

Chapter NR 40

INVASIVE SPECIES IDENTIFICATION, CLASSIFICATION AND CONTROL

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

History: CR 08-074: cr. Register August 2009 No. 644, eff. 9-1-09.

NR 40.02 Definitions. For purposes of this chapter:

(1) “Algae” means a predominately photosynthetic eukaryotic organism ranging from unicellular to macroscopic forms, lacking true roots, stems, leaves, and embryos.

(2) “Animal” means all vertebrate and invertebrate species, including but not limited to mammals, birds, reptiles, amphibians, fish, mollusks, arthropods, insects, and their eggs, larvae or young, but excluding humans.

(3) “Aquatic animal” means any vertebrate or invertebrate species that lives or grows only in water during any life stage, and includes the eggs, larvae or young of those species.

(3m) “Aquatic invasive species” means any invasive species that dwells in water or wetlands.

(4) “Aquatic plant” means a submergent, emergent, free-floating or floating-leaf plant and includes any part of the plant.

(5) “Attached” means in, on, or physically connected to in any way.

(6) “Boat” means any device capable of being used as a means of transportation on water.

(7) “Category” means a grouping of species designated by administrative rule for which there are specific legal requirements or restrictions.

(7g) “Cave” means any naturally occurring void, cavity, recess or system of interconnected passageways beneath the surface of the earth or in a bluff, cliff or ledge, including pits and sinkholes, but does not include a rock shelter.

(7r) “Commercial cave or mine” means a cave or mine that has more than 1,000 visitors per year and charges a fee.

(8) “Contain” or “containment” means to prevent spread beyond a designated boundary.

(9) “Control” has the meaning given it in s. 23.22 (1) (a), Stats. In addition, “control” includes activities to eliminate or reduce the adverse effects of invasive species including decreasing or eradicating their population or limiting their introduction or spread, and includes destroying the aboveground, and when necessary, the belowground portions of a plant in a manner and at the proper time to prevent the development and distribution of viable seeds or other propagules. For plants that reproduce vegetatively, “control” includes the use of methods that contain or reduce the vegetative spread of the plant.

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

(10) “Cultivate” means, for plants, intentionally maintaining an individual or population of a plant.

(11) “Cyanobacteria” means a predominately photosynthetic prokaryotic organism occurring singly or in colonies.

(12) “DATCP” means the Wisconsin department of agriculture, trade and consumer protection.

(13) “Department” means the Wisconsin department of natural resources.

(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.

(15) “Eradicate” means to remove an entire population of an invasive species and all its propagules from an area of infestation.

(16) “Established” means, for algae and cyanobacteria, plants, terrestrial invertebrates and plant disease-causing microorganisms, aquatic invertebrates except crayfish, and terrestrial and aquatic vertebrates except fish, present in an area as a self-sustaining population that is dispersed to the extent that eradication is either infeasible or will take a significant effort over a period of several years.

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

(18) “Feral” means existing in an untamed or wild, unconfined state, having returned to such a state from domestication.

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

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

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

(22) “Incidental” means something is done inadvertently when performing an otherwise legal activity.

(23) “Introduce” means to stock, plant, release or otherwise put an invasive species into the outdoor environment or use an invasive species in this state anywhere except within an indoor facility which is designed to physically contain the organism, including but not limited to a laboratory, greenhouse, growth chamber or fermenter.

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

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

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

(25m) “Mine” means any artificial excavation, shaft, underground passageway, slope, tunnel or working from which ore or mineral is or was extracted, but does not include an open pit mine. However, caves or mines may be located adjacent to open pit mines.

(26) “Native duckweed” means any of the following: *Lemna aquinoctialis* (lesser duckweed, three-nerved duckweed), *Lemna minor* (common duckweed), *Lemna obscura* (little duckweed, purple duckweed), *Lemna perpusilla* (least duckweed, minute duckweed), *Lemna trisulca* (forked duckweed, star duckweed), *Lemna turionifera* (perennial duckweed, turion duckweed), *Spirodela polyrrhiza* (giant duckweed), *Wolffia borealis* (northern watermeal), *Wolffia brasiliensis* (Brazilian watermeal), and *Wolffia columbiana* (Columbian watermeal).

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

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

(29) “Nonnative” or “nonnative species” means a species not indigenous to Wisconsin, and includes an individual specimen.

(30) “Nonnative fish species in the aquaculture industry” means arctic char (*Salvelinus alpinus*), Atlantic salmon (*Salmo salar*), brown trout (*Salmo trutta*), chinook salmon (*Oncorhynchus tshawytscha*), coho salmon (*Oncorhynchus kisutch*), rainbow trout (*Oncorhynchus mykiss*), pink salmon (*Oncorhynchus gorbuscha*), redear sunfish (*Lepomis microlophus*), tiger trout (a hybrid of *Salvelinus fontinalis* and *Salmo trutta*) and tilapia (*Tilapia* spp).

(31) “Nonnative viable fish species in the aquarium trade” means goldfish (*Carassius auratus*), koi carp (*Cyprinus carpio*), sterlet (*Acipenser ruthenus*), Chinese hi-fin banded shark (*Myxocyprinus asiaticus*), bitterling (*Rhodeus* spp.), ide (*Leuciscus idus*) and weather loach (*Misgurnus anguillicaudatus*).

(32) “Non-reproductive” means, for plants, not capable of reproduction sexually or asexually.

(33) “Nonviable” means, with respect to aquatic vertebrates including fish species, species for which eggs, fry, or adults are not capable of surviving water temperature below 38 degrees Fahrenheit or not capable of surviving in fresh water. “Nonviable” means, with respect to terrestrial vertebrates, species that are not capable of living, growing, developing, and functioning successfully in Wisconsin’s outdoor environment.

(34) “Open pond” means an outdoor pond that is not entirely covered to prevent the escape of fish.

(35) “Order” means an element of the Linnean taxonomic classification system, unless the context indicates otherwise.

