

NATURAL RESOURCES BOARD AGENDA ITEM

SUBJECT: Request authorization for public hearings on Natural Resources Board Order IS-34-06. An order to create ch. NR 40 relating to the identification, classification and control of invasive species

FOR: JUNE 2008 **BOARD MEETING**

TO BE PRESENTED BY: ~~Laurie Osterndorf, Todd Ambs, Susan Crawford, Paul DeLong~~
Kelly Kearns and Tom Boos

SUMMARY:

The rules identify, classify and control invasive species as part of DNR's state-wide program to control invasive species under s. 23.22 (2), Stats. The rules set criteria to classifying invasive species and list specific invasive species into 2 categories -- prohibited and restricted. The rules limit the transport, possession, transfer and introduction of prohibited list invasives, with certain exceptions. Restricted list invasives are also subject to a ban on transport, transfer and introduction, but not possession (except for fish and crayfish). Transport, possession, transfer or introduction for research, education, identification, control or disposal or for other specified purposes may be authorized by DNR permit.

Incidental or unknowing transport, possession, transfer or introduction without a permit is exempt if DNR determines that it was not due to the person's failure to take reasonable precautions.

The rules authorize DNR to enter property to inspect, sample and control prohibited species and to order persons who own, control or manage property where prohibited species are present to take approved control measures. If a control order is not complied with and DNR takes control measures, it may seek cost-recovery.

The rules also limit certain common activities that may spread of invasive species, including requirements to drain water from boats, trailers, and equipment upon their removal from the water; a ban on the transport of live fish and fish eggs, and a ban on transport on public highways of boats, trailers and equipment if aquatic plants or animals are attached.

RECOMMENDATION: Authorize public hearings on NRB Order IS-34-06.

LIST OF ATTACHED MATERIALS:

- | | | | | | |
|----|-------------------------------------|---|-----|-------------------------------------|----------|
| 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:

~~Bureau Director,~~

Date

/s/ /s/ /s/ /s/

4/15/08

Administrator, Osterndorf, Ambs, Crawford, DeLong

Date

/s/

6/16/08

Secretary, Matt Frank

Date

cc: Laurie J. Ross - AD/5
Peter Flaherty - LS/8
Carol Turner -LS/8

DATE: April 21, 2008 FILE REF: 3600

TO: Natural Resources Board

FROM: Matthew J. Frank

SUBJECT: Request authorization for public hearings for Natural Resources Board Order No. IS-34-06, Invasive Species Identification, Classification and Control

1. Why is rule being proposed?

a. What event or action triggered the proposal?

The order creates a new chapter of rules relating to the classification and regulation of invasive species, as part of the state-wide program to control invasive species under s. 23.22 (2), Stats. That section states that the Department shall establish a statewide program to control invasive species and shall promulgate rules to identify, classify and control species for purposes of the program.

The Wisconsin Council on Invasive Species (the Council) was created by s. 15.347 (18), Stats., and appointed by the Governor to make recommendations to the Department for classifying invasive species under the invasive species program. The Department and the Council have been working over the last 3 years to develop rules to classify and regulate invasive species. The Council's Research and Regulations Committee developed the process that the Department followed to assess invasive species.

The Research and Regulations Committee developed a detailed set of criteria for assessing species for classification. The criteria include:

- a) Potential economic, environmental or human health impacts of the species
- b) Current presence, distribution and abundance in the state
- c) Potential for establishment and spread
- d) Control potential
- e) Socio-economic impacts of the species, both positive and negative

Department staff, with input from the Council and others, developed the lists of species to be assessed based on these criteria. Summaries of the available literature were written on each of those species, specifically with regard to the assessment criteria. These literature summaries were reviewed by land managers and species specialists. Species Assessment Groups (SAGs) were developed to assess the species and to make recommendations to the Council. The SAGs, which were comprised of experts in their respective fields and stakeholder groups, used the criteria for species selection to advise the Council on the placement of species in specific categories. Separate SAGs have been developed for specific categories including:

- a) aquatic plants and algae
- b) woody plants
- c) terrestrial herbaceous plants
- d) fish and aquatic invertebrates
- e) terrestrial and aquatic vertebrates
- f) terrestrial invertebrates and plant disease causing microorganisms

The Council met in October, 2007 and discussed the SAGs' recommendations. For a few species the Council revised the classification recommended by the SAGs. For most species, the Council agreed with the SAG recommendations.

In 2007, the Department prepared a draft rule and conducted informal listening sessions to garner input on the draft rule. Listening sessions for the public were held in Milwaukee, Madison, La Crosse, Spooner, Rhinelander (2), and Green Bay. Listening sessions for Department staff were held in Milwaukee, Madison, Fitchburg, Spooner, Rhinelander and Green Bay. The sessions included a brief overview of the rule and then participants asked questions and provided comments. There was also an opportunity to comment via email, on the Department website and through a printed questionnaire. Several hundred comments were received and those for which significant changes have been made in the draft rule are summarized in the attached document. Department staff considered the comments in making further revisions to the draft rule.

b. What issues are addressed by this rule?

The rule identifies, classifies and regulates invasive species. Invasive species are a known threat to the aquatic and terrestrial resources of Wisconsin. Current state and federal laws on invasive species are inconsistent among species groups. For some, such as fish and forest insects and diseases, there are a number of existing laws that give the Department of Natural Resources (DNR) and the Department of Agriculture, Trade and Consumer Protection (DATCP) authority to regulate them in some ways. For other groups of invasive species, such as terrestrial plants, existing state and federal laws are very limited and there have been no state agencies with regulatory authority.

Invasives have caused environmental and economic damage and threaten human health. Examples include the cost resulting from zebra mussels clogging water intake facilities, depletion of Great Lakes fish populations by sea lamprey, decreasing forest regeneration, loss of biodiversity, the impacts of cyanobacteria in our waterways and the blistering from wild parsnip, and the threat posed by emerald ash borer (727,000,000 forest ash trees at risk in Wisconsin).

The proposed rule will establish a consistent science-based classification and regulatory system for all listed invasive species. The rule will set specific restrictions on actions such as possession, sale, transportation and planting or releasing listed invasive species to the wild. It will allow the Department to work with local units of government, state or federal agencies, land managers and landowners to quickly contain new infestations of prohibited species likely to become problematic. The proposed rule defines *invasive species* to exclude dead specimens or non-viable life stages.

For this initial rule development, the effort focused primarily on listing those species that were clearly invasive and whose trade, propagation or use were not believed to be important to any segment of society. The rule does not address VHS, CWD or certain other fish and wildlife pathogens that are already the subject of specific control programs.

2. Summary of the Rule

The order creates rules for the identification, classification and control of invasive species, as part of the Department's state-wide program to control invasive species required under s. 23.22 (2), Stats. Section 23.22 (1) (c), Stats., defines "invasive species" to mean nonindigenous species whose introduction causes or is likely to cause economic or environmental harm or harm to human health.

The proposed rules establish criteria for classifying invasive species and list or identify specific invasive species into 2 specific categories (prohibited and restricted) according to those criteria. The rules prohibit or restrict the transportation (including importation), possession, transfer (including sale) and introduction of invasive species that are listed or identified as "prohibited", with certain exceptions. "Restricted" invasive species are also subject to a conditional ban on transportation, transfer and introduction, but not

possession (except for fish and crayfish), with certain exceptions. The rules also allow transportation, possession, transfer or introduction for research, education, identification, control or disposal or for other specified purposes when authorized by a Department permit.

Transportation, possession, transfer and introduction without a permit are not prohibited if the Department determines that the transportation, possession, transfer or introduction was incidental or unknowing, and was not due to the person's failure to take reasonable precautions. However, another rule in the chapter bans transportation of items or host materials that may carry any invasive species and that are subject to a quarantine by the Department, the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) or the United States Department of Agriculture Animal and Plant Health Inspection Service (USDA APHIS), regardless of whether the transportation was incidental or unknowing.

For prohibited species the goal is to eradicate, contain or slow the spread of the infestation, regardless of whose property the species is on. The department will work with the landowners to determine the best means of control. The rules authorize the Department to enter property for the purpose of inspection, sampling and control of prohibited invasive species; allow the Department to order persons who own, control or manage property where prohibited invasive species are present to implement approved control measures, and allow for state control of prohibited invasive species. If a control order is not complied with and the Department undertakes control measures, the rules allow for cost-recovery by the Department for the expenses it incurred. In contrast, "restricted" species are not subject to any control requirements, except that persons who grow restricted plant species at a nursery are required to destroy them if the nursery closes.

General preventative measures are also required by the rules, without being specific as to species. These rules limit certain common activities that may function as pathways for the inadvertent introduction or spread of invasive species, unless a permit to engage in the activity has been issued by the Department. These include conditional requirements to drain all water from boats, boat trailers, equipment and containers upon their removal from the water; a ban on the transport of live fish and fish eggs away from the water, and restrictions on the transport on public highways of boats, trailers and equipment with aquatic plants or animals attached.

Criteria and procedures for permit application, issuance, administration and revocation are detailed in the rules.

Finally, the rules set out the procedures or mechanisms available to the Department under the statutes for enforcement of the rules and of permits issued under the rules.

Fish and aquatic invertebrates

The rule defines all non-native fish species as prohibited invasive species, but identifies species in the aquaculture trade, species in the aquarium trade, and established non-native species as restricted species that are permissible for certain defined uses. In addition certain named species of fish and aquatic invertebrates are classified as prohibited: bighead carp, black carp, grass carp, silver carp, eastern mosquitofish, western mosquitofish, red shiner, viable (i.e., capable of surviving in Wisconsin) snakehead species, tench, zander, Asian clam, bloody shrimp, Chinese mitten crab, New Zealand mud snail, quagga mussel, water flea, spiny water flea, fishhook water flea, and faucet snail. Species in this group may not be transported, possessed, transferred, or introduced without a permit issued by the Department.

Restricted fish and crayfish invasive species are classified into three groups: fish species in the aquarium trade, fish species in the aquaculture trade, and established nonnative fish and crayfish species. *Fish species in the aquarium trade* are goldfish, koi carp, white sturgeon, Chinese hi-fin banded shark, bitterling, ide, weather loach, and *non-viable* fish species. *Non-viable* fish species are those for which eggs, fry, or adults are not capable of surviving water temperatures below 38 degrees Fahrenheit or not capable of surviving in fresh water. Fish species in the aquarium trade may, if held in a *safe facility*, be transported, possessed or transferred, but may not be possessed elsewhere, stocked, or used live as bait without a permit issued by the Department, except that goldfish and koi carp may be transported, possessed, or transferred. For fish, a *safe facility* is one that does not directly drain into a water of the state, is not subject to flooding, is not connected to any water of the state, and is not an open pond. *Fish species in the aquaculture trade* are arctic char, Atlantic salmon, brown trout, chinook salmon, coho salmon, rainbow trout, pink salmon, redear sunfish, tiger trout, and tilapia. Species in this group may be transported (DNR permit required for importation), possessed in a *safe facility*, possessed on a registered fish farm, or transferred without a permit issued by the Department. Stocking is prohibited except by DATCP and DNR permit and use as live bait is prohibited. *Established non-native fish and crayfish species* are alewife, common carp, rainbow smelt, round goby, ruffe, sea lamprey, three-spine stickleback, tubenose goby, white perch, and rusty crayfish. Species in this group may not be transported, possessed, transferred, stocked, or used as live bait without a permit issued by the Department.

Terrestrial and Aquatic Vertebrates

Proposed prohibited terrestrial and aquatic vertebrates are Russian boar and other wild swine, feral domestic swine, mute swan, monk (Quaker) parrot (parakeet). In addition, all other nonnative mammals, nonnative birds, nonnative reptiles, and nonnative amphibians are classified as prohibited invasive species unless they are specifically exempted or are listed separately as restricted invasive species. However, non-viable terrestrial and aquatic vertebrates, nonnative domestic animals, nonnative wild animals authorized by a license under ch. 169, Stats., but not including nonnative wild animals that are harmful wild animals, or legally obtained nonnative wild animals that are pets may be possessed, transported, or transferred without a permit issued by the Department. Red-eared slider turtles with a carapace (top shell) length less than 4 inches are the only restricted terrestrial or aquatic invasive vertebrate.

Terrestrial Plants

There are 29 prohibited species including such species as kudzu and giant hogweed. There are 37 restricted species including such species as garlic mustard, common buckthorn and Canada thistle. There are 8 “split” listed species including common teasel and multiflora rose that are prohibited in part of the state and restricted in the remaining part. The split classification is necessary because there are several plants that are located in a part of the state and not in another; therefore it is critical to prevent such species from spreading into un-infested areas of the state. It is likely that permits will be developed for certain species in the plant trade, such as the oriental bittersweet that is grown and exported for the cut flower industry.

Terrestrial Invertebrates and Plant Disease Causing Microorganisms

There are 7 prohibited species including: hemlock woolly adelgid, emerald ash borer, crazy worms, Asian longhorned beetle, scale from beech bark disease, Asian gypsy moth and sudden oak death pathogen and one proposed restricted species: European gypsy moth.

