

HOUSE BILL NO. 74

INTRODUCED BY K. WALSH

BY REQUEST OF THE WATER POLICY INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PRIVATE FISH POND LAWS AND COMMERCIAL TAKE OF FISH; REVISING LICENSING STANDARDS AND THE RENEWAL PROCESS FOR PRIVATE AND COMMERCIAL FISH PONDS; REPEALING PADDLEFISH CAVIAR SALES; PROVIDING FOR RECORDKEEPING; PROVIDING RULEMAKING AUTHORITY; INCREASING APPLICATION AND RENEWAL FEES; PROVIDING FOR PENALTIES; AMENDING SECTIONS 87-4-603, 87-4-606, 87-4-607, 87-6-202, 87-6-206, AND 87-6-707, MCA; REPEALING SECTION 87-4-601, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA

Section 1. Section 87-4-603, MCA, is amended to read:

"87-4-603. Fish pond license for private fish pond -- site inspections -- records. (1) A person who owns or lawfully controls a private fish pond ~~may~~shall apply to the department for a fish pond license. The licensee may stock the fish pond with fish procured from a lawful source. The licensee may take fish from the pond in any manner.

(2) The department may designate the species of fish that may be released in the pond and otherwise condition the license if:

(a) there is a possibility of fish escaping from the pond into adjacent streams or lakes; or

(b) in the department's determination, the pond poses a risk of introduction of a pathogen or an invasive species, as defined in 80-7-1003. ~~The licensee may take fish from the pond in any manner. Before a licensee may sell fish, eggs, or fry from the pond, the licensee shall furnish a corporate surety bond to the state for \$500, conditioned to the effect that the licensee:~~

(a) ~~will not sell fish or spawn from any of the public waters of this state or violate the conditions of the license; and~~

1 (b) ~~will submit an annual report on transactions to the department pursuant to subsection (6).~~

2 (2) ~~A person who owns or lawfully controls a fish pond that does not meet the requirements of~~
3 ~~subsection (3) but is determined by the department to not pose an unacceptable risk to game fish or fish~~
4 ~~species of concern in adjacent waters may apply to the department for a temporary fish pond license. The~~
5 ~~applicant shall abide by any condition of the license and the requirements governing private fish ponds in 87-4-~~
6 ~~606 and this section. A temporary license is valid for 1 year. An application for renewal must be made annually~~
7 ~~before the license expires.~~

8 (3) (a) "Private fish pond", as used in 87-4-606 and this section, means a body of water that does
9 not exceed 500 surface acres, is determined by the department to not pose an unacceptable risk to game fish
10 or fish species of concern in adjacent waters, including a risk of introduction of a pathogen or an invasive
11 species, as defined in 80-7-1003, and is:

12 (i) created by artificial means with an associated water right as defined in 85-2-102 that includes
13 the appropriate beneficial use; or

14 (ii) an instream pond with a tributary spring or stream that does not support game fish or fish
15 species of special concern.

16 (b) The term does not include all other natural ponds or bodies of water, including streams or rivers
17 and impoundments or reservoirs of or on a natural stream, river, lake, or pond.

18 (4) An applicant for licensing of an instream private fish pond shall present to the department
19 verification that game fish or fish species of special concern do not occur in the tributary, spring, or stream and
20 that the instream private fish pond does not pose an unacceptable risk to game fish or fish species of special
21 concern in adjacent waters, including a risk from the introduction of a pathogen or an invasive species as
22 defined in 80-7-1003. Verification must be in the form of:

23 (a) a formal report from a department-approved professional fisheries consultant; or

24 (b) other ~~reliable~~ department-approved data and documentation.

25 (5) The department may condition a fish pond license to require the construction, implementation,
26 operation, and maintenance of measures or devices to prevent fish in a private fish pond from escaping into
27 adjacent waters and posing a risk of introduction of a pathogen or invasive species as defined in 80-7-1003.
28 The department may deny a license if these conditions are not met.

1 (6) A licensee who sells fish, eggs, or fry from a private fish pond must meet these additional
2 requirements:

3 (a) The license must be renewed annually pursuant to 87-4-606.

4 (b) Before selling fish, eggs, or fry from the pond, the licensee must provide a corporate surety
5 bond to the state for \$2,500. This bond is conditioned on:

6 (i) maintaining compliance with the terms of the fish pond license issued to the person; and

7 (ii) not selling fish or spawn from any of the public waters of the state.

