

SENATE BILL NO. 15

INTRODUCED BY D. STEINBEISSER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING WALLEYE AS A NATIVE SPECIES IN MONTANA AND UPDATING SCIENTIFIC NAMES; AMENDING SECTIONS 87-1-272, 87-2-101, 87-3-235, 87-3-236, 87-5-702, AND 87-5-714, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 87-1-272, MCA, is amended to read:

"87-1-272. (Temporary) Future fisheries improvement program -- funding priority -- reports required. (1) In order to enhance future fisheries through natural reproduction, the department shall establish and implement a statewide voluntary program that promotes fishery habitats and spawning areas for the rivers, streams, and lakes of Montana's fisheries.

(2) The department shall when projects are suggested by the future fisheries review panel, through a public hearing process and with the approval of the commission, prioritize projects that have been recommended by the review panel to be funded. Emphasis must be given to projects that enhance the historic habitat of native fish species, including walleye (*Sander vitreus*). The department shall fund and implement the program regarding the long-term enhancement of streams and streambanks, instream flows, water leasing, lease or purchase of stored water, and other voluntary programs that deal with wild fish and aquatic habitats. A project conducted under the future fisheries improvement program may not restrict or interfere with the exercise of any water rights or property rights of the owners of streambeds and property adjacent to streambeds, streambanks, and lakes. The fact that a program project has been completed on private property does not create any right of public access to the private property unless that right is granted voluntarily by the property owner.

(3) The department shall work in cooperation with private landowners, conservation districts, irrigation districts, local officials, anglers, and other citizens to implement the future fisheries improvement program. Any department employee who is employed under this section to facilitate contact with landowners must have experience in commercial or irrigated agriculture. The department shall encourage the use of volunteer labor and grants, matching grants, and private donations to accomplish program purposes. The department may use contracted services:

1 (a) for negotiations with landowners, local officials, citizens, and others;

2 (b) for coordination with other agencies that may be involved in projects conducted under this section;

3 and

4 (c) to perform and supervise project work.

5 (4) Funds expended under this section may be used only for projects for the protection of the fisheries
6 resource that have been identified by the review panel established in 87-1-273 and approved by the commission
7 and may not be used for the acquisition of any interest in land.

8 (5) (a) The department shall report to the commission on the progress of the future fisheries improvement
9 program every 12 months and post a copy of the report on a state electronic access system to ensure public
10 access to the report.

11 (b) The department shall also present a detailed report to the senate fish and game committee, the
12 house fish, wildlife, and parks committee, and the natural resources and commerce joint appropriations
13 subcommittee of each regular session of the legislature on the progress of the future fisheries improvement
14 program and shall include specific information regarding progress and projects related to the restoration of native
15 Montana fish species, including walleye (*Sander vitreus*). The legislative report must include the department's
16 program activities and expenses since the last report and the project schedules and anticipated expenses for the
17 ensuing 10 years' implementation of the future fisheries improvement program. The department shall include a
18 listing of the funding source for each project funded since the last report and shall identify any project that
19 involves stream remediation from mining activities. All financial information presented in the legislative report must
20 conform to the requirements of the state accounting, budgeting, and human resources system.

21 (c) In order to implement 87-1-273 and this section, the department may expend revenue from the future
22 fisheries improvement program for up to two additional full-time employees. (Terminates July 1, 2009--sec. 3, Ch.
23 183, L. 2007.)

24 **87-1-272. (Effective July 1, 2009) Future fisheries improvement program -- funding priority --**
25 **reports required.** (1) In order to enhance future fisheries through natural reproduction, the department shall
26 establish and implement a statewide voluntary program that promotes fishery habitats and spawning areas for
27 the rivers, streams, and lakes of Montana's fisheries.

