

Clearinghouse Rule 08-074

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD CREATING RULES

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

IS-34-06

Analysis Prepared by Department of Natural Resources

1. Statutes interpreted.

Section 23.22 (2) (a), Stats.

2. Statutory authority.

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

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

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

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

Section 29.014 (1), Stats., directs the department to establish and maintain any bag limits and conditions governing the taking of fish that will conserve the fish supply and ensure the citizens of this state continued opportunities for good fishing. Section 29.039 (1), Stats., authorizes the department to develop conservation programs to ensure the perpetuation of nongame species, require harvest information and establish limitations relating to taking, possession, transportation, processing and sale or offer for sale, of

nongame species. “Nongame species” is defined as any mammal, bird, fish, or other creature of a wild nature endowed with sensation and the power of voluntary motion that is living in the wild and that is not classified as a game fish, game animal, game bird or furbearing animal. Section 29.041, Stats., provides that the department may regulate fishing on and in all interstate boundary waters, and outlying waters. Finally, s. 227.11 (2) (a), Stats., expressly confers rulemaking authority on the department to promulgate rules interpreting any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

4. Related statute or rule.

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

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

- 29.733 Natural waters used in fish farms.
- 29.734 Barriers required for fish farms.
- 29.735 Importation of fish.
- 29.736 Stocking of fish.
- 29.737 Permit for private management.
- 29.738 Private fishing preserves.
- 29.741 Food in the wild for game birds.
- 29.875 Disposal of escaped deer or elk.
- 29.885 Removal of wild animals.
- 29.887 Wildlife control in urban communities.
- 29.927 Public nuisances.
- 29.931 Seizures.
- 29.934 Sale of confiscated game and objects.
- 30.1255 Report on control of aquatic nuisance species.
- 30.715 Placement of boats, trailers, and equipment in navigable waters.
- 59.70 (17) and (18) [County funds, equipment, fees for pest and weed control, plant or animal diseases.]
- 66.0407 Noxious weeds. [local governments]
- 66.0517 Weed commissioner. [local governments]
- 66.0627 Special charges for current services. [charges for weed elimination]
- 84.07 (3) [DOT highway patrol officers to destroy noxious weeds on highways]
- 93.07 Department duties. [Dept. of Agriculture, Trade and Consumer Protection - pests]
- 94.01 Plant inspection and pest control authority.
- 94.02 Abatement of pests.
- 94.03 Shipment of pests and biological control agents; permits.
- 94.10 Nursery stock; inspection and licensing.
- 94.38 Agricultural and vegetable seeds; definitions.
- 94.41 Prohibitions. [Sale or distribution of noxious weed seed]
- 94.45 Powers and authority of the department.
- 94.46 Stop sale; penalties; enforcement.
- 94.69 Pesticides; rules.
- 94.76 Honeybee disease and pest control.
- 146.60 Notice of release of genetically engineered organisms into the environment.
- 169.04 Possession of live wild animals.
- 169.06 Introduction, stocking, and release of wild animals.
- 169.07 Exhibition of live wild animals.
- 169.08 Propagation of wild animals.
- 169.10 Sale and purchase of live wild animals.
- 169.11 Harmful wild animals.
- 169.36 Record-keeping and reporting requirements.
- 182.017 Transmission lines; privileges; damages. [utility weed control along transmission lines]
- 281.17 (2) [DNR to supervise chemical treatment of waters for the suppression of nuisance-producing organisms that are not regulated by the program established under s. 23.24 (2).]
- 237.10 Rapide Croche lock [Fox river lamprey barrier]

5. Plain language analysis of the proposed rule.

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

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

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

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

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

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

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

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

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

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

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

invertebrates, mammals and birds. The invasive species laws are similar in scope to Wisconsin's proposed rules, minus the inclusion of terrestrial plants.

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

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

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

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

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

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

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

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

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

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

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

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

Species Assessment Groups were established to advise the Council on the classification of invasive species. These groups included representatives of industries affected by the species and those potentially affected by any regulations limiting the use of these species. During the Species Assessment Group meetings, economics were addressed for most species. For instance, in the woody plants group, decisions were in large part based on the number of nurseries that grow a particular plant and how much income they produce from a particular plant or its cultivars. If the number of nurseries that grow a plant was very low or none, the decision was easier to come to consensus on. For example, for the variegated cultivar of Porcelain berry, it was stated that there is only one known Wisconsin grower. That grower makes \$500 per year on the plant and had already stated that it won't bother them if the plant is prohibited.

