BEFORE THE FISH, WILDLIFE AND PARKS COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 12.6.2204 and 12.6.2208 regarding adding Tilapia as a controlled species	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On June 14, 2012, at 6:30 p.m., the commission will hold a public hearing at the Fish, Wildlife and Parks Headquarter offices located at 1420 East 6th Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department by June 4, 2012, to advise us of the nature of the accommodation that you need. Please contact Coleen Furthmyre, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana 59620-0701; telephone (406) 444-4594; fax (406) 444-7456; or e-mail cfurthmyre@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

<u>12.6.2204 SPECIFIC REQUIREMENTS FOR CARE AND HOUSING OF EXOTIC WILDLIFE</u> (1) through (3) remain the same.

<u>(4) Tilapia, *Oreochromis spp.*, may only be held for commercial activities and with an approved operation plan.</u>

<u>(a) Tilapia must be raised in a facility that:</u>

<u>(i) is indoors and locked with access restricted solely to individuals involved in the operation and maintenance of the facility;</u>

<u>(ii) is not within the 100-year flood plain;</u>

<u>(iii) is at least 200 feet from any surface of water;</u>

<u>(iv) does not receive diverted surface water;</u>

<u>(v) does not have an effluent or discharge of waste or water within 200 feet of surface water including perennial, intermittent, or ephemeral streams or rivers; and</u>

<u>(vi) complies with all other local, state, and federal regulations and permits.</u>

<u>(b) Only fry or eggs may leave the facility.</u>

<u>(c) Any significant mortality in the facility that occurs as a result of an infectious disease must be reported to the department within 30 days.</u>

<u>(d) Carcasses must either be disposed in a state-regulated landfill or in another manner that would not impact state waters or be accessible to wildlife or other animals that might carry carcasses to water.</u>

<u>(e) Plans to suspend operations must be reported to the department prior to ceasing activities.</u>

(f) Annual reporting of imports to the facility and exports is required to the department.

AUTH: 87-5-702, 87-5-704, 87-5-705, 87-5-712, MCA
IMP: 87-5-705, 87-5-707, 87-5-709, 87-5-711, 87-5-712, MCA

12.6.2208 LIST OF CONTROLLED SPECIES (1) remains the same.
(2) The following fish are classified as controlled species:
(a) coho salmon - *Onocorhynchus kisutch;*
(b) goldfish - *Carassius auratus* (for use in outdoor ponds); ~~and~~
(c) koi - *Cyprinus carpio* (for use in outdoor ponds)~~.~~; and
(d) tilapia - *Oreochromis spp*.

AUTH: 87-5-704, 87-5-705, 87-5-712, MCA
IMP: 87-5-705, 87-5-707, 87-5-709, 87-5-711, 87-5-712, MCA

4. Reasonable Necessity: The 2003 Legislature passed SB 442 granting the commission authority to adopt rules regarding the importation, possession, and sale of exotic wildlife through the operation of a "classification review committee" (committee). The intent of SB 442 was to protect Montana's native wildlife and plant species, livestock, horticultural, forestry, agricultural production, and human health and safety from the harmful effects of unregulated exotic animals.

The function of the committee created by SB 442 is to recommend classification of individual exotic animal species to the commission. The committee may recommend that a species be classified as noncontrolled, controlled, or prohibited for importation, possession, and sale. If the commission approves the committee's recommendations, the commission begins administrative rulemaking to incorporate the recommendations into these classification lists: noncontrolled species, controlled species, and prohibited species.

The purpose of this rulemaking is to implement the recommendations of the committee and to increase the clarity of the existing rule through minor editing changes.

The committee recommended the addition of Tilapia, a species of exotic wildlife to the list of controlled species because the potential impacts should be reduced to an acceptable level by the specified control measures outlined in the Administrative Rule. The primary concerns associated with Tilapia are for their potential to be released and/or escape from confinement, and the potential for competition with native and recreationally important fish species. This addition made revisions to ARM 12.6.2204 and 12.6.2208 necessary. After evaluating this species, the committee found that they pose a minimal threat to Montana's native wildlife or plant species, livestock, horticultural, forestry, agricultural production, or human health and safety.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: FWP Exotics, Fisheries, Helena, MT 59620-0701, fax (406) 444-4952;

or e-mail them to fwpexotics@mt.gov. Any comments must be received no later than June 22, 2012.

6. Eileen Ryce or another hearings officer appointed by the department has been designated to preside over and conduct this hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the commission. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies the subject or subjects about which the person wishes to receive notice. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1712 9th Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

/s/ Bob Ream
Bob Ream, Chairman
Fish, Wildlife and Parks Commission

/s/ Rebecca Jakes Dockter
Rebecca Jakes Dockter
Rule Reviewer

Certified to the Secretary of State May 14, 2012.