

HOUSE BILL NO. 109

INTRODUCED BY HARPER

BY REQUEST OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING REGULATION OF PRIVATE FISH PONDS; CLARIFYING THE DEFINITION OF "ARTIFICIAL LAKE OR POND"; ESTABLISHING A 1-YEAR AMNESTY PROGRAM FOR POND OWNERS NOT IN COMPLIANCE WITH FISH POND REGULATIONS; ESTABLISHING TERMS, FEES, SITE INSPECTIONS, AND TRANSFER AND RENEWAL PROCEDURES FOR NONCOMMERCIAL AND COMMERCIAL PRIVATE FISH POND LICENSES; ELIMINATING THE PROVISION ALLOWING THE FEDERAL GOVERNMENT TO CONDUCT FISH HATCHING OPERATIONS IN ANY MANNER AND AT ANY TIME THAT THE FEDERAL GOVERNMENT CONSIDERS IT NECESSARY AND PROPER; AMENDING SECTIONS 87-3-204, 87-3-205, 87-4-601, 87-4-603, AND 87-4-606, MCA; REPEALING SECTION 87-1-704, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 87-3-204, MCA, is amended to read:

"87-3-204. Restrictions on fishing methods. (1) ~~No~~ A game fish may not be caught, captured, or taken or attempted to be caught, captured, or taken by the aid or with the use of any gun or trap, ~~nor may any such~~ A set gun, trap, or other device to entrap game fish may not be used, made, or set.

(2) It is unlawful for a person to take or catch fish in any of the waters of this state;

(a) ~~except with hook and line held in hand or line and hook attached to rod or pole held in hand; to take or catch fish~~

(b) with hook baited with any poisonous substance or by means of the use of any poisonous substance, including fish berries; or ~~to take or catch fish~~

(c) by means of the use of fishtraps, grabhooks, seines, nets, or other similar means for catching fish.

(3) The department may designate ~~such~~ waters within the state of Montana ~~wherein~~ in which, in the judgment of the department, spears or gigs may be used for taking walleyed pike, sauger, northern pike, and nongame fish and traps, seines, nets, and rubber or spring-propelled spears, when employed by

1 ~~sportsmen~~ individuals swimming or submerged in the water, may be used for the taking of designated
 2 species of fish. The designated waters ~~so designated~~ may be closed at the discretion of the department.
 3 The taking of all fish by ~~such~~ designated means in the designated waters, ~~when so designated, is to~~ must
 4 be done under ~~such~~ rules as that the department may prescribe with ~~reference thereto~~ and under the
 5 supervision of the department. All ~~such~~ nongame fish ~~so~~ taken by designated means may be possessed and
 6 sold in ~~such~~ the manner and under ~~such~~ the restrictions as that the department may direct. All fish, other
 7 than those ~~herein~~ designated, ~~so~~ taken by designated means under department rules, when prescribed by
 8 the department, ~~shall~~ must be returned uninjured to the waters from which they were taken.

9 (4) The taking of black bass in Flathead Lake may be permitted by the department.

10 (5) The department ~~shall have the power to~~ may designate certain waters where setlines may be
 11 used to fish for certain species of game or nongame fish, and the department may designate the number
 12 of hooks and lines and the length of line or lines which may be used as setlines.

13 (6) Game fish ~~shall~~ must be taken only by angling; ~~that is, by hook and single line in hand or single~~
 14 ~~rod in hand or within immediate control~~ as provided in subsection (2)(a). This does not prevent, ~~however:~~

15 (a) the snagging of paddlefish, coho (silver salmon), and kokanee (sockeye salmon) when the
 16 department declares an open season when paddlefish, coho (silver salmon), and kokanee (sockeye salmon)
 17 may be taken by snagging;

18 (b) the taking of paddlefish, channel catfish, and nongame fish with longbow and arrow, under
 19 ~~such~~ rules and regulations as the fish, wildlife, and parks commission may prescribe;