(36) “Person” means an individual, partnership, corporation, society, association, firm, unit of government, public agency or public institution, and includes an agent of one of these entities.

(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.

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

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

(40) “Possess” means to own, maintain control over, restrain, hold, grow, raise or keep.

(41) “Prohibited invasive species” or “prohibited species” means an invasive species that the department, at the time of listing under s. NR 40.04 (2), has determined is likely to survive and spread if introduced into the state, potentially causing economic or environmental harm or harm to human health, but which is not found in the state or in that region of the state where the species is 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.

(42) “Propagules” means specimens or parts of a species that are capable of producing additional specimens through either sexual or asexual reproduction, including but not limited to seeds, roots, stems, rhizomes, tubers and spores.

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

(44) “Reasonable precautions” means intentional actions that prevent or minimize the transport, introduction, possession or transfer of invasive species. Reasonable precautions include but are not limited to best management practices (BMPs) for invasive species approved by the department, practices recommended by the “Wisconsin Clean Boats, Clean Waters” program and “Stop Aquatic Hitchhikers” campaign, and compliance with DATCP quarantine regulations imposed under s. 94.01, Stats., or a United States Department of Agriculture Animal and Plant Health Inspection Service quarantine declared under 7 USC section 7714 or 7715. For the transfer of aquatic plants, reasonable precautions include verifying that the species transferred is identified correctly and is not listed in s. NR 40.04 or 40.05 as prohibited or restricted, and that there are no other listed invasive species commingled with the species being transferred.

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

(46) “Restricted invasive species” or “restricted species” means an invasive species that the department, at the time of listing under s. NR 40.05 (2), has determined is already established in the state or in that region of the state where the species is 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.

(46m) “Rock shelter” means an overhang or cave-like opening in a bluff, cliff or ledge that is shallow and does not provide an area of substantial daytime darkness.

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

prevents the escape of the aquatic invertebrates and that does not directly drain into a water of the state.

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

(49) “Transfer” means to buy, sell, trade, barter, exchange, give or receive or to offer to buy, sell, trade, barter, exchange, give or receive.

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

(51) “Unknowing” means unaware of the presence of a prohibited or restricted invasive species.

(52) “Waters of the state” has the meaning given it in s. 281.01 (18), Stats.

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

(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.

History: CR 08-074: cr. Register August 2009 No. 644, eff. 9-1-09; CR 10-016: cr. (3m), am. (16), (42) and (53) Register August 2010 No. 656, eff. 9-1-10; EmR1039: emerg. cr. (7g), (7r), (25m), (46m), eff. 11-3-10; CR 10-123: cr. (7g), (7r), (25m), (46m) Register May 2011 No. 665, eff. 6-1-11.

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

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/topic/Invasives/> or by writing to the department at the following address:

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

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

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

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

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

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

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

History: CR 08-074: cr. Register August 2009 No. 644, eff. 9-1-09.

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

(2) **IDENTIFICATION OF PROHIBITED SPECIES.** (a) *Algae and cyanobacteria.* The following algae and cyanobacteria invasive species are prohibited:

1. *Cylindrospermopsis raciborskii* (Cylindro)
2. *Didymosphenia geminata* (Didymo or rock snot), except in Lake Superior
3. *Nitellopsis obtusa* (Starry stonewort)
4. Novel cyanobacterial epiphyte of the order Stigonematales linked with avian vacuolar myelinopathy
5. *Prymnesium parvum* (Golden alga)
6. *Ulva* species, including species previously known as *Enteromorpha* species

(b) *Plants.* The following plant invasive species are prohibited:

1. *Ampelopsis brevipedunculata* (Porcelain berry) including the variegated cultivar
2. *Anthriscus sylvestris* (Wild chervil) except in Barron, Columbia, Dane, Milwaukee, Polk and Walworth counties
3. *Bunias orientalis* (Hill mustard) except in Green and Lafayette counties
4. *Cabomba caroliniana* (Fanwort)
5. *Centaurea solstitialis* (Yellow star thistle)
6. *Chelidonium majus* (Celandine) 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
7. *Cirsium palustre* (European marsh thistle) except in Ashland, Bayfield, Chippewa, 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 Crawford, Dane, Grant, Green, Iowa, Lafayette, Richland, Rock, and Sauk counties
9. *Crassula helmsii* (Australian swamp crop or New Zealand pygmyweed)
10. *Cytisus scoparius* (Scotch broom)
11. *Dioscorea oppositifolia* (Chinese yam)
12. *Egeria densa* (Brazilian waterweed)
13. *Epilobium hirsutum* (Hairy willow herb) except in Kenosha county
14. *Glyceria maxima* (Tall or reed mannagrass) except in Brown, Calumet, Dodge, Door, Fond du Lac, Jefferson, Kenosha, Kewaunee, Manitowoc, Milwaukee, Outagamie, Ozaukee, Racine, Sheboygan, Walworth, Washington, Waukesha and Winnebago counties
15. *Heracleum mantegazzianum* (Giant hogweed)

16. *Humulus japonicus* (Japanese hops) except in Grant and Crawford counties

17. *Hydrilla verticillata* (Hydrilla)

18. *Hydrocharis morsus-ranae* (European frogbit)

19. *Lagarosiphon major* (Oxygen-weed, African elodea or African waterweed)

20. *Lepidium latifolium* (Perennial or broadleaved pepperweed)

21. *Lespedeza cuneata* or *Lespedeza sericea* (Sericea or Chinese lespedeza)

22. *Leymus arenarius* or *Elymus arenarius* (Lyme grass or sand ryegrass) except in Door, Kewaunee, Manitowoc, Sheboygan and Racine counties

23. *Lonicera japonica* (Japanese honeysuckle)

24. *Lonicera maackii* (Amur honeysuckle) except in Adams, Brown, 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

25. *Microstegium vimineum* (Japanese stilt grass)

26. *Myriophyllum aquaticum* (Parrot feather)

27. *Najas minor* (Brittle naiad, or Lesser, Bushy, Slender, Spiny or Minor naiad or waternymph)

