

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

The statement of scope for this rule, SS 016-12, was approved by the Governor on March 12, 2012, published in Register No. 675 on March 31, 2012, and approved by the Natural Resources Board on June 27, 2012. This rule was approved by the Governor on January 7, 2015.

The Wisconsin Natural Resources Board proposes an order to **repeal** NR 40.04 (2) (b) 6., (c) 4., 5., 12. d. (Note), (e) 2., 3., 5., (3) (d) (Note), 40.05 (2) (f), (3) (d) (Note) and (g); to **renumber** NR 40.04 (2) (a) 1., (b) 1., 40.05 (2) (b) 1. and (e) 1.; to **renumber and amend** NR 40.04 (2) (b) 31., (3) (e), 40.05 (2) (b) 37., and (3) (e) (intro.); to **amend** NR 40.02 (14), (17), (24) (Note), (37), (53), 40.03 (Note), 40.04 (2) (b) (intro.), 2., 3., 7., 8., 11., 12., 13., 14., 16, 22., 24., 30., 32., 36., (c) 12. d., (g) 1., (3) (a), (d), (g) (Note), (4) (f), 40.05 (2) (b) (intro.), 3., 4., 11., 14., 20., 25., 27., 28., 29., 36., 42., 43., (3) (d), (f), (k), 40.06 (1) (a) (Note) and 40.07 (8) (d) (Note); to **create** NR 40.02 (9m), 40.04 (2) (a) 1g., (b) 1e., 1m., 2e., 2m., 2s., 4g., 4n., 4r., 4w., 10g., 10r., 12g., 12r., 13e., 13s., 18d., 18h., 18p., 18t., 22g., 22r., 24m., 27m., 28e., 28m., 28s., 29d., 29h., 29p., 29t., 33g., 33r., 34b., 34f., 34k., 34p., 34s., 34w., 34y., 37e., 37m, 37s., 40., 41., (c) 12. e., (d) 5m., 8g., 8r., (e) 5e., 5m., 8., (f) 1m., (3) (e) 1., 2., (h) 3., (i), 40.05 (2) (b) 1e., 1e. (Note), 1m., 1m. (Note), 2m., 2m. (Note), 3g., 3g. (Note), 3r., 3r. (Note), 6m., 6m. (Note), 10e., 10e. (Note), 10m., 10m. (Note), 10s., 10s. (Note), 14m., 14m. (Note), 21m., 21m. (Note), 23r., 23r. (Note), 24m., 24m. (Note), 27e., 27e. (Note), 27m., 27m. (Note), 27s., 27s. (Note), 28m., 32g., 32g. (Note), 32r., 32r. (Note), 33e., 33e. (Note), 33m., 33m. (Note), 33s., 33s. (Note), 34m., 34m. (Note), 35m., 35m. (Note), 36m., 36m. (Note), 37m., 37m. (Note), 40g., 40g. (Note), 40r., 40r. (Note), 41m., 45g., 45g. (Note), 45r., 45r. (Note), (c) 5., (d) 1m., 3., 4., (e) 1m., 2., (3) (e) 1., 2., (f) (Note), (k) (Note), (o) 3., (p) and (p) (Note), relating to NR 40 including clarification to the language and changes to the species listed under NR 40.04(2) and NR 40.05(2) Wisconsin's regulated invasive species list, and affecting small business.

SS-04-12

Analysis Prepared by Department of Natural Resources

1. Statutes Interpreted: In promulgating this rule, s. 227.11 (2) (a), Wis. Stats., has been interpreted as allowing the department the authority to create and amend rules. Section 23.22 (2) (a) and (b) 6., Wis. Stats., has been interpreted as allowing the department the authority to create and amend the list of invasive species in Wisconsin and create related provisions, NR 40, Wis. Admin. Code.

2. Statutory Authority: The state statutes that authorize the promulgation of this rule are ss. 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), Wis. Stats.

3. Explanation of Agency Authority: Sections 23.22 (2) (a) and (b) 6. grant rule-making authority for regulation of invasive species.

4. Related Statutes or Rules: Section 23.22 (2) (b) 6. Wis. Stats., required the department to establish an invasive species rule. Chapter NR 40, Wis. Admin. Code, provides the lists of invasive species and associated requirements for preventing the introduction and spread of invasive species.

5. Plain Language Analysis: The department's Invasive Species Team worked with the Wisconsin

Invasive Species Council and affected stakeholders to review and propose revisions to ch. NR 40, Wis. Admin. Code, relating to the lists of regulated invasive species.

Revisions classify additional invasive species into existing categories established in ch. NR 40, Wis. Admin. Code, making them subject to existing administrative rules and statutes that regulate the introduction, possession, transfer, and transport of invasive species in order to prevent them from becoming established in Wisconsin or to prevent already-established invasive species from spreading within the state.

In 2009, during the public input and initial rule drafting of ch. NR 40, it was recognized that many additional species may need to be evaluated and, if appropriate, categorized and listed under this rule. Most of these species are used by some sector of society and require input from the affected stakeholders. The proposed revisions in this Board Order will add species of plants, vertebrates, and invertebrates to the invasive species rule, and will clarify rule language, facilitate compliance, and improve organization of the rule.

A summary of the proposed revisions follows, ordered by Board Order SECTION and grouped by the type of revision. Additional supporting documents including the literature reviews for each of the proposed invasive species are available on the DNR's website (dnr.wi.gov) keyword "invasives."

SECTION 1 creates a definition for crayfish in ch. NR 40.

SECTION 2 revises the following NR 40 definitions:

- The definition of "disposal" is amended to include the consumption of an invasive species as food.
- The definition of "invasive species" is amended to clarify that the department does not consider organisms that are dead as "invasive species".
- The definition of "pet" is amended to clarify that fish, crayfish and other aquatic invertebrates are not pets. Due to the risk posed by fish, crayfish and by other aquatic invertebrates the definition is revised to exclude these organisms from the exemption provided for pets.
- The definition of "wild animal" is amended to exclude other aquatic invertebrates.

SECTIONS 2 and 32 remove eastern and western mosquitofish from the list of prohibited species under NR 40.04 and adds them to the list of "established nonnative fish species and established nonnative crayfish species" as defined in ch. NR 40.02. "Established nonnative fish species and established nonnative crayfish species" are regulated as a restricted species under ch. NR 40.05 (c) (1). Best management practices (BMPs) to reduce the risk of importing mosquitofish (*Gambusia affinis*) have been made available, but concerns remain because the BMPs do not provide a guarantee against possible enforcement action. In order to accommodate the use of imported bait that may be contaminated with the species, these revisions move the species from the prohibited category to the in the restricted fish category, "established nonnative fish species." This revision will not in itself authorize possession of mosquitofish, but would allow the department to permit possession in bait shipments and registered fish farm raceways, subject to specified conditions. This would enable the department to address concerns regarding the potential for dispersal of mosquitofish by bait dealers through additional requirements in permit conditions.

SECTION 3 clarifies the note on non-regulated species classification and removes the reporting and in-store education suggestions. Additionally, language on the beneficial use of non-restricted invasive species is removed as it creates the false impression that any beneficial use will exempt a species from listing.

SECTIONS 4 and 7 renumber the initial species listed in the NR 40 Prohibited Category to maintain alphabetical order.

SECTIONS 5, 8, 10, 12, 15, 17, 19, 21, 23, 25, 29, 31, 35 and 37 add new species to the NR 40 Prohibited Category. The below species proposed for addition to the prohibited category are invasive species that the department has determined are likely to survive and spread if introduced into the state, potentially causing economic or environmental harm or harm to human health, but which are not found in the state or in those regions of the state where the species are listed as prohibited in s. NR 40.04 (2), with the exception of isolated individuals, small populations or small pioneer stands of terrestrial species, or in the case of aquatic species, that are isolated to a specific watershed in the state or the Great Lakes, and for which statewide or regional eradication or containment may be feasible.

- *Caulerpa taxifolia* (Killer algae)
- *Achyranthes japonica* (Japanese chaff flower)
- *Akebia quinata* (Fiveleaf akebia or Chocolate vine)
- *Arundo donax* (Giant reed)
- *Azolla pinnata* (Mosquito fern)
- *Berberis vulgaris* (Common barberry)
- *Cardamine impatiens* (Narrow leaf bittercress)
- *Celastrus loeseneri* (Asian loeseneri bittersweet)
- *Centaurea diffusa* (Diffuse knapweed)
- *Centaurea repens* (Russian knapweed)
- *Digitalis lanata* (Grecian foxglove)
- *Dioscorea batatas* or *Dioscorea polystacha* (Chinese yam)
- *Eichhornia azurea* (Anchored water hyacinth)
- *Eichhornia crassipes* (Water hyacinth, floating)
- *Fallopia x bohemicum* or *F. x bohémica* or *Polygonum x bohémicum* (Bohemian knotweed)
- *Glossostigma cleistanthum* (Mudmat)
- *Hydrocotyle ranunculoides* (Floating marsh pennywort)
- *Hygrophila polysperma* (Indian swampweed)
- *Impatiens glandulifera* (Policeman's helmet)
- *Ipomoea aquatica* (Water spinach)
- *Limnophila sessiliflora* (Asian marshweed)
- *Linaria dalmatica* (Dalmatian toadflax) except in Juneau and Bayfield counties
- *Lythrum virgatum* (Wanded loosestrife)
- *Nelumbo nucifera* (Sacred lotus)
- *Oenanthe javanica* (Java waterdropwort or Vietnamese parsley)
- *Oplismenus hirtellus* ssp. *undulatifolius* (Wavy leaf basket grass)
- *Ottelia alismoides* (Ducklettuce)
- *Petasites hybridus* (Butterfly dock)
- *Phellodendron amurense* (Amur cork tree) except male cultivars and seedling rootstock
- *Pistia stratiotes* (Water lettuce)
- *Ranunculus ficaria* (Lesser celandine)

- *Rubus armeniacus* (Himalayan blackberry)
- *Sagittaria sagittifolia* (Hawaii arrowhead)
- *Salvinia herzogii* (Giant salvinia)
- *Salvinia molesta* (Giant salvinia)
- *Solidago sempervirens* (Seaside goldenrod) except in Kenosha, Milwaukee and Racine counties
- *Sorghum halepense* (Johnsongrass)
- *Stratiotes aloides* (Water soldiers)
- *Taeniatherum caput-medusae* (Medusahead)
- *Tussilago farfara* (Colt's foot)
- *Typha domingensis* (Southern cattail)
- *Typha laxmannii* (Graceful cattail)
- *Wisteria floribunda* (Japanese wisteria)
- *Wisteria sinensis* (Chinese wisteria)
- *Dikerogammarus villosus* (Killer shrimp)
- *Limnoperna fortunei* (Golden Mussel)
- *Melanoides tuberculata* (Malaysian trumpet snail)
- *Dendroctonus ponderosae* (Mountain pine beetle)
- *Geosmithia morbida* (Thousand cankers disease of walnut)
- *Pityophthorus juglandis* (Walnut twig beetle)
- *Myocastor coypus* (Nutria)

SECTIONS 6 and 45 clarify that certain invasive plants are listed under both the prohibited and restricted categories in ch. NR 40. These plant species are sometimes called split listed plants. Split listed plants are currently isolated to a specific region in the state but if introduced into other parts of the state are likely to survive and spread, potentially causing significant environmental or economic harm or harm to human health. These plants are regulated as restricted in the counties listed that have known populations and are prohibited elsewhere in the state.