Aquatic Plants and Algae

A total of 35 species of aquatic plants, algae, and cyanobacteria were evaluated for invasiveness in Wisconsin. The proposed rule lists 16 prohibited species including such species as hydrilla, water chestnut, and rock snot. There are 3 restricted species including Eurasian watermilfoil, curlyleaf

pondweed, and flowering rush. There were 14 species for which documented nuisance growth has occurred in more southern climates, but for which there remained uncertainty about their potential in Wisconsin; most of these species are also sold in the water garden or aquarium trade and are not proposed to be regulated unless more information becomes available to suggest a threat in northern climates.

3. How does this proposal affect existing policy?

The proposed rule broadly implements existing policy in s. 23.22, Stats.

Fish and aquatic invertebrates

For non-native fish the rule adopts an approach in which any non-native species is regarded as invasive and prohibited unless explicitly allowed by listing in one of the sub-categories of restricted fish species. Existing statutes already prohibit the importation of non-native fish and the introduction of any fish into the wild without a permit. The preventative measures in this rule closely track the VHS rules that were recently adopted but are not yet in effect as permanent rules.

Terrestrial and Aquatic Vertebrates

This rule compliments and is consistent with existing statutes and administrative codes, mainly chs. 29 and 169, Stats., and ch. NR 16, Wis. Adm. Code. The listing of Russian boar and other wild or feral domestic swine is consistent with the Department's efforts to eliminate feral pigs wherever they occur in the wild. The prohibition of mute swans is also consistent with the Department's mute swan control policy established by the Board in 2007. Existing statutes already prevent the introduction of wildlife into the wild without a permit due to the potential for ecological problems and genetic or disease contamination. The rule is consistent with 2007 Wisconsin Act 119, effective April 4, 2008, that requires the Department to designate by rule wild swine and feral swine as "harmful wild animals."

Terrestrial Plants

Currently there are no state statutes or rules affecting most invasive plants in the state. They may be sold, purchased, transported and intentionally introduced to the environment. The Nuisance Weed Law (s. 23.235, Stats.) lists only 2 species, purple loosestrife and multiflora rose, and prohibits their sale. It does not provide a means for adding other species to the list. The Noxious Weed Law (s. 66.0407, Stats.) simply lists 3 species, Canada thistle, leafy spurge and field bindweed, as noxious weeds statewide and provides counties and municipalities the authority to list additional noxious weeds at a local level and require their control. The proposed rule includes 2 of those 3 species in the "restricted" category, restricting the sale and use of these species. The proposed rule does not affect the authority of municipalities to list species locally. However, it will assist municipalities in determining what species would be appropriate to add to their local noxious weed law. This rule will complement and support the use of the noxious weed law at the local level.

Terrestrial Invertebrates and Plant Disease Causing Microorganisms

The proposed rule creates additional mechanisms to enforce quarantines of the organisms that pose the highest risk to Wisconsin's forest ecosystem. Department law enforcement staff will effectively have authority to enforce quarantines set in place by DATCP, increasing the opportunity to contain or slow the spread of high-risk organisms. The prohibition of transporting, transferring, possessing and introducing prohibited species is consistent with DATCP's goals outlined under ch. ATCP 21, Wis. Adm. Code, and ch. 94, Stats.

Aquatic Plants and Algae

The proposed rule complements s. 23.24, Stats., which lists Eurasian water milfoil, curlyleaf pondweed, and purple loosestrife as invasive aquatic plants, by establishing a more extensive list of potential invaders to Wisconsin waters. Under s. 23.24, Stats., the Department may designate any aquatic plant as an invasive aquatic plant for a water body or group of water bodies. While s. 23.24, Stats., still grants that authority, the proposed rule clarifies the list of species that could cause significant adverse effects and regulates the transport, possession, transfer or introduction of those species. In addition, the rule is consistent with Department policies related to the Clean Boats Clean Waters program, now providing the additional regulatory step banning the transport of boats, trailers and equipment with any aquatic plants or animals attached, or containing water.

4. Has Board dealt with these issues before? When? Board Action?

The board has addressed these issues on a species on by species basis, e.g., VHS, CWD, mute swans, emerald ash borer. However, to the extent that the board has dealt with invasive species issues, this is the first comprehensive rule.

5. Who will be affected by the proposed rule? How?

Fish and aquatic invertebrates

The proposed rule will affect fish farmers, aquarium-fish stores and aquarists, recreational anglers, crayfish trappers, and boaters. No species currently handled on fish farms will be prohibited or further restricted, but other non-native species could not be permitted for aquaculture under the proposed rule. Grass carp are not currently permitted in Wisconsin and are prohibited under the proposed rule. This may be a point of disagreement with the aquaculture industry. The proposed rule prohibits only 2 species now handled in the aquarium trade, the eastern and western mosquitofish, but viable non-native aquarium species not currently in trade would be prohibited and the identified fish species in the aquarium trade would have to be confined to safe facilities. The prohibition of mosquitofish may be a point of disagreement with the aquarium-fish industry. Consistent with the newly approved VHS rules, recreational anglers will be prohibited from transporting live fish, except under certain defined conditions, and boaters will be required to observe certain safety precautions, including draining all water from boats and containers and clearing all non-native species from their boats and trailers. Crayfish trappers will be required to keep any live rusty crayfish that they have trapped in safe facilities.

Terrestrial and Aquatic Vertebrates

Individuals who raise Russian boars or other wild or feral domestic swine for meat production agriculture will be required to obtain a DNR permit. Pet trade operators will need to be aware that DNR has a carapace restriction for red-eared slider turtles which is consistent with the US Food and Drug Administration's ban on their sale at 21 CFR 1240.62. Landowners or public land managers on whose property a prohibited species occurs may be asked to control the species. Department staff or cooperators will work with the landowners to determine the best means to contain the prohibited species. Where possible the Department will assist with the control effort and may seek funding to assist in covering the costs of controls.

Terrestrial Plants – The Wisconsin Nursery Association has surveyed its members and found that there are very few that are growing the plants listed in this rule, so the impacts will be minor. Businesses that have valid reasons to use restricted species in ways that minimize their spread may apply for a permit to allow specific uses. Floriculture growers, herbalists, nursery growers and others are likely to utilize the permit process. Unless they fit under an exemption or have obtained a permit, any business that sells or

uses prohibited or restricted species will have to sell the plants or destroy them. This includes, but is not limited to nursery growers and dealers, garden centers, seed producers, and all retail markets of plants that grow or sell listed species.

Landowners or public land managers whose property contains a prohibited species may be asked to control the species. Department staff or cooperators will work with the landowners to determine the best means to contain the prohibited species. Where possible the Department will assist with the control effort and will seek funding, such as federal grants, to assist in the cost of controls. It is anticipated that enforcement action will be taken only when landowners refuse to cooperate with control efforts. The rule does provide the Department with the authority to enter onto private lands as necessary to inventory, control or monitor prohibited species. If the owner refuses to allow the Department to enter the affected property, the Department may seek an inspection warrant from the Circuit Court to authorize entry.

Landowners that possess restricted species on their property are encouraged to control the invasive species, but are not required to do so. However, they will no longer be able to plant, trade or sell restricted species.

Terrestrial Invertebrates and Plant Disease Causing Microorganisms

No significant new impacts are expected because this rule supports authority for prohibitions and quarantine enforcement already in place for DATCP and outlined in ch. ATCP 21, Wis. Adm. Code, and ch. 94, Stats.

Aquatic Plants and Algae

Boaters, lake associations and state, county, or municipal water resource managers and private consultants, water garden and aquarium industry may all be affected by this rule. They will not be allowed to introduce listed species and may not transport aquatic invasive species without a Department permit.

Accidental transport, transfer, possession or introduction of invasive species

It is understood that seeds, eggs and spores of invasive plants, invertebrates and disease causing organisms may move onto or away from a person's property through no fault of his or her own. For this reason, the rule's prohibitions against unpermitted transport, transfer, possession and introduction do not apply if the Department determines that the transportation, possession, transfer or introduction was incidental or unknowing, and was not due to the person's failure to take reasonable precautions.

Control of Prohibited Species:

The goal is to work cooperatively with the landowner or manager wherever possible, entering only with permission and assisting them with the control program and finding other means to pay for the work. The proposed rule includes mechanisms for the Department to enter property for the purpose of inspection, sampling, control or monitoring of prohibited (but not restricted) invasive species. If permission to enter is not given, the Department may obtain an inspection warrant from the Circuit Court in order to gain access to the affected property. It also allows the Department to order persons who own, control or manage property where a prohibited invasive species is present to implement approved control measures. This includes both public and private lands. The rule allows the Department to implement control measures if an order recipient does not comply with the order. Finally, it allows for cost-recovery for the reasonable and necessary expenses the Department incurs if a control order is not complied with and the Department has to undertake control measures. Where large populations of prohibited species are

discovered, the Department will order control efforts only where it is reasonable and feasible to contain the population.

Phase out for Restricted List Terrestrial Plants:

Although the proposed rules are not expected to significantly affect businesses engaged in raising and selling plants, it is anticipated that future revisions to the proposed rules may affect a number of companies and individuals as more terrestrial plant species are added to the restricted list. Discussions have already been held with some of the potentially affected industries to help them prepare for eventual regulation of some of these species.

Department staff met with the Wisconsin Nurseryman's Association to discuss the Association's proposal for including a compliance schedule or phase-out period in the rule now for restricted list terrestrial plant species that may be added in the future. The Association's members didn't have any species on the current proposed list of restricted species that they felt needed a phase-out period at this time. They proposed that the phase out period, only to be applied to species already in the nursery trade but listed as restricted, be as follows: 7 years for trees, 5 years for shrubs, and 3 years for vines and herbaceous perennials. These times are based on the amount of time it takes from a plant being started in the nursery to when it reaches salable size. They did not have any recommendations for annuals, grasses, aquatic plants or seed, so further discussions may be needed with other industry representatives.

The phase-out recommended by the Association would allow licensed nursery growers to continue growing and selling restricted plants during that period. They would also like to be allowed to sell them to other nurseries, green houses or retail customers during that time period, and concurrently, those buyers would be allowed to buy the plants legally. The Association agrees that all importation of restricted species should be halted as soon as a new species is added to the restricted list.

At this time, the Department does not recommend including a phase-out schedule for restricted list terrestrial plants, since no plants in the proposed rule seem to need one, but if recommended by the Council, as more species are added to the restricted list in the future, the Department will work with nurseries and other landscape industries to develop any necessary phase-out periods or compliance schedules to allow businesses to legally retain their stock of restricted plants past the rule implementation date and phase out their inventories so as to minimize their potential economic losses.

6. Environmental assessment

This is a Type III action under Chapter NR 150, Wis. Admin. Code. No Environmental Assessment is required.

7. Small business analysis- Initial Regulatory Flexibility Analysis

a. Describe the type of small business that will be affected by the rule.

Fish and aquatic invertebrates

The proposed rule does not impose any additional reporting or record-keeping requirements on fish farmers or aquarium stores.

Terrestrial and Aquatic Vertebrates

None anticipated.

Terrestrial Plants

Nursery growers, nursery dealers, garden centers, seed dealers, floriculture growers and retailers will no longer be allowed to grow or sell listed species, unless there is an exception or the business has a permit from the Department. Landscape architects, landscapers and others will no longer be allowed to purchase and plant listed species. Utilities, mowing contractors and others who conduct vegetation maintenance or construction activities may need to modify their practices to prevent the inadvertent spread of listed species. Restoration consultants, vegetation managers and landscape contractors may benefit from this rule.

Terrestrial Invertebrates and Plant Disease Causing Microorganisms

Businesses that transport, possess and transfer raw wood products such as pulp and paper mills, sawmills and firewood dealers may be affected by quarantine rules. Movement of raw, untreated products out of quarantined areas will be restricted. Treatment of raw wood products or restrictions on timing of movement out of a quarantined area may be required.

Aquatic Plants and Algae

Water resources consultants, water garden and aquarium industry may benefit from this rule.

b. Briefly explain the reporting, bookkeeping and other procedures required for compliance with the rule.

Permit holders must keep a current, correct and complete record of all permit activities. Permit records may be inspected and copied by the Department at any time. Copies of records must be provided to the Department upon request.

Persons who wish to transport, possess or give away a prohibited invasive species for the purpose of identification, control or disposal without a permit must report the location of origin of prohibited invasive species to the Department. Reports must be submitted within 30 days of the person taking possession and must include contact and property owner information, type and detailed location of the species, the purpose for transporting, possessing or giving away the invasive species, and the final disposition of the invasive species.

c. Describe the type of professional skills necessary for compliance with the rule.

Professional skills required to comply with the rule include the ability to identify and distinguish listed invasive species from other species.