28. *Nymphoides peltata* (Yellow floating heart)

29. *Paulownia tomentosa* (Princess tree)

30. *Polygonum perfoliatum* (Mile-a-minute vine)

31. *Polygonum sachalinense* (Giant knotweed)

32. *Pueraria montana* (Kudzu)

33. *Quercus acutissima* (Sawtooth oak)

34. *Rubus phoenicolasius* (Wineberry or wine raspberry)

35. *Torilis arvensis* (Spreading hedgeparsley)

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, Trempealeau, Taylor, Washburn, Vilas and Wood counties

37. *Trapa natans* (Water chestnut)

38. *Vincetoxicum nigrum* or *Cynanchum louiseae* (Black or Louise's swallow-wort) except in Columbia, Crawford, Dane, Grant, Green, Iowa, Jefferson, Juneau, Kenosha, La Crosse, Lafayette, Milwaukee, Monroe, Racine, Richland, Rock, Sauk, Vernon, Walworth and Waukesha counties

39. *Vincetoxicum rossicum* or *Cynanchum rossicum* (Pale or European swallow-wort)

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

1. *Channidae* (snakehead), including *Channa argus* (Northern snakehead), *Channa bleheri* (Rainbow snakehead), *Channa gachua* (Dwarf snakehead), *Channa maculata* (Blotched snakehead), *Channa marulius* (Bullseye snakehead), *Channa punctata* (Spotted snakehead), and *Channa striata* (Chevron snakehead)

2. *Ctenopharyngodon idella* (Grass carp)

3. *Cyprinella lutrensis* (Red shiner)

4. *Gambusia affinis* (Western mosquitofish)

5. *Gambusia holbrooki* (Eastern mosquitofish)

6. *Hypophthalmichthys molitrix* (Silver carp)

7. *Hypophthalmichthys nobilis* (Bighead carp)

8. *Mylopharyngodon piceus* (Black carp)

9. *Sander lucioperca* (Zander)

10. *Scardinius erythrophthalmus* (Rudd)

11. *Tinca tinca* (Tench)

12. All other nonnative fish and nonnative crayfish except:

a. Established nonnative fish species and established nonnative crayfish species

b. Nonnative viable fish species in the aquarium trade

c. Nonnative fish species in the aquaculture industry

d. Fish species that the department has determined are nonviable fish species

Note: As of Jan. 1, 2010, the department determined that the following Snakehead fish species are nonviable fish species: *Channa amphibeus* (Chel snakehead), *Channa asiatica* (Chinese snakehead), *Channa aurantimaculata* (Orangespotted snakehead), *Channa bankanensis* (Bangka snakehead), *Channa baramensis* (Baram snakehead), *Channa barca* (Barca snakehead), *Channa burmanica* (Burmese snakehead), *Channa cyanospilos* (Bluespotted snakehead), *Channa harcourtbutleri* (Inle snakehead), *Channa lucius* (Splendid snakehead), *Channa maruloides* (Emperor snakehead), *Channa melnopterus* (Blackfinned snakehead), *Channa melasoma* (Black snakehead), *Channa micropeltes* (Giant snakehead), *Channa nox* (Night snakehead), *Channa orientalis* (Ceylon snakehead), *Channa panaw* (Panaw snakehead), *Channa pleurophthalma* (Ocellated snakehead), *Channa stewartii* (Golden snakehead), *Parachanna Africana* (Niger snakehead), *Parachanna insignis* (Congo snakehead), and *Parachanna Obscura* (African snakehead). For the latest list of nonviable fish species, contact the department at:

Attn: FH/4

Wisconsin Department of Natural Resources

PO Box 7921

Madison, WI 53707-7921

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

1. *Bithynia tentaculata* (Faucet snail)

2. *Bythotrephes cederstroemi* (Spiny water flea)

3. *Cercopagis pengoi* (Fishhook water flea)

4. *Corbicula fluminea* (Asian clam)

5. *Daphnia lumholtzi* (Water flea)

6. *Dreissena rostriformis* (Quagga mussel)

7. *Eriocheir sinensi* (Chinese mitten crabs)

8. *Hemimysis anomala* (Bloody shrimp)

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

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

1. *Adelges tsugae* (Hemlock woolly adelgid)

2. *Agrilus planipennis* (Emerald ash borer)

3. *Amyntas* or *Amyntus* species (Crazy worm)

4. *Anoplophora glabripennis* (Asian longhorned beetle)

5. *Cryptococcus fagisuga* (Scale associated with beech bark disease)

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

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

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

Note: For species that are both listed under NR 40 and quarantined at the federal and/or the state level, the department determines that "reasonable precautions" allow for the incidental possession, transport, transfer, or introduction of a prohibited or restricted organism *within* the boundaries of a federal or state quarantine for that organism.

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

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

2. *Sus domestica* (Feral domestic swine)

3. *Sus scrofa* (Russian boar) and other wild swine

(g) *Fungi*. The following fungus invasive species are prohibited:

1. *Geomyces destructans* (white-nose syndrome fungal pathogen)

(3) ACTIONS PROHIBITED BY THIS CLASSIFICATION; EXEMPTIONS.

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

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

Note: Paragraph (b) does not apply to preventive measures set out in s. NR 40.07.

(c) If authorized by a permit issued by the department under this chapter, a person may transport, possess, transfer or introduce a prohibited invasive species for research, public display, or, if the species is not a fish or crayfish, for other purposes specified by the department in the permit.

(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, but may not be introduced.

Note: "Wild animal" is defined in s. NR 40.02 (53) to mean any mammal, bird, or other creature of a wild nature endowed with sensation and the power of voluntary motion, except fish and crayfish.

(e) 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.

(f) Paragraph (a) does not apply to a person who has a permit issued by DATCP under s. ATCP 21.04 for importation, movement, distribution or release of a pest or biological control agent that is a prohibited invasive species identified or listed under sub. (2).

