

STATEMENT OF REASONS

WYOMING GAME AND FISH COMMISSION

CHAPTER 51

PRIVATE FISH HATCHERIES

Regulations pertaining to fish health inspections have historically been included in appendices and “supplements” to Commission Regulation Chapter 10, Regulation for Importation, Possession, Confinement, Transportation, Sale and Disposition of Live Wildlife. Chapter 10 has been revised extensively and all regulations pertaining to cold blooded aquatic wildlife are proposed for a new regulation; Commission Regulation Chapter 69, Importation and Possession of Live Cold Blooded Wildlife. As part of the revision process, the private fish hatchery health inspection requirements that were found in the appendices and “supplements” to Chapter 10 were moved to Chapter 51. Those requirements are found in Section 5 and Appendix I of this revised regulation.

W.S. §23-4-202(a) prohibits all persons from importing or transporting or causing the importation or transportation of an aquatic invasive species (AIS) into Wyoming. W.S. §23-4-204(a) directs the Commission to promulgate rules to administer and enforce the provisions of the AIS statute.

In-state and out-of-state private fish hatcheries conduct approximately 450 separate fish stocking events annually in Wyoming waters. Although all hatcheries have been inspected annually to ensure that these hatcheries are free of pathogens of concern, the Commission has only recently began requiring that private hatcheries are also inspected to ensure they are free of AIS prior to authorizing the stocking of fish in Wyoming. Regulations are necessary to ensure that private citizens are able to secure fish for stocking privately owned waters in accordance with W.S. §23-4-102, while ensuring that the hatchery sources are free of AIS. Many of the substantive changes to Chapter 51 are intended to provide the necessary rules to ensure that AIS are not imported or transported from a private fish hatchery to the waters of this state.

The regulation title was changed for consistency with other Commission regulations.

Section 1. Authority.

Added references to the AIS statute; § 23-4-201 and references providing authority to inspect commercial operations and revoke commercial licenses.

Section 2. Definitions.

(a): Reorganization. Moved last sentence to Section 3(b); “Application for a Fish Hatchery License” and edited to clarify the relationship between “aquaponics”, “aquaculture facility” and “ornamental ponds”. Added reference to the definition of “ornamental pond”. Deleted reference to “hobby aquariums and natural bodies of water” because private hatcheries often utilize both as part of the aquaculture facility.

(b): Added “Aquaculture Operation”. New definition necessary to describe operations involving the cultivation of mollusks and crustaceans in regulation. Provided explanation of relationships to “aquaponics” and “ornamental ponds.

(c): Added “Aquaponics”. Moved definition from existing Commission Regulation Chapter 10 which is being edited to Importation and Possession of Warm Blooded Wildlife.

(d): Added “Aquatic Animal Health Inspector” that was previously in Commission Regulation Chapter 10 but is no longer referenced in that chapter.

(e): Added “Aquatic Invasive Species (AIS) Hatchery Inspection”. New definition to support added AIS requirements.

(f) through (h): Added new definitions of “Aquatic Invasive Species (AIS) Hatchery Inspection Report”, “Aquatic Invasive Species Hatchery Inspector” and “Aquatic Invasive Species of Concern”. These are new terms that are used to provide new AIS inspection rules for private fish hatcheries that are constructed similarly to existing fish health inspection requirements.

(i): Combined two definitions (“Approved Laboratory” and “Approved Laboratory Technician”) that were previously in Commission Regulation Chapter 10 into a single term in this chapter; “Aquatic Laboratory Technician”. Previously, “Approved Laboratory” was only used in the definition of “Approved Laboratory Technician”.

(j): Added “Assumed Pathogen Prevalence Level (APPL)” to clarify fish health inspection requirements. The concept was present in Appendix I of Commission Regulation Chapter 10 which was moved to this regulation.

(k): Added “Authorized Agent”. The term was used in chapters 10 and 51 but had not been defined previously.

Deleted the terms “Brokered”, “Non-Salmonid Fish Hatchery” and “Salmonid Fish Hatchery” which are no longer used.

