The legislative and political development of the Montana Department of Fish Wildlife and Parks (1895-1921): A case of cultural heritage

Diann Ericson

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The Legislative and Political Development of the Montana Department of Fish, Wildlife, and Parks (1895-1921): A Case of Cultural Heritage

by

Diann Ericson

B.A. The University of Denver, 1969

presented in partial fulfillment of the requirements for the degree of

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Approved by:

H.D. Hampton
Chairperson

Dean, Graduate School

Date
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Established in 1901 the Montana State Department of Game and Fish represented the culmination of efforts by sportsmen to preserve and to protect the state's wildlife. The origins of the social and economic values that motivated this legislation yielded not from Montana, but from the East. Therefore the origin is actually English, or more accurately, the evolution of opposition to English wildlife law. This cultural evolution arrived early in Montana Territory against a backdrop of open space and exploitation.

Wildlife laws in Montana evolved with the establishment of its territorial government in Bannock in 1865. A bill authorized in that year restricted the methods of harvesting trout. A wildlife conservation act, hardly seems an appropriate topic for a governing body of the wild, western frontier. The event arouses even more curiosity when one pauses to realize that only the beaver populations had been recognized as a depleted wildlife resource up to this point in wildlife history of Montana. Exploitation of big game, most notably the buffalo, did not gain public attention until the late 1870s. It is unlikely that the 14,000 inhabitants of the territory could have exploited noticeably the trout population in the three years following the first gold strikes.

However, exploitation of another type did exist. Joan L. Brownell notes in her thesis, "The Genesis of Wildlife Conservation in Montana," that Montana's conservation ethic emerged in the midst of the exploitation of many of the state's natural resources, mining being the most obvious example. She
suggests that these conditions created motivation for the wildlife conservation idea that manifested itself throughout the existence of the territorial legislature. Still the origin of the idea can be shown to have been Eastern/English.3

The exploitation and loss of habitat resulting from increased population persuaded concerned citizens to call for additional wildlife protection. In the last months of the territorial government Montana's citizens addressed what Forest and Stream editor George B. Grinnell labeled the "most pertinent question" concerning wildlife protection--enforcement.4

To examine the history of the Montana State Fish and Game Commission, one must begin in 1895.5 Six years after statehood, with fish and game statutes in existence since territorial days, the Montana legislature established a board of commissioners whose purpose it was "to secure through and by their agents and subordinates, the enforcement of all laws of this state for the preservation, and propagation and protection of the game and fish of the state."6 This gubernatorially elected board of three was to appoint a game warden, for a two year term, to act as secretary and business agent for the board of commissioners. Of major importance was the commissioners' responsibility to report annually to the governor, to review duties performed and expenditures made, and to present recommendations for legislative action.7 The state Capital housed the board's office and records and their property was tax exempt. This
legislation passed in March of 1895. No additional reference to this first board of commissioners exists in the codes from 1897 to 1901.

Financing for the commission and the warden accumulated from one source, fines. One half of all the fines collected under the fish and game laws went to the State Treasurer and he placed this money in a fish and game fund. The commissioners set compensation for the warden, not to exceed the collection of fines netted in the fish and game fund. The remaining half of the money apparently went to the county warden responsible for the arrest. This state level organization of a game and fish board of commissioners transpired in conjunction with the continuance of the county's prerogative to hire a county warden.\footnote{8}

The legislative silence, inaction, or indifference concerning the game and fish board of commissioners ended in 1901. The board's report by Morton J. Elrod, Chairman of the Montana Game and Fish Board of Commissioners and R. A. Wagner, State Game Warden, begun in 1899 and submitted in 1900, undoubtedly precipitated the fish and game legislation of 1901.

The lack of law enforcement capability, according to the report, rendered useless wildlife protection regulations. Elrod found that few counties had hired game wardens and believed that "protection of game should no longer be in their hands."\footnote{9}
The Seventh Legislative Assembly, 1901, repealed all previous sections of the political codes of Montana relating to game and fish wardens, their powers and compensation, including the county commissioners' obligation to hire its own game and fish warden.

Abolishment of the board of game and fish commissioners and the subsequent gubernatorial appointment of the state game warden offered major modifications. The warden's powers reflected those of a sheriff regarding investigations and arrests. The new statutes also authorized the warden to appoint and supervise deputy wardens. Another major modification involved finances. In addition to money raised from fines, the county commissioners who, earlier, seldom found motivation to finance their own county warden, were required to levy an annual tax of 1/10 of one mil on a dollar of all property tax. This money established the Fish and Game Fund "defraying the salaries and expenses provided for in this act."¹⁰ This fund housed the fines collected under all fish and game laws and regulations.

In addition to the legislation of hunting regulations which it had overseen since territorial days, the creation of a department of game and fish, the hunting license format and distribution, and the creation of the Fish and Game Fund, the legislature inaugurated a liberal search and seizure policy for its wardens.¹¹

These laws created the Montana Game and Fish Department in April, 1901. W.F. Scott became the department's first state game and fish warden.
Between April 1 and June 1 of 1901, by his account in the *Game and Fish Commission Biennial Report of 1902*, Scott single-handedly organized the department from the floor to the filing cabinets. Within two months Scott had purchased furniture, hired a secretary and devised "a system to carry on the affairs of the department." He also hired eight game wardens. At that time, a dozen game regulations existed in the *Montana Codes*, to be enforced by a state warden, eight deputy wardens, and an office in Helena.

The new deputy wardens began their position studying the game and fish regulations, "forward and backwards." Other duties included posting the cloth-backed placards of regulations and developing the habit of posting daily log entries. Duties of the deputy wardens as defined by the 1901 legislature included the same investigation and prosecution rights as the state warden, requirements of monthly reports, and the distribution of information on the game and fish regulations. Deputy wardens received four year appointments with a salary of one hundred dollars per month.

Based on a questionnaire circulated by the board of commissioners in 1900, the Montana legislature passed extensive wildlife legislation in March of 1901. The questionnaire, printed in every Montana newspaper, contained questions on many perspectives: Do you endorse the present game law as it stands? If not, state your objection? What kind of game should be perpetually protected? Commissioner Elrod described the responses as humorous, the
opinions varied, and he noted great unanimity on many points. Respondents agreed in their dislike of: the present game laws, the sale of game animals and the present limits on game. They also agreed that non-residents should buy a permit to hunt in the state. Respondents did not agree as to what the limits would be or on the role of game wardens.15

With an awareness of these sentiments and little else to draw upon, the 1901 legislature designed a comprehensive program for wildlife protection. (See Appendix A.) During the early years of the legislative assemblies, laws regarding all aspects of wildlife protection evolved, but most dealt with the species on the "no kill--perpetual protection" list, the length of the hunting seasons, bag limits, and fees. (See Appendix C.)

In 1903, Eighth Legislative Assembly conducted routine revision and repeal of previous codes concerning hunting season, bag limits, and penalties; in addition, the legislature dealt with a variety of issues generally related to wildlife protection. Often the topics for consideration originated from the state game and fish warden's biennial report.

The financial effects of creating a new state agency for wildlife protection must have been immediately evident, for in 1903 the previous designation of fifty percent of each fine to be placed in the Fish and Game Fund increased to one hundred percent, ending the 50/50 split between the arresting warden and the Fund. Perhaps local wardens felt compensated, in part, by the two hundred
dollars per annum salary increase and a larger mileage allowance. (For additional financial information see Appendix B.)

The quest for funds placed the greatest financial commitment upon taxidermists. Their license cost twenty-five dollars. In addition taxidermists and guides had to complete extensive reports for the state game warden. The essence of the reports documented every transaction these businesses experienced in an effort to account for the harvesting pressure on the wildlife. Confident in its revenue measures, the 1903 Legislature, as mentioned above raised salaries and travel allowances. In addition to those already mentioned, the state game warden's salary increased to $1800 annually with a travel allowance of $1500.

Licensing continued to be a major element of wildlife management in 1905. (For details see Appendix B.) With this licensing flurry came the repeal of the 1/10 mil on property taxes of 1901. This action placed more directly the responsibility of wildlife management on hunters and fishermen.

In 1907, possibly in response to the mushrooming interest in fish management, the state legislature instituted major changes in personnel, finances, and supervision, creating a state fish commission with two gubernatorially appointed members. The state game and fish warden served as an ex officio member. Building a state fish hatchery denoted the new commission's primary mission. As stated in the 1907 Codes of Montana the
fish commission was to construct a fish hatchery, hire a superintendent for the hatchery and distribute fry. Funding came from the Fish and Game Fund. The new commission received no duties concerning other wildlife. It appears that between 1907 and 1913 the state game and fish warden and the legislature represented the primary overseers of Montana wildlife, placing the promulgation and propagation of fish as the principal duty of the Montana State Fish Commission.

The emphasis on fish protection and management emerges as a curious phenomenon and not at all unique to Montana. Its importance represents a cultural phenomenon motivated by technology, scarcity, and romance. Technology helped produce the best and the worst conditions for fish. It caused fewer fish due to inadequate habitat. In Montana, for example, earliest territorial law pertaining to wildlife protected fish from such illegal harvesting as dynamiting and seining, technology that became more disruptive to plentiful fish populations with each gold discovery.19 As demand for fish increased, on the other hand, the ability to meet that demand was due to technology.

Regarding the technology of fish management, early research in New England demonstrated that eggs could be fertilized and raised to fry in captivity and released into natural waters.20 Fish represented the first species readily propagated by sportsmen for their own welfare and pursuit of happiness. In this
vein, the Montana State Fish Commission began a program that would occupy it and its descendent, the Montana State Game and Fish Commission, as a major endeavor into the late 1920s.

If the significance of the first state fish hatchery, located in Anaconda, home of fish commission chairman E.P. Mathewson, could be measured by budget, additional evidence need not be submitted. It amounted to almost $10,000.21

E.P. Mathewson and State Game Warden Scott were joined by George E. Doll to form the first fish commission. Before the close of 1907, Anaconda housed the state's first state-owned fish hatchery (there was a federal hatchery at Bozeman prior to 1907). By November of 1909, hatchery director, C.F. Healea reported that grayling, one of the most prized sports fish of the day, had been transplanted in Georgetown Lake in April and "are being taken on a fly as much as eleven inches long [sic]."22

The 1909 Legislative Assembly passed seven laws relating to the fish commission and wildlife management. Four laws related to administrative aspects of the department and the other three laws concerned the state fish hatchery.23

The legislative actions, in 1909, revealed the intent for wildlife management for the approaching biennium. Largely their purpose pointed to refining current statutes, increasing revenue through licensing and providing
adequate funding for the state fish hatchery. The fish commission's biennial report revealed another perspective—the application and results of legislative intent. Henry Avare wrote the report in 1910. Avare, appointed in January of 1909, had the distinction of becoming the second Montana State Game and Fish Warden. He had served as a deputy warden under W. F. Scott.