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

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

Note: Reports for fish may be sent to:

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

Note: Reports for other vertebrates may be sent to:

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

Note: Reports for terrestrial plants may be sent to:

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

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

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

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

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

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

(h) Paragraph (a) does not apply to any of the following:

1. A person who holds a scientific collector permit for the invasive species under s. 29.614, Stats.

2. A person who, while lawfully fishing, inadvertently catches a fish invasive species.

Note: Section NR 20.20 (73) (c) 1. sets a bag limit of 0 for nonindigenous detrimental fish, but allows one such fish to be taken by hook and line if it is killed immediately and delivered immediately to a department service center or regional office. All nonindigenous fish species are declared under s. NR 20.38 (6) to be detrimental fish if the fish were imported without a permit in violation of s. 29.735, Stats., or are found in any water where their presence is not specifically permitted by the department.

(3m) EARLY DETECTION MONITORING. Unless entry is otherwise authorized by law, as part of an invasive species early detection program, the department or its designee may enter property where a cave or mine may be located to monitor, survey or inspect for the presence of the prohibited invasive fungus species *Geomyces destructans* (white-nose syndrome fungal pathogen) in the cave or mine, with permission of the person who owns, controls or manages the property, but if the person does not grant permission or cannot be located by the department after making reasonable effort, the department may seek an inspection warrant under s. 66.0119, Stats., from the appropriate circuit court authorizing entry. Data obtained by the department under this subsection shall be made available to the person who owns, controls or manages the property.

(4) CONTROL REQUIREMENTS. (a) Unless entry is otherwise authorized by law, if the department has reason to believe that a prohibited species is present, the department or its designee may enter property to inspect for, survey or control prohibited species with permission of the person who owns, controls or manages the property, but if the person does not grant permission or cannot be located by the department after making reasonable effort, the department may seek an inspection warrant from the appropriate circuit court authorizing entry.

(b) The department may ask any person who owns, controls or manages property where a prohibited species is present to control the prohibited species in accordance with a plan approved by the department. The department will seek funds to assist in the control of prohibited species. However, a person who owns, controls or manages property where a prohibited species is present is responsible for controlling the prohibited species that exists on the property.

Note: The department anticipates it will request control of a prohibited invasive species only if it is feasible and reasonable to control the prohibited species on the property.

(c) If voluntary cooperation is not achievable or likely, and it is feasible and reasonable to control the prohibited species on the property, the department or its designee may control the prohibited species or it may offer the person the opportunity to negotiate the terms of a consent order for control purposes.

(d) If a consent order is not achievable or likely, the department may issue a unilateral order requiring that the person who owns, controls or manages the property control the prohibited species in accordance with a plan approved by the department unless the department determines that the prohibited species is present through no fault of the person. If the department determines that the prohibited species is present through no fault of the person, the department or its designee may control the prohibited species.

(e) If the person does not control the prohibited species upon order of the department, the department or its designee may control the prohibited species and the department may recover the reasonable and necessary expenses it incurs.

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

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

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

History: CR 08-074: cr. Register August 2009 No. 644, eff. 9-1-09; CR 10-016: am. (2) (b) 6., 7., 8., 14., 24., 36., 38., r. and recr. (2) (c) Register August 2010 No. 656, eff. 9-1-10; EmR1039: emerg. cr. (3m), eff. 11-3-10; CR 10-123: cr. (3m) Register May 2011 No. 665, eff. 6-1-11; EmR1036: emerg. cr. (2) (g), eff. 9-29-10; CR 10-115: cr. (2) (g) Register May 2011 No. 665, eff. 6-1-11.

NR 40.045 Emergency additions to prohibited category. (1) The department may temporarily identify an additional species as an invasive species and may classify it into the prohibited category of s. NR 40.04 (2) if the secretary determines that all of the following are met:

(a) The species meets the definition of invasive species in s. NR 40.02 (24).

(b) Based on consideration of the criteria of s. NR 40.03 (2), the species meets the definition of prohibited invasive species for inclusion under s. NR 40.04 (2).

(c) An emergency exists, making it necessary for the preservation of public peace, health, safety or welfare, or the environment, to require the immediate identification and classification of the species as a prohibited invasive species under this chapter prior to the time it would take effect if the department complied with the procedures for permanent rulemaking under ch. 227, Stats.

(2) Department action under sub. (1) shall become effective upon issuance of an emergency order by the secretary and publication of a notice of the emergency order in the official state newspaper.

(3) The department shall provide the notice of the emergency order to the Wisconsin Council on Invasive Species and shall promptly notify the public of its determination by issuing a press release, by posting the notice of the emergency order on the department's internet site, and by such other means as the department determines are reasonably likely to inform the public.

(4) During the time that an emergency order issued under sub. (2) is in effect, the actions prohibited by s. NR 40.04 (3) (a) and the exemptions of s. NR 40.04 (3) (b) through (h) apply to the additional species. In addition, the control requirements of s. NR 40.04 (4) apply to the additional species.

(5) The identification and classification under sub. (1) of an additional species as an invasive species in the prohibited category terminates 2 years after the emergency order is issued under sub. (2), when the emergency order issued under sub. (2) is withdrawn by the department, or when a permanent rule takes effect adding the species to this chapter, whichever occurs first.

Note: Under s. 23.22 (2t) (a), Stats., the department may promulgate an emergency rule to identify, classify, or control an invasive species and is not required to provide evidence that such a rule is necessary for the preservation of public peace, health, safety, or welfare or to provide a finding of emergency for such a rule. An emergency rule promulgated under s. 23.22 (2t) (a), Stats., remains in effect for 24 months or until the repeal of the emergency rule, or until the effective date of the permanent rule identifying, classifying, or controlling the invasive species, whichever occurs first.

History: CR 08-074: cr. Register August 2009 No. 644, eff. 9-1-09.

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

(2) IDENTIFICATION OF RESTRICTED SPECIES. (a) *Algae and cyanobacteria.* The following algae and cyanobacteria invasive species are restricted: None.

