

BEFORE THE
DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PUBLIC HEARING
ER-27-11

NOTICE IS HEREBY GIVEN THAT pursuant to ss. 29.604 227.11, Stats, the Department of Natural Resources, hereinafter the Department, will hold a public hearing on changes to NR 27.03 Wisconsin's Endangered/Threatened Species List on the date(s) and at the time(s) and location(s) listed below.

NOTICE IS HEREBY FURTHER GIVEN that the hearings will be held on:

Date and Time

March 5, Tuesday 11:00AM

Location

Old Library room 1128, University of Wisconsin - Eau Claire, 105 Garfield Avenue, Eau Claire, WI 54702

Instructional Services room 1034, University of Wisconsin - Green Bay, 2420 Nicolet Drive, Green Bay, WI 54311

Lubar Hall room S250, University of Wisconsin - Milwaukee, 3202 North Maryland Avenue, University of Wisconsin - Milwaukee, Milwaukee, WI 53201

March 5, Tuesday 4:00PM

Northwoods Room, Wisconsin Department of Natural Resources Science Operations Center, 2801 Progress Rd., Madison, WI 53716

March 6, Wednesday 4:00PM

Marathon County Public Library - Wausau room (3rd Floor), 300 North First Street, Wausau, WI 54403

Availability of Rules and Submitting Comments:

The proposed rule supporting documents may be reviewed and comments electronically submitted at the following internet site: <http://adminrules.wisconsin.gov>. A copy of the proposed rules and supporting documents may also be obtained from Madeline Emde, Bureau of Endangered Resources, P.O. Box 7921, Madison, WI 53707 or madeline.emde@wisconsin.gov.

Written comments on the proposed rule may be submitted via U.S. mail or email to Madeline Emde at the addresses noted above. Written comments, whether submitted electronically or by U.S. mail, will have the same weight and effect as oral statements presented at the public hearings. Comments may be submitted until March 7, 2013.

Analysis Prepared by the Department of Natural Resources:

The Department's Bureau of Endangered Resources initiated and completed a review of Wisconsin's rare species, and now proposes changes to Ch. NR 27, Wis. Admin. Code, which will add 8 species and remove 16 species in Wisconsin to the Wisconsin endangered and threatened species list, and will update 20 scientific names.

The 8 species the state proposes to add to the endangered and threatened list are:

Upland Sandpiper (*Bartramia longicauda*), a bird, is found primarily in the southwest, northwest sands, and northeastern part of the state. Other secondary areas are in the central, southeast, and western parts of the state. This species prefers large, open landscapes with short to mid-height grassy vegetation, including remnant prairie, lightly grazed pastures, barrens, old fields, and other idle grasslands, and hay fields. This species is in decline in Wisconsin, some of the largest declines

in its range; once reported at 55 sites. It may disappear from Wisconsin without large blocks of idle and/or grazed grasslands. Add to threatened list [NR27.03(3)].

Black Tern (*Chlidonias niger*), a bird, is found in northern, eastern, and central Wisconsin in marshes, river sloughs, rivers, lakeshores, impoundments, and wet meadows, typically in sites with mixture of emergent vegetation and open water. The species is in decline in Wisconsin. Surveys indicate declines as much as 36% in recent years and a 78% decline over 30 years. Once reported at 79 sites, was found only at 7 breeding colonies in 2010. Add to endangered list [NR27.03(2)].

Kirtland's Warbler (*Dendroica (=Setophaga) kirtlandii*), a bird, is found in Adams and Marinette counties in areas at least 30 hectares in size, where scrubby jack pine (2 to 6 meters high) is interspersed with many small openings and minimal ground cover. This species is considered to be "critically imperiled" globally and is currently on the Federal list of endangered species. This species has nested in Wisconsin consistently since 2007; twelve new populations are now known. There are historic records of individuals in the state. Add to endangered list [NR27.03(2)].

Beach-dune Tiger Beetle (*Cicindela hirticollis rhodensis*), a beetle also known as the "hairy-necked tiger beetle", is found on beaches of Lakes Superior and Michigan. This species is rare and declining in Wisconsin (30%). Once reported from 9-10 sites statewide, now only one known viable population remains. Add to endangered list [NR27.03(2)].