(l), (m) and (x): Added “Coldwater Fish Species”, “Coolwater Fish Species” and “Warmwater Fish Species”. These terms contain the lists of specific species that may be used in private fish hatcheries. Capitalization of common names is in accordance with the American Fisheries Society standards. Common names are capitalized unless they are hybrids, life history variants (e.g., golden trout and kokanee salmon) or groups of species (e.g., “bass” vs. Largemouth Bass). Did not list some species defined as game fish in Commission Regulation Chapter 46, Fishing Regulations, in any of the three categories; Burbot, Cisco, Freshwater Drum, Northern Pike, Smallmouth Bass, Yellow Perch, Walleye, and Yellow Perch. These species could cause significant negative impacts to many of the state’s important fisheries if released or allowed to escape.

(n): Added “Department Approved Private Fish Hatchery”. This is new definition that is used throughout this regulation to convey that a hatchery has met the requirements to operate in Wyoming or to import fish into Wyoming from out of state. See new Section 4 of this regulation.

Changed “Fish Hatchery” to “Private Fish Hatchery” and moved down alphabetically.

(o): Added “Fish Health Inspection”. New definition. There was previously only a definition of a fish health inspection report.

(p) through (s), (u) and (w): Moved “Fish Health Inspection Report”, “Fish Pathologist”, “Inspecting Agent”, “Lot”, “Prevalence” and “Reasonable Action” from Commission Regulation, Chapter 10. Revised “Fish Health Inspection Report” to more accurately describe the report. Revised “Reasonable action to include some of the possible actions.

(t): Added “Pathogen(s) of Concern” that includes all categories of pathogens that are organized by level of severity in Section 6 of this regulation.

(v): Revised “Fish Hatchery” to “Private Fish Hatchery” and revised. Added reference to aquaponics and clarified that the term does not include hatcheries operated by government or tribal agencies, but does include ornamental fish facilities that use water from – or discharge water into the waters of this state.

Section 3. Application for license. Edited section title to “Application for a Fish Hatchery License”.

Edited “fish hatchery” to “private fish hatchery” throughout this regulation.

(a): Reorganized extensively to include all regulations pertaining to application for a license. Clarified that private hatcheries must obtain a “commercial fish hatchery license” since this is what the applicable license is called in W.S. § 23-2-301. Added clarification that the application must be legible and complete and included additional specific contents of the application that must be completed to subsections (i) through (viii) of Section 3. Reorganized other existing application requirements to follow the actual license application. Moved regulations out of Section 3(a) that are not related to actual completion of the license application and added content from other regulations (e.g., original sections 3(e) and 4(b)) that are related to the application.

(i): : Reorganized. Moved most content to (a)(v). Last sentence is unrelated to the rest of the paragraph. Moved it to its own subsection (a)(vi) and edited for clarity. Incorporated map requirement into (a)(vii).

(ii): Reorganized. Moved to (a)(vii) below and edited slightly.

(iii): Reorganized. Moved first sentence to Section 3(a)(iv). Deleted the second sentence due to redundancy with the last sentence of this paragraph. Moved the last sentence to Section 3(f)(i).

(iv): Reorganized. Moved from first sentence of original Section 3(a)(iii). Provided a reference to the definition of “tropical fish”. Clarified that hatcheries dealing in ornamental fish may also be authorized to use ornamental nongame fish (e.g., ornamental darters and killifishes) and provided reference to the definitions of “marine” and “ornamental fish”.

(viii): Reorganized. Content was moved from original Section 4(b). Unchanged.

(b): Content was moved from the definition of an “Aquaculture Facility” and Section 3(d) in the original regulation. Replaced “drain to, or are modified to drain to, different waters” with “that lack a common effluent” for clarity. Second sentence was moved from original Section 3(d) with no substantive change.

(d): Old regulation was moved to Section 3(a)(viii) since this is part of the application for a license. New regulation was moved from original Section 4(b); Facility Inspection and revised slightly to include inspection requirements for a new hatchery or one that changes owners.

(e): Moved the original regulation to Section 3(a)(viii) since this is part of the application for a license. Added a new regulation clarifying that owners are responsible for actions of their authorized agents.

(f): No substantive changes. Content was moved from original sections 3(a)(iii) and 3(b).

(g): Deleted portion that is redundant with content of the new Section 4.

Section 4.

Original Section 4 became Section 5.

