ "Recreational waters" means waters accessible to the general public, used primarily for recreational purposes, and which are aquatic sites in sovereignty lands.

(18) "Section" means the Invasive Plant Management Section, an administrative subdivision of the Florida Fish and Wildlife Conservation Commission.

~~(19)~~(25) "Sovereignty lands" means, pursuant to Article X, Section 11, Constitution of the State of Florida, the title to lands under navigable waters, within the boundaries of the state, which have not been alienated, including beaches below mean high water lines, is held by the state, by virtue of its sovereignty, in trust for all the people.

~~(20)~~(26) "State funds" means those aquatic plant management funds provided by Legislative appropriation.

~~(21)~~ "Task assignment" means an executed agreement between the Commission and the contractor that authorizes all of the workplans and an approved budget for the contractor's area of operations for a given fiscal year.

~~(22)~~(27) "Waters" or "Waters of the state" means rivers, streams, lakes, navigable waters and associated tributaries, canals, meandered lakes, enclosed water systems, and all other bodies of water.

~~(23)~~(28) "Workplan" means an outline of the anticipated ~~the commission approved detailed outline of the~~ aquatic plant management operations to be conducted on a given waterbody and an approved budget for a given fiscal year.

Rulemaking Specific Authority 370.021(1), 369.20, 369.22 FS. Law Implemented 369.20, 369.251, 369.22 FS. History--New 1-7-87, Amended 5-30-93, Formerly 16C-54.003, 62C-54.003, Amended _____.

68F-54.0035 Waters Eligible and Eligibility Criteria for Aquatic Plant Management Funds.

(1) The Commission is authorized to enter into contracts ~~grant agreements~~ for the purpose of managing noxious aquatic plants in sovereignty lands, or those sites which might adversely impact sovereignty lands. Applications for grants are made on FWC Form 50-035(16). An executed grant agreement shall serve as proof that the applicant (grantee) has sufficient funds on hand to satisfy any funding match requirement. Approval of control techniques and program approval are contained in the individual workplans ~~workplan~~ for each waterbody which are compiled into a task assignment ~~will become attachment A-1 of the grant agreement.~~

(2) In order for state and federal aquatic plant management funds to be considered, waters for which these funds are requested must meet the following eligibility criteria:

(a) The waterbody must be sovereignty lands, or Commission managed lands such as a Fish Management Area or Wildlife Management Area, or a site which might adversely impact sovereignty lands or Commission managed

lands, or a state-owned spring or spring run.

(b) For sovereignty lands, ~~t~~The waterbody must have access to the boating public by way of an established, improved boat ramp or a direct navigable connection to an eligible waterbody.

1. (e) There must be a sign at the boat ramp stating that it is a public boat ramp or use area.

2. A ramp fee may be charged provided that the fee is not unreasonable (in keeping with ramp fees charged in the area).

3. (d) There must be at least one directional sign on the nearest paved roadway indicating the way to the public boat ramp.

4. (e) The boat ramp must have sufficient space to safely turn a vehicle and trailer around and ample parking space within one quarter mile distance from the boat ramp.

(3) Commission approval shall be the execution of the task assignment grant agreement between the contractor applicant and the Commission. ~~The applicant shall be notified in writing of application deficiencies or denial.~~
Rulemaking Specific Authority 370.021, 369.20, 369.22 FS. Law Implemented 369.20, 369.22 FS. History—New 5-30-93, Formerly 16C-54.0035, 62C-54.0035, Amended _____.

68F54.005 Approval, Allocation, and Disbursement Procedures for Aquatic Plant Management Funds.

(1) Workplan requests ~~The applications for funds~~ shall be reviewed and approved by the section staff to determine compliance with this chapter.

~~(a) Applicants submitting insufficient information or unreasonable cost estimates to support the allocation of funds will be notified and advised of such deficiency in writing. The applicant shall have 30 days from the date of notification to furnish the additional information. The date of submission of the additional information shall be the postmarked date.~~

~~(b) Applicants denied funds shall be notified in writing as to the reason for such denial.~~

(2) Although a waterbody may meet eligibility criteria, funding and workforce availability may be insufficient to manage noxious plants for a period of time. ~~When federal or state funds are involved, T~~the section shall allocate ~~disperse~~ funds according to the following priorities, with 1 being the highest priority, and the additional considerations listed in subsection 68F-54.005(3), F.A.C.:

Priority 1: ~~(a)~~ To manage waterhyacinth and waterlettuce, including those plants in waters which could infest connected eligible lakes and rivers.

Priority 2: ~~(b)~~ To manage new hydrilla infestations, particularly those at boat ramps or in waters connected to eligible waters which contain little or no hydrilla.

Priority 3: ~~(c)~~ To manage any noxious aquatic plant restricting access at public boat ramps, or to establish trails which connect boat ramps to major use areas.

Priority 4: ~~(d)~~ To provide open areas in dense stands of hydrilla for navigation and recreational use.

Priority 5: ~~(e)~~ To provide for large scale hydrilla management operations.

Priority 6: ~~(f)~~ To provide open areas in dense stands of other noxious plants for navigation and recreational use.

Priority 7: ~~(g)~~ To manage noxious plants in residential or dead end canals and which are connected to eligible waters, unless they contain: waterhyacinth or waterlettuce, or hydrilla when there is a navigable connection to an eligible water and the eligible water contains little or no hydrilla.

~~1. Waterhyacinth or waterlettuce.~~

~~2. Hydrilla, and there is a navigable connection to an eligible water, and the eligible water contains little or no hydrilla.~~

(3) ~~When federal or state funding is involved, T~~the section commission shall allocate funds for an individual waterbody using the criteria established in subsection 68F-54.005(2), F.A.C., with consideration being given to the following factors:

(a) No change.

(b) Availability of local funds or in-kind services ~~for matching state or federal funds.~~

(c) - (h) No change -.

(4) A task assignment grant agreement shall be executed by the Commission with the contractor grantee prior to any aquatic plant management activities being eligible for reimbursement. ~~This grant agreement shall contain the mutual obligations of the commission and the grantee.~~

(5) Reimbursement shall be based on accounting for actual costs and shall be the means for identifying and distributing allowable costs in the program. All invoices reporting forms for a given month shall be provided to the Commission for determination of reimbursement no later than the 20th day of the following month. The commission shall have thirty (30) days in which to review, inspect, and accept the contractor's grantee's work effort and associated reimbursement documentation. Incomplete or incorrect invoices reports submitted shall be returned by the Commission for correction to the contractor grantee within thirty (30) days of receipt. The corrected invoice report shall be returned to the Commission no later than the 20th day following the day of receipt by the contractor grantee. The commission shall reimburse the contractor grantee monthly upon receipt of a properly certified invoice. The following certification statement shall appear on the invoice, "I certify that the above bill is correct and just and that payment thereof has not been received; I further certify that the contractor and all sub-contractors employed on the work have complied with the labor standards provision of the contract." The contractor grantee shall keep separate cost accounting records for this program from which the invoice shall be prepared. Rulemaking Specific Authority 370.021(1); 369.20, 369.22 FS. Law Implemented 369.20, 369.22, 120.60 FS. History--New 1-7-87, Amended 5-30-93, Formerly 16C-54.005, 62C-54.005, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Eric Sutton, Habitat and Species Conservation Director, 620 S. Meridian Street, Tallahassee, Florida 32399

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Fish and Wildlife Conservation Commission.

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: *[Insert date FWC approved concept or rule draft.]*

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN F.A.W.: March 23, 2012