ATTACHMENTS:

Summary of major public comments

Summary of major public comments for draft rule package (6-5-08)

In December, 2007 the initial draft rule, species proposed for listing, and the background information showing how the species were assessed were all posted on the DNR webpage. Notices were sent out to thousands of interested parties to alert them to the public listening sessions and open comment period. Hundreds of comments were received by email. Several came by mail. We conducted 6 listening sessions for DNR staff and 6 for the general public. Approximately 100 DNR staff and 160 members of the public attended. Department staff have compiled most of the comments in a detailed document that is available upon request. The most significant comments and subsequent revisions to the draft rule are summarized here. Some of the comments provided can not be resolved in the rule language itself, but will be addressed in the background memo or guidance documents that may be developed by the department.

Definitions – Numerous recommendations were made to add definitions. New definitions have been added if they are used in the rule text and are needed for clarification. Definitions were added, deleted or revised for: public highway, bank, shore, immediate drainage, transfer, native species, and established.

Process for Rule and List Revisions – There were numerous requests to lay out, at least in notes in the rule, the details of revising the rule and of revising the list of regulated species. This includes: intended frequency to revise the rule and the list, the process for determining which species are to be assessed, the role of the Wisconsin Council on Invasive Species and the species assessment groups. *These procedures to be developed by department staff with advice of the Council are beyond the scope of the rule and will be compiled into appropriate guidance documents.*

Classifications/Categories – Recommendations to change the category name from “watch” to “caution”. Watch is currently used to denote species nearing endangerment. Caution more accurately reflects the intent of the category. It was also confusing to readers as to if the watch and non-restricted categories have legal restrictions. This needs to be clarified. *Watch was changed to “Caution”. Both categories are now only referenced in notes in the rule and will be unofficial lists on the DNR website. As these two categories are not a part of the rule, guidance documents will be developed to clarify the process for assessing and listing species in these categories.*

Species Reclassified – During the public comment process we had requested further distribution and abundance information about the species proposed for listing. Numerous comments were provided to help clarify the best category to classify several species. *The species are now listed in their recommended categories. No new species were added to the list. Several were moved from one category to another. Several plants that were listed as prohibited in part of their range and restricted in another were adjusted based on new range information provided in the comments.*

Control Requirements – There were concerns that the rules appeared to be too focused on enforcement for prohibited species, allowing the department to order controls, enter onto land to inspect, control or monitor and to charge the landowner for the control efforts. Utilities, land trusts and others who hold easements on property want to have the rule clear as to which parties are responsible for the control of prohibited species, and about liability for accidentally transporting invasive species when doing construction and maintenance activities. *The Department’s goal is to focus on education and cooperation to identify and control prohibited species. Department staff will work with landowners or land managers with prohibited species to*

cooperatively control them, regardless of where they are found. When possible, the Department will attempt to find funding to conduct the inventory, control and monitoring work. The Department staff met with utilities, roadside managers and others to resolve some of these issues. The wording in the rule is changed slightly to better reflect the intent. The background memo better explains the intent of this section. If necessary, guidance documents may be developed to explain the procedures that are beyond the scope of the rule, including the educational focus, stepped enforcement process and process to be used in working with landowners to assist them in control efforts.

Restricting access to infested public lands

There were concerns that the rule draft stated that the department could restrict access to any public lands if necessary to prevent the spread of a prohibited species by the public. The Department already has the authority to close DNR properties to public access, as was done this last summer at Rocky Arbor State Park due to a gypsy moth infestation. *This restriction was removed from the draft rule.*

Exemptions – There was general agreement with the exemptions for disposal and other exemptions in the rule. It was suggested that there be an exemption for possession of prohibited and restricted species for educational purposes. *It was determined that “educational purposes” was too vague, and that the exemption for identification purposes would meet this need, as educators intent in possessing these species would be teaching their identification.*

Invasive Species Permits – There were several questions about how permitting would be done. *The draft rules were revised to better describe the permit process, and it is anticipated that guidance will also be developed to clarify the procedures to be used to implement the rule.*

Phase out Period for Commercially Significant Plants – The nursery industry is concerned that as commercially important plants get put on the restricted list, companies growing these plants could lose significant amounts of income if not given a phase out period to sell off their stock. None of the species currently proposed on the list are of concern to the nursery association. However, they recommend that this rule include language to clarify the length of time growers may have to continue growing restricted species after the rule is implemented and the process for allowing this phase out period. *Because this phase out does not apply to any species currently proposed for listing, the department recommends not including phase out periods in the rules at this time.*

Enforcement – There were many questions and concerns about enforcement by the public and by department staff. Some felt that the rule wasn't strong enough and would not do enough or could even weaken the efforts to minimize the spread of invasives. Others felt the rule was expanding department authority beyond what is reasonable. Several people asked if this rule would be enforced by local law enforcement officials in addition to conservation wardens. *The answer is that although local officials may enforce DNR rules, it rarely happens. No specific revisions were made in the rule regarding law enforcement.*

Reporting Issues – There are concerns that landowners will be reluctant to report prohibited species if the department may order control, enter on to land or charge the landowner for control efforts. There were also questions about the protocol for department staff and others to report occurrences, collect and submit voucher specimens and to follow-up for control efforts. *As the process for reporting is outside of the rule itself, department staff will be developing guidance documents clarifying procedures for reporting.*

Preventative Measures – A number of specific measures are set up to prevent the spread of invasive species by common vectors. Most deal with aquatic species. There was strong support for expanding restrictions on the transport of moving aquatic invasive species from “launching” only to include “transport away from the boat launch” and for “immediate removal of all plants and animals”. There were a number of recommendations to expand the preventative measures to include the incidental transportation of invasive terrestrial species through construction and maintenance activities, specifically for linear infrastructure (such as power lines and pipe lines) and for department properties. Those industries were concerned that such requirements would make it difficult for them to conduct their work. *Staff met with utility and right-of-way managers to resolve this issue. Department staff are in the process of working with a wide range of stakeholders developing a series of Best Management Practices to minimize the spread of invasives. One of these tracks will focus on rights-of-way and other corridors. It was agreed that at this time, the rules should not include mention of the BMP’s, as they have not yet been developed. Instead it would refer to the need for taking “reasonable precautions.” The rule may be revised in the future to refer to these BMP’s if needed. It was also agreed to continue conversations with stakeholders during rule implementation. Revisions were made to increase enforceability. It was decided to address the need to address the transport of water via flushing and maintenance of dry hydrants in a separate revision of another rule.*

Funding - It was felt that this rule would best be implemented if there was a consistent funding source to help landowners and land managers with the control and monitoring of prohibited species populations. There is an existing state funding source for aquatic invasives via the AIS grants. The primary need for funding is for the control of terrestrial plants, for which there is currently no dedicated funding. *As the department cannot designate funding sources in a rule, this is referenced in the background memo. Guidance documents may need to be developed to clarify how staff and partners can work with existing funding sources and procedures for working with landowners when no funding is available.*

Outreach/Education- There was general agreement that the most important part of this rule is the educational component, and that it should be clarified that education will generally be the first step prior to enforcement. *Educational components are outside the scope of the rule language.*

23.22 Invasive species. (1) DEFINITIONS. In this section:

(a) “Control” means to cut, remove, destroy, suppress, or prevent the introduction or spread of.

(b) “Council” means the invasive species council.

(c) “Invasive species” means nonindigenous species whose introduction causes or is likely to cause economic or environmental harm or harm to human health.

(d) “State agency” means a board, commission, committee, department, or office in the state government.

(2) DEPARTMENT RESPONSIBILITIES. (a) The department shall establish a statewide program to control invasive species in this state.

(b) As part of the program established under par. (a), the department shall do all of the following:

1. Create and implement a statewide management plan to control invasive species in this state, which shall include inspections as specified under sub. (5).

2. Administer the program established under s. 23.24 as it relates to invasive aquatic plants.

3. Encourage cooperation among state agencies and other entities to control invasive species in this state.

4. Seek public and private funding for the program.

5. Provide education and encourage and conduct research concerning invasive species.

6. Promulgate rules to identify, classify, and control invasive species for purposes of the program. In promulgating these rules, the department shall consider the recommendations of the council under sub. (3) (a). As part of these rules, the department may establish procedures and requirements for issuing permits to control invasive species.

(c) Under the program established under par. (a), the department shall promulgate rules to establish a procedure to award cost-sharing grants to public and private entities for up to 75 percent of the costs of projects to control invasive species. The rules promulgated under this paragraph shall establish criteria for determining eligible projects and eligible grant recipients. Eligible projects shall include education and inspection activities at boat landings. The rules shall allow cost-share contributions to be in the form of money or in-kind goods or services or any combination thereof. In promulgating these rules, the department shall consider the recommendations of the council under sub. (3) (c).

Cross Reference: See also ch. NR 198, Wis. Adm. code.

(3) COUNCIL DUTIES. (a) The council shall make recommendations to the department for a system for classifying invasive species under the program established under sub. (2). The recommendations shall contain criteria for each classification to be used, the allowed activities associated with each classification, criteria for determining state priorities for controlling invasive species under each classification, and criteria for determining the types of actions to be taken in response to the introduction or spread of an invasive species under each classification.

(b) Under the program established under sub. (2), the council shall conduct studies of issues related to controlling invasive species. The studies shall address all of the following:

1. The effect of the state's bait industry on the introduction and spread of invasive species.
2. The effect of the state's pet industry on the introduction and spread of invasive species.
3. The acquisition of invasive species through mail order and Internet sales.
4. Any other issue as determined by the council.

(c) The council shall make recommendations to the department on the establishment of a procedure for awarding cost-sharing grants under sub. (2) (c) to public and private entities for up to 50% of the costs of eligible projects to control invasive species. The recommendations shall contain criteria for determining eligibility for these grants and for determining which applicants should be awarded the grants.

(d) To assist the council in its work, the council shall create 4 subcommittees on the subjects of education, research, regulation, and interagency coordination. The council may create additional subcommittees on other subjects.

[Note – there is no subsection (4).]

(5) INSPECTIONS. As part of the statewide management plan, the department shall create a watercraft inspection program under which the department shall conduct periodic inspections of boats, boating equipment, and boat trailers entering and leaving navigable waters and shall educate boaters about the threat of invasive species that are aquatic species. The department shall encourage the use of volunteers or may use department employees for these inspections.

(6) REPORTS. (a) The department shall submit to the legislature under s. 13.172 (2), and to the governor and the council, a biennial report that includes all of the following:

1. Details on the administration of the program established under sub. (2), including an assessment as to the progress that is being made in controlling invasive species in this state.
2. A description of state funding that has been expended under the program.
3. A description of funding from other sources that has been expended to control invasive species in this state.
4. An assessment of the future needs of the program.

(b) The department shall submit the biennial report under par. (a) before July 1 of each even-numbered year. The first biennial report shall be submitted no later than July 1, 2004. Each report shall cover the 24-month period ending on the March 31 that immediately precedes the date of the report.

(c) In addition to the report required under par. (a), the department shall submit an interim performance report to the legislature under s. 13.172 (2), and to the governor and the council, on the progress that has been made on the control of invasive species. The department shall submit this interim performance report before July 1 of each odd-numbered year. The first interim performance report shall be submitted no later than July 1, 2005. Each interim performance report shall cover the 12-month period ending on the March 31 that immediately precedes the date of the interim performance report.

(7) APPEARANCE BEFORE LEGISLATURE. Upon request of a standing committee of the legislature with jurisdiction over matters related to the environment, natural resources, or agriculture, the director of the program shall appear to testify.

(8) PENALTIES. (a) Except as provided in pars. (b) and (c), any person who violates a rule promulgated under sub. (2) (b) 6., or any permit issued under those rules, shall forfeit not more than \$200.

(b) Any person who intentionally violates any rule promulgated under sub. (2) (b) 6. or any permit issued under those rules shall be fined not less than \$1,000 nor more than \$5,000, or shall be imprisoned for not less than 6 months nor more than 9 months or both.

(c) A person who violates a rule promulgated under sub. (2) (b) 6. or any permit issued under those rules and who, within 5 years before the arrest of the current conviction, was previously convicted of a violation of a rule promulgated under sub. (2) (b) 6. or any permit issued under those rules shall be fined not less than \$700 nor more than \$2,000 or shall be imprisoned for not less than 6 months nor more than 9 months or both.

(d) The court may order a person who is convicted under par. (a), (b), or (c) to abate any nuisance caused by the violation, restore any natural resource damaged by the violation, or take other appropriate action to eliminate or minimize any environmental damage caused by the violation.

(9) ENFORCEMENT. (a) If the department of natural resources finds that any person is violating a rule promulgated under sub. (2) (b) 6. or a permit issued under those rules for which the person is subject to a forfeiture under sub. (8) (a), the department of natural resources may do one or more of the following:

1. Issue a citation pursuant to s. 23.50 to 23.99.
2. Refer the matter to the department of justice for enforcement under par. (b).
3. Revoke a permit issued under the rules promulgated under sub. (2) (b) 6., after notice and opportunity for hearing.