Though little information is known about Avare's predecessor, what can be gleaned from the biennial reports presents a reader with the image of a person in command and a person with political savvy. Not only had W. F. Scott organized the department from the floor up, but he had garnered the distinction of becoming the first president of the Western Wildlife Managers Association. Knowing only a little of Scott's credentials and recalling the tragic confrontation in 1908 between Indians from the Salish/Kootenai Reservation and game warden Charles B. Peyton, resulting in Peyton's death, it is difficult not to contemplate the type of political atmosphere Avare inherited from Scott. After three voluminous biennial reports from Scott in 1902, 1904, and 1906 none appeared in 1908. Peyton's death occurred after the 1907 legislative session and Avare became the new warden in the first month of the 1909 session.

In the 1910 Biennial Report from the fish commission to the governor, Henry Avare, after almost two years in office began this way:
The last report of this department was compiled by Hon. W. F. Scott, State Game and Fish Warden, the years 1905-06. In January, 1909, I was appointed as the head of this department and it is upon the conditions of the game of Montana and the laws governing the same during the years 1909-10 that this report will touch.²⁶

Having left the past behind and establishing his parameters, Warden Avare began what was rapidly becoming a regular feature of each biennial report, the testimonial, witnessing the growing sentiment in favor of wildlife protection and the support for wildlife laws enforcement. This was followed by a second "regular" in biennial report topics, the unparalleled hunting opportunities in Montana.²⁷

In addition, Avare noted that the department now retained fifteen deputies for the twenty-eight counties and of these only one had left his position. Contrary to national patterns, turn-over of game wardens in Montana remained low.²⁸ Also, as was mandated by the legislature, Avare made a variety of recommendations to the state assembly that would increase the quality of wildlife protection. These recommendations encompassed such areas as the hiring of special deputies and increasing deputies' travel expenses. To facilitate enforcement, he suggested the licensing of all males over the age of 14, establishing a March 31 expiration date on all licenses and stricter regulations on trappers and grouse hunters. Further recommendations included appropriations for feeding the Montana portion of the Yellowstone elk herd and a two bucks only deer limit. Finally, he challenged the mining and ranching
interests in the state by recommending that mines be required to keep cyanide out of fish streams and that paddle wheels and screens be used in irrigation ditches and headgates.  

Before closing these comments on wildlife protection in Montana between 1907 and 1910, one final item deserves notice. In 1909 the joint assembly voted to employ Mrs. Charles B. Peyton as a deputy game warden.

Legislation pertaining to fish and game in 1911 projected the biennial need to adjust the particulars within the department. These adjustments included enlarging the fish commission to five members, still appointed by the governor with the same system of staggered terms providing gradual change in membership. This expanded commission established a second state fish hatchery, this time, in Flathead County. Somers became the eventual site selection. Funds, as before, came from the Fish and Game Fund.

Other actions included several of Warden Avare's recommendations. The appointment of a chief deputy warden gained legislative approval as did Avare's suggestion that the use of special deputies be permitted and the hiring of an additional clerk be approved. The state game and fish warden would regulate the employment of the new deputy state warden.

Additional action on Avare's recommendations included legislation regarding stream pollution. However, the source of pollution addressed was sawdust rather than cyanide of potassium. Although Avare's concern regarding
stream pollution received attention in at least one area addressed by him, his comments concerning irrigation ditches found themselves pigeonholed for another biennium.

This legislature closed its fish and game business by creating a game preserve in Park County and a new position entitled Clerk of the Montana State Fish Commission and Clerk to the Director of the State Fish Hatchery. This position went to Mrs. Charles B. Peyton for a term of four years. Closing with the two year appropriation to the Anaconda fish hatchery, the 12th Legislative Assembly of Montana enhanced wildlife protection as best they could technically and politically for another biennium. 34

The legislative action of 1913 concerning wildlife management presents itself in a cloud of confusing and conflicting administrative factors. These items may, upon inspection be insignificant, but none-the-less pose a barrier to establishing an accurate portrait of wildlife management's administrative structure in 1913. Since commission minutes do not exist before 1915, the major source of information for the years 1913 and 1914 emanates from the assembly's journals, the Montana Laws, and the biennial reports. From this, one must understand the development spawned by the Thirteenth Assembly.

At issue loomed the intent of the Thirteenth Legislative Assembly regarding the continued existence of the Montana State Fish Commission. Below is the exact wording of Chapter 79 of the Montana Laws. The title of
Chapter 79, which runs almost two pages in length, includes the wording "An Act to Provide for the Protection of Fish and Game in the State of Montana...Creating the Montana Fish Commission and Granting Powers to said Commission for the propagation and protection of Fish and Game..." What appears to be a very clear intent blurred as the appropriate section of the bill developed. Basically what Section 19 of Chapter 79 stated is that all the acts of 1907 and 1911 creating the fish commission and describing its duties be reenacted in 1913. Then in the final sentence of Section 19 it calls the commission the Montana Game and Fish Commission.

Because the act goes on to describe the duties and powers of the "said Commission" it is difficult to determine which commission is intended. The most logical conclusion permitted is that the same group of men acted as both "Fish" and "Game and Fish" Commission from 1913 to 1921. Other legislation in 1913 included bills that attempted to adjust hunting seasons, bag limits, and licensing to balance the increasing man hours of hunting and fishing against the decreasing numbers of game animals and fish.

Reinforcing the idea of the logic and acceptability of the transition of 1913, the fish and game legislation during the Fourteenth Assembly, 1915, contained entirely routine areas of action and housekeeping. Three bills dealt with establishing the elk, general hunting, and deer seasons. A bill passed amending Section 1978 of the Revised Codes of 1913 giving control of lakes
and ponds on state lands to the State Game and Fish Commission. Another bill increased the penalty for using explosives or poisons to take fish. The Snow Creek Game Preserve was enlarged. The bills mentioned here reflect the continuation of issues discussed during previous legislative sessions. There existed only three other bills that year. (For more details see Appendix B.)

Of more significance in 1915 was the commencement of the Game and Fish Commission minutes. The first meeting, recorded thusly, convened in Helena, in Warden J. L. DeHart's office on April 28. Listed as present were J. L. DeHart, E. P. Mathewson, chairman, M. D. Baldwin, and W. M. Bickford. All the business conducted that day regarded the topic of fish. (This continued to be the major topic at each commission meeting for almost a decade.) The specific topics and actions included a motion to encourage farmers and ranchers to establish their own private fish ponds and another motion to make all hatchery employees honorary deputy wardens.

Another meeting held May 12 produced a warning to a cyanide plant near Georgetown concerning tailings in Flint Creek. In a third meeting held on June 12, the commission moved to expand the hatchery at Anaconda, discussed the railroad car used for fish fry distribution and the provision of a fish and game exhibit at the State Fair.

An August meeting produced a fifth commission member, Nelson Story, Jr. At that meeting the commission determined that in the future all fish fry
must go to sportsmen's clubs and not individuals. Also, at that meeting the commission directed a letter to the Secretary of the Interior regarding the licensing of fishermen in Glacier Park... "setting forth the views of the Commission to the effect that hunting and fishing should be carried on under the laws of the state."^42

An October meeting adjourned the first year of commission minutes with recognition to the railroads for their assistance in the distribution of fish fry. Also considered was the Northern Pacific Railway's request for fish to be mounted for one of their exhibits.^43

At this juncture, the territory and state of Montana had been in the business of legislating wildlife protection, mainly fish, since 1865, the department of game and fish had been in existence since 1901 and the Western Montana Angler's Association, since 1910. Without the insights available from a biennial report for 1915 and 1916, an opportune time presents itself to examine the relationship between segments of Montana's citizenry with the department, commission, and state wildlife management in general.

Excerpts from newspapers offer a glimpse of the public's information and input regarding wildlife management. In 1916, headlines in the Great Falls Tribune sought public attention: commission recommendations to legislature "Would Double Hunting Fee." Besides, continued the article, in as much as women have the vote, "these Dianas" should also be required to take out a
license. The increased hunting license fee from one dollar to two, meant more money for the propagation of game, elk distribution and enlargement of hatcheries. Also in this article, citizens of Montana learned of the commission's request to the legislature for the power to fix seasons. With this and similar articles, Montanans read, early in 1916, of the gathering currents of change that 1917 would produce in wildlife management within the state.44

Meanwhile, with Thomas N. Marlow re-elected as president, the Western Montana Anglers' Association maintained a steady stream of correspondence with J. L. DeHart, State Game and Fish Warden. This association was just one of dozens of similar groups in the state. Although the bulk of this correspondence dealt with fish regulations and distribution of fish fry, which was one of the club's major service projects, on two different occasions in 1916 the club and the state warden conferred on other issues. The contents of the correspondence demonstrated a major concern. In a letter from Warden DeHart in May, 1916 the Association obtained the details surrounding the poaching of 300 elk in Yellowstone Park. The Association responded to DeHart on June 6, 1916:

Resolved: That the Western Montana Anglers' Association heartily endorses the energetic steps taken by the State Game Warden to punish the perpetrators of the crime committed in killing three hundred elk out of season.45
A month later Warden DeHart again wrote to the local sportsmen's clubs, this time, to request that each group write in protest to a proposed amendment to the Migratory Bird Act allowing spring shooting in Illinois, Iowa, Kansas, Nebraska, and Missouri. Delivered to the post the next day, a letter from the Western Montana Anglers' Association stated to the Bureau of Biological Survey that such an amendment represented a:

Violation of the spirit and object of the Weeks-McLean Bill under which act your Department obtained control of our migratory birds," further stating, "spring shooting is a barbarous practice, justly condemned by all decent people. Other correspondence illustrating the close communications between sportsmen's clubs and the department/commission included the topic of stream pollution near Henderson, Montana and an invitation to the annual State Sportsmen's Association's meeting.

An additional element that had fully evolved by 1915-1916 was the Montana Sportsmen's Association, more commonly referred to as the State Sportsmen's Association. Each year sportsmen club representatives received invitations to an annual meeting, of the State Sportsmen's Association, held, 1915, in Lewistown, Montana. References to this state association occur frequently in the game and fish commission minutes after 1915.
Although commission meetings for 1916 reinforced the continued interest in fish culture, several other topics related to wildlife management demanded commission attention as well. The commission members, E.P. Mathewson, chairman, W.M. Bickford, M. D. Baldwin and Nelson Story, Jr. and state game and fish warden, J.L. DeHart reviewed an agenda that asked them to consider taking over two ranches at the north end of Yellowstone Park, near Gardiner, Montana as a state game preserve. They also reviewed the size and condition of the Yellowstone elk herd.

