

Wisconsin Department of Natural Resources
Natural Resources Board Agenda Item

SUBJECT:

Request that the Board adopt Board Order SS-04-12, proposed rules affecting NR 40 related to Invasive Species Identification, Classification and Control revisions 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.

FOR: December 2014 Board meeting

PRESENTER'S NAME AND TITLE: Dreux Watermolen, Section Chief - Social Science Services

SUMMARY:

Wisconsin's Invasive Species Rule (ch. NR 40) makes it illegal to possess, transport, transfer, or introduce certain invasive species in Wisconsin without a permit.

In 2009, during the public input and initial rule drafting of ch. NR 40, Wis. Admin. Code, it was recognized that many additional species may need to be evaluated and, if appropriate, categorized and listed under this rule. In 2012, the department initiated the rule-making process and worked with the Wisconsin Invasive Species Council to evaluate those species and revise the list of regulated species.

The proposed rule revision lists additional invasive species into existing prohibited and restricted categories set out in ch. NR 40, making them subject to existing administrative rules and statutes. Other proposed revisions facilitate compliance with ch. NR 40, clarify language, update species names, and improve organization of the rule.

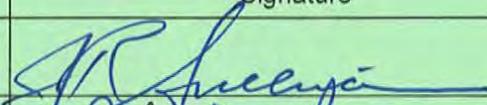
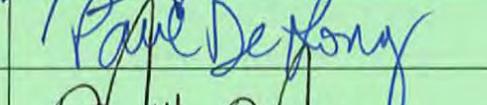
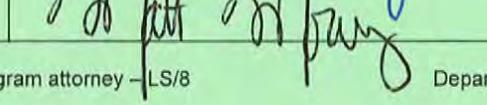
The department solicited comments on the economic impact of the proposed rule revision in November and December 2013. The department held two public hearings on the proposed rule in Green Bay and Madison in June 2014. Written comments were accepted through June 30, 2014. Comments from the Rules Clearinghouse were received on May 19, 2014. The department compiled, considered, and responded to all comments.

Prompted by comments, the department made several changes to the initial proposed rule, including: split-listing the nonnative ecotype of Phragmites and clarifying how genetically modified fish are regulated in NR 40 to remove substantive requirements from ch. NR 40.02 definitions. Prompted by new information, the following changes to the initial proposed rule were made: changed the regulated classification of earthworms of the genus Amyntas from prohibited to restricted; added the Golden Mussel to the prohibited category; and removed the two proposed prohibited fungi from the board order.

RECOMMENDATION: That the Board adopt Board Order SS-04-12.

LIST OF ATTACHED MATERIALS (check all that are applicable):

- (choose one)
- Fiscal estimate and economic impact analysis (EIA) form
- Response summary
- Attachments to background memo
- Environmental assessment or impact statement
- Board order/rule

Approved by	Signature	Date
Jack Sullivan, Bureau Director		11/6/14
Paul DeLong, Division Administrator - Forestry		11/10/14
Cathy Stepp, Secretary		11/12/14

cc: Board Liaison - AD/8

Program attorney - LS/8

Department rule coordinator - LS/8

DATE: September 29, 2014

TO: All Members of the Natural Resources Board

FROM: Cathy Stepp, Secretary

SUBJECT: Background memo on Board Order SS-04-12, relating to revisions to Wisconsin's Invasive Species Rule (ch. NR 40)

1. Subject of Proposed Rule:

The proposed rule addresses revisions to Wisconsin's Invasive Species Rule (ch. NR 40, Wis. Admin. Code). Proposed revisions classify additional invasive species into existing categories established in ch. NR 40, 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. Other proposed revisions facilitate compliance with ch. NR 40, clarify language, update species names, and improve organization of the rule.

2. Background:

In 2001, the Wisconsin Legislature directed the Department of Natural Resources to establish a statewide program to control invasive species, and to promulgate rules to identify, classify and control invasive species for purposes of the program. By 2004, the Wisconsin Council on Invasive Species formed to assist DNR with this task.

As a result, Wisconsin's Invasive Species Identification, Classification and Control Rule, ch. NR 40, Wis. Adm. Code, went into effect on September 1, 2009. The rule helps citizens learn to identify and minimize the spread of plants, animals and diseases that can invade our lands and waters and cause significant damage.

- Invasive species are non-native plants, animals and pathogens whose introduction causes or is likely to cause economic or environmental harm or harm to human health.
- Invasive species can alter ecological relationships among native species and can affect ecosystem function and structure, economic value of ecosystems, and human health.
- There are many non-native plants that are invasive in forests, grasslands, wetlands, lakes and rivers. They displace native species and disrupt wildlife habitat.

Without this rule, different invasive species groups are not treated consistently, making concerted action less likely. Federal and state laws provide regulations and resources for early detection and quarantine for some invertebrates and disease-causing organisms. State law limits the release of non-native fish and other vertebrates into the wild. However, there are very few federal or state laws that relate to non-native plants. Local noxious weed ordinances are erratic and often uneven in their implementation. This rule allows the Department to have more consistent authority and actions between the species groups and to provide one clear, state-wide law that is reasonable and feasible.

3. Why is the rule being proposed?

In 2009, during the public input and initial drafting of the Invasive Species Identification, Classification, and Control Rule, ch. NR 40, Wis. Admin. Code, 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.

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

After complete review of the species at hand, each SAG formalized a recommended designation for each species via "Species Assessment Group Forms." These documents are available for review on the department's website (dnr.wi.gov; keyword "NR 40"). 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.

The department's Invasive Species Team met throughout 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.

4. Summary of the rule.

Wisconsin's Invasive Species Rule (ch. NR 40, Wis. Adm. Code) makes it illegal to possess, transport, transfer, or introduce certain invasive species in Wisconsin without a permit.

The proposed rule revision lists additional invasive species into existing prohibited and restricted categories set out in ch. NR 40, Wis. Adm. Code, making them subject to existing administrative rules and statutes. Other proposed revisions facilitate compliance with ch. NR 40, clarify language, update species names, and improve the organization of the rule.

The proposed species changes include: delisting two species, listing 49 new prohibited species, listing 32 new restricted species, listing two species as split-listed (prohibited/restricted), and changing the regulated status of five species.

A summary of the proposed revisions to the rule follows. 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 "NR 40").

Summary:

- Creates a definition for “crayfish”
- Revises the definition of “disposal” to include consumption as food
- Revises the note under the definition of “invasive species” to clarify that the definition of “invasive species” does not apply to organisms that are dead
- Revises the definition of “pet” to exclude fish, crayfish, and other aquatic invertebrates.
- Revises the definition of “wild animal” to exclude other aquatic invertebrates
- Adds new species to the lists of prohibited and restricted species
- Removes species from the lists of prohibited and restricted species
- Clarifies that certain invasive plants are listed under both the prohibited and restricted categories
- Updates the list of counties for split-listed (prohibited/restricted) species
- Revises scientific, common, and synonym names to reflect current taxonomy
- Removes eastern and western mosquitofish from the list of prohibited species under s. NR 40.04 and adds them to the list of “established nonnative fish species and established nonnative crayfish species”
- Revises the list of DNR reporting and permitting contacts to a single statewide contact
- Clarifies the note on non-regulated species classification and removes the reporting and in-store education suggestions
- Simplifies the rule language and facilitates compliance by removing the list of nonviable fish species the department has determined to date and by referencing the definition of nonviable
- Clarifies that the exemption for pets only applies to pets obtained prior to their being listed as prohibited and restricted; and that the exemption would not allow for possession of offspring covered under the exemption to be transferred, except as a gift for restricted species only
- Creates an exemption for department staff to transport, possess, transfer, or introduce a regulated invasive plant, in the performance of their official duties
- Clarifies 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
- Adds viable genetically modified native and nonnative fish species to the list of restricted species
- Removes the red-eared slider from NR 40 as the sale of that size is already banned via Code of Federal Regulation
- Allows live crayfish to be used as bait on the Mississippi River as per NR 19 and eliminates the exemption that allows live rusty crayfish to be transported
- Clarifies rule language pertaining to dead crayfish as bait
- Creates a phase out period for restricted-plants to minimize impacts of the rule to the nursery industry and to facilitate compliance
- Split-lists the nonnative ecotype of Phragmites (*Phragmites australis*)

Between October 28 and December 31, 2013, the department solicited comments on the economic impact of the proposed rule revision. The preliminary Fiscal Estimate and Economic Impact Analysis were updated using the economic comments received. The potential economic impact of this proposed rule revision is estimated to be Level I (Significant).

5. How does this proposal affect existing policy?

Wisconsin’s Invasive Species Law is governed by chs. NR 40 and NR 198, Wis. Admin. Code, and ss. 23.22 and 23.24, *Wis. Stats.* Specific policy changes are noted in the summary section above.

6. Has Board dealt with these issues before?

The Invasive Species Identification, Classification, and Control Rule, ch. NR 40, Wis. Admin. Code, became effective September 1, 2009. The Scope Statement for this rule revision was approved by the Natural Resources Board at the June 2012 meeting. Authorization for public hearings for this rule revision was approved by the Natural Resources Board at the April 2014 meeting.

7. Who will be impacted by the proposed rule? How?

Affected parties include the nursery, landscape, forestry, seed and agriculture industries, fish farmers, bait dealers, commercial fishers and wholesale fish dealers, aquarium and ornamental fish dealers, pet dealers, game farms, landowners, anglers, gardeners, county and municipal governments, lake districts, government agencies, and environmental and conservation organizations. Native American tribes may also have an interest. How each may be impacted by the rule is discussed in the Economic Impact Analysis.

8. Soliciting public input –

Economic impact synopsis – Pursuant to s. 227.127, *Wis. Stats.*, the department is required to solicit comments on the potential economic impact of a proposed rule. The department solicited input on the economic impact of the proposed revisions between October 28 and December 31, 2013. Small businesses, as defined in s. 227.114(1), *Wis. Stats.*, were asked to identify themselves as a small business in their comments. Twenty-eight comments were received during the Economic Impact Analysis public comment period, the majority from individuals representing small businesses in the nursery trade. Following the public comment period on the economic impacts, the preliminary “Fiscal Analysis and Economic Impact Analysis” was revised containing relevant information that the department received.

Prompted by public comments received on the economic impacts of the proposed rule changes, the department determined that the plant bittercress (*Cardamine hirsuta*) does not meet the definition of prohibited under ch. NR 40 because eradication and containment is not feasible. This plant was removed from the proposed list of prohibited species included in the initial board order prior to public hearings.

Public hearing synopsis – The Department held two public hearings: One on Tuesday June 17th at the DNR office building in Madison with the option to participate remotely via MediaSite; and one on Wednesday June 18th at the DNR office building in Green Bay. Written comments were accepted through June 30, 2014. Comments from the Rules Clearinghouse were received on May 19, 2014.

Five of the ten hearing attendees spoke and 49 written comments were received, totaling 58 comments from 54 individuals. Of the 58 comments, 15 noted support and 6 noted opposition for all or most of the proposed rule. The majority of comments were specific to a subset of the species proposed for listing as prohibited or restricted.

Prompted by public comments and new information the following significant changes to the board order that went out for public hearing were made:

- Split-listed the nonnative ecotype of Phragmites (*Phragmites australis*) and listed them in the NR 40 prohibited category in counties where they have not been reported to occur or where there are isolated populations that have been treated or have planned treatments. Created an exemption in the prohibited category, similar to the existing restricted category, that allows this species used in wastewater treatment facilities permitting process under ch. 283, *Wis. Stats.*

- Removed the proposed amendments to the definitions of “nonnative” or “nonnative species”, “nonnative fish species in the aquaculture industry”, “nonnative viable fish species in the aquarium trade”, and “species”. These proposed amendments, which applied to how genetically modified (GM) fish are treated in NR40, were removed because they contained substantive requirements. The department created an exemption for GM fish in the prohibited category, and revised the proposed restricted category to clarify that only viable GM fish, of both native and nonnative species, are classified as restricted.
- Added Golden Mussel (*Limnoperna fortunei*) to the NR 40 Prohibited Category, prompted by a comment outside of the comment period, reminding the department of the state’s commitment to regulate the Council of Great Lakes Governors’ list of ‘least wanted aquatic invasive species’.
- Revised the NR 40 regulated classification of crazy worm (*Amyntas* sp.) from prohibited to restricted based on new information on the presence and spread of these species in the state. When the rule was initially adopted, there were no known occurrences of this species in the state. Since the rule was adopted, crazy worms have been confirmed to occur in five counties and have been reported from several additional locations. Given this new information, the species no longer meets the definition of Prohibited.
- Removed the two prohibited blue-stain fungi (*Grosmannia clavigera* and *Ophiostoma montium*) from the proposed rule, prompted by a request outside of the comment period from the Wisconsin Department of Agriculture, Trade, and Consumer Protection (DATCP). These fungi are associated with the mountain pine beetle and it is believed their spread to the state will be effectively limited by a DATCP quarantine.

Attachment A to the background memo summarizes comments received on the proposed rule and the Department’s response to each.

9. Environmental Analysis

Administrative rule revisions are equivalent analysis actions under NR 150.20 (2) (a) 20., Wis. Adm. Code.

10. Small Business Analysis

The department’s email distribution list compiled specifically for this rule revision was used to solicit comments from small businesses and small business associations. The distribution list is available upon request to the Governor’s Office of Regulatory Compliance. Department staff also attended the January 2014 Small Business Environmental Council meeting and provided follow-up information requested by Small Business Environmental Council members.

As part of the information gathering and outreach process, the department sent a letter to 600 licensed retailers and growers and approximately 1,100 licensed growers and dealers from the November 2, 2012 DATCP list of license holders updating them on the process in December 2012. In the spring of 2013, a series of informal public information sessions about the proposed changes to the rule were held 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 were received during the discussion period.

