

HOUSE BILL NO. 161

INTRODUCED BY B. TSCHIDA

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A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING REQUIREMENTS FOR DECISIONMAKING RELATED TO FISH AND WILDLIFE; CONDITIONING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 87-1-107, 87-1-201, 87-1-241, 87-1-255, 87-1-301, 87-1-304, 87-2-1003, 87-3-303, 87-5-103, AND 87-5-402, MCA."

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

NEW SECTION. **Section 1. Requirements for decisionmaking by director, department, and commission.** Except as provided in 87-1-217(5), 87-1-301(1)(h), 87-1-304(4), and in any matter concerning landowner tolerance and relations, the director, department, and commission may only use facts and science when making decisions pursuant to authorities granted in Title 87 related to fish and wildlife. The director, department, and commission may not use social science, human dimensions, or people's attitudes, opinions, or preferences in decisionmaking processes related to fish and wildlife.

Section 2. Section 87-1-107, MCA, is amended to read:

"87-1-107. Right to harvest -- legislative intent. The legislature, mindful of its constitutional obligations under Article II, section 3, of the Montana constitution protecting the inalienable ~~rights~~ right of a person to pursue life's basic necessities, ~~enjoy the person's life and liberties, and pursue happiness in all lawful ways,~~ and Article IX, section 7, of the Montana constitution protecting the opportunity for a person to harvest wild fish and wild game animals while not diminishing other private rights, has enacted the laws of this title pertaining to the lawful means of hunting, fishing, and trapping, as defined in 87-2-101 and 87-6-101, as adequate remedies for the preservation of the harvest heritage of the individual citizens of this state."

Section 3. Section 87-1-201, MCA, is amended to read:

"87-1-201. Powers and duties. (1) Except as provided in subsection (12), the department shall supervise all the wildlife, fish, game, game and nongame birds, waterfowl, and the game and fur-bearing animals of the state and may implement voluntary programs that encourage hunting access on private lands and that



1 promote harmonious relations between landowners and the hunting public. The department possesses all powers
2 necessary to fulfill the duties prescribed by law and to bring actions in the proper courts of this state for the
3 enforcement of the fish and game laws and the rules adopted by the department.

4 (2) Except as provided in subsection (12) of this section and subject to [section 1], the department shall
5 enforce all the laws of the state regarding the protection, preservation, management, and propagation of fish,
6 game, fur-bearing animals, and game and nongame birds within the state.

7 (3) ~~The~~ Subject to [section 1], the department has the exclusive power to spend for the protection,
8 preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds
9 all state funds collected or acquired for that purpose, whether arising from state appropriation, licenses, fines,
10 gifts, or otherwise. Money collected or received from the sale of hunting and fishing licenses or permits, from the
11 sale of seized game or hides, from fines or damages collected for violations of the fish and game laws, or from
12 appropriations or received by the department from any other sources is under the control of the department and
13 is available for appropriation to the department.

14 (4) The department may discharge any appointee or employee of the department for cause at any time.

15 (5) The department may dispose of all property owned by the state used for the protection, preservation,
16 management, and propagation of fish, game, fur-bearing animals, and game and nongame birds that is of no
17 further value or use to the state and shall turn over the proceeds from the sale to the state treasurer to be credited
18 to the fish and game account in the state special revenue fund.

19 (6) The department may not issue permits to carry firearms within this state to anyone except regularly
20 appointed officers or wardens.

21 (7) Except as provided in subsection (12) of this section and subject to [section 1], the department is
22 authorized to make, promulgate, and enforce reasonable rules and regulations not inconsistent with the
23 provisions of Title 87, chapter 2, that in its judgment will accomplish the purpose of chapter 2.

24 (8) The department is authorized to promulgate rules relative to tagging, possession, or transportation
25 of bear within or outside of the state.

26 (9) (a) ~~The~~ Subject to [section 1], the department shall implement programs that:

27 (i) manage wildlife, fish, game, and nongame animals in a manner that prevents the need for listing under
28 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq.;

29 (ii) manage listed species, sensitive species, or a species that is a potential candidate for listing under
30 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq., in a manner that assists in the

1 maintenance or recovery of those species;

2 (iii) manage elk, deer, and antelope populations based on habitat estimates determined as provided in
3 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as provided
4 in 87-1-323. In implementing an elk management plan, the department shall, as necessary to achieve harvest
5 and population objectives, request that land management agencies open public lands and public roads to public
6 access during the big game hunting season.