The 1916 game and fish commission ended the year regretfully accepting the resignation of Chairman Mathewson. Mr. J. L. Kelly of Anaconda became the commission’s newest member and the new chairman in December 1916. Thus, several political components of wildlife management poised ready for the 1917 legislative session and the state game warden commanded a major role as a communications link between these components.

Fully nine months prior to the convening of the assembly, State Warden DeHart briefed the commission on the upcoming annual State Sportsmen’s Association meeting in Deer Lodge, during which he would urge cooperation and certain changes in game laws. The next day the Great Falls Tribune carried the article discussed earlier concerning increased license fees.

As the Fifteenth Assembly convened the Western Montana Anglers’ Association readied their position. In a letter to all Missoula County legislators,
dated February 3, 1917 the Association resolved to do all in their power to secure the enactment of all the proposed bills effecting fish and game, now before the legislature. The resolution included two amendments apparently not in the general bill. One requested the killing of deer of either sex during the open season and the lengthening of the open season on bear. They fully supported the one dollar for hunting and one dollar for fishing license fee.51

Thus, what the anticipation and preliminary planning did not foretell of the coming legislative plans for wildlife management, the title of the general game and fish bill accomplished. After nine years of hatchery construction, distribution of fry through local sportsmen's clubs, and growth of enforcement personnel and procedures, Senate Bill 142 emerged as:

An Act to Establish and Create a General Fish and Game Law for the State of Montana; to Codify and Arrange All of Said Laws now in Force Relating to Fish and Game Which are not Repealed or amended Hereby and Re-enacting Such Laws as are not in Conflict Herewith....52

It seems logical that a total review of all fish and game laws was the assembly's objective. This review produced a multifaceted law involving pages of increased detailed procedures by which to administer justly the letter of the law regarding wildlife propagation, promulgation, and protection. The entire title itself covers over a page and a half in the 1917 Montana Laws book.
The license fee for hunting and fishing did increase, but, true to the art of compromise, the increase totaled one dollar and fifty cents, not the requested two dollars. The "Dianas" paid one dollar and fifty cents as well, once over the age of eighteen.\textsuperscript{53}

Game bird management had garnered additional spotlights with each biennium. In 1917 this momentum continued with the designation of one third of all resident license fees for the "propagation of game birds and animals in the State of Montana."\textsuperscript{54} The emphasis also manifested itself in the form of shipping records of all game birds for hunters, merchants, restaurant keepers, and of course the department. Shipping permits for game animals or parts cost fifty cents.

Two sections of Senate Bill 142 dealt with the game and fish commission's administrative responsibilities. The first incorporated the commission into the process of hiring deputy wardens, a duty that had formerly fallen entirely to the state warden.\textsuperscript{55} The other aspect of commission duties received review in Sections 8-18 of SB 142 (Chapter 173 of the Montana Laws). It is here that the question of the existence of a fish commission and game and fish commission again appears. In these sections, one reckons with the continued existence of a fish commission for which there seemed to be no names, no minutes, and no publications, only references to its duties within the
written statutes, and the occasional job-well-done letters printed in the biennial reports.²⁶

The broader perspective of the general game and fish legislation emerged from the correspondence between the W.M.A.A., Warden DeHart, and J. L. Brower, a senator from western Montana. There appeared much more to address than the reorganization of the commission.

In a letter addressed to Mr. M.R. Hanlenbough (Hardenburgh), W.M.A.A.'s secretary, Senator Brower stated that his concern with game and fish management dealt with department personnel funding. His opinion held that too much of the revenue raised by the "State Fish and Game Department" maintained "numerous game wardens, whose main duties have been so far to play sluff...." He stated that he would support the increase in license fees only if this additional money meant increased finances for fish hatcheries, game reserves, and the propagation of game birds. Another comment in this February 5th letter called attention to the fact that the Republicans hoped to abolish the office of Deputy Game Warden. Finally Senator Brower commented that in reference to:

The law (meaning the general game and fish bill which is before the Committee on Fish and Game)...[I] will say that it is a mighty good law, and well drawn, and it seems to me it might do considerable amount of good for Montana....farmers of Eastern Montana are opposed to this measure, but we who live in Western
Montana, where the fish and game exist, believe this asset should be protected.

In addition to stating his position on funding, the one antlered deer law, and an extended bear season, Brower clearly established his feelings on the politics related to the game and fish department.

It has been made into a political machine whose main purpose was the creation of positions in various counties for faithful ward healers, whose duties so far have been, not to protect the fish and game of this country, but the maintenance in office of their superiors....

This outspoken position concerning state politics, of which Brower viewed the department as a part of, broadens one's perspective of the department's role in state government, regardless of its accuracy. Other indications of the department's political life were evident, particularly in the continuing clarification of search and seizure procedures, sale of confiscated goods, specific wording on licenses, and redefining resident, alien, and non resident. Such measures occurred not so much for the protection of wildlife, but to assure due process to persons involved in wildlife protection, either as hunter or manager.

But, politics aside, based on the correspondence of the W.M.A.A. and correspondence in the House Journal in 1917, most issues discussed related
directly to hunting and fishing: the hunting license fee, the antlered deer only season, and game preserves. It had become a commonly held opinion in many eastern states, that an antlered deer only season would result in the death of fewer hunters. As Game Warden DeHart explained to the W.M.A.A. in answer to their opposition letter on the topic, if a hunter were required to shoot only antlered bucks, he/she would use more prudence before pulling the trigger.58

In the final days of the 1917 legislative session’s work, the Montana State Fish and Game Commission, as it was now called, found itself adjusting to a variety of new regulations. At the March commission meeting the minutes read:

Owing to the fact that the Governor had yet under consideration the new game laws, there was nothing definite to be done in the line of formulating rules and regulations for the examination of deputy game wardens under civil service [regulations] as provided for in the new bill.59

This revision no doubt eased concerns such as Senator Brower’s over political appointments within the department. In addition to the use of civil service applications and requirements, 1917 marked the commencement of commission’s approval of state fish and game warden’s appointments of chief deputy warden and deputies. But the Republicans lost their bid to remove the position of Chief Deputy Warden.
As the commission's work drew to an end for 1917, the major revamping over, they oversaw other legislative action such as the enactment of regulations regarding game farms owned by private individuals and the installation of five fish wheels, designed to prevent fish from entering irrigation ditches.\textsuperscript{60} The biennial report placed the final perspective on the major legislative activities of the Fifteenth Assembly, 1917.

In the Letter of Transmittal to Governor S. V. Stewart, dated January 1, 1919, the commission reiterated the process by which the State Sportsmen's Association and itself had "framed certain amendments to the previously existing fish and game laws during the 1917 legislative assembly."\textsuperscript{61} Other articles in the biennial report for 1917-18 concerned the status of the "Thymallus," the railroad car used to distribute fish fry, the stocking of fry, the status of game bird production in the state, a review of the federal migratory bird treaty act, the attorney general's opinion of the application of the "The Alien Gun Law," and an article explaining why bears should become game animals. Though most of the pages of the 1917-1918 Biennial Report remained fish oriented, other interspersed articles foretold of the broadening role and responsibility of the fish and game commission and department.

One of the articles entitled "Big Game Season" by D.H. Werforn of Anaconda predicted continued difficulties managing the elk herd of Yellowstone Park. Werforn made reference to Mr. Vernon Bailey's study of the Yellowstone
elk herd which the commission had reviewed early in 1916. Mr. Bailey’s recommendation had been for an October 1 to November 15 hunting season. At the time, the commission had sought the power to fix seasons, but the law permitted only that it recommend hunting seasons. It was the legislature that set the actual dates.

Reviewing this issue of the Yellowstone elk herd and the setting of seasons facilitates one’s understanding of the working relationship between the legislature, commission, and department. In 1917 the state witnessed a major reexamination of all fish and game laws yet the elk season remained the same. According to W.D. Werforn’s article, Dr. H.W. Henshaw, Chief of the Biological Bureau, upon receiving Bailey’s report, wrote the Montana Fish and Game Department “urging the necessity of more stringent regulations.” Yet the question of the elk season does not exist in the commission minutes in 1917, 1918 or 1919. The commission continued knee-deep in the fish business: distribution of fry, fish wheels, and the building of hatcheries.

Approximately twenty-five bills relating to wildlife management entered the fish and game committees of the House and Senate in 1919. Many of these similar topics merged with the opposite chamber’s version, producing a final count of new fish and game laws of seven, including the appropriations bill for hatchery operations and a special permit requested in the 1917-1918 Biennial Report to assist taxidermists with the restrictive selling of game birds and game
bird parts. The W.M.A.A.'s (now known as the Western Montana Fish and Game Association) only comment for the Sixteenth Assembly concerned the length of the deer season. These events reflect the possibility that, in terms of the public's view of wildlife management, much had been resolved in 1917.

But the reorganization of 1917 apparently had not settled the question of political influence within the commission or the department. During the Sixteenth Assembly, bills appeared that would transfer fish and game law enforcement to the sheriff's department, doing away with game wardens altogether, and another bill would have required all deputies including the state warden to be chosen by the commission.

In a three page letter to Representative I.M. Brandjack, the Western Montana Fish and Game Association (W.M.F.G.A.) voiced clearly their opposition to the 1919 proposal that county sheriff's departments become the law enforcement for the department. They did, however, endorse the idea of a non-partisan commission "who will employ all necessary game wardens after they have passed an examination..." Brandjack's reply elaborated also on the political atmosphere in Helena, referring to the power of the Republicans, just as Brower had in his letter in 1917. Brandjack wrote to the W.M.F.G.A. in February of 1919,
I am in full accord with all you say; but what can a poor, innocent Democrat do in this Republican legislature. Your Republican friends got it into their heads that the present Game Warden and his Deputies constituted a political machine which should be smashed....

Another political topic included a movement to place the Fish and Game Fund in the State's general fund. But legislation to that effect never surfaced in 1919.

There was one seemingly apolitical outcome of the 1919 Legislative Assembly regarding wildlife management which would surface and shape future events. This legislation included a redefining of the Gallatin Game Preserve boundaries, a longer elk season and a late season permit for certain areas of Park and Gallatin County.