SECTIONS 9, 11, 14, 18, 20, 22, 24 and 30 update the list of county exceptions for split listed plants in the NR 40 Prohibited Category. Species are restricted in the listed counties and are prohibited elsewhere.

- *Anthriscus sylvestris* (Wild chervil) except in Adams, Barron, Chippewa, Crawford, Columbia, Dane, Dodge, Dunn, Fond du Lac, Green, Green Lake, Iowa, Jefferson, Juneau, Kenosha, Lacrosse, Lafayette, Marquette, Milwaukee, Monroe, Ozaukee, Polk, Racine, Richland, Rock, Sauk, Sheboygan, Taylor, Vernon, and Walworth, Waukesha, and Washington counties
- *Bunias orientalis* (Hill mustard) except in Dane, Grant, Green and Iowa, Lafayette, and Rock counties
- *Cirsium palustre* (European marsh thistle) except in Ashland, Bayfield, Chippewa, Clark, Door, Florence, Forest, Iron, Langlade, Lincoln, Marathon, Marinette, Menominee, Oconto, Oneida, Price, Rusk, Sawyer, Shawano, Taylor and Vilas counties
- *Conium maculatum* (Poison hemlock) except in Crawford, Dane, Grant, Green, Iowa, Jefferson, Kenosha, Lafayette, Milwaukee, Ozaukee, Racine, Richland, Rock, and Sauk, Sheboygan, Walworth, and Waukesha counties
- *Epilobium hirsutum* (Hairy willow herb) except in Brown, Calumet, Door, Kenosha, Kewaunee, and Manitowoc county counties
- *Glyceria maxima* (Tall or reed mannagrass) except in Brown, Calumet, Columbia, Dane, Dodge, Door, Fond du Lac, Green, Jefferson, Kenosha, Kewaunee, Manitowoc, Milwaukee, Outagamie, Ozaukee, Racine, Rock, Sheboygan, Walworth, Washington, Waukesha and Winnebago counties

- *Humulus japonicus* (Japanese hops) except in Buffalo, Crawford, Dane, Grant, Green, Iowa, Jackson, La Crosse, Lafayette, Monroe, Pepin, Richland, Sauk, Trempealeau, and Vernon counties
- *Leymus arenarius* or *Elymus arenarius* (Lyme grass or sand ryegrass) except in Door, Kenosha, Kewaunee, Manitowoc, Milwaukee, Ozaukee, Racine, and Sheboygan counties
- *Lonicera maackii* (*Amur honeysuckle*) except in Adams, Brown, Buffalo, Calumet, Columbia, Crawford, Dane, Dodge, Fond du Lac, Grant, Green, Green Lake, Iowa, Jefferson, Juneau, Kenosha, Kewaunee, La Crosse, Lafayette, Manitowoc, Marquette, Milwaukee, Monroe, Outagamie, Ozaukee, Racine, Richland, Rock, Sauk, Sheboygan, Vernon, Walworth, Washington, Waukesha, Waupaca, Waushara and Winnebago counties
- *Torilis japonica* (Japanese hedgeparsley or erect hedgeparsley) ~~in Ashland, Barron, Bayfield, Buffalo, Burnett, Chippewa, Clark, Douglas, Dunn, Eau Claire, Florence, Forest, Iron, Jackson, Lincoln, Oneida, Pepin, Pierce, Polk, Price, Rusk, St. Croix, Sawyer, Trempealeau, Taylor, Washburn, and Wood~~ except in Adams, Brown, Calumet, Columbia, Crawford, Dane, Dodge, Door, Fond du Lac, Grant, Green, Green Lake, Iowa, Jefferson, Juneau, Kenosha, Kewaunee, La Crosse, Lafayette, Langlade, Manitowoc, Marathon, Marinette, Marquette, Menominee, Milwaukee, Monroe, Oconto, Outagamie, Ozaukee, Portage, Racine, Richland, Rock, Sauk, Shawano, Sheboygan, Vernon, Walworth, Washington, Waukesha, Waupaca, Waushara, and Winnebago counties

SECTIONS 13 and 36 remove the following species from the NR 40 Prohibited Category.

- *Chelidonium majus* (Celandine), a split listed plant, is proposed to be listed in the Restricted Category statewide.
- *Agrius planipennis* (Emerald ash borer) is proposed to be moved from the Prohibited Category to the Restricted Category.
- *Amyntas* or *Amyntus* species (Crazy worm) are proposed to be moved from the Prohibited Category to the Restricted Category.
- *Cryptococcus fagisuga* (Scale associated with beech bark disease) is proposed for delisting from both of Wisconsin's regulated invasive species lists.

SECTIONS 16, 26, 27, 28, and 38 revise scientific and common names in the NR 40 Prohibited Category to include accepted synonyms. Giant knotweed is renumbered to maintain alphabetical order.

- *Dioscorea oppositifolia* (~~Chinese~~ Indian yam)
- *Egeria densa* (Brazilian waterweed or wide-leaf anacharis)
- *Polygonum perfoliatum* or Persicaria perfoliata (Mile-a-minute vine)
- *Fallopia sachalinensis* or Polygonum sachalinense (Giant knotweed)
- *Pueraria montana* or P. lobata (Kudzu)
- ~~Geomyces~~ Pseudogymnoascus *destructans* (*white-nose syndrome fungal pathogen*)

SECTIONS 25, 43 and 62 revise the regulated category of *Phragmites australis* (Phragmites or Common reed) to both the NR 40 Prohibited and Restricted Categories. And replicated the NR 40 Restricted Category exemption for use in a wastewater treatment facility authorized by a WPDES permit under ch. 283, Stats. in the NR 40 Prohibited Category. The species is restricted in the listed counties and are prohibited elsewhere: Brown, Calumet, Columbia, Dane, Dodge, Door, Florence, Fond du Lac, Forest, Green Lake, Jefferson, Kenosha, Kewaunee, Langlade, Manitowoc, Marathon, Marinette, Marquette, Menominee, Milwaukee, Oconto, Outagamie, Ozaukee, Portage, Racine, Rock, Shawano, Sheboygan, Walworth, Washington, Waukesha, Waupaca, Waushara, and Winnebago counties.

SECTIONS 33 and 34 simplify the rule language and facilitate compliance by removing the list of nonviable fish species the department has determined to date and by referencing the definition of nonviable. The department has a definition of nonviable and a protocol for determining if a fish is nonviable.

SECTIONS 35 and 67 adds viable genetically modified (GM) native and nonnative fish species to the list of restricted species and exempts all GM fish from the prohibited category. GM fish are available for sale or may soon be available for aquaculture. Potential GM alterations, such as increased rate of growth, substantially alter how these organisms interact with the environment. The invasive species rule defines what it means to be genetically modified but does not differentiate GM fish from their parent species. Given that the risk they pose may differ, a mechanism to evaluate them separately is needed. These proposed revisions would allow for the continued sale of nonviable genetically modified aquarium fish such as the "GloFish™".

SECTIONS 38 and 71 clarify that the exemption for pets only applies to pets obtained prior to their being listed as prohibited and restricted and the exemption would not allow for possession of offspring covered under the exemption to be transferred, except as a gift for restricted species only.

SECTIONS 39 and 72 remove the unnecessary note defining "wild animal" as it is already defined in NR 40.02 of this chapter.

SECTIONS 40, 41, 73, and 74 clarify that the transport, possession, transfer, or introduction of forest pests under quarantine is allowed within quarantine zones. Both prohibited and restricted forest pests may be subject to quarantines zones. If a quarantine is in effect, the intent of the invasive species rule in restricting the movement of invasive species has been met. Revisions specify that if movement of regulated materials such as untreated wood is taking place within a quarantine zone then the invasive species rule does not apply.

SECTIONS 42 and 80 update the list of DNR reporting and permitting contacts to a single "Statewide Invasive Species Coordinator, SS/7" in Wisconsin's regulated invasive species rule to simplify the reporting and permitting process and to enable the department to issue and monitor permits and reports statewide.

SECTIONS 43 and 79 create an exemption for the department staff to transport, possess, transfer, or introduce a regulated invasive plant, in the performance of their official duties.

SECTIONS 44, 75, 76, and 77 remove reporting requirement for restricted aquatic plants, algae and cyanobacteria and would allow the use of any restricted aquatic/wetland plants for identification, education, control or disposal without a permit.

SECTIONS 46 and 68 renumber the initial species listed in the NR 40 Restricted Category to maintain alphabetical order

SECTIONS 47, 49, 51, 53, 55, 57, 59, 61, 63, 65, 67 and 69 add new species to the NR 40 Restricted Category. The below species proposed for addition to the restricted category are invasive species that the department has determined are already established in the state or in that region of the state where the species are listed as restricted in s. NR 40.05 (2) and that causes or has the potential to cause economic or environmental harm or harm to human health, and for which statewide or regional eradication or containment may not be feasible. Plants proposed for addition to the restricted list will have the rule's effective date listed in a note, added by the Legislative Reference Bureau when the rule is published.

Restricted plants not also listed as prohibited under s. NR 40.04 (2) (b) and located in Wisconsin prior to the date the species is listed in NR 40.05 (2) may be transported, transferred, and introduced without a permit for a period not to exceed 3 years for herbaceous plants and woody vines, or 5 years for trees and shrubs, from the time that the species were included for listing by the department under this chapter.