For small businesses growing woody plants, a number of years have been invested into the infrastructure to grow particular species. To minimize the economic impact of listing new species that are invasive in Wisconsin, a phase-out period of five years for trees and shrubs, and three 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.

ATTACHMENT A

DNR Response to Comments
Proposed Revisions to Ch. NR 40, Wis. Adm. Code
Board Order SS-04-12

I. General Summary

The Department of Natural Resources (DNR or department) held two public hearings: One on Tuesday June 17th at the DNR office building in Madison with the option to participate remotely via MediaSite; and one on Wednesday June 18th at the DNR office building in Green Bay. Written comments were accepted through June 30, 2014. Comments from the Rules Clearinghouse were received on May 19, 2014.

Five of the ten hearing attendees spoke and 49 written comments were received, totaling 58 comments from 54 individuals. Ten individuals identified themselves as small business owners. Following are the organization/affiliations listed: America's Best Flowers, Cook Water Farm, Lynden Sculpture Garden, Northern Pines Greenery, Northland College, Piala's Nursery and Garden Shop, Golden Sands RC&D, Robert Wiltout Nursery, Stone Silo Prairie Gardens, Timberland Invasives Partnership, UW-Extension, Wisconsin Invasive Species Council, Wisconsin Taxidermy Association, Wisconsin Green Industry Federation, and Wisconsin and Upper Michigan Florists Association. Staff from Ashland County, Vilas County, Wisconsin Department of Agriculture, Trade and Consumer Protection, and the United States Forest Service submitted comments.

Of the 58 comments, 15 noted support and 6 noted opposition for all or most of the proposed rule. The majority of comments were specific to a subset of the species proposed for listing as prohibited or restricted. Specific comments were received in opposition of listing the following species that are proposed for prohibited (P) or restricted (R):

Proposed P/R Listing Comments	Support	Oppose
<i>Berberis thunbergii</i> (Japanese barberry) R	5	3
<i>Eichhornia crassipes</i> (Water hyacinth) P	0	8
<i>Pistia stratiotes</i> (Water lettuce) P	0	8
<i>Coronilla varia</i> (Crown vetch) R	2	3
<i>Lysimachia nummularia</i> ("Goldilocks") R	2	3
<i>Myosotis sylvatica</i> (Woodland forget-me-not) R	2	3
<i>Robinia pseudoacacia</i> (Black locust) R	4	1
<i>Acer tataricum</i> subsp. <i>ginnala</i> (Amur maple) R	1	3
<i>Iris pseudacorus</i> (Yellow iris) R	1	3
<i>Valeriana officinalis</i> (Garden valerian) R	4	0
<i>Aegopodium podagraria</i> (Bishop's goutweed) R	0	3
<i>Akebia quinata</i> (Chocolate vine) P	0	3
<i>Celastrus loeseneri</i> (Asian bittersweet) P	0	3
<i>Euonymus alatus</i> (Burning bush) R	0	3
<i>Fallopia x bohemicum</i> (Bohemian knotweed) P	0	3
<i>Myosotis scorpioides</i> (Aquatic forget-me-not) R	2	0

The Villages of Cecil and Vesper contacted the department to coordinate on the development of the Economic Impact Analysis (EIA). The department followed-up with both villages, neither had concerns nor information specifically related to these proposed rule revisions.

After the close of the public comment period, the department compiled comments received and considered all recommendations and oppositions submitted. The department made the following changes in response to public comments:

- Updated the scientific name of the white-nose syndrome fungal pathogen from *Geomyces destructans* to *Pseudogymnoascus destructans*.
- Corrected the exempt cultivar name of Tansy (*Tanacetum vulgare*).
- Clarified the cultivar exemption for Moneywort (*Lysimachia nummularia*).
- Removed Bittercress or Hairy bittercress (*Cardamine hirsuta*) from the initial draft rule prompted by comments received during the EIA comment period as to its widespread presence in the nursery industry.
- Split-listed the nonnative ecotype of Phragmites (*Phragmites australis*) and listed them in the NR 40 prohibited category in counties where they have not been reported to occur or where there are isolated populations that have been treated or have planned treatments. Created an exemption in the prohibited category, similar to the existing restricted category, which allows this species used in wastewater treatment facilities permitting process under ch. 283, *Wis. Stats.*
- Clarified that the definition of ‘invasive species’ does not apply to dead organisms or parts that not revivable and no longer capable of living, growing, developing, reproducing, and functioning as ‘invasive species’.
- Updated the list of counties for the following split-listed plants: Wild chervil (*Anthriscus sylvestris*) adding Chippewa and Dunn counties; Amur honeysuckle (*Lonicera maackii*) adding Buffalo County.

Comments from the Rules Clearinghouse were received on May 19, 2014. The majority of comments were recommendations that improve clarity and follow administrative code styles within the Board Order and have been incorporated into the final rule package. Rules Clearinghouse comments on proposed revisions prompted amendments to the following definitions and notes:

- NR 40.02 definition: “Disposal”
- NR 40.02 definition of “Invasive Species”
- NR 40.02 definition of “Pet”
- NR 40.02 definitions of “nonnative” or “nonnative species”, “nonnative fish species in the aquaculture industry”, “nonnative viable fish species in the aquarium trade”, and “species”.
 - These proposed definitions that applied to how genetically modified (GM) fish are treated in NR40, were removed because they contained substantive requirements. The department created an exemption for GM fish in the prohibited category, and revised the proposed restricted category to clarify that only viable GM fish, of both native and nonnative species, are classified as restricted.
- NR 40.04 (3) (b) (Note) and NR 40.05 (3) (b) (Note)
 - Removed the proposed Chapters 30 and 31 compliance language “Note” that contained substantive requirements.

Prompted by new information received after the public comment period, the department made the following changes to the proposed rule (both changes are not significant and will not pose additional economic, fiscal, and compliance costs).

- Added Golden Mussel (*Limnoperna fortunei*) to the NR 40 Prohibited Category, prompted by a comment reminding the department of the state's commitment to regulate the Council of Great Lakes Governors' list of 'least wanted aquatic invasive species'.
 - According to the Council of Great Lakes Governors, golden mussel has the potential to affect the diversity of native mollusk communities, and dead mussels clog small water pipes, which can cause industrial facilities to shut down. There is not a trade for this species.
- Revised the NR 40 regulated classification of crazy worm (*Amyntas* sp.) from Prohibited to Restricted based on new information on the presence and spread of these species in the state.
 - This species is currently regulated as a prohibited species. When the rule was initially adopted, there were no known occurrences of this species in the state. Since the rule was adopted, crazy worms have been confirmed to occur in five counties and have been reported from several additional locations. Given this new information, the species no longer meets the definition of prohibited.
- Removed the two prohibited blue-stain fungi (*Grosmannia clavigera* and *Ophiostoma montium*) from the proposed rule, prompted by a request outside of the comment period from the Wisconsin Department of Agriculture, Trade, and Consumer Protection (DATCP).
 - These fungi species are closely associated with the mountain pine beetle (*Dendroctonus ponderosae*), a species that is being proposed for the prohibited category. The DATCP has determined that regulation of the beetle through quarantine will be more effective in inspecting out-of-state lumber and controlling both the beetle and the associated blue-stain fungi.

This document includes the comments received on the proposed rule and the department's response to recommendations and to comments in opposition. All comments were tallied and comments containing additional information or rationale are included after the tally.

The comments received during the public comment period are addressed first, and then the non-economic comments on the rule received during the economic impact public comment period (October 28 – December 31, 2013) that resulted in changes to the proposed rule revision. The department's response to the economic comments were incorporated into the EIA and are reflected in the Fiscal Estimate/EIA report. The comments received by the Rules Clearinghouse are addressed last.

II. Comments received during the public comment period (May 19 – June 30, 2014)

Species proposed for Restricted category (NR 40.05)

1. Received 3 comments on Bishops Weed – Goutweed/Snow on the mountain (*Aegopodium podagraria*) in opposition:

- The species is a lovely variegated ground cover that has been sold for decades especially good for dry shade and especially good for stopping soil and water erosion.
- I agree that controls need to be established for many of the invasive/non-native plants that are destructive. However, I believe the benefits of the above listed plants out-weigh the negatives.

Response: The department reviewed available information and determined that there is enough data and information to support regulating this plant as a restricted species under NR 40.

2. Received 4 comments on Amur maple (*Acer tataricum* subsp. *ginnala*)

a. In support, 1 comment.

b. In opposition, 3 comments:

- This species has been sold for decades. Exceptional fall color.
- I agree that controls need to be established for many of the invasive/non-native plants that are destructive. However, I believe the benefits of the above listed plants out-weigh the negatives.

Response: The department reviewed available information and determined that there is enough data and information to support regulating this plant as a restricted species under NR 40. Cultivars of this species that are available in trade are exempt from the regulation.

3. Received 1 comment on Black European alder (*Alnus glutinosa*) in support: In 1994 several trees were planted and now have become the dominant woody species. If planted, this species could have a very negative impact to Wisconsin's wetlands.

4. Received 1 comment on Wormwood (*Artemisia absinthium*) in support.

5. Received 8 comments on Japanese barberry (*Berberis thunbergii*):

a. In support, 3 comments received:

- This needs to no longer be sold by landscaping companies. It is especially problematic in post-grazed and urban landscapes. It currently is heavily invading my woods, and I suspect that the source was the garden center that sells barberry ¼ of a mile up the road from me.
- Our neighborhood has almost 100 contiguous acres of woods that is not only partially invaded by glossy buckthorn, but is also starting to get barberry. Birds spread the seed and it gets in to our forests. We've spent hours digging up the barberry, just to see our new neighbor bring home more barberry plants from the nursery! It's insane.

b. Recommendation, 2 comments received - both in support of listing:

- List all forms as prohibited: This invasive plant has completely taken over entire forest preserves elsewhere. There is no understory whatsoever except this plant (and some garlic mustard). We should not wait for that to happen here. Wildlife does not eat it, and it is

impossible for humans to walk through. So, no hunting and no hiking. No nothing except Japanese Barberry. No reason not to prohibit it.

- I recommend adding all cultivars to the restricted list, no exceptions, as I have heard about several cultivars displaying invasive behavior, and cross-pollination of non-invasive cultivars could lead to expression of aggressive wild-type alleles in offspring.

c. In opposition, 3 comments received:

- At least the red and yellow ones should be allowed - it is one of the top ten nursery plants sold in the US and has been sold for about 100 years. We even have a native barberry *Berberis canadensis* though it is rare. We have yet to see a red or yellow barberry along the Interstate highway. You would think if it is invasive you would see at least one. Just do not see it going from one neighbor to another in an urban setting. Kobold and Rosy Glow very important retail varieties.
- I agree that controls need to be established for many of the invasive/non-native plants that are destructive. However, I believe the benefits of the above listed plants out-weigh the negatives.

Response: The department reviewed available information and consulted with nursery industry representatives and determined that there is enough data and information to support regulating this plant as a restricted species under NR 40. This species is currently widespread in the state. Because of this distribution, the species does not meet the definition of a prohibited species under NR 40.02 (41). The proposed restriction includes the 25 cultivars and hybrids known to be most invasive based on research. All other cultivars are proposed to be exempt, primarily due to a lack of information on these forms.

6. Received 1 comment on Siberian peashrub (*Caragana arborescens*) in support.

7. Received 5 comments on Crown Vetch (*Coronilla varia*)

a. In support, 2 comments:

- This is more of a problem in prairie country in southern WI, but I am starting to see it more often on our roadsides in the Chequamegon region.

b. In opposition, 3 comments:

- Extremely good at stopping soil and water erosion. It fixes nitrogen in the soil. It provides food for honey bees.
- I agree that controls need to be established for many of the invasive/non-native plants that are destructive. However, I believe the benefits of the above listed plants out-weigh the negatives.

Response: The department reviewed available information and determined that there is enough data and information to support regulating this plant as a restricted species under NR 40.

8. Received 3 comments on Winged euonymus / burning bush (*Euonymus alatus*) in opposition:

- This species sold for decades and we just do not see this plant going from one neighbor's yard to another.
- I agree that controls need to be established for many of the invasive/non-native plants that are destructive. However, I believe the benefits of the above listed plants out-weigh the negatives.

Response: The department reviewed available information and consulted with nursery industry representatives and determined that there is enough data and information to support regulating this plant as a restricted species under NR 40. The department is proposing only to regulate the species and one specific cultivar. All other cultivars are proposed to be exempt, primarily due to a lack of information on these forms.

9. Received 1 comment on queen-of-the-meadow (*Filipendula ulmaria*) in support.

10. Received 4 comments on yellow iris (*Iris pseudacorus*):

a. In support, 1 comment.

b. In opposition, 3 comments:

- This species is a good seller - sold for years.
- I agree that controls need to be established for many of the invasive/non-native plants that are destructive. However, I believe the benefits of the above listed plants out-weigh the negatives.

Response: The department reviewed available information and determined that there is enough data and information to support regulating this plant as a restricted species under NR 40.

11. Received 6 comments on Moneywort (*Lysimachia nummularia*):

a. In support, 1 comment received:

- This species has increased significantly in active floodplain forests (as documented in Johnson et al. 2014, JVS 25: 885-896). It is still actively sold in the garden industry as a groundcover plant. It doesn't actually set seed outside of its native range in Europe, but it spreads easily by fragmentation of the plant and subsequently covers the forest floor.

b. In opposition, 3 comments received:

- This species is a good seller especially the yellow varieties sold for years. Aurea needs to be explained better in footnotes since many yellow varieties though they are Aurea do not have that name on the tag. It is extremely good at stopping soil and water erosion.
- I agree that controls need to be established for many of the invasive/non-native plants that are destructive. However, I believe the benefits of the above listed plants out-weigh the negatives.

c. Recommendation, 2 comments received - one in support of listing:

- Revise the wording on the cultivar exemption and common name: *Lysimachia nummularia* is often listed as 'Aurea', Goldilocks, or yellow leaf form. Since all of these would be exempt by my understanding of the proposal, the wording for the exemption should probably just exempt yellow or gold leaf forms. That may simplify it and be better understood by the public and industry.
- I recommend adding all cultivars to the restricted list, no exceptions, as I have heard about several cultivars displaying invasive behavior, and cross-pollination of non-invasive cultivars could lead to expression of aggressive wild-type alleles in offspring.

