

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Rulemaking related to fish habitat program

The Natural Resource Commission hereby rescinds Chapter 35, “Fish Habitat Promotion for County Conservation Boards,” Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 455A.5(6)“a” and 483A.3A.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 483A.3A.

Purpose and Summary

Chapter 35 implements a grant program where fishing license fee funds are used by county conservation boards to conduct projects that provide access to, protection of, or enhancement of fish habitat for anglers. The Department of Natural Resources (Department) is directed to implement this program by the Iowa Code. Counties may voluntarily participate in this grant program, incurring the costs of staff time and required cost sharing. This chapter benefits anglers by distributing grant funds for projects throughout the state.

Consistent with Executive Order 10 (January 10, 2023) and the five-year review of rules in Iowa Code section 17.7(2), this chapter was edited for length and clarity.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7240C**. Public hearings were held on January 23 and 30, 2024, at 12 noon via video/conference call. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Commission on April 11, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual

or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on June 5, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 571—Chapter 35 and adopt the following new chapter in lieu thereof:

CHAPTER 35

FISH HABITAT PROMOTION FOR COUNTY CONSERVATION BOARDS

571—35.1(483A) Purpose and definitions. The purpose of this chapter is to designate procedures for the allotment of fish habitat revenue to county conservation boards. These funds shall be used specifically to acquire from willing sellers whole or partial interest in land for use as or for protection of fish habitats and to develop and enhance fishable waters and habitat areas.

The following definitions apply in these rules:

“*Commission*” means the natural resource commission.

“*County*” means a county conservation board.

“*Department*” means the department of natural resources.

“*Director*” means the director of the department of natural resources.

“*District*” means a county conservation district.

571—35.2(483A) Availability of funds. Fish habitat funds are dependent on sales. Revenues received by the department determine the amount of moneys available at any time.

35.2(1) Local share. Funds available for county conservation boards shall be specified in the department's budget in accordance with legislative appropriations. At least 50 percent of the fish habitat revenue will be apportioned to county conservation boards.

35.2(2) Distribution. After deduction of 5 percent to be held for contingencies, the remaining local share will be available on an annual basis. The department shall divide fish habitat funds equally among the districts. The districts have two years to obligate fish habitat funds once the funds are made available. After two years, the department will apportion all unobligated funds equally among the districts.

571—35.3(483A) Program eligibility. All counties are eligible to participate in this program.

571—35.4(483A) Eligibility for cost-sharing assistance. A project is not eligible for cost sharing unless the commission specifically approves the project or the applicant has received a written waiver of retroactivity from the director prior to the project's initiation. A project must allow for public fishing to be eligible for cost sharing; however, the review and selection committee as described in subrule 35.6(1) may recommend for commission approval projects with restrictions on boating.

35.4(1) Acquisition projects. A licensed appraiser shall appraise lands or rights thereto to be acquired, and the appraisal shall be approved by department staff. The appraisal requirement may be waived when the staff determines that it is impractical for a specific project. The cost share shall not be approved for more than 90 percent of the approved appraised value. Acquisition projects are eligible for cost share either by direct payment as described in subrule 35.11(6) or by reimbursement to counties.

35.4(2) Eligible acquisition activities.

a. Acquisition for pond and lake construction.

b. Acquisition of fishable streams, ponds and lakes.

c. Acquisition for watershed protection.

35.4(3) Development projects. Eligible expenditures for development projects include, but are not limited to, preliminary expenses, contracts, the purchase of materials and supplies, rentals, and extra labor that is hired only for the specific project. The purchase of equipment is not an eligible expenditure.

Donated labor, materials and equipment-use and use of a county's own labor and equipment are not eligible for cost-share assistance. Development projects are limited to lands legally controlled by the county for the expected life of the project. Development projects are eligible only for reimbursement of reasonable costs actually incurred and paid by the county.