- *Acer tataricum* subsp. *ginnala* (Amur maple) except all cultivars
- *Aegopodium podagraria* (Bishop's goutweed)
- *Alnus glutinosa* (Black alder) except all cultivars and hybrids
- *Artemisia absinthium* (Wormwood)
- *Berberis thunbergii* (Japanese barberry). This restriction only applies to the parent type, the variety *atropurpurea*, the hybrid of *B. thunbergii* x *B. Koreana*, and the following cultivars. *Berberis thunbergii* cultivars: Sparkle, 'Anderson' Lustre Green™, Erecta, 'Bailgreen' Jade Carousel®, Angel Wings, Painter's Palette, Inermis ('Thornless'), Pow Wow, Golden Ring, Kellers, Kobold, 'JN Variegated' Stardust™ and Antares. Variety *atropurpurea* cultivars: Marshall Upright ('Erecta'), Crimson Velvet, 'Bailtwo' Burgundy Carousel®, Red Rocket, 'Monomb' Cherry Bomb™, 'Bailone' Ruby Carousel®, JN Redleaf, Rose Glow and Silver Mile. Hybrid of *B. thunbergii* x *B. koreana* cultivars: Tara and 'Bailsel' Golden Carousel®.
- *Caragana arborescens* (Siberian peashrub) except the cultivars Lorbergii, Pendula, and Walkerii
- *Centaurea jacea* (Brown knapweed)
- *Centaurea nigra* (Black knapweed)
- *Centaurea nigrescens* (Tyrol knapweed)
- *Coronilla varia* (Crown vetch)
- *Euonymus alatus* (Burning bush) including the cultivar 'Nordine' and excluding all other cultivars
- *Filipendula ulmaria* (Queen of the meadow)
- *Galium mollugo* (White bedstraw)
- *Impatiens balfourii* (Balfour's touch-me-not)
- *Iris pseudacorus* (Yellow iris)
- *Knautia arvensis* (Field scabiosa)
- *Linaria dalmatica* (Dalmation toadflax) in Juneau and Bayfield counties
- *Lysimachia nummularia* (Moneywort) except the cultivar Aurea and yellow and gold leaf forms
- *Lysimachia vulgaris* (Garden yellow loosestrife)
- *Morus alba* (White mulberry) except male cultivars
- *Myosotis scorpioides* (Aquatic forget-me-not)
- *Myosotis sylvaticum* (Woodland forget-me-not)
- *Najas marina* (Spiny naiad)
- *Phalaris arundinacea* var. *picta* (ribbon grass or gardener's garters) and other ornamental variegated varieties and cultivars. This restriction only applies to the ornamental variegated varieties and cultivars of *Phalaris arundinacea* and does not include the parent type reed canary grass.
- *Pimpinella saxifraga* (Scarlet pimpernel)
- *Populus alba* (White poplar)
- *Robinia hispida* (Rose acacia)
- *Robinia pseudoacacia* (Black locust) except all cultivars
- *Solidago sempervirens* (Seaside goldenrod) in Kenosha, Milwaukee and Racine counties
- *Ulmus pumila* (Siberian elm) except hybrids and individuals used as rootstock
- *Valeriana officinalis* (Garden heliotrope)
- *Cipangopaludina japonica* (Japanese trapdoor snail or Japanese mystery snail)
- *Valvata piscinalis* (European valve snail)

- *Viviparus georgianus* (Banded mystery snail)
- *Agrius planipennis* (Emerald ash borer)
- *Amyntas* or *Amyntus* species (Crazy worm)

SECTION 48, 50, 52, 54, 56, 58 and 60 update the list of counties with restricted designations for species in the NR 40 Restricted Category (prohibited elsewhere in the state):

- *Anthriscus sylvestris* (Wild chervil) in Adams, Barron, Chippewa, Crawford, Columbia, Dane, Dodge, Dunn, Fond du Lac, Green, Green Lake, Iowa, Jefferson, Juneau, Kenosha, Lacrosse, Lafayette, Marquette, Milwaukee, Monroe, Ozaukee, Polk, Racine, Richland, Rock, Sauk, Sheboygan, Taylor, Vernon, and Walworth, Waukesha, and Washington counties
- *Bunias orientalis* (Hill mustard) in Dane, Grant, Green, Iowa, and Lafayette, and Rock counties
- *Chelidonium majus* (Celandine) ~~except in Ashland, Barron, Bayfield, Burnett, Chippewa, Douglas, Dunn, Florence, Forest, Iron, Langlade, Lincoln, Marinette, Oconto, Oneida, Polk, Price, Rusk, St. Croix, Sawyer, Taylor, Vilas and Washburn counties.~~ This species was split-listed and will now be restricted statewide.
- *Conium maculatum* (Poison hemlock) in Crawford, Dane, Grant, Green, Iowa, Jefferson, Kenosha, Lafayette, Milwaukee, Ozaukee, Racine, Richland, Rock, and Sauk, Sheboygan, Walworth, and Waukesha counties
- *Epilobium hirsutum* (Hairy willow herb) in Brown, Calumet, Door, Kenosha, Kewaunee, and Manitowoc county counties
- *Glyceria maxima* (Tall or reed mannagrass) in Brown, Calumet, Columbia, Dane, Dodge, Door, Fond du Lac, Green, Jefferson, Kenosha, Kewaunee, Manitowoc, Milwaukee, Outagamie, Ozaukee, Racine, Rock, Sheboygan, Walworth, Washington, Waukesha and Winnebago counties
- *Humulus japonicus* (Japanese hops) in Buffalo, Crawford, Dane, Grant, Green, Iowa, Jackson, La Crosse, Lafayette, Monroe, Pepin, Richland, Sauk, Trempealeau, and Vernon counties
- *Leymus arenarius* or *Elymus arenarius* (Lyme grass or sand ryegrass) in Door, Kenosha, Kewaunee, Manitowoc, Milwaukee, Ozaukee, Racine, and Sheboygan counties
- *Lonicera maackii* (*Amur honeysuckle*) in Adams, Brown, Buffalo, Calumet, Columbia, Crawford, Dane, Dodge, Fond du Lac, Grant, Green, Green Lake, Iowa, Jefferson, Juneau, Kenosha, Kewaunee, La Crosse, Lafayette, Manitowoc, Marquette, Milwaukee, Monroe, Outagamie, Ozaukee, Racine, Richland, Rock, Sauk, Sheboygan, Vernon, Walworth, Washington, Waukesha, Waupaca, Waushara and Winnebago counties
- *Torilis japonica* (Japanese hedgeparsley or erect hedgeparsley) ~~except in Ashland, Barron, Bayfield, Buffalo, Burnett, Chippewa, Clark, Douglas, Dunn, Eau Claire, Florence, Forest, Iron, Jackson, Lincoln, Oneida, Pepin, Pierce, Polk, Price, Rusk, St. Croix, Sawyer, Trempealeau, Taylor, Washburn, and Wood~~ in Adams, Brown, Calumet, Columbia, Crawford, Dane, Dodge, Door, Fond du Lac, Grant, Green, Green Lake, Iowa, Jefferson, Juneau, Kenosha, Kewaunee, La Crosse, Lafayette, Langlade, Manitowoc, Marathon, Marinette, Marquette, Menominee, Milwaukee, Monroe, Oconto, Outagamie, Ozaukee, Portage, Racine, Richland, Rock, Sauk, Shawano, Sheboygan, Vernon, Walworth, Washington, Waukesha, Waupaca, Waushara, and Winnebago counties

SECTION 64 and 66 revises scientific names in the NR 40 Restricted Category to include accepted synonyms and renumbers to maintain alphabetical order.

- *Fallopia japonica* ~~var. japonica~~ or *Polygonum cuspidatum* (Japanese knotweed)
- *Tanacetum vulgare* (Tansy), except the cultivars Aureum and ~~Compactum~~ Crispum

SECTION 70 removes the red-eared slider with a carapace (top shell) less than 4 inches from the NR 40

Restricted Category as the sale of turtles of the size are already banned via Code of Federal Regulation – Title 21.

SECTION 78 removes the rusty crayfish from the list of species that may be transported, possessed, or transferred without a permit. Additionally this section clarifies that the rusty crayfish may be taken from the Mississippi River for use as bait on the Mississippi River as authorized under ch. NR 19.27 (4) (a) 1. a. While rusty crayfish (*Orconectes rusticus*) are abundant in many lakes, there are many lakes that are free of this species and their movement should be limited as with other restricted species. This revision will allow live crayfish to be used as bait on the Mississippi River as per NR 19 and will eliminate the exemption that allows live rusty crayfish to be transported.

SECTION 79 clarifies rule language pertaining to dead crayfish as bait, and creates a phase out period for restricted plants to facilitate compliance. The department exemption is explained with SECTION 41.

- The use of dead crayfish, including rusty crayfish, on all waters as bait are not prohibited under NR 40, but may be restricted under other applicable department rules relating to the use of bait for fishing purposes.
- A phase out period for restricted plants is created, where they may be transported, transferred, and introduced without a permit for a period not to exceed 3 years for herbaceous plants and woody vines, or 5 years for trees and shrubs, from the time that the species was added to the NR 40 Restricted Category. All plants listed in the NR 40 Prohibited Category are not included in this exemption. Plants added to the restricted list after 2009 have the rule's effective date listed. All plants without an effective date have been restricted since 2009 and remain restricted. Growing out potted trees and shrubs to a marketable size takes several years. When new species that are grown commercially in Wisconsin are added to the invasive species rule, businesses that have these species in inventory may have several years invested in their production. A phase out period for newly listed, restricted plants will reduce the burden for businesses to comply with the invasive species rule. As a similar but shorter investment may be made in planting crops for seed production or herbaceous perennial plants, a two tiered 3 and 5 year phase out period is proposed. This phase out applies only to restricted plants, not prohibited or split-listed species.

SECTION 81 updates the department's website address.

6. Summary of, and Comparison with, Existing or Proposed Federal Regulations: There are no known proposed federal regulations that would provide the ability for the state to act when newly establishing invasive species are discovered. Existing regulations address a narrow subset of noxious weeds under the Federal Noxious Weed Act (7 U.S.C. 2801 etseq; 88 Stat, 2148) or animals under the Lacey Act (18 U.S.C. 42-43, 16 U.S.C. 3371-3378), primarily species that are already too widespread for a more cost-effective prevention approach.

