

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.

The principal authority for these rules is s. 23.22 (2) (a) and (b) 6., Stats., which requires the department to establish a statewide program to control invasive species in this state and directs the department to promulgate rules to identify, classify and control invasive species for purposes of the program, which may include procedures and requirements for issuing permits to control invasive species. In order to fulfill this broad duty, the department must adopt rules that provide it with all of the tools that are required to control invasive species, wherever found in the state, including regulation of the possession, transportation, transfer and introduction of specific invasive species, general preventive measures designed to restrict pathways by which humans commonly spread or introduce invasive species, authority to enter property in order to inspect, survey and control invasive species, and authority to recover the state's costs when it must carry out necessary control measures because responsible parties do not comply with department orders to control invasives themselves.

The Department believes that a prohibition on the transport of specific aquatic invasive plants and animals *per se* would be ineffective and nearly impossible to enforce in most circumstances because it would be too difficult for a non-expert to correctly identify even some common invasive aquatic species in the field.

For this reason, a broader ban on the transport of aquatic plants and animals in general is reasonable and necessary in order to control the spread of aquatic invasive species from waterbody to waterbody, especially since they are commonly comingled with native species. Legislative recognition of this need appears in s. 30.715, Stats. To prevent the spread of invasive aquatic plants, it prohibits the placement of a boat or boat trailer in navigable water if the boat or trailer has any aquatic plants attached.

Section 23.11 (1), Stats., delegates to the department 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.

Invasive species have caused environmental and economic damage and threaten human health, and will continue doing so unless adequate control measures are adopted and implemented. The general legislative delegation to the department of all necessary or convenient powers set out in s. 23.11 (1), Stats., combined with the broad directive in s. 23.22 (2) (a) and (b) 6., Stats., to control invasive species in this state give the department sufficient power to adopt the rules created by this Order for the protection of public health, safety, welfare and the environment, but particularly for the promotion of public welfare, convenience and general prosperity. The department's exercise of legislatively delegated police powers, as embodied in these rules, has its basis in the inherent power and duty of government to protect and promote the life, comfort, safety and welfare of society.

Reserved to the states by the 10th Amendment to the U. S. Constitution, the state's police power is vested in the Legislature and delegated to the department for purposes of controlling invasive species. It is the governmental power of self-protection, permitting reasonable regulation of rights and property in matters essential to preservation of the public from injury. The police power is a necessary attribute of every sovereign state, inherent in the states of the United States, and is not a grant derived from or under a written Constitution, but is founded upon the necessities of the existence of government. As stated in s. 227.19 (1) (a) and (b), Stats., Article IV of the Wisconsin Constitution vests in the Legislature the power to make laws, and thereby to establish agencies such as the department and to designate agency functions, and purposes, such as the control of invasive species. In creating agencies and designating their functions and purposes, the Legislature may delegate rule-making authority to these agencies to facilitate administration of legislative policy.

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.

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. The department considers the rules created by this Order to be necessary to effectuate the purposes of s. 23.22, Stats.

In adopting the rules set out in this Order, it should be noted that the department is expressly not relying on, interpreting or implementing either s. 23.225, Stats., relating to invasive fish species (as defined by department rule), or s. 23.245, Stats., relating to transporting certain boats and equipment on highways with invasive species (as defined by department rule) in or attached. These provisions were adopted as part of 2007 Wisconsin Act 226, effective June 1, 2008 (the budget repair bill). Both statutes will require rulemaking by the department before they become applicable.

4. Related statute or rule.

Related statutes or rules include but are not limited to the following provisions which, to varying degrees, may apply to the identification, classification, control or other regulation of species that are invasive, or to conduct that may result in the introduction or spread of invasive species:

<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.
- 29.924 Investigations; Searches.
- 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 rules.

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 rules establish criteria for classifying invasive species and list or identify specific invasive species into 2 regulated categories (prohibited and restricted) according to those criteria (giving consideration to recommendations from the Wisconsin Council on Invasive Species). The rules ban the transportation (including importation), possession, transfer (including sale) and introduction of invasive species that are listed or identified as "prohibited", with certain exceptions. The department may, by special order, temporarily identify additional species as invasive and classify them into the prohibited invasive species category if the secretary determines that certain criteria described in the rule are met. "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 set out exemptions and allow permits for transportation, possession, transfer or introduction for research or for other specified purposes and allow the department to recognize other equivalent department permits or approvals in lieu of issuing a permit under these rules.

Transportation, possession, transfer and introduction without a permit are exempt 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 also ban transportation of "identified carriers" – 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 with the permission of the owner or person in control of the property and, if permission cannot be obtained, to seek an inspection warrant from the Circuit Court. Entry is only for the purpose of inspection, sampling or control of prohibited invasive species. The rules also allow the department to enter into consent orders with persons who own, control or manage property where prohibited invasive species are present to implement approved control measures, and to issue unilateral orders for control purposes unless the person was not responsible for the presence of the 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.

The rules also include general preventive measures to curb the spread or introduction of invasive species. They limit certain common activities that may function as vectors or pathways for the inadvertent introduction or spread of invasive species, especially when in the form of eggs, seeds, propagules, pathogens, and other life forms or stages too small to see, unless a permit to engage in the activity has been issued by the department. These preventive measures are not specific as to species, and are written so that they complement and do not conflict with or duplicate other rules or statutes with similar objectives such as the VHS rules in ss. NR 19.05 and 19.055, the rules governing operation and maintenance of dry fire hydrants in s. NR 329.04, the “illegal to launch” prohibitions in s. 30.715, Stats., and the prohibition in s. NR 109.08 (4) against placing equipment used in aquatic plant management in another navigable water.