35.4(4) *Enhancement projects.* For purposes of this rule, "enhancement" is considered to be synonymous with "development." Eligible enhancement activities include:

- a. Physical placement of fish habitats in ponds, lakes, pits and streams.
- b. Armoring of pond, lake, pit and stream shores.
- c. Construction of aeration systems.
- d. Dredging of ponds or lakes.
- e. Construction of ponds and lakes.
- f. Construction of sediment-retaining basins.
- g. Repair of lake dam/outlets.
- h. Manipulation of fish populations and aquatic vegetation.
- i. Removal of dams.
- j. Construction of fish ladders.
- k. Construction of fish barriers.
- l. Construction of rock-faced jetties.

35.4(5) *Project income.* When, as a result of a purchase agreement or other title transfer action involving cost sharing with fish habitat funds, a county directly or indirectly receives financial income that would have been paid to the previous landowner, 90 percent of that income shall be transferred to the department unless the county has identified and committed to habitat development projects or additional acquisitions on the project site to be funded from the income received. The project review and selection committee shall recommend, and the director and commission shall approve, plans for the expenditure of income received pursuant to this subrule. In the absence of acceptable fish habitat development or acquisition plans, the county shall transfer to the department 90 percent of the income received as it is received. The department shall credit that income to the county's apportionment of the fish habitat fund as described in subrule 35.2(1). The schedule of those reimbursements from a county to the state shall be included in the project agreement.

571—35.5(483A) *Application for assistance.* Applications must contain sufficient detail as to clearly describe the scope of the project and how the area will be managed.

35.5(1) *Form.* Applications must be submitted on forms provided by the department.

35.5(2) *Time of submission.* Applications for funds will be reviewed and selected for funding at least once per year. The department will publish on its website the date and time for submitting a funding proposal, providing at least 90 days' notice. Applications must be submitted to the department as described on the website. Upon timely notice to eligible recipients, additional selection periods may be scheduled if necessary to expedite the distribution of funds. In emergencies, a county may request a waiver so that an acquisition project may be approved for retroactive payments if funds are available and the project meets all other criteria.

35.5(3) *Joint applications.* Joint applications are permitted. One county shall serve as the primary applicant. A joint application shall clearly describe the respective share of project costs for each county named. Any cooperative agreement between the counties named shall be provided as a part of the application.

35.5(4) *County funding.* An applicant shall certify that it has committed its share of project costs and that these funds are available and shall state the means of providing for the county share. All necessary approvals for acquisition and financing shall be included with the application. All financial income received directly or indirectly that would have been paid to the previous landowner as a result of a purchase agreement or other title transfer action shall be completely documented in the application.

35.5(5) *Multiple development projects.* An application for development project assistance may include development on more than one area if the development is of a like nature.

571—35.6(483A) Project review and selection.

35.6(1) Review and selection committee.

a. Each district shall have a review and selection committee, hereinafter referred to as the committee. Each committee shall be composed of at least five county directors or their designees, with at least two designated alternates. Each district's committee shall determine which grant applications and amendment requests are selected for funding. For advisory purposes only, a department biologist or designee shall be present during review and selection of grant applications and amendment requests.

b. Conflict of interest. An individual who is a member, volunteer, or employee of an entity that has submitted a project cannot serve on the scoring committee during that award cycle. Instead, one of the alternates shall review and score in the individual's place.

35.6(2) Consideration withheld. The committee shall not consider any application that on the date of the selection session is incomplete or for which additional pertinent information has been requested but not received.

35.6(3) Application rating system. The committee shall apply a rating system to each grant application considered for fund assistance. The department shall develop the rating system. The rating system shall be used to rate each application, and those applications receiving the highest ratings shall be selected for fund assistance to the extent of the allotment for each annual period. If the amount of grant moneys available exceeds that requested, applications will be reviewed only to determine eligibility.

571—35.7(483A) Commission review. The director shall present the committees' recommendations to the commission at its next meeting following the rating of projects for funding. The commission may approve or disapprove funding for any project on the list.