28 (2) ~~The department shall by April 1, 1996, and thereafter when~~ When projects are suggested by the
29 future fisheries review panel, the department shall, through a public hearing process and with the approval of the
30 commission, prioritize projects that have been recommended by the review panel to be funded. Emphasis must

1 be given to projects that enhance the historic habitat of native fish species, including walleye (*Sander vitreus*).
2 The department shall fund and implement the program regarding the long-term enhancement of streams and
3 streambanks, instream flows, water leasing, lease or purchase of stored water, and other voluntary programs that
4 deal with wild fish and aquatic habitats. A project conducted under the future fisheries improvement program may
5 not restrict or interfere with the exercise of any water rights or property rights of the owners of streambeds and
6 property adjacent to streambeds, streambanks, and lakes. The fact that a program project has been completed
7 on private property does not create any right of public access to the private property unless that right is granted
8 voluntarily by the property owner.

9 (3) The department shall work in cooperation with private landowners, conservation districts, irrigation
10 districts, local officials, anglers, and other citizens to implement the future fisheries improvement program. Any
11 department employee who is employed under this section to facilitate contact with landowners must have
12 experience in commercial or irrigated agriculture. The department shall encourage the use of volunteer labor and
13 grants, matching grants, and private donations to accomplish program purposes. The department may use
14 contracted services:

15 (a) for negotiations with landowners, local officials, citizens, and others;

16 (b) for coordination with other agencies that may be involved in projects conducted under this section;
17 and

18 (c) to perform and supervise project work.

19 (4) Funds expended under this section may be used only for projects for the protection of the fisheries
20 resource that have been identified by the review panel established in 87-1-273 and approved by the commission
21 and may not be used for the acquisition of any interest in land.

22 (5) (a) The department shall report to the commission on the progress of the future fisheries improvement
23 program every 12 months and post a copy of the report on a state electronic access system to ensure public
24 access to the report.

25 (b) The department shall also present a detailed report to each regular session of the legislature on the
26 progress of the future fisheries improvement program. The legislative report must include the department's
27 program activities and expenses since the last report and the project schedules and anticipated expenses for the
28 ensuing 10 years' implementation of the future fisheries improvement program.

29 (c) In order to implement 87-1-273 and this section, the department may expend revenue from the future
30 fisheries improvement program for up to two additional full-time employees."

- 1
- 2 **Section 2.** Section 87-2-101, MCA, is amended to read:
- 3 **"87-2-101. Definitions.** As used in 87-1-102, chapter 3, and this chapter, unless the context clearly
- 4 indicates otherwise, the following definitions apply:
- 5 (1) "Angling" or "fishing" means to take or the act of a person possessing any instrument, article, or
- 6 substance for the purpose of taking fish in any location that a fish might inhabit.
- 7 (2) (a) "Bait" means any animal matter, vegetable matter, or natural or artificial scent placed in an area
- 8 inhabited by wildlife for the purpose of attracting game animals or game birds.
- 9 (b) The term does not include:
- 10 (i) decoys, silhouettes, or other replicas of wildlife body forms;
- 11 (ii) scents used only to mask human odor; or
- 12 (iii) types of scents that are approved by the commission for attracting game animals or game birds.
- 13 (3) "Closed season" means the time during which game birds, fish, and game and fur-bearing animals
- 14 may not be lawfully taken.
- 15 (4) "Commission" means the state fish, wildlife, and parks commission.
- 16 (5) "Fur-bearing animals" means marten or sable, otter, muskrat, fisher, mink, bobcat, lynx, wolverine,
- 17 northern swift fox, and beaver.
- 18 (6) "Game animals" means deer, elk, moose, antelope, caribou, mountain sheep, mountain goat,
- 19 mountain lion, bear, and wild buffalo.
- 20 (7) "Game fish" means all species of the family salmonidae (chars, trout, salmon, grayling, and whitefish);
- 21 all species of the genus ~~stizostedion~~ sander (sandpike or sauger and walleyed pike or yellowpike perch); all
- 22 species of the genus esox (northern pike, pickerel, and muskellunge); all species of the genus micropterus (bass);
- 23 all species of the genus polyodon (paddlefish); all species of the family acipenseridae (sturgeon); all species of
- 24 the genus lota (burbot or ling); the species perca flavescens (yellow perch); all species of the genus pomoxis
- 25 (crappie); and the species ictalurus punctatus (channel catfish).
- 26 (8) "Hunt" means to pursue, shoot, wound, kill, chase, lure, possess, or capture or the act of a person
- 27 possessing a weapon, as defined in 45-2-101, or using a dog or a bird of prey for the purpose of shooting,
- 28 wounding, killing, possessing, or capturing wildlife protected by the laws of this state in any location that wildlife
- 29 may inhabit, whether or not the wildlife is then or subsequently taken. The term includes an attempt to take by
- 30 any means, including but not limited to pursuing, shooting, wounding, killing, chasing, luring, possessing, or

1 capturing.