Response: The department reviewed available information and consulted with representatives of the nursery industry and determined that there is enough data and information to support regulating this plant as a restricted species under NR 40. Because of the confusion regarding the cultivar exemption, the department has clarified the 'Aurea' cultivar exemption by including "yellow or gold leaf forms".

12. Received 1 comment on garden yellow loosestrife (*Lysimachia vulgaris*) in support: This species is just starting to take off in Vilas Co, so listing as Restricted rather than Prohibited could help to get management on them. It is now in a couple of wetland habitats in/on Cranberry Lake. We don't know the origin. Interestingly where people have this as a garden plant it seems well behaved. I don't know how it initially spread – from root fragments or seed. Once in wetlands it becomes an aggressive vegetative spreader. The rhizomes spread for yards. I collected some last year to send to the Freckman herbarium, I have to dig out that plant press. We are going to look at these Cranberry Lake populations this summer in more detail.

13. Received 2 comments on aquatic forget-me-not (*Myosotis scorpioides*) in support:

- I see this invading streamsides in our region (and is all but choking out parts of the intermittent stream on my own property).
- This species is just starting to take off in Vilas Co, so listing as Restricted rather than Prohibited could help to get management on them. It spreads along shorelines and streams. I suspect by seed, but don't know if plant fragments are also capable of reproducing. I think this species is crowding out natives in either mesic forest or on shorelines.

14. Received 5 comments on Woodland forget-me-not (*Myosotis sylvatica*)

a. In support, 2 comment:

- This species is just starting to take off in Vilas Co, so listing as Restricted rather than Prohibited could help to get management on them. It is spreading along roads from vehicles/disturbance and from there into forest lands. I think this species is crowding out natives in either mesic forest or on shorelines.

b. In opposition, 3 comments:

- The species is a good seller and has been around for many years. Many customers ask for it by name in the spring.
- I agree that controls need to be established for many of the invasive/non-native plants that are destructive. However, I believe the benefits of the above listed plants out-weigh the negatives.

Response: The department reviewed available information and determined that there is enough data and information to support regulating this plant as a restricted species under NR 40.

15. Received 1 comment on ribbon grass (*Phalaris arundinacea* var. *picta*) in support: This species is just starting to take off in Vilas Co, so listing as Restricted rather than Prohibited could help to get management on them. I believe people move the ribbon grass – but once established large patches develop. I see occasional patches of this where someone has planted it in the ditches by their driveway or in a garden – then the patch just grows.

16. Received 1 comment on Burnet saxifrage (*Pimpinella saxifraga*) in support.

17. Received 1 comment on White Poplar (*Populus alba*) in support: This is a popular yard tree and I see young seedlings and saplings spreading out from the tree everywhere it is planted. It has the potential to be quite invasive.

18. Received 4 comments on Black locust (*Robinia pseudoacacia*)

a. In support, 2 comments:

- Some permaculturalists in the region are teaching people to plant this as a firewood species (and to ignore 'those invasive species concerns'). This absolutely needs to be restricted. It is a nitrogen fixer and could pose a problem in the barrens and other disturbed habitats, as

has been the case in southern WI. I have noticed dense patches of this along Hwy 13 south of Ashland and near Washburn (I believe Wannebo Road).

- While working in ecological restoration in southern WI, I commonly managed this species for eradication. It's extremely aggressive in areas and very hard to control once established. Since moving to northern WI I have talked with many involved in the permaculture movement that promote the use of this species (and other potential/known invasive species!) and it is of concern to me that this species could become more prevalent and aggressive in the area.

b. Recommendation, 1 comment received - in support: I recommend adding all cultivars to the restricted list, no exceptions, as I have heard about several cultivars displaying invasive behavior, and cross-pollination of non-invasive cultivars could lead to expression of aggressive wild-type alleles in offspring.

c. In opposition, 1 comment: The Black Locust was classified as "not-restricted, native" and has been proposed to be re-classified as "restricted". If this proposal depends on its "nativeness", then it should be taken into account that the 1863 date of a John Muir record is within a generation of first settlement of Europeans in Wisconsin [article and photo provided].

Response: The department reviewed available information and determined that there is enough data and information to support regulating this plant as a restricted species under NR 40. The only evidence of this species historically occurring in the state comes from an anecdotal report of a single tree on the University of Wisconsin campus in the 1860s. Biologists consider this to be a southern U.S. species. Nonetheless, the species is now established, widespread, and invading in the state. The department is proposing only to regulate the parent species. All cultivars are proposed to be exempt, primarily due to a lack of information on these forms.

19. Received 4 comments on Garden valerian (*Valeriana officinalis*) in support:

- This is spreading swiftly around the northern tier counties in Wisconsin, including the Chequamegon Bay region (especially in Washburn). It has also recently established on Northland College's campus. Despite its abundance on roadsides, I recently saw this for sale among seedlings at the Washburn ReSource Reuse store. I have been actively pulling this along my ditch in Washburn for two years and it seems to continue to come back stronger each year. It does well in moist soils (and extends into upland soils), so I fear it poses a threat to wetland habitats. The seeds are small and wind dispersed.
- It appears this species is aggressively spreading in NW WI where I live (more specifically the City of Washburn, WI and along US 2 between Ashland, WI and Duluth, MN).

Species proposed for Prohibited category (NR40.04)

20. Received 3 comments on Chocolate vine (*Akebia quinata*) in opposition:

- This species is a good seller - sold for many years - also a zone 5 plant not very hardy or invasive in Wisconsin. Some people say it smells like chocolate.
- I agree that controls need to be established for many of the invasive/non-native plants that are destructive. However, I believe the benefits of the above listed plants outweigh the negatives.

Response: The department reviewed available data and information and determined that there is enough data and information to support regulating this plant as a prohibited species under NR 40.

21. Received 3 comments on Asian bittersweet (*Celastrus loeseneri*) in opposition:

- We have the largest producer of this plant in the US with Star Valley in SW Wisconsin. What amazes me - they have been growing this plant for some time but it is not taking over his fields, or invading the neighbor's fields or woodlands. Yet it is banned for sale and he is trying to get a permit to continue to grow it.
- I agree that controls need to be established for many of the invasive/non-native plants that are destructive. However, I believe the benefits of the above listed plants out-weigh the negatives.

Response: The department reviewed available information and determined that there is enough data and information to support regulating this plant as a prohibited species under NR 40. The department has no evidence that Celastrus loeseneri is being sold in the state. The highly invasive Celastrus orbiculatus is currently regulated as a restricted species. The department has issued permits to allow the sale and transport out-of-state of Celastrus orbiculatus.

22. Received 8 comments on water hyacinth (*Eichhornia crassipes* / *Eichhornia azurea*) in opposition:

- This species cannot overwinter in WI.
- What is the data that shows the species can and has overwintered in WI (pool 5)?
- Banning them would financially harm our business.
- Rather than banning, we suggest educating consumers so they will dispose of their excess pond plants in an environmentally responsible manner. Lack of education is the problem. Why should responsible pond owners suffer because of the actions of a few irresponsible individuals?
- This species sold for decades. Excellent at keeping algae out of ponds. Tens of thousands of water lettuce and water hyacinth have been sold in the Dane county market yet not one plant is in any of Dane county's bodies of water. When and if the environment changes enough to allow it to live here it will come in naturally from other areas of the country carried by the migratory birds and we won't be able to stop it. Why not allow the people of Wisconsin the opportunity to benefit from these water plants at present and not use chemicals to treat their self-contained ponds.
- I agree that controls need to be established for many of the invasive/non-native plants that are destructive. However, I believe the benefits of the above listed plants out-weigh the negatives.
- I buy water hyacinth and/or water lettuce for my pond pretty much every year to help control algae, so the inability to buy these plants would be detrimental to my pond.
- Conduct a simple lab study to determine how cold these plants can survive, they would see they need warmer water temperatures.
- Water Hyacinth plants have a cold hardiness zone rating of Zone 9a-11. Water Lettuce has a cold hardiness zone rating of Zone 9-11.
- In 2011 and 2012 this species was found growing in pool #5 of the Mississippi River. Great efforts were made to remove these exotic aquatics and treat the water for eradicating these plants. In 2013, the National Wildlife and Fish Refuge conducted a survey of this same area and none of the exotic aquatic plants were found. The survey results showed it was more likely these exotic aquatics were introduced to pool #5 at the beginning of the warmer growing season in 2011 and again in 2012.

- Hold in a cautionary category until we can say with confidence and scientific evidence, how these plants will behave in our climate and if they pose a risk. Concerned that the decision which will have large economic impacts is not based on science, but rather opinion.

Response: The department determined that there is enough data and information to support regulating this plant as a prohibited species under NR 40. One of the factors leading to the aquatic plant species assessment group suggesting a 'prohibited' classification for water hyacinth was due to the discovery of a large population in Pool 5 of the Mississippi River. In 2011, moderate populations (~1500 plants) of this and another species were observed and efforts were made by state and federal agencies to pull and destroy all plants. It was believed at the time that any plants which were inadvertently missed would succumb to the cold winter temperatures. However, in July 2012 a very large population (~10,000 plants) was observed in the exact same area where plants were pulled during the prior year. Although it is probably unlikely that these plants survived vegetatively throughout the winter, it is hypothesized that this new large population resulted from a seedbank. Due to the vast number of plants discovered in 2012, it was thought a separate re-introduction was unlikely. There has been some recent documentation of this species being reported for multiple consecutive years in Canada and Michigan, and milder winter temperatures experienced in some years may facilitate the continued northward spread of this species. Field observations made in 2012 and 2013 indicate that this plant reproduces, becomes very abundant, and can cause ecological harm in a single growing season.

23. Received 3 comments on Bohemian knotweed (*Fallopia x bohemicum*) in opposition:

- Quite a few are trademarked and patented plants. Many new ones have unique foliage traits sold for decades. The variegated ones are very popular and marginally hardy.
- I agree that controls need to be established for many of the invasive/non-native plants that are destructive. However, I believe the benefits of the above listed plants out-weigh the negatives.

Response: The department reviewed available information and determined that there is enough data and information to support regulating this plant as a prohibited species under NR 40.

24. Received 1 comment on sacred lotus (*Nelumbo nucifera*) questioning whether this species has been found in WI public waters.

Response: The department reviewed available information and determined that there is enough data and information to support regulating this plant as a prohibited species under NR 40. A population was discovered in Lake Delavan, Walworth Co., in 2008. The population quickly expanded and has overwintered for several years.

25. Received 8 comments on water lettuce (*Pistia stratiotes*) in opposition for the following reasons:

- This is a tropical species that cannot overwinter in WI.
- What is the data that shows the species can and has overwintered in WI?
- Banning them would financially harm our business.
- Rather than banning, we suggest educating consumers so they will dispose of their excess pond plants in an environmentally responsible manner. Lack of education is the problem. Why should responsible pond owners suffer because of the actions of a few irresponsible individuals?
- This species is excellent at keeping algae out of ponds. Tens of thousands of water lettuce and water hyacinth have been sold in the Dane county market yet not one plant is in any of Dane county's bodies of water. When and if the environment changes enough to allow it to live here it will come in naturally from other areas of the country carried by the migratory birds and

we won't be able to stop it. Why not allow the people of Wisconsin the opportunity to benefit from these water plants at present and not use chemicals to treat their self-contained ponds.

- I agree that controls need to be established for many of the invasive/non-native plants that are destructive. However, I believe the benefits of the above listed plants out-weigh the negatives.
- I buy water hyacinth and/or water lettuce for my pond pretty much every year to help control algae, so the inability to buy these plants would be detrimental to my pond.
- Conduct a simple lab study to determine how cold these plants can survive, they would see they need warmer water temperatures.
- Water Lettuce has a cold hardiness zone rating of Zone 9-11.
- In 2011 and 2012 this species was found growing in pool #5 of the Mississippi River. Great efforts were made to remove these exotic aquatics and treat the water for eradicating these plants. In 2013, the National Wildlife and Fish Refuge conducted a survey of this same area and none of the exotic aquatic plants were found. The survey results showed it was more likely these exotic aquatics were introduced to pool #5 at the beginning of the warmer growing season in 2011 and again in 2012.
- Hold in a cautionary category until we can say with confidence and scientific evidence, how these plants will behave in our climate and if they pose a risk. Concerned that the decision which will have large economic impacts is not based on science, but rather opinion.

Response: The department determined that there is enough data and information to support regulating this plant as a prohibited species under NR 40. One of the factors leading to the aquatic plant species assessment group suggesting a 'prohibited' classification for water lettuce was due to the discovery of a large population in Pool 5 of the Mississippi River. In 2011, moderate populations (~1500 plants) of this and another species were observed and efforts were made by both state and federal agencies to pull and destroy all plants. It was believed at the time that any plants which were inadvertently missed would succumb to the cold winter temperatures. However, in July 2012 a very large population (~10,000 plants) was observed in the exact same area where plants were pulled during the prior year. Although it is probably unlikely that these plants survived vegetatively throughout the winter, it is hypothesized that this new large population resulted from a seedbank. Due to the vast number of plants discovered in 2012, it was thought a separate re-introduction was unlikely. There has been some recent documentation of this species being reported for multiple consecutive years in Canada and Michigan, and milder winter temperatures experienced in some years may facilitate the continued northward spread of this species. Field observations made in 2012 and 2013 indicate that this plant reproduces, becomes very abundant, and can cause ecological harm in a single growing season.