Added a new Section 4 (Designation as a Department Approved Private Fish Hatchery). Although not new, the concept of a “Department approved private fish hatchery” is overarching throughout the new regulation. The purchase of a private (commercial) fish hatchery license has never afforded the licensee authority to stock fish or transfer fish until specific conditions are met. Added the new Section 4 and utilized “Department approved private fish hatchery” to refer to licensed hatcheries that have met these conditions. The term is defined in this chapter and referenced in the new Chapter 69 (Importation and Possession of Live Cold Blooded Wildlife) and in the revised Chapter 49 (Private Stocking of Cold Blooded Wildlife). The intent is to clarify the design, inspection and reporting requirements that must be met for a licensed hatchery to become a “Department approved private fish hatchery” that can legally stock or transfer fish.

(a): The fish health reporting requirement in (ii) is not new. Added similar requirements pertaining to AIS inspection reports to ensure compliance W.S. §23-4-202(a). Added a new regulation to (iii) clarifying that a consequence of failing to meet existing record keeping and reporting requirements described in the new Section 14 may be loss of designation as a Department approved private fish hatchery.

(b): Added a regulation requiring out of state hatcheries to meet criteria similar to in state hatcheries prior to being designated as a Department approved private fish hatchery. An out of state hatchery must have this designation in order to import fish to the state of Wyoming. The requirement in (i) was moved from Chapter 10 and reference to “hatchery licensee” was changed to “hatchery owner” since the Department does not license out of state hatcheries and this regulation also applies to those hatcheries. The fish health requirement in (ii) is not new. AIS inspection has been required in the past to ensure compliance with W.S. §23-4-202(a), but hatchery AIS inspection regulations are clarified in this revision. Added a new regulation to (iii) to ensure that fish are not coming to Wyoming from hatcheries that are not operating legally in the state of origin.

(c): New regulation clarifying that this designation shall be in writing.

(d): New regulation to ensure protection of Wyoming’s aquatic wildlife resources by recognizing that there are places out of state that, regardless of the outcome of fish health and/or AIS inspections, pose too great of a risk due to their proximity to problem (AIS or pathogen infested) watersheds to be approved to import fish to Wyoming waters.

(e): The Department has required that private hatcheries provide three years of fish health reports prior to stocking Wyoming waters. New regulation clarifies that the Chief of Fisheries may deny designation as a Department approved private hatchery to hatcheries that have not demonstrated a consistent pattern of being AIS and pathogen free.

(f): New regulation explaining when designation as a Department approved private hatchery expires.

(g): Moved from original Section 9 of this regulation, revised, and added AIS to the notification requirement. Changed references to “licensee” to “owner” to include out of state fish hatcheries.

(h): Added clarity to consequences of violating this regulation. The loss of designation as a Department approved private fish hatchery would preclude a licensed in state hatchery from removing or receiving fish and would preclude an out of state hatchery from importing fish to Wyoming.

Section 5. Facility Inspection.

Original Section 4 becomes Section 5 and is renamed “Private Fish Hatchery Inspections”.

Original subsections (a) and (b) were moved to Section 3(a)(viii) since these are requirements related to issuance of a fish hatchery license. The original subsection (c) was moved to Section (5)(d). The remainder of the section was revised to address health and AIS inspection requirements at in state and out of state private fish hatcheries.

(a): Added Section 5(a) to clarify inspection requirements and possible exceptions.

(i): Provided an exemption for hatcheries producing tropical, ornamental fish or baitfish. Hatcheries producing only tropical fish (a term defined in Chapter 69) would most likely be producing food fish (e.g., tilapia) rather than stocking and would therefore be unlikely to spread pathogens or AIS. Ornamental fish facilities may deal in fishes from all over the world that may carry pathogens, diseases or AIS that are not described in this regulation or described in this regulation as pathogens of concern. The specific inspection requirements described below (e.g., 60 lethal samples) would not be appropriate for hatcheries dealing in rare, ornamental fishes. Some baitfish facilities may be constructed and operated in a manner that would make some testing unnecessary or require sampling methods to be adapted (e.g., facilities where all baitfish are reared in aquaria that are isolated from the waters of the state).

(i)(A): New language to allow the Department to adapt health and AIS inspections as necessary to ensure that these private fish hatcheries are unlikely to introduced invasive species or pathogens to WY waters.