2 (9) "Migratory game birds" means waterfowl, including wild ducks, wild geese, brant, and swans; cranes,
3 including little brown and sandhill; rails, including coots; wilson's snipes or jacksnipes; and mourning doves.

4 (10) "Nongame wildlife" means any wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or
5 other animal not otherwise legally classified by statute or regulation of this state.

6 (11) "Open season" means the time during which game birds, fish, and game and fur-bearing animals
7 may be lawfully taken.

8 (12) "Person" means individuals, associations, partnerships, and corporations.

9 (13) "Predatory animals" means coyote, weasel, skunk, and civet cat.

10 (14) "Trap" means to take or participate in the taking of any wildlife protected by the laws of the state by
11 setting or placing any mechanical device, snare, deadfall, pit, or device intended to take wildlife or to remove
12 wildlife from any of these devices.

13 (15) "Upland game birds" means sharptailed grouse, blue grouse, spruce (Franklin) grouse, prairie
14 chicken, sage hen or sage grouse, ruffed grouse, ring-necked pheasant, Hungarian partridge, ptarmigan, wild
15 turkey, and chukar partridge.

16 (16) "Wild buffalo" means buffalo or bison that have not been reduced to captivity."
17

18 **Section 3.** Section 87-3-235, MCA, is amended to read:

19 **"87-3-235. Fort Peck multispecies fish hatchery established.** (1) There is a multispecies fish hatchery
20 near Fort Peck dam. The purpose of the hatchery is to provide healthy warm water game fish to improve the warm
21 water fishing opportunities in Montana with minimal impact on cold water fish populations. Administration of the
22 hatchery must be by the department, consistent with the department's authority provided for in 87-3-201.

23 (2) The multispecies hatchery is intended to use 96 acres of rearing ponds to produce warm water
24 species. The hatchery is to employ land available through long-term lease from the U.S. army corps of engineers.
25 It is intended that the hatchery use free, high-quality water from the dredge cut adjacent to Fort Peck dam. Electric
26 power for the hatchery may be purchased from Fort Peck dam at the lowest available rate.

27 (3) Warm water species to be propagated at the hatchery may include largemouth bass (*Micropterus*
28 *salmoides*), smallmouth bass (*Micropterus dolomieu*), walleye (~~*Stizostedion vitreum*~~ *Sander vitreus*), sauger
29 (~~*Stizostedion canadense*~~ *Sander canadensis*), black crappie (*Pomoxis nigromaculatus*), white crappie (*Pomoxis*
30 *annularis*), channel catfish (*Ictalurus punctatus*), yellow perch (*Perca flavescens*), northern pike (*Esox lucius*),

1 pallid sturgeon (*Scaphirhynchus albus*), paddlefish (*Polyodon spathula*), tiger muskellunge, other warm water
 2 species classified as species of special concern, threatened, or endangered, and bait fish, including cisco
 3 (*Coregonus artedii*). The hatchery may also include raceways for salmon.

4 (4) Costs for hatchery construction, operation, maintenance, and personnel are to be funded with
 5 revenue in the warm water game fish accounts established in 87-3-236. It is intended that the hatchery be
 6 constructed in stages as revenue becomes available in the warm water game fish accounts established in
 7 87-3-236."

8

9 **Section 4.** Section 87-3-236, MCA, is amended to read:

10 **"87-3-236. Warm water game fish surcharge and stamp -- warm water game fish defined --**
 11 **accounts established -- dedication of revenue to Fort Peck multispecies fish hatchery.** (1) A person who
 12 is required to be licensed in order to fish in Montana and who desires to fish in waters listed pursuant to
 13 subsection (9) shall, upon purchase of a Class A, Class B, Class B-4, Class B-5, or Class A-8 fishing license, pay
 14 a warm water game fish surcharge of \$5. The surcharge is in addition to the license fee established for each class
 15 of license and entitles the holder to fish in the waters listed pursuant to subsection (9) as authorized by the
 16 department. Payment of the surcharge must be indicated by placement of a warm water game fish stamp on the
 17 fishing license.