8 ~~(a)~~(c) A licensee who sells fish or eggs from a private fish pond shall keep accurate records of:

9 (i) the species and quantities of fish or eggs sold or purchased;

10 (ii) dates of sales or purchases;

11 (iii) names of purchasers or sellers;

12 (iv) fish health inspections or department certifications for the facility or pond, including dates and
13 results;

14 (v) a purchaser's private fish pond license number and verification that the license was valid for the
15 species of fish or eggs purchased; and

16 ~~(v)~~(vi) locations or addresses to or from which fish or eggs are transferred.

17 ~~(b)~~(d) On or before January 31 of each year, a licensee who sells fish or eggs shall file a report with
18 the department, on forms made available by the department, summarizing the records required under
19 subsection ~~(6)~~(a) (6)(c).

20 (7) A person who owns or controls a private fish pond may request an inspection by the
21 department to ascertain the presence of disease in fish or the illegal introduction of fish species. Whenever the
22 department has reasonable cause to believe that a fish species in the pond may have been illegally introduced
23 or may have a disease that may affect fish in another body of water, the department shall notify the landowner
24 or landowner's agent by mail or in person of the intention to enter upon the land and shall enter only after notice
25 has been given to the landowner or agent or after every reasonable effort has been made to notify the
26 landowner and receive permission to enter upon the land. Thereafter, the department may enter upon land
27 under the provisions of this subsection for the purposes of inspecting the pond, the species of fish in the pond,
28 the presence of disease in a fish species, the construction of any impoundment, dam, or fish barrier, and the

1 physical connection of a pond to an adjacent natural lake, pond, or body of water, including a stream or river.

2 The department is responsible for actual damages to any property.

3 (8) If the department finds an illegal introduction of fish or the presence of disease in fish in a
4 licensed private fish pond or a natural lake, pond, or body of water, the department shall consult with the
5 landowner or the landowner's agent to determine the appropriate action unless an emergency exists. In an
6 emergency situation, the department may order or take appropriate action to address any threat to the state's
7 fisheries resources, including quarantine or destruction of fish, eggs, or the source of a disease. Whenever
8 privately owned fish are destroyed and the private owner is not responsible for an illegal introduction or the
9 introduction of fish with a disease, the department may replace the destroyed fish without charge to the private
10 owner. A landowner or agent who has granted permission for the department to enter is not considered
11 responsible for an illegal introduction of fish or disease unless proved otherwise.

12 (9) The department may adopt rules necessary for the regulation of private fish ponds as provided
13 in this section, including but not limited to department certification of a health standard, frequency of department
14 certification, pond design and function, inspections, reporting requirements, and other measures to prevent
15 damage to public fish and wildlife resources."

16

17 **Section 2.** Section 87-4-606, MCA, is amended to read:

18 **"87-4-606. Term of fish pond license -- fees -- site inspections ---license not transferable --**
19 **exception for transfer -- rulemaking.** (1) Except as provided in subsections (3) and (4), a fish pond license
20 issued pursuant to 87-4-603 is valid for ~~40-5~~ 10 years. An application must be on a form prescribed by the
21 department and must include the following to be considered correct and complete:

22 (a) physical CONTACT information concerning the property owner, and if applicable, the property
23 management;

24 (b) an accurate and complete description of the pond location, including whether the pond is off
25 stream or on stream, physical information concerning the construction and design of an off-stream pond, and a
26 detailed plan of operation;

27 (c) documentation of lawful source of fish to be stocked;

28 (d) documentation of water right, as defined in 85-2-102.