- (b) *Plants.* The following plant invasive species are restricted:
1. *Ailanthus altissima* (Tree of heaven)
 2. *Alliaria petiolata* (Garlic mustard)
 3. *Anthriscus sylvestris* (Wild chervil) in Barron, Columbia, Dane, Milwaukee, Polk and Walworth counties
 4. *Bunias orientalis* (Hill mustard) in Green and Lafayette counties
 5. *Butomus umbellatus* (Flowering rush)
 6. *Campanula rapunculoides* (Creeping bellflower)

7. *Carduus acanthoides* (Plumeless thistle)
 8. *Carduus nutans* (Musk thistle or Nodding thistle)
 9. *Celastrus orbiculatus* (Oriental bittersweet)
 10. *Centaurea biebersteinii*, *Centaurea maculosa* or *Centaurea stoebe* (Spotted knapweed)
 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
 12. *Cirsium arvense* (Canada thistle)
 13. *Cirsium palustre* (European marsh thistle) in Ashland, Bayfield, Chippewa, Door, Florence, Forest, Iron, Langlade, Lincoln, Marathon, Marinette, Menominee, Oconto, Oneida, Price, Rusk, Sawyer, Shawano, Taylor and Vilas counties
 14. *Conium maculatum* (Poison hemlock) in Crawford, Dane, Grant, Green, Iowa, Lafayette, Richland, Rock, and Sauk counties
 15. *Cynoglossum officinale* (Hound's tongue)
 16. *Dipsacus laciniatus* (Cut-leaved teasel)
 17. *Dipsacus sylvestris* or *Dipsacus fullonum* (Common teasel)
 18. *Elaeagnus angustifolia* (Russian olive)
 19. *Elaeagnus umbellata* (Autumn olive)
 20. *Epilobium hirsutum* (Hairy willow herb) in Kenosha county
 21. *Epipactis helleborine* (Helleborine orchid)
 22. *Euphorbia cyparissias* (Cypress spurge)
 23. *Euphorbia esula* (Leafy spurge)
 24. *Galeopsis tetrahit* (Hemp nettle)
 25. *Glyceria maxima* (Tall or reed mannagrass) in Brown, Calumet, Dodge, Door, Fond du Lac, Jefferson, Kenosha, Kewaunee, Manitowoc, Milwaukee, Outagamie, Ozaukee, Racine, Sheboygan, Walworth, Washington, Waukesha and Winnebago counties
 26. *Hesperis matronalis* (Dame's rocket)
 27. *Humulus japonicus* (Japanese hops) in Grant and Crawford counties
 28. *Leymus arenarius* or *Elymus arenarius* (Lyme grass or sand ryegrass) in Door, Kewaunee, Manitowoc, Sheboygan and Racine counties
 29. *Lonicera maackii* (Amur honeysuckle) in Adams, Brown, 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
 30. *Lonicera morrowii* (Morrow's honeysuckle)
 31. *Lonicera tatarica* (Tartarian honeysuckle)
 32. *Lonicera x bella* (Bell's or showy bush honeysuckle)
 33. *Lythrum salicaria* (Purple loosestrife)
- Note:** Purple loosestrife is also designated as an invasive aquatic plant statewide under s. NR 109.07 (2).
34. *Myriophyllum spicatum* (Eurasian watermilfoil)
- Note:** Eurasian watermilfoil is also designated as an invasive aquatic plant statewide under s. NR 109.07 (2).
35. *Pastinaca sativa* (Wild parsnip), except for the garden vegetable form
 36. *Phragmites australis* (Phragmites or Common reed) non-native ecotype
 37. *Polygonum cuspidatum* (Japanese knotweed)
 38. *Potamogeton crispus* (Curly-leaf pondweed)
- Note:** Curly-leaf pondweed is also designated as an invasive aquatic plant statewide under s. NR 109.07 (2).
39. *Rhamnus cathartica* (Common buckthorn)

40. *Rhamnus frangula* or *Frangula alnus* (Glossy buckthorn) including the Columnaris (tall hedge) cultivar but excluding the cultivars Asplenifolia and Fineline (Ron Williams)

41. *Rosa multiflora* (Multiflora rose)

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

43. *Torilis japonica* (Japanese hedge parsley or erect hedge-parsley) 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, Vilas and Wood counties

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

45. *Typha x glauca* (Hybrid cattail)

46. *Vincetoxicum nigrum* or *Cynanchum louiseae* (Black or Louise's swallow-wort) in Columbia, Crawford, Dane, Grant, Green, Iowa, Jefferson, Juneau, Kenosha, La Crosse, Lafayette, Milwaukee, Monroe, Racine, Richland, Rock, Sauk, Vernon, Walworth and Waukesha counties

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

1. Established nonnative fish species and established nonnative crayfish species

2. Nonnative viable fish species in the aquarium trade

3. Nonnative fish species in the aquaculture industry

4. Nonviable fish species

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

1. *Cipangopaludina chinensis* (Chinese mystery snail)

2. *Dreissena polymorpha* (Zebra mussel)

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

1. *Lymantria dispar* (European Gypsy moth) European race in all counties except those included in a DATCP quarantine under s. 94.01, Stats., or a United States Department of Agriculture Animal and Plant Health Inspection Service quarantine declaration under 7 USC section 7714 or 7715.

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

Note: Gypsy moth quarantined areas may be viewed at: <http://www.gypsy-moth.wisconsin.gov/>.

Note: For species that are both listed under NR 40 and quarantined at the federal and/or the state level, the department determines that "reasonable precautions" allow for the incidental possession, transport, transfer, or introduction of a prohibited or restricted organism *within* the boundaries of a federal or state quarantine for that organism.

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

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

(3) ACTIONS RESTRICTED BY THIS CLASSIFICATION; EXEMPTIONS.

(a) Except as otherwise provided in pars. (b) to (o), no person may do any of the following:

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

2. Transport, transfer or introduce any other restricted invasive species identified or listed under sub. (2).

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

Note: Paragraph (b) does not apply to preventive measures set out in s. NR 40.07.

