

STATEMENT OF REASONS

WYOMING GAME AND FISH COMMISSION

CHAPTER 49

PRIVATE STOCKING OF COLD BLOODED WILDLIFE

W.S. §23-4-101(a) empowers the Commission to regulate fish stocking in the waters of Wyoming. W.S. §23-1-302 directs and empowers the commission to supervise the propagation of fish in Wyoming.

In-state and out-of-state private fish hatcheries conduct approximately 450 separate fish stocking events annually in private waters. Changes to this chapter are concurrent with revision of Commission Regulation Chapter 51, Private Fish Hatcheries and the creation of Chapter 69, Importation and Possession of Live Cold Blooded Wildlife. Substantial effort was made to reorganize content into a more understandable format, move content between this chapter and Chapters 51 and 69 to the most appropriate chapter and reduce redundancy between the chapters. We broadened this chapter to include possible stocking of cold blooded wildlife other than fish.

Section 2 Definitions.

- 2(b). New definition of “Brokerage receipt” to add reference to a new Department provided receipt for use when fish are transferred from a Department approved private fish hatchery to a broker. This receipt is distinct from a stocking receipt but is required in accordance with W.S. § 23-4-102(e).
- 2(e). Edited language for consistency with other regulations.
- 2(f). Added definition to clarify the meaning of “Koi” as used in this and other chapters.
- 2(f). Added a definition for the existing private fish stocking authorization receipt that is currently used to document a Department approved private fish stocking event. Issuance of such a receipt is required by W.S. § 23-4-102(e).
- 2(h). Added definition (Oxford English Dictionary), omitting hybrids of coldwater, coolwater and warmwater game fish species that are produced by the Department (e.g., tiger trout, splake and tiger muskie) and varieties of tropical fish that might be used in private aquaculture (e.g., tilapia) but would not survive in the wild in Wyoming.

Section 3 Stocking Restrictions. Broadened this section to include other cold blooded wildlife beyond fish.

- 3(b). Utilized the term cold blooded wildlife defined in Commission Regulation Chapter 69.
- 3(c). Added to clarify that the Department shall determine which species may pose a threat.
- 3(d) and (e). Added to provide relevant reference to Commission Regulation Chapter 69 for user clarity.

Previous Section 4 Sanction of a Private Fish Hatchery to Stock Fish was deleted since the language is more appropriate for Commission Regulation Chapter 51, Private Fish Hatcheries.

Section 4 Application for Authorization to Stock Fish

- 4(a). Provide additional time for department review in Section 6(b)(i). It allows the Department 30 days to review an application to stock Grass Carp. Ten days would be insufficient for the Department to determine whether or not screening, flood plain/berming requirements are likely to be met.
- 4(b). Ornamental ponds are growing in popularity and Commission regulations have been unclear. A statement was added to clarify that marine fish, tropical fish, Goldfish and koi are exempted from the regulations in this section and that the term “ornamental pond” is defined in Chapters 52 and 69.
 - 4(b)(i) and (ii). Added to provide important references to Commission Regulations Chapter 51 and Chapter 69 for user clarity.
- 4(c). Reorganized and edited for clarity. Subsection (iii) provides an important reference to appropriate regulation in Chapter 51. Subsection (iv) references other restrictions that appear later in this regulation. Subsections (v) and (vi) attempt to clarify text that was deleted (“...if fish species requested are not compatible with species already present in the drainage or conflict with Department management goals for the drainage.”). Subsection (v) conveys Commission Policy VII C (Fish Stocking); “A wild fisheries management philosophy has been adopted for all streams with the potential to support satisfactory wild trout populations.”

Section 5. Terms of Authorization

- 5(a). Extend the amount of time that an authorization is valid.
- 5(b) and (c). Deleted previous (b) and incorporated those concepts into new sections (b) and (c).
- 5(d). Clarify authority to deny fish stocking requests for failure to comply.

Section 6. Types of Fish Stocking. Moved deleted text to new Section 11 (Transportation of Fish) of Chapter 51, Private Fish Hatcheries. New text was moved from old Section 8 below (Source of Fish for Fish Stocking) and a reference to Chapter 51 was added for user clarity.

