Clearinghouse Rule 16-037

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD REPEALING, RENUMBERING AND AMENDING, AMENDING, REPEALING AND RECREATING, AND CREATING RULES

The statement of scope for this rule, SS 066-15, was approved by the Governor on August 3, 2015, published in Register No. 716A2 on August 10, 2015 and approved by the Natural Resources Board on October 28, 2015. This permanent rule was approved by the Governor on _____.

The Wisconsin Natural Resources Board proposes an order to repeal Ch. NR 10.001 (3s), (8e), (25k) and (27), 10.01 (3) (e) 2. d., 10.102 (5), 10.24 (3) (g), 12.16 (8) (c), 13.30 (2) (i) 6. and (Note), NR 15.01 (4), 19.09 (4) (f), 40.05 (2) (b) 3. (Note), 13. (Note), and 14. (Note); to renumber and amend NR 10.001 (8m); to amend NR 10.001 (5p), (5v), (8m), (18m), 10.02 (Intro.), 10.04 (1), 10.07 (1) (k), 10.13 (3) (c) 1. and 2., 10.24 (7) (a), and (10) (a), 10.25 (1) (c) 3. and (4) (b), 10.285 (Intro.), 12.10 (3) (d), 4, 19.12 (1) (d), 40.05 (2) (b) 3., 13., 14., 33s. and (e) 2.; to repeal and recreate NR 10.24 (7) (b), 10.29 and 19.13, ; and to create NR 10.001 (6b) and (12m), wildlife management rules making remedial revisions to regulations for hunting, trapping, closed areas, nuisance wildlife management, removal of car-killed deer, and invasive species.

WM-12-15

Analysis Prepared by the Department of Natural Resources

Statutory Authority and Explanation of Agency Authority: The chapter on wild animals and plants, in s. 29.014, "rule making for this chapter", establishes that the department shall maintain open and closed seasons for fish and game and any limits, rest days, and conditions for taking fish and game. This grant of rule-making authority allows the department to make changes related to trapping regulations and turkey hunting regulations or permit applications. This grant of rule-making authority also allows rulemaking which establishes the disposition of wild animals killed in vehicle accidents with additional direction provided in s. 29.349 related to animals killed by motor vehicles.

Additional statutory authority relating to the issuance of turkey hunting permits is found in s. 29.164 which establishes that the department may regulate and limit the hunting of wild turkeys by issuing licenses.

The wildlife damage abatement and claims program is established in s. 29.889 and rule making is specifically authorized under subsection paragraph (2) (b) which directs the department to establish rules for eligibility under the program.

The department's authority to promulgate wild rice is established in s. 29.607 related to wild rice. This statute establishes department powers and requires that the department obtain the advice and consent of the tribal council before promulgating any rules governing the harvest, use and disposition of wild rice growing within the bounds of an Indian reservation.

The establishment of game refuges is authorized in s. 23.09 (2) (b) relating to the department's ability to designate locations reasonably necessary for the purpose of providing safe retreats in which birds may rest and replenish adjacent hunting grounds.

The department's authority to classify and regulate invasive species is established s. 23.22 and rule making is specifically authorized under subsection paragraphs (2) (a) and (b), which directs the department to establish rules to identify, classify, and control invasive species.

Statutes Interpreted and Explanation: The chapter on wild animals and plants, in s. 29.014, "rule making for this chapter", establishes that the department shall maintain open and closed seasons for fish and game and any limits, rest days, and conditions for taking fish and game. This grant of rule-making authority allows the department to make changes related to trapping regulations and turkey hunting regulations or permit applications. This grant of rule-making authority also allows rulemaking which establishes the disposition of wild animals killed in vehicle accidents with additional direction provided in s. 29.349 related to animals killed by motor vehicles.