(ii): Added regulation similar to that in existing Chapter 10, Section 2 and (i) above that would allow the Chief to make exemptions on a case by case basis when appropriate (e.g., inspections at hatcheries in Arkansas may not need to be done between June 15 and October 15 due to climatic differences and longer seasonal detectability of AIS).

(b): Much of the content of Section 5(b) was moved from Appendix I of Chapter 10. Sections that seemed most appropriate for an appendix (extensive detail) were moved to Appendix I of this revised regulation.

(i): Clarify existing procedure for requesting fish health inspections. Subsection (A) documents existing practice. Changed 10 business day requirement to 15 total days to allow the Department laboratory adequate time to prepare cells for virology testing. The Department conducts health inspections at in state private fish hatcheries at no cost. The licensee chooses whether to have lab analyses conducted by the Department or by another party. The Department has a fee schedule that is used to determine the cost for various analyses.

(ii): New regulation that moved from the definition of “annual fish health inspection” in Chapter 10 and clarifying that standard fish health sampling involves the taking of lethal samples.

(iii): New regulation clarifying that all pathogens of concern must be included on the fish health inspection report.

(iv): Moved from original Section 5(c) “Records” and added “...unless subsequent testing...” language. Subsection (A) is a new regulation that prohibits fish from leaving a facility until they are known to be healthy. Since an inspection expires after 365 days, there could be a period of time between expiration of the previous report and issuance of a new fish health inspection report during which fish could not leave the facility.

(v): Reworded to clarify that existing three year reporting requirements (original Section 3(e), Section 4(b) and Section 5) apply to both in state and out of state facilities.

(vi): Moved from Chapter 10, Appendix I, Section 1.

(c): Section 5(c) is new and is organized to mirror the fish health inspection Section 5(b) to the extent practical. The June 15 to October 15 time frame for AIS sampling is necessary to ensure that sampling is conducted during a period of time when AIS are most detectable (e.g., plants are established, crayfish are not in burrows). Unlike fish health inspection procedures, an appendix was not deemed warranted for AIS inspection procedures so there are some additional details in this subsection.

(i): Clarified that the AIS inspection shall be done at the Department's expense. The September 15 deadline will allow Department AIS hatchery inspectors 30 days of notice prior to having to complete an inspection by October 15.

(ii): New details regarding hatchery inspection procedures. The procedures were adapted from the Arkansas Department of Agriculture Bait and Ornamental Fish Certification Program. This program was the first of its kind in the U.S. and has been successfully implemented for many years to ensure that private hatcheries are free of AIS. Details regarding expenses associated with shipping and analysis costs are similar to those that have been used for fish health sampling. Added language in subsection 5(c)(ii)(D) that would allow the Department to utilize environmental DNA testing as a screening tool for AIS of concern. Due to the highly sensitive nature of eDNA sampling and potential problems associated with false positives, cross contamination of samples and interpretation of results, eDNA would be used only for screening. The tool would increase the likelihood that AIS of concern that are present in a hatchery at very low densities would be detected via follow up sampling. This subsequent confirmatory sampling would be required to confirm that an AIS of concern was actually present. Laboratory analyses associated with the identification and/or analysis of AIS samples is currently paid for by laboratories that are funded primarily via federal grants. The proposed language in Subsection 5(c)(ii)(E) would require the private hatchery owner to pay for these laboratory charges if federal grant funding was no longer available, as has long been the case for disease testing. However, eDNA testing and any subsequent testing would be conducted at the Department's expense.

(iii) and (iv): Clarifying existing practice of modeling AIS inspection expiration (365 days) and reporting requirements (3 years of records) after widely accepted standard for expiration of fish health inspections.

(d): Retained regulation from Chapter 51, original Section 4(c) and added same requirement for additional AIS inspections. Edited first sentence to clarify that these inspections would be in addition to the annual, scheduled fish health and AIS inspections necessary to become a Department approved private fish hatchery. Added reference to "inspection of records" from original Chapter 10, Appendix I, Subsection 2(c)(vii), but replaced "allow immediate inspection" with "during reasonable hours and with reasonable notice". Added subsection (i) clarifying that additional inspections may involve the "collection of blood, tissue and other biological samples." Language was adapted from the original requirements in Chapter 10, Appendix I, Subsection (c)(vii). Deleted the "allow immediate inspection requirement" for persons "importing, possessing or transporting".