(c) If authorized by a permit issued by the department under this chapter, a person may transport, possess, transfer or introduce

a restricted invasive species for research, public display, or for other purposes specified by the department in the permit.

(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.

Note: "Wild animal" is defined in s. NR 40.02 (53) to mean any mammal, bird, or other creature of a wild nature endowed with sensation and the power of voluntary motion, except fish and crayfish.

(e) 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.

(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.

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

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

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

Note: New populations of restricted aquatic plant species may be reported to the appropriate department regional aquatic invasive species coordinator. For a list of known waterbodies with restricted aquatic plant, algae and cyanobacteria species, see <http://dnr.wi.gov/lakes/invasives/AISByWaterbody.aspx>. To contact the appropriate aquatic invasive species coordinator see <http://dnr.wi.gov/lakes/DNRAIS-Coordinators.aspx>.

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

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

(j) Koi carp and goldfish may be transported, possessed or transferred without a permit issued by the department under this chapter but koi carp may not be used as bait or introduced to any water of the state except waters of the state that are artificial, entirely confined and retained upon the property of a person, do not drain to other waters of the state, are not subject to intermittent or periodic flooding, and are not connected to any other water of the state.

Note: Section NR 20.08 (1) prohibits the use of goldfish as bait and the possession of goldfish in any form or manner on any water of the state.

(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 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.

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

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

(m) Paragraph (a) does not apply to a person who has a permit issued by DATCP under s. ATCP 21.04 for importation, movement, distribution or release of a pest or biological control agent that is a restricted invasive species identified or listed under sub. (2).

(n) 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.

(o) Paragraph (a) does not apply to any of the following:

1. A person who holds a scientific collector permit for the invasive species under s. 29.614, Stats.

2. A person who, while lawfully fishing, inadvertently catches a fish invasive species.

Note: Section NR 20.20 (73) (c) 1. sets a bag limit of 0 for nonindigenous detrimental fish, but allows one such fish to be taken by hook and line if it is killed immediately and delivered immediately to a department service center or regional office. All nonindigenous fish species are declared under s. NR 20.38 (6) to be detrimental fish if the fish were imported without a permit in violation of s. 29.735, Stats., or are found in any water where their presence is not specifically permitted by the department.

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

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

History: CR 08-074; cr. Register August 2009 No. 644, eff. 9-1-09; CR 10-016; am. (2) (b) 11., 13., 14., 25., 29., 43., 46. Register August 2010 No. 656, eff. 9-1-10.

NR 40.06 Invasive species permits. A person may transport, possess, transfer or introduce a prohibited invasive species listed in s. NR 40.04 (2), or a restricted invasive species listed in s. NR 40.05 (2), if the person has been issued a permit by the department under this section for the activity.

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

Note: Applications for permits for fish and aquatic invertebrates may be sent to:
Attn: FH/4
Wisconsin Department of Natural Resources
PO Box 7921
Madison, WI 53707-7921

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 7921
Madison, WI 53707-7921

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 7921
Madison, WI 53707-7921

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 53711

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

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

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

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

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

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

(3) ISSUANCE AND CONDITIONS. (a) If it determines that there is significant public interest, the department may hold a public informational hearing on a permit application before acting on the application.

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

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

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

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

(7) OTHER PERMITS OR APPROVALS. A person who holds a permit or approval issued by the department under another chapter or a statute other than s. 23.22, Stats., is not required to hold a permit under this chapter to transport, possess, transfer or introduce a prohibited invasive species listed in s. NR 40.04 (2), or a restricted invasive species listed in s. NR 40.05 (2), if the department determines that all of the following apply:

(a) The permit or approval expressly authorizes the transportation, possession, transfer or introduction of the prohibited invasive species listed in s. NR 40.04 (2), or the restricted invasive species listed in s. NR 40.05 (2).

(b) The permit or approval includes legally enforceable requirements that are at least equivalent to those that would be contained in a permit issued by the department under this chapter.

(c) The person is not in violation of the permit or approval.

History: CR 08-074; cr. Register August 2009 No. 644, eff. 9-1-09.

NR 40.07 Preventive measures. (1) NOTIFICATION REQUIRED. Any person who possesses a restricted invasive fish species in a safe facility shall notify the department within 24 hours of any escape of a specimen or viable part of a specimen, or of any failure of the integrity of the safe facility that could allow the escape of any specimen or viable part of a specimen. The notice shall be made in writing by mail or by e-mail and shall include the specific location of the known, suspected, or anticipated escape and the fish species involved.

Note: The notice shall be mailed to the Director, Bureau of Fisheries Management, Wisconsin Department of Natural Resources, PO Box 7921, Madison, Wisconsin 53707-7921 and e-mailed to DNRFishHabitatProtection@wisconsin.gov.

(2) IMMEDIATE REMOVAL OF AQUATIC PLANTS AND AQUATIC ANIMALS AND DRAINAGE OF WATER. (a) Except as provided in pars. (b) to (g):

1. Any person who removes a vehicle, boat, boat trailer, boating or fishing equipment, or other equipment or gear of any type from any inland or outlying water or from its bank or shore shall remove all attached aquatic plants and aquatic animals immediately after removing the vehicle, boat, boat trailer, boating or fishing equipment or other equipment or gear from the water, bank or shore and before leaving any boat launch area or associated parking area.

Note: Section 30.07 (2) (a) and (b), Stats., prohibit any person from placing or operating a vehicle, seaplane, watercraft, or other object of any kind in a navigable water if it has any aquatic plants or aquatic animals attached to the exterior and from taking off with a seaplane, or transporting or operating a vehicle, watercraft, or other object of any kind on a highway with aquatic plants or aquatic animals attached to the exterior.

2. Any person who removes a vehicle or equipment other than boating or fishing equipment, or gear of any type from any inland or outlying water or from its bank or shore shall drain all water from the vehicle, equipment or gear, including water in any motor, tank or other container, immediately after removing the vehicle, equipment or gear from the water, bank or shore and before leaving any boat launch area or associated parking area.