(b) The department of justice shall initiate an enforcement action requested by the department under par. (a) 2. The enforcement action may include a request for injunctive relief. In any action initiated by it under this paragraph, the department of justice shall, prior to stipulation, consent order, judgment, or other final disposition of the case, consult with the department of natural resources for the purpose of determining the department's views on final disposition. The department of justice shall not enter into a final disposition different than that previously discussed without first informing the department of natural resources.

(c) In an action initiated pursuant to a citation or initiated under par. (b), the court may award, as an additional penalty, an amount equal to all or a portion of the costs of investigation, including any monitoring, incurred by the department of natural resources or the department of justice, which led to the establishment of the violation. The court may also award the department of justice the reasonable and necessary expenses of the prosecution, including attorney fees. The department of justice shall deposit in the state treasury for deposit into the general fund all moneys that the court awards to the department of justice under this paragraph. These moneys shall be credited to the appropriation account under s. 20.455 (1) (gh).

History: 2001 a. 109 ss. 72t, 72xd; 2003 a. 33; 2005 a. 25, 160; 2007 a. 20.

June 11, 2008 From <http://www.legis.state.wi.us/statutes/Stat0023.pdf> *Not certified under s. 35.18 (2), stats.* Text from the 2005-06 Wis. Stats. database updated by the Revisor of Statutes. Only printed statutes are certified under s. 35.18 (2), stats. Statutory changes effective prior to 4-2-08 are printed as if currently in effect. Statutory changes effective on or after 4-2-08 are designated by NOTES. Report errors at (608) 266-3561, FAX 264-6948, <http://www.legis.state.wi.us/rsb/stats.html>

Fiscal Estimate — 2005 Session

<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected <input type="checkbox"/> Supplemental	LRB Number Bill Number SB 16	Amendment Number if Applicable Administrative Rule Number IS-34-06
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Subject
 Creation of NR 40 -- Invasive Species Identification, Classification, and Control

Fiscal Effect
 State: No State Fiscal Effect
 Indeterminate

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

<input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Create New Appropriation	<input checked="" type="checkbox"/> Increase Costs — May be possible to absorb within agency's budget. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Decrease Costs
---	--

Local: No Local Government Costs
 Indeterminate

1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Governmental Units Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
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Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input checked="" type="checkbox"/> SEG <input type="checkbox"/> SEG-S	Affected Chapter 20 Appropriations
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Assumptions Used in Arriving at Fiscal Estimate

Rule Summary: The statutes confer on the Department the authority to establish a statewide program to control invasive species in this state, including a statewide management plan and rules to identify, classify and control invasive species for purposes of the program, and to establish procedures and requirements for issuing permits to control invasive species. The proposed rule specifies the procedures for the identification, classification and control of invasive species. In addition, the rule establishes criteria for identifying and listing invasive species and classifying invasive species into two specific categories: prohibited or restricted. The rules prohibit or restrict the transportation (including importation) possession, transfer (including sale) and introduction of invasive species that are listed or identified as “prohibited”, with certain exceptions. “Restricted” invasive species are also subject to a conditional ban on transportation, transfer and introduction, but not possession, with certain exceptions.

Fiscal Effect: This estimate focuses on the fiscal effect resulting from implementing NR 40, as distinguished from the effect associated with the underlying authorizing statutory language. This rule will be implemented across several Department programs, including Bureaus in the divisions of Land, Forestry, Enforcement & Science, and Water. The Department’s costs associated with implementing NR 40 are primarily associated with the permitting, site inspection, monitoring and technical assistance activities inherent in the rule. The Department estimates the workload associated with these tasks across the Department to roughly equal the equivalent of 2.00 FTE and \$120,000 annually in salary related costs. In addition, the Department assumes it will incur \$40,000 annually to supply public informational and educational materials regarding the requirements of the rule.

Long-Range Fiscal Implications

None

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

Fiscal Estimate Worksheet — 2005 Session
 Detailed Estimate of Annual Fiscal Effect

Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number IS-34-06

Subject
 Creation of NR 40 -- Invasive Species Identification, Classification, and Control

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		\$ 120,000	\$ -
(FTE Position Changes)		(2.00 FTE)	(- FTE)
State Operations — Other Costs		40,000	-
Local Assistance			-
Aids to Individuals or Organizations			-
Total State Costs by Category		\$ 160,000	\$ -
B. State Costs by Source of Funds		Increased Costs	Decreased Costs
GPR		\$	\$ -
FED			-
PRO/PRS			-
SEG/SEG-S		160,000	-
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	\$ 160,000	\$
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)

ORDER OF
THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES

The Wisconsin Natural Resources Board proposes an order to create ch. NR 40 relating to the identification, classification and control of invasive species

IS-34-06

Analysis Prepared by Department of Natural Resources

1. Statutes interpreted.

Section 23.22 (2) (a), Stats.

2. 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), Stats.

3. Explanation of agency authority to promulgate the proposed rules under the statutory authority.

Section 23.09 (2) (intro), Stats., grants the department general authority to adopt rules for the protection, development and use of forests, fish and game, lakes, streams, plant life, flowers and other outdoor resources in this state. Section 23.091, Stats., authorizes the department to acquire, develop, operate and maintain state recreation areas, to establish use zones within state recreation areas providing for the full range of recreational uses, including hunting and fishing, and to promulgate rules to control uses within zones and limit the number of persons using any zone. Section 23.11 (1), Stats., gives the department the authority to have and take the general care, protection and supervision of all state parks, of all state fish hatcheries and lands used therewith, of all state forests, and of all lands owned by the state or in which it has any interests, along with such further powers as may be necessary or convenient to enable it to exercise the functions and perform the duties required of it by ch. 23, Stats., and by other provisions of law. Section 23.22 (2) (a) and (b) 6., Stats., confer on the department the authority to establish a statewide program to control invasive species in this state, including a statewide management plan and rules to identify, classify and control invasive species for purposes of the program, and to establish procedures and requirements for issuing permits to control invasive species.

Section 23.28 (3), Stats., prohibits the department from allowing any use of a designated state natural area which is inconsistent with or injurious to its natural values, and authorizes the department to establish use zones, control uses within a zone and limit the number of persons using zones in designated state natural areas. Section 27.01 (2) (j), Stats., grants the department authority to promulgate rules necessary to govern the conduct of state park visitors, and for the protection of state park property, or the use of facilities, including the use of boats and other watercraft on lakes or rivers within the limits of a state park, and the use of roads, trails or bridle paths.

Section 29.014 (1), Stats., directs the department to establish and maintain any bag limits and conditions governing the taking of fish that will conserve the fish supply and ensure the citizens of this state continued opportunities for good fishing. Section 29.039 (1), Stats., authorizes the department to develop conservation programs to ensure the perpetuation of nongame species, require harvest information and establish limitations relating to taking, possession, transportation, processing and sale or offer for sale, of nongame species. “Nongame species” is defined as any mammal, bird, fish, or other creature of a wild nature endowed with sensation and the power of voluntary motion that is living in the wild and that is not classified as a game fish, game animal, game bird or furbearing animal. Section 29.041, Stats., provides that the department may regulate fishing on and in all interstate boundary waters, and outlying waters. Finally, s. 227.11 (2) (a), Stats., expressly confers rulemaking authority on the department to promulgate rules interpreting any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

4. Related statute or rule.

Related statutes or rules include but are not limited to the following:

<u>Statutory section</u>	<u>Title [or subject]</u>
15.347 (18)	Invasive species council.
23.093	Carp control research.
23.235	Nuisance weeds.
23.24	Aquatic plants.
26.20 (4)	[Railroad right-of-way annual weed removal]
26.30	Forest insects and diseases; department jurisdiction; procedure.
27.019 (7) (c)	[County rural planning – highways - only native plantings allowed]
27.05 (5) and (7)	[County authority to manage plants and control weeds in county waters, parks and county lands]
29.011	Title to wild animals.
29.047	Interstate transportation of game.
29.053	Specific open and closed seasons.
29.055	Wild animals; possession in closed season or in excess of bag limit.
29.057	Wild animals; possession in open season.
29.089	Hunting on land in state parks and state fish hatcheries.
29.091	Hunting or trapping in wildlife refuge.
29.192	Regulation of takings of certain wild animals.
29.301	General restrictions on hunting.
29.307	Hunting with aid of aircraft prohibited.
29.314	Shining animals.
29.327	Regulation of waterfowl blinds.
29.331	Trapping regulation.
29.334	Hunting and trapping; treatment of wild animals.
29.335	Feeding wild animals for nonhunting purposes.
29.337	Hunting and trapping by landowners and occupants.
29.354	Possession of game birds and animals.
29.407	Transportation of fish.
29.414	Erection of barriers to exclude rough fish.

- 29.417 Permit to take rough fish.
- 29.421 Removal of rough fish.
- 29.424 Control of detrimental fish.
- 29.509 Bait dealer license.
- 29.516 Fishing with nets and setlines.
- 29.601 Noxious substances.
- 29.604 Endangered and threatened species protected.
- 29.614 Scientific collector permit.
- 29.627 Domestic fur-bearing animal farms.
- 29.701 Propagation of fish; protected wild animals.
- 29.705 Propagation of fish; removal of fish.
- 29.733 Natural waters used in fish farms.
- 29.734 Barriers required for fish farms.
- 29.735 Importation of fish.
- 29.736 Stocking of fish.
- 29.737 Permit for private management.
- 29.738 Private fishing preserves.
- 29.741 Food in the wild for game birds.
- 29.875 Disposal of escaped deer or elk.
- 29.885 Removal of wild animals.
- 29.887 Wildlife control in urban communities.
- 29.927 Public nuisances.
- 29.931 Seizures.
- 29.934 Sale of confiscated game and objects.
- 30.1255 Report on control of aquatic nuisance species.
- 30.715 Placement of boats, trailers, and equipment in navigable waters.
- 59.70 (17) and (18) [County funds, equipment, fees for pest and weed control, plant or animal diseases.]
- 66.0407 Noxious weeds. [local governments]
- 66.0517 Weed commissioner. [local governments]
- 66.0627 Special charges for current services. [charges for weed elimination]
- 84.07 (3) [DOT highway patrol officers to destroy noxious weeds on highways]
- 93.07 Department duties. [Dept. of Agriculture, Trade and Consumer Protection - pests]
- 94.01 Plant inspection and pest control authority.
- 94.02 Abatement of pests.
- 94.03 Shipment of pests and biological control agents; permits.
- 94.10 Nursery stock; inspection and licensing.
- 94.38 Agricultural and vegetable seeds; definitions.
- 94.41 Prohibitions. [Sale or distribution of noxious weed seed]
- 94.45 Powers and authority of the department.
- 94.46 Stop sale; penalties; enforcement.
- 94.69 Pesticides; rules.
- 94.76 Honeybee disease and pest control.
- 146.60 Notice of release of genetically engineered organisms into the environment.
- 169.04 Possession of live wild animals.
- 169.06 Introduction, stocking, and release of wild animals.
- 169.07 Exhibition of live wild animals.

- 169.08 Propagation of wild animals.
- 169.10 Sale and purchase of live wild animals.
- 169.11 Harmful wild animals.
- 169.36 Record-keeping and reporting requirements.
- 182.017 Transmission lines; privileges; damages. [utility weed control along transmission lines]
- 281.17 (2) [DNR to supervise chemical treatment of waters for the suppression of nuisance-producing organisms that are not regulated by the program established under s. 23.24 (2).]
- 237.10 Rapide Croche lock [Fox river lamprey barrier]

5. Plain language analysis of the proposed rule.

The order creates rules for the identification, classification and control of invasive species, as part of the department's state-wide program to control invasive species required under s. 23.22 (2), Stats. Section 23.22 (1) (c), Stats., defines "invasive species" to mean nonindigenous species whose introduction causes or is likely to cause economic or environmental harm or harm to human health.

The proposed rules establish criteria for classifying invasive species and list or identify specific invasive species into 2 specific categories (prohibited and restricted) according to those criteria (giving consideration to recommendations from the Wisconsin Council on Invasive Species). The rules prohibit or restrict the transportation (including importation), possession, transfer (including sale) and introduction of invasive species that are listed or identified as "prohibited", with certain exceptions. "Restricted" invasive species are also subject to a conditional ban on transportation, transfer and introduction, but not possession (except for fish and crayfish), with certain exceptions. The rules also allow transportation, possession, transfer or introduction for research, education, identification, control or disposal, or for other specified purposes when authorized by a department permit.

Transportation, possession, transfer and introduction without a permit are not prohibited if the department determines that the transportation, possession, transfer or introduction was incidental or unknowing, and was not due to the person's failure to take reasonable precautions. However, the rules ban transportation of items or host materials that may carry any invasive species and that are subject to a quarantine by the department, the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) or the United States Department of Agriculture Animal and Plant Health Inspection Service (USDA APHIS), regardless of whether the transportation was incidental or unknowing.