Fawnsfoot (*Truncilla donaciformis*), a freshwater mussel, is only known from the Mississippi River and portions of its major tributaries in Wisconsin (St. Croix and Wisconsin River). This species is in decline in Wisconsin. Populations are disappearing range wide. Once widespread and abundant, this species is rarely found in recent years. Numbers have greatly declined in WI's remaining viable populations (St. Croix and Lower Wisconsin Rivers). Add to threatened list [NR27.03(3)].

Ottoo Skipper (*Hesperia ottoe*), a butterfly, is found in nine counties in the southwestern corner of the state on dry to dry-mesic hill prairies, sand prairies, and sand barrens. This species is very rare and in decline in Wisconsin. Once known to 16 sites; as of 2011 only 4 are extant (a 75% decline since the mid-1990s). Many populations are gone range wide. Very few sites have the size, quality, structure, or connectivity to sustain this species. Add to endangered list [NR27.03(2)].

A Leafhopper (*Attenuipyga vanduzeei*), a small terrestrial insect also known as "a prairie leafhopper" or "shovel-headed leafhopper", is found in the highest quality prairie remnants near the Mississippi and Lower Wisconsin Rivers. This species is very rare in Wisconsin. Only 4 extant populations are known. This species has poor dispersal ability and is sensitive to management and woody encroachment. Add to endangered list [NR27.03(2)].

An Issid Planthopper (*Fitchiella robertsoni*), a small terrestrial insect also known as "Fitch's Elephanthopper" or "Robertson's Flightless Planthopper" or "Fitch's Planthopper", is found in high quality remnant dry to dry-mesic grasslands in the bluffs along the Mississippi River and in the sand country of northwest Wisconsin. This species is very rare in Wisconsin. Only 4 extant populations are known. Add to threatened list [NR27.03(3)].

The 16 species the state proposes to remove from the endangered and threatened list are:

Barn Owl (*Tyto alba*), an owl, has a scattered and irregular distribution in the state, mostly the southern half. The species has always been on the edge of its range in Wisconsin and is not considered a regular breeder. In their range, they are found in rural lands or grasslands with some combination of wet meadows, wetland edges, pastures, old-fields, grain crops, hayfields, hedges, and fencerows; usually within 1-2km of permanent water and adjacent to woodlot edge. Nest sites include concrete-domed silos, barns, tree cavities, abandoned farm buildings, church steeples, bank or cliff cavities, and barn owl nest boxes. Remove from the endangered list [NR27.03(2)].

Bewick's Wren (*Thryomanes bewickii*), a small migratory bird, has not been observed breeding in Wisconsin or neighboring states for over 40 years; it is extirpated. Remove from the endangered list [NR27.03(2)].

Snowy Egret (*Egretta thula*), a waterbird, utilizes a wide variety of wetland habitats in their range, but does not breed in Wisconsin. The species has always been on the edge of its range in Wisconsin

and is not considered a regular breeder in the state. Remove from the endangered list [NR27.03(2)].

Greater Redhorse (*Moxostoma valenciennesi*), a large fish, is found in widely scattered locations in the Lake Michigan and Mississippi River basins. The species appears stable in WI; found consistently in multiple watersheds. Remove from the threatened list [NR27.03(3)].

Blanding's Turtle (*Emydoidea blandingii*), a turtle, is often found in slow moving rivers, streams, ponds, lakes, marshes, swamps, sloughs, and backwater areas, as well as adjacent terrestrial habitats found in the majority of Wisconsin's counties, except for the north-central tier. Species still slightly declining in WI, however large population numbers and wide distribution. Species is not imperiled in the state. Remove from the threatened list [NR27.03(3)].

Butler's Gartersnake (*Thamnophis butleri*), a snake, is found in open to semi-open canopy wetland and upland habitat, including prairies, sedge meadows, shrub carr, wet meadows, marshes, grasslands, savannas, old fields, pastures, grassy roadsides, and vacant lots in Dodge, Fond du Lac, Milwaukee, Ozaukee, Sheboygan, Washington, and Waukesha counties. Species appears stable in WI. New information on abundance, range, and hybridization support delisting. Remove from the threatened list [NR27.03(3)].