Note: Section NR 19.055 (1) requires any person who removes a boat, boat trailer, boating equipment or fishing equipment from any inland or outlying water or its bank or shore to immediately drain all water from the boat, boat trailer, boating equipment or fishing equipment, including water in any bilge, ballast tank, bait bucket, live well or other container immediately after removing the boat, boat trailer, boating equipment or fishing equipment from the water, bank or shore, with certain exceptions.

Note: Chapters NR 320, 323, 328, 329, 341, 343 and 345, relating to general navigable waters permit criteria, set out equipment decontamination requirements to stop the spread of invasive species from one waterway to another and require removal of all plants, animals, mud, debris, etc., before and after use.

Note: See ss. 30.18 (2) and 31.02 (1), Stats., regarding the diversion or withdrawal of water from lakes and streams. Withdrawals are regulated through individual permits that may consider the associated risk of spreading invasive species.

(b) The department may exempt any vehicle, equipment or gear in writing from par. (a) 1. or 2. if it determines that it will not allow invasive species to be transported to other waters.

(c) Paragraph (a) does not apply to decontaminated equipment, tanks or containers when used for the operation or maintenance of dry fire hydrants that are subject to ch. NR 329.

Note: See s. NR 329.04 (1) (c) 5. and (2) (c) 4. c. regarding the maintenance and operation of dry fire hydrants.

(d) Paragraph (a) 1. does not apply to an aquatic animal whose possession is authorized by department rule.

Note: An example of an aquatic animal whose possession is authorized by department rule is a dead game fish taken in compliance with ch. NR 20.

(e) Paragraph (a) 2. does not apply to water in closed engine cooling systems or to tanks or containers of potable drinking water or other beverages meant for human consumption.

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

Note: The transport of live fish and fish eggs away from any inland or outlying water or its bank or shore is prohibited by s. NR 19.05 (3), with certain exceptions.

(g) Paragraph (a) does not apply to vehicles, equipment, or gear while engaged in fire suppression.

(3) TRANSPORT OF VEHICLES AND EQUIPMENT INTO WISCONSIN; REMOVAL PRIOR TO ENTRY OF AQUATIC PLANTS AND AQUATIC ANIMALS AND DRAINAGE OF WATER. (a) Except as provided in pars. (b) to (d), no person may do any of the following:

1. Transport over land from another state any vehicle, boat, boat trailer, boating or fishing equipment, or other equipment or gear of any type for use on any water of the state or its bank or shore unless the person first removes all attached aquatic plants and aquatic animals from the vehicle, boat, boat trailer, boating or fishing equipment, or other equipment or gear of any type before entering the state.

Note: Section 30.07 (2) (a) and (b), Stats., prohibit any person from placing or operating a vehicle, seaplane, watercraft, or other object of any kind in a navigable

water if it has any aquatic plants or aquatic animals attached to the exterior and from taking off with a seaplane, or transporting or operating a vehicle, watercraft, or other object of any kind on a highway with aquatic plants or aquatic animals attached to the exterior.

2. Transport over land from another state any vehicle, equipment other than boating or fishing equipment, or gear of any type for use on any water of the state or its bank or shore unless the person first drains all water from the vehicle, equipment or gear, including water in any motor, tank, or other container before entering the state.

Note: Section NR 19.055 (2) prohibits any person from transporting over land from another state any boat, boat trailer, boating equipment or fishing equipment for use on any water of the state or its bank or shore unless the person drains all water from the boat, boat trailer, boating equipment or fishing equipment, including water in any bilge, ballast tank, bait bucket, live well or other container before entering the state, with certain exceptions.

(b) The department may exempt any vehicle, boat, boat trailer, equipment or gear in writing from par. (a) 1. or 2. if it determines that it will not allow invasive species to be transported to waters of the state.

(c) Paragraph (a) 1. does not apply to dead game fish lawfully taken in another state, as provided by s. 29.047, Stats.

(d) Paragraph (a) 2. does not apply to water in closed engine cooling systems or to tanks or containers of potable drinking water or other beverages meant for human consumption.

(4) ILLEGAL TO LAUNCH, TAKE OFF OR TRANSPORT. (a) Except as provided in par. (b), no person may place or operate a vehicle, watercraft or other object of any kind in any wetland or non-navigable water of the state if the vehicle, watercraft or other object has an aquatic plant or aquatic animal attached to the exterior.

(b) Paragraph (a) does not apply if the aquatic plant is native duckweed or wild rice.

(c) Paragraph (a) does not apply to vehicles, watercraft or other objects while engaged in fire suppression.

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

Note: Identified carriers of invasive terrestrial invertebrates and plant-disease causing microorganisms most commonly include but are not limited to trees that support life stages of the invasive species. Trees include all parts of a tree including limbs, branches, roots and foliage. Raw forest products such as unprocessed logs, slabs with bark, cut firewood and chips may be considered as carriers. The department does not consider certified firewood to be an identified carrier. Certified firewood is firewood that has been treated by a DATCP-certified firewood dealer using one or more DATCP-approved firewood treatment methods to prevent the spread of invasive pests.

(b) Paragraph (a) does not apply to a person who transports an identified carrier of an invasive species from a department infestation control zone designated under s. 26.30 (7), Stats., a DATCP quarantine area imposed under s. 94.01, Stats., or a United States Department of Agriculture Animal and Plant Health Inspection Service quarantine area declared under 7 USC 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.

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

Note: Prohibited fish invasive species and crayfish invasive species are identified in s. NR 40.04 (2) (c).

(7) INTRODUCTION PROHIBITED. Unless authorized by a permit issued by the department under this chapter, no person may introduce a nonnative algae or cyanobacteria species in any water of the state. This subsection does not apply to the incidental introduction of a nonnative algae or cyanobacteria species by a person operating an aircraft, vehicle, equipment or gear while engaged in fire suppression.