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Related Statute or Rule: The department is currently modifying the maximum dimensions of colony traps used for muskrats in Board Order WM-04-13. This rule modifies the same provision in NR 10.001 (3s) to replace the word "drowning" with "submersion". In the treatment clause of this board order the section is referred to by the words "as affected" and the proposed trap dimensions in WM-04-13 are used.

Plain Language Rule Analysis: These rule changes are proposed to update administrative code language to correct inconsistencies, update outdated language, and provide clarification when appropriate. This rule package will amend regulations for hunting, trapping, closed areas, nuisance wildlife management, removal of car-killed deer, and invasive species.

SECTION 1 repeals the definition of "blind" related to goose hunting in the former Horicon intensive management zone for Canada goose hunting. The Horicon intensive management zone has been repealed.

SECTIONS 2, 3, 6, 8 and 15 replace the word “drowning” with “submersion” to better describe how that type of trap set functions.

SECTION 4 establishes a definition of “culvert” because the term is used regularly in the chapter related to regulations for trap placement.

SECTIONS 5 and 14 repeal references to the Class B bear hunting license which was repealed by 2015 ACT 55.

SECTIONS 7 and 9 eliminate the reference to the material that a foothold trap is made out of so that modern traps made of polymer or other materials can be used, instead of just steel. Section 9 also eliminates the definition of “unforked antler” because the term in not used in this chapter.

SECTION 10 repeals a reference to a firearm deer season occurring over the Christmas holiday period that is now extraneous because that season is an optional instead of an annual event.

SECTION 11 clarifies that illegal possession of a protected animal includes possession of the animal’s carcass.

SECTION 12 notes that porcupines are an unprotected species. Porcupines are unprotected under current law and providing that information in this location will reduce the number of questions to staff and make the code more useful.

SECTION 13 clarifies that modern archery gear used normally for hunting will not cause a person to be in violation of the prohibition of marking and releasing wild animals.

SECTIONS 16, 17 and 18 modernize language related to pheasant hunting at the Bong State Recreation Area to reflect elimination of arm bands that hunters were required to wear in the past and the switch to a daily permit that hunters are currently required to possess.

SECTION 19 relaxes regulations for dove hunting in the special use zone at Bong State Recreation Area. Hunters would be required to be within 25 feet, instead of 10, from assigned blind locations. This provision would also allow four people to hunt from a location instead of three.

SECTION 20 allows up to ten people to apply as a group for turkey hunting permits instead of just four under current rules.

SECTION 21 replaces the word “zone” with “unit” which is the preferred terminology for the old deer management unit map that was preserved for continuity of reporting sharp-tailed grouse, fisher, and bear harvest.

SECTION 22 clarifies, in the turkey hunting zone map, that Chambers Island is included with Door County as part of zone 2 instead of zone 5.

SECTION 23 clarifies that all for-fee hunting is illegal related to department issued shooting permits.

SECTION 24 removes an outdated reference to seasons for hunting deer with shotguns only.

SECTION 25 removes a reference to the prohibition of discharging firearms on the day before the traditional nine-day firearm deer hunting season because the prohibition was repealed by previous rulemaking.

SECTION 26 eliminates a game refuge at Columbia Co Indian Agency House. These are not department owned lands and there is no purpose for this refuge to be established by the department. SECTION 27 eliminates date-regulation authority on Noquebay Lake in Marinette County so that the department does not need to inspect the rice for ripeness or publicize when harvest is allowed. Current rules establish a number of date-regulated lakes in northern Wisconsin which have been jointly agreed upon by the Department and the Great Lakes Indian Fish and Wildlife Commission, however, Noquebay Lake is outside of the ceded territory.

SECTION 28 repeals regulations for tagging the carcasses of wild animals, birds and fish taken on Indian reservations because 2013 ACT 85 has established statutory requirements for the transportation in Wisconsin of game taken in another state or on Indian land.

SECTION 29 repeals most requirements for taking possession of car killed deer, and acknowledges that car-killed turkey and bear can be taken in to possession, for consistency with 2015 ACT 55 and 2011 Act 251 ss. 4, 10 to 15.