18 (2) A warm water game fish stamp is valid for the license year in which it is purchased.

19 (3) Revenue from the warm water game fish surcharge must be placed in the account created in
 20 subsection (5) and may be used only for the purposes set out in subsection (7).

21 (4) As used in this section, "warm water game fish" includes but is not limited to all species of the genera
 22 ~~Stizostedion~~ Sander, Esox, Micropterus, and Lota and includes largemouth bass (*Micropterus salmoides*),
 23 smallmouth bass (*Micropterus dolomieu*), walleye (~~Stizostedion vitreum~~ Sander vitreus), sauger (~~Stizostedion~~
 24 ~~canadense~~ Sander canadensis), black crappie (*Pomoxis nigromaculatus*), white crappie (*Pomoxis annularis*),
 25 channel catfish (*Ictalurus punctatus*), yellow perch (*Perca flavescens*), northern pike (*Esox lucius*), pallid sturgeon
 26 (*Scaphirhynchus albus*), paddlefish (*Polyodon spathula*), other warm water species classified as species of
 27 special concern, threatened, or endangered, chinook salmon (*Oncorhynchus tshawytscha*), and tiger
 28 muskellunge.

29 (5) There is an account into which must be deposited:

30 (a) all proceeds from the warm water game fish surcharge established in subsection (1); and

1 (b) money received by the department in the form of gifts, grants, reimbursements, or appropriations from
2 any source intended to be used for the Fort Peck multispecies fish hatchery.

3 (6) The department shall administer the account within the state special revenue fund established in
4 17-2-102.

5 (7) Subject to the provisions of subsection (8), revenue collected under subsection (5) must be used by
6 the department for the operation, maintenance, and personnel costs of the Fort Peck multispecies fish hatchery
7 established in 87-3-235, which may include the costs incurred in eradicating illegally introduced warm water
8 species from Montana waters. No more than 15% of available revenue may be dedicated to eradication efforts.

9 (8) The department may not use any nonfederal funds for the hatchery authorized in 87-3-235 other than
10 those in the account provided for in subsection (5). There is an account in the federal special revenue fund into
11 which must be deposited all federal money received for purposes of the Fort Peck multispecies fish hatchery and
12 from which the department may use funds for the hatchery authorized in 87-3-235.

13 (9) The department shall prepare a list of all waters into which fish from the Fort Peck multispecies fish
14 hatchery will be planted. All waters listed in the Montana fishing regulations that require a warm water stamp and
15 waters planted or waters that will be planted with fish from the Fort Peck multispecies fish hatchery must be
16 permanently included on the list. The waters designated in the list are the only waters for which a warm water
17 game fish stamp is required."
18

19 **Section 5.** Section 87-5-702, MCA, is amended to read:

20 **"87-5-702. Definitions.** For purposes of this part, the following definitions apply:

21 (1) "Controlled exotic wildlife" means species placed on the controlled exotic wildlife list under 87-5-707
22 that may be imported, possessed, or sold only pursuant to commission and department rules and an authorization
23 permit provided for in 87-5-705(2).

24 (2) "Domestic animal" means an animal that, through long association with humans, has been bred to
25 a degree that has resulted in genetic changes affecting color, temperament, conformation, or other attributes of
26 the species to an extent that makes the animal unique and distinguishable from wild individuals of the species
27 and that is readily controllable if accidentally released into the wild. The term includes livestock, as defined in
28 81-2-702, dogs, cats, rodents, Eurasian ferrets, and poultry.

29 (3) "Exotic wildlife" means a wildlife species that is not native to Montana.

30 (4) "Feral" means the appearance of an animal and any offspring that have escaped captivity and

1 become wild.