- 6(a). Clarified which game fish may be approved for stocking by adding reference to Chapter 51 for definitions of “coldwater”, “coolwater” and “warmwater” fish species.
- 6(b)(i) Grass Carp, extensive revisions made to add provisions that have long been in Department Grass Carp stocking protocols, but not in regulation. Propose permitting Grass Carp stocking for vegetation control only in lakes and ponds. Stocking for vegetation control in flowing waters has not been documented to be affective and may allow fish to move to waters where they may cause resource damage (e.g., excessive turbidity).
- Grass Carp are long-lived fishes that have been documented to cause resource damage upon spread to some waters. Added requirements in subsection (A) to reduce the likelihood that triploid Grass Carp can escape from the water that was stocked. Similar screening and berming requirements were adopted more than a decade ago by the U.S. Fish and Wildlife Service and the states of Colorado, Utah, and Wyoming when permitting Grass Carp stocking within the Colorado (including Green River) River

drainage. These requirements and agreement are documented in the May 2015 Upper Colorado River Basin Nonnative and Invasive Aquatic Species Prevention and Control Strategy and the 2009 Procedures for Stocking Nonnative Fish Species in the Upper Colorado River Basin. (<https://www.coloradoriverrecovery.org/general-information/program-elements/nonnative-fish-management.html>).

- The proposed regulations in section (b) require that the application includes a floodplain delineation and engineering plans for berming, if warranted, and a description of screening plans. This burden should be placed on the applicant since private stocking does not benefit the public and escape of the species could pose a risk to the aquatic resources of this state. The proposed subsection (C) would allow the Department to deny applications to stock Grass Carp in locations where escape may be possible. New regulations in subsections (D) and (E) will allow the Department to ensure that berming and screening plans described on the Grass Carp stocking application have been implemented prior to the applicant submitting a private fish stocking application.
- “Broker” language was added that has long been in Department Grass Carp stocking protocols, but not in regulation. The requirement ensures that Grass Carp that have been certified triploid (sterile) can’t be mixed with diploid (Grass Carp capable of reproducing) through the process of brokering. Brokering of Grass Carp has been deemed responsible for the spread of this exotic species in the Colorado River drainage downstream of Flaming Gorge Dam.
- 6(b)(ii). Mosquito control has generally been restricted to the use of Fathead Minnow, primarily because this species is available from private hatcheries and is already widely established in Wyoming drainages and usually considered compatible with other fish species. Plains Topminnow and Plains Killifish are not available from private hatcheries and must be transplanted from other waters. Added appropriate reference to new language in Chapter 69 that states that “These species may be approved only if they are established in the drainage, stocking in the locations requested is considered by the Department to be compatible with aquatic species in that drainage, and the source population(s) for transplant are not located in drainages known to contain an AIS or pathogen of concern.” The prohibition on Western Mosquitofish is not new since the species is neither native nor established in any Wyoming drainage (requirements in deleted text).
- 6(b)(iii). Clarified that only warmwater fish species, which include Fathead Minnow (nongame fish) and sunfishes (game fish), would be available from Department approved private fish hatcheries and may be approved for stocking as forage.

Previous Section 8. Source of Fish For Stocking was deleted due to reorganization. Contents moved to new Section 6 above (Types of Fish Stocking).

Section 7. Species New to a Drainage. New section created by reorganization. Moved from old Section 12 below. Content is unchanged.

Section 8. Process for Appealing a Department Decision. Added process for appealing a Department decision. The process is the same as the existing process described in Chapters 10 and 33 of Department regulations and the new Chapter 69. Rather than creating redundancy by repeating identical, new language in Chapters 49, 50, 53, and 51, the language in Chapters 49, 50 and 53 references a process described in Chapter 51, Private Fish Hatcheries. The process is

intended to provide a standard procedure for applicants to address grievances with Department decisions – prior to having such issues addressed via a contested case hearing in accordance with Commission Regulation Chapter 27, Rules of Practice Governing Contested Cases Before the Wyoming Game and Fish Commission.

Section 9. Transportation of Fish. This section was reorganized. Placarding requirements were reiterated in multiple Department regulations. Deleted the placarding requirements from this section and referenced Chapter 51, Private Fish Hatcheries. The last sentence provides an exemption for fish permitted for use in ornamental ponds and provides the user with a reference to the definition of “ornamental pond” in Chapter 69.

Section 10. Records. This section was reorganized and revised. Existing regulation requires that the applicant (the person requesting the fish for a private water) get a signature from the private hatchery that delivers the fish on the private fish stocking authorization receipt and submit that to the Department within 15 days after the stocking. The onus is on the person who requested the fish to get the authorization signed and to submit it. The revised regulation would make the hatchery or broker the responsible party for completing and affirming the accuracy of the private fish stocking authorization receipt and for submitting the receipt to the Department which is consistent with W.S. § 23-4-102(e).

- 10(b). Grass Carp records was moved from old Section 7(b)(i); Types of Fish Stocking. The deadline for submitting the ploidy release authorization was extended from “at least 10 working days prior to stocking” to “within 15 days of the stocking event.” The change was necessary due to the logistics associated with U.S. Fish and Wildlife Service issuance of the ploidy release authorization.