The rules authorize the department to enter property for the purpose of inspection, sampling and control of prohibited invasive species and allow the department to order persons who own, control or manage property where prohibited invasive species are present to implement approved control measures. If a control order is not complied with and the department undertakes control measures, the rules allow for cost-recovery by the department for the expenses it incurred. In contrast, "restricted" species are not subject to any control requirements, except that persons who grow restricted plant species at a nursery are required to destroy them if the nursery closes.

General preventative measures are also required by the rules, without being specific as to species. These rules limit certain common activities that may function as pathways for the inadvertent introduction or spread of invasive species, unless a permit to engage in the activity has been issued by the department. These include conditional requirements to drain all water from boats, boat trailers, equipment and containers upon their removal from the water; a ban on the transport of live fish and fish eggs away from

the water; and restrictions on the transport on public highways of boats, trailers and equipment with aquatic plants or animals attached.

Criteria and procedures for permit application, issuance, administration and revocation are detailed in the rules.

Finally, the rules set out the procedures or mechanisms available to the department under the statutes for enforcement of the rules and of permits issued under the rules.

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

There are no directly comparable federal regulations that address the activities regulated by the proposed rule.

7. Comparison with similar rules in adjacent states (Minnesota, Iowa, Illinois, and Michigan).

Minnesota has invasive species regulations that make it unlawful to possess, import, purchase, transport, or introduce these species except under a permit for disposal, control, research, or education. Minnesota also has a regulated and unlisted species regulation that states “Regulated and unlisted invasive species are legal to possess, sell, buy, and transport, but they may not be introduced into a free-living state, such as being released or planted in public waters.” Minnesota’s classifications include aquatic plants, fish, invertebrates, mammals and birds. The invasive species laws are similar in scope to Wisconsin’s proposed rules, minus the inclusion of terrestrial plants.

Iowa has a noxious weed law similar to Wisconsin, but includes many more plant species (25+). The Iowa Noxious Weeds and Iowa Weed Law is rather involved, including roads and railroad regulations, removal and cost issues.

Illinois has a noxious weed law similar to Wisconsin’s noxious weed law. It defines noxious weed “as any plant which is determined by the State Director of Agriculture, the Dean of the College of Agriculture of the University of Illinois and the Director of the Agricultural Experiment Station at the University of Illinois, to be injurious to public health, crops, livestock, land or other property.”

Michigan has a noxious weed law similar to Wisconsin, but lists many more species. They also have a law titled *Transgenic and Nonnative Organisms* which lists prohibited and restricted aquatic plants, fish and insects. It seems similar to the proposed rule, again, minus the terrestrial plants.

8. Summary of the factual data and analytical methodologies that the agency used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule.

The department and the Wisconsin Council on Invasive Species (Council) have been working over the last 2 years to develop rules to classify and regulate invasive species. The Research Subcommittee of the Council developed a detailed set of criteria for assessing the species to be classified. The criteria include:

- a) Potential economic, environmental or human health impacts of the species
- b) Current presence, distribution and abundance in the state

- c) Potential for establishment and spread
- d) Control potential
- e) Socio-economic impacts of the species, both positive and negative

Department staff, with input from the Council and others, developed the lists of species to be assessed based on these criteria. Summaries were written of the available literature on each of those species, specifically with regard to the assessment criteria. These literature summaries were reviewed by land managers and species specialists. Species Assessment Groups (SAGs) were developed to assess the species and to make recommendations to the Council. The SAGs, which were comprised of experts in their respective fields and stakeholder groups, used the criteria for species selection to advise the Council on the placement of species in specific categories. Separate SAGs have been developed for specific categories including:

- a) aquatic plants and algae
- b) woody plants
- c) terrestrial herbaceous plants
- d) fish and aquatic invertebrates
- e) terrestrial vertebrates
- f) terrestrial invertebrates and forest pests

The Council met in October, 2007 and discussed the SAGs' recommendations. For a few species the Council revised the classification recommended by the SAGs. For most species, it agreed with the SAG recommendations

9. Analysis and supporting documentation that the agency used in support of the agency's determination of the rule's effect on small businesses under s. 227.114, Stats., or that was used when the agency prepared an economic impact report.

The Wisconsin Council on Invasive Species' Research Committee identified economics as a criterion for species classifications. Therefore, the literature reviews conducted for each species include socio-economic effects. The category includes: positive aspects the species has on the economy/society; potential socio-economic effects of restricting use or requiring control; direct and indirect socio-economic effects of plant; increased cost to sectors caused by the plant; and effects on human health. The data collected varies greatly by species and is generally qualitative as quantitative data is difficult to acquire.

Most invasive species with high economic importance to agriculture or other businesses are not being proposed for classification or regulation at this time. Department staff has been consulting with industry groups to assess potential impacts of the proposed rules on businesses and ways to minimize any adverse impacts. Permits and exemptions will be allowed for the 2 regulated categories of invasive species (prohibited and restricted).

Species Assessment Groups were established to advise the Council on the classification of invasive species. These groups included representatives of industries affected by the species and those potentially affected by any regulations limiting the use of these species. During the Species Assessment Group meetings, economics were addressed for most species. For instance, in the woody plants group, decisions were in large part based on the number of nurseries that grow a particular plant and how much income they produce from a particular plant or its cultivars. If the number of nurseries that grow a plant was very low or none, the decision was easier to come to consensus on. For example, for the variegated cultivar of

Porcelain berry, it was stated that there is only one known Wisconsin grower. That grower makes \$500 per year on the plant and had already stated that it won't bother them if the plant is prohibited.

For some plant species, certain cultivars that are not known to be invasive will be exempted from restrictions. For species that are proposed for the prohibited or restricted listing, permits are available for persons or businesses that have a valid use for the species that can minimize its potential spread. One example is the Asian bittersweet, which is not widely sold as an ornamental, but there are several cut flower farms that have large acreages of this plant for cutting and selling as cut stems. These businesses will be able to apply for permits to continue their activities with some limitations to minimize spread of the seeds.

10. Effects on small business, including how the rule will be enforced.

The rules may have favorable effects on a number of businesses. For example, there has been an enormous increase in the number of ecological restoration businesses starting because of the public awareness of invasive species. They primarily focus on invasive species control. Landscape contractors, arborists, aquatic plant and pest control companies, as well as others, will have increased business opportunities when landowners and businesses chose to remove listed invasive species from their property.

Some small business owners may have to learn to identify the prohibited or restricted invasive species. Small businesses will be affected by the necessity to apply for and receive a permit to transport, possess, transfer or introduce, when applicable. Department staff will work with individuals and businesses to develop a permit specific to their situation and needs. There may be a requirement for permittees to report in a predetermined amount of time. For some businesses, the effects may also include the need to stop importing, buying, selling, growing or otherwise using certain species, or to potentially replace the prohibited or restricted species with other species. Some small businesses may experience a loss of revenue if a particular species in their inventory is restricted by the rules and the business's inventory is not sold prior to the rules' effective date.

Enforcement will vary depending on the species being regulated and the applicability of other rules and statutes. For forest or plant pests and aquaculture, the department and DATCP share regulatory responsibility. The department has (or will develop) memoranda of agreement with DATCP to clarify what aspects of this and related rules will be enforced by each agency.

The department anticipates that it will normally follow an informal, stepped enforcement process in order to obtain compliance with the rules, but if formal enforcement is necessary, these rules and permits issued under the rules will be enforced by department conservation wardens, county district attorneys, and county circuit courts through the use of citations and civil or criminal complaints. Civil and criminal enforcement may also be carried out by department referral of violations to the Wisconsin Attorney General, with prosecution and abatement actions in county circuit courts. Finally, violations of the permits issued under the rules also may be enforced by administrative permit revocation proceedings.

11. Agency contact person (including e-mail and telephone number).

Kelly Kearns
Bureau of Endangered Resources

Department of Natural Resources
 PO Box 7921
 Madison, WI 53707-7921
 Telephone: (608) 267-5066
 Email: kelly.kearns@wisconsin.gov

12. Place where comments are to be submitted and deadline for submission: Comments can be submitted by U.S. mail to the contact and address above. In addition, comments can be submitted during the public comment period using the Internet at <http://adminrules.wisconsin.gov>. The comment period will begin upon publication of the public hearing notice and will continue until [to be determined] , 2008.

SECTION 1. Chapter NR 40 is created to read:

Chapter NR 40
INVASIVE SPECIES IDENTIFICATION,
CLASSIFICATION AND CONTROL

NR 40.01 Purpose.

NR 40.02 Definitions.

NR 40.03 Classifications.

NR 40.04 Prohibited category.

NR 40.05 Restricted category.

NR 40.06 Preventive measures.

NR 40.07 Invasive species permits.

NR 40.08 Enforcement.

NR 40.01 Purpose. The purpose of this chapter is to control invasive species in Wisconsin as part of the statewide program required by s. 23.22 (2) (a), Stats.

NR 40.02 Definitions. For purposes of this chapter,

(1) "Animal" means all vertebrate and invertebrate species, including but not limited to mammals, birds, reptiles, amphibians, fish and shellfish, or their the eggs, larvae or young, but excluding humans.

(2) "Aquatic plant" means a non-woody submergent, emergent, free-floating or floating-leaf plant that normally grows in or near water and includes any part of the plant.

(3) "Boat" means any device capable of being used as a means of transportation on water.

(4) "Category" means a grouping of species that may be monera, protista, fungi, plantae, animalia, viruses, phytoplasmata, mycoplasma-like organisms or prions designated by administrative rule for which there are specific legal requirements or restrictions.

(5) "Contain" or "containment" means to prevent spread beyond a designated boundary.

(6) “Control” has the meaning given it in s. 23.22 (1) (a), Stats. In addition, “control” means activities to eliminate or reduce the adverse effects of invasive species including decreasing or eradicating their population or preventing their spread, and includes to destroy the aboveground portion of a plant in a manner and at the proper time to prevent the development and distribution of viable seeds or other propagules and to prevent their spread. For plants that reproduce vegetatively, “control” includes the use of methods that contain or reduce the vegetative spread of the plant.

Note. Section 23.22 (1) (a), Stats., states that “control” means to cut, remove, destroy, suppress, or prevent the introduction or spread of.

(7) “Cultivate” means, for plants, intentionally maintaining an individual or population of a plant.

(8) “DATCP” means the Wisconsin department of agriculture, trade and consumer protection.

(9) “Department” means the Wisconsin department of natural resources.

(10) “Disposal” means the lawful discharge, deposit, dumping, spilling or placing of any invasive species into or on any land or water, and does not include introduction.

(11) “Domestic animal” means terrestrial vertebrates of any species that have been domesticated by humans and include livestock; poultry; farm–raised game birds, except farm–raised game birds that have been released to the wild; ratites; foxes, fitch or polecat, nutria, marten, fisher, mink, chinchilla, rabbit or caracul that are born, bred and raised in captivity and are not endangered or threatened species; and pet birds.

(12) “Eradicate” means to remove an entire population of an invasive species and all its propagules.

(13) “Established” means present in an area for several years and reproducing or dispersed to the extent that eradication is either infeasible or will take a significant effort over a period of several years.

(14) “Established nonnative fish species and established nonnative crayfish species” means alewife (*Alosa pseudoharengus*), common carp (*Cyprinus carpio*), rainbow smelt (*Osmerus mordax*), round goby (*neogobius melanostomus*), ruffe (*Gymnocephalus cernuus*), sea lamprey (*Petromyzon marinus*), three-spine stickleback (*Gasterosteus aculeatus*), tubenose goby (*Proterorhinus marmoratus*), white perch (*Morone americana*), and rusty crayfish (*Oroconectes rusticus*).

(15) “Feral” means existing in an untamed or wild state, having returned to such a state from domestication.

(16) “Fish species in the aquaculture trade” means arctic char (*Thymallus arcticus*), Atlantic salmon (*Salmo salar*), brown trout (*Salmo trutta*), chinook salmon (*Onchorhynchus tshawytscha*), coho

salmon (*Onchorhynchus kisutch*), rainbow trout (*Onchorhynchus gairdneri*), pink salmon (*Onchorhynchus gorbuscha*), redear sunfish (*Lepomis microlophus*), tiger trout (a hybrid of *Salvelinus fontinalis* and *Salmon trutta*) and tilapia (*Tilapia* sp).

(17) “Fish species in the aquarium trade” means goldfish (*Carassius auratus*), koi carp (*Cyprinus carpio*), white sturgeon (*Acipenser ruthenus*), Chinese hi-fin banded shark (*Myxocyprinus asiaticus*), bitterling (*Rhodeus* sp.), ide (*Leuciscus idus*), weather loach (*Misgurnus anguillicaudatus*), and non-viable fish species.

(18) “Genetically-modified” refers to an organism whose genome, chromosomal or extrachromosomal, is modified permanently and heritably, using recombinant nucleic acid techniques, and includes the progeny of any genetically modified organism.

(19) “Harmful wild animal” means a wild animal designated under s. 169.11 (1) (a), Stats.

