



Wisconsin Association of Lakes

A nonprofit group of citizens, organizations, and businesses working for clean, safe, healthy lakes for everyone.

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Department of Natural Resources
Endangered Resources-6
Box 7921,
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August 27, 2008

RE: Wisconsin Association of Lakes (WAL)
Comments on proposed Invasive Species Classification rule (NR 40)
IS-34-06

To Whom It May Concern:

Thank you for the opportunity to comment on the proposed Invasive Species Classification rule (NR 40). In addition to these written comments, WAL requests the opportunity to address the Natural Resources Board when the proposed rule is presented.

Invasive species—especially aquatic invasive species—are a tremendous challenge to Wisconsin's 15,000 lakes, and are a top concern of our membership. These dedicated volunteers recognize the serious threat aquatic invasive species (AIS) pose to the ecological health of our lakes, boating and fishing opportunities enjoyed by citizens and visitors, and potential impacts on tourism related businesses and services.

AIS can also undermine the investment that the state, many lake groups, and private citizens have made to improve lake water quality and habitat. Many of our member Lake Districts and Lake Associations are spending a good portion of the annual operating budgets on suppressing existing AIS populations and preventing introductions through educational programs, monitoring efforts, and volunteer watercraft inspection programs.

This rule represents significant progress toward comprehensive statewide efforts to prevent and manage invasive species. Overall, WAL is pleased with many provisions contained in proposed NR 40; however there are some areas where we have suggested improvement or additional clarification within the rule.

Additional prevention requirements for Prohibited and Restricted species

WAL supports the restrictions on introduction, transference, and transport of invasive species classified as Prohibited and Restricted. But there is a significant gap within the preventative measures that aim to curtail the spread of AIS.

The current draft requires draining water from boats and other equipment, and prohibiting the transport of boats or trailers on highways if there are aquatic plants and animals attached. But some invasives--like zebra mussels, spiny water fleas, and pathogens like VHS--can be transported into lakes (and/or other waterbodies) in sediment or transfer of water from one water body to another. The current rule does not address the transfer of sediment or water from lake to lake (or other waterbodies), leaving these common pathways of invasion unregulated.

WAL suggests the rule be revised to ban the transfer of plants, animals, water, and sediments between waterbodies, with some reasonable exceptions (such as fire suppression and permitted exceptions).

Mechanism within NR 40 to incorporate increasing or new invasive threats

The criterion in NR 40.03 clearly outlines a framework for determining whether a non-native species should be classified as an invasive species under the rule. However, the rule does not appear to contain a mechanism to incorporate non-native species that meet the criterion into the Department's internally kept Caution list, or add species to Restricted or Prohibited classification regulated under NR 40.

WAL interprets this apparent lack of a clear trigger to include new invasive species and/or existing invasives that may warrant increased prevention or control efforts into NR 40 as problematic. As drafted it appears inclusion of additional invasive species, or moving a classified species from one classification to another, or moving Caution list species into a classification, would require a formal rule revision to NR 40 or alternatively, passage of emergency rules on a species by species basis, with formal rule revisions to follow. WAL is concerned that these approaches may result in the following complications:

- **Frequent revisions of NR 40.**
It is likely that new invasive species will continue to be introduced into the state, perhaps with increasing frequency. This may necessitate rule revisions on a more routine basis than anticipated, which can be time-consuming for DNR staff. The regulated community and many citizens would likely be unappreciative of a rule in a semi-constant state of revision.
- **Infrequent revisions of NR 40.**
Because the rule revision process is time-consuming, WAL also fears that invasive species that should be classified as Prohibited or Restricted will not be incorporated into the rule in a timely fashion.
- **Acting outside the framework of NR 40 to respond to new or growing threats**
While the Department does have the authority to pass emergency rules, a species by species approach is inefficient, and seems to require the Department to work around its own rule (NR 40) in order to quickly respond to new threats. It seems logical that a invasive (such as the recent example of VHS) that has

provoked a level of urgency sufficient enough to require emergency rules should trigger inclusion into the Prohibited or Restricted classifications, and be subject to the regulations thereof.

WAL recommends that a clear process be included within the rule that specifies when and how additional invasive species can be added to the Prohibited or Restricted classes and when and how a classified species can be moved from one classification to another. We suggest this process should at minimum address the following scenarios:

- Addition of non-native species that is not included on the Department's internal watch list that meets the criterion in NR 40.03 to the Prohibited or Restricted classifications.
- Addition of non-native species that is included on the Department's internal watch list that meets the criterion in NR 40.03 to the Prohibited or Restricted classifications.
- Reclassification of a Prohibited species to a Restricted species.

Inconsistency between definitions and classification table

WAL appreciates the inclusive definition of invasive species (NR 40.02 (43)). However it appears that there are some groups of organisms within the "species" definition (monera, protista, viruses, phytoplasma, mycoplasma-like organisms, and prions) that are not defined independently of the "species" definition and are not listed as being included within other definitions in the rule (such as "animal," "aquatic plant," "plant," "terrestrial plant."). It is also not clear where the above mentioned groups of species would fall into the current categories in the classification table (terrestrial plants, aquatic plants, vertebrates, terrestrial invertebrates & plant disease causing microorganisms, fish and aquatic invertebrates). Microorganisms could potentially encompass some of these species, but is undefined in the current draft.

It is the Department's intention to assign invasive monera, protista, viruses, phytoplasma, mycoplasma-like organisms, and prions to one of the existing categories in the classification table, or could these invasives be scattered through several or all classification table categories? Also, plant disease causing microorganisms are broken out separately in the proposed classification table. There are some viruses (such as VHS) and other pathogens that can directly (or contribute to) disease in animals. Where would such species be classified in the current table?

WAL suggests two remedies for this inconsistency:

- Adding a definition of "microorganism" that includes monera, protista, viruses, phytoplasma, mycoplasma-like organisms, and prions.
- Remove the phrase "plant disease causing" from the Terrestrial Invertebrates & Plant Disease Causing Microorganisms category title in the classification table such that the title reads Terrestrial Invertebrates and Microorganisms

Additional methods of limiting the movement of invasive species

Thus far, policy solutions have focused on preventative measures largely undertaken by individual citizens with the support of statewide and citizen group educational programs. Certainly changing public behaviors to take simple preventative steps is necessary, however it is not sufficient to stop or reverse the ecological and economic impact invasive species can have on Wisconsin resources. Restrictions on transportation, possession, transference, and introduction (subject to exemptions granted by permits) are a good first step, but additional policies will be necessary to respond and control invasives.

The Wisconsin Association of Lakes offers the following regulatory approaches to enhance statewide management of invasive species:

- Require sellers of plants and animals to disclose any invasive species they are retailing. Require labels with information about the invasive species, and the potential impact of the invasive plant/animal on state natural resources and economy should the species become uncontained.
- Require buyers who choose to purchase an invasive species to register with the state, and provide the state with the quantity of invasive species bought and where they were distributed.
- Require certification of “invasive free” seed mixes, started plant stock, or other products (like firewood, soil, or water) that can be vectors for the introduction of regulated invasive species.

We encourage the Department to examine its existing regulatory authority to determine whether ideas such as these could be incorporated into current administrative rules, or if additional authority is needed.

On behalf of the Board of Directors and members of the Wisconsin Association of Lakes, thank you for the opportunity to comment on this important rule.

Sincerely,

A handwritten signature in black ink that reads "Earl A. Cook". The signature is written in a cursive, flowing style.

Wisconsin Association of Lakes President