Reflecting on the political tides drifting around during 1919 and reviewing the final legislative outcome of those currents sets the stage for the watershed year that 1921 proved to be. The Seventeenth Legislative Assembly convened in January of 1921. Montana had a new governor, Joseph M. Dixon, a Republican, described as progressive and moderate. Soon thereafter Montana would claim its first new state game and fish warden in more than a decade. Although the exact relationship between these changes and the reorganization that occurred regarding fish and game management is difficult to ascertain, it would be safe to say, they did not achieve fruition in a vacuum.
Enough evidence exists to support the fact that legislative action of 1921 resulted from a growing wave of criticism and recognized need for revision.\textsuperscript{72}

The revisions sought and, to a large extent, achieved in 1917 concerned game and fish management; for example, seasons, limits, closed areas, more specific regulations, and higher fees and fines. The revisions of 1921 reflected administrative reform, in particular the delegation of the power of decision making.

On January 12, 1921, Governor Dixon received the \textit{1919-1920 Biennial Report} from State Game and Fish Warden J. L. DeHart, Secretary of the Montana Game and Fish Commission. In a brief summary of the biennium, 1919-1921, Warden DeHart discussed the commission’s continued difficulty in purchasing a railroad car for fry distribution. The letter expressed appreciation for Governor Dixon’s attitude relative to fish and game laws, specifically mentioning the Governor’s plan to “place the work of the department in the hands of the Commission.”\textsuperscript{73} Although the most efficient view of 1921 is through a synopsis of the \textit{1921 Revised Codes of Montana}, a review of the House and Senate Journals provides additional insight as to the general public’s opinion of the major reorganization in 1921 of the wildlife’s management triangle. As a result of the concern for the care of Montana’s Yellowstone elk herd, one proposal was an extension of the Park’s northern boundary in the form of game preserves. Proposals to purchase ranches to use for winter range, the
feeding of the herd through the winter, and the transplanting of as many as a thousand head of elk to the Bison Range near Dixon were all elements of the proposed solutions.

For whatever reason 1921 proved the year Park County farmers and ranchers had heard enough. Among all the heat over commission powers vs executive/legislative, these people, whose correspondence became part of the House Journal had one primary concern. That concern focused on the loss of their land to game preserves.

One of the largest attended meetings of the stock growers and farmers ever held in Park County was held yesterday in connection with substitute House Bill No. 13...They opposed the granting of power to set aside large game preserves in connection with the government, also the power to put screens etc., in irrigation ditches with provision for maintenance and cleaning the same.  

Correspondence from the farmers and ranchers of Park County represents the probable cause for the wording in the law that read:

No refuge, preserve or sanctuary shall be set aside or created by the Commission except that the same be petitioned for by 75% of the actual property owners to be included....
It also stated that the commission must consist of one farmer, one stockman, and one sportsman. A revised Senate version of House Bill No. 13, received approval just before midnight on March 3, 1921.

Approximately twelve bills received consideration in 1921. One of those represented the usual licensing review, another the protection of bears, two involved the building and appropriations of the fish hatcheries, and four involved the creation of game preserves. The hours of legislative discussion regarding wildlife management revisions most likely revolved around who would make these decisions in the future, not what these decisions would be.

These revisions began with the Governor. He must now be content to appoint a five member commission in accordance with the contradictory directive: "without regard for political affiliation...and not more than three of said members shall belong to the same political party." This commission would in turn appoint the state fish and game warden and the deputy wardens, of which there would be eight. The state fish and game warden's and the deputy wardens' tenure existed at the pleasure of the commission.

The duties and powers of the commission encompassed every conceivable category, most of which had been legislative responsibility. In the housecleaning, the power of the state fish and game warden, as he would now be called, diminished with the legislature's while the commission's power rose to amazing heights.
Specific powers granted the commission responsibility over the importation of game birds and animals, the acquisition of lands for establishing game farms and the distribution of imported game. The commission received specific instructions to use fish and game funds to introduce and propagate wild waterfowl foods. The commission was to supervise the construction and installation of fish ladders and fish screens. Authority to locate and build rearing ponds for fish fry became a commission responsibility. Reading further, one finds the commission's power and duty to divide the state into fish and game districts... "to declare closed seasons for hunting or fishing in any of said specified districts, and later to open said closed districts." Included also was the right to close fishing water when necessary. As stated earlier, the commission received the authority to establish game preserves, although at first only with permission of affected landowners.  

Finally the general powers of the commission included the creation of resting grounds for migratory birds, the establishment of an educational and biological department, and the responsibility to see that the commission secretary post notifications of hearings in a specific manner. (For additional details see Appendix E.)

No doubt the commission had to wait until the end of the legislative session of 1921 before flexing its new muscle. But, at the commission's second meeting of the year, on April 20, 1921, the transition had taken place. C.A.
Jakways attended as the state's new fish and game warden and commission secretary. For the first time all legislation referring to wildlife management, officers, commission and department appears with the title "Fish and Game," though one might still observe a typographical slip back in time, now and then. The commissioners wasted no time fulfilling the obligations imparted to them by the legislature. Enlarging on Section 3663 of the 1921 Revised Codes that named all sheriffs, constables, peace officers, and state forest officers ex-officio deputy state fish and game wardens, the new fish and game commission moved that all United States Forest Rangers, most other forestry personnel and state fire wardens become ex-officio state deputy fish and game wardens. They scheduled a meeting with Robert E. Bateman concerning state and federal cooperation regarding predatory animals. Morton J. Elrod of Missoula received an assignment to survey lakes in western Montana to ascertain the kind of vegetation that could be planted in those areas to encourage more visitations of migratory birds. The meeting continued for two days. The topics listed above are only a few out of dozens of actions considered and pursued.

The letter of transmittal of the 1921-22 Biennial Report of the Montana Fish and Game Commission contained a new signature as J.L. DeHart was no longer the state game warden. The reasons are unknown, but intriguing. Certainly he had vocalized his firm, unflattering opinion of the value of the legislature's role in wildlife management, but so had the commission. The
administration was still Republican, but of a different type than in the past. The chairman of the commission was no longer from Anaconda. The power and responsibility of the state game warden had changed. For whatever the reason, J. L. DeHart departed. The commission now consisted of five members not including the state fish and game warden. One aspect remained the same, the biennial report retained its standard format of news and information on wildlife management and of the abundant hunting opportunities still present in Montana.

State Warden Jakways recognized the transitions since 1921 as follows:

The Fish and Game Department, as at present constitutes, was placed under the administration of the writer by your body on April 17, 1921. Acting under your instructions, I have proceeded with the work and desire to submit the following report...

This letter, while formerly addressed to the governor, was now addressed to the fish and game commission. Events recorded in the warden's letter which best reflect the new course of the department included a cooperative agreement reached with the United States Bureau of Biological Survey--a fee of twenty-five cents from each license had been set aside to fund the destruction of predatory animals. Other sources of funds for the department included interest on a loan to the General Fund and a new beaver tagging program. Rearing ponds permitting the distribution of larger fish and the addition of five new
subsidiary hatcheries decreasing the cost and complications of fish planting capped the final segment of the new state fish and game warden's report.

Other articles in this comparatively short report included an entry by Chairman Marlow on the importation and planting of game birds within Montana. W.M. Bickford wrote on the merits of a closed fishing season. J.H. Brunson, Superintendent of Hatcheries, commented on projects in Flathead County and wrote his opinion on the propriety of the department supplying fish eggs to private hatcheries.

The final article in the 1921-1922 Biennium Report was by M. S. Carpenter, head of the Educational and Biological branch of the fish and game department. A major responsibility for this division of the department derived from its contact with local sportsmen's clubs from around the state. Carpenter's assessment of the sportsmen's clubs recognized them as a source of "healthy sentiment favorable to the progressive programs of the Commission." As in the past, the 1921-1922 Biennial Report closed with statistics on income, expenses, arrests, and fish distribution.

One means of evaluating the results of legislative action comes from observing its fate during the following legislative sessions. The legislature, in 1923, chose to add to the commission's powers the "power to discharge any appointee or employee of such commission for or without cause at any time." Although changes in the commission's power between 1921 and 1925 appear to
be clarifications of the laws, with the intent of the law to remain the same, there exists a few exceptions. In addition to the commission powers summarized above, the wording "fur-bearing animals and "trapping" became an addition to all sections that referred to animals under the control of the commission and activities under the same. Deleted in 1925, the right of seventy-five percent of residents affected by proposed game preserve to petition its merit. The new wording simply read:

Such refuges shall be established by order of the commission upon the petition and proper showing that such action is, in judgement of the fish and game commission, necessary and in the best interest of the wildlife within that area, to be included within such refuge.83

The detailed wording of commission responsibility for the maintenance of fish screens disappeared by 1927. With these statutes and their interpretations in place the 1923-24 Biennial Report further indicated the direction of wildlife management into the 1940s and beyond.

Warden Jakways, Chairman Marlow, District Forester Morrell, Former Commissioner Bickford, and Education Secretary Carpenter addressed these topics in the 1923-24 Biennial Report: The demands on wildlife management brought about by the automobile and the need to produce more fish and game to meet these demands, the need for scientific management, the improved management created by the reorganization of 1921, the importance of predator
eradication, and the importance of education of the public through an education division working closely with state’s sportsmen’s clubs. These concerns mirrored not only the status of wildlife management in Montana but in many parts of the United States as well.

Wildlife laws have evolved in order to facilitate a sustained periodic harvest of wildlife, to control the use of weapons involved in hunting, to favor certain groups of people, and to protect the rights of animals. In the early biennial reports of Montana’s fish and game commission one often read comments decrying the waste and greed in the harvesting of wildlife. “The supply seemed so plentiful no one dreamed it would even diminish, let alone disappear.” Yet as the population increased the role of man as a “natural predator of wildlife” became significant.

Because of the American government’s largely English roots, the exploration of the United States’ wildlife law can be pursued best in English history. For perfectly sound wildlife management reasons, hunting in the British Isles had been a privilege of noble class. But however valid the justification, in the minds of disembarking colonists, most of whom were not of the privileged hunting class, it created a bitter taste for wildlife protection. Colonists arrived in America expecting to live off the land.

This expectation of carving one’s home out of the wilderness, as well as the desires for an egalitarian society, received reinforcement from the land itself.
America's expansive abundance and the rigors of survival in the wilderness further promoted the attitude of free-taking.88

For these reasons, the needs of landowners and the need to restrict the kill of certain species due to declining numbers, although arising early in American colonial history, received few satisfactory remedies until industrialization of the nineteenth century. With industrialization came the recognized value of hunting as a pleasurable pursuit, over its economic value.89 Not until this recognition emerged did the necessity to secure a sustained yield begin to outweigh the colonial recognition of rights of the common man.90 It was then that wildlife management, to achieve a sustained yield, pursued limited harvest, habitat improvement, and artificial stocking.91 Ironically, the means to accomplish these preliminary goals of wildlife management incorporated English wildlife law.92

Clearly, all of these policies became part of American and Montana wildlife management. The doctrine of free-taking and landowner prerogative to hunting rights, though admirable democratic policies for wildlife harvest, proved a failure for wildlife preservation. The question of the justification of hunting restrictions for the purpose of sustained yield versus free-taking viewed by most as a constitutional right found its answer slowly. But evolve it did. In 1877, a court case in Virginia helped establish hunting as a privilege rather than a right. Similar events and growth of these attitudes provided the backdrop for the
emergence of the first fish and game protection departments in the United States.  