(20) “Identified carrier of an invasive species” means any material identified in a department infestation control designation under s. 26.30 (7), Stats., a DATCP quarantine under s. 94.01, Stats., or a United States Department of Agriculture Animal and Plant Health Inspection Service quarantine declaration under 7 USC § 7714 or 7715 as potentially carrying an invasive species.

(21) “Import” means to bring into Wisconsin or to arrange for another person to bring into Wisconsin.

(22) “Introduce” means to stock, plant, release or otherwise put an invasive species into the outdoor environment or use an invasive species in this state anywhere except within an indoor facility which is designed to physically contain the organism, including a laboratory, greenhouse, growth chamber or fermenter.

(23) “Invasive species” has the meaning given it in s. 23.22 (1) (c), Stats. In addition, “invasive species” means nonnative species including hybrids, cultivars, subspecific taxa, and genetically modified variants whose introduction causes or is likely to cause economic or environmental harm or harm to human health, and includes individual specimens, eggs, larvae, seeds, propagules and any other viable life-stages of such species. For fish, “invasive species” includes all nonnative species.

Note: Section 23.22 (1) (c), Stats., states that “invasive species” means nonindigenous species whose introduction causes or is likely to cause economic or environmental harm or harm to human health.

(24) “Land” means a parcel or tract of real estate including wetlands and public and private waters, but not including buildings.

(25) “Management action” means limiting the spread of established populations and abating harmful ecological, economic, social and public health impacts associated with invasive species introductions.

(26) “Native species” means a species indigenous to Wisconsin, and includes an individual specimen, regardless of the specimen’s origin. For fish, “native species” means those fish species identified as native fish species in *Wisconsin Fishes 2000: Status and Distribution*, by Lyons, J., P. A. Cochran, and D. Fago, published by University of Wisconsin Sea Grant Institute, and includes an individual specimen, regardless of the specimen’s origin

(27) “Natural areas” means those lands preserved or restored and managed for their natural features, including but not limited to parks, forests, refuges, grasslands, wetlands and shorelines on public and private lands.

(28) “Nonnative” or “nonnative species” means a species not indigenous to Wisconsin, and includes an individual specimen.

(29) “Non-reproductive” means, for plants, not capable of reproduction sexually or asexually.

(30) “Non-viable” means, with respect to fish species, species for which eggs, fry, or adults are not capable of surviving water temperature below 38 degrees Fahrenheit or not capable of surviving in fresh water. “Non-viable” means, with respect to terrestrial vertebrates, species that are not capable of living, growing, developing, and functioning successfully in Wisconsin’s outdoor environment.

(31) "Order" means an element of the Linnean taxonomic classification system, unless the context indicates otherwise.

(32) “Person” means an individual, partnership, corporation, society, association, firm, public agency or public institution, and includes an agent of one of these entities.

(33) “Pioneering stage” means, for terrestrial plants, the stage of invasion where one or more plants are established in the wild, the population has not been present for more than 3 years for herbaceous species, 5 years for vines and shrubs or 10 years for trees, and it still may be possible to contain the plant’s spread. For aquatic plants, “pioneering stage” has the same meaning as “pioneer infestation” in s. NR 198.12(6).

(34) “Plant” means, as a verb, to place entire live plants, plant parts or seeds into the water, the ground or a planter out of doors for the purpose of growing them. “Plant”, as a noun, means any member of the Kingdom Plantae, lichens, algae and cyanobacteria, and any varieties, cultivars, hybrids or genetically modified variants thereof, and includes any plant parts capable of vegetative or sexual reproduction.

(35) “Plant taxa” mean taxonomic categories or units of plant classification, such as family, genus, species, variety and cultivar.

(36) “Possess” means to own, maintain control over, restrain, hold or keep.

(37) “Prohibited invasive species” or “prohibited species” means those invasive species that are not currently found in Wisconsin, with the exception of isolated individuals, small populations or small pioneer stands of terrestrial species, or of aquatic species that are isolated to a specific watershed in the state or the Great Lakes, but which, if introduced into the state, are likely to survive and spread, potentially causing significant environmental or economic harm or harm to human health. For these species, statewide eradication or containment may be feasible.

Note: Prohibited species are listed or identified under s. NR 40.04.

(38) “Propagules” means parts of a plant that are capable of producing additional plants through either sexual or asexual reproduction, including but not limited to seeds, roots, stems, rhizomes, tubers and spores.

(39) “Public highway” means every public street, alley, road, highway or thoroughfare of any kind, except waterways, in this state while open to public travel and use, but does not include public boat access sites and associated parking areas.

(40) “Recombinant nucleic acid techniques” means laboratory techniques through which genetic material is isolated and manipulated in vitro and then inserted into an organism, resulting in a transgenic organism.

(41) “Restricted invasive species” or “restricted species” means those invasive species that are already established in the state and cause or have the potential to cause significant environmental or economic harm or harm to human health. For these species, statewide eradication or containment may not be feasible.

Note: Restricted species are listed or identified under s. NR 40.05.

(42) “Safe facility” means, for fish, a facility that does not directly drain into a water of the state, is not subject to intermittent or periodic flooding, is not connected to any water of the state, and is not an open pond. For crayfish and other aquatic invertebrates, “safe facility” means an aquarium that prevents the escape of the aquatic invertebrates and that does not directly drain into a water of the state.

(43) “Species” means monera, protista, fungi, plantae, animalia, viruses, phytoplasmas, mycoplasma-like organisms and prions and includes seeds, propagules and individual living specimens, eggs, larvae, and any other viable life-stages of such species. “Species” includes genetically modified species, cultivars, hybrids and sub-specific taxa.

(44) “Terrestrial plant” means a plant that normally lives or grows on land and includes wetland species.

(45) “Transfer” means to buy, sell, trade, barter, exchange, give or receive.

(46) “Transport” means to cause, or attempt to cause, an invasive species to be imported or carried or moved within the state, and includes accepting or receiving a specimen for the purpose of transportation or shipment.

(47) “Waters of the state” has the meaning given it in s. 281.01 (18), Stats.

Note: Section 281.01 (18), Stats., provides as follows: “Waters of the state” includes those portions of Lake Michigan and Lake Superior within the boundaries of this state, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface water or groundwater, natural or artificial, public or private, within this state or its jurisdiction.

(48) “Wild animal” means any mammal, bird, or other creature of a wild nature endowed with sensation and the power of voluntary motion, except fish.

NR 40.03 Classifications. (1) CLASSIFICATION CATEGORIES. For purposes of this chapter, invasive species are classified into the following categories: prohibited and restricted.

(2) CRITERIA. The department shall consider the following criteria in classifying a nonnative species as an invasive species for the purpose of this chapter:

(a) The species’ potential to directly or indirectly cause economic or environmental harm or harm to human health, including harm to native species, biodiversity, natural scenic beauty and natural ecosystems; harm to the long-term genetic integrity of native species; harm to recreational, commercial, industrial and other uses of natural resources in the state; and harm to the safety or well being of humans, including vulnerable or sensitive individuals.

(b) The extent to which the species is already present in the state, or in portions of the state, including whether there are isolated pioneer stands.

(c) The likelihood that the species, upon introduction, will become established and spread within the state.

(d) The potential for eradicating the species or controlling the species’ spread within the state, including the technological and economic feasibility of eradication or control.

(e) The socio-economic value afforded by the species, including any beneficial uses or values the species may provide for recreation, commerce, agriculture or industry within the state.

Note: For informational and educational purposes, the department informally maintains and updates as needed a caution list of invasive species and a list of non-restricted invasive species.

Caution list invasive species are not currently found in the state, or if they are, the extent of their presence or impact is not sufficiently documented. Caution list species may have shown evidence of invasiveness in similar environments in other states and could potentially spread in Wisconsin. Unlike the prohibited and restricted categories, caution list category invasive species are not regulated under this chapter. Additional information is needed to determine if caution list species belong in another category. Any person finding a caution list species or knowing of its spread or lack thereof is encouraged to report the location, spread and impact (if known) to the department and to contain the spread of the species. Any person selling or distributing a caution list plant species is encouraged to distribute educational materials asking that the plants not be planted near wild, natural or environmentally sensitive areas.

Non-restricted invasive species may have beneficial uses, but they also may have adverse environmental, recreational or economic impacts or cause harm to human health. Most of the non-restricted species are already integrated into Wisconsin's ecosystems, and state-wide control or eradication is not practical or feasible. Non-restricted category invasive species are not regulated under this chapter.

Note: A copy of the latest caution list and non-restricted list may be obtained at no cost at <http://dnr.wi.gov/invasives> or by writing to the department at the following address:

Invasive Plant Coordinator – ER/6

Wisconsin Department of Natural Resources

PO Box 7921

Madison, WI 53707-7921

NR 40.04 Prohibited category. (1) PROHIBITED INVASIVE SPECIES. Prohibited invasive species are identified in this section by common and scientific names and by specific categories of species.

(2) IDENTIFICATION OF PROHIBITED SPECIES. (a) Aquatic plants, algae and cyanobacteria. The following aquatic plant, algae and cyanobacteria invasive species are prohibited:

1. Fanwort (*Cabomba caroliniana*)
2. Australian swamp crop, also known as New Zealand pygmyweed (*Crassula helmsii*)
3. Cyllindro (*Cylindrospermopsis raciborskii*)
4. Didymo, also known as rock snot (*Didymosphenia geminata*)

5. Brazilian waterweed (*Egeria densa*)
 6. Hydrilla (*Hydrilla verticillata*)
 7. European frogbit (*Hydrocharis morsus-ranae*)
 8. Oxygen-weed, also known as African elodea or African waterweed (*Lagarosiphon major*)
 9. Parrot feather (*Myriophyllum aquaticum*)
 10. Brittle (also known as Lesser, Bushy, Slender, Spiny, Minor) naiad or waternymph (*Najas minor*)
 11. Starry stonewort (*Nitellopsis obtusa*)
 12. Yellow floating heart (*Nymphoides peltata*)
 13. Golden alga (*Prymnesium parvum*)
 14. Novel cyanobacterial epiphyte of the order Stigonematales
 15. Water chestnut (*Trapa natans*)
 16. *Ulva* species (including species previously known as *Enteromorpha* species)
- (b) Terrestrial plants. The following terrestrial plant invasive species are prohibited:
1. Porcelain berry (*Ampelopsis brevipedunculata*) including the variegated cultivar
 2. Wild chervil (*Anthriscus sylvestris*)
 3. Hill mustard (*Bunias orientalis*)
 4. Yellow star thistle (*Centaurea solstitialis*)
 5. Celandine (*Chelidonium majus*) north of state highway 64
 6. European marsh thistle (*Cirsium palustre*) west of state highway 13 and south of state highway 29, excluding Door county
 7. Poison hemlock (*Conium maculatum*)
 8. Scotch broom (*Cytisus scoparius*)
 9. Chinese yam (*Dioscorea oppositifolia*)
 10. Hairy willow herb (*Epilobium hirsutum*)
 11. Tall manna grass (*Glyceria maxima*) west of a line formed by state highway 22 from Oconto to Arlington, then state highway 51 from Arlington to the Illinois state line.
 12. Giant hogweed (*Heracleum mantegazzianum*)
 13. Japanese hops (*Humulus japonicus*) in all counties except Grant
 14. Perennial pepperweed (*Lepidium latifolium*)
 15. Sericea lespedeza (*Lespedeza cuneata*)
 16. Japanese honeysuckle (*Lonicera japonica*)

17. Amur honeysuckle (*Lonicera maackii*) north of state highway 21 from LaCrosse to Wautoma and state highway 22 from Wautoma to Oconto

18. Lyme grass (*Lymus arenarius*) in all counties except Door, Kewaunee, Manitowoc, Sheboygan and Racine.

19. Japanese stilt grass (*Microstegium vimineum*)

20. Princess tree (*Paulownia tomentosa*)

21. Mile-a-minute vine (*Polygonum perfoliatum*)

22. Giant knotweed (*Polygonum sacchalinense*)

23. Kudzu (*Pueraria montana*)

24. Sawtooth oak (*Quercus acutissima*)

25. Wineberry (*Rubus phoenicolasius*)

26. Spreading hedge parsley (*Torilis arvensis*)

27. Japanese hedge parsley (*Torilis japonicus*) north of the line formed by state highway 21 from La Crosse to Coloma, north on state highway 51 to Heafford Junction, east on state highway 8 to the Michigan state line

28. Black swallowwort (*Vincetoxicum nigrum*) north and east of a line formed by interstates 90 from LaCrosse to Madison and 94 from Madison to Milwaukee

29. Pale swallowwort (*Vincetoxicum rossicum*)

(c) Fish and crayfish. The following fish invasive species and crayfish invasive species are prohibited:

1. Asian carp, including bighead (*Hypophthalmichthys nobilis*), black (*Mylopharyngodon piceus*), grass (*Ctenopharyngodon idella*); and silver (*Hypophthalmichthys molitrix*)

2. Eastern mosquitofish (*Gambusia holbrooki*)

3. Red shiner (*Cyprinella lutrensis*)

4. Rudd (*Scardinius erythrophthalmus*)

5. Snakehead (viable species of the family *Synbranchidae*)

6. Tench (*Tinca tinca*)

7. Western mosquitofish (*Gambusia affinis*)

8. Zander (*Sander lucioperca*)

9. All other nonnative fish and nonnative crayfish except:

a. Established nonnative fish species and established nonnative crayfish species

b. Fish species in the aquarium trade

c. Fish species in the aquaculture trade

(d) Aquatic invertebrates except crayfish. The following aquatic invertebrate invasive species are prohibited:

1. Asian clam (*Corbicula fluminea*)
2. Bloody shrimp (*Hemimysis anomala*)
3. Chinese mitten crabs (*Eriocheir sinensi*)
4. New Zealand mud snail (*Potamopyrgus antipodarum*)
5. Water flea (*Daphnia lumholtzi*)
6. Spiny water flea (*Bythotrephes cederstroemi*)
7. Fishhook water flea (*Cercopagus pengoi*)
8. Faucet snail (*Bithynia tentaculata*)

(e) Terrestrial invertebrates and plant disease-causing microorganisms. The following terrestrial invertebrate invasive species and plant disease-causing microorganism invasive species are prohibited:

1. Asian Gypsy moth (*Lymantria dispar* Asian race)
2. Emerald ash borer (*Agrilus planipennis*)
3. Asian longhorned beetle (*Anaplophora glabripennis*)
4. Sudden oak death pathogen (*Phytophthora ramorum*)
5. Hemlock woolly adelgid (*Adelges tsugae*)
6. Crazy worm (*Amyntas* or *Amyntus* species)
7. Scale associated with beech bark disease (*Cryptococcus fagisuga*)

Note: These terrestrial invertebrates and plant disease-causing microorganisms are also regulated by the department under s. NR 45.04 and by DATCP under ch. ATCP 21 and ch. 94, Stats.