7. Comparison with Rules in Adjacent States:

- Illinois: The Illinois Department of Agriculture maintains a statutory list under Illinois Noxious Weed Law of about 9 species (www.agr.state.il.us/Laws/Regs/8iac220.pdf) and the Illinois Department of Natural Resources links to a more comprehensive list of 102 invasive species and a shorter list of plants, animals, insects and diseases (www.invasive.org/illinois/SpeciesofConcern.html).
- Iowa: Regulates several species of aquatic invasive plants, aquatic invasive invertebrates, and invasive fish

www.iowadnr.gov/idnr/Fishing/AboutFishinginIowa/FightingInvasiveSpecies/AquaticInvasiveInvertebrates.aspx)

- Michigan: Regulates a number of invasive aquatic plants - 18, fish - 12 plus all snakeheads, and other animals - 11 through Act 451 and requires prevention actions especially for aquatic invasive species ([www.legislature.mi.gov/\(S\(brw3y4554cagkv4554a24a45\)\)/documents/mcl/pdf/mcl-451-1994-iii-2-1-wildlife-conservation-413.pdf](http://www.legislature.mi.gov/(S(brw3y4554cagkv4554a24a45))/documents/mcl/pdf/mcl-451-1994-iii-2-1-wildlife-conservation-413.pdf))
- Minnesota: Regulates both aquatic and terrestrial invasive species in a process similar to Wisconsin with prohibited, restricted, and non-regulated categories as well as prevention requirements including regulating the transport of water. The species regulated as prohibited include aquatic plants - 14 plus all federally listed species except *Ipomoea aquatica*, fish - 14, aquatic invertebrates - 5, mammals - 4. The species regulated as restricted include aquatic plants - 6, birds - 3, fish - 5, and aquatic invertebrates - 3. In addition all crayfish are regulated.

8. Summary of factual data and analytical methodologies:

Following the enactment of ch. NR 40, Wis. Adm. Code in September of 2009, a list of species remained in need of assessment. These species and additional species presented to the department formed the list of species considered during NR 40 revisions. For each considered species, department staff completed a literature review to establish the potential ecological and economic threats presented by the species.

In 2012, at the request of the Wisconsin Invasive Species Council, species assessment groups (SAGs) convened with the charge of recommending a regulatory category (Prohibited or Restricted) or non-regulatory category (Caution, Pending, Non-restricted, or not invasive) for each considered species to the Council. SAGs are comprised of taxa experts representing governmental, industrial, environmental, educational, and scientific organizations. SAGs are facilitated by DNR staff species experts. Each group utilized the completed literature reviews and professional expert knowledge of the species to make their determinations. The literature reviews are available for review.

For the revision process, eleven SAGs were formed:

- | | |
|---|---|
| 1) Terrestrial Plants: Trees, Shrubs and Vines | 6) Aquatic Invertebrates (besides crayfish) |
| 2) Terrestrial Plants: Ornamental Forbs and Grasses | 7) Fish and Crayfish |
| 3) Terrestrial Plants: Other Forbs and Grasses | 8) Plant Pests |
| 4) Terrestrial Plants: Forage, Turf and Biofuels | 9) Terrestrial Invertebrates |
| 5) Aquatic Plants, Algae and Cyanobacteria | 10) Vertebrates (except fish) |
| | 11) Fish and Wildlife Diseases (Fungi) |

After complete review of the species at hand, each SAG formalized a recommended designation for each species via Species Assessment Group Forms. These forms are available for review. On October 22, 2012 the SAGs presented their recommendations to the Wisconsin Invasive Species Council. The Council subsequently voted and approved the SAG recommendations with minor amendments. The Council then advised the DNR to consider the Council recommendations to revise the invasive species rule.

DNR staff experts on the department Invasive Species Team met in 2012 to consider language changes that were needed in the rule to clarify meaning, ensure consistency with existing rules, and assure practicality of the rule. These language changes were developed with input from SAG groups and industry experts as appropriate and are reflected in the board packet. An overview of these changes was presented to the Council for review and to solicit feedback.

In the winter of 2012-2013, DNR staff presented the Council's recommendations to the public in a series

of informal public meetings. The department concurrently solicited public comments from scientific and industry partners as well as the general public. In the spring and summer of 2013 DNR staff used these comments and additional research to further refine DNR's recommended amendments to the rule.

9. Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:

Small Business Regulatory Flexibility Analysis

Pursuant to s. 227.127, Wis. Stats., the department is required to solicit comments on the economic impact of a proposed rule. Small businesses, as defined in s. 227.114(1), Wis. Stats., were asked to identify themselves as a small business in their comments. Following the public comment period on the economic impacts, a revised "Fiscal Analysis and Economic Impact Analysis" (EIA) was prepared containing relevant information that the department received. The department will submit the rule package and economic impact analysis to the Wisconsin Legislative Council under s. 227.15, Wis. Stats., along with the public hearing notice in accordance with ss. 227.17 and 227.18, Wis. Stats.

A small business regulatory flexibility analysis that contains the following provisions in s. 227.19 (3) (e), Stats., will be included in the final rule order:

1. The agency's reason for including or failing to include in the proposed rule any of the methods specified under s. 227.114 (2) for reducing its impact on small businesses.
2. A summary of the issues raised by small businesses during the hearings on the proposed rule, any changes in the proposed rule as a result of alternatives suggested by small businesses and the reasons for rejecting any alternatives suggested by small businesses.
3. The nature of any reports and the estimated cost of their preparation by small businesses that must comply with the rule.
4. The nature and estimated cost of other measures and investments that will be required of small businesses in complying with the rule.
5. The additional cost, if any, to the agency of administering or enforcing a rule which includes any of the methods specified under s.227.114 (2).
6. The impact on public health, safety and welfare, if any, caused by including in the rule any of the methods specified under s 227.114 (2).

The department's email distribution list used to solicit comments includes small businesses and small business associations. The distribution list will be available upon request to the Governor's Office of Regulatory Compliance.

10. Effect on small businesses: We expect considerable interest in the proposed rule revisions. Interested parties may include the nursery, landscape, forestry, seed and agriculture industries, fish farmers, bait dealers, commercial fishers and wholesale fish dealers, aquarium and ornamental fish dealers, game farms, anglers, landowners, gardeners, county and municipal governments, Native American Indian tribes, lake districts, state agencies, and environmental and conservation organizations. The Wisconsin Invasive Species Council reviewed and assessed a list of species for inclusion in the proposed rule revision and actively engaged their contacts in the process. The Council includes representatives the Departments of Natural Resources; Administration; Agriculture, Trade and Consumer Protection; Tourism; Transportation and seven other Council members that are drawn from agriculture; nursery industry; NGOs (TNC, Wisconsin Lakes); UW; and forestry.

As part of the information gathering and outreach process, Invasive Species Outreach Specialist Chrystal

Schreck sent a letter to 600 retailers and growers and approximately 1100 licensed growers and dealers from the November 2, 2012 DATCP list of license holders updating them on the process in December, 2012. A series of informal public information sessions about the proposed changes to the rule were held from February 25 - March 15 in Madison, Milwaukee, Spooner, Rhinelander, and La Crosse to inform interested parties that the revisions were under development and to solicit informal comments on the potential impact of the rule. Approximately 41 people attended, and 52 public comments have been received during the informal discussion period.

For small businesses growing woody plants, a number of years have been invested into the infrastructure to grow particular species. To minimize economic impact of listing new species that are invasive in Wisconsin a phase out period of 5 years for trees and shrubs, and 3 years for all other plants once listed as Restricted would both reduce the economic impact and provide a defined period for achieving compliance without using permits for commercial activities. The compliance period would begin once the rule is in effect. Prohibited species would be immediately subject to regulation.

Through staff work with pet stores and other small businesses that had not previously been regulated by the DNR we learned that personal communication, clear and concise guides to regulated species, and education were important. Ensuring personal contact and taking an "education first" approach is consistent with DNR's policy of stepped enforcement and will be maintained for all taxa groups regulated under the invasive species rule.

Enforcement and administration for the invasive species rule and permits are already in place. Some changes due to the increased number of species requiring review and training for identification are anticipated but cost are expected to be absorbed within existing DNR budgets and by DATCP staff who enforce provisions of the rule at licensed nurseries. Staff from both agencies have met and developed guidelines to continue a partnership of joint and cooperative enforcement. Management costs may rise with the addition of new species to the list but as the options for cost-sharing for control have not been funded in the past, it is unlikely that there will be any discernible operational impact. The policy of stepped enforcement is compatible with the changes proposed to the rule as "education first" is the priority for compliance.

Effect on local governmental units: Pursuant to s. 227.137 Wis. Stats., the department solicited comments on the economic impact of the proposed rule, and coordinated with local governments that requested in the preparation of an Economic Impact Analysis (EIA). The Village of Cecil requested the department coordinate with them in preparation of the EIA. Department staff have been in consultation with the Village President.

Summary of Expected Economic and Fiscal Impacts: The economic cost of listing a species is highly dependent on the impact it is having now, how wide spread it already is, how it is currently being used in trade, and the availability of species that can be substituted for the proposed species. The assumption of a significant impact is a conservative estimate that does not generally take into account the availability of substitute non-invasive species or the value of preventing the introductions of invasive species. The impact of removing newly regulated organisms from trade has a potentially high short term impact. It is anticipated that businesses will substitute alternative, non-invasive species over time. The high estimate also reflects the diversity of species under assessment, as well as the fact that a number of these species may be used by various sectors of society. During the species assessment process, the economic costs and benefits were discussed for each species considered for inclusion in the rule revisions. Certain species may have larger potential economic impacts than others and will be highlighted in the discussion that follows.

Summary of Expected Benefits of Revisions to the Rule: Updating the regulated list of invasive species under NR 40 to include species that if removed from trade, or subject to reasonable precautions to prevent their spread can be contained, slowed, or prevented from establishing in Wisconsin reduces the ecological and economic harm caused by these invasive species in the future. Listing species under the invasive species rule encourages action across jurisdictions and can focus control and containment efforts, improving their effectiveness. Invasive species are species that are non-native to Wisconsin and cause or have the potential to cause economic or environmental harm or harm to human health. By regulating these species that have been identified as causing or potentially causing harm and that have the potential to be controlled through regulation the intent is to create the largest possible benefit to both the economy and the department's mission to protect and manage the resources of the state. These rule revisions provide valuable economic benefits by reducing future control and management costs for regulated invasive species.

The alternative considered in the detailed Economic Impact Analysis report is not listing additional invasive species for regulation. Past efforts to quantify where the economic impact from controlling invasive species falls have identified that individual landowners generally bear the highest cost to mitigate the damage these species cause while the economic benefits of continued use of a species are limited to a much smaller contingent. The distributed impact of not listing species that are invasive species is likely to be greater.