Preventive measures include requirements to:

- notify the department of the escape of restricted invasive fish species from a safe facility,
- remove all attached aquatic plants and aquatic animals from vehicles, boats, trailers, equipment and gear of any type immediately upon their removal from the water,
- drain all water from any vehicle, equipment other than boating or fishing equipment, or gear of any type immediately upon its removal from the water,
- remove all attached aquatic plants and aquatic animals from vehicles, boats, trailers, equipment and gear of any type before bringing it into the state over land for use on any water of the state or its bank or shore.
- drain all water from any vehicle, equipment other than boating or fishing equipment, or gear of any type before bringing it into the state over land for use on any water of the state or its bank or shore,
- remove attached aquatic plants and aquatic animals from any vehicle, certain boats, boat trailers, and equipment, and gear of any type or from a sea plane before placing it in any water of the state, and before taking off a in a seaplane or transporting a vehicle, boat, boat trailer, equipment or gear of any type on a public highway,
- not transport “identified carriers” – materials that are covered by a department infestation control zone designation or a DATCP or USDA APHIS quarantine order,
- not use a prohibited invasive fish or crayfish species as bait,
- not introduce a nonnative aquatic plant, algae or cyanobacteria species into any water of the state.

The preventive measure rules also set out specific exemptions for permitted activities, for movement and cleaning of aquatic plant harvesting equipment, for wild rice and duckweed, for waterfowl blinds, for transport of an identified carrier of an invasive species from a department infestation control zone, a DATCP quarantine area or a United States Department of Agriculture Animal and Plant Health Inspection Service quarantine area pursuant to a DATCP-USDA APHIS compliance agreement, and for other specific situations.

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

Finally, the rules set out the procedures 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 rules.

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

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. Minnesota maintains a list of “prohibited invasive species” in its administrative code, along with lists of “regulated invasive species” and “unregulated nonnative species”. The term “unlisted species” is defined in Minnesota statutes. Although not limited to invasive (i.e., nonnative) plant species, Minnesota has a noxious weed law that lists a number of widespread weeds as prohibited and requires landowners to control them. County Agriculture Inspectors have primary authority to order controls. They also have 2 species listed as restricted noxious weeds that are not required to be controlled but may not be imported, sold or transported. An additional group of species are called secondary noxious weeds and are not regulated by the state but may be added to a county prohibited or restricted noxious weed list.

Iowa law makes it illegal to 1) possess, introduce, purchase, sell, propagate, or transport aquatic invasive species in Iowa, 2) place a trailer or launch a watercraft with aquatic invasive species attached in public waters, and 3) operate a watercraft in a marked aquatic invasive species infestation. The law also requires the DNR to identify waterbodies infested with aquatic invasive species and post signs alerting boaters. The DNR may restrict boating, fishing, swimming, and trapping in infested waters. Iowa also has regulations on crop seed content, noxious weeds and plant pests. Its noxious weed law is similar to Minnesota’s, but includes many more plant species (25+). The Iowa law is rather involved, including roads and railroad regulations, removal and cost issues. County weed commissioners are authorized to enter private lands to perform their duties and supervise the control and destruction of all noxious weeds in the county. Weed commissioners are required to undergo training and do extensive reporting of all duties performed. They can order controls on any private or public lands. Landowners or managers pay the costs of control.

Illinois does not have an inter-organizational council or statewide plan to address all categories of invasives; however, it has established an interagency task force, which has developed a statewide management plan for aquatic nuisance species. Illinois has a noxious weed law similar to Wisconsin’s noxious weed law, but more complex. 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.” They have a weed control fund that can be used to help with the cost of control. There is a clean list of birds and mammals that may be brought into Illinois to hold, release, propagate, or sell. 1. A permit is needed to import all animals not on the list. 2. The permit will be granted after proof that the animals intended to be imported are free of communicable disease, will not

become a nuisance, and will not damage any existing wild or domestic species. 3. Animals imported for a zoo or other public display are exempt from the permitting requirements. 4. Animals on the list cannot be released without permission from the department. 5. Before any person may propagate, release, import, export, or transport any exotic wildlife species on the list, he must provide the department upon request with evidence that the animals have been inspected and certified disease free.

There is an aquatic life approved species list. 1. The following aquatic life categories are considered approved for aquaculture, transportation, stocking, importation, and possession in Illinois: amphibians, reptiles, crustaceans, mollusks, gastropods, fish, and plants. 2. Any species not on the aquatic life approved species list may not be imported or possessed alive without a letter of authorization, except saltwater species commonly used as seafood which will not survive in freshwater. 3. It is unlawful to release any aquatic life into the waters of Illinois without first securing permission of the department, except for aquatic life on the aquatic life approved species list into waters wholly on one's property. 4. Permission will be based on the potential detriment to the aquatic resource. 5. A restricted species transportation permit is needed to transport or ship within Illinois any live grass carp or white amur, bighead carp, silver carp, or hybrid grass carp. 6. A salmonid import permit is needed for a source hatchery to transport or ship live trout, salmon, or char into Illinois. 7. A copy of the salmonid import permit must accompany each shipment. 8. A salmonid import permit will be issued only if the source hatchery has been inspected within the last 12 months and found free of specified diseases. 9. Except in the case of injurious species, such as rusty crayfish and zebra mussel, as determined by the Department of Conservation based on the potential threat to indigenous aquatic life or habitat, these regulations do not apply to state agencies or universities as long as they are operating in a manner to prevent escape. 10. The Department of Conservation may remove and dispose of any aquatic life from any Illinois waters to maintain the biological balance of aquatic life. 11. After any investigation when it is found by the director that there is imminent danger of loss of aquatic life, the director may authorize the taking of aquatic life from any area to salvage imperiled aquatic life. 12. The department may examine all buildings, vessels, bags, or other receptacles that it believes contain aquatic life bought, sold, shipped, or in possession contrary to the Code.

Michigan has an old (1941) noxious weed law similar to Wisconsin's that lists more species, several of which are native. They also have a new law titled *Transgenic and Nonnative Organisms* which lists prohibited and restricted aquatic plants, fish and insects. It seems similar to the proposed rules, minus the terrestrial plants and vertebrates. It includes a fund specifically for administration of the law and for education. Michigan maintains a list of "prohibited fish species" in statutes. In addition, species may be prohibited by Order of the DNR Director. A list of "approved species for aquaculture production" is also maintained in statutes. Before importing an exotic animal species, the director may require a physical examination, negative test results, and an official interstate health certificate. Live feral swine and San Juan rabbits may not be imported or released in Michigan without permission from the director. If an animal is imported into Michigan without the required official tests or document, the director may quarantine, return, or destroy the animal; perform the test; allow a direct movement of the animal to slaughter; or allow legal importation into another state.