SECTIONS 30 to 36 update scientific and common names and permanently adds bracketed counties that were inadvertently omitted from the list of restricted counties in the new chapter of rules related to invasive species. The common name of Amynthas species is changed from crazy worm to jumping worm to reflect current naming conventions. The scientific name spelling of Woodland forget-me-not is changed from Myosotis sylvaticum to the accepted name Myosotis sylvatica. Three invasive species (Poison hemlock, Wild chervil, and European marsh thistle) have bracketed counties that are permanently added to the list of restricted counties under their prohibited county lists.

Federal Regulatory Analysis: Federal regulations allow states to manage the wildlife resources located within their boundaries provided they do not conflict with regulations established in the Federal Register. None of these rule changes violate or conflict with the provisions established in the Federal Code of Regulations.

Comparison with rules in Adjacent States: These rule change proposals do not represent significant policy changes and do not differ significantly from surrounding states. All surrounding states have regulations and rules in place for the management and recreational use of wild game and furbearer species that are established based on needs that are unique to that state's resources and public desires.

Summary of Factual Data and Analytical Methodologies: All of the policies in this rule are generally consistent with past board policies of regulating fish and game harvest and invasive species for conservation purposes and establishing closed areas for hunting.

Recent trap designs include ones with jaws constructed of polymers and these new trap types have passed humane trap standard evaluations. As polymer trap designs become available, this proposed rule would allow their legal use. The change to a more realistic description of "foothold" instead of "steel jaw" would also better describe how the devices are designed to work, by just holding the animal.

By applying as a group, turkey permit applicants can assure that all members of a hunting party will draw tags that are for the same time period and hunting zone. Currently, a maximum of four hunters are allowed to submit a group application for the spring and fall wild turkey hunting seasons. This proposal would increase the limit on the number of participants in the group to ten hunters. This would reduce the number of complaints received by department staff that the current group application cap does not allow all members of an intended hunting party to apply together as a group.

The use of electronic calls is currently illegal for turkey hunting. There is an exception which allows the use of electronic calls by people who possess permits for hunters with mobility-related disabilities. These rules would expand the exception so that electronic calls could also be used by people who are deaf. Dove hunters at the Richard Bong State Recreation Area are currently required to hunt at numbered blinds and must remain within 10 feet of the blind while hunting in order to manage the hunting pressure at that location. These rules would establish that hunters need to remain 25 feet from their blind, which the department has observed is more practical. There have been no hunting accidents during this manage hunt. Additionally, minor updates to pheasant hunting permit requirements are made.

Under current rules, it is illegal for the holder of agricultural damage shooting permit tags to charge any type of fee of people who receive the tags. The Department has learned of individuals, other than the permittee, charging fees for guiding services on agriculture damage permits or selling agriculture damage tags to other participants. This proposal would clarify that it is illegal for anyone to charge a fee for hunting in agricultural damage shooting permit situations.

Under 2011 Act 251 ss. 4, 10 to 15 changes were made to the car-killed deer statute to include bear and turkeys. In the future, the department may also change to tags or permits that can be printed from law enforcement vehicle computers but those tags may not be durable enough if they must be attached to the carcass. These changes will make administrative rules consistent with changes made by Act 251 and provide more efficient issuance of tags or permits in the field. This proposal may also save on the cost of printing special durable, three-ply carcass tags that have to be distributed statewide to all law enforcement agencies and to more efficiently make future modifications to permits.

The National Society for the Colonial Dames of America in the State of Wisconsin owns a small property in Columbia County which is called the Old Indian Agency House. It is designated as a game refuge under department rules and the owners have requested that the property be undesignated. The initial purpose for a number of the refuges established in this Ch. NR 15 is unknown. The only practical benefit to a refuge owner may be that department law enforcement staff could take enforcement action against someone who is hunting on the property. However, where these properties are privately owned, enforcement of trespassing laws by local police may be a more practical way to prevent hunting if the owner does not allow it.