Long Range Projections: The long range economic impacts include control costs, costs to comply with both the list of regulated species and with the required reasonable precautions, and increased enforcement burdens. The control costs for prohibited species where control is required when feasible will increase somewhat with the increased number of species listed as some of these species are likely to be introduced to Wisconsin and spread. However, it is anticipated that with a changing climate, continually increasing trade and exchange of materials, and the dispersal from populations already established, that the cost to control invasive species in Wisconsin will increase independent of the proposed regulation, and that regulation will reduce the number of these species being introduced.

The increased number of regulated species will reduce or eliminate those particular species in trade without restricting commerce overall since substitution of non-regulated species is likely. The long range implications for businesses are generally low as the initial cost to remove a species from sale and develop sources and propagation methods for substitute species will occur over a 1-7 year period and not reoccur. Costs to comply with reasonable precautions will be ongoing and are likely to decrease with time as new methods and tools increase the efficiency of these actions. The required reasonable precautions will continue to have benefits by reducing the likelihood that multiple species will spread through known pathways such as mowing equipment, forestry activities, boating, and nursery sales. The benefits of preventing the spread of invasive species will continue as long as the requirement to employ reasonable precautions remains in place.

The increased enforcement burden will require that both Department of Natural Resources and Department of Agriculture, Trade and Consumer Protection staff will spend more time reviewing and learning the listed species and working with regulated parties. It is anticipated that these increased costs will be absorbed by the existing staff and program.

11. A copy of any comments and opinion prepared by the Board of Veterans Affairs under s. 45.03 (2m), Stats., for rules proposed by the Department of Veterans Affairs: No information.

12. Agency Contact Person: Dreux Watermolen, Section Chief, Social Science Services Section, 101 S. Webster St., P.O. Box 7921 SS/7, Madison, WI 53707-7921. (608) 266-8931, Invasive.Species@Wisconsin.gov.

13. Place where comments are to be submitted and deadline for submission: Comments on this proposed rule may be submitted to the agency contact person listed above. Written comments may also be submitted at a public hearing. Hearings dates and comment submission deadlines

SECTION 1. NR 40.02 (9m) is created to read:

NR 40.02 (9m) "Crayfish" means any decapod crustacean from the following families: *Astacidae*, *Cambaridae* and *Parastacidae*.

SECTION 2. NR 40.02 (14), (17), (24) (Note), (37) and (53) are amended to read:

NR 40.02 (14) "Disposal" means the lawful discharge, deposit, dumping or placing of any invasive species into or on any land or water in a manner that prevents the establishment, introduction or spread of the disposed species, or the consumption of the species as food.

(17) "Established nonnative fish species and established nonnative crayfish species" means alewife (*Alosa pseudoharengus*), common carp (*Cyprinus carpio*), eastern mosquitofish (*Gambusia holbrooki*), rainbow smelt (*Osmerus mordax*), round goby (*Neogobius melanostomus*), ruffe (*Gymnocephalus cernuus*), sea lamprey (*Petromyzon marinus*), three-spine stickleback (*Gasterosteus aculeatus*), tubenose goby (*Proterorhinus marmoratus*), white perch (*Morone americana*), ~~and~~ rusty crayfish (*Orconectes rusticus*), and western mosquitofish (*Gambusia affinis*).

(24) (Note) 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. The department does not consider dead specimens or organisms that are dead, not revivable and no longer capable of living, growing, developing, reproducing, and functioning as 'invasive species'.

(37) "Pet" means an animal raised or kept for companionship and generally kept indoors, in an enclosure or otherwise confined or restrained, and not allowed to roam freely out-of-doors. 'Pet' does not include fish and crayfish, or other aquatic invertebrates.

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

SECTION 3. NR 40.03 (Note) is amended to read:

NR 40.03 (Note) Note: For informational and educational purposes, the department informally maintains and updates as needed a caution list of invasive species and a list of non-restricted invasive species. Caution list invasive species are either not found in the state, or if they are, the extent of their presence or impact is not sufficiently documented. Caution list species may have shown evidence of invasiveness in similar environments in other states and could potentially spread in Wisconsin. Unlike the prohibited and restricted categories, caution list category invasive species are not regulated under this chapter. Additional information is needed to determine if caution list species belong in another category. ~~Any person finding a caution list species or knowing of its spread or lack thereof is encouraged to report the location, spread and impact (if known) to the department and to contain the spread of the species. Any person selling or distributing a caution list plant species is encouraged to distribute educational materials asking that the plants not be planted near wild, natural or environmentally sensitive areas. Non-restricted invasive species may have beneficial uses, but they also may have adverse environmental, recreational or economic impacts or cause harm to human health. Most of the non-restricted species are already~~

integrated into Wisconsin's ecosystems, and state-wide control or eradication is not practical or feasible. Non-restricted category invasive species are not regulated under this chapter. All other non-native species recommended for listing as invasive but not yet assessed for this rule are put on an informal pending list. Future rule revisions will involve assessing some species from this list.

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

~~Invasive Plant Coordinator — ER/6
Wisconsin Department of Natural Resources
PO Box 7924
Madison, WI 53707-7924~~

SECTION 4. NR 40.04 (2) (a) 1. is renumbered NR 40.04 (2) (a) 1r.

SECTION 5. NR 40.04 (2) (a) 1g. is created to read:
NR 40.04 (2) (a) 1g. *Caulerpa taxifolia* (Killer algae)

SECTION 6. NR 40.04 (2) (b) (intro.) is amended to read:
NR 40.04 (2) (b) (intro.) *Plants*. The following plant invasive species are prohibited statewide except in the counties listed where they are restricted under s. NR 40.05 (2) (b):

SECTION 7. NR 40.04 (2) (b) 1. is renumbered NR 40.04 (2) (b) 1s.

SECTION 8. NR 40.04 (2) (b) 1e. and 1m. are created to read:
NR 40.04 (2) (b) 1e. *Achyranthes japonica* (Japanese chaff flower)
1m. *Akebia quinata* (Fiveleaf akebia or Chocolate vine)

SECTION 9. NR 40.04 (2) (b) 2. is amended to read:
NR 40.04 (2) (b) 2. *Anthriscus sylvestris* (Wild chervil) except in Adams, Barron, Chippewa, Crawford, Columbia, Dane, Dodge, Dunn, Fond du Lac, Grant, Green, Green Lake, Iowa, Jefferson, Juneau, Kenosha, La Crosse, Lafayette, Marquette, Milwaukee, Monroe, Ozaukee, Polk, and Racine, Richland, Rock, Sauk, Sheboygan, Taylor, Vernon, Walworth, Waukesha, and Washington counties

SECTION 10. NR 40.04 (2) (b) 2e., 2m. and 2s. are created to read:
NR 40.04 (2) (b) 2e. *Arundo donax* (Giant reed)
2m. *Azolla pinnata* (Mosquito fern)
2s. *Berberis vulgaris* (Common barberry)

SECTION 11. NR 40.04 (2) (b) 3. is amended to read:
NR 40.04 (2) (b) 3. *Bunias orientalis* (Hill mustard) except in Dane, Grant, Green and Iowa, Lafayette, and Rock counties

SECTION 12. NR 40.04 (2) (b) 4g., 4n., 4r. and 4w. are created to read:
NR 40.04 (2) (b) 4g. *Cardamine impatiens* (Narrow leaf bittercress)
4n. *Celastrus loeseneri* (Asian loeseneri bittersweet)
4r. *Centaurea diffusa* (Diffuse knapweed)
4w. *Centaurea repens* (Russian knapweed)

SECTION 13. NR 40.04 (2) (b) 6. is repealed.

SECTION 14. NR 40.04 (2) (b) 7. and 8. are amended to read:

NR 40.04 (2) (b) 7. *Cirsium palustre* (European marsh thistle) except in Ashland, Bayfield, Chippewa, Clark, Door, Florence, Forest, Iron, Langlade, Lincoln, Marathon, Marinette, Menominee, Oconto, Oneida, Price, Rusk, Sawyer, Shawano, Taylor and Vilas counties

8. *Conium maculatum* (Poison hemlock) except in Buffalo, Crawford, Dane, Grant, Green, Iowa, Jefferson, Kenosha, La Crosse, Lafayette, Milwaukee, Monroe, Ozaukee, Racine, Richland, Rock, ~~and Sauk~~, Sheboygan, Trempealeau, Vernon, Walworth, and Waukesha counties

SECTION 15. NR 40.04 (2) (b) 10g. and 10r. are created to read:

NR 40.04 (2) (b) 10g. *Digitalis lanata* (Grecian foxglove)

NR 40.04 (2) (b) 10r. *Dioscorea batatas* or *Dioscorea polystacha* (Chinese yam)

SECTION 16. NR 40.04 (2) (b) 11. and 12. are amended to read:

NR 40.04 (2) (b) 11. *Dioscorea oppositifolia* (~~Chinese~~ Indian yam)

12. *Egeria densa* (Brazilian waterweed or wide-leaf anacharis)

SECTION 17. NR 40.04 (2) (b) 12g. and 12r. are created to read:

NR 40.04 (2) (b) 12g. *Eichhornia azurea* (Anchored water hyacinth)

12r. *Eichhornia crassipes* (Water hyacinth, floating)

SECTION 18. NR 40.04 (2) (b) 13. is amended to read:

NR 40.04 (2) (b) 13. *Epilobium hirsutum* (Hairy willow herb) except in Brown, Calumet, Door, Kenosha ~~county~~, Kewaunee, and Manitowoc counties

SECTION 19. NR 40.04 (2) (b) 13e. and 13s. are created to read:

NR 40.04 (2) (b) 13e. *Fallopia x bohemicum* or *F. x bohémica* or *Polygonum x bohémicum* (Bohemian knotweed)

13s. *Glossostigma cleistanthum* (Mudmat)

SECTION 20. NR 40.04 (2) (b) 14. and 16. are amended to read:

NR 40.04 (2) (b) 14. *Glyceria maxima* (Tall or reed mannagrass) except in Brown, Calumet, Columbia, Dane, Dodge, Door, Fond du Lac, Green, Jefferson, Kenosha, Kewaunee, Manitowoc, Milwaukee, Outagamie, Ozaukee, Racine, Rock, Sheboygan, Walworth, Washington, Waukesha and Winnebago counties