(f) Terrestrial and aquatic vertebrates except fish. The following terrestrial and aquatic vertebrate invasive species are prohibited:

1. Russian boar and other wild swine (*Sus scrofa*)
2. Feral domestic swine (*Sus domestica*)
3. Mute swan (*Cygnus olor*)

Note: Section NR 10.02 includes all swans as protected animals. See s. NR 16.15 (2) (e) regarding mute swan pen requirements.

4. Monk or Quaker parakeet or parrot (*Myiopsitta monachus*)
5. All other nonnative mammals, nonnative birds, nonnative reptiles and nonnative amphibians are prohibited invasive species, except the following:

- a. European goldfinch (*Carduelis carduelis*)
- b. Stone or beech marten (*Martes foina*)
- c. Great tit (*Parus major*)
- d. Eurasian tree sparrow (*Passer montanus*)
- e. Eurasian collared dove (*Streptopelia decaocto*)
- f. Pigeon or rock dove (*Columba livia*)
- g. English or house sparrow (*Passer domesticus*)
- h. Ring-necked pheasant (*Phasianus colchicus*)
- i. European starling (*Sturnus vulgaris*)
- j. Hungarian or gray partridge (*Perdix perdix*)
- k. Chukar partridge (*Alectoris chukar*)
- L. Norway rat (*Rattus norvegicus*)
- m. House mouse (*Mus musculus*)
- n. Red-eared slider (*Trachemys scripta elegans*) with a carapace (top shell) length greater than 4 inches
- o. House finch (*Carpodacus mexicanus*)
- p. Terrestrial and aquatic vertebrate species except fish listed or identified as restricted invasive species under s. NR 40.05.
- q. Non-viable terrestrial and aquatic vertebrates.
- r. Domestic animals, but not including domestic animal species specifically listed in this paragraph that have become feral.
- s. Nonnative wild animals, possession of which is authorized by a license issued under ch. 169, Stats., but not including nonnative wild animals that are harmful wild animals.

(3) ACTIONS PROHIBITED BY THIS CLASSIFICATION; EXEMPTIONS. (a) Except as otherwise provided in pars. (b) to (e), no person may transport, possess, transfer or introduce a prohibited invasive species identified or listed under sub. (2).

(b) Paragraph (a) does not apply to a person who transports, possesses, transfers or introduces a prohibited invasive species identified or listed under sub. (2) if the department determines that the transportation, possession, transfer or introduction was incidental or unknowing, and was not due to the person's failure to take reasonable precautions.

(c) If authorized by a permit issued by the department under this chapter, a person may transport, possess, transfer or introduce a prohibited invasive species for research, education, identification, control or disposal or for other purposes specified by the department in the permit.

(d) Legally obtained nonnative wild animals that are pets may be possessed, transported or transferred without a permit under this chapter.

(e) A person may transport, possess or give away a prohibited invasive species for the purpose of identification or disposal without a permit issued by the department under this chapter, if the person reports the location of origin of the prohibited invasive species to the department and no individual specimens or propagules are allowed to escape or be introduced. Reports shall be submitted within 30 days of the person taking possession and shall include contact and property owner information, type and detailed location of the species, the purpose for transporting, possessing or giving away the invasive species, and the final disposition of the invasive species. This paragraph does not apply to terrestrial and aquatic vertebrates or fish species.

Note: Reports for fish and aquatic invertebrates may be sent to:

Attn: FH/4
Wisconsin Department of Natural Resources
PO Box 7921
Madison, WI 53707-7921

Reports for other vertebrates may be sent to:

Attn: Wildlife Regulation Policy Specialist, WM/6
Wisconsin Department of Natural Resources
PO Box 7921
Madison, WI 53707-7921

Reports for plants may be sent to:

Attn: FR/4
Wisconsin Department of Natural Resources
PO Box 7921
Madison, WI 53707-7921

Reports for terrestrial invertebrates and plant disease-causing microorganisms may be sent to:

Forest Health Protection Program Coordinator
Wisconsin Department of Natural Resources
3911 Fish Hatchery Rd.

Fitchburg, WI 53711

(4) CONTROL REQUIREMENTS. (a) Any person who owns, controls or manages property where the department has reason to believe that a prohibited species is present shall allow the department or its designees to enter the property to survey or control the prohibited species.

(b) The department may order any person who owns, controls or manages property where a prohibited species exists to control the prohibited species in accordance with a plan approved by the department. The department will seek to find funds to assist in the control of prohibited species, however, a person who owns, controls or manages property where a prohibited species exists is responsible for controlling the prohibited species that exists on the property. If the person does not control the prohibited species upon order of the department, the department may control the species.

Note: The department anticipates that, before ordering a person to control a prohibited species under par. (b), it will informally seek the person's voluntary cooperation in controlling the prohibited species. If voluntary cooperation is not achievable or likely, the department may then offer the person the opportunity to negotiate the terms of a consent order. If a consent order acceptable to the department is not achievable or likely, the department will then consider issuing a unilateral order. However, each case will be evaluated on its individual merits, so the department may choose not to follow this procedure in every case.

(c) The department may recover the reasonable and necessary expenses it incurs in controlling a prohibited species on property owned, controlled or managed by a person who does not comply with an order under par. (b).

(d) The department may remove, or cause to be removed any detrimental fish or other aquatic invasive species from waters of the state.

Note: All nonindigenous fish species are detrimental fish under s. NR 20.38 (6) if the fish were imported without a permit in violation of s. 29.735, Stats., or are found in any water where their presence is not specifically permitted by the department.

Note: Persons finding any prohibited species are encouraged to report the species and its location to the department.

NR 40.05 Restricted category. (1) RESTRICTED INVASIVE SPECIES. Restricted species are listed or identified in this section by common and scientific names and by specific categories of species.

(2) IDENTIFICATION OF RESTRICTED SPECIES. (a) Aquatic plants, algae and cyanobacteria. The following aquatic plant, algae and cyanobacteria invasive species are restricted:

1. Flowering rush (*Butomus umbellatus*)
2. Eurasian watermilfoil (*Myriophyllum spicatum*)

Note: Eurasian watermilfoil is also designated as an invasive aquatic plant statewide under s. NR 109.07 (2).

3. Curly-leaf pondweed (*Potamogeton crispus*)

Note: Curly-leaf pondweed is also designated as an invasive aquatic plant statewide under s. NR 109.07 (2).

(b) Terrestrial plants. The following terrestrial plant invasive species are restricted:

1. Tree of heaven (*Ailanthus altissima*)
2. Garlic mustard (*Alliaria petiolata*)
3. Creeping bellflower (*Campanula rapunculoides*)
4. Plumeless thistle (*Carduus acanthoides*)
5. Musk thistle (*Carduus nutans*)
6. Oriental bittersweet (*Celastrus orbiculatus*)
7. Spotted knapweed (*Centaurea biebersteinii*)
8. Celandine (*Chelidonium majus*) south of state highway 64
9. Canada thistle (*Cirsium arvense*)
10. European marsh thistle (*Cirsium palustre*) east of state highway 13 and north of state

highway 29, excluding Door county

11. Hound's tongue (*Cynoglossum officinale*)
12. Cut-leaved teasel (*Dipsacus laciniatus*)-
13. Common teasel (*Dipsacus sylvestris*)
14. Russian Olive (*Elaeagnus angustifolia*)
15. Autumn olive (*Elaeagnus umbellata*)
16. Helleborine orchid (*Epipactis helleborine*)
17. Cypress spurge (*Euphorbia cyparissias*)
18. Leafy spurge (*Euphorbia esula*)
19. Glossy buckthorn (*Frangula alnus*) including the Columnaris (tall hedge) cultivar but

excluding the cultivars Asplenifolia and Fineline (Ron Williams)

20. Hemp nettle (*Galeopsis tetrahit*)

21. Tall manna grass (*Glyceria maxima*) east of a line formed by state highway 22 from Oconto to Arlington, then state highway 51 from Arlington to the Illinois state line.
22. Dame's Rocket (*Hesperis matronalis*)
23. Japanese hops (*Humulus japonicus*) in Grant county
24. Amur honeysuckle (*Lonicera maackii*) south of state highway 21 from LaCrosse to Wautoma and state highway 22 from Wautoma to Oconto
25. Eurasian bush honeysuckles (*Lonicera tartarica*, *Lonicera morrowii*, *Lonicera x bella*)
26. Lyme grass (*Lymus arenarius*) in Door, Kewaunee, Manitowoc, Sheboygan and Racine counties.
27. Purple loosestrife (*Lythrum salicaria*)
Note: Purple loosestrife is also designated as an invasive aquatic plant statewide under s. NR 109.07 (2).
28. Wild parsnip (*Pastinaca sativa*), except for the garden vegetable form
29. Phragmites, also known as Common reed (*Phragmites australis* (Nonnative ecotype))
30. Japanese knotweed (*Polygonum cuspidatum*)
31. Common buckthorn (*Rhamnus cathartica*)
32. Multiflora rose (*Rosa multiflora*)
33. Tansy (*Tanacetum vulgare*), except the cultivars "Aureum" and "Compactum"
34. Japanese hedge parsley (*Torilis japonicus*) south of the line formed by state highway 21 from La Crosse to Coloma, north on state highway 51 to Heafford Junction, east on state highway 8 to the Michigan state line
35. Narrow-leaf cattail (*Typha angustifolia*)
36. Hybrid cattail (*Typha x glauca*)
37. Black swallow-wort (*Vincetoxicum nigrum*) north and east of a line formed by interstates 90 from LaCrosse to Madison and 94 from Madison to Milwaukee

(c) Fish and crayfish. The following fish invasive species and crayfish invasive species are restricted:

1. Fish species in the aquarium trade
2. Fish species in the aquaculture trade
3. Established nonnative fish species and established nonnative crayfish species

(d) Aquatic invertebrates except crayfish. The following aquatic invertebrate invasive species are restricted:

1. Zebra mussel (*Dreissena polymorpha*)
2. Quagga mussel (*Dreissena rostriformis*)
3. Chinese mystery snail (*Bellamya chinensis*)

(e) Terrestrial invertebrates and plant disease-causing microorganisms. The following terrestrial invertebrate invasive species and plant disease-causing microorganism invasive species are restricted:

1. European Gypsy moth (*Lymantria dispar* European race)

Note: This terrestrial invertebrate is also regulated by DATCP under ch. ATCP 21 and ch. 94, Stats.

(f) Terrestrial and aquatic vertebrates except fish. The following terrestrial vertebrate invasive species are restricted:

1. Red-eared slider (*Trachemys scripta elegans*) with a carapace (top shell) length less than 4 inches.

(3) ACTIONS RESTRICTED BY THIS CLASSIFICATION; EXEMPTIONS. (a) Except as otherwise provided in pars. (b) to (d), no person may:

1. Transport, possess, transfer or introduce a restricted invasive fish or crayfish species identified or listed under sub. (2), or
2. Transport, transfer or introduce any other restricted invasive species identified or listed under sub. (2).

(b) Paragraph (a) does not apply to a person who transports, possesses, transfers or introduces a restricted invasive species identified or listed under sub. (2) if the department determines that the transportation, possession, transfer or introduction was incidental or unknowing, and was not due to the person's failure to take reasonable precautions.