(e): Moved from last sentence of Section 2(b) of Chapter 10 and added AIS.

Original Section 5. Records.

Moved to Section 14 of this regulation.

Original Section 6. Escaped or Disposed of Fish.

Moved to Section 15 of this regulation.

New Section 6. Pathogens of Concern.

Revised Section 2(b) from Chapter 10 to follow Colorado Fish and Wildlife Council Fish Health Committee recommendations for terms. Now utilize four categories rather than the three categories that had been used previously in Chapter 10. The four categories, (a) through (d), facilitate a variable response based on pathogen threat; presented from most extreme to least extreme. Pathogens in the Emergency Prohibited Fish Pathogen category have never been documented in Wyoming, while those in the Prohibited Fish Pathogen pose a significant threat but have been documented at one or more locations in the state. OMVD was previously combined with Herpesvirus salmonis Type 2 in Appendix I, Supplement Number 5. Pathogens now listed as Reportable/Notifiable were not listed previously in Chapter 10.

Original Section 7. Stocking of Fish or Fish Eggs.

Moved to new Section 10, Sale Transfer or Stocking of Fish or Fish Eggs and revised; subsections (c) and (d).

New Section 7. Aquatic Invasive Species of Concern.

New section that mirrors the fish pathogen approach in Section 6 above and assigns AIS to one of three categories listed in order of decreasing severity.

(a): “Emergency prohibited AIS” have never been documented in Wyoming and pose a severe threat to the infrastructure of the state.

(b): With the exception of Rusty Crayfish, “prohibited AIS” have never been documented in Wyoming. Rusty Crayfish were recently documented in one section of the Laramie River in the Laramie Mountain Range.

(c): All “Regulated AIS” have been documented in Wyoming and regulations are intended to help contain these species by not spreading them to other waters. Commission Regulation Chapter 62, Aquatic Invasive Species, lists AIS for Wyoming. Any new AIS that are designated in Chapter 62 in the future would become “Regulated AIS” in Chapter 51, unless Chapter 51 is revised to designate those AIS as either “Emergency prohibited” or “Prohibited”. New regulation in subsection (i) includes designated AIS in an out of state hatchery’s state of origin as “Regulated AIS” to help ensure that species designated as AIS in other state are not imported to Wyoming by a private fish hatchery.

Original Section 8. Transportation of Fish, Fish Eggs, or Fish Gametes.

Moved to new Section 11 of this regulation.

New Section 8. Courses of Action for Fish Disease and AIS for In-State Department Approved Private Fish Hatcheries.

Some of the content of this section was moved from Sections 3-5 of Chapter 10, Appendix I, reorganized and edited for clarity. It has been modified to include Courses of Action for AIS, to distinguish between in-state and out-of-state facilities, and to more clearly explain various courses of action. These are the actions that the Department may require if pathogens or AIS are detected at a private fish hatchery.

(a): Regulation that clarifies the Department's response to the discovery of a pathogen or AIS threat at an in state hatchery.

(b): Subsections (b) and (c) are specific to pathogens and were edited from sections 3 and 4 of Appendix I, Chapter 10 and prohibit all movement of fish to, from, and within a facility if a pathogen of concern is suspected present. The second sentence of (c) is from original Chapter 51, Section 9.

(c): Edited content from Sections 3(b), 3(c), 4(b) and 4(c) of Appendix I of Chapter 10. Revised the regulation in Section 3(c)(ii)(B) prohibiting the importation of eggs infected with Enteric Redmouth or Furunculosis from Chapter 10, Appendix I, Section 4 and broadened to allow the Chief of Fisheries to make additional exceptions for pathogens that are not transmissible from adult fish to eggs. Other changes are not significant.

(d): New regulation similar to subsection (b) above, but specific to suspected AIS rather than suspected pathogen. The new regulation would prohibit fish or eggs from leaving the facility until confirmatory sampling was completed, but would not prohibit the movement of fish or eggs to or within the facility during this time.

(e): New regulations specific to AIS that are organized similarly to the courses of action for fish pathogens.

(i): Reasonable action for emergency prohibited AIS listed in Section 7(a) requires destruction of all fish and AIS eradication from the facility.