Note: Section 23.24 (3) (a) 1., Stats., prohibits any person from introducing non-native aquatic plants into waters of this state unless the person has a valid aquatic plant management permit issued by the department.

(8) WHITE-NOSE SYNDROME PREVENTION. (a) *Definition.* In this subsection “near a cave or mine” means within 100 feet of a cave or mine.

(b) *Entry with imported items prohibited.* Except as provided in par. (e), no person may bring or place any equipment, gear, clothing or other object of any kind in or near a cave or mine if the equipment, gear, clothing or other object has been in or near a cave or mine located outside of Wisconsin.

(c) *Requirements.* 1. Except as provided in subd. 5. and par. (e), no person may bring or place any equipment, gear, clothing or other object of any kind in or near a cave or mine if the equipment, gear, clothing or other object has been in or near a cave or mine located in this state unless the equipment, gear, clothing or other object has first been cleaned in accordance with par. (d).

2. Except as provided in subd. 5. and par. (e), any person removing any equipment, gear, clothing or other object of any kind from any cave or mine or from within 100 feet of any cave or mine or exiting any cave or mine or the area within 100 feet of any cave or mine with any equipment, gear, clothing or other object of any kind shall clean the equipment, gear, clothing and other objects in accordance with par. (d).

3. Except as provided in subd. 5. and par. (e), any person who caused or will cause contact to occur between a bat and an individual or object of any kind, including but not limited to a net, trap, weighting tube, bat bag, wing punch, ruler, clothing, glove, electronic equipment or exclusion material shall, prior to and immediately following the contact, clean the individual or object in accordance with par. (d).

4. Except as provided in subd. 5. and par. (e), any person who owns or operates an active mine or a commercial cave or mine shall ensure that each individual entering or exiting the person’s active mine or commercial cave or mine complies with par. (b) and subds. 1. to 3.

5. The requirements of subds. 1. to 4. do not apply to dedicated equipment, gear, clothing and other objects of any kind that are used exclusively in or near and stored exclusively in or near a single cave or mine.

(d) *Protocols.* Individuals, equipment, gear, clothing and other objects of any kind to which the requirement of par. (c) 1., 2., or 3. applies shall be cleaned in accordance with protocols approved by the department. Unless it determines that emergency conditions require otherwise, the department shall provide notice and opportunity for public comment at least 14 days before it materially changes an approved protocol.

Note: Detailed information about department-approved cleaning protocols may be obtained at http://dnr.wi.gov/topic/WildlifeHabitat/documents/WNS_DeconProtocols.pdf or by writing to Wisconsin Department of Natural Resources, Wisconsin Bat Monitoring Program, Bureau of Endangered Resources, P.O. Box 7921, Madison, WI 53707-7921.

(e) *Written exemption.* The department may exempt any person in writing from par. (b) or (c) if it determines that the exemption will not significantly increase the risk that *Geomyces destructans* (white-nose syndrome fungal pathogen) would be introduced or transported to other locations. The department may set conditions in any written exemption granted under this paragraph. Any person who receives a conditional exemption from the department under this paragraph shall comply with the conditions of the exemption.

(f) *Site-specific prevention plan.* Except as provided in subd. 5., any person who owns or operates a cave or mine shall develop a written plan for each of the person’s caves and mines to prevent

the introduction and transmission of *Geomyces destructans* (white-nose syndrome fungal pathogen).

1. The prevention plan shall include a description of practices that will be installed or implemented by the owner or operator to prevent the introduction or transmission of *Geomyces destructans* via human transmission. The plan may include practices such as screening visitors, cleaning equipment, gear, clothing and other objects before they are brought into the cave or mine or upon their removal, the use of dedicated equipment, gear, clothing and other objects, and modification of the cave or mine environment to make it unsuitable for establishment and transmission of *Geomyces destructans*.

2. The prevention plan shall be submitted by the owner or operator to the department by June 1, 2011, for its review and approval. The department may set conditions for the approval of any plan required under this paragraph and shall include any exemption granted under par. (e) to the owner or operator of a cave or mine in a plan approval issued under this paragraph. In setting conditions for the approval of any plan, the department shall consider the site-specific risk of *Geomyces destructans* introduction and transmission along with the feasibility and reasonableness of alternative practices for the prevention of *Geomyces destructans* transmission or introduction.

3. The owner or operator shall implement the plan as approved by the department and shall maintain as appropriate all practices specified in the plan.

4. The owner or operator shall maintain a copy of the approved prevention plan at the cave or mine covered by the plan or an alternate location approved by the department and shall make the copy available for inspection upon request by the department at any reasonable time.

5. This paragraph does not apply to any of the following:

a. A cave or mine that the department has determined in writing lacks the environmental conditions, including temperature and humidity, suitable for the introduction or transmission of *Geomyces destructans*.

b. A cave or mine where the owner or operator restricts human access through the use of department-supplied and maintained signage or bat-friendly barriers or gates.

c. A cave or mine where the primary reason for human presence in the cave or mine relates to the storage or processing of a food or beverage intended for human consumption.

History: CR 08-074: cr. Register August 2009 No. 644, eff. 9-1-09; CR 10-016: am. (4) and (7) Register August 2010 No. 656, eff. 9-1-10; EmR1039: emerg. cr (8), eff. 11-3-10; CR 10-123: cr. (8) Register May 2011 No. 665, eff. 6-1-11.

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

(1) Issue a citation pursuant to ss. 23.50 to 23.99, Stats.

(2) Refer the matter to the department of justice for enforcement.

(3) Revoke any permit issued under this chapter, after notice and opportunity for hearing.

History: CR 08-074: cr. Register August 2009 No. 644, eff. 9-1-09.

NR 40.09 Interagency coordination. This chapter does not affect the authority of DATCP under chs. 93, 94, 95 and 97, Stats. The action of the department under this chapter shall be coordinated with DATCP. The secretaries of the department and DATCP shall execute a memorandum of agreement to enable coordination of invasive species work of their departments.

History: CR 08-074: cr. Register August 2009 No. 644, eff. 9-1-09.