7 (iv) in accordance with the forest management plan required by 87-1-622, address fire mitigation, pine
8 beetle infestation, and wildlife habitat enhancement giving priority to forested lands in excess of 50 contiguous
9 acres in any state park, fishing access site, or wildlife management area under the department's jurisdiction.

10 (b) In maintaining or recovering a listed species, a sensitive species, or a species that is a potential
11 candidate for listing, the department shall seek, to the fullest extent possible, to balance maintenance or recovery
12 of those species with the ~~social and~~ economic impacts of species maintenance or recovery.

13 (c) Any management plan developed by the department pursuant to this subsection (9) is subject to the
14 requirements of Title 75, chapter 1, part 1.

15 (d) This subsection (9) does not affect the ownership or possession, as authorized under law, of a
16 privately held listed species, a sensitive species, or a species that is a potential candidate for listing.

17 (10) The department shall publish an annual game count, estimating to the department's best ability the
18 numbers of each species of game animal, as defined in 87-2-101, in the hunting districts and administrative
19 regions of the state. In preparing the publication, the department may incorporate field observations, hunter
20 reporting statistics, or any other suitable method of determining game numbers. The publication must include an
21 explanation of the basis used in determining the game count.

22 (11) The department shall report current sage grouse population numbers, including the number of leks,
23 to the Montana sage grouse oversight team, established in 2-15-243, and the environmental quality council,
24 established in 5-16-101, on an annual basis. The report must include seasonal and historic population data
25 available from the department or any other source.

26 (12) The department may not regulate the use or possession of firearms, firearm accessories, or
27 ammunition, including the chemical elements of ammunition used for hunting. This does not prevent:

28 (a) the restriction of certain hunting seasons to the use of specified hunting arms, such as the
29 establishment of special archery seasons;

30 (b) for human safety, the restriction of certain areas to the use of only specified hunting arms, including

- 1 bows and arrows, traditional handguns, and muzzleloading rifles;
- 2 (c) the restriction of the use of shotguns for the hunting of deer and elk pursuant to 87-6-401(1)(f);
- 3 (d) the regulation of migratory game bird hunting pursuant to 87-3-403; or
- 4 (e) the restriction of the use of rifles for bird hunting pursuant to 87-6-401(1)(g) or (1)(h)."

- 5
- 6 **Section 4.** Section 87-1-241, MCA, is amended to read:
- 7 **"87-1-241. Acquisition of wildlife habitat -- rules.** (1) Before acquisition of any interest in land for the
- 8 primary purpose of securing wildlife habitat the commission shall by rule establish a policy for making such
- 9 acquisitions. With regard to any specific acquisition the policy shall provide for a comprehensive analysis of:
- 10 (a) the wildlife populations and use currently associated with the property;
- 11 (b) the potential value of the land for protection, preservation, and propagation of wildlife;
- 12 (c) management goals proposed for the land and wildlife populations, and where feasible, any additional
- 13 uses of the land such as livestock grazing or timber harvest;
- 14 (d) any potential impacts to adjacent private land resulting from proposed management goals, and plans
- 15 to address such impacts;
- 16 (e) any significant potential ~~social and~~ economic impacts to affected local governments and the state,
- 17 including but not limited to impacts on:
- 18 (i) tax revenue available for the operation of taxing jurisdictions within the county;
- 19 (ii) services required to be provided by local governments;
- 20 (iii) employment opportunities within the counties;
- 21 (iv) local schools; and
- 22 (v) private businesses supplying goods and services to the community;
- 23 (f) a land maintenance program to control weeds and maintain roads and fences; and
- 24 (g) subject to the provisions of [section 1], any other matter considered necessary or appropriate by the
- 25 commission.
- 26 (2) The analysis made of any proposed acquisition must be made available for review by each owner
- 27 of land adjacent to the property that is the subject of analysis, and to any member of the public. A public hearing
- 28 must be held in the affected area after the analysis has been made available to the public."
- 29

- 30 **Section 5.** Section 87-1-255, MCA, is amended to read:

1 **"87-1-255. Purpose.** The legislature finds that the conservation of rivers and their fisheries is of vital
2 ~~social and~~ economic importance to Montana. The legislature further finds that some of our state's rivers and
3 fisheries are diminished in value by water pollution, water shortages, and riparian erosion and that there is a need
4 for a program to promote the beneficial use and productivity of our river systems. The legislature further finds that
5 establishment of a river restoration program, funded by anglers from across the state and nation, is a sound and
6 proper method to help ensure that the rivers and fisheries that anglers and others have ~~treasured~~ used for
7 Montana's first 100 years will continue to serve the state and its people."
8