(ii): Reasonable action for prohibited AIS listed in Section 7(b) requires AIS eradication from the facility.

(iii): Reasonable action for all other AIS (New Zealand Mudsail, Asian Clam, Brook Stickleback and Curly Pondweed) does not necessarily require eradication from the facility or destruction of fish. The Chief of Fisheries will determine reasonable action on a case by case basis, but W.S. § 23-4-202 prohibits the possession or transportation of these plants and animals.

(iv): New AIS regulation similar to the pathogen regulation from Section 4(b) of Appendix 1, Chapter 10 that requires follow up testing.

(f): New regulation to ensure that an AIS does not reappear in a facility or that a regulated AIS is contained at a facility and not introduced to waters of Wyoming.

Original Section 9. Notification and Disposition of Discarded Fish, Fish Eggs and Fish Gametes.

Deleted section that is no longer necessary. Content was incorporated into other sections of this regulation above. Combined this section with the new Section 5 (Fish Health and AIS Inspections) and Section 6 (Courses of Action for Fish Disease and AIS) along with content that was originally in Appendix I of Chapter 10.

New Section 9. Courses of Action for Fish Disease and AIS for Out-of-State Department Approved Private Fish Hatcheries.

New section. The section is intended to separate courses of action for in state hatcheries (Section 8) and out of state hatcheries (Section 9). Department authority for dictating courses of action at out of state hatcheries is limited largely to allowing or preventing importation.

(a): New language that prohibits a hatchery from knowingly importing fish that could spread pathogens or AIS to Wyoming waters, while allowing the Chief of Fisheries flexibility to grant exceptions if threats can be adequately mitigated (e.g., some regulated pathogens or AIS).

(b): Regulation similar to (a) that clarifies the Department's response to the discovery of a pathogen or AIS threat at an out of state hatchery.

Original Section 10. Prohibition of Fish Transport. Deleted this section completely. The addition of Section 4, Designation as a Department Approved Private Fish Hatchery, accomplishes the same thing. The Chief can rescind such a designation and if that is done, fish transport is prohibited.

New Section 10. Sale, Transfer or Stocking of Live Fish or Fish Eggs.

Revised from original Section 7 and reorganized. Original language was incorporated into subsections (c) and (d).

(a): Provided reference to revised importation and stocking regulations pertaining to live fish in Chapter 69, Importation and Possession of Live Cold Blooded Wildlife.

(b): Reiteration of critical language related to designation as a Department approved private fish hatchery from new Section 4.

(c): Slightly revised language that was moved from the header of the original Section 7. Added reference to a "brokerage receipt". This receipt is defined in Chapter 49 and intended for use when fish are transferred from a Department approved private fish hatchery to a broker. Added (i) to reference Chapter 49 to clarify that fish shall not be stocked without a private fish stocking authorization. Not a substantive change.

(d): Slightly revised content from original Section 7(a). Edited "licensee" to "hatchery owner" because the section is specific to out of state hatcheries that are not licensed by the Department. Added statement to clarify appropriate practice for completing a fish stocking authorization receipt.

(e): New regulation conveying Commission authority provided in § 23-6-207.

Original Section 11. Catchout Ponds.

Moved the entire section to the new Section 16 and edited for clarity.

New Section 11. Transportation of Fish, Fish Eggs or Fish Gametes.

Revised from original Section 8. Moved placarding requirements from opening paragraph to section (i).

(a): New language that represents standard practices for transporting fish from state or federal hatcheries to ensure that other plants or animals moved to other waters. Suggest regulations requiring the same practices by private hatcheries.

(b): Moved from old Section 13(c) and revised to clarify that shipments shall not contain plants designated as AIS or other cold blooded wildlife. Edited immediate notification requirement to include only plants designated as AIS and not other fish species, vegetation or other organisms. Added reference to applicable statutes and regulations that prohibit the unauthorized stocking of fish, amphibians, reptiles, mollusks and crustaceans.

(c): Reorganization, moved language from Section 6 of Commission Regulation Chapter 49, Private Fish Stocking. Deleted a requirement that nongame fish species be held in separate containers from game fish species. Not necessary if fish are being transported for stocking in the same water.

(d) through (g): New language that clarifies existing requirements and does not contain substantive changes. Subsection (g)(i) was added to clarify that W.S. § 23-4-203 requires all conveyances to stop at AIS check stations.