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

The department and the Wisconsin Council on Invasive Species (Council) have been working over the last 3 ½ 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. Literature reviews were conducted 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 were 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. The draft rules went out for informal public input in December 2007. Meetings were held around the state to gather input on the process used, the rule language and the species to be listed. Revisions were made, and the Natural Resources Board authorized public hearings which were held in August of 2008. After public hearing, comments were compiled and the Council met again to hear of possible revisions to the rules. This species assessment process was generally agreed to be a scientifically sound and effective method to evaluate invasive species and solicit input from the public and affected stakeholders. It is anticipated that a similar process, with only minor revisions, will be used for future rule changes that might revise the listed species and rule language.

9. Analysis and supporting documentation that the agency used in support of the agency's determination of the rules' 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 Subcommittee identified economics as a criterion for species classifications. Therefore, the literature reviews conducted for each species include an evaluation of socio-economic effects. The evaluation 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 proposed species; increased cost to sectors caused by the species; 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, but may be assessed in the future. Department staff

has been consulting with industry groups to assess potential impacts of the proposed rules on businesses, landowners and local units of government and to develop solutions to minimize potential adverse impacts. Permits and exemptions will be allowed for the 2 regulated categories of invasive species (prohibited and restricted) where appropriate.

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 will not be burdensome if the plant were 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 and 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 requirement to minimize spread of the seeds.

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

The rules may have favorable effects on a number of businesses; others may have some costs involved. 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 choose to remove listed invasive species from their property. Businesses that depend on a healthy, sustainable environment will also benefit when the rules help to minimize the spread of invasives. Marinas, boating, fishing gear and bait stores, resorts, fishing guides and others are significantly affected by invasive aquatic species, so keeping these species out of the waters will benefit them. The entire forestry and outdoor recreation industries, as well as many aspects of agriculture will benefit in the long-term from these rules, although they may need to follow some best management practices to avoid spreading invasives.

Landowners and managers of both public and private lands will benefit greatly from decreased spread of invasives. A few landowners, managers and small businesses will find that they have prohibited species that need to be controlled, and they will be expected to control the infestations. However, innocent landowners are not likely to have to bear the costs of the control efforts.

Some small business owners may have to learn to identify some of the prohibited or restricted invasive species. For some businesses, the effects of the rules 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 regulated by the rules and the business's inventory is not sold prior

to the rules' effective date. This may include nurseries, aquaculture operations, bait dealers, pet shops and game farms. Species have been selected for these rules to minimize these potential impacts. A very few small businesses may need to apply for a free permit to transport, possess, transfer or introduce listed species, and to comply with its requirements. 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. Where other department permits or approvals already apply, efforts will be made to avoid requiring additional permits.

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. This involves informal discussions between department staff and the landowner or company, notifying the person of potential violations and providing guidance on how to comply with the rules. Notices of non-compliance may follow if necessary. If formal enforcement is necessary, these rules and permits issued under the rules will be enforced by department conservation wardens, county district attorneys, and 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 the circuit courts. Criminal enforcement will be limited to intentional violations. 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).

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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 40.045 Emergency additions to prohibited category.

NR 40.05 Restricted category.

NR 40.06 Invasive species permits.

NR 40.07 Preventive measures.

NR 40.08 Enforcement.

NR 40.09 Interagency coordination.

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

NR 40.02 Definitions. For purposes of this chapter,

(1) "Algae" means a predominately photosynthetic eukaryotic organism ranging from unicellular to macroscopic forms, lacking true roots, stems, leaves, and embryos.

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

(3) "Aquatic animal" means any vertebrate or invertebrate species that lives or grows only in water during any life stage, and includes the eggs, larvae or young of those species.

(4) "Aquatic plant" means a submergent, emergent, free-floating or floating-leaf plant and includes any part of the plant.

(5) "Attached" means in, on, or physically connected to in any way.

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

(7) "Category" means a grouping of species designated by administrative rule for which there are specific legal requirements or restrictions.

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

(9) "Control" has the meaning given it in s. 23.22 (1) (a), Stats. In addition, "control" includes activities to eliminate or reduce the adverse effects of invasive species including decreasing or eradicating their population or limiting their introduction or spread, and includes destroying the aboveground, and

when necessary, the belowground portions of a plant in a manner and at the proper time to prevent the development and distribution of viable seeds or other propagules. 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.

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

(11) “Cyanobacteria” means a predominately photosynthetic prokaryotic organism occurring singly or in colonies.

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

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

(14) “Disposal” means the lawful discharge, deposit, dumping or placing of any invasive species into or on any land or water in a manner that prevents the establishment, introduction or spread of the disposed species.

(15) “Eradicate” means to remove an entire population of an invasive species and all its propagules from an area of infestation.

(16) “Established” means, for plants and terrestrial invertebrates and disease causing organisms, present in an area as a self-sustaining population that is dispersed to the extent that eradication is either infeasible or will take a significant effort over a period of several years.

(17) “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 (*Orconectes rusticus*).

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

(19) “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.

(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) “Incidental” means something is done inadvertently when performing an otherwise legal activity.

(23) “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 but not limited to a laboratory, greenhouse, growth chamber or fermenter.

(24) “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.

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

(26) “Native duckweed” means any of the following: *Lemna aequinoctialis* (lesser duckweed, three-nerved duckweed), *Lemna minor* (common duckweed), *Lemna obscura* (little duckweed, purple duckweed), *Lemna perpusilla* (least duckweed, minute duckweed), *Lemna trisulca* (forked duckweed, star duckweed), *Lemna turionifera* (perennial duckweed, turion duckweed), *Spirodela polyrrhiza* (giant duckweed), *Wolffia borealis* (northern watermeal), *Wolffia brasiliensis* (Brazilian watermeal), and *Wolffia columbiana* (Columbian watermeal).