20 (c) the taking of walleyed pike, sauger, northern pike, burbot (ling), and nongame fish with spear
 21 or gig when the department declares an open season for taking walleyed pike, sauger, northern pike, burbot
 22 (ling), and nongame fish with spear or gig;

23 (d) the use of landing net or gaff to land a game fish after the ~~same~~ game fish has been hooked
 24 by angling as ~~above~~ specified in subsection (6);

25 (e) the taking of minnows other than game fish variety by the use or aid of a net not to exceed 12
 26 feet in length and 4 feet in width in ~~such~~ waters ~~as may be~~ designated by the department;

27 (f) the taking of whitefish by nets or traps in the Kootenai River and in its tributary streams within
 28 1 mile of the Kootenai River, under ~~such~~ rules and regulations as that the fish, wildlife, and parks
 29 commission may prescribe; or

30 (g) the taking of any game fish through a hole in ice with an unattended line or rod as long as the

1 angler is in the vicinity and within visual contact of the line or rod.

2 (7) These restrictions do not apply to fish taken under 87-4-603."

3

4 **Section 2.** Section 87-3-205, MCA, is amended to read:

5 **"87-3-205. Unlawful to possess net or seine -- exceptions.** (1) It is unlawful for any person or
6 persons to have in their possession or under their control any seine, net, or other similar device for
7 capturing fish. A seine or net found in any vehicle, at the camp, or on the premises of any person ~~shall be~~
8 is prima facie evidence that the seine, net, or similar device belongs to the person or persons occupying
9 ~~said the~~ the camp or premises.

10 (2) ~~Nothing contained herein shall~~ This section does not apply to:

11 (a) the owners of private fish ponds, as ~~defined under the statute~~ provided in 87-4-603 and anyone
12 given permission by the owners;

13 (b) a person ~~or persons~~ having an unexpired seine or net license, as provided for in ~~the statutes~~
14 of Montana law;

15 (c) the use, by any person, of a landing net in connection or in addition to pole, line, and hooks
16 in fishing for game fish; or

17 (d) the possession of traps, seines, or nets ~~where~~ found in the vicinity of ~~any~~ waters ~~which~~ that
18 the department has designated ~~within the state where~~ that traps, seines, or nets ~~may be used~~ are permitted
19 for the taking of nongame fish ~~and Dolly Varden trout, as provided for in the statutes of Montana."~~

20

21 **Section 3.** Section 87-4-601, MCA, is amended to read:

22 **"87-4-601. (Temporary) Sale of fish or spawn unlawful -- exceptions.** (1) Except as provided in
23 subsections (2) and (3), a person may not, for speculative purposes, for market, or for sale, in any way,
24 catch any of the fish which in this title are classified as game fish or remove or cause to be removed the
25 eggs or spawn of any ~~such~~ game fish. ~~No~~ A person may not sell or offer for sale any of the game fish of
26 this state as defined in this title or the eggs or spawn from any game fish.

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

28 (a) the catching of fish in private fish ponds by the owners of private fish ponds and anyone given
29 permission by the owners or license holders of private fish ponds;

30 (b) the taking of fish by state authorities for the purpose of obtaining eggs for propagation in state

1 fish hatcheries or by any person who receives a permit from the department to take eggs for propagation
2 purposes;

3 (c) the catching of whitefish by the holder of a valid fishing license fishing with hook and line or
4 rod in specified waters designated by rules and regulations of the department;

5 (d) the taking of whitefish by nets or traps in the Kootenai River and in its tributary streams within
6 1 mile of the Kootenai River, under rules and regulations as the fish, wildlife, and parks commission may
7 prescribe; or

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

10 (3) (a) A person issued a paddlefish tag under 87-2-306 who legally takes a paddlefish from the
11 Yellowstone River between the Burlington Northern Railroad bridge at Glendive to the confluence of
12 Cottonwood Creek and the Yellowstone River during an authorized paddlefish season may donate the
13 paddlefish roe, or eggs, to a Montana nonprofit corporation as specified in subsection (3)(b) for processing
14 and marketing as caviar. A paddlefish may be brought only to the Intake fishing access site for donation
15 to the paddlefish roe donation program and must be a properly tagged, whole paddlefish. Roe separated
16 from the paddlefish is not acceptable for donation to the program. A paddlefish intentionally cut in any
17 manner to identify its sex is also unacceptable for donation to the program.