Current rules establish a number of date-regulated lakes in northern Wisconsin which have been jointly agreed upon by the Department and the Great Lakes Indian Fish and Wildlife Commission. On these lakes, state officials inspect the rice crop, post signs at access points, and coordinate public notice of when the rice crop may be harvested. All of these lakes, except Noquebay Lake in Marinette County, are within the ceded territory of Northern Wisconsin. Allowing rice harvest on Noquebay Lake does not require approval or consultation with the Voigt Task Force, or the Ojibwe tribes because this is outside of the ceded territory. This proposal would eliminate date-regulation authority on this body of water so that the department does not need to inspect the rice for ripeness or publicize when harvest is allowed.

The proposed rule edits the invasive species list to make minor name corrections and to correct county listing inconsistencies which were identified late in the department's recent extensive rulemaking process, which became effective May 1, 2015.

This rule repeals a section of code that established regulations for tagging the carcasses of wild animals, birds and fish taken on Indian reservations. This language is no longer needed with the passage of 2013 ACT 85 which established statutory requirements for the transportation in this state of game taken in another state or on Indian land.

Anticipated Private Sector Costs and Economic Impact of Implementing the Rule: These rules, and the legislation which grants the department rule making authority, do not have a significant fiscal effect on the private sector or small businesses. These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small business, nor are any design or operational standards contained in the rule.

The proposed rule changes are not expected to significantly influence the spending activities or hunting and trapping activity of hunters, trappers, dog trainers, or other outdoor enthusiasts. Correspondingly, no related economic impacts are anticipated.

Effects on Small Business: These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small businesses, and no design standards are contained in the rule.

Because this rule does not add any regulatory requirements for small businesses, the proposed rules will not have a significant economic impact on a substantial number of small businesses under 227.24 (3m).

Agency Contact Person: Scott Loomans, 101 South Webster St., PO BOX 7921, Madison, WI 53707-7921. (608) 267-2452, scott.loomans@wisconsin.gov

Comment Period: Comments may be sent to the agency contact person through January 31, 2016

SECTION 1. NR 10.001 (3s) is repealed.

SECTION 2. NR 10.001 (5p) is amended to read:

NR 10.001 (5p) "Capable of ~~drowning~~ submersing" means a set designed to allow the trapped animal to travel to water of sufficient depth to cause ~~drowning~~ irreversible complete submersion. ~~Slide wires or poles, locking devices, slip chains, weighted traps and traps staked in deep water are commonly used in drowning sets~~.

SECTION 3. NR 10.001 (5v), as affected by WM-04-13, is amended to read:

NR 10.001 (5v) "Colony trap" means an enclosure device designed to allow the capture of one or more fur-bearing animals in a single setting as a ~~drowning~~ submersion set. Entrance to the device is gained by one or more one-way entrances with overall dimensions of the trap not to exceed 6.5 inches in width, 6.5 inches in height and 36.5 inches in length.

SECTION 4. NR 10.001 (6b) is created to read:

NR 10.001 (6b) “Culvert” means a pipe, tube or conduit no greater than 4 feet in width or diameter that allows the passage of water under a public or private roadway or driveway.

SECTION 5. NR 10.001 (8e) is repealed.

SECTION 6. NR 10.001 (8m) is renumbered and amended to read:

NR 10.001 ~~(8m)~~ (25L) "~~Drowning~~ Submersion set" means any trap set capable of capturing an animal and ~~drowning~~ capable of submersing the captured animal. Slide wires or poles, locking devices, slip chains, weighted traps and traps staked in deep water are commonly used in submersion sets. A body gripping trap is not a submersion set when more than one-half of the set trap is located above water.