16. *Humulus japonicus* (Japanese hops) except in ~~Grant~~ Buffalo, Crawford, Dane, Grant, Green, Iowa, Jackson, La Crosse, Lafayette, Monroe, Pepin, Richland, Sauk, Trempealeau, and Vernon counties

SECTION 21. NR 40.04 (2) (b) 18d., 18h., 18p. and 18t. are created to read:

NR 40.04 (2) (b) 18d. *Hydrocotyle ranunculoides* (Floating marsh pennywort)

18h. *Hygrophila polysperma* (Indian swampweed)

18p. *Impatiens glandulifera* (Policeman's helmet)

18t. *Ipomoea aquatica* (Water spinach)

SECTION 22. NR 40.04 (2) (b) 22. is amended to read:

NR 40.04 (2) (b) 22. *Leymus arenarius* or *Elymus arenarius* (Lyme grass or sand ryegrass) except in Door, Kenosha, Kewaunee, Manitowoc, Milwaukee, Ozaukee, Racine, and Sheboygan ~~and Racine~~ counties

SECTION 23. NR 40.04 (2) (b) 22g. and 22r. are created to read:

NR 40.04 (2) (b) 22g. *Limnophila sessiliflora* (Asian marshweed)

22r. *Linaria dalmatica* (Dalmatian toadflax) except in Juneau and Bayfield counties

SECTION 24. NR 40.04 (2) (b) 24. is amended to read:

NR 40.04 (2) (b) 24. *Lonicera maackii* (Amur honeysuckle) except in Adams, Brown, Buffalo, Calumet, Columbia, Crawford, Dane, Dodge, Fond du Lac, Grant, Green, Green Lake, Iowa, Jefferson, Juneau, Kenosha, Kewaunee, La Crosse, Lafayette, Manitowoc, Marquette, Milwaukee, Monroe, Outagamie, Ozaukee, Racine, Richland, Rock, Sauk, Sheboygan, Vernon, Walworth, Washington, Waukesha, Waupaca, Waushara and Winnebago counties

SECTION 25. NR 40.04 (2) (b) 24m., 27m., 28e., 28m., 28s., 29d., 29h., 29p. and 29t. are created to read:

NR 40.04 (2) (b) 24m. *Lythrum virgatum* (Wanded loosestrife)

27m. *Nelumbo nucifera* (Sacred lotus)

28e. *Oenanthe javanica* (Java waterdropwort or Vietnamese parsley)

28m. *Oplismenus hirtellus* ssp. *undulatifolius* (Wavy leaf basket grass)

28s. *Ottelia alismoides* (Ducklettuce)

29d. *Petasites hybridus* (Butterfly dock)

29h. *Phellodendron amurense* (Amur cork tree) except male cultivars and seedling rootstock

29p. *Phragmites australis* (Phragmites or Common reed) non-native ecotype except in Brown, Calumet, Columbia, Dane, Dodge, Door, Florence, Fond du Lac, Forest, Green Lake, Jefferson, Kenosha, Kewaunee, Langlade, Manitowoc, Marathon, Marinette, Marquette, Menominee, Milwaukee, Oconto, Outagamie, Ozaukee, Portage, Racine, Rock, Shawano, Sheboygan, Walworth, Washington, Waukesha, Waupaca, Waushara, and Winnebago counties

29t. *Pistia stratiotes* (Water lettuce)

SECTION 26. NR 40.04 (2) (b) 30. is amended to read:

NR 40.04 (2) (b) 30. *Polygonum perfoliatum* or *Persicaria perfoliata* (Mile-a-minute vine)

SECTION 27. NR 40.04 (2) (b) 31. is renumbered NR 40.04 (2) (b) 13m. and amended to read:

NR 40.04 (2) (b) 13m. *Fallopia sachalinensis* or *Polygonum sachalinense* (Giant knotweed)

SECTION 28. NR 40.04 (2) (b) 32. is amended to read:

NR 40.04 (2) (b) 32. *Pueraria montana* or *P. lobata* (Kudzu)

SECTION 29. NR 40.04 (2) (b) 33g., 33r., 34b., 34f., 34k., 34p., 34s., 34w. and 34y. are created to read:

NR 40.04 (2) (b) 33g. *Ranunculus ficaria* (Lesser celandine)

33r. *Rubus armeniacus* (Himalayan blackberry)

34b. *Sagittaria sagittifolia* (Hawaii arrowhead)

34f. *Salvinia herzogii* (Giant salvinia)

34k. *Salvinia molesta* (Giant salvinia)

34p. *Solidago sempervirens* (Seaside goldenrod) except in Kenosha, Milwaukee and Racine counties

34s. *Sorghum halepense* (Johnsongrass)

34w. *Stratiotes aloides* (Water soldiers)

34y. *Taeniatherum caput-medusae* (Medusahead)

SECTION 30. NR 40.04 (2) (b) 36. is amended to read:

NR 40.04 (2) (b) 36. *Torilis japonica* (Japanese hedgeparsley or erect hedgeparsley) in ~~Ashland, Barron, Bayfield, Buffalo, Burnett, Chippewa, Clark, Douglas, Dunn, Eau Claire, Florence, Forest, Iron,~~

Jackson, Lincoln, Oneida, Popin, Pierce, Polk, Price, Rusk, St. Croix, Sawyer, Trempeleau, Taylor, Washburn, and Wood except in Adams, Brown, Calumet, Columbia, Crawford, Dane, Dodge, Door, Fond du Lac, Grant, Green, Green Lake, Iowa, Jefferson, Juneau, Kenosha, Kewaunee, La Crosse, Lafayette, Langlade, Manitowoc, Marathon, Marinette, Marquette, Menominee, Milwaukee, Monroe, Oconto, Outagamie, Ozaukee, Portage, Racine, Richland, Rock, Sauk, Shawano, Sheboygan, Vernon, Walworth, Washington, Waukesha, Waupaca, Waushara, and Winnebago counties

SECTION 31. NR 40.04 (2) (b) 37e., 37m., 37s., 40. and 41. are created to read:

- NR 40.04 (2) (b) 37e. *Tussilago farfara* (Colt's foot)
- 37m. *Typha domingensis* (Southern cattail)
- 37s. *Typha laxmannii* (Graceful cattail)
- 40. *Wisteria floribunda* (Japanese wisteria)
- 41. *Wisteria sinensis* (Chinese wisteria)

SECTION 32. NR 40.04 (2) (c) 4. and 5. are repealed.

SECTION 33. NR 40.04 (2) (c) 12. d. is amended to read:

NR 40.04 (2) (c) 12. d. ~~Fish species that the department has determined are nonviable~~ Nonviable fish species

SECTION 34. NR 40.04 (2) (c) 12. d. (Note) is repealed.

SECTION 35. NR 40.04 (2) (c) 12. e., (d) 5m., 8g. and 8r. are created to read:

- NR 40.04 (2) (c) 12. e. Genetically modified fish species
- (d) 5m. *Dikergammarus villosus* (Killer shrimp)
- 8g. *Limnoperna fortunei* (Golden Mussel)
- 8r. *Melanoides tuberculata* (Malaysian trumpet snail)

SECTION 36. NR 40.04 (2) (e) 2., 3., and 5. are repealed

SECTION 37. NR 40.04 (2) (e) 5e., 5m., 8. and (f) 1m. are created to read:

- NR 40.04 (2) (e) 5e. *Dendroctonus ponderosae* (Mountain pine beetle)
- 5m. *Geosmithia morbida* (Thousand cankers disease of walnut)
- 8. *Pityophthorus juglandis* (Walnut twig beetle)
- (f) 1m. *Myocastor coypus* (Nutria)

SECTION 38. NR 40.04 (2) (g) 1., (3) (a) and (d) are amended to read:

NR 40.04 (2) (g) 1. ~~Geomyces~~ *Pseudogymnoascus destructans* (*white-nose syndrome fungal pathogen*)

(3) (a) Except as otherwise provided in pars. (b) to ~~(h)~~ (i), no person may transport, possess, transfer or introduce a prohibited invasive species identified or listed under sub. (2).

(d) A legally obtained nonnative wild animal that is a pet may be possessed, transported or transferred without a permit issued by the department under this chapter if obtained prior to and located in the State of Wisconsin on the date the species is listed as prohibited under this section, but may not be introduced. The offspring of pets possessed under this paragraph may not be transferred.

SECTION 39. NR 40.04 (3) (d) (Note) is repealed.

SECTION 40. NR 40.04 (3) (e) is renumbered NR 40.04 (3) (e) (intro.) and amended to read:

NR 40.04 (3) (e) (intro.) Paragraph (a) does not apply to a person who transports, possesses, transfers or introduces a terrestrial invertebrate or plant disease-causing microorganism that is regulated under a quarantine imposed by DATCP under s. 94.01, Stats., or a United States Department of Agriculture Animal and Plant Health Inspection Service quarantine area declared under 7 USC section 7714 or 7715 ~~if the person is in compliance with a DATCP-USDA APHIS compliance agreement applicable to the terrestrial invertebrate or plant disease-causing microorganism.~~ any of the following apply:

SECTION 41. NR 40.04 (3) (e) 1. and 2. are created to read:

NR 40.04 (3) (e) 1. The person is in compliance with a DATCP-USDA APHIS compliance agreement applicable to the terrestrial invertebrate or plant disease-causing microorganism, or

2. The transport, possession, transfer or introduction takes place entirely within the quarantine applicable to the terrestrial invertebrate or plant disease-causing microorganism.

SECTION 42. NR 40.04 (3) (g) (Note) is amended to read:

NR 40.04 (3) (Note) Note: Paragraph (g) does not apply to transport of identified carriers of invasive species as described in s. NR 40.07 (5) (a).

~~Note: Reports for fish may be sent to:~~

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

~~Note: 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~~

~~Note: Reports for terrestrial plants may be sent to:~~

~~Attn: Forestry Invasive Species Coordinator — FR/4
Wisconsin Department of Natural Resources
PO Box 7921
Madison, WI 53707-7921~~

~~Note: Reports for aquatic species except fish may be sent to:~~

~~Attn: Aquatic Invasive Species Coordinator
Wisconsin Department of Natural Resources
141 NW Barstow St., Room 180
Waukesha, WI 53188~~

~~Note: 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~~

Note: Reports for invasive species may be sent to:

Attn: Statewide Invasive Species Coordinator, SS/7
Wisconsin Department of Natural Resources
PO Box 7921
Madison, WI 53707-7921

Note: Reports may also be sent by email to invasive.species@wisconsin.gov

SECTION 43. NR 40.04 (3) (h) 3. and (i) are created to read:

NR 40.04 (3) (h) 3. Employees or duly authorized agents of the department in the performance of their official duties.