18 (b) The department shall develop rules for selecting one Montana nonprofit organization to accept
19 paddlefish egg donations and process and market the eggs as caviar. The department shall also develop
20 rules for the marketing and sale of caviar under this section.

21 (c) The department may enter into an agreement with the organization selected pursuant to the
22 rules provided for in subsection (3)(b) specifying times, sites, and other conditions under which paddlefish
23 eggs may be collected. The agreement must require the organization to maintain records of revenue
24 collected and related expenses incurred and to make the records available to the department and the
25 legislative auditor upon request.

26 (d) (i) Forty percent of the proceeds from the sale of paddlefish egg caviar products in excess of
27 the costs of collection, processing, and marketing must be deposited in a state special revenue fund
28 established for the department. The fund and any interest earned on the fund must be used to benefit the
29 paddlefish fishery, including fishing access, administration, improvements, habitat, and fisheries
30 management, or to provide information to the public regarding fishing in eastern Montana, which could

1 include the design and construction of interpretive displays.

2 (ii) Sixty percent of the proceeds from the sale of paddlefish egg caviar products in excess of the
3 costs of collection, processing, and marketing must be paid to the nonprofit organization that processes
4 and markets the caviar. The nonprofit organization's administrative costs must be paid from its share of
5 the proceeds. An advisory committee must be appointed by the commission and consist of one member
6 from the organization selected pursuant to the rules provided for in subsection (3)(b), two area local
7 government representatives, and two representatives of area sportsmen. The advisory committee shall
8 solicit and review historical, cultural, recreational, and fish and wildlife proposals and fund projects. The
9 committee shall notify the commission of its actions. Proceeds may be used as seed money for grants.
10 (Terminates June 30, 2003--sec. 2, Ch. 196, L. 1993.)

11 **87-4-601. (Effective July 1, 2003) Sale of fish or spawn unlawful -- exceptions.** (1) Except as
12 provided in subsection (2), ~~no~~ a person may not, for speculative purposes, for market, or for sale, in any
13 way, catch any of the fish which in this title are classified as game fish or remove or cause to be removed
14 the eggs or spawn of any ~~such~~ game fish. ~~No~~ A person may not sell or offer for sale any of the game fish
15 of this state as defined in this title or the eggs or spawn ~~therefrom~~ from any game fish.

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

17 (a) the catching of fish in private fish ponds by the owners and anyone given permission by the
18 owners or license holders thereof of private fish ponds;

19 (b) the taking of fish by state authorities for the purpose of obtaining eggs for propagation in state
20 fish hatcheries or by any person who receives a permit from the department to take eggs for such
21 purposes;

22 (c) the catching of whitefish by the holder of a valid fishing license fishing with hook and line or
23 rod in specified waters designated by rules and regulations of the department;

24 (d) the taking of whitefish by nets or traps in the Kootenai River and in its tributary streams within
25 1 mile of the Kootenai River, under ~~such~~ rules and regulations as the fish, wildlife, and parks commission
26 may prescribe; or

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

29

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

1 **"87-4-603. Fish pond license for artificial lake or pond -- records.** (1) A person who owns or
2 lawfully controls an artificial lake or pond may apply to the director for a private fish pond license. The
3 holder of a the private fish pond license may stock the fish pond with fish procured from a lawful source.
4 The department may designate the species of fish that may be released in the private fish pond and
5 otherwise condition the license if there is a possibility of fish escaping from the private fish pond into
6 adjacent streams or lakes. The license holder and anyone given permission by the license holder may take
7 fish from the artificial lake or pond in any manner and without a fishing license or any restrictions. Before
8 a commercial license holder may sell fish or eggs or fry from the artificial lake or pond, the license holder
9 shall furnish a corporate surety bond to the state for \$500, conditioned to the effect that the license holder
10 will not sell fish or spawn from any of the public waters of this state or violate the conditions of the license
11 and also conditioned to the effect that the license holder will submit an annual report on transactions to
12 the director.