Although the momentum for fish and game management grew throughout the nineteenth century, the early attitudes of free-taking, now often referred to as a frontier philosophy, permeated user attitudes and continue to the present. In addition to the conflicts created by our early colonial history, the concept of states' rights, the question of just what constitutes good management (in the face of inadequate scientific evidence), and the formidable politics of the times, presented wildlife management a significant challenge. Perhaps for some of these reasons early wildlife management consisted largely of the collection of funds through licensing and law enforcement, both to an inadequate degree.

State regulation of wildlife began in other parts of the United States early in the nineteenth century especially in the northeast. The need for regulation caused by a variety of factors evolved as a result of scarcity promoted by the loss of habitat. Pockets of scarcity in New England existed as early as the seventeenth century, as colonial destruction of the native's mosaic of habitats led to the same scenario of scarcity left behind in Europe. Unfortunately, in the midst of this growth of state legislation for wildlife management and national support in the form of sportsmen's magazines and associations most wildlife populations continued to decline.
The early state game and fish boards, fish commissioners, and game wardens faced similar dilemmas. First and foremost they threatened a basic principle of American democracy, the inalienable right of free-taking. These issues pitted farmer/stockman against sportsman.99

State wildlife agencies often resulted as an outgrowth of citizen sportsmen's organizations. Club officers often became game and fish commissioners, this was true of Thomas N. Marlow.100 Or these game agencies became expansions of previously existing fish commissions. The state wildlife agency, whether in the form of a board and state warden, a single state commissioner, or an appointed commission, usually exhibited "feeble" efforts with minute appropriations and power. In nearly all states the personnel turnover was frequent, the spoils system prevailed, and wardens had to be careful who they arrested. Fish hatcheries and game farms represented prizes for districts supporting the powers that be.101

In spite of these formidable obstacles, and because of the continuing decline in wildlife numbers, agencies grew in size and effectiveness. Scarcity played a major role, for it forced the reexamination of America's wildlife legacy. In addition scarcity, caused by and coupled with, urbanization created the "Sportsman."102

Most historians of wildlife management grant more than passing mention of the role of the sportsman in the development of modern wildlife agencies.103

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These sportsmen, most often members of the urban elite, had the financial means of traveling to hunting areas. Beyond their financial status developed a set of ethics that held in contempt market hunting, pot hunters, and meat hunter.\textsuperscript{104} The sportsman prided himself in the fact that hunting represented a recreational pursuit, though one essential to maintain a legacy for one's children and to uphold the honor and dignity of the nation.\textsuperscript{105} No sooner had these largely Eastern elite sportsmen's groups recognized this moral obligation to maintain hunting in America than they realized the increasing scarcity of the object of their hunt, the game. The sportsman provided the political, financial, and philosophical foundations needed to reinforce early wildlife management programs.\textsuperscript{106} One needs only to review the contents of the biennial reports to be reminded of the role of the sportsmen's associations in Montana's wildlife management program.

Thus, as the killing of game became a privilege and as the increasing limits and restrictions eventually received recognition as a benefit to all, most states ushered in government entities prepared well enough to manage the remaining wildlife during the 1920s. But nonpolitical commissions and departments, laws and larger numbers of enforcement personnel alone did not account for the gradual turn around in declining wildlife numbers. Not only had wildlife protection received enormous political clout from sportsman by the
1920s, it also benefited from the Progressive Era's faith in the scientific method, in a scientific solution for dilemmas.

It remained for the financially desolate '30s to apply modern science, largely through federal funds, to establish additional wildlife habitat, and habitat improvement. Soil conservation and improved methods of farming often proved beneficial to wildlife as well as agriculture. The 1930s also witnessed the arrival of a federal funding program for wildlife management. The Pittman-Robinson Act established a fund by taxing firearms and ammunition to be used in each state for the development of wildlife habitat. It also required that each state create an enabling act that prevented the diversion of state wildlife funds for purposes other than state wildlife management programs. Finally, in the 1930s the ground work occurred providing the desperately needed scientific data on which to base wildlife management decisions. The establishment of wildlife units at land grant colleges, like the one started in 1933 at the University of Wisconsin, completed the list of elements necessary for a total wildlife management program.107

Following these major wildlife management events of the 1930s, less than a decade passed before Montana's department of fish and game would boast of its reorganization of 1941 as the beginning of its modern wildlife management program.108 This reorganization occurred in conjunction with the hiring of Montana's first wildlife biologist and big game manager and the initiation of the
Pittman-Robinson funds within the state for wildlife restoration, maintenance and propagation.¹⁰⁹
End Notes

1 The Montana State Game and Fish Department is currently known as the Montana Department of Fish, Wildlife and Parks. Known by other names during its existence, in this paper it will be referred to as "the department."


4 Ibid., 61.

5 The Montana Fish and Game Commission is currently known as the Montana Fish, Wildlife and Parks Commission. Known by other names during its existence, in this paper it will be referred to as "the commission."

6 Montana, State of, The Codes and Statutes of Montana, Annotated (Booth 1895), 405.

7 Ibid., 406.

8 Ibid., 404.


10 H.B. No. 147, Seventh Legislative Session, (18 March 1901), 133. Original wording for the fund is that “all fines collected under the game and fish laws...shall be paid to the treasurer and placed by him in the fish and game fund. As fish and game statutes became more numerous, the list of categories of money to be placed in the fund became more specific. For example in 1903 the fund became the repository for all fines, licenses and other income of the department. S.B. No. 31, Eighth Legislative Session, (28 February 1903), 55.

11 Ibid., 134. When a warden had “good reasons to believe that he would thereby secure evidence of violations of the laws” a person, his equipment and belongings could be searched. Any evidence found would be viewed as prima facie, confiscated, and sold at auction. The fish and game fund received the
proceeds of the sale if the person were found guilty; if innocent, the defendant received the proceeds of the sale. The legislature added that no officer "shall be liable for any damages on account of any search, examination, or seizure for sale.

12Game and Fish Commission, Biennial Reports of the Montana State Game and Fish Warden, 1901-02 (Helena, Montana: State Publishing Co., 1902), 35.

13Ibid.

14"Perpetual" protection of an animal outlawed the killing of that animal until further notice. In the case of the buffalo the protection was indefinite; in the case of other game species the protection was often for a given number of years.

15Annual Report, 1900, 7-10.

16S.B. No. 29, Eighth Legislative Session, (4 March 1903), 123.

17Ibid., 16.

18S.B. No. 135, Tenth Legislative Session, (March 8 1907), 471.


21S.B. No. 135, Tenth Legislative Session, 8 March 1907), 473. The legislatively approved budget for the new hatchery included $6,000 for construction and equipment and $1500 for the director per year, $1,500 for labor and distribution of fry, and $600 for incidental expenses.

22Biennial Report, 1909-10, 22.

23Sub. H.B. No. 24 and 32, Eleventh Legislative Session (4 January 1909), 110; H.B. No. 275, Eleventh Legislative Session (5 March 1909), 118; H.B. No. 204, Eleventh Legislative Session (6 March 1909), 142; Sub. H.B. No. 251, Eleventh Legislative Session (9 March 1909), 186; H.B. No. 108, Eleventh Legislative Session (11 March 1909), 220; H.B. No. 59, Eleventh Legislative
Session (9 March 1909), 356; H.B No. 367, Eleventh Legislative Session (9 March 1909); H.B. No. 367, Eleventh Legislative Session 376;


26Ibid., 6.

27Ibid. (Aware's comments: "No state in the union affords the hunter the diversity of game that Montana does and no state has a more liberal code of game laws, both for local and non-resident hunters." Other references on this theme can be found in the Biennial Report, 1913-14, 17. and the Biennial Report, 1925-26, 11.


29*Biennial Reports*, 1909-10, 6-19.

30HJR No. 13, Eleventh Legislative Session, (10 March 1909), 390. (This action to assist Mrs. Peyton by hiring her to fill her late husband's position as a deputy game warden in the Ovando area was approved by the assembly in 1909. In 1911 the legislature approved of hiring Mrs. Peyton as clerk to the commission and to the director of the state hatcheries. See the H.B. No. 275, Twelfth Legislative Session (6 March 1911), 189; H.B. No. 350 Thirteenth Legislative Session, (10 March 1913), 546.

31S.B. No. 61, Twelfth Legislative Session, (February 11, 1911), 22. The budget allotments: fifteen thousand dollars for construction, ten thousand dollars for 1911 and five thousand dollars for 1912. The fish commission received authorization to raise the salary of the director of the state hatchery from fifteen hundred dollars to eighteen hundred dollars.

32S.B. No. 84, Twelfth Legislative Session (16 February 1911), 46; 127. The legislature also stipulated that the new position be one of the fifteen regular deputy warden positions: "This act shall not increase the number of deputies now by law allowed." meaning fourteen wardens remained for regular fish and game law enforcement and wildlife management responsibilities.
According to this bill any person or business dumping debris from a sawmill into a stream would be fined from fifty to two hundred and fifty dollars.

H.B. No. 275, Twelfth Legislative Session, (6 March 1911), 189.
H.B. No. 88, Twelfth Legislative Session, (11 February 1911), 525.

Chapter 79, Thirteenth Legislative Session, 1913, ( ), 326.

"That the Act approved March 8th, 1907, and amended by an Act approved February 11th, 1911 and the Act approved March 4th, 1911, all of said Act relating to the creation of the Montana State Fish Commission, and prescribing the manner of the appointment of members thereof, and their term of office, be and the same are hereby re-enacted; and that members of said Montana State Fish Commission shall continue in office for the term, or respective terms, for which they were respectively appointed, and until their successors may be appointed as herein provided, and shall hereafter be appointed, hold office and have authority to act, and shall be governed as herein provided.

"Be it Further Enacted that from and after the enactment and approval hereof, said Montana Game and Fish Commission shall consist of the State Game Warden and four members whose terms of office shall be four years to be appointed by the Governor, by and with the approval and advice of the Senate...."

"Ibid. In other words, Section 19 of the Montana Laws, Chapter 79 changed the name of the commission from “fish” to “game and fish” and allowed the old commission members to finish their terms and even to be reappointed according to gubernatorial wishes.