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

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

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

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

Enforcement will vary depending on the species being regulated and the applicability of other rules and statutes. For forest or plant pests and aquaculture, the department and DATCP share regulatory

responsibility. The department has (or will develop) memoranda of agreement with DATCP to clarify what aspects of this and related rules will be enforced by each agency.

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

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

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

12. Place where comments are to be submitted and deadline for submission: Comments can be submitted by U.S. mail to the contact and address above. In addition, comments can be submitted during the public comment period using the Internet at <http://adminrules.wisconsin.gov>. The comment period will begin upon publication of the public hearing notice and will continue until September 5, 2008.

SECTION 1. Chapter NR 40 is created to read:

**Chapter NR 40
 INVASIVE SPECIES IDENTIFICATION,
 CLASSIFICATION AND CONTROL**

<p>NR 40.01 Purpose. NR 40.02 Definitions. NR 40.03 Classifications. NR 40.04 Prohibited category.</p>	<p>NR 40.05 Restricted category. NR 40.06 Preventive measures. NR 40.07 Invasive species permits. NR 40.08 Enforcement.</p>
---	--

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

NR 40.02 Definitions. For purposes of this chapter,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(16) "Fish species in the aquaculture trade" means arctic char (*Thymallus arcticus*), Atlantic salmon (*Salmo salar*), brown trout (*Salmo trutta*), chinook salmon (*Onchorhynchus tshawytscha*), coho salmon (*Onchorhynchus kisutch*), rainbow trout (*Onchorhynchus gairdneri*), pink salmon (*Onchorhynchus gorbuscha*), redear sunfish (*Lepomis microlophus*), tiger trout (a hybrid of *Salvelinus fontinalis* and *Salmon trutta*) and tilapia (*Tilapia* sp).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Any person selling or distributing a caution list plant species is encouraged to distribute educational materials asking that the plants not be planted near wild, natural or environmentally sensitive areas.

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

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

Invasive Plant Coordinator – ER/6
 Wisconsin Department of Natural Resources
 PO Box 7921
 Madison, WI 53707-7921

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

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

1. Fanwort (*Cabomba caroliniana*)
2. Australian swamp crop, also known as New Zealand pygmyweed (*Crassula helmsii*)
3. Cyllindro (*Cylindrospermopsis raciborskii*)
4. Didymo, also known as rock snot (*Didymosphenia geminata*)
5. Brazilian waterweed (*Egeria densa*)
6. Hydrilla (*Hydrilla verticillata*)
7. European frogbit (*Hydrocharis morsus-ranae*)
8. Oxygen-weed, also known as African elodea or African waterweed (*Lagarosiphon major*)
9. Parrot feather (*Myriophyllum aquaticum*)
10. Brittle (also known as Lesser, Bushy, Slender, Spiny, Minor) naiad or waternymph (*Najas minor*)
11. Starry stonewort (*Nitellopsis obtusa*)
12. Yellow floating heart (*Nymphoides peltata*)
13. Golden alga (*Prymnesium parvum*)
14. Novel cyanobacterial epiphyte of the order Stigonematales
15. Water chestnut (*Trapa natans*)

16. *Ulva* species (including species previously known as *Enteromorpha* species)
- (b) Terrestrial plants. The following terrestrial plant invasive species are prohibited:
 1. Porcelain berry (*Ampelopsis brevipedunculata*) including the variegated cultivar
 2. Wild chervil (*Anthriscus sylvestris*)
 3. Hill mustard (*Bunias orientalis*)
 4. Yellow star thistle (*Centaurea solstitialis*)
 5. Celandine (*Chelidonium majus*) north of state highway 64
 6. European marsh thistle (*Cirsium palustre*) west of state highway 13 and south of state highway 29, excluding Door county
 7. Poison hemlock (*Conium maculatum*)
 8. Scotch broom (*Cytisus scoparius*)
 9. Chinese yam (*Dioscorea oppositifolia*)
 10. Hairy willow herb (*Epilobium hirsutum*)
 11. Tall manna grass (*Glyceria maxima*) west of a line formed by state highway 22 from Oconto to Arlington, then state highway 51 from Arlington to the Illinois state line.
 12. Giant hogweed (*Heracleum mantegazzianum*)
 13. Japanese hops (*Humulus japonicus*) in all counties except Grant
 14. Perennial pepperweed (*Lepidium latifolium*)
 15. Sericea lespedeza (*Lespedeza cuneata*)
 16. Japanese honeysuckle (*Lonicera japonica*)
 17. Amur honeysuckle (*Lonicera maackii*) north of state highway 21 from LaCrosse to Wautoma and state highway 22 from Wautoma to Oconto
 18. Lyme grass (*Lymus arenarius*) in all counties except Door, Kewaunee, Manitowoc, Sheboygan and Racine.
 19. Japanese stilt grass (*Microstegium vimineum*)
 20. Princess tree (*Paulownia tomentosa*)
 21. Mile-a-minute vine (*Polygonum perfoliatum*)
 22. Giant knotweed (*Polygonum sacchalinense*)
 23. Kudzu (*Pueraria montana*)
 24. Sawtooth oak (*Quercus acutissima*)
 25. Wineberry (*Rubus phoenicolasius*)
 26. Spreading hedge parsley (*Torilis arvensis*)
 27. Japanese hedge parsley (*Torilis japonicus*) north of the line formed by state highway 21 from La Crosse to Coloma, north on state highway 51 to Heafford Junction, east on state highway 8 to the Michigan state line