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

SECTION 44. NR 40.04 (4) (f) is amended to read:

NR 40.04 (4) (f) The department may remove, or cause to be removed any detrimental fish or other aquatic prohibited invasive species from waters of the state.

SECTION 45. NR 40.05 (2) (b) (intro.) is amended to read:

NR 40.05 (2) (b) (intro.) *Plants*. The following plant invasive species are restricted statewide except in the counties not listed where they are prohibited under s. NR 40.04 (2) (b):

SECTION 46. NR 40.05 (2) (b) 1. is renumbered NR 40.05 (2) (b) 1s.

SECTION 47. NR 40.05 (2) (b) 1e., 1e. (Note), 1m. 1m. (Note), 2m. and 2m. (Note) are created to read:

NR 40.05 (2) (b) 1e. *Acer tataricum* subsp. *ginnala* (Amur maple) except all cultivars

1e. (Note) Effective date of listing: the effective date of this rule. [LRB inserts date]

1m. *Aegopodium podagraria* (Bishop's goutweed)

1m. (Note) Effective date of listing: the effective date of this rule. [LRB inserts date]

2m. *Alnus glutinosa* (Black alder) except all cultivars and hybrids

2m. (Note) Effective date of listing: the effective date of this rule. [LRB inserts date]

SECTION 48. 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, Green, Green Lake, Iowa, Jefferson, Juneau, Kenosha, Lacrosse, Lafayette, Marquette, Milwaukee, Monroe, Ozaukee, Polk and Racine, Richland, Rock, Sauk, Sheboygan, Taylor, Vernon, Walworth, Waukesha, and Washington counties

SECTION 49. NR 40.05 (2) (b) 3g., 3g. (Note), 3r. and 3r. (Note) are created to read:

NR 40.05 (2) (b) 3g. *Artemisia absinthium* (Wormwood)

3g. (Note) Effective date of listing: the effective date of this rule. [LRB inserts date]

3r. *Berberis thunbergii* (Japanese barberry). This restriction only applies to the parent type, the variety *atropurpurea*, the hybrid of *B. thunbergii* x *B. Koreana*, and the following cultivars. *Berberis thunbergii* cultivars: Sparkle, 'Anderson' Lustre Green™, Erecta, 'Bailgreen' Jade Carousel®, Angel Wings, Painter's Palette, Inermis ('Thornless'), Pow Wow, Golden Ring, Kelleriis, Kobold, 'JN Variegated' Stardust™ and Antares. Variety *atropurpurea* cultivars: Marshall Upright ('Erecta'), Crimson Velvet, 'Bailtwo' Burgundy Carousel®, Red Rocket, 'Monomb' Cherry Bomb™, 'Bailone' Ruby Carousel®, JN Redleaf, Rose Glow and Silver Mile. Hybrid of *B. thunbergii* x *B. koreana* cultivars: Tara and 'Bailsel' Golden Carousel®.

3r. (Note) Effective date of listing: the effective date of this rule. [LRB inserts date]

SECTION 50. NR 40.05 (2) (b) 4. is amended to read:

NR 40.05 (2) (b) 4. *Bunias orientalis* (Hill mustard) in Dane, Grant, Green, Iowa, and Lafayette, and Rock counties

SECTION 51. NR 40.05 (2) (b) 6m., 6m. (Note), 10e., 10e. (Note), 10m., 10m. (Note), 10s. and 10s. (Note) are created to read:

NR 40.05 (2) (b) 6m. *Caragana arborescens* (Siberian peashrub) except the cultivars Lorbergii, Pendula, and Walkerii

6m. (Note) Effective date of listing: the effective date of this rule. [LRB inserts date]

10e. *Centaurea jacea* (Brown knapweed)

10e. (Note) Effective date of listing: the effective date of this rule. [LRB inserts date]

10m. *Centaurea nigra* (Black knapweed)

10m. (Note) Effective date of listing: the effective date of this rule. [LRB inserts date]

10s. *Centaurea nigrescens* (Tyrol knapweed)

10s. (Note) Effective date of listing: the effective date of this rule. [LRB inserts date]

SECTION 52. NR 40.05 (2) (b) 11. and 14. are amended to read:

NR 40.05 (2) (b) 11. *Chelidonium majus* (Celandine) ~~except in Ashland, Barron, Bayfield, Burnett, Chippewa, Douglas, Dunn, Florence, Forest, Iron, Langlade, Lincoln, Marinette, Oconto, Oneida, Polk, Price, Rusk, St. Croix, Sawyer, Taylor, Vilas and Washburn counties~~

14. *Conium maculatum* (Poison hemlock) in Crawford, Dane, Grant, Green, Iowa, Jefferson, Kenosha, Lafayette, Milwaukee, Ozaukee, Racine, Richland, Rock, and Sauk, Sheboygan, Walworth, and Waukesha counties

SECTION 53. NR 40.05 (2) (b) 14m. and 14m. (Note) are created to read:

NR 40.05 (2) (b) 14m. *Coronilla varia* (Crown vetch)

14m. (Note) Effective date of listing: the effective date of this rule. [LRB inserts date]

SECTION 54. NR 40.05 (2) (b) 20. is amended to read:

NR 40.05 (2) (b) 20. *Epilobium hirsutum* (Hairy willow herb) in Brown, Calumet, Door, Kenosha county, Kewaunee, and Manitowoc counties

SECTION 55. NR 40.05 (2) (b) 21m., 21m. (Note), 23r., 23r. (Note), 24m. and 24m. (Note) are created to read:

NR 40.05 (2) (b) 21m. *Euonymus alatus* (Burning bush) including the cultivar 'Nordine' and excluding all other cultivars

21m. (Note) Effective date of listing: the effective date of this rule. [LRB inserts date]

23r. *Filipendula ulmaria* (Queen of the meadow)

23r. (Note) Effective date of listing: the effective date of this rule. [LRB inserts date]

24m. *Galium mollugo* (White bedstraw)

24m. (Note) Effective date of listing: the effective date of this rule. [LRB inserts date]

SECTION 56. NR 40.05 (2) (b) 25. and 27. are amended to read:

NR 40.05 (2) (b) 25. *Glyceria maxima* (Tall or reed mannagrass) in Brown, Calumet, Columbia, Dane, Dodge, Door, Fond du Lac, Green, Jefferson, Kenosha, Kewaunee, Manitowoc, Milwaukee, Outagamie, Ozaukee, Racine, Rock, Sheboygan, Walworth, Washington, Waukesha and Winnebago counties

27. *Humulus japonicus* (Japanese hops) in Grant, Buffalo, Crawford, Dane, Grant, Green, Iowa, Jackson, La Crosse, Lafayette, Monroe, Pepin, Richland, Sauk, Trempealeau, and Vernon counties

SECTION 57. NR 40.05 (2) (b) 27e., 27e. (Note), 27m., 27m. (Note), 27s. and 27s. (Note) are created to read:

NR 40.05 (2) (b) 27e. *Impatiens balfourii* (Balfour's touch-me-not)

27e. (Note) Effective date of listing: the effective date of this rule. [LRB inserts date]

27m. *Iris pseudacorus* (Yellow iris)

27m. (Note) Effective date of listing: the effective date of this rule. [LRB inserts date]

27s. *Knautia arvensis* (Field scabiosa)

27s. (Note) Effective date of listing: the effective date of this rule. [LRB inserts date]

SECTION 58. NR 40.05 (2) (b) 28. is amended to read:

NR 40.05 (2) (b) 28. *Leymus arenarius* or *Elymus arenarius* (Lyme grass or sand ryegrass) in Door, Kenosha, Kewaunee, Manitowoc, Milwaukee, Ozaukee, Racine, and Sheboygan and Racine counties

SECTION 59. NR 40.05 (2) (b) 28m. is created to read:

NR 40.05 (2) (b) 28m. *Linaria dalmatica* (Dalmation toadflax) in Juneau and Bayfield counties

SECTION 60. NR 40.05 (2) (b) 29. is amended to read:

NR 40.05 (2) (b) 29. *Lonicera maackii* (Amur honeysuckle) in Adams, Brown, Buffalo, Calumet, Columbia, Crawford, Dane, Dodge, Fond du Lac, Grant, Green, Green Lake, Iowa, Jefferson, Juneau, Kenosha, Kewaunee, La Crosse, Lafayette, Manitowoc, Marquette, Milwaukee, Monroe, Outagamie, Ozaukee, Racine, Richland, Rock, Sauk, Sheboygan, Vernon, Walworth, Washington, Waukesha, Waupaca, Waushara and Winnebago counties

SECTION 61. NR 40.05 (2) (b) 32g., 32g. (Note), 32r., 32r. (Note), 33e., 33e. (Note), 33m., 33m. (Note), 33s., 33s. (Note), 34m., 34m. (Note), 35m. and 35m. (Note) are created to read:

NR 40.05 (2) (b) 32g. *Lysimachia nummularia* (Moneywort) except the cultivar Aurea and yellow and gold leaf forms

32g. (Note) Effective date of listing: the effective date of this rule. [LRB inserts date]

32r. *Lysimachia vulgaris* (Garden yellow loosestrife)

32r. (Note) Effective date of listing: the effective date of this rule. [LRB inserts date]

33e. *Morus alba* (White mulberry) except male cultivars

33e. (Note) Effective date of listing: the effective date of this rule. [LRB inserts date]

33m. *Myosotis scorpioides* (Aquatic forget-me-not)

33m. (Note) Effective date of listing: the effective date of this rule. [LRB inserts date]

33s. *Myosotis sylvaticum* (Woodland forget-me-not)

33s. (Note) Effective date of listing: the effective date of this rule. [LRB inserts date]

34m. *Najas marina* (Spiny naiad)

34m. (Note) Effective date of listing: the effective date of this rule. [LRB inserts date]

35m. *Phalaris arundinacea* var. *picta* (ribbon grass or gardener's garters) and other ornamental variegated varieties and cultivars. This restriction does not include the parent type - reed canary grass.