S.B. No. 43, Thirteenth Legislative Session (25 February 1913), 43; S.B. No. 52, Thirteenth Legislative Session (25 February 1913), 45; H.B. No. 78, Thirteenth Legislative Session (28 February 1913), 53; H.B. No. 280, Thirteenth Legislative Session (13 March 1913), 326; S.B. No. 168 Thirteenth Legislative Session (14 March 1913), 429; H.B. No. 240, Thirteenth Legislative Session (15 March 1913), 436; S.B. No. 151 Thirteenth Legislative Session (15 March 1913), 475; H.B. No. 350 Thirteenth Legislative Session (10 March 1913), 546.

H.B. No. 315 Fourteenth Legislative Session (8 March 1915), 235; H.B. No. 262, Fourteenth Legislative Session (10 March 1915), 443.
40 Montana. Game and Fish Commission Minutes (Helena, Montana: Montana Historical Society, 1915-1941), 1, microfilm.

41 Ibid., 9, 15.

42 Ibid., 25.

43 Ibid., 37.

44 *Great Falls Tribune*, 26 March 1916.

45 Western Montana Angler's Association to State Game and Fish Warden J.L. DeHart, 6 June 1916, Association correspondence, unprocessed collection, K. Ross Toole Archives, Mansfield Library, University of Montana.

46 State Game and Fish Warden, J.L. DeHart to the Western Montana Angler's Association, 20 July 1916.

47 Western Montana Angler's Association, 21 July 1916.

48 Ibid., 8 April 1916. Concluding a review of 1916 correspondence from the W.M.A.A., three other topics emerged. Those topics were stream pollution due to sawdust, near Henderson, Montana. As discussed earlier, stream pollution had been a concern since earliest times. Most recently Warden Avare had recommended legislative action in 1910. The 1911 Legislative Assembly had placed a fine of two hundred and fifty dollars for dumping of sawmill debris into streams. Related to this law, the Association reported the occurrence of sawdust dispersal in a stream near Henderson, Montana. Also mentioned in that letter was the fact that this had been brought to the attention of the department earlier with no satisfactory results. In a letter written two days later Warden DeHart responded to the Association's concern stating that he "will see to it personally, if necessary." DeHart, 10 April 1916.

49 Commission Minutes, 53.

50 *Great Falls Tribune*, 26 March 1916.

51 Western Montana Angler's Association, 3 February 1917.

52 SB 142, Fifteenth Legislative Session, (15 March 1917), 466.
(Non-residents now paid for the privilege of hunting in Montana the sum of fifty dollars. Details regarding licensing garnered its share of ink, including the exact wording of the license. Other procedural matters included securing bids for hatchery construction, and the regulations concerning searches, seizures, and confiscations received scrutiny and revision.)

"Ibid., 485.

"Biennial Reports 1917-18, 65; SB 41, Thirteenth Legislative Session, (18 March 1913), 552; HB 138 Fifteenth Legislative Session, (15 February 1915), 78.

Western Montana Angler’s Association, 5 February 1917.

"Ibid., from John L. DeHart, 5 February 1917. The best information that we are able to obtain from the Biological Society, which makes it a point to get correct information relative to such matters is to the effect that in the big game districts and heavily wood territories we are killing in the neighborhood of two hundred and fifty sportsmen per year...” The warden continued, “This is also due to the fact that there is no restraint upon the party thus engaged, but he is permitted in indiscriminately fire high power, long range rifles when in the timber at everything that he sees move, regardless of distance.”

Commission Minutes, 73.

"Ibid., 97.


"Ibid., 53.

"Ibid., 3.

"Ibid., 53.

Western Montana Fish and Game Association (formerly the WMAA), 27 December 1918.

67Western Montana Fish and Game Association, 23 February 1919.

68Ibid., from I. M. Brandjack, 25 February 1919.

69Ibid., 7 January 1919.

70S.B. No. 109, Sixteenth Legislative Session, (6 March 1919), 275; H.B. No. 89, Sixteenth Legislative Session, (13 March 1919), 514.


72Biennial Report, 1919-20, 5; Western Montana Fish and Game Association, 1919-1921.

73Biennial Report, 1919-20, 3. DeHart stated that placing these decisions had been a goal of the present commission for eight years, in order to insure prompt action concerning such issues as the opening and closing of streams, game seasons, and the like.


75Ibid., 447.

76Sub. H.B. No. 13, Seventeenth Legislative Session, (5 March 1921) 355.

77Montana Revised Codes, 1921 (Page 1343), sec. 3653. The origin of the "seventy-five per cent of the property owners" is clear. The origin of the alternative conditions in which no property owners are involved is unclear. But it comes as little surprise that both conditions were eliminated by the legislature in 1925. One conclusion as to the elimination in 1925 is that that stipulation made the creation of game preserves virtually impossible.
“Commission Minutes,” 205.

Biennial Report, 1919-20, 5.

Biennial Report, 1921-22, 5.

Ibid., 22.

Sub S.B. No. 61, Eighteenth Legislative Session (6 March 1923) 205.

Montana Revised Codes, 1923-1927 (Page 429), sec. 3653.

Lund, American Wildlife Law, 4.


Lund, American Wildlife Law, 20-22; Cronon, Changes in the Land, 56.

Lund, American Wildlife Law, 12.

Ibid., 29 and 36.

Ibid., 14.


97 Tober, *Who Owns the Wildlife?*, 100.


99 Ibid., 34; Tober, *Who Owns the Wildlife?*, 125, 144, 252.

100 Western Montana Fish and Game Association, August, 29, 1919.


103 Ibid., 130.


105 *Biennial Report, 1905-06*, 11.


108 Mussehl, Thomas N. and Howell, F.W. (eds.) *Game Management In Montana* (Helena: Montana Fish and Game Department, 1971), 17.

109 *Now You Know...A Collection of Facts and Figures about the Montana Department of Fish, Wildlife and Parks. June, 1992* 35.
APPENDIX A
1901 Fish and Game Laws
An Act to repeal Sections 3100, 3101, 3102, 3103, 3104, 3105, 3106, 3107, 3108, 3109, 3110, 3111, 3112, 3113 and 3114 of the Political Code of the State of Montana, and to provide for the appointment of a state game and fish warden, deputy game and fish wardens and special deputy game and fish wardens and defining their powers and duties and providing for their compensation.

Be It Enacted By The Legislative Assembly Of The State Of Montana:

Section 1. That Sections 3100, 3101, 3102, 3103, 3104, 3105, 3106, 3107, 3108, 3109, 3110, 3111, 3112, 3113, and 3114 of the Political Code of the State of Montana, be and the same are hereby repealed.

Section 2. That the Governor shall immediately after the passage of this act and every four years thereafter, appoint a state game and fish warden; he shall hold his office for a period of four years, or until removal [removed] as hereinafter provided:

Section 3. Said state game and fish warden before entering upon the discharge of his duties shall give a bond to the state of Montana, in the sum of Three thousand ($3,000.00) dollars for the faithful performance of the duties of his office, which bond shall be approved by the Governor and filed in the office of the Secretary of State.

Section 4. The duties of said state game and fish warden shall be to examine into and inquire about any violation of the game and fish laws of this state, and to institute prosecutions for any violation of the law and he is vested throughout the state with all the powers of a sheriff in making arrests and in the prosecution of all offenses against the game and fish laws of the state. He shall have general supervision over all deputy game and fish wardens and all special deputy game and fish wardens hereinafter provided for; and he is hereby authorized to appoint such deputies.

Section 5. That said State game and fish warden may at any time be removed at the will of the Governor and at any time a vacancy for any reason occurs in said office, the Governor of the State of Montana is hereby authorized and directed to make an appointment to fill said vacancy.
Section 6. The compensation of the State game and fish warden shall be at the rate of Eighteen hundred ($1800.00) dollars per annum, payable in monthly payments at the end of each month; he shall be paid for all actual and necessary traveling expenses and other actual and necessary expenses, but in no case shall said expenses be permitted to exceed the rate of Six hundred ($600.00) Dollars per annum.

Section 7. That each of such deputies appointed as aforesaid shall perform the following duties: To examine into and inquire about any violation of the game and fish laws of this State and to institute prosecutions for any violations of said law, and make report at the end of each month to the State game and fish warden of all arrests and prosecutions made by said deputy, and furnish such other information which he may have that will tend to promote the enforcement of the game and fish laws; and he is vested throughout the State with all the powers of a sheriff in making arrests and in the prosecution of all offenses against the game and fish laws of this State.

Section 8. Each State game and fish warden immediately after his appointment and every four years thereafter, is hereby authorized and empowered to appoint not less than five (5) nor more than eight (8) special deputy game and fish wardens, as the needs of the State may require. Their term of office shall be for a period of four years, but any of said special deputy game and fish wardens so appointed by said State game and fish warden, may at any time be removed at the will of said State game and fish warden.

Section 9. That whenever a vacancy occurs by the death or removal of a special deputy game and fish warden, or for any other cause, the State game and fish warden is hereby authorized to fill said vacancy by appointment, if in his judgment it is to the best interests of the State to fill said vacancy.

Section 10. Each of the special deputy game and fish wardens hereby provided for, shall before entering upon the discharge of their duties give a bond to the state of Montana in the sum of One Thousand ($1000.00) Dollars for the faithful performance of the duties of his office, which bond shall be approved by the Governor and filed in the office of the Secretary of State.

Section 11. The duties of said special deputy game and fish wardens shall be to inquire about any violations of the game and fish
laws of the State of Montana and to institute prosecutions for any violation of said law, and report in detail to said State game and fish warden at the end of each month, where they were each day of said month and the inquiries and efforts by them made to enforce the game and fish laws; and each is vested throughout the State with all the powers of a sheriff in making arrests and in the prosecution of all offenses against the game and fish laws of said State.

Section 12. The special deputy game and fish wardens appointed by the State game and fish warden shall receive as compensation for their services, pay at the rate of Twelve Hundred ($1200.00) Dollars per annum, which shall be in full for their services and the expenses incurred in their own districts, the same to be made in monthly payments at the end of each month.

Section 13. The State game and fish warden may divide the State from time to time into such fish districts, as to him may seem best and designate a special deputy game and fish warden to take charge of said district and to perform the duties of special deputy game and fish warden therein. The State game and fish warden may however when he deems it necessary for the better enforcement of the game and fish laws, send any of said special deputies from the district so assigned to them to perform services in another part of the State, and when such special deputy game and fish warden is so sent from his district to perform duties in any other part of the State he shall receive pay for actual and necessary expenses incurred by him while traveling outside of his district in performance of duty under the direction of said State Game and Fish Warden.

Section 14. There is hereby created a fund to be known as the game and fish fund and all fines collected under the game and fish laws of the State of Montana in prosecutions instituted by the State game and fish warden and the special deputy game and fish wardens appointed by him, shall be paid by [to] the State Treasurer and by him placed in the fish and game fund.