(27) “Native species” means a species indigenous to Wisconsin, and includes an individual specimen. 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.

(28) “Natural areas” means undeveloped or wild lands and 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.

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

(30) “Nonnative fish species in the aquaculture industry” means arctic char (*Salvelinus alpinus*), Atlantic salmon (*Salmo salar*), brown trout (*Salmo trutta*), chinook salmon (*Oncorhynchus tshawytscha*), coho salmon (*Oncorhynchus kisutch*), rainbow trout (*Oncorhynchus mykiss*), pink salmon (*Oncorhynchus gorbuscha*), redear sunfish (*Lepomis microlophus*), tiger trout (a hybrid of *Salvelinus fontinalis* and *Salmo trutta*) and tilapia (*Tilapia* spp).

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

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

(33) “Nonviable” means, with respect to aquatic vertebrates including 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. “Nonviable” means, with respect to terrestrial vertebrates, species that are not capable of living, growing, developing, and functioning successfully in Wisconsin’s outdoor environment.

(34) “Open pond” means an outdoor pond that is not entirely covered to prevent the escape of fish.

(35) “Order” means an element of the Linnean taxonomic classification system, unless the context indicates otherwise.

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

(37) “Pet” means an animal raised or kept for companionship and generally kept indoors, in an enclosure or otherwise confined or restrained, and not allowed to roam freely out-of-doors.

(38) “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.

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

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

(41) “Prohibited invasive species” or “prohibited species” means an invasive species that the department, at the time of listing under s. NR 40.04 (2), has determined is likely to survive and spread if introduced into the state, potentially causing economic or environmental harm or harm to human health, but which is not found in the state or in that region of the state where the species is listed as prohibited in s. NR 40.04 (2), with the exception of isolated individuals, small populations or small pioneer stands of terrestrial species, or in the case of aquatic species, that are isolated to a specific watershed in the state or the Great Lakes, and for which statewide or regional eradication or containment may be feasible.

(42) “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.

(43) “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.

(44) “Reasonable precautions” means intentional actions that prevent or minimize the transport, introduction, possession or transfer of invasive species. Reasonable precautions include but are not limited to best management practices (BMPs) for invasive species approved by the department, practices recommended by the “Wisconsin Clean Boats, Clean Waters” program and “Stop Aquatic Hitchhikers” campaign, and compliance with DATCP quarantine regulations imposed under s. 94.01, Stats., or a United States Department of Agriculture Animal and Plant Health Inspection Service quarantine declared under 7 USC § 7714 or 7715. For the transfer of aquatic plants, reasonable precautions include verifying that the species transferred is identified correctly and is not listed in s. NR 40.04 or 40.05 as prohibited or restricted, and that there are no other listed invasive species comingled with the species being transferred.

(45) “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.

(46) “Restricted invasive species” or “restricted species” means an invasive species that the department, at the time of listing under s. NR 40.05 (2), has determined is already established in the state or in that region of the state where the species is listed as restricted in s. NR 40.05 (2) and that causes or has the potential to cause economic or environmental harm or harm to human health, and for which statewide or regional eradication or containment may not be feasible.

(47) “Safe facility” means, for fish, an aquarium or container 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 or container that prevents the escape of the aquatic invertebrates and that does not directly drain into a water of the state.

(48) "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.

(49) "Transfer" means to buy, sell, trade, barter, exchange, give or receive or to offer to buy, sell, trade, barter, exchange, give or receive.

(50) "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.

(51) "Unknowing" means unaware of the presence of a prohibited or restricted invasive species.

(52) "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.

(53) "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.

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 either not 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. All other non-native species recommended for listing as invasive but not yet assessed for this rule are put on an informal pending list. Future rule revisions will involve assessing some species from this list.

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

(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 ecosystem structure, function or sustainability; 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.

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) Algae and cyanobacteria. The following algae and cyanobacteria invasive species are prohibited:

1. *Cylindrospermopsis raciborskii* (Cylindro)
2. *Didymosphenia geminata* (Didymo or rock snot), except in Lake Superior
3. *Nitellopsis obtusa* (Starry stonewort)
4. Novel cyanobacterial epiphyte of the order Stigonematales linked with avian vacuolar myelinopathy
5. *Prymnesium parvum* (Golden alga)
6. *Ulva* species, including species previously known as *Enteromorpha* species

(b) Plants. The following plant invasive species are prohibited:

1. *Ampelopsis brevipedunculata* (Porcelain berry) including the variegated cultivar
2. *Anthriscus sylvestris* (Wild chervil) except in Barron, Columbia, Dane, Milwaukee, Polk and Walworth counties
3. *Bunias orientalis* (Hill mustard) except in Green and Lafayette counties.
4. *Cabomba caroliniana* (Fanwort)
5. *Centaurea solstitialis* (Yellow star thistle)
6. *Chelidonium majus* (Celandine) north of state highway 64
7. *Cirsium palustre* (European marsh thistle) west of state highway 13 and south of state highway 29, excluding Door county
8. *Conium maculatum* (Poison hemlock) except Iowa and Grant counties
9. *Crassula helmsii* (Australian swamp crop or New Zealand pygmyweed)
10. *Cytisus scoparius* (Scotch broom)
11. *Dioscorea oppositifolia* (Chinese yam)
12. *Egeria densa* (Brazilian waterweed)
13. *Epilobium hirsutum* (Hairy willow herb) except in Kenosha county
14. *Glyceria maxima* (Tall or reed mannagrass) west of a line formed by state highway 22 from Oconto to Arlington, then state highway 51 from Arlington to the Illinois state line.
15. *Heracleum mantegazzianum* (Giant hogweed)
16. *Humulus japonicus* (Japanese hops) except in Grant and Crawford counties