- 1 (2) There is a ~~\$10~~ \$600 application fee and a ~~\$10~~ \$250 renewal fee for each fish pond license.
- 2 (3) (a) Except as provided in subsections (3)(b) and (4), a fish pond license expires on February 28
3 of the ~~10th fifth~~ 10TH year ~~succeeding~~ following the year of issuance or renewal.
- 4 (b) A licensee who sells fish or eggs under 87-4-603 shall renew the license annually. The license
5 expires on February 28 of the year ~~succeeding~~ following the year of issuance.
- 6 (c) (i) An application for renewal must be made before a license expires. The renewal application
7 must be made on a form prescribed by the department.
- 8 (ii) The department shall ~~may~~ renew the license if the licensee has not violated ~~any~~ a condition
9 upon which the license was granted and if the licensee has met all of the requirements governing private fish
10 ponds in 87-4-603, administrative rules, and this section.
- 11 (iii) The department may only deny a renewal if the department receives documented, substantive,
12 new information since the issuance of the original permit about the threat or risk to game fish or fish species of
13 concern in adjacent waters.
- 14 (iv) If the department does not renew a license, the department shall:
- 15 (A) provide in writing to the applicant the reasons for not renewing;
- 16 (B) allow 30 days for a response from the applicant; and
- 17 (C) provide for a show cause hearing to address deficiencies and to craft a mitigation plan to the
18 newly identified threat or risk. The department may agree to the mitigation plan and subsequently renew the
19 license.
- 20 (4) A new license is required when a licensee proposes to plant a new species or stock a pond not
21 designated in the original license.
- 22 (5) (a) Except as provided in subsection (5)(b), a fish pond license granted under 87-4-603 is not
23 transferable.
- 24 (b) If ownership or control of the private fish pond changes, the new owner or operator shall apply
25 to the department for a license transfer on a form prescribed by the department. The transfer must be approved
26 by the department before the new owner or operator may continue operation of the private fish pond.
- 27 (c) A transferred license retains the remaining portion of the original license's term.
- 28 (d) There is a \$250 application fee to transfer the fish pond license.

1 (6) The department may adopt rules necessary to implement the provisions of this section,
2 including but not limited to the format and requirements of the application form, conditions for renewal licenses,
3 and eligibility requirements for the transfer of licenses."
4

5 **Section 3.** Section 87-4-607, MCA, is amended to read:

6 **"87-4-607. Revocation of fish pond license -- penalties and fines -- rulemaking.** (1) ~~A fish pond~~
7 ~~license or a temporary fish pond license issued pursuant to 87-4-603 may be revoked for failure to operate or~~
8 ~~use the pond according to the terms or conditions of the license or any statute, rule, or order covering~~
9 ~~importation, transportation, or introduction of fish or eggs.~~

10 (2) ~~—If the department discovers a violation under this section of this part, it may institute revocation~~
11 ~~proceedings after providing reasonable notice and opportunity for a hearing to the licensee. After the hearing~~
12 ~~and upon proof of the violation, the department may revoke the fish pond license.~~

13 (2) The department may adopt rules necessary to implement the provisions of this section,
14 including those related to compliance strategies, penalties, and fines."
15

16 **Section 4.** Section 87-6-202, MCA, is amended to read:

17 **"87-6-202. Unlawful possession, shipping, or transportation of game fish, bird, game animal, or**
18 **fur-bearing animal.** (1) A person may not possess, ship, or transport all or part of any game fish, bird, game
19 animal, or fur-bearing animal that was unlawfully killed, captured, or taken, whether killed, captured, or taken in
20 Montana or outside of Montana.

21 (2) This section does not prohibit the possession, shipping, or transportation of:

22 (a) hides, heads, or mounts of lawfully killed, captured, or taken game fish, birds, game animals, or
23 fur-bearing animals, except that the sale or purchase of a hide, head, or mount of a grizzly bear is prohibited,
24 except as provided by federal law;

25 (b) naturally shed antlers or the antlers with a skull or portion of a skull attached from a game
26 animal that has died from natural causes and that has not been unlawfully killed, captured, or taken or
27 accidentally killed;

28 (c) the bones of an elk, antelope, moose, or deer that has died from natural causes and that has

1 not been unlawfully killed, captured, or taken or accidentally killed;

2 (d) ~~— paddlefish roe as caviar under the provisions of 87-4-601 ;~~

3 (e)(d) captive-reared migratory waterfowl; or

4 (f)(e) salvaged antelope, deer, elk, or moose subject to 87-3-145.

5 (3) A person may not possess, ship, or transport live fish away from the body of water in which the
6 fish were taken except:

7 (a) as provided in Title 87, chapter 4, part 6, or as specifically permitted by the laws of this state;

8 (b) fish species approved by the commission for use as live bait and subject to any restrictions
9 imposed by the commission; or

10 (c) within the boundaries of the eastern Montana fishing district, as established by commission
11 regulations.

12 (4) Except as provided in 87-3-310, possession of all or part of a dead game fish, bird, game
13 animal, or fur-bearing animal is prima facie evidence that the person or persons in whose possession the fish,
14 bird, or animal is found killed, captured, or took the fish, bird, or animal.

15 (5) The value of a game fish, bird, game animal, or fur-bearing animal that is unlawfully possessed,
16 shipped, or transported must be determined from the schedules of restitution values in 87-6-906 and 87-6-907.
17 The value of game fish, birds, game animals, or fur-bearing animals that are unlawfully possessed, shipped, or
18 transported pursuant to a common scheme, as defined in 45-2-101, or as part of the same transaction, as
19 defined in 46-1-202, may be aggregated in determining the value.