SECTION 7. NR 10.001 (12m) is created to read:

NR 10.001 (12m) "Jawed trap" means a trap designed to catch an animal by the foot, but does not include enclosed trigger traps, cable restraints, or body gripping traps.

SECTION 8. NR 10.001 (18m) is amended to read:

NR 10.001 (18m) "~~Non-drowning~~ Non-submersion set" means any trap set that is capable of capturing an animal and not capable of ~~drowning~~ submersing the captured animal.

SECTION 9. NR 10.001 (25k) and (27) are repealed.

SECTION 10. NR 10.01 (3) (e) 2. d. is repealed.

SECTION 11. NR 10.02 (Intro.) is amended to read:

NR 10.02 Protected wild animals. The following wild animals are designated protected. No person may take, attempt to take, transport or possess any protected wild animal or its carcass at any time unless expressly authorized by the department.

SECTION 12. NR 10.04 (1) is amended to read:

NR 10.04 (1) Opossum, porcupine, skunk, and weasel.

SECTION 13. NR 10.07 (1) (k) is amended to read:

NR 10.07 (1) (k) *Marking.* Capture and tag, collar or mark and release any game taken from the wild unless issued a permit by the department pursuant to s. NR 19.11, or as authorized under a federal migratory bird banding permit, or a license issued under s. 169.25, Stats. The normal uses of archery equipment for hunting such as lighted, reflective, or glowing nocks are not a violation of this paragraph.

SECTION 14. NR 10.102 (5) is repealed.

SECTION 15. NR 10.13 (3) (c) 1. and 2. are amended to read:

NR 10.13 (3) (c) 1. ~~Non-drowning~~ Non-submersion sets shall be tended at least once each day and any animal captured shall be removed from the set.

2. ~~Drowning~~ Submersion sets shall be tended within a 4-day period following the last tending of the set. Any animal captured shall be removed from the set. Water levels shall be monitored to ensure effective ~~drowning~~ submersion sets.

SECTION 16. NR 10.24 (3) (g) is repealed.

SECTION 17. NR 10.24 (7) (a) is amended to read:

NR 10.24 (7) (a) ~~*Tagging*~~ *Permit validation.* When a pheasant is killed and before it is carried by hand or transported in any manner, the hunter shall ~~completely attach to the bird's leg a carcass tag issued by the department~~ validate their daily pheasant hunting permit by slitting, tearing, or punching holes according to instructions on the permit. Failure to properly validate the permit renders any pheasant in the person's possession illegal.

SECTION 18. NR 10.24 (7) (b) is repealed and recreated to read:

(b) *Permit information.* No person may hunt pheasants unless they are in possession of a permit which bears the customer information number of the holder and the date of permit issuance.

SECTION 19. NR 10.24 (10) (a) is amended to read:

(10) (a) *Special use zone hunting post requirement.* Hunting shall be restricted to locations assigned by the department in a 300 acre area in the southeast part of the special use zone. In assigned locations, the hunter may assemble a blind using existing natural vegetation at the assigned site or use a portable blind. Individuals are required to hunt within ~~10~~ 25 feet of the assigned location. All portable blinds shall be removed at the end of the day.

(b) *Blind limitation.* No more than ~~3~~ 4 people may hunt from any location assigned by the department.

SECTION 20. NR 10.25 (1) (c) 3. And (4) (b) are amended to read:

NR 10.25 (1) (c) 3. If a maximum of ~~4~~ 10 persons wish to hunt together, each shall complete an application form for individual licenses. The group application shall be treated as one application for purposes of random selection or consideration for a license. Landowner preference may be requested by group applicants provided all individuals are eligible under par. (b).

