

SUBJECT: Request approval of the statement of scope for board order SS-04-12 related to invasive species

FOR: JUNE 2012 **BOARD MEETING**

TO BE PRESENTED BY / TITLE: Mindy Wilkinson, Invasive Species Coordinator

SUMMARY:

Scope statement approval of board order SS-04-12 will allow drafting of rules that will classify additional invasive species into existing categories established in ch. NR 40, Wis. Admin. Code, making them subject to existing administrative rules and statutes that regulate the introduction, possession, transfer, and transport of invasive species in order to prevent them from becoming established in Wisconsin or to prevent already-established invasive species from spreading within the state.

We are updating ch. NR 40 now because when it became effective Sept. 1, 2009, a number of invasive species were intentionally not included. During the public input and drafting processes for the 2009 rule, it was recognized that many additional species may need to be evaluated and, if appropriate, categorized and listed under this rule. Most of these species are used by some sector of society and we need to get input from the affected stakeholders. The requested current rule change will add species of terrestrial plants, several aquatic plants, and a few vertebrates, soil invertebrates, and aquatic invertebrates to the invasive species rule.

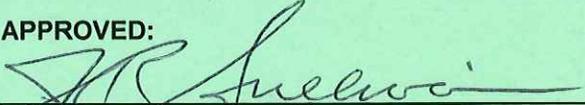
We expect considerable interest in the proposed rule revisions. Interested parties may include the nursery, landscape, forestry, seed and agriculture industries, fish farmers, bait dealers, commercial fishers and wholesale fish dealers, aquarium and ornamental fish dealers, game farms, anglers, landowners, gardeners, county and municipal governments, Native American Indian tribes, lake districts, state agencies, and environmental and conservation organizations.

RECOMMENDATION: Adopt Board Order SS-04-12, scope of revisions to NR 40 relating to invasive species.

LIST OF ATTACHED MATERIALS:

- | | | | |
|--|---|---|----------|
| No <input checked="" type="checkbox"/> | Fiscal Estimate Required | Yes <input 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 |

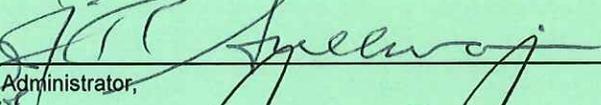
APPROVED:



Bureau Director,

5/31/12

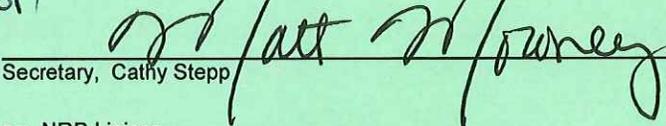
Date



Administrator,

5/31/12

Date



Secretary, Cathy Stepp

6/12/12

Date

cc: NRB Liaison
DNR Rules Coordinator

DATE: May 1, 2012

TO: Natural Resources Board

FROM: Cathy Stepp, Secretary

SUBJECT: Scope Statement relating to proposed rule for the control of invasive species

Subject/Objective of the Proposed Rule

Revision of ch. NR 40, Wis. Admin. Code, to identify, classify, and list additional prohibited and restricted invasive species.

Description of Policy Issues/Analysis of Policy Alternatives

The proposed rule revision will classify additional invasive species into existing categories established in NR 40, making them subject to existing administrative rules and statutes that regulate the introduction, possession, transfer, and transport of invasive species in order to prevent them from becoming established in Wisconsin or to prevent already-established invasive species from spreading within the state. Other proposed revisions will address accommodations to facilitate compliance with NR 40, clarify language, and improve organization of the rule.

Economic Impact

The potential economic impact is estimated at Level 1. This is a conservative estimate reflecting the diversity of species potentially under assessment, as well as the fact that a number of these species are used by various sectors of society. Rule revisions also have the potential to provide valuable economic benefits by reducing future control and management costs for regulated invasive species. Businesses can potentially mediate costs by substituting non-invasive species in their practices. During the species assessment process, the economic costs and benefits will be evaluated for each species considered for inclusion in the rule revisions. Certain species may have larger potential economic impacts than others.

Statutory Authority

Sections 23.09 (2) (intro), 23.091, 23.11 (1), 23.22 (2) (a) and (b) 6., 23.28 (3), 27.01 (2) (j), 29.014 (1), 29.039 (1) 29.041, and 227.11 (2) (a), *Wis. Stats.*

Estimate of Time Needed to Develop the Rule

This revision will require approximately 6,240 hours of staff time (1.5 FTE working for 2 years).

Summary and Comparison with Existing or Proposed Federal Regulations

There are no known proposed federal regulations that would provide the ability for the state to act when newly establishing invasive species are discovered. Existing regulations address a narrow subset of noxious weeds under the Federal Noxious Weed Act (7 U.S.C. 2801 et seq; 88 Stat, 2148) or animals under the Lacey Act (18 U.S.C. 42-43, 16 U.S.C. 3371-3378), primarily species that are already too widespread for a more cost-effective prevention approach.

All Entities Affected by the Rule

Interested parties may include the nursery, landscape, forestry, seed and agriculture industries, fish farmers, bait dealers, commercial fishers and wholesale fish dealers, aquarium and ornamental fish dealers, game farms, landowners, anglers, gardeners, county and municipal governments, tribes, lake districts, government agencies, and environmental and conservation organizations.