20 (6) The following penalties apply for a violation of this section:

21 (a) If a person is convicted or forfeits bond or bail after being charged with unlawful possession,
22 shipping, or transportation of a game fish or bird and if the value of all or part of the game fish or bird or
23 combination thereof does not exceed \$1,000, the person shall be fined not less than \$50 or more than \$1,000
24 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person
25 may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the
26 privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes
27 for a period of time set by the court.

28 (b) If a person is convicted or forfeits bond or bail after being charged with unlawful possession or

1 transportation of a mountain sheep, moose, wild buffalo, caribou, mountain goat, black bear, or grizzly bear or
2 any part of these animals and if the value of all or part of the animal or combination thereof does not exceed
3 \$1,000, the person shall be fined not less than \$500 or more than \$2,000 or be imprisoned in the county
4 detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting,
5 fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this
6 state for 30 months from the date of conviction or forfeiture unless the court imposes a longer period.

7 (c) If a person is convicted or forfeits bond or bail after being charged with unlawful possession or
8 transportation of a deer, antelope, elk, or mountain lion or any part of these animals and if the value of all or
9 part of the animal or combination thereof does not exceed \$1,000, the person shall be fined not less than \$300
10 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In
11 addition, the person shall forfeit any current hunting, fishing, or trapping license issued by this state and the
12 privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture unless the court
13 imposes a longer period.

14 (d) If a person is convicted or forfeits bond or bail after being charged with unlawful shipping of a
15 mountain sheep, moose, wild buffalo, caribou, mountain goat, black bear, grizzly bear, deer, antelope, elk, or
16 mountain lion or any part of these animals and if the value of all or part of the animal or combination thereof
17 does not exceed \$1,000, the person shall be fined not less than \$50 or more than \$1,000 or be imprisoned in
18 the county detention center for not more than 6 months, or both. In addition, the person may be subject to
19 forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or
20 trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set
21 by the court.

22 (e) If a person is convicted or forfeits bond or bail after being charged with unlawful possession,
23 shipping, or transportation of a fur-bearing animal or pelt of a fur-bearing animal and if the value of all or part of
24 the animal or combination thereof does not exceed \$1,000, the person shall be fined not less than \$100 or
25 more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In
26 addition, the person shall forfeit any current hunting, fishing, or trapping license issued by this state and the
27 privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture unless the court
28 imposes a longer period, and any pelts possessed unlawfully must be confiscated.

1 (f) If a person is convicted under this section or forfeits bond or bail after being charged with a
2 violation of this section and if the value of all or part of the game fish, bird, game animal, or fur-bearing animal
3 or combination thereof exceeds \$1,000, the person shall be fined not more than \$50,000 or be imprisoned in
4 the state prison for a term not to exceed 5 years, or both. In addition, the person shall forfeit any current
5 hunting, fishing, or trapping license or permit issued by this state and the privilege to hunt, fish, or trap in this
6 state for not less than 3 years up to a revocation for life from the date of conviction.

7 (7) A person convicted of unlawful possession of more than double the legal bag limit may be
8 subject to the additional penalties provided in 87-6-901.

9 (8) As used in this section:

10 (a) "lawfully killed, captured, or taken" means killed, captured, or taken in conformance with this
11 title, the regulations adopted by the commission, and the rules adopted by the department under authority of
12 this title;

13 (b) "possess" includes the act of killing, capturing, or taking a game fish, bird, game animal, or fur-
14 bearing animal regardless of whether the person takes or retains physical possession of the fish, bird, or
15 animal; and

16 (c) "unlawfully killed, captured, or taken" means not lawfully killed, captured, or taken.

17 (9) A violation of this section may also result in an order to pay restitution pursuant to 87-6-905
18 through 87-6-907."

19

20 **Section 5.** Section 87-6-206, MCA, is amended to read:

21 **"87-6-206. Unlawful sale of game fish, bird, game animal, or fur-bearing animal.** (1) A person
22 may not purposely or knowingly sell, purchase, or exchange all or part of any game fish, bird, game animal, or
23 fur-bearing animal.

24 (2) The value of the game fish, bird, game animal, or fur-bearing animal must be determined from
25 the schedules of restitution values set out in 87-6-906 and 87-6-907. The value of game fish, birds, game
26 animals, or fur-bearing animals that are sold, purchased, or exchanged pursuant to a common scheme, as
27 defined in 45-2-101, or as part of the same transaction, as defined in 46-1-202, may be aggregated in
28 determining the value.

