

Chapter NR 40

INVASIVE SPECIES IDENTIFICATION, CLASSIFICATION AND CONTROL

NR 40.01	Purpose.
NR 40.02	Definitions.
NR 40.03	Classifications.
NR 40.04	Prohibited category.
NR 40.045	Emergency additions to prohibited category.

NR 40.05	Restricted category.
NR 40.06	Invasive species permits.
NR 40.07	Preventive measures.
NR 40.08	Enforcement.
NR 40.09	Interagency coordination.

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.

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

(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, or the consumption of the species as food.

(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*), 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*).

(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

(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, phytoplasmas, 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 and other aquatic invertebrates.

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; CR 14-034: cr. (9m), am. (14), (17), (37), (53) Register April 2015 No. 712, eff. 5-1-15.

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. Non-restricted invasive species 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.

(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:

- 1g. *Caulerpa taxifolia* (Killer algae)
- 1r. *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 statewide except in the counties listed where they are restricted under s. NR 40.05 (2) (b):

- 1e. *Achyranthes japonica* (Japanese chaff flower)
- 1m. *Akebia quinata* (Fiveleaf akebia or chocolate vine)
- 1s. *Ampelopsis brevipedunculata* (Porcelain berry) including the variegated cultivar
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, Racine, Richland, Rock, Sauk, Sheboygan, Taylor, Vernon, Walworth, Waukesha, and Washington counties
- 2e. *Arundo donax* (Giant reed)
- 2m. *Azolla pinnata* (Mosquito fern)
- 2s. *Berberis vulgaris* (Common barberry)
3. *Bunias orientalis* (Hill mustard) except in Dane, Grant, Green, Iowa, Lafayette, and Rock counties
4. *Cabomba caroliniana* (Fanwort)
- 4g. *Cardamine impatiens* (Narrow leaf bittercress)
- 4n. *Celastrus loeseneri* (Asian loeseneri bittersweet)
- 4r. *Centaurea diffusa* (Diffuse knapweed)
- 4w. *Centaurea repens* (Russian knapweed)
5. *Centaurea solstitialis* (Yellow star thistle)
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, Sauk, Sheboygan, Trempealeau, Vernon, Walworth, and Waukesha counties

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. Nonviable fish species
 - e. Genetically modified fish species
- (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 lumholztzi* (Water flea)
 - 5m. *Dikerogammarus villosus* (Killer shrimp)
 6. *Dreissena rostriformis* (Quagga mussel)
 7. *Eriocheir sinensi* (Chinese mitten crabs)
 8. *Hemimysis anomala* (Bloody shrimp)
 - 8g. *Limnoperna fortunei* (Golden mussel)
 - 8r. *Melanoides tuberculata* (Malaysian trumpet snail)
 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)
 4. *Anoplophora glabripennis* (Asian longhorned beetle)
 - 5e. *Dendroctonus ponderosae* (Mountain pine beetle)
 - 5m. *Geosmithia morbida* (Thousand cankers disease of walnut)
 6. *Lymantria dispar* Asian race (Asian Gypsy moth)
 7. *Phytophthora ramorum* (Sudden oak death pathogen)
 8. *Pityophthorus juglandis* (Walnut twig beetle)

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 ch. 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)
- 1m. *Myocastor coypus* (Nutria)
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. *Pseudogymnoascus destructans* (White-nose syndrome fungal pathogen)

(3) **ACTIONS PROHIBITED BY THIS CLASSIFICATION; EXEMPTIONS.**
 (a) Except as otherwise provided in pars. (b) to (i), 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 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.

(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 any of the following apply:

1. The person is in compliance with a DATCP-USDA APHIS compliance agreement applicable to the terrestrial invertebrate or plant disease-causing microorganism.

2. The transport, possession, transfer or introduction takes place entirely within the quarantine 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 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.

(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.

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

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.

(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.

Note: Effective date of listing: May 1, 2015.

3. *Anthriscus sylvestris* (Wild chervil) 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, Racine, Richland, Rock, Sauk, Sheboygan, Taylor, Vernon, Walworth, Waukesha, and Washington counties

3g. *Artemisia absinthium* (Wormwood)

Note: Effective date of listing: May 1, 2015.

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, Kellersii, 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®.

Note: Effective date of listing: May 1, 2015.

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

5. *Butomus umbellatus* (Flowering rush)

6. *Campanula rapunculoides* (Creeping bellflower)

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

Note: Effective date of listing: May 1, 2015.

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)

10e. *Centaurea jacea* (Brown knapweed)

Note: Effective date of listing: May 1, 2015.

10m. *Centaurea nigra* (Black knapweed)

Note: Effective date of listing: May 1, 2015.

10s. *Centaurea nigrescens* (Tyrol knapweed)

Note: Effective date of listing: May 1, 2015.