17. *Hydrilla verticillata* (Hydrilla)
 18. *Hydrocharis morsus-ranae* (European frogbit)
 19. *Lagarosiphon major* (Oxygen-weed, African elodea or African waterweed)
 20. *Lepidium latifolium* (Perennial or broadleaved pepperweed)
 21. *Lespedeza cuneata* or *Lespedeza sericea* (Sericea or Chinese lespedeza)
 22. *Leymus arenarius* or *Elymus arenarius* (Lyme grass or sand ryegrass) except in Door, Kewaunee, Manitowoc, Sheboygan and Racine counties
 23. *Lonicera japonica* (Japanese honeysuckle)
 24. *Lonicera maackii* (Amur honeysuckle) north of state highway 21 from LaCrosse to Wautoma and state highway 22 from Wautoma to Oconto
 25. *Microstegium vimineum* (Japanese stilt grass)
 26. *Myriophyllum aquaticum* (Parrot feather)
 27. *Najas minor* (Brittle naiad, or Lesser, Bushy, Slender, Spiny or Minor naiad or waternymph)
 28. *Nymphoides peltata* (Yellow floating heart)
 29. *Paulownia tomentosa* (Princess tree)
 30. *Polygonum perfoliatum* (Mile-a-minute vine)
 31. *Polygonum sachalinense* (Giant knotweed)
 32. *Pueraria montana* (Kudzu)
 33. *Quercus acutissima* (Sawtooth oak)
 34. *Rubus phoenicolasius* (Wineberry or wine raspberry)
 35. *Torilis arvensis* (Spreading hedgeparsley)
 36. *Torilis japonica* (Japanese hedgeparsley or erect hedgeparsley) 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
 37. *Trapa natans* (Water chestnut)
 38. *Vincetoxicum nigrum* or *Cynanchum louiseae* (Black or Louise's swallow-wort) north and east of a line formed by interstate highways 90 from La Crosse to Madison and 94 from Madison to Milwaukee
 39. *Vincetoxicum rossicum* or *Cynanchum rossicum* (Pale or European swallow-wort)
- (c) Fish and crayfish. The following fish invasive species and crayfish invasive species are prohibited:
1. *Ctenopharyngodon idella* (grass carp)
 2. *Cyprinella lutrensis* (Red shiner)

3. *Gambusia affinis* (Western mosquitofish)
 4. *Gambusia holbrooki* (Eastern mosquitofish)
 5. *Hypophthalmichthys molitrix* (silver carp)
 6. *Hypophthalmichthys nobilis* (bighead carp)
 7. *Mylopharyngodon piceus* (black carp)
 8. *Sander lucioperca* (Zander)
 9. *Scardinius erythrophthalmus* (Rudd)
 10. *Synbranchidae* (Snakehead) except nonviable species of the family
 11. *Tinca tinca* (Tench)
 12. All other nonnative fish and nonnative crayfish except:
 - a. Established nonnative fish species and established nonnative crayfish species
 - b. Nonnative viable fish species in the aquarium trade
 - c. Nonnative fish species in the aquaculture industry
 - d. Nonviable fish species
- (d) Aquatic invertebrates except crayfish. The following aquatic invertebrate invasive species are

prohibited:

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

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

1. *Adelges tsugae* (Hemlock woolly adelgid)
2. *Agilus planipennis* (Emerald ash borer)
3. *Amyntas* or *Amyntus* species (Crazy worm)
4. *Anoplophora glabripennis* (Asian longhorned beetle)
5. *Cryptococcus fagisuga* (Scale associated with beech bark disease)

6. *Lymantria dispar* Asian race (Asian Gypsy moth)

7. *Phytophthora ramorum* (Sudden oak death pathogen)

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. *Myiopsitta monachus* (Monk or Quaker parakeet or parrot)

2. *Sus domestica* (Feral domestic swine)

3. *Sus scrofa* (Russian boar) and other wild swine

(3) ACTIONS PROHIBITED BY THIS CLASSIFICATION; EXEMPTIONS. (a) Except as otherwise provided in pars. (b) to (h), 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.

Note: Paragraph (b) does not apply to preventive measures set out in s. NR 40.07.

(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, public display, or, if the species is not a fish or crayfish, for other purposes specified by the department in the permit.

(d) A legally obtained nonnative wild animal that is a pet may be possessed, transported or transferred without a permit issued by the department under this chapter, but may not be introduced.

(e) Paragraph (a) does not apply to a person who transports, possesses, transfers or introduces a terrestrial invertebrate or plant disease-causing microorganism that is regulated under a quarantine imposed by DATCP 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 if the person is in compliance with a DATCP-USDA APHIS compliance agreement applicable to the terrestrial invertebrate or plant disease-causing microorganism.

(f) Paragraph (a) does not apply to a person who has a permit issued by DATCP under s. ATCP 21.04 for importation, movement, distribution or release of a pest or biological control agent that is a prohibited invasive species identified or listed under sub. (2).

(g) 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: Paragraph (g) does not apply to transport of identified carriers of invasive species as described in s. NR 40.07 (5) (a).

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 invertebrates 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

Reports may also be sent by email to Bureau.EndangeredResources@wisconsin.gov

(h) Paragraph (a) does not apply to any of the following:

1. A person who holds a scientific collector permit for the invasive species under s. 29.614, Stats.
2. A person who, while lawfully fishing, inadvertently catches a fish invasive species.

Note: Section NR 20.20 (73) (c) 1. sets a bag limit of 0 for nonindigenous detrimental fish, but allows one such fish to be taken by hook and line if it is killed immediately and delivered immediately to a department service center or regional office. All nonindigenous fish species are declared under s. NR 20.38 (6) to be detrimental fish 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.

(4) CONTROL REQUIREMENTS. (a) Unless entry is otherwise authorized by law, if the department has reason to believe that a prohibited species is present, the department or its designee may enter property to inspect for, survey or control prohibited species with permission of the person who owns, controls or manages the property, but if the person does not grant permission or cannot be located by the department after making reasonable effort, the department may seek an inspection warrant from the appropriate circuit court authorizing entry.