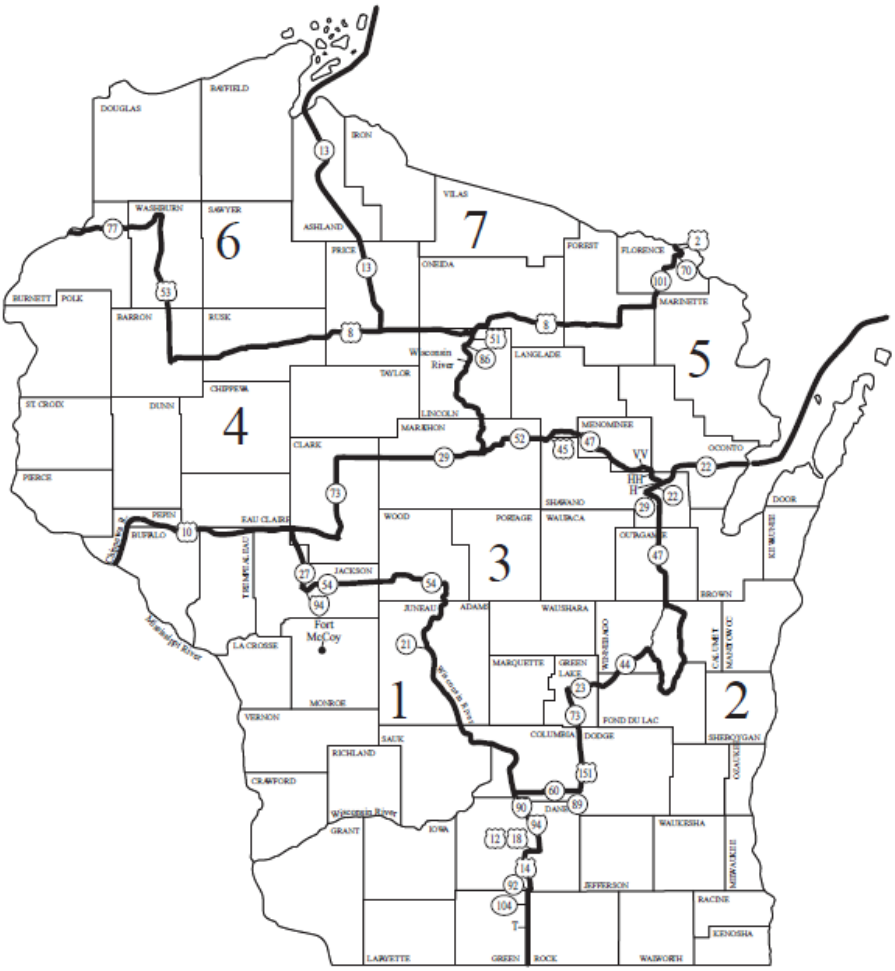
(4) (b) By the use or aid of recorded or electrically amplified bird calls or sounds or imitations thereof, or while in possession of any type of device that produces recorded or electronic amplifications of bird calls or sounds. This paragraph does not apply to hunters possessing a Class A or B disabled hunting permit which authorizes hunting from a stationary vehicle and which is issued for more than one year. This paragraph does not apply to hunters who are unable to proficiently use a turkey call because they are deaf or severely hard of hearing due to some pathological or functional cause as verified by a medical professional.

SECTION 21. NR 10.285 (Intro.) is amended to read:

NR 10.285 Game management ~~zones~~ units.

SECTION 22. NR 10.29 is repealed and recreated to read:

NR 10.29 Wild turkey hunting zones.



SECTION 23. NR 12.10 (3) (d) is amended to read:

NR 12.10 (3) (d) *No fees.* The permittee, participant, or any other individual may not charge any form of fee to a participant. All permit materials, tags, and distribution of materials and tags are the responsibility of the permittee. Upon verification of fees being charged the department may revoke the removal permit and, if applicable, enforce penalties under s. NR 12.35 (4).

SECTION 24. NR 12.16 (8) (c) is repealed.

SECTION 25. NR 13.30 (2) (i) 6. and (Note) are repealed.

SECTION 26. NR 15.01 (4) is repealed.