35m. (Note) Effective date of listing: the effective date of this rule. [LRB inserts date]

SECTION 62. NR 40.05 (2) (b) 36. is amended to read:

NR 40.05 (2) (b) 36. *Phragmites australis* (*Phragmites* or Common reed) non-native ecotype in Brown, Calumet, Columbia, Dane, Dodge, Door, Florence, Fond du Lac, Forest, Green Lake, Jefferson, Kenosha, Kewaunee, Langlade, Manitowoc, Marathon, Marinette, Marquette, Menominee, Milwaukee, Oconto, Outagamie, Ozaukee, Portage, Racine, Rock, Shawano, Sheboygan, Walworth, Washington, Waukesha, Waupaca, Waushara, and Winnebago counties

SECTION 63. NR 40.05 (2) (b) 36m. and 36m. (Note) are created to read:

NR 40.05 (2) (b) 36m. *Pimpinella saxifraga* (Scarlet pimpernel)

36m. (Note) Effective date of listing: the effective date of this rule. [LRB inserts date]

SECTION 64. NR 40.05 (2) (b) 37. is renumbered NR 40.05 (2) (b) 23g. and amended to read:
NR 40.05 (2) (b) 23g. *Fallopia japonica* or *Polygonum cuspidatum* (Japanese knotweed)

SECTION 65. NR 40.05 (2) (b) 37m., 37m. (Note), 40g., 40g. (Note), 40r., 40r. (Note) and 41m. are created to read:

- NR 40.05 (2) (b) 37m. *Populus alba* (White poplar)
- 37m. (Note) Effective date of listing: the effective date of this rule. [LRB inserts date]
- 40g. *Robinia hispida* (Rose acacia)
- 40g. (Note) Effective date of listing: the effective date of this rule. [LRB inserts date]
- 40r. *Robinia pseudoacacia* (Black locust) except all cultivars
- 40r. (Note) Effective date of listing: the effective date of this rule. [LRB inserts date]
- 41m. *Solidago sempervirens* (Seaside goldenrod) in Kenosha, Milwaukee and Racine counties

SECTION 66. NR NR 40.05 (2) (b) 42. and 43. are amended to read:

NR 40.05 (2) (b) 42. *Tanacetum vulgare* (Tansy), except the cultivars Aureum and ~~Compactum~~
Crispum

43. *Torilis japonica* (Japanese hedgeparsley or erect hedgeparsley) ~~except in Ashland, Barron, Bayfield, Buffalo, Burnett, Chippewa, Clark, Douglas, Dunn, Eau Claire, Florence, Forest, Iron, Jackson, Lincoln, Oneida, Pepin, Pierce, Polk, Price, Rusk, St. Croix, Sawyer, Trempeleau, Taylor, Washburn, and Wood~~ in Adams, Brown, Calumet, Columbia, Crawford, Dane, Dodge, Door, Fond du Lac, Grant, Green, Green Lake, Iowa, Jefferson, Juneau, Kenosha, Kewaunee, La Crosse, Lafayette, Langlade, Manitowoc, Marathon, Marinette, Marquette, Menominee, Milwaukee, Monroe, Oconto, Outagamie, Ozaukee, Portage, Racine, Richland, Rock, Sauk, Shawano, Sheboygan, Vernon, Walworth, Washington, Waukesha, Waupaca, Waushara, and Winnebago counties

SECTION 67. NR 40.05 (2) (b) 45g., 45g. (Note), 45r., 45r. (Note), (c) 5., (d) 1m., 3., and 4. are created to read:

- NR 40.05 (2) (b) 45g. *Ulmus pumila* (Siberian elm) except hybrids and individuals used as rootstock
- 45g. (Note) Effective date of listing: the effective date of this rule. [LRB inserts date]
- 45r. *Valeriana officinalis* (Garden heliotrope)
- 45r. (Note) Effective date of listing: the effective date of this rule. [LRB inserts date]
- (c) 5. Viable genetically modified native and nonnative fish species.
- (d) 1m. *Cipangopaludina japonica* (Japanese trapdoor snail or Japanese mystery snail)
- 3. *Valvata piscinalis* (European valve snail)
- 4. *Viviparus georgianus* (Banded mystery snail)

SECTION 68. NR 40.05 (2) (e) 1. is renumbered NR 40.05 (2) (e) 3.

SECTION 69. NR 40.05 (2) (e) 1m. and 2. are created to read:

- NR 40.05 (2) (e) 1m. *Agilus planipennis* (Emerald ash borer)
- 2. *Amyntas* or *Amyntus* species (Crazy worm)

SECTION 70. NR 40.05 (2) (f) is repealed.

SECTION 71. NR 40.05 (3) (d) is amended to read:

NR 40.05 (3) (d) A legally obtained nonnative wild animal that is a pet may be possessed, transported or transferred without a permit issued by the department under this chapter if obtained prior to and located in the State of Wisconsin on the date the species is listed as restricted under this section.

The offspring of pets possessed under this paragraph may not be transferred except as a gift.

SECTION 72. NR 40.05 (3) (d) (Note) is repealed.

SECTION 73. NR 40.05 (3) (e) is renumbered NR 40.05 (3) (e) (intro.) and amended to read:

NR 40.05 (3) (e) (intro.) Paragraph (a) does not apply to a person who transports, possesses, transfers or introduces a terrestrial invertebrate or plant disease-causing microorganism that is regulated under a quarantine imposed by DATCP under s. 94.01, Stats., or a United States Department of Agriculture Animal and Plant Health Inspection Service quarantine area declared under 7 USC section 7714 or 7715 if ~~the person is in compliance with a DATCP-USDA APHIS compliance agreement applicable to the terrestrial invertebrate or plant disease-causing microorganism.~~ any of the following apply:

SECTION 74. NR 40.05 (3) (e) 1. and 2. are created to read:

NR 40.05 (3) (e) 1. The person is in compliance with a DATCP-USDA APHIS compliance agreement applicable to the terrestrial invertebrate or plant disease-causing microorganism, or

2. The transport, possession, transfer or introduction takes place entirely within the quarantine applicable to the terrestrial invertebrate or plant disease-causing microorganism.

SECTION 75. NR 40.05 (3) (f) is amended to read:

NR 40.05 (3) (f) A person may transport or give away a restricted invasive species for the purpose of identification, education, control or disposal without a permit issued by the department under this chapter, if no viable individual specimens or propagules are allowed to escape or be introduced. This paragraph does not apply to ~~aquatic plants, algae and cyanobacteria,~~ terrestrial and aquatic vertebrates or fish species.

SECTION 76. NR 40.05 (3) (f) (Note) is created to read:

NR 40.05 (3) (f) (Note) Note: New populations of restricted aquatic plant species may be reported to the appropriate department regional aquatic invasive species coordinator. Visit the DNR website (dnr.wi.gov) keywords "reporting invasives" to view a list of waterbodies with known invasives and reporting contacts.

SECTION 77. NR 40.05 (3) (g) is repealed

SECTION 78. NR 40.05 (3) (k) is amended to read:

NR 40.05 (3) (k) If held in a safe facility, ~~rusty crayfish,~~ nonviable fish species and nonnative viable fish species in the aquarium trade may be transported, possessed or transferred without a permit issued by the department under this chapter. In addition, rusty crayfish taken from the Mississippi River can be used as bait on the Mississippi River ~~may be transported, possessed or transferred without a permit when being used as bait on the Mississippi river~~ as authorized under s. NR 19.27 (4) (a) 1. a.

SECTION 79. NR 40.05 (3) (k) (Note), (3) (o) 3., (3) (p) and (p) (Note) are created to read:

NR 40.05 (3) (k) (Note) Note: Possession of dead crayfish for purposes of fishing bait on all waters, including outlying waters, is not prohibited under this chapter, but may be restricted under other rules that regulate the use of certain types of bait for fishing purposes.

(3) (o) 3. Employees or duly authorized agents of the department in the performance of their official duties.

(3) (p) Restricted plants listed under sub. (2) that are not also listed as prohibited under s. NR 40.04 (2) (b) and that were located in Wisconsin prior to the effective date of the listing of the species under sub. (2) may be transported, transferred and introduced without a permit for a period not to exceed

3 years for herbaceous plants and woody vines, or 5 years for trees and shrubs, from the effective date of the listing of that species under sub. (2).

(p) (Note) Note: The effective date of the listing of a species under sub. (2) is the effective date of the rule that adds the species under sub. (2). Plants added to the restricted list under sub. (2) after 2009 are indicated by a note following the listing in sub. (2) stating the effective date of the listing. All plant listings in sub. (2) without an effective date note have been restricted since 2009.

SECTION 80. NR 40.06 (1) (a) (Note) is amended to read:

NR 40.06 (1) (a) (Note) Note: Applications for permits ~~for fish and aquatic invertebrates~~ may be sent to:

~~Attn: FH/4
Wisconsin Department of Natural Resources
PO Box 7924
Madison, WI 53707-7924~~

~~Note: Applications for permits for terrestrial plants may be sent to:~~

~~Attn: Forestry Invasive Species Coordinator — FR/4
Wisconsin Department of Natural Resources
PO Box 7924
Madison, WI 53707-7924~~

~~Note: Applications for permits for aquatic plants may be sent to:~~

~~Attn: Aquatic Invasive Species Coordinator
Wisconsin Department of Natural Resources
141 NW Barstow St., Room 180
Waukesha, WI 53188~~

~~Note: Applications for permits for other vertebrates may be sent to:~~

~~Attn: Wildlife Regulation Policy Specialist, WM/6
Wisconsin Department of Natural Resources
PO Box 7924
Madison, WI 53707-7924~~

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

~~Forest Health Protection Program Coordinator
Wisconsin Department of Natural Resources
3911 Fish Hatchery Rd.
Fitchburg, WI 53714~~

~~Attn: Statewide Invasive Species Coordinator, SS/7
Wisconsin Department of Natural Resources
PO Box 7921
Madison, WI 53707-7921~~

~~Note: Reports may also be sent by email to invasive.species@wisconsin.gov~~

SECTION 81. NR 40.07 (8) (d) (Note) is amended to read:

NR 40.07 (8) (d) (Note) Note: Detailed information about department-approved cleaning protocols may be obtained at http://dnr.wi.gov/topic/WildlifeHabitat/documents/WNS_DeconProtocols.pdf on the DNR website (dnr.wi.gov) keyword "bats" or by writing to Wisconsin Department of Natural Resources, Wisconsin Bat Monitoring Program, Bureau of Endangered Resources-Natural Heritage Conservation, P.O. Box 7921, Madison, WI 53707-7921.

SECTION 82. 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 83. BOARD ADPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on December 10, 2014.