(b) The department may ask any person who owns, controls or manages property where a prohibited species is present to control the prohibited species in accordance with a plan approved by the department. The department will seek funds to assist in the control of prohibited species. However, a person who owns, controls or manages property where a prohibited species is present is responsible for controlling the prohibited species that exists on the property.

Note: The department anticipates it will request control of a prohibited invasive species only if it is feasible and reasonable to control the prohibited species on the property.

(c) If voluntary cooperation is not achievable or likely, and it is feasible and reasonable to control the prohibited species on the property, the department or its designee may control the prohibited species or it may offer the person the opportunity to negotiate the terms of a consent order for control purposes.

(d) If a consent order is not achievable or likely, the department may issue a unilateral order requiring that the person who owns, controls or manages the property control the prohibited species in accordance with a plan approved by the department unless the department determines that the prohibited species is present through no fault of the person. If the department determines that the prohibited species is present through no fault of the person, the department or its designee may control the prohibited species.

(e) If the person does not control the prohibited species upon order of the department, the department or its designee may control the prohibited species and the department may recover the reasonable and necessary expenses it incurs.

(f) 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 declared under s. NR 20.38 (6) to be detrimental fish 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 40.045 Emergency additions to prohibited category. (1) The department may temporarily identify an additional species as an invasive species and may classify it into the prohibited category of s. NR 40.04 (2) if the secretary determines that all of the following are met:

(a) The species meets the definition of invasive species in s. NR 40.02 (24).

(b) Based on consideration of the criteria of s. NR 40.03 (2), the species meets the definition of prohibited invasive species for inclusion under s. NR 40.04 (2).

(c) An emergency exists, making it necessary for the preservation of public peace, health, safety or welfare, or the environment, to require the immediate identification and classification of the species as a prohibited invasive species under this chapter prior to the time it would take effect if the department complied with the procedures for permanent rulemaking under ch. 227, Stats.

(2) Department action under sub. (1) shall become effective upon issuance of an emergency order by the secretary and publication of a notice of the emergency order in the official state newspaper.

(3) The department shall provide the notice of the emergency order to the Wisconsin Council on Invasive Species and shall promptly notify the public of its determination by issuing a press release, by posting the notice of the emergency order on the department's internet site, and by such other means as the department determines are reasonably likely to inform the public.

(4) During the time that an emergency order issued under sub. (2) is in effect, the actions prohibited by s. NR 40.04 (3) (a) and the exemptions of s. NR 40.04 (3) (b) through (h) apply to the additional species. In addition, the control requirements of s. NR 40.04 (4) apply to the additional species.

(5) The identification and classification under sub. (1) of an additional species as an invasive species in the prohibited category terminates 2 years after the emergency order is issued under sub. (2), when the emergency order issued under sub. (2) is withdrawn by the department, or when a permanent rule takes effect adding the species to this chapter, whichever occurs first.

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) Algae and cyanobacteria. The following algae and cyanobacteria invasive species are restricted: None.

(b) Plants. The following plant invasive species are restricted:

1. *Ailanthus altissima* (Tree of heaven)
2. *Alliaria petiolata* (Garlic mustard)
3. *Anthriscus sylvestris* (Wild chervil) in Barron, Columbia, Dane, Milwaukee, Polk and Walworth counties
4. *Bunias orientalis* (Hill mustard) in Green and Lafayette counties
5. *Butomus umbellatus* (Flowering rush)
6. *Campanula rapunculoides* (Creeping bellflower)
7. *Carduus acanthoides* (Plumeless thistle)
8. *Carduus nutans* (Musk thistle or nodding thistle)
9. *Celastrus orbiculatus* (Oriental bittersweet)
10. *Centaurea biebersteinii*, *Centaurea maculosa* or *Centaurea stoebe* (Spotted knapweed)
11. *Chelidonium majus* (Celandine) south of state highway 64
12. *Cirsium arvense* (Canada thistle)
13. *Cirsium palustre* (European marsh thistle) east of state highway 13 and north of state highway 29, including Door county
14. *Conium maculatum* (Poison hemlock) in Iowa and Grant counties
15. *Cynoglossum officinale* (Hound's tongue)
16. *Dipsacus laciniatus* (Cut-leaved teasel)
17. *Dipsacus sylvestris* or *Dipsacus fullonum* (Common teasel)
18. *Elaeagnus angustifolia* (Russian olive)
19. *Elaeagnus umbellata* (Autumn olive)
20. *Epilobium hirsutum* (Hairy willow herb) in Kenosha county
21. *Epipactis helleborine* (Helleborine orchid)
22. *Euphorbia cyparissias* (Cypress spurge)
23. *Euphorbia esula* (Leafy spurge)
24. *Galeopsis tetrahit* (Hemp nettle)

25. *Glyceria maxima* (Tall or reed mannagrass) east of a line formed by state highway 22 from Oconto to Arlington, then state highway 51 from Arlington to the Illinois state line.

26. *Hesperis matronalis* (Dame's rocket)

27. *Humulus japonicus* (Japanese hops) in Grant county and Crawford counties

28. *Leymus arenarius* or *Elymus arenarius* (Lyme grass or sand ryegrass) in Door, Kewaunee, Manitowoc, Sheboygan and Racine counties.

29. *Lonicera maackii* (Amur honeysuckle) south of state highway 21 from La Crosse to Wautoma and state highway 22 from Wautoma to Oconto

30. *Lonicera morrowii* (Morrow's honeysuckle)

31. *Lonicera tatarica* (Tartarian honeysuckle)

32. *Lonicera x bella* (Bell's or showy bush honeysuckle)

33. *Lythrum salicaria* (Purple loosestrife)

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

34. *Myriophyllum spicatum* (Eurasian watermilfoil)

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

35. *Pastinaca sativa* (Wild parsnip), except for the garden vegetable form

36. *Phragmites australis* (Phragmites or Common reed) nonnative ecotype

37. *Polygonum cuspidatum* (Japanese knotweed)

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

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

39. *Rhamnus cathartica* (Common buckthorn)

40. *Rhamnus frangula* or *Frangula alnus* (Glossy buckthorn) including the Columnaris (tall hedge) cultivar but excluding the cultivars *Asplenifolia* and *Fineline* (Ron Williams)