Pygmy Snaketail (*Ophiogomphus howei*), a small dragonfly, is found in clean, fast flowing, medium to large streams with abundant gravel or sand substrates in northern Wisconsin. These streams are also in largely forested watersheds. Species appears stable in the state. New populations found using modeling of habitat and targeted surveys. Remove from the threatened list [NR27.03(3)].

American Fever-few (*Parthenium integrifolium*), a composite plant also known as Wild Quinine, is found in dry-mesic to mesic (sometimes wet-mesic) prairie and savanna in mostly loamy to moderately sandy soils in the southwest and southeast corners of the state. The population in Wisconsin appears stable. It is reproducing well on managed and restored sites, and on newly planted sites. Remove from the threatened list [NR27.03(3)].

Bog Bluegrass (*Poa paludigena*), a grass, is found most often growing on banks and atop hummocks, tussocks, and moss-covered logs along small creeks, rivulets, and pools in black ash/yellow birch, black ash/red maple, and black ash/elm swamps throughout the state, perhaps most common in west-central and northwestern Wisconsin in areas bordering the driftless region. Population in Wisconsin appears stable. New records have resulted from inventories. Remove from the threatened list [NR27.03(3)].

Canada Horse-balm (*Collinsonia canadensis*), is a plant in the mint family is also known as Stoneroot, and is considered extirpated in Wisconsin. Elsewhere in its range it has been found in rich beech-maple deciduous forests, as well as occasionally in swampy deciduous forests or oak-hickory and sassafras forests. Documented at only 2 locations in Wisconsin; one is presumed extirpated and the other has not been observed for 150 years. This species is conspicuous and easy to identify. Remove from the endangered list [NR27.03(2)].

Drooping Sedge (*Carex prasina*), a plant in the sedge family, is found in good-quality, mesic hardwood forests encompassing seepages, spring heads, and streamlets and has been found in 11 counties mostly representing widely scattered populations. The population in Wisconsin is stable. It has a narrow habitat preference; however it has a fairly wide distribution and is found regularly in suitable habitat. Remove from the threatened list [NR27.03(3)].

Hemlock Parsley (*Conioselinum chinense*), a plant in the parsley family is considered extirpated. It was found in low, springy, marly ground and old tamarack bogs in Waukesha, Walworth, and Milwaukee counties. Only six native occurrences were known in the state; All are presumed extirpated or historical. Species is conspicuous and easy to identify. Remove from the endangered list [NR27.03(2)].

Prairie Indian-Plantain (*Arnoglossum plantagineum* = *Cacalia tuberosa*), a plant in the aster family, is found in open, deep-soiled wet to wet-mesic to dry prairies that are usually calcareous; has been reported from the southern two tiers of counties in Wisconsin, including Grant, Crawford, Lafayette, Iowa, Green, Dane, Rock, Jefferson, Walworth, Waukesha, Kenosha, and Racine counties. It inhabits moist prairies on lakeplains, outwash plains and low moraines in southeastern Wisconsin as

well as dry oak openings and bluff prairies in central and southwestern Wisconsin. The population in Wisconsin is stable to increasing; It has responded well to prairie management. Remove from the threatened list [NR27.03(3)].

Snowy Campion (*Silene nivea*), a plant in the pink family, is found in rich woods and alluvial, disturbed floodplains and streambanks, old grasslands, sand prairie, and roadsides. Primarily known from the Driftless area in south-central, southwestern, and western portion of the state. The population in Wisconsin appears stable. It is able to persist with reed canary grass and in degraded streamside habitats and roadside, railroad and utility rights-of-way. Species no longer considered imperiled. Remove from the threatened list [NR27.03(3)].

Yellow Gentian (*Gentiana alba*), a plant in the gentian family is also known as Yellowish Gentian, and is found in dry to moist prairies, savannas and open woods in a wide variety of soil types. In Wisconsin it has been found in 32 counties, mostly in the south-central portion of the state. The population in Wisconsin is increasing. Most of the population expansion and increases have occurred in old fields. Remove from the threatened list [NR27.03(3)].

Yellow Giant Hyssop (*Agastache nepetoides*), a plant in the mint family, is found in areas with partial sun within dry and dry mesic forests, oak woodlands, oak openings, alluvial forests, as well as the edges of meadows, fencerows, and thickets; primarily found in southern Wisconsin in Crawford, Grant, Lafayette, Green, Rock, Walworth, Racine, Jefferson, Dane, and Columbia counties. The population in Wisconsin is stable to increasing. It has responded well to savanna management and restoration. Remove from the threatened list [NR27.03(3)].