13 (2) A commercial private fish pond license is necessary:

14 (a) to sell fish, eggs, or fry from an artificial lake or pond;

15 (b) to operate a fee fishing facility by charging to fish in an artificial lake or pond; or

16 (c) to operate a private aquaculture facility for the production, rearing, or cultivation of fish species.

17 (3) (a) "Artificial lake or pond" or "private fish pond", as used in this section and 87-4-606, does
18 ~~not include a natural pond or body of water, including streams and rivers, created by natural means or any~~
19 ~~portion of the streambed or lakebed of a natural pond or body of water. It includes only bodies of water~~
20 ~~created by artificial means or diversion of water that do not exceed 500 acres of surface area. means a~~
21 body of water that is:

22 (i) (A) created by artificial means or a diversion of water that does not exceed 500 acres in surface
23 area; or

24 (B) an instream pond that does not exceed 500 acres with a tributary spring or stream that does
25 not support game fish or fish species of special concern; and

26 (C) not determined by the department to pose an unacceptable risk to game fish or fish species
27 of special concern in downstream waters.

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

30 (4) An applicant for licensing of an instream private fish pond shall present to the department

1 verification that game fish or fish species of special concern do not occur in the tributary, spring, or stream
 2 and that the instream private fish pond does not pose an unacceptable risk to game fish or fish species of
 3 special concern in downstream waters. The verification must be in the form of:

- 4 (a) a formal report from a department-approved professional fisheries consultant; or
 5 (b) other reliable data and documentation.

6 ~~(3)(5)~~ The department may condition the license to require the construction, implementation, and
 7 maintenance of measures or devices to prevent fish in an artificial lake or pond from escaping into adjacent
 8 waters.

9 ~~(4)(6)~~ (a) A commercial private fish pond licensee who sells fish or eggs shall keep accurate records
 10 of:

- 11 (i) the species and quantities of fish or eggs sold or purchased;
 12 (ii) dates of sales or purchases;
 13 (iii) names of purchasers or sellers; and
 14 (iv) locations to or from which fish or eggs are transferred.

15 (b) On or before January 31 of each year, a commercial private fish pond licensee who sells fish
 16 or eggs shall file a report with the department, on forms made available by the department, summarizing
 17 the records required under subsection ~~(4)(6)~~(a).

18 ~~(5)(7)~~ A person who owns or controls an artificial lake or pond may request an inspection by the
 19 department to ascertain the presence of disease in fish or the illegal introduction of fish species. ~~Whenever~~
 20 ~~the department has reasonable cause to believe that a fish species in the body of water may have been~~
 21 ~~illegally introduced or may have a disease that may affect fish in another body of water, As a condition of~~
 22 licensure, a private fish pond license holder shall allow administrative site inspections of the license holder's
 23 artificial lake or pond at reasonable times after notification by the department. ~~the~~ The department shall
 24 notify the landowner or landowner's agent by mail or in person of the intention to enter upon the land and
 25 shall enter only after notice has been given to the landowner or agent or after every reasonable effort has
 26 been made to notify the landowner and receive permission to enter upon the land. Thereafter, the
 27 department may enter upon land under the provisions of this subsection for the purposes of inspecting the
 28 private fish pond or the body of water, the species of fish in the private fish pond or the body of water,
 29 the presence of disease in a fish species, the construction of any impoundment, dam, or fish barrier, and
 30 the physical connection of an artificial lake or pond to an adjacent natural lake, pond, or body of water,

1 including a stream or river. The department is responsible for actual damages to ~~any~~ property.