571—35.8(483A) Grant amendments. If funds are available, projects for which grants have been approved may be amended to increase or decrease project scope or to increase or decrease project costs and fund assistance. The director shall approve project changes prior to their inception. Amendments to increase project costs and fund assistance due to cost overruns shall not be approved if funds have already been committed or the work has already been performed.

571—35.9(483A) Timely commencement of projects. Grant recipients are expected to carry out their projects in an expeditious manner. A project for which a grant is approved shall be commenced within six months of the date upon which the grantee is notified that the project is approved, or at another date agreed upon by both parties. Failure to do so may be cause for termination of the project and cancellation of the grant by the commission.

571—35.10(483A) Project period. A project period that is commensurate with the work to be accomplished shall be assigned to each project. Extensions may be granted only in case of extenuating circumstances.

571—35.11(483A) Payments.

35.11(1) Grant amount. Grant recipients will be paid 90 percent of all eligible costs incurred on a project up to the amount of the grant unless otherwise specified in the project agreement.

35.11(2) Project billings. Grant recipients shall submit billings for reimbursement or cost sharing on forms provided by the commission.

35.11(3) Project billing frequency. Project billings shall be submitted on the following basis:

a. Up to \$10,000 total project cost—one billing.

b. Over \$10,000 total project cost—no more than two billings.

35.11(4) Documentation. Grant recipients shall provide documentation to substantiate all costs incurred on a project as may be required by the department.

35.11(5) Development projects. Eighty percent of the approved local share may be paid to the county when requested, but not earlier than start-up of the project. The department, pending successful completion and final inspection of the project, shall withhold 20 percent of the local share until any irregularities discovered as a result of a final site inspection have been resolved.

35.11(6) Acquisition projects. The department may make payment directly to a property seller pursuant to the following criteria:

- a. The county requests direct payment in the project application and shows good cause for such procedure;
- b. The seller provides to the county a marketable fee simple title, free and clear of all liens and encumbrances or material objections at the time of payment; and
- c. Sufficient program funds are available at the time of transfer.

571—35.12(483A) Recordkeeping and retention. A grant recipient shall keep adequate records relating to its administration of a project, particularly relating to all incurred costs and direct or indirect income that normally would have been paid to the previous landowner as a result of a purchase agreement or other title transfer action. A copy of the county's audits showing such income and disbursements for the grant period shall be submitted to the department's budget and grant bureau. These records shall be available for audit by appropriate personnel of the department and the state auditor's office. All records shall be retained in accordance with state law.

571—35.13(483A) Penalties. Whenever any real or personal property acquired or developed with fish habitat fund assistance passes from the control of the grantee or is used for other purposes that conflict with the project purpose, it shall be considered an unlawful use of the funds. The department shall notify the county of any such violation.

35.13(1) Remedy. Funds thus used unlawfully shall be returned to the department for inclusion in the fish habitat fund, or local, non-cost-shared funds shall be used to acquire a replacement property of equal value at current market prices and with commensurate benefits to fish. The replacement property must be approved by the commission. The county shall have a period of two years after notification by the department in which to correct the unlawful use of funds. The remedies provided by this subrule are in addition to others provided by law.

35.13(2) Land disposal. Whenever it has been determined and agreed upon by the grantee and the commission that land acquired or developed with fish habitat fund assistance is no longer of value for the project purpose or that the county has other good cause, the commission may authorize that the land be disposed of and the proceeds thereof used to acquire or develop an area of equal value or that 90 percent of the proceeds be returned to the state for inclusion in the fish habitat fund.

35.13(3) Ineligibility. If the department determines that a county has unlawfully used fish habitat funds, the county shall be ineligible for further assistance until the matter has been resolved to the satisfaction of the commission.

These rules are intended to implement Iowa Code section 483A.3A.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/1/24.