26. Received 1 comment on Japanese wisteria (*Wisteria floribunda*) in support.

Additional species comments and recommendations not in the proposed rule

27. Received 1 comment recommending that Buckthorn should be on the list and that it should be mandatory that landowners (private and public) remove it when discovered.

Response: Both glossy (Frangula alnus) and common buckthorn (Rhamnus cathartica) are currently regulated under NR 40.05 as restricted species. Both species are widespread in the state and therefore do not fit the definition of a prohibited species. Classification as prohibited would make removal and control mandatory.

28. Received 1 comment requesting that the scientific name for the white-nose fungus *Geomyces destructans* be updated to the currently accepted name *Pseudogymnoascus destructans*.

Response: The department agrees and has made the change.

29. Received 7 comments requesting that Phragmites (*Phragmites australis*), a species currently Restricted under NR40.05, be split-listed and listed as Prohibited under NR40.04 in certain counties to enforce eradication efforts before the species becomes established and impossible to control.

Recommended split-listing divides and data provided:

- List as prohibited west of the Great Lakes basin in Wisconsin. Have seen pioneer stands in Jefferson county.
- List as prohibited in Jefferson county and elsewhere in the state where it hasn't established.
- It seems the western side of the state likely has limited populations of the non-native phragmites and listing this area as prohibited would be wise. Small, isolated patches have been identified and managed in the Chequamegon Bay (Lake Superior). There are many high quality freshwater estuaries in this region and I would hate to see these become solid stands of non-native phragmites similar to what we see along Lake Michigan (Green Bay, Milwaukee, and Chicago).
- More emphasis should be placed on these isolated populations of non-native *Phragmites* in the western half of the state to prevent its spread and destruction west of I-39. Listing this species as prohibited in the western 1/2-1/3 of the state would be a worthwhile step in attacking these populations and preventing further damage. We've seen what non-native *Phragmites* can do along the shorelines of Lake Michigan and Lake Winnebago. I'd hate to see it do the same along the Wisconsin River, St. Croix River, Mississippi River, Lake Superior, etc. We still have a chance at minimizing the damage of this species in Wisconsin – we should grab that opportunity.
- In Jackson County I see the very early attempts of non-native Phragmites to colonize our area. It is almost absent but is trying to move out of an infestation located in the Jackson County Lake Wazee Recreation Area, or more accurately, in the tailings pond near the lake. At present there is only one small site in the Black River State Forest and a few plants in nearby road ROWs. Eradication at these sites is a very strong possibility. Other than these I haven't seen Phrag anywhere else in the area, even though I frequent roads between Black River Falls and Eau Claire, especially I-94 and Hwy 12, and other back roads as well. The same with drives to La Crosse and elsewhere – I'm just not seeing it. There was a report of a large Phrag infestation at the Tamarack Creek State Wildlife Area south of Arcadia, which turned out to be native. In short, I'm just not seeing it in our area except in one spot. If it is as rare in the western counties as I think it is, it makes sense to take a more aggressive stance while we still can and list Phragmites as Prohibited where it is absent or rare. This would mean the western part of the state, more or less, to be determined more exactly by its current distribution. When it makes its appearance, as it surely will, we would be able to act decisively. Anyone who knows what we're in for if we let it go will agree, I think. Let the East Coast of the U.S. and parts of eastern Wisconsin where Phragmites has been so difficult to control be a lesson to us. We need to split list Phragmites.
- I propose split-listing the non-native subspecies of *Phragmites australis* as prohibited in the western 2/3 of Wisconsin (from Vilas County down to Green County), to keep it from infesting that area as it has in the Lake Michigan Basin.

Response: This subspecies is currently listed as restricted statewide. The department reviewed available information and determined that there is enough information and data to support split-listing this species based on its current distribution. Non-native strains have either not been found or found in only very small populations in much of the western part of state (generally outside of the Great Lakes basin). Split-listing will allow the department and partners to eradicate non-native Phragmites populations as they occur, before they can become firmly established and spread. All identified populations in the proposed prohibited counties have already been targeted for eradication with local support. Split listed area is based on known small or non-existent populations separated from more populous restricted area by a one-county buffer, the approach used for other split-listed species. The department replicated the exemption for waste-water treatment facility use of this species in the prohibited category.

30. Received 1 comment requesting that common teasel (*Dipsacus fullonum* subsp. *sylvestris*), a species currently Restricted under NR40.05, be split-listed and listed as Prohibited under NR40.04 in certain counties to enforce eradication efforts before the species becomes established and impossible to control. Recommended Restricted counties: Dane, Dodge, Jefferson, Kenosha, Racine and Walworth.

Response: The department reviewed available data and information and determined that there is not enough data and information to support split-listing this species. This species is under-reported and is probably more widespread in the state than the six reported counties.

31. Received 1 comment recommending that slender Russian thistle (*Salsola collina*), a species not currently or proposed to be regulated, be listed as Prohibited under NR40.04: This species is currently invading rare beach habitat in the Apostle Islands, including on Long Island in nesting habitat used by the Endangered Piping Plover. I have also observed it on Michigan Island in the Apostles. This annual plant spreads easily by tumbling and by seed. I've seen it flowering at a range of sizes (see small flowering individuals to the right of the larger plants in the attached photo taken from Michigan Island in 2012). This species poses a threat to other critically important dune habitats in the Great Lake region, and I'd assume it could also do well in dry prairies in southern WI and sand barrens.

Response: The department reviewed available data and information and determined that there is not enough data and information to support regulating this species. This species was not evaluated by a species assessment group.

32. Received 1 comment recommending that Siberian squill (*Scilla siberica*), a species not currently or proposed to be regulated, be regulated under NR40: My experience on attempting to remove this variety leads me to this email. Siberian Squill should be put on the invasive list and should no longer be on the market.

Response: The department reviewed available information and determined that this species does not fit the definition of an "invasive species" per section 23.22 (1) (c) Stats. The literature review for Siberian squill determined that this species is not likely to cause environmental or economic harm, or harm to human health.

33. Received 1 comment requesting that wild chervil (*Anthriscus sylvestris*), a species currently Prohibited under NR40.04, be split-listed and listed as Restricted under NR40.05 in certain counties to recognizing that the species has spread and established in parts of the state. Recommended restricted counties: 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.

Response: The department reviewed the available information and concurs and has updated the county list to include Chippewa and Dunn counties.

34. Received 1 comment recommending that the split-list counties for Amur honeysuckle (*Lonicera maachii*), a species currently regulated under NR40.04 and NR 40.05 be updated to incorporate new occurrence data in Buffalo county..

Response: The department reviewed the available information and concurs and has updated the county list to include Buffalo County.

35. Received 3 comments requesting an exemption for scotch broom (*Cytisus scoparius*), a species currently Prohibited under NR40.04, to allow for sale and use only in cut form to wholesalers and retail florists.

- I would like you to be aware that this product, while NOT used in or distributed as a plant form to florists in the Wisconsin and Upper Michigan areas, is an extremely beneficial cut floral item for us as florists and wholesalers to use during the Christmas Holiday season. We only receive Scotch Broom as a cut floral product. Because it is distributed in the winter months, and because it has been placed in preservative chemical solutions, it would be nearly impossible to propagate this item for any form of reproduction. Scotch Broom has not been available in plant form during my nearly 20 years as a retail florist. Upon asking my cut flower wholesalers and growers, they noted that Scotch Broom is also not available to them in anything but a cut floral form either. Once the cooler and shelf life of Scotch Broom is up, the product is dried up, brittle and unusable in any form. On behalf of WUMFA, and the hundreds of WI retail florists, I would like you to reconsider leaving Scotch Broom on the Invasive species list, and make an exception when it is sold and used only in cut form to wholesalers and retail florists. I appreciate your consideration of this matter. It DOES matter to retail florists when an economical holiday item is no longer available to us for use, and it will help keep us as small businesses in the state of Wisconsin more profitable, and in turn, be able to continue with our businesses.

- The wholesale floral industry purchases Scotch Broom cut branches from the NW states where they are cut and harvested from the wild and packaged up for the wholesale florist trade and shipped around the country. The national floral industry will supply cut floral materials via shipments to local floral distributors in our state where they are offered for sale to local florists. They may also direct ship via Fed Ex or overnight delivery to local floral buyers as well. I have spoken to several florists and wholesale distributors this past month, none of these floral industry folks were aware that Scotch Broom was on the WI NR 40 Prohibited Invasive Plant List already being regulated as prohibited. No one from the floral industry was represented on the species assessment group when these potential invasive plants were being discussed during the first round. There were no floral industry folks at the second round of species assessment group discussions on the current list of proposed plants even though there were several plants being assessed that are widely used in the floral trade as cut floral material. There is no recognition of The Floral Industry as an Interested Party in these assessments. Florists are not required to have a nursery license and therefore are not inspected by DATCP nursery inspectors. There was no outreach to the Florists by anyone on the Invasive Plant Council. There are specialty plant and floral sellers that have created niche small businesses using plants that have been legal to use until the NR 40 regulations became law. There needs to be more effort to include these folks, the small business ones, in the original species assessment discussions. The larger nursery businesses are much more flexible to adjust to the loss of these regulated invasive plants from the market. This NR 40 rule really economically affects the smaller nursery dealer-plant selling business. Many of these smaller nursery dealer businesses are not members of any Green Industry Association to get newsletter updates. There needs to be much more effort to educate the industries affected by the NR 40 prohibition and restrictions of plant material before they are regulated.

Response: The definition of "invasive species" in NR 40 was clarified. The definition does not apply to dead specimens or organisms that are dead, not revivable and no longer capable of living, growing, developing, reproducing, and functioning as 'invasive species'. As this species is grown out of state and imported in as treated cut stems which are not revivable, NR40 regulations would not apply.

36. Received 3 comments requesting that Variegated Porcelain Berry (*Ampelopsis brevipedunculata*), a species currently Prohibited under NR40.04, be removed:

- This species has sold for years and we have yet to see it invading the natural habitat. Just not hardy enough as it is a tender zone 5 plant.
- I am very concerned about the proposed new inclusions to the prohibited/restricted list for Wisconsin plants. I have many of these plants already on my property. They add much beauty and value to my landscape and I have no problem with them being invasive. I was made aware of this proposed change through an email from America's Best Flowers where I purchase much of my plantings. They have suggested a list of 15 that perhaps you could reconsider after doing more research on them. I agree that controls need to be established for many of the invasive/non-native plants that are destructive. However, I believe the benefits of the above listed plants out-weigh the negatives.

Response: The department reviewed available data and information and determined that there is no new data and information to support removing this species from NR 40.

37. Received 3 comments requesting that Russian Olive Tree (*Elaeagnus angustifolia*), a species currently Restricted under NR40.05, be removed:

- We have yet to see it invading a natural habitat in Wisconsin. The tree is too susceptible to fungal and bacterial diseases to ever be invasive. A group of them planted at West Towne near Madison 40 years ago. Unique foliage inspires and it has great scented flowers. It is in many neighborhoods.
- I am very concerned about the proposed new inclusions to the prohibited/restricted list for Wisconsin plants. I have many of these plants already on my property. They add much beauty and value to my landscape and I have no problem with them being invasive. I was made aware of this proposed change through an email from America's Best Flowers where I purchase much of my plantings. They have suggested a list of 15 that perhaps you could reconsider after doing more research on them. I agree that controls need to be established for many of the invasive/non-native plants that are destructive. However, I believe the benefits of the above listed plants out-weigh the negatives.

Response: The department reviewed available data and information and determined that there is no new data or information to support removing this species from NR 40.

38. Received 1 comment recommending that Big-leaf Lupine (*Lupinus polyphyllus*), a species not currently or proposed to be regulated, be regulated under NR40 as Restricted. This species is just starting to take off in Vilas Co, so listing as Restricted could help to get management on them. The Lupines are spread by seed both deliberately and accidentally by road crews. Despite being told this plant is not native and will colonize fields and is poisonous to horses - people persist in spreading it up and down our roadsides and in their gardens. If there were strong language on this species available we could certainly stop the lady who sells the seed at the farmers market. Every year I speak with her, but as there is no restriction she doesn't stop.

Response: The department reviewed available data and information and determined that there is not enough data and information to support adding this species to NR 40 at this time. Department staff have added this species to the list of species under consideration for subsequent NR 40 revisions.

General comments and recommendations on the rule

39. Received 13 comments in support of the proposed rule package. Below are specific reasons given:

- It appears to me that great care has been taken by the Department to ensure these proposed rules will not cause an undue burden on area businesses, notably garden/landscaping supply centers and beekeepers. There are plenty of plant alternatives for business owners to choose from in the case of the garden centers. As for the beekeepers, prohibited species are, at the moment because of foresight in policy, only a small fraction of overall nectar supply. Also, it is more in the best, long-term interest for beekeepers to utilize native nectar sources.
- Over the past 10 years of my life, I have become ever more aware of the need to preserve the native ecology of our region for the long term health of us all. I now firmly believe that we have to "garden as if life depends on it" because it does! We need to eliminate any threats to the native plant life of our region and the insects, birds and animals that depend on them. I have had experience with many of the typical yard plants that the new rule changes impact and have personally seen how they take over a space if left alone. I have found this out the hard way by digging them up hour after hour! The changes to the rules as proposed will help others not have to suffer these same mistakes by keeping them from planting them in the first place.
- I know that many nursery & plant sellers in the area are trying to get their customers to lobby against it. I applaud your efforts in putting forward this much needed bill.
- Thank you for tightening Wisconsin's invasive species laws. Having helped eradicate some of these plants from conserved properties, it's really awful to walk in to nurseries and see some of these plants for sale. Wisconsin needs to stop selling invasive species in the private market. We spend way too much money eradicating these very plants nurseries sell.
- Thank you for taking some action against invasive species. I support the proposed rule as far as it goes. I would like to see an even more stringent rule regarding invasive species. I would like to see the sale of all invasive species prohibited in the state. In regards the purveyors of exotic, invasive or potentially invasive species, what profit they might make through sales of these species, is outweighed by the future costs of control and eradication. My woods is full of honeysuckle. It seems as quick as I can remove one plant I find several more. Time and time again we see a plant or animal brought in for the enjoyment of a few people future generations are left with the responsibility and cost of control.
- The Crazy people like the ones that just posted this link to you that run a profit making nursery in Cottage Grove, WI. and think 15 of their best selling plants should not be on your list cuzzzzz they look nice and they don't see them along the highway and heck....they sell real good !!!!!
- I have seen and heard about serious infestations of the proposed restricted plants *Berberis thunbergii*, *Coronilla varia*, *Lysimachia nummularia*, *Myosotis sylvaticum*, *Robinia pseudoacacia*, and *Valeriana officinalis* while working in natural resources in northeastern Wisconsin, and many of the proposed prohibited plants in other states, so I applaud the committee for strengthening N.R. 40 with all the proposed additions to the list to protect Wisconsin's natural resources.
- Members of the Wisconsin Invasive Species Council voted at their June 5, 2014, meeting to support, in concept, the proposed revisions to Ch. NR 40, Wis. Admin. Code. This letter formally communicates the Council's support for the rule revision process, including changes to the list of regulated species.