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

29. Pale swallowwort (*Vincetoxicum rossicum*)

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

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

2. Eastern mosquitofish (*Gambusia holbrooki*)

3. Red shiner (*Cyprinella lutrensis*)

4. Rudd (*Scardinius erythrophthalmus*)

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

6. Tench (*Tinca tinca*)

7. Western mosquitofish (*Gambusia affinis*)

8. Zander (*Sander lucioperca*)

9. All other nonnative fish and nonnative crayfish except:

a. Established nonnative fish species and established nonnative crayfish species

b. Fish species in the aquarium trade

c. Fish species in the aquaculture trade

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

1. Asian clam (*Corbicula fluminea*)

2. Bloody shrimp (*Hemimysis anomala*)

3. Chinese mitten crabs (*Eriocheir sinensis*)

4. New Zealand mud snail (*Potamopyrgus antipodarum*)

5. Water flea (*Daphnia lumholtzi*)

6. Spiny water flea (*Bythotrephes cederstroemi*)

7. Fishhook water flea (*Cercopagus pengoi*)

8. Faucet snail (*Bithynia tentaculata*)

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

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

2. Emerald ash borer (*Agilus planipennis*)

3. Asian longhorned beetle (*Anaplophora glabripennis*)

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

5. Hemlock woolly adelgid (*Adelges tsugae*)

6. Crazy worm (*Amyntas* or *Amyntus* species)
7. Scale associated with beech bark disease (*Cryptococcus fagisuga*)

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

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

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

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

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

5. All other nonnative mammals, nonnative birds, nonnative reptiles and nonnative amphibians are prohibited invasive species, except the following:

- a. European goldfinch (*Carduelis carduelis*)
- b. Stone or beech marten (*Martes foina*)
- c. Great tit (*Parus major*)
- d. Eurasian tree sparrow (*Passer montanus*)
- e. Eurasian collared dove (*Streptopelia decaocto*)
- f. Pigeon or rock dove (*Columba livia*)
- g. English or house sparrow (*Passer domesticus*)
- h. Ring-necked pheasant (*Phasianus colchicus*)
- i. European starling (*Sturnus vulgaris*)
- j. Hungarian or gray partridge (*Perdix perdix*)
- k. Chukar partridge (*Alectoris chukar*)
- L. Norway rat (*Rattus norvegicus*)
- m. House mouse (*Mus musculus*)

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

- o. House finch (*Carpodacus mexicanus*)
- p. Terrestrial and aquatic vertebrate species except fish listed or identified as restricted invasive species under s. NR 40.05.
- q. Non-viable terrestrial and aquatic vertebrates.
- r. Domestic animals, but not including domestic animal species specifically listed in this paragraph that have become feral.

s. Nonnative wild animals, possession of which is authorized by a license issued under ch. 169, Stats., but not including nonnative wild animals that are harmful wild animals.