(c) If authorized by a permit issued by the department under this chapter, a person may transport, possess, transfer or introduce a restricted invasive species for research, education, identification, control or disposal or for other purposes specified by the department in the permit.

(d) A person may transport or give away a restricted invasive species for the purpose of identification, control or disposal without a permit issued by the department under this chapter, if no individual specimens or propagules are allowed to escape or be introduced. This paragraph does not apply to aquatic plants, algae and cyanobacteria, terrestrial and aquatic vertebrates or fish species.

(e) For aquatic plants, algae and cyanobacteria, a person may transport or give away a restricted invasive species for the purpose of identification, control or disposal without a permit issued by the department under this chapter if the restricted invasive species is listed on the department's website as

present in the waterbody from which the plant came or, if the restricted invasive species is not listed, the person reports the restricted invasive species to the department within 30 days.

Note: Reports required by par. (e) shall be sent to:

Aquatic Invasive Plant Coordinator – WT/3

Wisconsin Department of Natural Resources

PO Box 7921

Madison , WI 53707-7921

Note: New populations of restricted aquatic plant species may be reported to the appropriate department regional lake coordinator. For a list of known waterbodies with restricted aquatic plant, algae and cyanobacteria species, see <http://dnr.wi.gov/invasives/aquatic>. To contact the appropriate lake coordinator see <http://dnr.wi.gov/org/water/fhp/lakes/aquaplan.htm>.

(f) Restricted plant species parts that are incapable of reproducing or propagating may be transported, transferred or introduced without a permit issued by the department under this chapter.

(g) Multiflora rose, when used as root stock for ornamental roses, may be transported, transferred or introduced without a permit issued by the department under this chapter.

(h) Koi carp and goldfish may be transported, possessed or transferred without a permit issued by the department under this chapter but may not be used as bait.

(i) If held in a safe facility, rusty crayfish and fish species in the aquarium trade may be transported, possessed or transferred without a permit issued by the department under this chapter.

(j) Fish species in the aquaculture trade may be transported, possessed in a safe facility, possessed in a registered fish farm, or transferred without a permit issued by the department under this chapter.

Note: A department permit is required under this chapter and s. 29.735, Stats., to import nonnative fish for the purpose of introduction into any waters of the state, and under s. 29.736, Stats., to stock or introduce any fish, and DATCP regulates fish farms under ch. ATCP 10.

(4) CONTROL REQUIREMENTS. Any person who grows a restricted plant at a nursery shall destroy it upon closure of the nursery.

Note: Any person who owns, controls or manages land where a restricted plant species is in the pioneering stage, in an area otherwise not infested with that species or where there is a high priority resource threatened by a restricted plant species is encouraged to control the restricted plant to the already infested sites, to reduce its population, and to foster an increase in desired species.

NR 40.06 Preventive measures. (1) NOTIFICATION REQUIRED. Any person who possesses a restricted invasive fish species in a safe facility shall notify the department within 24 hours of any escape of a specimen or viable part of a specimen, or of any failure of the integrity of the safe facility that could allow the escape of any specimen or viable part of a specimen. The notice shall be made in writing by mail to the Director, Bureau of Fisheries Management, Wisconsin Department of Natural Resources, PO Box 7921, Madison, Wisconsin 53707-7921 and by e-mail to NRFishHabitatProtection@Wisconsin.Gov and shall include the specific location of the known, suspected, or anticipated escape and the fish species involved.

(2) TRANSPORT OF FISH AND EGGS PROHIBITED. Unless the person has a permit from the department, no person may transport live fish or live fish eggs away from any inland or outlying water or its bank or shore, except:

(a) Live fish or live fish eggs being transported out of state in compliance with the United States Department of Agriculture Animal and Plant Health Inspection Service's regulations and orders.

(b) Live fish or live fish eggs being transported within the state in compliance with requirements set by DATCP in ch. ATCP 10.

(c) Live fish or live fish eggs being transported with the prior written approval of the department, where the department has determined that the proposed activity will not allow invasive species to be transported to other waters.

(d) Live minnows being transported away from the water where they were taken by a bait dealer who harvested the minnows in compliance with a wild bait harvest permit issued under s. NR 19.057.

(3) IMMEDIATE DRAINAGE OF BOATS AND EQUIPMENT; REMOVAL OF AQUATIC PLANTS AND ANIMALS. (a) Except as provided in pars. (b) to (d), any person who removes a vehicle, boat, boat trailer, boating equipment, fishing equipment or recreational or commercial gear of any type from any inland or outlying water or its bank or shore shall remove all attached aquatic plants and animals and drain all water from the vehicle, boat, boat trailer, equipment or gear, including water in any motor, bilge, ballast tank, bait bucket, live well or other container immediately after removing the vehicle, boat, boat trailer, equipment or gear from the water, bank or shore and before leaving any boat launch area or associated parking area.

(b) The department may exempt any vehicle, boat, boat trailer, boating equipment, fishing equipment or recreational or commercial gear in writing from par. (a) if it determines that it will not allow invasive species to be transported to other waters.

(c) Paragraph (a) does not apply to water in closed engine cooling systems or to tanks or containers of potable drinking water or other beverages meant for human consumption.

(d) Paragraph (a) does not apply to water in a container that holds live bait minnows obtained from a Wisconsin bait dealer, if the container holds no other fish, contains 2 gallons or less of water, and is used to transport only live minnows that have not been exposed to water or fish from that inland or outlying water or will be used for bait only on the same inland or outlying water, its bank or shore.

(4) TRANSPORT OF BOATS AND EQUIPMENT INTO WISCONSIN. (a) Except as provided in pars. (b) and (c), no person may transport over land from another state any vehicle, boat, boat trailer, boating equipment, fishing equipment or recreational or commercial gear of any type for use on any water of the state or its bank or shore unless the person first drains all water from the vehicle, boat, boat trailer, equipment or gear, including water in any motor, bilge, ballast tank, bait bucket, live well or other container before entering the state.

(b) The department may exempt any vehicle, boat, boat trailer, boating equipment, fishing equipment or recreational or commercial gear in writing from par. (a) if it determines that it will not allow invasive species to be transported to waters of the state.

(c) Paragraph (a) does not apply to water in closed engine cooling systems or to tanks or containers of potable drinking water or other beverages meant for human consumption.

(5) ILLEGAL TO LAUNCH OR TRANSPORT. (a) Except as provided in par. (b), no person may launch or place a vehicle, boat, boat trailer, boating equipment, fishing equipment or recreational or commercial gear of any type or land a sea plane in any water of the state, or take off a seaplane or transport on a public highway a vehicle, boat, boat trailer, boating equipment, fishing equipment or recreational or commercial gear of any type if the seaplane, vehicle, boat, boat trailer, equipment or gear has an aquatic plant or animal attached.

(b) A person may transport aquatic plants on a public highway if any of the following apply:

1. If authorized by a permit issued by the department under this chapter.
2. For disposal, as part of a harvest or control activity conducted under an aquatic plant management permit issued under ch. NR 109.
3. When transporting commercial or municipal aquatic plant harvesting equipment to a suitable location, away from any water body, for purposes of cleaning the equipment of any remaining aquatic plants or animals.
4. In a covered truck bed, covered trailer or covered container, for personal or commercial use as compost or mulch.

5. For purposes of constructing or transporting a shooting or observation blind, if the aquatic plants are emergent, cut above the waterline, and contain no propagules such as seed heads, roots or rhizomes and no aquatic invasive species.

6. If the aquatic plant is wild rice, during the open season established by the department for harvesting wild rice.

Note: Section NR 109.08 (4) prohibits any person from placing equipment used in aquatic plant management in a navigable water if the person has reason to believe that the equipment has any aquatic plants or zebra mussels attached, except equipment used in aquatic plant management when re-launched on the same body of water without having visited different waters, provided the re-launching will not introduce or encourage the spread of existing aquatic species within that body of water.

(6) **QUARANTINED MATERIALS.** No person may transport an identified carrier of an invasive species from a department infestation control zone designated under s. 26.30 (7), Stats., a DATCP quarantine area imposed under s. 94.01, Stats., or a United States Department of Agriculture Animal and Plant Health Inspection Service quarantine area declared under 7 USC § 7714 or 7715, for the specific identified invasive species.

Note: Identified carriers of invasive terrestrial invertebrates and plant-disease causing microorganisms most commonly include but are not limited to trees that support life stages of the prohibited species. Trees include all parts of a tree including limbs, branches, roots and foliage. Raw forest products such as unprocessed logs, slabs with bark, cut firewood and chips may be considered as carriers.

(7) **USE OF PROHIBITED FISH OR CRAYFISH AS BAIT.** Unless authorized by a permit issued by the department under this chapter, no person may use a prohibited fish or crayfish species as bait.

(8) **INTRODUCTION PROHIBITED.** Unless authorized by a permit issued by the department under this chapter, no person may introduce a nonnative aquatic plant, algae or cyanobacteria species in any public water of the state, including those waters of the state that are artificial and not entirely confined and retained upon the property of a person, that drain to other waters of the state, that are subject to intermittent or periodic flooding, or that are connected to any other water of the state.

NR 40.07 Invasive species permits. A person may transport, possess, transfer or introduce a prohibited invasive species listed in s. NR 40.04 (2), or a restricted invasive species listed in s. NR 40.05 (2), if the person has been issued a permit under this section for the activity.

(1) WRITTEN APPLICATION REQUIRED. (a) Applications for permits under this chapter shall be submitted in writing to the department on forms available from the department. The application shall include the name and quantity or number of invasive species specimens for which a permit is sought, whether the permit is sought for the transportation, possession, transfer or introduction of the invasive species, a description of other relevant permits, approvals or licenses of the applicant and the applicant's purpose or reasons for seeking a permit. The department may request additional information in order to determine whether the criteria of sub. (2) are met. This may include but is not limited to: where the invasive species is located or will be kept, how they will be kept from spreading into the wild, how they will be disseminated, and how they will be destroyed once the applicant is done using them.

Note: Applications for fish and aquatic invertebrates may be sent to:

Attn: FH/4
Wisconsin Department of Natural Resources
PO Box 7921
Madison, WI 53707-7921

Applications for plants may be sent to:

Attn: FR/4
Wisconsin Department of Natural Resources
PO Box 7921
Madison, WI 53707-7921

Applications for other vertebrates may be sent to:

Attn: Wildlife Regulation Policy Specialist, WM/6
Wisconsin Department of Natural Resources
PO Box 7921
Madison, WI 53707-7921

Applications for terrestrial invertebrates and plant disease-causing microorganisms may be sent to:

Forest Health Protection Program Coordinator
Wisconsin Department of Natural Resources
3911 Fish Hatchery Rd.
Fitchburg, WI 53711

(b) The department shall act on complete permit applications within 45 days following receipt of the application.

(2) **APPROVAL CRITERIA.** The department shall review permit applications to determine whether all of the following criteria are met:

- (a) The applicant is knowledgeable in the proper management or humane care of the invasive species.
- (b) The applicant has an adequate site or facility for containment of the invasive species.
- (c) The applicant has demonstrated to the department's satisfaction that permitted activities will not cause significant ecologic or economic harm or harm to human health,
- (d) The applicant has complied with the conditions of any previous department permits issued under this chapter.

(3) **ISSUANCE AND CONDITIONS.** An applicant meeting the criteria described in sub. (2) may be issued a permit subject to conditions the department considers reasonable.

(4) **RECORDS AND REPORTING.** Each permittee shall keep a current, correct and complete record of all permit activities as required by the department, on forms available from the department. Permit records may be inspected and copied by the department at any time. Copies of records shall be provided to the department upon request.

(5) **PERMIT TRANSFER; ALTERATION.** Unless expressly provided by the terms of the permit or by subsequent written approval of the department, permits issued under this chapter are not transferable. No person may alter or deface a permit issued under this chapter.

(6) **VIOLATIONS.** No person may violate any term of any permit issued under this chapter.

NR 40.08 Enforcement. Under s. 23.22 (9), Stats., if the department finds that any person is violating this chapter or a permit issued under this chapter, the department may do one or more of the following:

- (1) Issue a citation pursuant to ss. 23.50 to 23.99, Stats.
- (2) Refer the matter to the department of justice for enforcement.
- (3) Revoke any permit issued under this chapter, after notice and opportunity for hearing.

Note: Section 23.22 (8), Stats., establishes a forfeiture of up to \$200 for a violation of this chapter or a permit issued under this chapter. For an intentional violation of this chapter or a permit issued under this chapter, s. 23.22 (8), Stats., establishes a fine of \$1,000 to \$5,000 or 6 to 9 month imprisonment, or both. In addition, the court may order a person who is convicted of a violation of this chapter or a permit issued under this chapter to abate any nuisance caused by the violation, restore any

natural resource damaged by the violation, or take other appropriate action to eliminate or minimize any environmental damage caused by the violation.

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

SECTION 3. BOARD ADOPTION. The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Mathew J. Frank, Secretary

(SEAL)