Section 15. The Board of County Commissioners of each county at the time of levying the annual tax, must levy a tax of one tenth of a mill (1-10) on the dollar upon the assessed valuation of all property in their respective counties, which must be collected as other taxes upon like property and when so collected must be paid to the State
Treasurer, who must place the same into the fish and game fund which money together with other money placed into the fish and game fund must be used in defraying the salaries and expenses provided for in this Act.

Section 16. The State game and fish warden, the deputy game and fish wardens, and the special deputy game and fish wardens may make complaints and cause proceedings to be commenced against any person for violation of any of the laws for the protection or propagation of game and fish and in such case he shall not be obliged to furnish security for costs. Any of said wardens shall have power to search any person and examine any boat, conveyance, vehicle, fish box, fish basket, game bag, or game coat, or any other receptacle for game or fish when he has good reasons to believe that he will thereby secure evidence of the violation of the law. Any of said wardens shall at any and all times seize and take possession of any and all birds, animals or fish which have been caught, taken or killed at any time, in a manner or for a purpose or had in possession or under control or had been shipped contrary to any laws of the State, and such seizure may be made without a warrant. Any court having jurisdiction of the offense upon receiving proof of probable cause for believing in the concealment of any bird, animal or fish caught, taken, or killed, had in possession, under control, or shipped contrary to any of the laws of this State shall issue a search warrant and cause a search to be made in any place, and to that end may cause any building, enclosure or car to be entered, and any apartment, chest, box, locker, crate, basket, or package to be broken open and the contents thereof examined by the game and fish warden, or any deputy game and fish warden, or any special deputy game and fish warden, or any sheriff, deputy sheriff or constable. All birds, animals or fish seized by any officer, as herein provided shall be sold by said officer at a time and in a manner so as to receive the highest price therefor, and shall issue a certificate to the party purchasing the same certifying that the same was legally obtained and possessed, and any one so acquiring the same within this State shall have the right to deal therewith the same as if he [it] had been killed and was possessed in accordance with the laws of this State, anything herein to the contrary notwithstanding and shall pay the money to the court before whom the person having the same in possession at the time of such seizure shall be prosecuted, and of the person from
whom said birds, animals and fish were taken, is found guilty before said court of any violation of the fish and game laws of this State, said money shall be paid to the State Treasurer, and by him deposited into the fish and game fund, but should it be found that the party from whom the same was taken is not guilty of any violation of the game and fish laws of this State, said money shall be paid to the party from whom said birds, animals or fish were taken. No officer shall be liable for any damages on account of any search, examination, seizure or sale as herein provided for.

Section 17. No warrant shall be issued for the amount to be paid to the State Game and Fish Warden, or any of the special deputy game and fish wardens appointed by him, by the Auditor of the State, until itemized accounts, properly verified, shall be presented by the person to whom the warrant is to be issued or until the same is certified to as correct by the Governor of the State. Upon the presentation of said accounts, duly verified and certified, as above, the State Auditor shall draw a warrant on the fish and game fund on the State Treasurer, in favor of the party or parties entitled thereto, for the amount so certified, and the same shall be paid out of said fund.

Section 18. The State game and fish warden shall make a semiannual report to the Governor of all prosecutions instituted by himself and the different deputies during the six months prior to said report, and shall state in said report any and all information he may have obtained in regard to the condition of game and fish in the State of Montana, together with any information that may aid in protecting the fish and game of said state in the future.

Section 19. It shall be not lawful for any non-resident of this State, who does not pay taxes within this State, to hunt for or kill, or cause to be hunted or killed, deer, rocky mountain goat, moose or elk within this State without first obtaining from the State Game and Fish Warden a hunter's license permitting him to do so. Any such non-resident may procure a hunter's license to hunt or kill such game, during the open season for the same, by making application to the State Game and Fish Warden stating his name, age, place of residence, postoffice address and the color of his hair and eyes and paying to the State Game and Fish Warden the sum of twenty-five dollars. Upon receipt of such application the State Game and Fish Warden shall issue to said appli-
cant a license, bearing the date upon which the same is issued and authorizing the person named therein to use fire-arms in hunting deer, rocky mountain goat moose and elk for the open season of that year, but only at the times and in the manner provided by law that the same may be killed by residents of this State.

Section 20. It shall not be lawful for any non-resident of this State, who does not pay taxes within this State, to hunt for or kill, or to cause to be hunted for or killed, grouse, prairie chicken, fool hen, pheasant, partridge, sage hen, turtle dove, wild goose, wild duck, brant or swan, within this State without first obtaining from the State Game and Fish Warden a hunter's license permitting him to do so. Any such non-resident may procure a hunter's license to hunt or kill such game, during the open season for the same, by making application to the State Game and Fish Warden stating his name, age, place of residence, postoffice address and the color of his hair and eyes and paying to the State Game and Fish Warden the sum of fifteen dollars. Upon receipt of such application the State Game and Fish Warden shall issue to said applicant a license, bearing the date upon which the same is issued and authorizing the person named therein to use fire-arms in hunting grouse, prairie chicken, fool hen, pheasant, partridge, sage hen, turtle dove, wild goose, wild duck, brant and swan for the open season of that year and only at the times and in the manner provided by law that the same may be killed by residents of this State.

Section 21. The license for killing deer, rocky mountain goat, moose and elk shall be in the following form:
LICENSE FOR LARGE GAME.

Office of The State Game and Fish Warden, __________, State of Montana.

I, __________, the State Game and Fish Warden, do hereby certify that __________ has filed with me an application for a hunter's license stating that he resides at __________, and his postoffice address is __________, his age is __________ years, the color of his hair is __________ and the color of his eyes are __________.

I further certify that he has paid to me the sum of twenty-five ($25.00) Dollars for this license and is authorized to hunt for and kill with firearms deer, rocky mountain goat, moose and elk, during the open season for this year but only at the times and in the manner provided by law that the same may be killed by residents of this State __________.

Dated __________, 190—.

________________________________________

State Game and Fish Warden.

Section 22. The license for killing grouse, prairie chicken, fool hen, pheasant, partridge, sage hen, turtle dove, wild goose, wild duck, brant, or swan shall be in the following form:

LICENSE FOR SMALL GAME.

Office of The State Game and Fish Warden—__________, State of Montana.

I, __________, the State Game and Fish Warden, do hereby certify that __________, has filed with me an application for a hunter's license, stating that he resides at __________, and his postoffice address is __________, his age is __________ years, the color of his hair is __________ and the color of his eyes is __________.

I further certify that he has paid to me the sum of fifteen ($15.00) dollars for this license and is authorized to hunt for and kill with firearms grouse, prairie chicken, fool hen, pheasant, partridge, sage hen, turtle dove, wild goose, wild duck, brant or swan during the open sea-
son for this year but only at the times and in the manner provided by law that the same may be killed by residents of this State.

Dated __________, 190-.


State Game and Fish Warden.

Section 23. The State Game and Fish Warden shall have said licenses printed in book form, those for large game and those for small game in [a] different book, with stubs; and the stubs and licenses shall be consecutively numbered and upon said stubs shall be kept a complete record of all licenses issued. The stub corresponding with the license shall contain the number of said license, date of issuance, to whom issued, residence, postoffice address, age, color of hair, color of eyes and the amount received, and whether issued for killing birds or animals; which record shall remain in his office and be open to the inspection of the public at all times.

Section 24. All money received by the State Game and Fish Warden for the foregoing licenses shall be paid by him to the State Treasurer and by him placed to the credit of the Fish and Game Fund.

Section 25. All Acts and parts of Acts in conflict herewith are hereby repealed.

Section 26. This Act shall be in force and effect from and after its
APPENDIX B
Additional Fish and Game Legislation

1901

Moose, buffalo, caribou, quail, Chinese pheasant, mountain sheep, antelope, and beaver received perpetual protection.

Big game season extended from: September 1st through November 1st for elk (limit two bulls). September 1st to January 1st for deer and Rocky Mountain goats, limit of six each.

Penalties included six months to two years in jail and/or a fifty to five hundred dollar fine for elk violations and three months to one year and/or one hundred to five hundred dollar fine for deer or Rocky Mountain goat violations.

1903

Permits required for the shipment of trophies.

Guides' licenses were one dollar.

Deputy wardens' salary increased to twelve hundred dollars with five cents a mile for travel expenses.

1905

Resident hunting license was one dollar.

Revenue from hunting licenses was twenty-five thousand dollars.

Revenue from additional licensing: taxidermists, guides, trophy shipments totaled four thousand dollars.

Non-resident license, twenty-five dollars, including big game, small game and fishing.
Non-resident fishing, ten dollars.

Residents defined as anyone living in the state for six months and all soldiers stationed in Montana.

1907

State warden's salary increased to twenty-four hundred dollars with two thousand dollars for expenses.

The illegal taking of big game becomes a felony.

Forest rangers hunt on a resident license.

Deputy wardens required to keep daily logs.

Four additional wardens and districts added to the department.

All wardens to act as fire wardens.

Resident hunting license abolished.

1909

Total number of deputy wardens and districts increased to fifteen.

Revisions of the 1907 procedures regarding confiscations included the increase in the types of items subject to confiscations: all birds, animals, fish, heads, hides, teeth, or other parts. Sales of confiscated items in 1907 were to occurred "at a time and in a manner so as to receive the highest price..." In 1909, the revised instructions included such considerations as: the use of a public auction, the acceptance of the "highest and best bidder," that printed notice of the time and place be given, together with a description of items for sale, in at least one local paper. The sale to be held not less than five or more than thirty days after publication date of notice. If the item(s) is perishable forego the notice procedures and sell at officer's discretion.

A combination hunting-fishing license returned at the cost of one dollar.
A game birds "no kill" list included quail, pheasant, Hungarian pheasant and turtle doves—an attempt to establish new game birds and reestablish native populations.

Owners of private hatcheries producing at least 500,000 fry annually receive permission to fish such waters after three years of operation and as long as they provide spawn.

Appropriations for the Anaconda hatchery for 1909 and 1910 totaled twenty thousand dollars.

1911

Funds for the hatchery at Somers included fifteen thousand dollars for construction and maintenance, ten thousand designated for 1911 and five thousand for 1912.

The state hatchery director's salary increased to one thousand, eight hundred dollars.

A fine of fifty to two hundred and fifty dollars was set for dumping debris from a sawmill into a stream.

1913

April 30 was established as the expiration date of all hunting and fishing licenses.

Open season for elk, sheep, and goat set from October 1st to December 1st. Additional limitations and regulations included: elk or goat was either sex but a sheep had to be a ram—though there were no maturity specifications.