2 ~~(6)(8)~~ If the department finds an illegal introduction of fish or the presence of disease in fish in a
 3 licensed private fish pond; ~~an~~ artificial lake or pond; ~~or~~ a natural lake, pond, or body of water, the
 4 department shall consult with the landowner or the landowner's agent to determine the appropriate action
 5 unless an emergency exists. In an emergency situation, the department may order or take appropriate action
 6 to address any threat to the state's fisheries resources, including quarantine or destruction of fish, eggs,
 7 or the source of a disease. Whenever privately owned fish are destroyed and the private owner is not
 8 responsible for an illegal introduction or the introduction of fish with a disease, the department may replace
 9 the destroyed fish without charge to the private owner. A landowner or agent who has granted permission
 10 for the department to enter is not considered responsible for an illegal introduction of fish or disease unless
 11 proven otherwise.

12 (9) (a) The department shall implement and administer an amnesty program for private fish pond
 13 owners or operators who are not in compliance with the private fish pond licensing and operational
 14 requirements. For a period of 1 year from [the effective date of this act], persons who report to the
 15 department past noncompliance with the private fish pond requirements may not be prosecuted for past
 16 violations of this section that have been reported to the department. Violations may include but are not
 17 limited to:

18 (i) failure to obtain a private fish pond license;

19 (ii) stocking of unauthorized fish; and

20 (iii) failure to comply with license conditions.

21 (b) Failure to comply, where compliance is possible, within a reasonable time granted by the
 22 department, will subject the private fish pond owner or operator to prosecution for the violation.

23 (c) If the department finds illegally introduced fish or diseased fish in a private fish pond as part
 24 of the amnesty program described in subsection (9)(a), the department:

25 (i) may exercise the authority granted in subsection (8);

26 (ii) is responsible for any costs incurred in ridding the private fish pond of the illegal or diseased fish;

27 (iii) is not required to replace the illegal or diseased fish; and

28 (iv) is not required to approve or license any unauthorized fish species found in the private fish
 29 pond."

30

1 **Section 5.** Section 87-4-606, MCA, is amended to read:

2 "**87-4-606. Term of license -- fees -- site inspections -- license not transferable -- exceptions.** (1)

3 A noncommercial private fish pond license is valid for 10 years. A commercial private fish pond license is
4 valid for 1 year.

5 (2) There is a \$100 application fee for a new license application and a \$100 renewal fee.

6 (3) More than one private fish pond may be authorized by a single license if the private fish ponds
7 are:

8 (a) in close physical proximity to one another;

9 (b) located in the same immediate drainage; and

10 (c) owned or operated by the same person.

11 ~~(4)~~ (4) A commercial private fish pond licensee who sells fish or eggs under 87-4-603 shall renew
12 ~~the license annually. The license expires on January 31~~ February 28 of the year succeeding the year of
13 issuance. A noncommercial private fish pond license expires on February 28 of the 10th year succeeding
14 the year of issuance. Application for renewal must be made before a license expires. The department shall
15 renew the license if the licensee has not violated any condition upon which the license was granted and
16 the licensee has met all the requirements governing private fish ponds in 87-3-204 and this section.

17 (5) (a) A private fish pond license renewal is contingent upon inspection of the site by the
18 department, if the department determines that an inspection is warranted in order to ensure compliance
19 with 87-4-603, and any conditions that are part of the license.

20 (b) The department shall inspect commercial private fish ponds annually.

21 (c) If the department finds noncompliance through site inspection, the private fish pond license is
22 suspended until the violations are corrected.

23 (d) If the department discovers through site inspection that additional conditions are necessary to
24 meet the requirements of 87-4-603, the department may require compliance with those conditions as a
25 prerequisite to future operation as a private fish pond.

26 (6) A new license may be granted only after there is a site inspection by the department.

27 (7) (a) A noncommercial private fish pond as of [the effective date of this act] is subject to the
28 10-year term requirement starting from the initial licensure of the private fish pond.