SECTION 27. NR 19.09 (4) (f) is repealed.

SECTION 28. NR 19.12(1) (d) is amended to read:

NR 19.12(1) (d) If a Wisconsin tribe ~~has a tagging and registration system similar to the department's and an approved memorandum of understanding with the department pertaining to the system,~~ complies with the licensing and tagging requirements of s. 29.047 (1) (d) 1m and 2, Stats., the tagging requirements under this section may be waived by the department. ~~Tribal tags shall be validated and affixed to the carcass.~~

SECTION 29. NR 19.13 is repealed and recreated to read:

NR 19.13 Animals killed by motor vehicles.

(1) No person may possess the carcass of a wild animal killed by a motor vehicle except as authorized by the department or as authorized by s. 29.349.

(2) No person authorized to take possession of a carcass under sub. (1) may:

(a) Fail to immediately remove the entire carcass from the scene, or

(b) Selectively remove parts of the carcass from the scene.

(3) No person may deposit or dispose of the carcass of a wild animal killed by a motor vehicle on any land or property owned, under easement to, or lease by federal, state, county, or municipal government, including highway right-of-ways, except where such deposit or disposal is explicitly authorized using established solid waste disposal receptacles and facilities.

Note: The term "carcass" is defined at s. 29.001 (18).

Note: This section prevents field dressing of animals killed by motor vehicles, within the highway right-of-way.

Note: This sub. does not prevent the movement of a carcass to the shoulder or ditch to maintain highway safety.

SECTION 30. NR 40.05 (2) (b) 3. is amended to read:

NR 40.05 (2) (b) 3. *Anthriscus sylvestris* (Wild chervil) in Adams, Barron, Chippewa, Crawford, Columbia, Dane, Dodge, Dunn, Fond du Lac, ~~[Grant,]~~ Grant, Green, Green Lake, Iowa, Jefferson, Juneau, Kenosha, La Crosse, Lafayette, Marquette, Milwaukee, Monroe, Ozaukee, Polk, Racine, Richland, Rock, Sauk, Sheboygan, Taylor, Vernon, Walworth, Waukesha, and Washington counties

SECTION 31. NR 40.05 (2) (b) 3. (Note) is repealed.

SECTION 32. NR 40.05 (2) (b) 13. is amended to read:

NR 40.05 (2) (b) 13. *Cirsium palustre* (European marsh thistle) in Ashland, Bayfield, Chippewa, ~~[Clark,]~~ Clark, Door, Florence, Forest, Iron, Langlade, Lincoln, Marathon, Marinette, Menominee, Oconto, Oneida, Price, Rusk, Sawyer, Shawano, Taylor and Vilas counties

SECTION 33. NR 40.05 (2) (b) 13. (Note) is repealed.

SECTION 34. NR 40.05 (2) (b) 14. is amended to read:

NR 40.05 (2) (b) 14. *Conium maculatum* (Poison hemlock) in ~~[Buffalo,]~~ Buffalo, Crawford, Dane, Grant, Green, Iowa, Jefferson, Kenosha, ~~[La Crosse,]~~ La Crosse, Lafayette, Milwaukee, ~~[Monroe,]~~

Monroe, Ozaukee, Racine, Richland, Rock, Sauk, Sheboygan, ~~[Trempealeau], [Vernon],~~ Trempealeau, Vernon, Walworth, and Waukesha counties

SECTION 35. NR 40.05 (2) (b) 14. (Note) is repealed.

SECTION 36. NR 40.05 (2) (b) 33s. and (e) 2. are amended to read:

NR 40.05 (2) (b) 33s. *Myosotis* ~~*sylvaticum*~~ *sylvatica* (Woodland forget-me-not)

(e) 2. *Amynthas* or *Amynthus* species (~~Crazy~~ Jumping worm)

SECTION 37. EFFECTIVE DATE. This rule 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 38. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Cathy Stepp, Secretary

(SEAL)