9 **Section 6.** Section 87-1-301, MCA, is amended to read:

10 **"87-1-301. Powers of commission.** (1) Except as provided in subsections (6) and (7) of this section
11 and subject to [section 1], the commission:

12 (a) shall set the policies for the protection, preservation, management, and propagation of the wildlife,
13 fish, game, furbearers, waterfowl, nongame species, and endangered species of the state and for the fulfillment
14 of all other responsibilities of the department related to fish and wildlife as provided by law;

15 (b) shall establish the hunting, fishing, and trapping rules of the department;

16 (c) except as provided in 23-1-111 and 87-1-303(3), shall establish the rules of the department governing
17 the use of lands owned or controlled by the department and waters under the jurisdiction of the department;

18 (d) must have the power within the department to establish wildlife refuges and bird and game preserves;

19 (e) shall approve all acquisitions or transfers by the department of interests in land or water, except as
20 provided in 23-1-111 and 87-1-209(2) and (4);

21 (f) except as provided in 23-1-111, shall review and approve the budget of the department prior to its
22 transmittal to the office of budget and program planning;

23 (g) except as provided in 23-1-111, shall review and approve construction projects that have an
24 estimated cost of more than \$1,000 but less than \$5,000;

25 (h) shall manage elk, deer, and antelope populations based on habitat estimates determined as provided
26 in 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as
27 provided in 87-1-323. In developing or implementing an elk management plan, the commission shall consider
28 landowner tolerance when deciding whether to restrict elk hunting on surrounding public land in a particular
29 hunting district. As used in this subsection (1)(h), "landowner tolerance" means the written or documented verbal
30 opinion of an affected landowner regarding the impact upon the landowner's property within the particular hunting

1 district where a restriction on elk hunting on public property is proposed.

2 (i) shall set the policies for the salvage of antelope, deer, elk, or moose pursuant to 87-3-145; and

3 (j) shall comply with, adopt policies that comply with, and ensure the department implements in each
4 region the provisions of state wildlife management plans adopted following an environmental review conducted
5 pursuant to Title 75, chapter 1, parts 1 through 3.

6 (2) ~~The Subject to [section 1], the~~ commission may adopt rules regarding the use and type of archery
7 equipment that may be employed for hunting and fishing purposes, taking into account applicable standards as
8 technical innovations in archery equipment change.

9 (3) ~~The Subject to [section 1], the~~ commission may adopt rules regarding the establishment of special
10 licenses or permits, seasons, conditions, programs, or other provisions that the commission considers appropriate
11 to promote or enhance hunting by Montana's youth and persons with disabilities.

12 (4) (a) The commission may adopt rules regarding nonresident big game combination licenses to:

13 (i) separate deer licenses from nonresident elk combination licenses;

14 (ii) set the fees for the separated deer combination licenses and the elk combination licenses without the
15 deer tag;

16 (iii) condition the use of the deer licenses; and

17 (iv) limit the number of licenses sold.

18 (b) The commission may exercise the rulemaking authority in subsection (4)(a) when it is necessary and
19 appropriate to regulate the harvest by nonresident big game combination license holders:

20 (i) for the biologically sound management of big game populations of elk, deer, and antelope;

21 (ii) to control the impacts of those elk, deer, and antelope populations on uses of private property; and

22 (iii) to ensure that elk, deer, and antelope populations are at a sustainable level as provided in 87-1-321
23 through 87-1-325.

24 (5) (a) ~~The Subject to [section 1], the~~ commission may adopt rules to:

25 (i) limit the number of nonresident mountain lion hunters in designated hunting districts; and

26 (ii) determine the conditions under which nonresidents may hunt mountain lion in designated hunting
27 districts.