40. Received 6 comments in opposition of the proposed rule package for the following reasons:

- I would like to see a review of the list because several of the plants I see mentioned are not invasive and should be reconsidered. Again Government is taking control of every aspect of our lives. Why not just place a warning on these plants to let people know when they are purchasing them that they need to be aware of the potential harm these plants might cause if planted. We sure do not need the plant police scoping out our landscapes.
- Leave things alone.
- Too much governmental involvement in this 'invasive' species ruling. Far too many plants are listed/unwarranted. Many of the plants are well controlled and not at risk for 'invading' where unwanted when maintenance of plantings performed. Many places have these beautiful plantings without harm to other plantings. You may have planted some on your own properties. As Americans, we are all non-native, invasive species to this land.
- I am very much in favor of keeping invasive species out of the state, BUT I do not agree with the list of 150 additional plant species that are being considered for a ban. For plants that are already widely spread in the state, it seems like closing the barn door after the animals have gotten out. If these plants are truly invasive, then stopping the sale of plants that are already widespread won't accomplish anything. Also, some of these plants are common and have not proven to spread aggressively. Lastly, some of these plants are not cold hardy, so will die off every winter.
- I am very concerned about the proposed new inclusions to the prohibited/restricted list for Wisconsin plants. I have many of these plants already on my property. They add much beauty and value to my landscape and I have no problem with them being invasive. I was made aware of this proposed change through an email from America's Best Flowers where I purchase much of my plantings. They have suggested a list of 15 that perhaps you could reconsider after doing more research on them.

Response: The department has a statutory responsibility to regulate invasive species. The department has worked with the Wisconsin Invasive Species Council and affected stakeholders to develop a reasonable rule proposal that meets the statutory directive. All comments regarding specific species proposed for regulation were re-evaluated, and where appropriate, changes were made to the proposed rule language.

41. Received 2 comments concerned about the impact NR40 has to real estate transactions: Though it may not be the intent of DNR or the individuals who drafted the law - it clearly could be a violation of this law as it is written to sell real estate with restricted or prohibited plants on them. There certainly are liability issues that have to be resolved in real estate transfers when the real estate has restricted and/or prohibited plants on it - regardless of how the DNR decides to enforce NR 40.

Response: Real estate transactions and any potential liabilities arising from them are a matter between the seller and purchaser. Nothing in statute expressly requires notification of the existence of NR 40-listed species. Nothing in the proposed rule package changes the regulation of restricted or prohibited plants relative to real estate transactions.

42. Received 1 comment requesting the DNR to provide a public listing where people can go and see the sites damaged by past, present, and future non-native terrestrial plants listed for stop sale orders in Wisconsin. We all need a better understanding of actually what is happening.

Response: Species proposed for listing as prohibited are currently not found in the state or are found in only very small numbers where prohibited. The intent behind prohibiting them is to proactively avoid economic and ecological harm from their introduction. Species that are proposed for listing as restricted are already wide spread. The department concurs that having reference sites is a good

outreach and education tool. Department staff can be contacted directly for specific site/species requests.

43. Received 5 comments on the phase-out period for newly restricted plants.

a. In support, 1 comment.

b. Recommendation, 3 comments: Increase the phase-out period to 8 and 10 years to eliminate existing stock and develop and market a better form of the plant species.

Response: The department has consulted with representatives of green industries. We believe the recommended 3- and 5-year phase-out periods provide reasonable opportunities for vendors to eliminate their existing stock of regulated species.

44. Received 1 comment recommending a review of the split-listing decisions: The Wisconsin Invasive Species Council recommended against the split-listing of plants based on the level of confusion it may cause.

Response: While the department recognizes the complexity and potential confusion that can result from split-listing species, this approach avoids a "one-size fits all" solution while addressing the underlying goals of the regulation.

45. Received 1 comment recommending that the language on the rusty crayfish appears inconsistent with DNR's VHS rules/approach towards catching and using minnows from lakes with the VHS designation. For example, Clark Lake has a VHS designation, and our residents and visitors cannot catch minnows for use on Clark Lake. The concern is that the captured minnows will be used on other lakes, hence possibly spreading the VHS virus. Seems the risk is the same for rusty crayfish.

Response: NR 19, Wis. Admin. Code, allows for the use of crayfish as bait on the Mississippi River. The proposed change aligns NR 40 with this other regulation. In addition, proposed revisions clarify that consumption of rusty crayfish constitutes disposal.

46. Received 1 comment recommending that the EIA should also include adverse financial impact of invasives (page 11, section 9; and page 13).

Response: The department recognizes the adverse economic impacts resulting from the establishment of invasive species. By definition, "invasive species" can create economic harm. The proposed listing of species is recognition of adverse financial impacts.

47. Received 1 comment recommending that the list of impacted organizations be updated to include Wisconsin Lakes to the list of NGO's.

Response: The department concurs and has made this update.

48. Received 1 comment recommending that the definition of "dead organisms" does not include organisms that still have viable seeds/eggs: It is possible to have a dead organism and still have viable seeds/eggs?

Response: The definition of "invasive species" in NR 40 was clarified so it does not apply to dead specimens or organisms that are dead, not revivable and no longer capable of living, growing, developing, reproducing, and functioning as 'invasive species'. Seeds are propagules and are included in the definition of "invasive species". Seeds are covered by the restrictions in the rule.

49. Received 1 comment questioning if it is ok to transfer ownership (sale, trade, etc) of a nonnative animal without a permit? Seems quite liberal in our handling of "pet" organisms.

Response: The existing rule allows the transfer of prohibited or restricted wild animals that are "pets." This revision does not include a proposal to revise that exemption.

Non-rule related comments and recommendations

50. Received 3 comments noting that the timing of the public comment period is poor for the nursery industry.

Response: The Species Assessment Groups met the winter of 2012-13. The draft rule was taken out to the public for an extensive informal review and comments during the winter of 2013-14. These were timed specifically for the green industry and other stakeholders. These were the periods when most comments were sought in order to ensure that the proposed rule would reflect the needs of Wisconsin residents. The official comment period is set by the rule making process and did not allow for scheduling around stakeholders.

51. Received 1 comment encouraging efforts to include the terrestrial list with native varieties that could be uses to replace them.

Response: The department is working with others in the Midwest to develop a listing of plants that can be used to replace ornamentals that are invasive. Attached is a link to a publication developed a few years ago that is currently being revised.

<http://www.mipn.org/MIPN%20Landscape%20Alternatives%202013.pdf>. There is now a free smart phone app of the same but expanded information that people can use while shopping for plants:

<https://itunes.apple.com/us/app/landscape-alternatives-for/id559865258?mt=8>

52. Received 1 comment recommending that landowners should control invasive plants within 50 feet of lot lines.

Response: Although it would be ideal if everyone tried to contain and control these species on their property, there is no funding to do the work or even to provide assistance or information to all landowners in the state. It would also be impossible to enforce. The best approach in this situation is for landowners to work directly with their neighbors, sharing information about the invasive species and offering assistance with surveying their land or even doing some of the control work. Cooperative Weed Management Areas have been developed around the state to help people at a local level.

53. Received 1 comment noting that their local town ordinance only lists 2 prohibited weeds.

Response: A state statute lists three species as "noxious weeds" statewide - Canada thistle, leafy spurge and field bindweed. That law allows local units of government to put additional weeds on their local list and to do enforcement. If the landowner does not comply within 10 days, the weed commissioner may do the control themselves and bill the landowner on their property taxes. The majority of towns and cities have not added anything to their list. Some have added many. It is quite variable. If adding species, the town needs to have an appointed weed commissioner and some way to enforce their ordinance. It also should be realistic, allowing landowners time and resources to do the necessary control work. In part because this law was not very useful at the state level, the legislature directed the department to develop the NR 40 rule. NR 40 applies statewide, to both public and private lands and lists multiple prohibited and restricted plants.

54. Received 1 comment clarifying that the language on the DNR website is for information purposes and is not the current or proposed rule language.

55. Received 3 comments recommending changes to the invasive species classification process:

- Add documentation in NR 40 concerning how SAG groups (Special Assessment Groups) are created, who sits on them and the rules under which they operate. Nothing in NR 40 even mentions SAG groups now, yet they are telling us which plants to issue stop sale orders for.

- Require public testimony at the appropriate SAG committee meetings and allow all members to request and provide it in addition to the research papers and personal observations they review.
- Remove the SAG chairmanship from IPAW members and people that support natives or non-natives - the chairperson of SAG groups should be neutral. IPAW is a special interest group – the Invasive Plant Association of Wisconsin.
- Require all SAG votes to be in secret.
- Require specific economic, environmental, and human information for each species to be presented in the Wisconsin environment. Both good and bad must be presented at the SAG committees before a vote is taken.
- Require the DNR to evaluate how many of each species is being presently sold, and the effect this will have on business income and jobs.
- Gather Wisconsin information so a rate of spread in urban and naturalized areas can be established for the plants before they are considered invasive – provide this rate of spread to SAG groups before vote is taken.
- Require DNR to place a value on animals eating the plants for food, value on the beauty of the plant in the urban landscape, value of the plant for insects and butterfly larvae feeding, value of the plants to birds and human healing. Present the findings at SAG meetings before vote is taken.
- Require DNR to have groups affected by the stop sale orders on the SAG groups, so the opinions are equally balanced between native and non-native species.

Response: The Wisconsin Invasive Species Council and the department will be reviewing the species assessment processes and seeking input from interested parties. These comments will be taken into account in that review process.

56. Received 1 comment wondering about guidance to homeowners on how to handle banned species on our own land? Not purchasing or sharing banned plants is a given, of course, but what should we do with banned plant on our property? And how about invasive species which have spread to our land and are difficult, if not impossible, to eradicate?

Response: Invasive plants that are common and widespread are proposed to be listed as “restricted”. Any plants listed as restricted, will not be allowed to be purchased, sold, or planted. “Prohibited” species are limited to those that are not yet found in the wild in Wisconsin, or have been found in only a few locations. The goal is to contain these infestations wherever they are found before they spread onto other lands and cause further damage. Only plants listed as prohibited may be required to be controlled. The department will work with the landowner to verify the identification and to assist in getting the population controlled.

57. Received 1 comment recommending that labeling requirements be created. Labeling would be similar to COOL (Country of origin labeling). Possible required plant labels to include whether the plant is: N- Native to Wisconsin (possible genotype to county of seed collection or similar?); NC- Native Cultivar; NN- Non Native and include where it's native to; and IP-Invasiveness Potential (scale of 1-5?) and advise not to plant in or near Wisconsin's natural areas.

Response: These ideas will be reviewed during the review of the species assessment process. To implement this full proposal, an extensive amount of work would need to be done to assess invasiveness potential for each species statewide. It would also require growers or vendors to determine nativity and to label each plant in their inventory. This would be a significant burden on the plant industry. If, as

suggested, they were required to list the county or state of seed collection, this would be very difficult for many businesses.

58. Received 1 comment recommending the creation of an additional tax on all exotic species sold in the state. The revenue generated by the tax would be used to fund research, control and education for existing and new invasive species.

Response: The department does not have the authority to levy taxes. That would need to be done by the state legislature.

59. Received 1 comment questioning if the rule would prohibit possession of dead prohibited/restricted fish species in preparation for any stage in taxidermy of that species.

Response: The proposed rule revision has revised a "note" to section 40.02(02) that says "The note under the definition of "invasive species" is amended to clarify that the definition of "invasive species" does not apply to organisms that are dead."

60. Received 1 comment opposing the listing of commercial forage plants (red clover, white clover, trefoil and some of the grasses) and supporting listing of invasive, poisonous species.

Response: Several non-regulated lists were formed for educational purposes only. These lists include several forage plants. Forage or potential forage plants on the "Caution" list include hairy vetch and everlasting pea. The "Invasive but not restricted" list includes bird's foot trefoil, reed canary grass, yellow and white sweet clover, quack grass and smooth brome. The "Not invasive" list includes orchard grass, tall fescue, flat pea, white clover, red clover, and cow vetch. All of these plants are still available to be purchased, sold, and planted. The recommendation to list poisonous species did not list specific plants. There are thousands of plants with poisonous parts that are not invasive in Wisconsin.

61. Received comments to include the following groups in outreach, education, and species assessment groups: WI taxidermists, WI Florists, Out-of-state wholesale nurseries and wholesale floral suppliers.

Response: The department concurs and will be conducting extensive outreach starting in 2015. These will be amongst dozens of groups targeted for information about the rule and species listed.

62. Received 1 comment recommending that NR 40 clearly outline a process to legally harvest invasive plants for medicinal/consumption and sale of non-viable plant material in an ecologically responsible way.