(h): Added regulation requiring brokers to be in possession of a brokerage receipt described in the new Section 10(c) above and not offload fish to any water or facility other than the water(s) indicated on the private fish stocking authorization(s).

(i): Moved placarding from header portion of this section to this location and added exemption for transport via common carrier in accordance with Commission regulations in Chapter 46, Fishing Regulations and Chapter 69, Importation and Possession of Live Cold Blooded Wildlife. Provided the Chief of Fisheries with the ability to make exceptions to the transportation requirement of this section for ornamental fish.

Original Section 12. Salmonid Fish Hatcheries.

Deleted all of Section 12 from Chapter 51. All portions are either redundant with other portions of the revised regulation or were moved to another regulation; e.g., Section 12(b) was incorporated into the new Chapter 69, Section 6(b).

Original Section 13. Non-Salmonid Fish Hatcheries.

Section 13 became Section 12 and was revised to focus on baitfish. All other species are addressed in earlier portions of the revised regulation. Most of the regulations in the original subsection (a) were deemed redundant or unnecessary and deleted.

New subsection (a): Added a reference to a critical definition in Chapter 46; “Commercially produced live baitfish” means adult fathead minnows that were propagated and reared in a Department approved private fish hatchery.

New subsection (b): Rewording of original subsection (a)(ii). Not a new regulation.

New subsection (c): Reworded for clarity and to provide appropriate reference to Chapter 69.

Old subsection (c): Moved to Section 11, Transportation of Fish, Fish Eggs or Fish Gametes, subsection (b) and revised to clarify that shipments shall not contain other plants or animals, require notification for shipments containing AIS, and reference applicable statutes and regulations.

New Section 13. Aquaponics and Mollusk and Crustacean Aquaculture.

New section to address aquaponics and other aquaculture operations. The terms aquaponics and aquaculture operation are defined in this regulation. Aquaponics operations have increased in popularity in the last several years. New regulations are intended to clarify that some of the most commonly used fish species do not require a commercial fish hatchery license and are exempted from the requirements of Chapter 51. However, aquaponics operations using game fish are not exempted from these requirements. Language in subsection (c) was added because crustaceans (e.g., crayfish) and mollusks (e.g., snails) are capable of moving out of an aquaponics operation. Many that are not classified as AIS could be legally obtained and spread to the waters of Wyoming. This regulation allows the Chief to assess risk and authorize only under appropriate conditions. Language in subsection (d) clarifies that AIS cannot be legally possessed. Language in subsection (d)(i) provides reference to the Wyoming Department of Agriculture and is similar to language pertaining to cage and aviary birds and domestic animals

in Commission Regulation Chapter 10, Importation and Possession of Live Warm Blooded Wildlife.

Original Section 14. Revocation of License.

Reorganized. Moved section to Section 18 below. No substantive changes.

New Section 14. Records.

Original Section 5 was moved to Section 15. Minor edits were incorporated to clarify intent and to add references to fish health and AIS inspection reports.

(a): Reorganized original subsection (b) as subsection (a)(i) and deleted reference to “forms provided by the Department” because the Department does not provide these forms.

(b): Added reference to “AIS inspection reports” and struck reference to appendix in Chapter 10 since that information has been moved to this Chapter. Deleted reference to expiration of fish health inspection reports since expiration of fish health and AIS inspection reports is described in the new Section 5 of this regulation.

(c): New regulation allowing the Chief of Fisheries to grant record keeping exceptions for marine and tropical fish vendors that are considered “Private Fish Hatcheries” in accordance with the revised definition of that term in Section 2 of this regulation.

Original Section 15. Disposition of Fish, Fish Eggs or Fish Gametes Upon Revocation of or Denial of or Failure to Renew License.

Moved to Section 18 below. No substantive changes.

New Section 15. Escaped or Disposed of Fish.

Moved from original Section 6 and revised to require Department notification for smaller numbers of escaped fish by eliminating reference to “50 pounds or more”. Added new language prohibiting the disposal of dead fish into hatchery effluent to prevent the spread of fish pathogens in the receiving drainage.

New Section 16. Catchout Ponds

Moved from Section 11 and edited slightly for clarity. Added reference to statute due to other requirements that are only noted there (i.e., 10 surface acres or smaller). No substantive changes.