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: SS-04-12

Relating to: Invasive Species

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

Not an Emergency Rule

2. Detailed description of the objective of the proposed rule:

The proposed rule revision will classify additional invasive species into existing categories established in ch. NR 40, Wis. Admin. Code, making them subject to existing administrative rules and statutes that regulate the introduction, possession, transfer, and transport of invasive species in order to prevent them from becoming established in Wisconsin or to prevent already-established invasive species from spreading within the state. Other proposed revisions will address accommodations to facilitate compliance with NR 40, clarify language, and improve organization of the rule.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

The proposed rule revision will identify or list additional invasive species into existing categories set out in ch. NR 40, making them subject to existing administrative rules and statutes. When ch. NR 40 became effective Sept. 1, 2009, a number of invasive species intentionally were not included in the initial rule. During the public input and drafting processes, it was recognized that many additional species may need to be evaluated and, if appropriate, categorized and listed in the rule. Most of these species are used by some sector of society and evaluation will need to involve the affected stakeholders. There likely will be many species of terrestrial plants, several aquatic plants, and a few vertebrates, terrestrial invertebrates, and aquatic invertebrates assessed and possibly categorized. Other proposed revisions will facilitate compliance with NR 40, clarify language, and improve organization of the rule.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

The legislature granted specific rule-making authority to the department in the context of "invasive species" in s. 23.09 (2), Stats., which states: "The department may promulgate rules...as it deems necessary to carry out the provisions and purpose of this section." The purpose of this statute section, pursuant to s. 23.09 (1), Stats., is "to provide an adequate and flexible system for the protection, development and use of forests, fish and game, lakes, streams, plant life, flowers and other outdoor resources in this state."

More specifically, the legislature has directed the department, through the enactment of s. 23.22, Stats., to control invasive species in Wisconsin in the furtherance of the purpose outlined in s. 23.09 (1) Stats. Particularly, ss. 23.22 (2) (a) and (b), Stats., outline the duties and authority of the department concerning the regulation of "invasive species." Section 23.22 (2) (a), Stats., states the department "shall establish a statewide program to control invasive species in this state." Importantly, s. 23.22 (1) (a), Stats., defines

"control" to mean "to cut, remove, destroy, suppress, or prevent the introduction or spread of." Furthermore, s. 23.22 (2) (b) 1. through 6., Stats., outlines certain aspects of the program the department is required to implement. Of utmost importance in this context is s. 23.22 (2) (b) 6., Stats., which provides that the department shall "[p]romulgate rules to identify, classify, and control invasive species for the purposes of the program [established under s. 23.22 (2) (a), Stats.]." This proposed rule revision will effectuate this directive in two ways. First, this rule revision will alter what species the department classifies as "invasive species." Second, this rule will alter how the department will "control" "invasive species" through revisions in how the public will comply with the department's rules concerning "invasive species."

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

We estimate that this revision will require approximately 6,240 hours of DNR staff time over 2 years (1.5 FTE). In addition, the Wisconsin Council on Invasive Species, species experts, and various partners and stakeholders will be involved in assessing species and evaluating rule revisions.

6. List with description of all entities that may be affected by the proposed rule:

We expect considerable interest in the proposed rule revisions. Interested parties may include the nursery, landscape, forestry, seed and agriculture industries, fish farmers, bait dealers, commercial fishers and wholesale fish dealers, aquarium and ornamental fish dealers, game farms, anglers, landowners, gardeners, county and municipal governments, Native American Indian tribes, lake districts, state agencies, and environmental and conservation organizations.

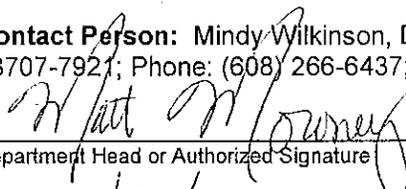
7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

There are no known proposed federal regulations that would provide the ability for the state to act when newly establishing invasive species are discovered. Existing regulations address a narrow subset of noxious weeds under the Federal Noxious Weed Act (7 U.S.C. 2801 et seq; 88 Stat, 2148) or animals under the Lacey Act (18 U.S.C. 42-43, 16 U.S.C. 3371-3378), primarily species that are already too widespread for a more cost-effective prevention approach.

8. Anticipated economic impact of implementing the rule:

The potential economic impact of this proposed rule revision is estimated to be Level 1. This is a conservative estimate reflecting the diversity of species under assessment, as well as the fact that a number of these species may be used by various sectors of society. These rule revisions also have the potential to provide valuable economic benefits by reducing future control and management costs for regulated invasive species. Businesses may potentially mediate costs by substituting non-invasive species in their practices. During the species assessment process, the economic costs and benefits will be evaluated for each species considered for inclusion in the rule revisions. Certain species may have larger potential economic impacts than others.

Contact Person: Mindy Wilkinson, Department of Natural Resources - SS/7, PO Box 7921, Madison, WI 53707-7921; Phone: (608) 266-6437; E-mail: Melinda.Wilkinson@Wisconsin.gov



Department Head or Authorized Signature

3/9/12

Date Submitted



SCOTT WALKER
OFFICE OF THE GOVERNOR
STATE OF WISCONSIN

P.O. Box 7863
MADISON, WI 53707

March 12, 2012

Cathy Stepp
Secretary
Wisconsin Department of Natural Resources
101 South Webster St.
P.O. Box 7921
Madison, WI 53707-7921

RE: Statement of Scope for Proposed Rule SS-04-12

Dear Secretary Stepp,

I hereby approve the statement of scope submitted on March 9, 2012, pursuant to Wisconsin Statutes § 227.135. You may send the scope statement to LRB for publication pursuant to Wisconsin Statutes § 227.135(3).

Sincerely,

A handwritten signature in black ink, appearing to be "S. Walker", written over a horizontal line.

Scott Walker
Governor