Response: Non-reproductive parts of NR 40 plants may be possessed, transported, and transferred. This would include dried and ground roots or seeds. If a person wants to transport or transfer viable reproductive parts such as fresh roots or whole seeds, they would need to obtain a permit. The permit would specify under what conditions these plant parts may be transported and transferred.

63. Received 1 comment recommending the DNR regulate road-side plant sellers.

Response: DATCP Nursery Inspectors inspect licensed nurseries, however many roadside and farmer's market sellers are not licensed. Outreach efforts at farmer's markets have decreased availability of invasive plants and outreach efforts will continue to contact the roadside sellers. Cooperative Weed Management Areas have been developed around the state to help people at a local level.

III. Non-Economic comments received during the EIA comment period that resulted in proposed rule revisions (October - December 2013)

1. Received 13 comments opposing the listing of bittercress as prohibited, as this species is widespread in nurseries and would impossible to eradicate.

Response: The department concurred and removed the species from the proposed list before going out for public comment on the rule.

2. Received 2 comments on whether the *Lysimachia nummularia* 'Goldilocks' is variety is exempt.

Response: Prompted by confusion over the trade and species names of the exempted cultivars, the department revised the exemption to clarify that golden and yellow forms are a part of the exemption.

3. "There is an exemption listed for *Tanacetum vulgare* 'Compactum'. According to Hortus Third, the correct designation for this cultivar is *Tanacetum vulgare* 'Crispum'."

*Response: The department concurs and revised the cultivar name to *Crispum*.*

IV. Comments and new information outside of the comment period

1. Received 1 comment requesting that the department verify that all of the Council of Great Lakes Governors' list of "least wanted" aquatic invasive species are currently regulated or are being proposed for regulation under NR40: <http://www.cglg.org/media/1156/least-wanted-press-release-and-listing-6-1-13.pdf>

*Response: Department staff added the Golden Mussel to the proposed list of prohibited species. Department staff reviewed the list and verified that all but one species will be regulated under NR40. The Golden Mussel (*Limnoperna fortunei*), a bivalve that is native to Asia, has the potential to colonize the Great Lakes if introduced causing significant environmental and economic harm. Impacts may be similar to the Zebra Mussel. The Golden Mussel's most likely introduction will be in ship ballast, and as a contaminant of shipments of live Asian clams. There is no economic impact to listing this species as prohibited.*

2. The department revised the NR 40 regulated classification of crazy worm (*Amyntas* sp.) from prohibited to restricted based on new information on the presence and spread of these species in the state. This species is currently regulated as a prohibited species. When the rule was initially adopted, there were no known occurrences of this species in the state. Since the rule was adopted, crazy worms have been confirmed to occur in five counties and have been reported from several additional locations. Given this new information, the species no longer meets the definition of a prohibited species.

V. **Comments from the Rules Clearinghouse** (numbering corresponds with report format)

2. Form, Style and Placement in Administrative Code

a. Definitions should be limited to a statement of what the defined term means and should not include substantive requirements. The latter should be placed into the body of a rule. [s. 1.01 (7) (b), Manual.] See, for example, the following:

- The current definition of “disposal” appears to consist entirely of substance (i.e., it tells the reader what form of disposal is permissible). The amendment to this definition only makes this problem more obvious by adding substantive requirements that appear to have nothing to do with the word “disposal.” Rather than amending the definition, the agency should consider repealing the definition and placing these substantive provisions into the body of the rule.
- The language added to s. NR 40.02 (29), (30), (31), and (48) appears to be substantive. A genetically modified arctic char is still an arctic char, but the policy established by this rule is to treat a genetically modified arctic char differently. This distinction should be established in the body of the rule, not in definitions.

Response: The department reviewed the definitions that the Clearinghouse identified as containing substantive requirements and made the following changes:

- *The definition of “disposal” was amended to only include the clarification that consumption as food is disposal. The clause “or use for other purposes that will not lead to the establishment, introduction or spread of the species” was removed from the proposed revision because it was substantive and allowed for interpretation outside of the permitting process.*
- *The proposed revisions to definitions NR 40.02 (29) “nonnative” or “nonnative species”, (30) “nonnative fish species in the aquaculture industry”, (31) “nonnative viable fish species in the aquarium trade”, and (48) “species” were removed from the rule for adoption. The proposed definitions, were created to clarify how genetically modified (GM) fish and crayfish are regulated in NR40. The department’s intent was to clarify that both native and nonnative GM fish are nonnative and that viable GM variants be regulated via NR 40 as Restricted. The department concurred with the Clearinghouse and replaced the proposed definition amendments with the language in the body of the rule. The department revised the proposed restricted category of viable GM fish to note that the restriction applies to both native and nonnative fish species and created an exemption for GM fish in the prohibited section.*
 - *Created NR 40.04 (2) (c) 12. e. Genetically modified fish species*
 - *Amended NR 40.05 (2) (c) 5. Viable genetically modified native and nonnative fish species*

b. Notes are explanatory and are not enforceable. [s. 1.09 (1), Manual.] The material added to s. NR 40.02 (24) (Note) relates to the applicability of ch. NR 40, though there does not appear to be a provision in that chapter establishing the applicability described in the note. If this is correct, a provision to this effect should be added to that chapter, but not in a note or a definition.

Response: The department amended the note under the definition of “invasive species” to clarify that the department does not consider organisms that are dead as “invasive species”.

c. In s. NR 40.02 (37), the language added to the definition of “pet” should be worded as follows: “‘Pet’ does not include fish or aquatic invertebrates.”

Response: The department agrees and has made the recommended change.

d. In ss. NR 40.02 (48), 40.04 (2) (b) 13. and (3) (e) (intro.), and 40.05 (2) (b) 3., 4., and 20. and (3) (e) (intro.), when material is deleted and new material is inserted in the same location, the new underscored material should immediately follow the stricken material. [s. 1.06 (1), Manual]

Response: The department agrees and has made the recommended change.

e. In both the treatment clause and text of SECTION 6 of the rule, the notation “(intro.)” should be inserted. The same is true of SECTION 43. The introductory clause should also include the notation “(intro.)” for these provisions.

Response: The department agrees and has made the recommended change.

f. The subdivisions of ss. NR 40.04 (2) and 40.05 (2) should all end in periods. [s. 1.03 (4), Manual].

Response: The department agrees and has made the recommended change.

g. In ss. NR 40.04 (2) (b) 2. and 40.05 (2) (b) 3., 4., and 14., commas that are new material in the text should be underscored. [s. 1.06 (1), Manual.]

Response: The department agrees and has made the recommended change.

h. In s. NR 40.04 (2) (b) 3., “Iowa, “ should be underscored. [s. 1.06 (1), Manual.]

Response: The department agrees and has made the recommended change.

i. The amendment to s. NR 40.04 (2) (b) 16. does not correctly reflect the text of the current rule. It should be drafted, in pertinent part, as follows: “...except in Grant and Buffalo, Crawford, Dane, Grant, Green,...”. Similarly, the amendment to s. NR 40.04 (2) (b) 22, should read in part: “...Ozaukee, Racine, and Sheboygan and Racine counties.”. See also the treatment of s. NR 40.05 (2) (b) 27. and 28., as well as s. NR 40.04 (3) (g) (Note) (in reference to the website at the end of the note).

Response: The department agrees and has made the recommended change.

j. When renumbering, show only the new numbering; do not show the old number with a strike-through and the new number with underscoring, as is done in SECTION 25 of this rule.

Response: The department agrees and has made the recommended change.

k. The treatment clause of SECTION 29 should include s. 40.04 (2) (b) 41. in the list of subdivisions created by that SECTION.

Response: The department agrees and has made the recommended change.

l. Section NR 40.04 (3) (b) (Note) appears to be substantive; it should be added to s. NR 40.04 (3) (b). In addition, “this paragraph” should be used in place of “this subsection”, and “Wis.” should be omitted. The same applies to s. NR 40.05 (3) (b) (Note).

Response: The department agrees and has removed the note from the proposed rule. The department instead will create “reasonable precautions” template outside of NR 40, stating that compliance with Chapters 30 and 31 constitute reasonable precautions.

m. SECTION 38 should renumber s. NR 40.04 (3) (e) to be s. NR 40.04 (3) (e) (intro.), and that provision, as amended, should end with “if any of the following apply:”. [s. 1.03 (3), Manual.] The introductory clause should also be modified to reflect the renumbering of s. NR 40.04 (3) (e). In s. NR 40.04 (3) (e) 1., “, or” should be replaced with a period. [s. 1.03 (4), Manual.] Section NR 40.05 (3) (e) should be treated in the same manner.

Response: The department agrees and has made the recommended change.

n. In SECTION 45, and subsequent SECTIONS, the rule directs the Legislative Reference Bureau (LRB) to insert an effective date but gives the LRB no instructions as to what the effective date should be. If the agency wishes to insert the actual effective date of a rule into the text, this may be done by incorporating, in the location where the date is to appear, the following text: “the effective date of this section ... [LRB inserts date].” [s. 1.01 (9) (b), Manual.] If those provisions should have an effective date that differs from the effective date in SECTION 79, the agency should specify a different effective date for those changes by creating an exception to the effective date in SECTION 79, [s. 1.02 (4), Manual.]

Response: The department has made the recommended change per s. 101 (9) (b), Manual. with additional guidance from the Legislative Reference Bureau.

o. SECTION 64 should state only that it repeals s. NR 40.05 (2) (f); in repealing par. (f), subd. 1. is also repealed.

Response: The department agrees and has made the recommended change.

p. SECTION 76 does not correctly reflect the current text of s. NR 40.07 (8) (d) (Note).

Response: The department agrees and has made the recommended change.

4. Adequacy of References to Related Statutes, Rules and Forms

a. In ss. NR 40.04 (3) (d) and 40.05 (3) (d), “subsection” should be replaced with “paragraph”. [s. 1.07 (2), Manual.]

Response: The department agrees and has made the recommended change.

b. In s. 40.05 (3) (p), “NR 40.05 (2)” should be replaced with “sub. (2)”. [s. 1.07 (2), Manual.]

Response: The department agrees and has made the recommended change.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In ss. NR 40.04 (3) (h) 3. and 40.05 (3) (o) 3., “Department” should not be capitalized. [s. 1.01 (4), Manual.]

Response: The department agrees and has made the recommended change.

b. In s. NR 40.05 (3) (k), “can” should be replaced with “may”. [s. 1.01 (2), Manual.]

Response: The department agrees and has made the recommended change.

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Original Updated Corrected

2. Administrative Rule Chapter, Title and Number

Chapter NR 40, Invasive Species Identification, Classification and Control

3. Subject

Revisions to classify additional invasive species into existing categories established in NR 40, address accomodations to facilitate compliance with NR 40, clarify language, and improve organization of the rule.

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected

6. Fiscal Effect of Implementing the Rule

No Fiscal Effect Increase Existing Revenues Increase Costs
 Indeterminate Decrease Existing Revenues Could Absorb Within Agency's Budget
 Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

State's Economy Specific Businesses/Sectors
 Local Government Units Public Utility Rate Payers
 Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes No

9. Policy Problem Addressed by the Rule

Revisions of NR 40 will 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 with in the state.

When ch. NR 40 became effective Sept. 1, 2009, a number of invasive species were not included pending additional assessment. During the public input and drafting processes for the 2009 rule, 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 we need to get input from the affected stakeholders. The requested current rule change will add species of terrestrial plants, aquatic plants, vertebrates, and both terrestrial and aquatic invertebrates to the invasive species rule. Other proposed revisions will facilitate compliance with NR 40, clarify language, and improve organization of the rule.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

Affected 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; Commerce; Tourism; Transportation and seven other Council members that are drawn from agriculture; nursery industry; NGOs (TNC); UW; and forestry.

As part of the information gathering and outreach process, a letter was sent to 600 retailers and growers and approximately 1,100 licensed growers and dealers from the November 2, 2012 DATCP list of license holders

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

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 were received during the informal discussion period.

Between October 28 and December 31, 2013, the department solicited comments on the economic impact of the proposed rule revision. The preliminary Fiscal Estimate and Economic Impact Analysis were updated based on the economic comments received.

Prompted by public comments received on the economic impacts of the proposed rule changes, it was determined that the plant bittercress (*Cardamine hirsuta*) does not meet the definition of prohibited under NR 40 because eradication and containment is not feasible. This plant was removed from the proposed list of prohibited species included in the initial board order.

11. Identify the local governmental units that participated in the development of this EIA.

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 Villages of Cecil and Vesper contacted the Department to coordinate on the development of the Economic Impact Analysis (EIA). The Department followed-up with both villages and neither had concerns nor had information related to these proposed rule revisions.

12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

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.

13. Benefits of Implementing the Rule and Alternative(s) to Implementing 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. The Wisconsin Invasive Species Council and the DNR's Strategic Plan for Invasive species estimated financial impacts of invasive species and illustrated the fiscal significance of updating the list. 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 both 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

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benefits of continued use of a species are limited to a much smaller contingent. Other adversely affected entities include land managers (NGOs, State and local government, utilities, and the forest business) . The distributed impact of not listing species that are invasive species is likely to be greater.

14. Long Range Implications of Implementing the Rule

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 programs.

15. Compare With Approaches Being Used by Federal Government

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 et seq; 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.

16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

* Illinois: The Department of Agriculture maintains a statutory list under Illinois Noxious Weed Law of about 9 species (<http://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 (<http://www.invasive.org/illinois/SpeciesofConcern.html>).

* Iowa: Regulates several species of aquatic invasive plants - 6, aquatic invasive invertebrates, and invasive fish - 7. (<http://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 ([http://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.