1 (3) This section does not prohibit the:

2 (a) sale, purchase, or exchange of hides, heads, or mounts of game fish, birds, game animals, or
3 fur-bearing animals that have been lawfully killed, captured, or taken, except that the sale or purchase of a hide,
4 head, or mount of a grizzly bear is prohibited, except as provided by federal law;

5 (b) sale, purchase, or exchange of naturally shed antlers or the antlers with a skull or portion of a
6 skull attached from a game animal that has died from natural causes and that has not been unlawfully killed,
7 captured, or taken or accidentally killed;

8 (c) sale, purchase, or exchange of the bones of an elk, antelope, moose, or deer that has died
9 from natural causes and that has not been unlawfully killed, captured, or taken or accidentally killed;

10 ~~(d) donation, sale, purchase, or exchange of paddlefish roe as caviar under the provisions of 87-4-~~
11 ~~604 ; or~~

12 ~~(e)(d)~~ sale, purchase, or exchange of captive-reared migratory waterfowl.

13 (4) If a person is convicted or forfeits bond or bail after being charged with a violation of this
14 section and if the value of all or part of the game fish, bird, game animal, or fur-bearing animal or combination
15 thereof does not exceed \$1,000, then the person shall be fined not less than \$50 or more than \$1,000 or be
16 imprisoned in the county detention center for not more than 6 months, or both. In addition, the person may be
17 subject to forfeiture of any current hunting, fishing, or trapping license or permit issued by this state and the
18 privilege to hunt, fish, or trap in this state for a period set by the court.

19 (5) If a person is convicted or forfeits bond or bail after being charged with a violation of this
20 section and if the value of all or part of the game fish, bird, game animal, or fur-bearing animal or combination
21 thereof exceeds \$1,000, then the person shall be fined not more than \$50,000 or be imprisoned in the state
22 prison for not more than 5 years, or both. In addition, the person shall forfeit any current hunting, fishing, or
23 trapping license or permit issued by this state and the privilege to hunt, fish, or trap in this state for not less than
24 3 years up to a revocation for life from the date of conviction.

25 (6) As used in this section:

26 (a) "lawfully killed, captured, or taken" means killed, captured, or taken in conformance with this
27 title, the regulations adopted by the commission, and the rules adopted by the department under authority of
28 this title; and

1 (b) "unlawfully killed, captured, or taken" means not lawfully killed, captured, or taken."

2

3 **Section 6.** Section 87-6-707, MCA, is amended to read:

4 **"87-6-707. Unlawful sale of fish or spawn.** (1) Except as provided in ~~87-4-604~~ and subsections (2)
5 and (3) of this section, a person may not, for speculative purposes, for market, or for sale, catch game fish or
6 remove or cause to be removed the eggs or spawn of any game fish in any way. A person may not sell or offer
7 for sale game fish or the eggs or spawn from game fish.

8 (2) The restrictions of subsection (1) do not apply to the:

9 (a) catching of fish or the collecting of eggs or spawn in a private fish pond licensed under 87-4-
10 603 by the owner of the pond;

11 (b) taking of fish by state authorities for the purpose of obtaining eggs for propagation in state fish
12 hatcheries or by any person who receives a permit from the department to take eggs for use in a private fish
13 pond licensed under 87-4-603;

14 (c) catching of whitefish by the holder of a valid fishing license fishing with hook and line or a rod in
15 specified waters designated by rules of the commission;

16 (d) taking of whitefish by nets or traps in the Kootenai River and in its tributary streams within 1
17 mile of the Kootenai River under rules of the commission; or

18 (e) sale by the department of fish eggs produced from brood stock owned by the department but
19 determined to be in excess of the department's needs.

20 (3) A person may possess and sell legally taken nongame fish as provided in 87-4-609 and rules
21 adopted by the department pursuant to 87-4-609.

22 (4) A person convicted of a violation of this section shall be fined not less than \$50 or more than
23 \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the
24 person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing,
25 or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands,
26 as defined in 77-1-101, for recreational purposes for a period of time set by the court."

27

28 NEW SECTION. **Section 7. Repealer.** The following section of the Montana Code Annotated is

1 repealed:

2 87-4-601. Sale of fish or spawn.

3

4 NEW SECTION. **Section 8. Effective date.** [This act] is effective on passage and approval.

5 - END -