(a): Clarified that the owner or operator of a private fish hatchery catchout pond may also set size limits.

(b): Deleted reference to “forms provided by the Department” since the Department allows use of a written statement with specified content and does not provide forms. Used the same language as recently used for fishing preserves in Chapter 50, Fishing Preserves and Chapter 53, Landowner Fishing Lakes or Ponds. These are the 3 regulations (Chapters 50, 51 and 53) that allow take of fish without a fishing license and require a written statement to accompany fish transported from the fishing location.

(c): Clarified that authorization will be in writing and will come from the “Chief of Fisheries” for consistency with other related regulations and per current standard practice.

New Section 17. Requesting an Appeal to a Department Decision.

Added a process to request an appeal of a Department decision. The section is specific regarding who has standing to request the appeal. The same approach is also used Chapters 49, 50, and 53 where each chapter specifically describes who has standing to appeal a department decision made under that chapter. All four regulations reference the detailed process provided in section 18.

New Section 18. Department Decision Appeals Process.

This 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 the detailed process provided here. 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.

New Section 19. Revocation of License.

Moved from original Section 14. No changes.

New Section 20. Disposition of Fish, Fish Eggs or Fish Gametes Upon Revocation of or Denial of or Failure to Renew License.

Moved from original Section 15. No substantive changes.

Appendix I. Cold Blooded Wildlife Fish Health Inspection Procedures.

This appendix was moved from Chapter 10 (originally called Regulation for Importation, Possession, Confinement, Transportation, Sale and Disposition of Live Wildlife). Chapter 10 was revised and regulations pertaining to cold blooded wildlife were moved to the new Chapter 69 (Importation and Possession of Live Cold Blooded Wildlife). Some contents of Chapter 10 were deemed more appropriate for Chapter 51; however, much of the content of the appendix was moved into the body of the regulation. Those portions containing inspection “procedures” were retained in the new, abbreviated appendix. The Chapter 10 appendix also contained five “supplements” that were deleted completely. The supplements described inspection procedures that are no longer explicitly described in regulation.

New Appendix I of Chapter 51.

(a): Deleted content from the original Appendix 1, Section 1 (General Requirements) that referenced the Bluebook published by the American Fisheries Society. Replaced with reference to “standard operating procedures from the Department Fish Health Lab” to provide the flexibility needed to adapt protocols to the best available science. The Department Fish Health Lab is accredited by the ANSI National Accreditation Board; the largest accreditation body in North America which provides services in more than 75 countries. In order to become accredited, the lab developed a quality system that includes written SOPs for every test performed in the lab, all of which must adhere to ISO standards. Accreditation is renewed every four years.

(b): Added language clarifying that Department SOPs are available for use by other laboratories.

(c): Reorganized. Regulations were moved from original Section 2 of Chapter 10, Appendix I. Replaced reference to “inspecting agent” in Section 2(c)(i) of Chapter 10, Appendix I with “aquatic animal health inspector” or “fish pathologist” (both defined in this regulation).

(d): Retained section on “Determining Sample Size” from original Section 2(d) of Chapter 10, Appendix I. No change.

(e)(i): Retained section on “Production Fish” from original Section 2(d)(ii) of Chapter 10, Appendix I. Revised a few procedures to ensure adequate testing. Changes include 1) Addition of language requiring that samples be taken from “the most susceptible species” when testing for enteric redmouth and furunculosis. This has been standard protocol and is not a substantive change in practice. 2) Addition of a regulation requiring a minimum sample size of 60 fish “from all lots over six months of age at the time of sampling” when testing for bacterial kidney disease. 3) Addition of a regulation pertaining to sample size when testing for enteric septicaemia of catfish.

(e)(ii): Retained section on “Brood stocks” from original Section 2(d)(iii) of Chapter 10, Appendix I. Added regulation stating that “Individuals sampled for ovarian fluids shall not be used to obtain kidney/spleen samples” per existing standard operating procedure.

(e)(iii): Added new section on “Baitfish and grass carp”. New regulations in this section reflect the past approach to testing for pathogens in baitfish and grass carp. All baitfish and grass carp are imported from out of state and must be tested adequately to ensure that pathogens are not spread to Wyoming waters.