

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: NH-08-25

Relating to: Invasive Species (ch. NR 40)

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

These are permanent rules.

2. Detailed description of the objective of the proposed rule:

The proposed rule revision will classify additional invasive species under the existing prohibited and restricted categories established in ch. NR 40, Wis. Admin. Code. Once classified, these species will be subject to current administrative rules and state statutes governing their introduction, possession, transfer, and transport. The intent is to prevent the establishment of new invasive species in Wisconsin and to limit the spread of those already present.

The rule revision may also include reclassification of currently regulated species, such as changing a species from prohibited to restricted, or removing it from regulation altogether. Other proposed changes focus on improving the organization and clarity of the rule's sections on enforcement, interagency coordination, permitting, and preventative measures—helping to support compliance with ch. NR 40. In addition, the revision proposes housekeeping updates, including clarifying language and updating species taxonomy. Additional rule changes may also be considered, provided they are reasonably related to the topics addressed in this revision.

These rules may also include additional updates such as correcting cross-reference citations, updating road names on maps, changes needed to update application forms or revisions which are necessary for consistency with recently enacted legislation

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

In 2001, the Wisconsin Legislature directed the Department of Natural Resources (the department) to establish a statewide program to control invasive species and to promulgate rules to identify, classify, and control invasive species (s. 23.22, Wis. Stats.). To assist with these tasks, the Wisconsin Legislature also created the Wisconsin Invasive Species Council (the Council), which was formed in 2004. Members of this council are appointed by the Governor and represent a wide range of stakeholders and agencies involved with invasive species. The Council is obligated under s. 23.22, Wis. Stats., to make recommendations to the department on a system for classifying and categorizing invasive species. The Council worked with department staff to develop the criteria and ch. NR 40. Wisconsin's invasive species rule, ch. NR 40, first became effective in 2009 and was last revised in 2015 (effective).

To fulfill its legislative directive, the department must adopt rules that provide it with all of the tools that are required to control invasive species, wherever found in the state. Existing tools include regulation of the possession, transportation, transfer and introduction of specific invasive species, general preventive measures designed to restrict pathways by which humans commonly spread or introduce invasive species, authority to enter property to inspect, survey and control invasive species, and authority to recover the state's costs when it must carry out necessary control measures because responsible parties do not comply with department orders to control invasives themselves. The department will evaluate ch. NR 40 based on its experience implementing the existing regulations and determine if revisions are necessary for efficacy and clarity.

The department's intention is to update the rule to identify or list additional invasive species into the existing categories set out in ch. NR 40, which would make them subject to existing administrative rules and statutes. Other proposed revisions will facilitate compliance with ch. NR 40, clarify language, and improve organization of the rule. The proposed rule will be consistent with longstanding practices, make updates to provide better clarity, and modify the species regulated under the rule to reflect changes in climate and species distributions.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

The principal authority for these rules is s. 23.22 (2) (a) and (b) 6., Wis. Stats., which requires the department to establish a statewide program to control invasive species in this state and directs the department to promulgate rules to identify, classify and control invasive species for purposes of the program, which may include procedures and requirements for issuing permits for invasive species research or education.

Section 23.09 (2), Wis. Stats., gives the department the authority to create rules as it deems necessary for the protection, development, and use of natural resources in the state, including through the establishment of long-range plans, projects and priorities for conservation. Identifying, classifying and controlling invasive species under ch. NR 40 is designed to help achieve priority goals for conservation.

Finally, s. 227.11 (2) (a), Wis. Stats., expressly confers rulemaking authority on the department to promulgate rules interpreting any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule :

500 hours.

6. List with description of all entities that may be affected by the proposed rule :

The department expects considerable interest in the proposed rule revisions. Interested parties may include the nursery, landscape, habitat restoration, 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 tribes, lake districts, state and federal agencies, and environmental and conservation organizations.

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

Existing federal laws and regulations address a narrow subset of noxious weeds under the Federal Noxious Weed Act (7 U.S.C. 2801 et seq;) and animals under the Lacey Act (18 U.S.C. 42, 16 U.S.C. 3371-3378). These acts and the federal regulations implementing them are primarily focused on the movement of species in interstate commerce. There is limited overlap with existing and proposed ch. NR 40 regarding the prohibited importation of species into Wisconsin.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have an economic impact on small businesses):

Based on current information, it is estimated that there will be at most a moderate economic impact from this rule revision. The complete economic impact of these rules will be known once the development of the rule proposal has taken place. This is a conservative estimate reflecting 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. These rule revisions also have the potential to provide valuable economic benefits by reducing future control and management costs for regulated invasive species. Businesses may potentially mitigate costs by substituting non-invasive species in their practices. During the species assessment process, the economic costs and benefits were evaluated for each species considered for inclusion in the rule revisions. Certain species may have larger potential economic impacts than others.

9. Anticipated number, month and locations of public hearings:

The department anticipates holding one public hearing in the month of December 2025.

The department will hold the hearing virtually to allow as many people as possible to attend. Comments may be provided by mail, phone, and email as well as in-person.

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For Karen Hyun, Ph. D., Secretary

Date Submitted