11. *Chelidonium majus* (Celandine)

12. *Cirsium arvense* (Canada thistle)

13. *Cirsium palustre* (European marsh thistle) in Ashland, Bayfield, Chippewa, Clark, 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 Buffalo, Crawford, Dane, Grant, Green, Iowa, Jefferson, Kenosha, La Crosse, Lafayette, Milwaukee, Monroe, Ozaukee, Racine, Richland, Rock, Sauk, Sheboygan, Trempealeau, Vernon, Walworth, and Waukesha counties

14m. *Coronilla varia* (Crown vetch)

Note: Effective date of listing: May 1, 2015.

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 Brown, Calumet, Door, Kenosha, Kewaunee, and Manitowoc counties

21. *Epipactis helleborine* (Helleborine orchid)

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

Note: Effective date of listing: May 1, 2015.

22. *Euphorbia cyparissias* (Cypress spurge)

23. *Euphorbia esula* (Leafy spurge)

23g. *Fallopia japonica* or *Polygonum cuspidatum* (Japanese knotweed)

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

Note: Effective date of listing: May 1, 2015.

24. *Galeopsis tetrahit* (Hemp nettle)

24m. *Galium mollugo* (White bedstraw)

Note: Effective date of listing: May 1, 2015.

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

26. *Hesperis matronalis* (Dame's rocket)

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

27e. *Impatiens balfourii* (Balfour's touch-me-not)

Note: Effective date of listing: May 1, 2015.

27m. *Iris pseudacorus* (Yellow iris)

Note: Effective date of listing: May 1, 2015.

27s. *Knautia arvensis* (Field scabiosa)

Note: Effective date of listing: May 1, 2015.

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

28m. *Linaria dalmatica* (Dalmatian toadflax) in Juneau and Bayfield counties

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

30. *Lonicera morrowii* (Morrow's honeysuckle)

31. *Lonicera tatarica* (Tartarian honeysuckle)

32. *Lonicera x bella* (Bell's or showy bush honeysuckle)

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

Note: Effective date of listing: May 1, 2015.

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

Note: Effective date of listing: May 1, 2015.

33. *Lythrum salicaria* (Purple loosestrife)

Note: Purple loosestrife is also designated as an invasive aquatic plant statewide under s. NR 109.07 (2).

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

Note: Effective date of listing: May 1, 2015.

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

Note: Effective date of listing: May 1, 2015.

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

Note: Effective date of listing: May 1, 2015.

34. *Myriophyllum spicatum* (Eurasian watermilfoil)

Note: Eurasian watermilfoil is also designated as an invasive aquatic plant statewide under s. NR 109.07 (2).

34m. *Najas marina* (Spiny naiad)

Note: Effective date of listing: May 1, 2015.

35. *Pastinaca sativa* (Wild parsnip), except for the garden vegetable form

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.

Note: Effective date of listing: May 1, 2015.

36. *Phragmites australis* (Phragmites or common reed) non-native ecotype in Brown, Calumet, Columbia, Dane, Dodge,

duced 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, 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 as authorized under s. NR 19.27 (4) (a) 1. a.

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.

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

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.

(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).

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.

(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; CR 14-034: am. (2) (b) (intro.), renum. (2) (b) 1. to 1s., cr. (2) (b) 1e., 1m., 2m., am. (2) (b) 3., cr. (2) (b) 3g., 3r., am. (2) (b) 4., cr. (2) (b) 6m., 10e., 10m., 10s., am. (2) (b) 11., 14., cr. (2) (b) 14m., am. (2) (b) 20., cr. (2) (b) 21m., 23r., 24m., am. (2) (b) 25., 27., cr. (2) (b) 27e., 27m., 27s., am. (2) (b) 28., cr. (2) (b) 28m., am. (2) (b) 29., cr. (2) (b) 32g., 32r., 33e., 33m., 33s., 34m., 35m., am. (2) (b) 36., cr. (2) (b) 36m., renum. (2) (b) 37. to 23g. and am., cr. (2) (b) 37m., 40g., 40r., 41m., am. (2) (b) 42., 43., cr. (2) (b) 45g., 45r., (c) 5., (d) 1m., 3., 4., renum. (2) (e) 1. to 3., cr. (2) (e) 1m., 2., r. (2) (f), am. (3) (d), renum. (3) (e) to (e) (intro.) and am., cr. (3) (e) 1., 2., am. (3) (f), r. (3) (g), am. (3) (k), cr. (3) (o) 3., (p) Register April 2015 No. 712, eff. 5-1-15; correction in (2) (b) 3., 3r., 8., 35m., 36., (3) (e) 1. made under s. 35.17, Stats., Register April 2015 No. 712; CR 16-037: am. (2) (b) 3., 13., 14., 33s., (e) 2. Register April 2017 No. 736, eff. 5-1-17.

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 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.

(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.

(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 nonnative 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 protocols may be obtained on the DNR website (dnr.wi.gov) keyword "bats" or by writing to Wisconsin Department of Natural Resources, Wisconsin Bat Monitoring Program, Bureau of Natural Heritage Conservation, 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*.