29 (b) The department may issue a renewal license, with a term of 10 years, to each person wishing
30 to continue operating a noncommercial private fish pond if the private fish pond still qualifies for licensure

1 and meets the conditions required in 87-4-603. A renewal license is subject to all of the conditions and
2 requirements of 87-3-204, 87-3-205, 87-4-601, 87-4-603, and this section.

3 (c) Licenses that have been in effect for greater than 10 years as of [the effective date of this act]
4 remain in effect until the department directs the license holder to apply for renewal and submit to a site
5 inspection if the department determines an inspection is necessary.

6 (d) A renewal of a private fish pond licensed as of [the effective date of this act] is subject to the
7 \$100 renewal application fee.

8 ~~(2)(8) A licensee who does not sell fish or eggs is not required to renew his license. However, a~~
9 new license is required when a licensee proposes to plant a new species or stock a pond not designated
10 in the original license.

11 ~~(3)(9) (a) A private fish pond license granted under 87-4-603 is not transferable, except as provided~~
12 ~~in subsections (9)(b) and (9)(c).~~

13 (b) If ownership or control of the private fish pond changes, the new owner or operator shall apply
14 for a transfer and the transfer must be approved by the department to continue operation.

15 (c) A transferred license retains the remaining portion of the original license's term.

16 (d) The department may require a site inspection before approving a transfer."

17
18 NEW SECTION. Section 6. Repealer. Section 87-1-704, MCA, is repealed.

19
20 NEW SECTION. Section 7. Severability. If a part of [this act] is invalid, all valid parts that are
21 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
22 applications, the part remains in effect in all valid applications that are severable from the invalid
23 applications.

24
25 NEW SECTION. Section 8. Applicability. [This act] applies to any private fish pond license
26 application pending review and approval by the department on [the effective date of this act] and applies
27 prospectively to any private fish pond licensed as of [the effective date of this act].

28
29 NEW SECTION. Section 9. Effective date. [This act] is effective on passage and approval.

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0109, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act revising the regulation of private fish ponds; clarifying the definition of "artificial lake or pond"; establishing a one-year amnesty program for pond owners not in compliance with fish pond regulations; establishing terms, fees, site inspections, and transfer and renewal procedures for noncommercial and commercial private fish pond licenses; eliminating the provision allowing the federal government to conduct fish hatching operations in any manner and at any time that the federal government considers it necessary and proper.

ASSUMPTIONS:

1. The private and commercial pond license has been issued free of charge. The proposed legislation and fee schedule would allow for part of the program to be paid for by the pond license holders.
2. The Department of Fish, Wildlife and Parks (FWP) currently has 4,492 private pond licenses on record statewide. Approximately 90% of these permits will be reissued under this new permit fee schedule.
3. FWP will process 10% of the 4,042 private pond licenses each year or 404 per year.
4. FWP currently has 29 commercial pond licenses and all are expected to be relicensed under this new permit fee schedule.
5. It will cost an average of \$200 to inspect a private fish pond. Each private fish pond will be inspected once every ten years. FWP will contract with private consultants to perform the inspection.
6. FWP will charge \$100 for each application fee and each renewal fee.

FISCAL IMPACT:

<u>Expenditures:</u>	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
Contracted Services	80,800	80,800
 <u>Funding:</u>		
Fish Pond Permit Fees (02)	58,500	58,500
General License Account (02)	<u>22,300</u>	<u>22,300</u>
Total	80,800	80,800
 <u>Revenues:</u>		
Fish Pond Permit Fees (02)	58,500	58,500
General License Account (02)	<u>0</u>	<u>0</u>
 <u>Net Impact:</u>		
Fish Pond Permit Fees (02)	0	0
General License Account (02)	(22,300)	(22,300)

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

This legislation will make private ponds safer to the public fisheries resources. It will also slow or stop the potential to spread disease to other fisheries.

Dave Lewis 1-11-97
 LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

Hal Harper 1/13
 HAL HARPER, PRIMARY SPONSOR DATE
 Fiscal note for HB0109, as introduced

HB 109