28 (b) The commission shall consider, but is not limited to consideration of, the following factors:

29 (i) harvest of lions by resident and nonresident hunters;

30 (ii) history of quota overruns;

- 1 (iii) composition, including age and sex, of the lion harvest;
- 2 (iv) historical outfitter use;
- 3 (v) conflicts among hunter groups;
- 4 (vi) availability of public and private lands; and
- 5 (vii) whether restrictions on nonresident hunters are more appropriate than restrictions on all hunters.
- 6 (6) The commission may not regulate the use or possession of firearms, firearm accessories, or
- 7 ammunition, including the chemical elements of ammunition used for hunting. This does not prevent:
- 8 (a) the restriction of certain hunting seasons to the use of specified hunting arms, such as the
- 9 establishment of special archery seasons;
- 10 (b) for human safety, the restriction of certain areas to the use of only specified hunting arms, including
- 11 bows and arrows, traditional handguns, and muzzleloading rifles;
- 12 (c) the restriction of the use of shotguns for the hunting of deer and elk pursuant to 87-6-401(1)(f);
- 13 (d) the regulation of migratory game bird hunting pursuant to 87-3-403; or
- 14 (e) the restriction of the use of rifles for bird hunting pursuant to 87-6-401(1)(g) or (1)(h).
- 15 (7) Pursuant to 23-1-111, the commission does not oversee department activities related to the
- 16 administration of state parks, primitive parks, state recreational areas, public camping grounds, state historic
- 17 sites, state monuments, and other heritage and recreational resources, land, and water administered pursuant
- 18 to Title 23, chapter 1, and Title 23, chapter 2, parts 1, 4, and 9."

- 19
- 20 **Section 7.** Section 87-1-304, MCA, is amended to read:
- 21 **"87-1-304. Fixing of seasons and bag and possession limits.** (1) Subject to the provisions of section
- 22 11, 87-5-302, and subsection (7) of this section, the commission may:
- 23 (a) fix seasons, bag limits, possession limits, and season limits;
- 24 (b) open or close or shorten or lengthen seasons on any species of game, bird, fish, or fur-bearing
- 25 animal as defined by 87-2-101;
- 26 (c) declare areas open to the hunting of deer, antelope, elk, moose, sheep, goat, mountain lion, bear,
- 27 wild buffalo or bison, and wolf by persons holding an archery stamp and the required license, permit, or tag and
- 28 designate times when only bows and arrows may be used to hunt deer, antelope, elk, moose, sheep, goat,
- 29 mountain lion, bear, wild buffalo or bison, and wolf in those areas;
- 30 (d) subject to the provisions of 87-1-301(6), restrict areas and species to hunting with only specified

1 hunting arms, including bow and arrow, for the reasons of safety or of providing diverse hunting opportunities and
2 experiences; and

3 (e) declare areas open to special license holders only and issue special licenses in a limited number
4 when the commission determines, after proper investigation, that a special season is necessary to ensure the
5 maintenance of an adequate supply of game birds, fish, or animals or fur-bearing animals. The commission may
6 declare a special season and issue special licenses when game birds, animals, or fur-bearing animals are
7 causing damage to private property or when a written complaint of damage has been filed with the commission
8 by the owner of that property. In determining to whom special licenses must be issued, the commission may,
9 when more applications are received than the number of animals to be killed, award permits to those chosen
10 under a drawing system. The procedures used for awarding the permits from the drawing system must be
11 determined by the commission.

12 (2) ~~The~~ Subject to [section 1], the commission may adopt rules governing the use of livestock and
13 vehicles by archers during special archery seasons.

14 (3) Subject to the provisions of [section 1], 87-5-302, and subsection (7) of this section, the commission
15 may divide the state into fish and game districts and create fish, game, or fur-bearing animal districts throughout
16 the state. The commission may declare a closed season for hunting, fishing, or trapping in any of those districts
17 and later may open those districts to hunting, fishing, or trapping.

18 (4) The commission may declare a closed season on any species of game, fish, game birds, or
19 fur-bearing animals threatened with undue depletion from any cause. The commission may close any area or
20 district of any stream, public lake, or public water or portions thereof to hunting, trapping, or fishing for limited
21 periods of time when necessary to protect a recently stocked area, district, water, spawning waters, spawn-taking
22 waters, or spawn-taking stations or to prevent the undue depletion of fish, game, fur-bearing animals, game birds,
23 and nongame birds. The commission may open the area or district upon consent of a majority of the property
24 owners affected.

25 (5) The commission may authorize the director to open or close any special season upon 12 hours'
26 notice to the public.

27 (6) The commission may declare certain fishing waters closed to fishing except by persons under 15
28 years of age. The purpose of this subsection is to provide suitable fishing waters for the exclusive use ~~and~~
29 ~~enjoyment~~ of juveniles under 15 years of age, at times and in areas the commission in its discretion considers
30 advisable and consistent with its policies relating to fishing.