Closure of certain areas to elk hunting began and continued until 1918. Sweet Grass, Park, Gallatin, Madison, Teton, Flathead, and portions of Powell and Missoula.

The Sun River Game Preserve was created by the GAME and Fish Commission.
A gun license was created for noncitizens at the cost of twenty-five dollars unless they individually possessed a twenty-five dollar hunting license.

The State Fish and Game Warden received authority to appoint six additional deputy wardens.

Additional regulations regarding the sale and/or possession of game birds occurred. These amounted to additional record keeping concerning purchase, numbers, shipment and receipt of game birds.

The definition of "sale" read "a contract by which for pecuniary consideration, called a price, one transfers an interest in either Game of fish...a contract by which for an article or thing of value, one transfers barters, or exchanges an interest in either Game or Fish."

Mrs. Charles Peyton continued on the payroll and commission and hatcheries clerk.

The legislature appropriated sixty thousand dollars for the purchase of a fish car and eleven thousand dollars each for the hatcheries at Somers and Anaconda..."funds to be used and transferred at the discretion of the Montana State FISH Commission.

1915

Game birds received additional protection within certain districts of Montana.

Prosecution of fish and game laws to be paid from the Fish and Game Fund.

Hatchery appropriations included: Ten thousand dollars per hatchery per year for maintenance and operations and an additional two thousand, five hundred dollars for each hatchery for improvements. Expenditures to be "under the order and direction of the State GAME and Fish Commission.

1917

Non-residents' license now fifty dollars.
The actual wording of the hunting/fishing licensing received word by word revision.

The details for securing bids for hatchery construction received legislative attention.

Regulations concerning searches, seizures, and confiscations received additions.

The purchase of a new fish car received authorization.

The Fish Commission was granted the authority to control any lakes or ponds on state land.
## APPENDIX C
### Montana Hunting Regulation Data 1900-1925

<table>
<thead>
<tr>
<th>No Kill List</th>
<th>Seasons</th>
<th>Limits</th>
<th>License Fees</th>
</tr>
</thead>
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<tr>
<td>1900 buffalo, cow elk, moose</td>
<td>Sept. 15-Nov. 15</td>
<td>bull elk 2, bull moose 2</td>
<td>None</td>
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<td>sheep</td>
<td>Sept. 1-Jan. 1</td>
<td>antelope 6, deer 6, goat 6</td>
<td></td>
</tr>
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<td>1901 antelope, buffalo, caribou, cow elk, moose, sheep</td>
<td>Sept. 1-Nov. 1</td>
<td>bull elk 2</td>
<td>None</td>
</tr>
<tr>
<td></td>
<td>Sept. 1-Jan. 1</td>
<td>deer 6, goat 6</td>
<td></td>
</tr>
<tr>
<td>1903 antelope, buffalo, caribou, moose</td>
<td>Sept. 1-Dec. 1</td>
<td>elk 1, deer 3, goat 1, sheep 1</td>
<td>None</td>
</tr>
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<td>1905 antelope, buffalo, caribou, moose</td>
<td>Sept. 1-Dec. 1</td>
<td>elk 1, deer 3, goat 1, sheep 1</td>
<td>$ 1.00*</td>
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<tr>
<td>1907 buffalo, caribou, moose</td>
<td>Sept. 1-Dec. 1</td>
<td>antelope 1, deer 3, elk 1, goat 1, sheep 1</td>
<td>$ 1.00</td>
</tr>
<tr>
<td>Year</td>
<td>Antelope</td>
<td>Date</td>
<td>Number of Animals</td>
</tr>
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<td>------</td>
<td>----------</td>
<td>------</td>
<td>-------------------</td>
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<td></td>
<td>Oct. 1- Dec. 1</td>
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<td>1911</td>
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<td></td>
<td>Nov. 1- Dec. 1</td>
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<tr>
<td></td>
<td></td>
<td>Oct. 15- Nov. 15</td>
<td>elk 1</td>
</tr>
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</table>
1923
antelope Oct. 15- elk 1 $ 2.00
buffalo Nov. 15 deer 1** $30.00
caribou
goat
moose
sheep

1925
antelope Oct. 15- elk 1 $ 2.00
buffalo Nov. 15 deer 1** $30.00
caribou
goat
moose
sheep

*This fee represented a hunting license until fishing licenses were required and then the hunting and fishing license fee totaled one dollar.

**Deer hunting was bucks only in most counties.
One third of all resident license fees for the "propagation of game
Section 4. Powers and Duties of Commission. The Commission hereby created, shall have supervision over all the wild life, fish, game, game and non-game birds and water fowl, and game and fur bearing animals of the State, and shall possess all powers necessary to fulfill the duties prescribed by law with respect thereto, and to bring actions in the proper court of this State for the enforcement of the fish and game laws of the State, and the orders, rules and regulations promulgated by the Commission. It shall have full power and authority to enforce all the laws of the State of Montana, respecting the protection, preservation and propagation of fish, game, game and non-game birds within the State. It shall have the exclusive power to expend for the protection, preservation and propagation of fish, game, and game birds, all funds of the State of Montana, collected or acquired for that purpose, whether arising from State appropriations, licenses, fines, gifts, or otherwise. It shall have full power and authority to dispose of all property owned by the State of Montana, used for the protection, preservation, and propagation of fish, game, and game birds, which shall have been found to be of no further value or use to the State, and shall turn over the proceeds arising therefrom to the State Treasurer, to be by him credited to the State Fish and Game Fund. It shall have full power and authority to use so much of the Fish and Game Fund of the State as may be necessary for the construction, maintenance, operation, upkeep and repair of Fish Hatcheries, Game Farms or other property or means and appliances for the protection and propagation of fish, game or game birds in the State of Montana; and it shall have the authority to appropriate moneys from the funds at its disposal for the extermination or eradication of predatory animals that destroy fish and game. It shall have authority to provide for the importation of game birds and animals, and for the protection, propagation and distribution of imported or domestic game birds or animals, and for that purpose to acquire, by gift, purchase, lease or otherwise, such land as may be deemed necessary for the purpose of establishing a State Game Farm, and to employ a person or persons skilled in game breeding to run, operate, and man-
age said game farm and to distribute the output of such Game Farm on the public lands of the State, or where in the judgment of the Commission, such birds or animals will receive adequate protection and be most likely to thrive and multiply. It shall have authority to spend so much of the State Fish and Game funds as may be necessary to introduce and propagate such wild waterfowl food as will thrive, grow and mature in the waters of this State, and for that purpose may secure expert advice as to what kinds of wild waterfowl foods are adapted to the climate, soil and waters of this State. It shall be its duty to furnish plans for, and to direct and compel the construction and installation and repair, of fish ladders and dams and ways, upon dams and other obstructions in streams which, however, shall be installed and maintained at the proper cost and expense of the owner or owners of same. It shall have the authority to purchase and maintain at the expense of the State Fish and Game Fund, suitable Fish Screens or Fish Wheels, and to install them in irrigation ditches to prevent fish entering said ditches, and to maintain said fish screens or fish wheels after the installation thereof, in such a manner that no damage shall result therefrom to the owner or owners of the irrigation ditch or ditches in which said fish screens or fish wheels are installed. It shall have authority to locate, lay out, construct and maintain nurseries and rearing ponds, where fry can be planted, propagated and reared and when of suitable size, liberated and distributed in the waters of this State, and may expend from the State Fish and Game Funds such sums as may be necessary for this purpose. It shall have authority to acquire by gift, purchase, capture, or otherwise, any fish, game, game birds or animals, for propagation, experimental, or scientific purposes. It shall have authority to divide the State into Fish and Game Districts, and to create Fish and Game Districts throughout the State of Montana and to declare closed seasons for hunting or fishing in any of said specified districts, and to later open Districts so closed, or a closed season on
any species of game, fish or game birds threatened with undue depletion from any cause, and to close any stream, public lake, or portions thereof, for limited periods of fishing, when such action is necessary to protect a recently stocked water, to protect spawning waters, or spawn-taking stations, or to prevent the undue depletion of fish. It shall have authority to establish game refuges for the purpose of providing safe sanctuaries in which game may breed and replenish, adjacent to game ranges, it being the purpose of this provision to establish small refuges rather than large preserves or rather than to close large areas to hunting. Provided, however, that no refuge, preserve or sanctuary shall be set aside or created by the Commission except that the same be petitioned for by seventy-five per cent (75%) of the actual property owners to be included within the proposed boundaries of said refuge, preserve or sanctuary or in case there are no property owners within the proposed boundaries of said area proposed to be set aside, then by a petition to the Commission, signed by seventy-five per cent (75%) of those directly interested or affected financially by the setting aside of said area. It shall have authority to designate and protect certain areas as rest grounds for migratory birds, in which hunting shall be forbidden, it being the purpose of this provision not to interfere unduly with the hunting of water-fowl but to provide havens in which they can rest and feed without molestations. It shall have authority to establish and maintain an educational and biological department of their work for the collection and diffusion of such statistics and information as shall be germane to the purpose of this Act. After petition has been duly filed with the Secretary of the Commission praying that an area shall be set aside for any purpose or purposes in this section enumerated, the said secretary shall immediately publish a notice in a paper of general circulation in the county in which said area is proposed, that a hearing in connection therewith will be held at the court house in said county on a day not less than fifteen (15) days from date of first publication to be specified in said notice at which time and place all interested parties shall have the right to appear and be heard. In case the area proposed to be set aside...
is in more than one county, the Commission shall have the right to designate a place in either county, but notice must be given of said meeting in a paper of general circulation in all counties affected. Said Commission shall, in addition to the powers heretofore granted, have such other and further powers as may be necessary to fully carry out the purposes and intent of all the laws pertaining to fish, game bird and animal propagation, protection and conservation of this Act.
Bibliography

Books


Mussehl, T. W. and Howell, F. W., eds. *Game Management in Montana.* Helena: Montana Fish and Game Department, 1971.


**ARTICLES**


**NEWSPAPERS**

*Great Falls Tribune, 1895-1925.*
STATE DOCUMENTS AND PUBLICATIONS


_____. *The Codes and Statutes of Montana, Annotated* (Booth 1895).

_____. *The Revised Codes of Montana of 1907, Annotated* (Blake 1908).

_____. *The Revised Codes of Montana of 1921, Annotated* (Choate 1921).

_____. 1927 Supplement to *The Revised Codes of Montana of 1921, Annotated* (Choate 1928).

UNPUBLISHED MATERIALS


Western Montana Angler's Association. Association correspondence, unprocessed collection, K. Ross Toole Archives, Mansfield Library, University of Montana.

THESES AND OTHER PAPERS