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

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

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

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

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

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

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

Reports for other vertebrates may be sent to:

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

Reports for plants may be sent to:

Attn: FR/4
Wisconsin Department of Natural Resources

PO Box 7921
Madison, WI 53707-7921

Reports for terrestrial invertebrates and plant disease-causing microorganisms may be sent to:
Forest Health Protection Program Coordinator
Wisconsin Department of Natural Resources
3911 Fish Hatchery Rd.
Fitchburg, WI 53711

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Tree of heaven (*Ailanthus altissima*)
2. Garlic mustard (*Alliaria petiolata*)
3. Creeping bellflower (*Campanula rapunculoides*)
4. Plumeless thistle (*Carduus acanthoides*)
5. Musk thistle (*Carduus nutans*)
6. Oriental bittersweet (*Celastrus orbiculatus*)
7. Spotted knapweed (*Centaurea biebersteinii*)
8. Celandine (*Chelidonium majus*) south of state highway 64
9. Canada thistle (*Cirsium arvense*)
10. European marsh thistle (*Cirsium palustre*) east of state highway 13 and north of state highway 29, excluding Door county
11. Hound's tongue (*Cynoglossum officinale*)
12. Cut-leaved teasel (*Dipsacus laciniatus*)
13. Common teasel (*Dipsacus sylvestris*)
14. Russian Olive (*Elaeagnus angustifolia*)
15. Autumn olive (*Elaeagnus umbellata*)
16. Helleborine orchid (*Epipactis helleborine*)
17. Cypress spurge (*Euphorbia cyparissias*)
18. Leafy spurge (*Euphorbia esula*)
19. Glossy buckthorn (*Frangula alnus*) including the Columnaris (tall hedge) cultivar but excluding the cultivars Asplenifolia and Fineline (Ron Williams)
20. Hemp nettle (*Galeopsis tetrahit*)

21. Tall manna grass (*Glyceria maxima*) east of a line formed by state highway 22 from Oconto to Arlington, then state highway 51 from Arlington to the Illinois state line.

22. Dame's Rocket (*Hesperis matronalis*)

23. Japanese hops (*Humulus japonicus*) in Grant county

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

25. Eurasian bush honeysuckles (*Lonicera tartarica*, *Lonicera morrowii*, *Lonicera x bella*)

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

27. Purple loosestrife (*Lythrum salicaria*)

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

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

29. Phragmites, also known as Common reed (*Phragmites australis* (Nonnative ecotype))

30. Japanese knotweed (*Polygonum cuspidatum*)

31. Common buckthorn (*Rhamnus cathartica*)

32. Multiflora rose (*Rosa multiflora*)

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

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

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

36. Hybrid cattail (*Typha x glauca*)

37. Black swallow-wort (*Vincetoxicum nigrum*) north and east of a line formed by interstates 90 from LaCrosse to Madison and 94 from Madison to Milwaukee

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

1. Fish species in the aquarium trade

2. Fish species in the aquaculture trade

3. Established nonnative fish species and established nonnative crayfish species

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

1. Zebra mussel (*Dreissena polymorpha*)

2. Quagga mussel (*Dreissena rostriformis*)

3. Chinese mystery snail (*Bellamya chinensis*)

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

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

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

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

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

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

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

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

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

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

(e) For aquatic plants, algae and cyanobacteria, a person may transport or give away a restricted invasive species for the purpose of identification, control or disposal without a permit issued by the department under this chapter if the restricted invasive species is listed on the department's website as present in the waterbody from which the plant came or, if the restricted invasive species is not listed, the person reports the restricted invasive species to the department within 30 days.

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

Aquatic Invasive Plant Coordinator – WT/3
Wisconsin Department of Natural Resources
PO Box 7921

Madison , WI 53707-7921

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. If authorized by a permit issued by the department under this chapter.
2. For disposal, as part of a harvest or control activity conducted under an aquatic plant management permit issued under ch. NR 109.
3. When transporting commercial or municipal aquatic plant harvesting equipment to a suitable location, away from any water body, for purposes of cleaning the equipment of any remaining aquatic plants or animals.
4. In a covered truck bed, covered trailer or covered container, for personal or commercial use as compost or mulch.
5. For purposes of constructing or transporting a shooting or observation blind, if the aquatic plants are emergent, cut above the waterline, and contain no propagules such as seed heads, roots or rhizomes and no aquatic invasive species.
6. If the aquatic plant is wild rice, during the open season established by the department for harvesting wild rice.

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

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

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

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

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

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

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

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

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

Applications for plants may be sent to:

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

Applications for other vertebrates may be sent to:

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

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

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

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

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

(a) The applicant is knowledgeable in the proper management or humane care of the invasive species.

(b) The applicant has an adequate site or facility for containment of the invasive species.

(c) The applicant has demonstrated to the department's satisfaction that permitted activities will not cause significant ecologic or economic harm or harm to human health,

(d) The applicant has complied with the conditions of any previous department permits issued under this chapter.

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

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

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

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

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

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

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

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

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

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Mathew J. Frank, Secretary

(SEAL)