41. *Rosa multiflora* (Multiflora rose)

42. *Tanacetum vulgare* (Tansy), except the cultivars "Aureum" and "Compactum"

43. *Torilis japonica* (Japanese hedge parsley) 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

44. *Typha angustifolia* (Narrow-leaf cattail)

45. *Typha x glauca* (Hybrid cattail)

46. *Vincetoxicum nigrum* or *Cynanchum louiseae* (Black or Louise's swallow-wort) south and west of a line formed by interstate highways 90 from La Crosse to Madison and 94 from Madison to Milwaukee

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

1. Established nonnative fish species and established nonnative crayfish species
2. Nonnative viable fish species in the aquarium trade
3. Nonnative fish species in the aquaculture industry
4. Nonviable fish species

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

1. *Cipangopaludina chinensis* (Chinese mystery snail)
2. *Dreissena polymorpha* (Zebra mussel)

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

1. *Lymantria dispar* (European Gypsy moth) European race in all counties except those included in 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.

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

Note: Gypsy moth quarantined areas may be viewed at: <http://www.gypsymoth.wisconsin.gov/>.

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

1. *Trachemys scripta elegans* (Red-eared slider) 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 (o), no person may do any of the following:

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

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.

Note: Paragraph (b) does not apply to preventive measures set out in s. NR 40.07.

(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, public display, or for other purposes specified by the department in the permit.

(d) A legally obtained nonnative wild animal that is a pet may be possessed, transported or transferred without a permit issued by the department under this chapter.

(e) Paragraph (a) does not apply to a person who transports, possesses, transfers or introduces a terrestrial invertebrate or plant disease-causing microorganism that is regulated under a quarantine imposed by DATCP 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 if the person is in compliance with a DATCP-USDA APHIS compliance agreement applicable to the terrestrial invertebrate or plant disease-causing microorganism.

(f) A person may transport or give away a restricted invasive species for the purpose of identification, education, control or disposal without a permit issued by the department under this chapter, if no viable 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.

(g) 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 aquatic plant, algae or cyanobacteria 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>.

(h) 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.

(i) 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.

(j) Koi carp and goldfish may be transported, possessed or transferred without a permit issued by the department under this chapter but koi carp may not be used as bait or introduced to any water of the state except waters of the state that are artificial, entirely confined and retained upon the property of a person, do not drain to other waters of the state, are not subject to intermittent or periodic flooding, and are not connected to any other water of the state.

Note: Section NR 20.08 (1) prohibits the use of goldfish as bait and the possession of goldfish in any form or manner on any water of the state.

(k) If held in a safe facility, rusty crayfish, nonviable fish species and nonnative viable fish species in the aquarium trade may be transported, possessed or transferred without a permit issued by the department under this chapter. In addition, rusty crayfish may be transported, possessed or transferred without a permit when being used as bait on the Mississippi river as authorized under s. NR 19.27 (4) (a) 1. a.

(L) Nonnative fish species in the aquaculture industry 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.

(m) Paragraph (a) does not apply to a person who has a permit issued by DATCP under s. ATCP 21.04 for importation, movement, distribution or release of a pest or biological control agent that is a restricted invasive species identified or listed under sub. (2).

(n) Paragraph (a) does not apply to phragmites associated with a reed bed treatment unit used in a wastewater treatment facility authorized by a WPDES permit under ch. 283, Stats.

(o) Paragraph (a) does not apply to any of the following:

1. A person who holds a scientific collector permit for the invasive species under s. 29.614.
2. A person who, while lawfully fishing, inadvertently catches a fish invasive species.

Note: Section NR 20.20 (73) (c) 1. sets a bag limit of 0 for nonindigenous detrimental fish, but allows one such fish to be taken by hook and line if it is killed immediately and delivered immediately to a department service center or regional office. All nonindigenous fish species are declared under s. NR 20.38 (6) to be detrimental fish 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.

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

Note: Any person who owns, controls or manages land where a restricted plant species is present 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 or contain it to the already infested sites, to reduce its population, and to foster an increase in desired species.

NR 40.06 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 by the department 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 permits 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 permits for plants may be sent to:

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

Applications for permits 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 permits 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.

(a) If it determines that there is significant public interest, the department may hold a public informational hearing on a permit application before acting on the application.

(b) 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.

(7) OTHER PERMITS OR APPROVALS. A person who holds a permit or approval issued by the department under another chapter or a statute other than s. 23.22, Stats., is not be required to hold a permit under this chapter to 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 department determines that all of the following apply:

(a) The permit or approval expressly authorizes the transportation, possession, transfer or introduction of the prohibited invasive species listed in s. NR 40.04 (2), or the restricted invasive species listed in s. NR 40.05 (2).

(b) The permit or approval includes legally enforceable requirements that are at least equivalent to those that would be contained in a permit issued by the department under this chapter.

(c) The person is not in violation of the permit or approval.

NR 40.07 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 or by e-mail and shall include the specific location of the known, suspected, or anticipated escape and the fish species involved.

Note: The notice shall be mailed to the Director, Bureau of Fisheries Management, Wisconsin Department of Natural Resources, PO Box 7921, Madison, Wisconsin 53707-7921 and e-mailed to NRFishHabitatProtection@wisconsin.gov.

(2) IMMEDIATE REMOVAL OF AQUATIC PLANTS AND AQUATIC ANIMALS AND DRAINAGE OF WATER. (a) Except as provided in pars. (b) to (g),

1. Any person who removes a vehicle, boat, boat trailer, boating or fishing equipment, or other equipment or gear of any type from any inland or outlying water or from its bank or shore shall remove all attached aquatic plants and aquatic animals immediately after removing the vehicle, boat, boat trailer, boating or fishing equipment or other equipment or gear from the water, bank or shore and before leaving any boat launch area or associated parking area.

2. Any person who removes a vehicle or equipment other than boating or fishing equipment, or gear of any type from any inland or outlying water or from its bank or shore shall drain all water from the vehicle, equipment or gear, including water in any motor, tank or other container, immediately after removing the vehicle, equipment or gear from the water, bank or shore and before leaving any boat launch area or associated parking area.