17. Contact Name

Dreux Watermolen, Section Chief, Social Science Services

18. Contact Phone Number

(608) 266-8931

This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

-
1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

[Detailed EIA report attached]

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

Wisconsin Invasive Species Council, Wisconsin Nursery Industry member survey of the economic impact of potentially invasive species in Wisconsin, five informal public meetings to discuss recommended changes to the rule, Department Invasive Species Team staff, WDNR's Economist, and planned: collect public comments during the EIA comment period. Department staff met with the Small Business Environmental Council in January 2014 to discuss the proposed impacts to small businesses.

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
 Less Stringent Schedules or Deadlines for Compliance or Reporting
 Consolidation or Simplification of Reporting Requirements
 Establishment of performance standards in lieu of Design or Operational Standards
 Exemption of Small Businesses from some or all requirements
 Other, describe:
-

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

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.

5. Describe the Rule's Enforcement Provisions

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.

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

Yes No

DOA 2049. Detailed Economic Impact Analysis Report for board order SS-04-12, pertaining to the Wisconsin Invasive Species Rule (Chapter NR 40, Wis. Adm. Code)

Additional data for Fiscal Estimate and Economic Impact Analysis (form DOA-2049).

To determine implementation and compliance costs expected to be incurred, DNR Invasive Species Team staff and Wisconsin Invasive Species Council members compiled a list of individuals and organizations that might be economically impacted by the proposed rule revisions or were affected by invasive species. Types of positive and negative effects from both regulating and not regulating were identified along with a method on how they might be quantified. Given the unknowns and the complexity of assessing the impacts, a relative impact of low-moderate-high (L/M/H) was determined. The economic cost of listing a species is highly dependent on its commercial uses, distribution, response to control tools currently available, level of impact, management needs, etc. Effects of listing/delisting invasive species will be highly variable among different types of businesses and user groups.

Examples of relative impacts of currently proposed species:

- Diffuse knapweed (*Centaurea diffusa*) – Prohibited. This and other species in the knapweed genus *Centaurea* are weeds of pastures and invasive in prairies. These species do provide nectar to bees and have been identified by bee keepers as a nectar source. As there are multiple other species that bloom during the general flowering period from July to September that could provide nectar, this species is not grown for the ornamental plant market, and is not widely distributed in Wisconsin.
- Japanese barberry (*Berberis thunbergii*) – Restricted with exemptions. This species has been distributed and sold as an ornamental plant for many years. Cultivars are currently patented, developed, and marketed. Over the past few decades this species has been observed developing dense thickets in the understory of forested areas where it is naturalizing. This creates barriers to movement as the shrubs are extremely spiny. The small fleshy red fruits are readily spread by birds and the widely dispersed records of naturalization indicate that this species is likely to spread in all parts of Wisconsin. The Wisconsin Nursery Association survey indicated that respondents valued sales of this species at approximately \$650,000 per year. The short term impact is likely to be high as switching to other non-invasive alternatives will take time and resources to develop and the long term impacts are likely to remain high as naturalized populations will require ongoing management to prevent the loss of access to woodlands, native wildflower diversity in woodland understory habitat, and encourage continuing recruitment of forest trees.

This detailed EIA report was developed with economic impacts known to the Department, gathered by the Wisconsin Invasive Species Council, and offered by members of the public during the informal public information sessions held in February and March 2013, and include the economic-related comments received during the EIA public comment period and the public comment period. The report is organized by the types of small businesses, organizations, units of government, etc. that could be affected. The proposed language changes to clarify and organize NR 40 are not included in this analysis because there is no impact.

Agricultural community including farms, livestock, forage, pasture, and beekeeping

<u>Proposed action</u>	<u>Types of positive effects from the action</u>	<u>Types of negative effects from the action</u>	<u>Methods for assessing the effects</u>	<u>Relative Impact and Complexity Factors</u>
REGULATE	Several species that are agricultural weeds will be subject to reasonable precautions and may not be spread to fields and pastures.	One species that is currently used in forage mixes and hay mixes, crown vetch (<i>Coronilla varia</i>) would not be available and substitute species would need to be identified.	Determine long term trends in the abundance and distribution of species included in regulation. Survey for regulated species in trade.	Low. The impact of the species recommended for listing can be mitigated by using substitute species.
DO NOT REGULATE	Agricultural producers retain greater flexibility in their choice of species available for planting.	Weedy and invasive species would continue to be used and spread to adjacent areas. Some of these alter nutrient cycling or create monocultures that reduce structural and bio-diversity of invaded sites.	Determine long term trends in the abundance and distribution of these species.	High. The large volume of seed introduced and area used for forage, hay, and biofuels create extremely high propagule pressure. Shifting species use to less invasive alternatives is unlikely without regulation.

Species with specific impacts

* A number of species were assessed by the Wisconsin Invasive Species Council's species assessment groups (SAG) and determined to be invasive, but are not being proposed to be regulated due to the high economic value, difficulty in limiting their spread and their current widespread abundance. Among these are reed canary grass (except ornamental variegated varieties and cultivars) and sweet clover.

* Terrestrial plants (all). The impact will be mixed. Species are valued by some groups including bee keepers and livestock producers are considered weedy by other managing for different land uses. Plants introduced for use as biofuel were discussed: the diversity of feedstocks under development and flexibility in fuel sources by powerplants make reliance on any one species unnecessary. Overall, the shift from invasive plants to non-invasive alternatives will reduce control costs and harm caused by the spread of the regulated species. Alternatively, intensive and widespread use has established many species discussed during the assessment process like bird's foot trefoil and sweet clovers widely across the state reducing the feasibility of control. Generally, few species identified as important turf, forage or biofuel crops were recommended by SAG as the participants were largely representing economic interests in maintaining use of the proposed species.

* Crown vetch (*Coronilla varia*) - proposed Restricted, is grown by several Wisconsin farmers and sold for erosion control and nitrogen fixation. Growers wanting to continue harvesting and selling seed would be required to obtain permits to continue propagation for out of state sale. Outreach should decrease in state use and spread.

Aquaculture, fish distributors, pet stores, aquarium hobbyists, and the pond trade

<u>Proposed action</u>	<u>Types of positive effects from the action</u>	<u>Types of negative effects from the action</u>	<u>Methods for assessing the effects</u>	<u>Relative Impact and Complexity Factors</u>
REGULATE	The use of best management practices will reduce the spread of many unintentional introductions. Limiting the introduction of mollusk species reduces the likelihood of parasitic disease by decreasing intermediate hosts.	Five invertebrates and two popular floating aquatic plants would not be available legally to the public. Businesses would incur increased costs from time and materials needed to decontaminate equipment.	Measure expenditures to develop and use best management practices. Assess time to inspect and remove hitchhiking organisms and develop alternatives to listed species.	Medium. There are few species available to substitute for floating pond plants and regulation may encourage internet and illegal import.
DO NOT REGULATE	No new preventative actions will be required by pond and aquarium stores and individuals to inspect and remove hitchhiking organisms.	There would be a continuing relatively high risk of introduction from ponds and aquariums to Wisconsin waters with unpredictable results and few mitigation options.	Measure expenditures to control unwanted organisms in aquariums and ponds. Measure expenditures required for newly established invasive species in Wisconsin waters.	Medium. There is a high risk of introduction but unknown probability of harm to Wisconsin waters from the species assessed.

Species with specific impacts

* Genetically Modified (GM) fish are divided into two categories, for non-viable GM fish in the aquarium trade there would be no change to business with new regulation or not regulating as all non-viable fish would remain legal to possess and transfer. Viable GM fish in the aquaculture trade could be allowed under permit requiring some additional time and assessment of the risks posed by these species.

* Down-listing mosquitofish from Prohibited to Restricted under the rule would allow businesses importing fish to continue to use best management practices to remove these species from bait and other fish import shipments or the new opportunity to apply for a permit to possess these species under limited circumstances. This would address business concerns about being found in violation of NR 40 but could include additional reporting requirements.

* Aquatic invertebrates may be sold or are more likely unintended hitchhikers on other pond and aquarium materials. Some are difficult to remove and widespread in aquaculture requiring significant time and effort to remove.

* Aquatic plants, especially water lettuce and water hyacinth, are sold by approximately 2/3 of Wisconsin shops that sell aquatic plants. Few options are available to substitute for these floating plants. Overwintering and spread have been observed at several locations and control has been ongoing. One nursery estimates that the two aquatic plants constitute 50% of their aquatic plant sales and may discontinue selling aquatic plants.

Department of Transportation, County, and Town Highway Managers

<u>Proposed action</u>	<u>Types of positive effects from the action</u>	<u>Types of negative effects from the action</u>	<u>Methods for assessing the effects</u>	<u>Relative Impact and Complexity Factors</u>
REGULATE	More opportunities to develop partnerships to manage significant weeds. Over the long term, fewer persistent weeds to manage in rights-of-way and to spread into adjacent lands.	Time needed to evaluate current mowing and management guidance to accommodate additional species. Additional training required for operators and contractors.	Assess effectiveness of current resources invested in rights-of-way maintenance and annual expenditures at the state and local level for management. Listed prohibited species may incur additional costs.	Low. Best management practices and invasive species in rights-of-way have already been incorporated into training and management considerations.
DO NOT REGULATE	No need to alter mowing instructions or update best management practices for additional species.	Rights-of-way will continue to be the primary corridors for the spread of weeds and roadside managers, private landowners, and public land management agencies will incur increasing costs to manage these species.	Assess effectiveness of current resources invested in rights-of-way maintenance and annual expenditures at the state and local level for management. Mowing timing and other actions already exist as costs.	Low. Best management practices and invasive species in rights-of-way have already been incorporated into training and management considerations.

Species with specific impacts

* A number of species were assessed by SAG and were determined to be invasive, but are not being proposed to be regulated due to the high economic value, difficulty in limiting their spread, and their current widespread abundance. Among these are reed canary grass (except ornamental variegated varieties and cultivars) and sweet clover. While these species have economic value in trade and industry, remediating their ecological impacts in places they invade also comes with a considerable cost and resulting economic impact.

* Bird's foot trefoil, a widespread weed that has already largely been removed from DOT recommended seed mixes, is not being proposed for listing.

* Red and white clover are currently used for seed mixes and were determined by SAG as "not invasive" and are not being proposed to be regulated under this rule, allowing for their continued use.

* Regulated invasive plants (all) are likely to benefit from increased light and disturbance more than native species and will likely be weedier along roadsides than in forests and prairies. By restricting the transport and introduction of additional species, long-term burdens for managing rights-of-way should be reduced. For prohibited plant species specifically, roadside managers would be required to control these plants where they are found under their jurisdiction. These are uncommon species and few would be likely to be found on roadsides.

Department of Agriculture, Trade and Consumer Protection

<u>Proposed action</u>	<u>Types of positive effects from the action</u>	<u>Types of negative effects from the action</u>	<u>Methods for assessing the effects</u>	<u>Relative Impact and Complexity Factors</u>
REGULATE	Increased opportunities for prevention success stories and protection of agricultural resources from weeds and pests.	Increased staff time required for training and inspection of licensed nurseries for additional listed species.	Determine staff time and work planning changes required to accommodate additional species, time spent processing additional violations discovered.	Low. Existing Memorandum of Understanding and cooperation with the nursery inspectors has already been established. Training would require additional time.
DO NOT REGULATE	Avoid increases to time spent conducting nursery inspections at licensed nurseries.	Additional harm anticipated to stakeholder groups with continued introduction and spread of weeds and pests.	Determine time spent inspecting regulated species, already a part of work planning.	Low. No change anticipated to current work load.

Species with specific impacts

* Garden yellow loosestrife, moneywort, queen of the meadow, and garden heliotrope - proposed Restricted, may appear in the cut flower trade. Nursery inspectors who contact these businesses may be asked additional questions about these regulated species.

* Japanese barberry and burning bush cultivars - proposed Restricted, are ubiquitous in local stock maintained by both nursery growers and dealers. Proposed exemptions for varieties will be complicated to enforce as consistent labeling is currently lacking.

* Mountain pine beetle is proposed Prohibited. Local regulation of this complex would complement state quarantines placed to slow the spread of this beetle.

Green Industry (Landscaping, Nursery dealers and growers, wholesale, florists)

<u>Proposed action</u>	<u>Types of positive effects from the action</u>	<u>Types of negative effects from the action</u>	<u>Methods for assessing the effects</u>	<u>Relative Impact and Complexity Factors</u>
REGULATE	Removal of weedy or invasive species from trade improves public trust that this industry is "green" and that plants purchased will not be invasive. Educating customers about phasing out invasive plants may increase sales of non-invasive alternatives and/or native plants when invasive species in the landscape are removed.	Existing stock will be subject to a phase-out over 3 years for herbaceous plants and 5 years for woody plants for restricted species and immediately for prohibited species incurring short term costs. May lose business from members of the public trying to acquire a specific species.	Measure sales volume before and after transition to non-invasive alternative species.	Medium. Prohibited species would be required to be removed from sale immediately. Restricted species would be required to be phased out of production over 3 or 5 years. Market may be flooded with phased-out plants initially.
DO NOT REGULATE	No change to current practices required, short term savings from not shifting to non-invasive alternatives.	No change required to stock offered for sale in Wisconsin. A patchwork of county and local weed control efforts may create an inconsistent regulatory burden.	Measure sales volume of species assessed but not regulated to determine the impact of perceived invasiveness on demand.	Low. Currently regulated species have been largely removed from both production and sale.

Species with specific impacts

* Garden yellow loosestrife, moneywort, queen of the meadow, and garden heliotrope - proposed Restricted, may appear in the cut flower trade, annual baskets, or be used as medicinal herbs. Nursery inspectors who contact these businesses may be asked additional questions about these regulated species. There is confusion over the trade name and species name for the moneywort cultivar exemption.

* Japanese barberry and burning bush cultivars - proposed Restricted, are ubiquitous in local stock maintained by both nursery growers and dealers. Two nurseries estimate that barberry constitutes 15% of shrub sales. Proposed exemptions for varieties will be complicated to enforce as consistent labeling is currently lacking, however the exemption allow for nurseries to provide less invasive alternatives for their customers.