- 1 (7) In an area immediately adjacent to a national park, the commission may not:
 2 (a) prohibit the hunting or trapping of wolves; or
 3 (b) close the area to wolf hunting or trapping unless a wolf harvest quota established by the commission
 4 for that area has been met."
 5

6 **Section 8.** Section 87-2-1003, MCA, is amended to read:

7 **"87-2-1003. Bodies of water subject to reciprocal privileges.** It is the primary purpose of this part to
 8 provide a method whereby the fishing opportunities afforded upon any part of any body of water located within
 9 or partly within 10 miles of the boundaries of this state may be mutually ~~enjoyed~~ used by the residents of Montana
 10 and the residents of the adjoining states, subject to the terms of a reciprocal agreement as authorized in
 11 87-2-1001."
 12

13 **Section 9.** Section 87-3-303, MCA, is amended to read:

14 **"87-3-303. Policy toward nonresident big game hunters.** It is the policy of this state to protect and
 15 preserve game animals primarily for the citizens of this state while welcoming licensed nonresidents ~~licensed~~ to
 16 hunt in Montana ~~to enjoy the state's public wildlife resources~~ and acknowledging nonresidents' financial
 17 contribution to Montana's wildlife management and tourism industry."
 18

19 **Section 10.** Section 87-5-103, MCA, is amended to read:

20 **"87-5-103. Legislative intent, findings, and policy.** (1) The legislature, mindful of its constitutional
 21 obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted The Nongame and
 22 Endangered Species Conservation Act. It is the legislature's intent that the requirements of this part provide
 23 adequate remedies for the protection of the environmental life support system from degradation and provide
 24 adequate remedies to prevent unreasonable depletion and degradation of natural resources.

25 (2) The legislature finds and declares all of the following:

- 26 (a) that it is the policy of this state to manage certain nongame wildlife ~~for human enjoyment~~, for scientific
 27 purposes; and to ensure their perpetuation as members of ecosystems;
 28 (b) that species or subspecies of wildlife indigenous to this state that may be found to be endangered
 29 within the state should be protected in order to maintain and, to the extent possible, enhance their numbers;
 30 (c) that the state should assist in the protection of species or subspecies of wildlife that are considered

1 to be endangered elsewhere by prohibiting the taking, possession, transportation, exportation, processing, sale
2 or offer for sale, or shipment within this state of species or subspecies of wildlife unless those actions will assist
3 in preserving or propagating the species or subspecies."
4

5 **Section 11.** Section 87-5-402, MCA, is amended to read:

6 **"87-5-402. Posting of notice and additional provisions.** (1) Preserves, refuges, sanctuaries, rest
7 grounds, or closed districts created by the department and any land or water areas or portions of preserves,
8 refuges, sanctuaries, rest grounds, or closed districts closed by the department must be conspicuously posted
9 for a period of 20 days, with posters setting forth their purposes and the penalties for violating the orders, rules,
10 and regulations of the department applicable to them. Not less than 20 days before creation of any fish and game
11 district, preserve, refuge, sanctuary, rest ground, or closed district or closure of land or water areas, publication
12 must be made of the boundaries of the fish and game district, preserve, refuge, sanctuary, rest ground, or closed
13 district, with boundaries accurately designated by definite topographic monuments or public land survey.
14 Publication must be in a newspaper having general circulation in the locality of the fish and game district,
15 preserve, refuge, sanctuary, rest ground, or closed district.

16 (2) The hunting, pursuing, capturing, killing, or taking of any fish, game animals, game birds, or
17 fur-bearing animals in violation of the orders, rules, or regulations of the department governing any closed
18 season, fish and game district, preserve, refuge, sanctuary, rest ground, or closed land or water area promulgated
19 by the department is punishable by the penalties provided for the violation of laws regarding closed seasons.

20 (3) All game preserves or refuges created are continued in full effect until they are changed by the
21 department in the manner designated in this section. The department has the right, power, and authority, when
22 properly petitioned, to alter and change the boundaries of or entirely do away with and abandon any preserve
23 or refuge, except the Sun River game preserve, when, ~~in the opinion of the department;~~ determines it is in the
24 best interest to do so."
25

26 **NEW SECTION. Section 12. Codification instruction.** [Section 1] is intended to be codified as an
27 integral part of Title 87, chapter 1, part 1, and the provisions of Title 87, chapter 1, part 1, apply to [section 1].
28

- END -