Note: Section NR 19.055 (1) requires any person who removes a boat, boat trailer, boating equipment or fishing equipment from any inland or outlying water or its bank or shore to immediately drain all water from the boat, boat trailer, boating equipment or fishing equipment, including water in any bilge, ballast tank, bait bucket, live well or other container immediately after removing the boat, boat trailer, boating equipment or fishing equipment from the water, bank or shore, with certain exceptions. **Note:** Chapters NR 320, 323, 328, 329, 341, 343 and 345, relating to general navigable waters permit criteria, set out equipment decontamination requirements to stop the spread of invasive species from one waterway to another and require removal of all plants, animals, mud, debris, etc., before and after use. **Note:** See ss. 30.18 (2) and 31.02 (1), Stats., regarding the diversion or withdrawal of water from lakes and streams. Withdrawals are regulated through individual permits that may consider the associated risk of spreading invasive species.

(b) The department may exempt any vehicle, equipment or gear in writing from par. (a) 1. or 2. if it determines that it will not allow invasive species to be transported to other waters.

(c) Paragraph (a) does not apply to decontaminated equipment, tanks or containers when used for the operation or maintenance of dry fire hydrants that are subject to ch. NR 329.

Note: See s. NR 329.04 (1) (c) 5. and (2) (c) 4. c. regarding the maintenance and operation of dry fire hydrants.

(d) Paragraph (a) 1. does not apply to an aquatic animal whose possession is authorized by department rule.

Note: An example of an aquatic animal whose possession is authorized by department rule is a dead game fish taken in compliance with ch. NR 20.

(e) Paragraph (a) 2. 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.

(f) Paragraph (a) 2. 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.

Note: The transport of live fish and fish eggs away from any inland or outlying water or its bank or shore is prohibited by s. NR 19.05 (3), with certain exceptions.

(g) Paragraph (a) does not apply to vehicles, equipment, or gear while engaged in fire suppression.

(3) TRANSPORT OF VEHICLES AND EQUIPMENT INTO WISCONSIN; REMOVAL PRIOR TO ENTRY OF AQUATIC PLANTS AND AQUATIC ANIMALS AND DRAINAGE OF WATER. (a) Except as provided in pars. (b) to (d), no person may do any of the following:

1. Transport over land from another state any vehicle, boat, boat trailer, boating or fishing equipment, or other equipment or gear of any type for use on any water of the state or its bank or shore unless the person first removes all attached aquatic plants and aquatic animals from the vehicle, boat, boat trailer, boating or fishing equipment, or other equipment or gear of any type before entering the state.

2. Transport over land from another state any vehicle, equipment other than boating or fishing equipment, or 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, equipment or gear, including water in any motor, tank, or other container before entering the state.

Note: Section NR 19.055 (2) prohibits any person from transporting over land from another state any boat, boat trailer, boating equipment or fishing equipment for use on any water of the state or its bank or shore unless the person drains all water from the boat, boat trailer, boating equipment or fishing

equipment, including water in any bilge, ballast tank, bait bucket, live well or other container before entering the state, with certain exceptions.

(b) The department may exempt any vehicle, boat, boat trailer, equipment or gear in writing from par. (a) 1. or 2. if it determines that it will not allow invasive species to be transported to waters of the state.

(c) Paragraph (a) 1. does not apply to dead game fish lawfully taken in another state, as provided by s. 29.047, Stats.

(d) Paragraph (a) 2. 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.

(4) ILLEGAL TO LAUNCH, TAKE OFF OR TRANSPORT. (a) Except as provided in par. (b) to (d), no person may launch or place a vehicle, boat, boat trailer, equipment or 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, equipment or gear of any type if the seaplane, vehicle, boat, boat trailer, equipment or gear has an aquatic plant or aquatic animal attached.

(b) Paragraph (a) does not apply to the placement or use of a boat or boating equipment or the placement of a boat trailer in a navigable water with an aquatic plant attached or in the St. Croix river with a zebra mussel attached.

Note: Placement and use of boats, boat trailers and boating equipment exempted under paragraph (b) is prohibited by s. 30.715, Stats.

(c) A person may transport a vehicle, boat, boat trailer, equipment or gear with aquatic plants or aquatic animals attached on a public highway if any of the following apply:

1. If authorized by a written exemption or 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 aquatic 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 native duckweed or wild rice.
7. If possession of the aquatic animal is authorized by department rule.

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.

(d) Paragraph (a) does not apply to aircraft, vehicles, equipment, or gear while engaged in fire suppression.

(5) QUARANTINED MATERIALS. (a) 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.

(b) Paragraph (a) does not apply to a person who transports 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, if the person is in compliance with a DATCP-USDA APHIS compliance agreement applicable to the terrestrial invertebrate or plant disease-causing microorganism.

(6) 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 invasive species or prohibited crayfish invasive species as bait.

Note: Prohibited fish invasive species and crayfish invasive species are identified in s. NR 40.04 (2) (c).

(7) **INTRODUCTION PROHIBITED.** Unless authorized by a written exemption issued by the department under this chapter, no person may introduce a nonnative aquatic plant, algae or cyanobacteria species in any water of the state, except waters of the state that are artificial, entirely confined and retained upon the property of a person, do not drain to other waters of the state, are not subject to intermittent or periodic flooding, and are not connected to any other water of the state. This subsection does not apply to the incidental introduction of a nonnative aquatic plant, algae or cyanobacteria species by a person operating an aircraft, vehicle, equipment or gear while engaged in fire suppression.

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.

NR 40.09 Interagency coordination. This chapter does not affect the authority of DATCP under chs. 93, 94, 95 and 97, Stats. The action of the department under this chapter shall be coordinated with DATCP. The secretaries of the department and DATCP shall execute a memorandum of agreement to enable coordination of invasive species work of their departments.

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 April 22, 2009.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Mathew J. Frank, Secretary

(SEAL)