2 (5) "Importation" means the act of receiving, bringing or having brought, or shipping into the state for a
3 person's temporary or permanent residence or domicile any wildlife from a location outside the state.

4 (6) "Introduction" means the release from captivity or attempt to release from captivity, intentional or
5 otherwise, wildlife from outside the state into the wild within the state.

6 (7) "Native wildlife" means a species or subspecies of wildlife that historically occurred in Montana and
7 that has not been introduced by humans or has not migrated into Montana as a result of human activity. The term
8 includes walleye (*Sander vitreus*).

9 (8) "Noncontrolled exotic wildlife" means animal species traditionally sold or kept as pets and includes
10 animals listed in 87-5-706 or animals that are added to the list in 87-5-706 by commission rule.

11 (9) "Possession" means to own or have control over an animal for personal use or resale.

12 (10) "Prohibited exotic wildlife" means animal species placed on the list provided in 87-5-704(3)(a) that
13 may not be imported, possessed, or sold.

14 (11) "Transplantation" means the release of or attempt to release, intentional or otherwise, wildlife from
15 one place within the state into another part of the state.

16 (12) (a) "Wildlife" means any wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean, or other
17 wild animal or the egg, sperm, embryo, or offspring of the wild animal.

18 (b) The term does not include domestic animals."
19

20 **Section 6.** Section 87-5-714, MCA, is amended to read:

21 **"87-5-714. Wildlife species authorized for introduction or transplantation.** (1) The following wildlife
22 species may be introduced or transplanted by the department based upon scientific investigation and upon
23 approval of the commission:

24 (a) gray (Hungarian) partridge (*Perdix perdix*);

25 (b) chukar partridge (*Alectoris chukar*);

26 (c) ring-necked pheasant (*Phasianus colchicus*);

27 (d) turkey (*Meleagris gallopavo*);

28 (e) rainbow trout (*Salmo gairdneri*);

29 (f) golden trout (*Salmo aquabonita*);

30 (g) brown trout (*Salmo trutta*);

- 1 (h) brook trout (*Salvelinus fontinalis*);
 2 (i) lake trout (*Salvelinus namaycush*);
 3 (j) northern pike (*Esox lucius*);
 4 (k) black bullhead (*Ictalurus melas*);
 5 (l) yellow bullhead (*Ictalurus natalis*);
 6 (m) largemouth bass (*Micropterus salmoides*);
 7 (n) smallmouth bass (*Micropterus dolomieu*);
 8 (o) pumpkinseed sunfish (*Lepomis gibbosus*);
 9 (p) bluegill (*Lepomis macrochirus*);
 10 (q) green sunfish (*Lepomis cyanellus*);
 11 (r) rock bass (*Ambloplites rupestris*);
 12 (s) black crappie (*Pomoxis nigromaculatus*);
 13 (t) white crappie (*Pomoxis annularis*);
 14 (u) yellow perch (*Perca flavescens*);
 15 (v) walleye (~~*Stizostedion vitreum*~~ *Sander vitreus*);
 16 (w) cisco (tulibee) (*Coregonus artedii*);
 17 (x) spottail shiner (*Notropis hudsonius*);
 18 (y) kokanee salmon (*Oncorhynchus nerka*);
 19 (z) chinook salmon (*Oncorhynchus tshawytscha*);
 20 (aa) lake whitefish (*Coregonus clupeaformis*);
 21 (bb) golden shiner (*Notemigonus crysoleucas*).
 22 (2) The commission may by rule and subject to the provisions of 87-5-711 authorize the department to
 23 transplant or introduce species of wildlife not listed in subsection (1)."
 24

25 **NEW SECTION. Section 7. Directions to code commissioner.** (1) Whenever the phrase "Stizostedion
 26 vitreum" (referring to walleye) appears in the Montana Code Annotated or in legislation enacted during the 61st
 27 legislative session, the code commissioner shall change the phrase to "Sander vitreus".

28 (2) Whenever the phrase "Stizostedion canadense" (referring to sauger) appears in the Montana Code
 29 Annotated or in legislation enacted during the 61st legislative session, the code commissioner shall change the
 30 phrase to "Sander canadensis".

1

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

3

- END -