* Yellow iris, aquatic forget-me-not, ribbon grass, garden yellow loosestrife, and moneywort - proposed Restricted, are occasionally requested by those planting along shorelines and in and around ponds. These species are resistant to wildlife damage, crowd out native plants, other weedy plants, and provide flowers making them desirable to customers. One nursery estimates that it sells 150-200 yellow iris and moneywort plants per year via wholesale and retail sales.

Federal agencies (NRCS, USFWS, USFS, NPS, USACE)

<u>Proposed action</u>	<u>Types of positive effects from the action</u>	<u>Types of negative effects from the action</u>	<u>Methods for assessing the effects</u>	<u>Relative Impact and Complexity Factors</u>
REGULATE	Reduced introductions spreading into managed federal lands. Increased opportunity for partnering on control of invasive species.	Increased costs to use best management practices, time spent training staff on newly listed species.	Measure land management expenditures and staff time. Number of grants and partnering opportunities.	Low. Federal agencies typically require best management practices for all managers and contractors already.
DO NOT REGULATE	Greater flexibility in implementing best management practices as fewer species would trigger action.	Likely spread of additional invasive species into managed lands. Less opportunity to partner on regional control projects.	Measure land management expenditures and staff time.	Low. Flexibility in managing invasive species that are impacting specific resources on federal lands are generally at the discretion of the managers.

Species with specific impacts

* Mosquito fern (*Azolla pinnata*) - proposed Prohibited, and several other species are currently listed as Federal Noxious Weeds. By dual listing these species in Wisconsin education and control efforts will be improved through greater consistence and the ability to create partnerships.

* Plants, woody. Many of the woody plants that are invasive in forests if listed would provide local weed management groups with additional incentive to apply for federal funds to manage established populations in or near forest lands.

* Plant pests and diseases. Local regulation of these species would benefit local federal land management goals and potentially decrease the spread of these species regionally meeting the goals of federal quarantine agencies.

Forest Industry

<u>Proposed action</u>	<u>Types of positive effects from the action</u>	<u>Types of negative effects from the action</u>	<u>Methods for assessing the effects</u>	<u>Relative Impact and Complexity Factors</u>
REGULATE	Forest resources would be offered a higher level of protection from pests and diseases.	More precautionary practices would be required adding time and cost to harvest and transport operations.	Determine project expenditures to use best management practices to reduce the spread of regulated species. Long term access to forest resources that are pest-free.	Low. Most general best management practices are already used in forest lands.
DO NOT REGULATE	Fewer precautions and best management practices to consider when conducting harvest and transport operations.	Increased risk that emerging pests and diseases would establish.	Determine availability to forest resources that are pest-free.	Low. Most general best management practices are already used in forest lands. Additional effort may be required for newly establishing species over time.

Species with specific impacts

* Plants, woody. Many of the woody plants that are invasive in forests if listed would provide local weed management groups with additional incentive to apply for federal funds to manage established populations in or near forest lands. Regulating cultivars would reduce the spread of invasive plants into forest areas and reduce future management costs for new woody weeds such as barberry and euonymus on top of the existing management burden for common and glossy buckthorn and several honeysuckle species that are also horticultural introductions and are currently regulated.

* Mountain pine beetle is proposed Prohibited. Preventing spread of this beetle (and its associated fungi) would require heat treatment of infested wood before shipment to an un-infested area. This is an expensive treatment relative to the value of the pine logs or chips themselves. Most of the wood used in Wisconsin mills comes from Wisconsin so the loss of access to infrequently used western state sources for pine wood is exceeded by the value of protecting fully utilized Wisconsin pine stands. Local regulation of this complex would complement state quarantines placed to slow the spread of this beetle and associated disease causing organisms.

Habitat (e.g. uplands, wetlands, waters)

<u>Proposed action</u>	<u>Types of positive effects from the action</u>	<u>Types of negative effects from the action</u>	<u>Methods for assessing the effects</u>	<u>Relative Impact and Complexity Factors</u>
REGULATE	Reduces risk of loss of native species due to exclusion, disease, or predation from regulated invasive species so subsequently reduce adding species to the endangered/threatened species list.	Public opinion that the number of invasive species will always increase reduces motivation to take preventative actions.	Measure acreage of land and waters that do not require additional management effort for newly establishing invasive species. Reduced number of reports of new invasive species locations.	Moderate. Regulating invasive species under the proposed rule addresses intentional movement and well regulated pathways only. Effects on ecosystems are difficult to predict and altered services are not easily measured.
DO NOT REGULATE	No change from present. Public and private land managers are likely to recognize species that are acting invasive and take action with or without regulation.	Continued, increased risk from invasive species due to continuing introductions.	Measure acreage of land and waters altered/degraded. Assess invaded sites to determine if there are reduced ecosystem services.	Moderate. The number of invasive species would likely be greater but the effects on ecosystems are difficult to predict and altered services are not easily measured.

Species with specific impacts

* Giant reed (*Arundo donax*) - proposed Prohibited, has colonized and transformed sandy river banks across the southern US and could dramatically alter structure, water flow, and habitat if it were able to establish further north.

* Floating water hyacinth (*Eichhornia crassipes*) - proposed Prohibited, has no Wisconsin ecological equivalent and if it does establish over large areas, at least seasonally, would dramatically alter open water habitats to solid vegetative cover.

* Burning bush (*Euonymus alatus*) cultivars - proposed Restricted, and several other woody species alter the structure of woodlands and may change the litter cover and cycling rate converting woodlands to shrublands or shift to a canopy of weedy black locust with little spring forb diversity. Altered canopy structure (trees, shrubs, and forbs) can affect habitat quality and the animal (e.g. birds) that depend on specific structural attributes. Shifts in species composition can also impact the availability and seasonality of food resources for wildlife.

* Crown vetch (*Coronilla varia*) - proposed Restricted, if established widely alters the nitrogen cycle and excludes other species shifting diverse prairie systems to an assemblage of weedy species.

* Wavy leaf basket grass (*Oplismenus hirtellus ssp. undulatifolius*) - proposed Prohibited, creates continuous grass cover in woodland areas excluding species that depend on leaf litter and reducing native forb cover.

Land management and conservation groups (NGOs)

<u>Proposed action</u>	<u>Types of positive effects from the action</u>	<u>Types of negative effects from the action</u>	<u>Methods for assessing the effects</u>	<u>Relative Impact and Complexity Factors</u>
REGULATE	Increase in grant opportunities with ability to reference that regulated invasive species are being proposed for management. Improved partnership opportunities.	Increased costs and time associated with addressing newly listed prohibited species, time required to train staff on identification of newly listed species.	Assess project expenditures to use best management practices to reduce the spread of regulated species.	Low. Most general best management practices are already used in conservation management.
DO NOT REGULATE	Land managers would not be required to implement additional best management practices to avoid spreading additional listed species, best management practices would continue for currently regulated species.	Increased risk that emerging pests and diseases would establish on lands set aside for conservation.	Assess project expenditures to use best management practices to reduce the spread of regulated species. Determine long term costs associated with increased introductions.	Low-Moderate. Most general best management practices are already used in conservation management. Education efforts encourage local residents to avoid spreading pests and introducing invasive species but these would not be backed by regulation.

Species with specific impacts

* Burning bush (*Euonymus alatus*) cultivars - proposed Restricted with cultivar exemptions, and several other ornamental woody species available in the nursery trade are still popular in developed urban landscapes. Without backing from administrative rules, efforts to control the spread of these weeds in conservation areas will continue to be hindered by the continued introduction and spread of these species from urban plantings.

Private landowners

<u>Proposed action</u>	<u>Types of positive effects from the action</u>	<u>Types of negative effects from the action</u>	<u>Methods for assessing the effects</u>	<u>Relative Impact and Complexity Factors</u>
REGULATE	Fewer weeds and plant pests introduced from urban plantings and unintentional spread by neighboring right of way, forestry operations, and other land management actions due to use of best management practices.	Potential for increased management costs if prohibited species are present. Time required learning how to integrate and care for alternative plants for planting instead of more familiar invasive species.	Determine land management expenditures and staff time. Count grants and incentives awarded to manage regulated invasive species.	Moderate. Prohibited species are only required to be controlled "as feasible" and control is suggested but not required for restricted species. Additional steps may be required to exclude regulated species from being transported (hay, other products).
DO NOT REGULATE	Additional choices in purchasing plants for planting and in moving wood products that may also contain pests.	Increased cost due to continued introductions of invasive plants, plant pests, and other invasive species to property and subsequent loss of property value.	Determine land management expenditures and staff time. Count grants and incentives awarded to manage regulated invasive species.	Low. Most currently regulated species are either widespread or generally subject to management. Best management practices already defined to avoid transport of invasive species.

Species with specific impacts

* Plants (all) and plant pests regulated species are less likely to be introduced via intentional movement. By restricting the transport and introduction of additional species, long term burdens for managing property should be reduced.

Small businesses

<u>Proposed action</u>	<u>Types of positive effects from the action</u>	<u>Types of negative effects from the action</u>	<u>Methods for assessing the effects</u>	<u>Relative Impact and Complexity Factors</u>
REGULATE	Partnering and collaboration opportunities to control invasive species. Seen as being proactive by customers.	Increased cost due to additional species triggering best management practices, decreased options for purchase of plants for planting and species for aquarium trade.	Determine project expenditures to use best management practices to reduce the spread of regulated species. Count number of enforcement actions.	Low. Few small businesses (other than groups specifically mentioned in this report) are required to change practices due to newly listed invasive species.
DO NOT REGULATE	Greater flexibility in species sold and in fewer species would require best management practice during operations.	Reduced consumer confidence that species being sold are not invasive, potential to spread infested materials with hitchhiking invasive species.	Determine project expenditures to use best management practices to reduce the spread of regulated species.	Low. There would not be any change to currently required practices or species sales.

Species with specific impacts

* Plant pests and diseases. Local regulation of these species would benefit land management goals over the longer term but would increase operation costs to comply with best management practices. With the increased establishment of these species the increased costs to remove infested plants (especially trees) will increasingly fall to local businesses and land owners. Lost trees and vegetation cover reduce land values.

Tourism

<u>Proposed action</u>	<u>Types of positive effects from the action</u>	<u>Types of negative effects from the action</u>	<u>Methods for assessing the effects</u>	<u>Relative Impact and Complexity Factors</u>
REGULATE	Educational opportunities to encourage a sense of ownership through conservation of visitor destination sites.	Exposure to increased inspection and potential confiscation of infested materials.	Assess number of tour/visitors reporting invasive species as a reason to alter travel plans.	Low. Most restrictions already address pathways (firewood for example) so additional regulated species will not change required practices.
DO NOT REGULATE	Fewer restrictions on the movement of invasive species and materials that may be infested.	Potential for loss of favored destination sites due to continued introductions of invasive plants, plant pests, and other invasive species.	Assess number of tour/visitors reporting invasive species as a reason to alter travel plans.	Low. Most restrictions already address pathways (firewood for example) so additional regulated species will not change required practices.

Species with specific impacts

* Aquatic plants especially water lettuce and water hyacinth have the ability to completely cover open water making boating, swimming, and fishing difficult or impossible in these waters.

* Japanese barberry (*Berberis thunbergii*) is proposed Restricted with cultivar exemptions. This species has been distributed and sold an ornamental plant for many years. Cultivars are currently patented, developed, and marketed. Over the past few decades this species has been observed developing dense thickets in the understory of forested areas where it is naturalizing. This creates barriers to movement including recreational use as the shrubs are extremely spiny. The short term impact is likely to be high as switching to other non-invasive alternatives will take time and resources to develop and the long term impacts are likely to remain high as naturalized populations will require ongoing management to prevent the loss of access to woodlands, native wildflower diversity in woodland understory habitat, and encourage continuing recruitment of forest trees.

Utility companies and the Public Service Commission

<u>Proposed action</u>	<u>Types of positive effects from the action</u>	<u>Types of negative effects from the action</u>	<u>Methods for assessing the effects</u>	<u>Relative Impact and Complexity Factors</u>
REGULATE	More opportunities to develop partnerships to manage significant weeds. Over the long term, fewer persistent weeds to manage in right-of-ways.	Time needed to evaluate current vegetation and pest management guidance to accommodate additional species. Additional training required for operators and contractors.	Measure effectiveness of current resources invested in rights-of-way maintenance and annual expenditures at the state and local level for management. Listed prohibited species may incur additional costs.	Low. Best management practices and invasive species in rights-of-way have already been incorporated into training and management considerations for contractors.
DO NOT REGULATE	No increase in costs and project management time required to implement best management practices for additional species.	More weeds likely over the long term in rights-of-way incur additional costs to maintain access corridors.	Measure effectiveness of current resources invested in rights-of-way maintenance and annual expenditures at the state and local level for management. Listed prohibited species may incur additional costs.	Low. Best management practices and invasive species in rights-of-way have already been incorporated into training and management considerations for contractors.

Species with specific impacts

* Regulated invasive plant species are likely to benefit from increased light and disturbance more than native species and will likely be weedier along utility access corridors than forests and prairies. By restricting the transport and introduction of additional species, long term burdens for managing rights-of-way should be reduced. Weedy native plants such as ragweed will still require management.

* Woody plants proposed for regulation including black locust and Siberian elm may incur additional costs to the maintenance of right-of-ways. These weedy trees grow quickly and can pose a hazard to utility lines. Depending on the surrounding land use, additional transport and disposal costs may be incurred as these species establish and spread.

**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 _____.

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.
- *Agrilus 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 quarantine 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, 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®.
- *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)
- *Agrilus 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 *Compaetum 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 (Funguses) |

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, Pepin, 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. *Dikerogammarus 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) (g) (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 7924
Madison, WI 53707-7924~~

~~Note: Reports 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: Reports 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: 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 53714~~

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. *Agrilus 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 _____.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Cathy Stepp, Secretary

(SEAL)