The 20 species the state proposes for a scientific name change are:

- Northern Cricket Frog also known as Blanchard's Cricket Frog (*Acris blanchardii* change to *Acris crepitans*), endangered
- Worm-eating Warbler (*Helmitheros vermivorus* change to *Helmitheros vermivorum*), endangered
- Pallid Shiner (*Notropis annis* change to *Hybopsis amnis*), endangered
- Shoal Chub also known as Speckled Chub (*Macrhybopsis aestivalis* change to *Macrhybopsis hyostoma*), threatened
- Spatterdock Darner Dragonfly (*Aeshna mutata* change to *Rhionaeschna mutata*), threatened
- Obovate Beak Grass (*Diarrhena americana* change to *Diarrhena obovata*), endangered
- Canada Gooseberry also known as Hawthorn-leaved Gooseberry (*Ribes oxycanthoides* change to *Ribes oxycanthoides* ssp. *oxycanthoides*), threatened
- Cliff Cudweed (*Gnaphalium saxicola* change to *Pseudognaphalium saxicola*), threatened
- Early Anemone (*Anemone multifida* change to *Anemone multifida* var. *multifida*), endangered
- Forked Aster (*Aster furcatus* change to *Eurybia furcata*), threatened
- Green Spleenwort (*Asplenun trichomanes-namosum* change to *Asplenium trichomanes-ramosum*), endangered
- Hall's Bulrush (*Scirpus hallii* change to *Schoenoplectus hallii*), endangered
- Hoary Whitlow-cress (*Draba lanceolata* change to *Draba cana*), endangered
- Large-leaved Sandwort (*Moehringia macrophylla* change to *Arenaria macrophylla*), endangered
- Long-beaked Baldrush also known as Bald Rush (*Rhynchospora scirysoides* change to *Rhynchospora scirpoides*), threatened
- Plains Ragwort (*Senecio indecorus* change to *Packera indecora*), threatened
- Sticky False-asphodel also known as False Asphodel (*Tofieldia glutinosa* change to *Triantha glutinosa*), threatened

- Tea-leaved Willow also known as Flat-leaved Willow (*Salix planifolia* change to *Salix planifolia* ssp. *planifolia*), threatened
- Thickspike also known as Thickspike Wheatgrass (*Elymus lonceolatus* ssp. change to *Elytrigia dasystachya* ssp. *psammophilus*), threatened
- Tufted Bulrush also known as Tussock Bulrush (*Scirpus cespitosus* change to *Trichophorum cespitosum*), threatened

Agency Contact Person:

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NOTICE IS HEREBY FURTHER GIVEN THAT pursuant to ss. 227.114 and 227.137, Wis. Stats., it is not anticipated that the proposed rules will have an economic impact on small businesses. The Department conducted an economic impact analysis in consultation with businesses, business associations, local governmental units, and individuals. The Department determined that this rule would not adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of this state. The Department's Small Business Regulatory Coordinator may be contacted at SmallBusiness@dnr.state.wi.us or by calling (608) 266-1959.

NOTICE IS HEREBY FURTHER GIVEN THAT this action is a type II action under Chapter NR 150, Wis. Adm. Code, thus requiring an Environmental Assessment. The Environmental Assessment is available with the proposed rule and supporting documents and may be reviewed and comments electronically submitted at the following internet site: <http://adminrules.wisconsin.gov>. A copy of the documents may also be obtained from Madeline Emde, Bureau of Endangered Resources, P.O. Box 7921, Madison, WI 53707 or madeline.emde@wisconsin.gov.

The Department has also made a preliminary determination that this action is not a major and significant action under s 1.11, Wis. Stat., and therefore does not require the Environmental Impact Statement process.

NOTICE IS HEREBY FURTHER GIVEN THAT pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Madeline Emde at (608) 264-6271 with specific information on your request at least 10 days before the date of the scheduled hearing.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
 DEPARTMENT OF NATURAL RESOURCES

By _____
 Cathy Stepp, Secretary