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**An Analysis of Present Law, Commentary, and Proposals**

**for Corrective Legislation to Establish Humane, Equitable,**

**and Democratic Management of Wildlife in Montana**

What follows is an omnibus presentation of suggested corrective legislation along with commentary and discusses which is needed to reform to present Montana statutes. This reform is overdue and necessary to bring fairness, equal protection of law, recognition of the rights of non-consumptive users and uses, and democracy to the management of wildlife in Montana. It also reflects the view that wildlife is properly managed as a commons resource and a public trust by the state for the benefit of all citizens not just hunters, anglers, trappers, and livestock interests.

Although an attempt has been made to use and loosely conform to the conventions of bill writing by the Legislative Services Division, there is no expectation that any of the following would be submitted in the form that is presented here. That is the job of the LSD to prepare bills and legislation.

**1. Democratize the wildlife management process**

This single amendment could do much to perfect the democratic and just management of wildlife in Montana. Adopting the proposed amendment would allow all citizens regardless of their values and interests in wildlife to have a place at the table in making decisions concerning this important and controversial, commonly-owned resource. If nothing else can be achieved in the 2015 legislature in regard to the issues raised below this much should be be done.

Section 2-15-3402, MCA is amended to read:

**“2-15-3402** **Fish and wildlife commission**. (1) There is a fish and wildlife commission.   
     (2) The commission consists of ~~five~~ ten members. At least one member must be experienced in the breeding and management of domestic livestock. The governor shall appoint ~~one~~ two members from each of the following districts:   
     (a) District No. 1, consisting of Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Powell, Ravalli, Granite, and Lewis and Clark Counties;   
     (b) District No. 2, consisting of Deer Lodge, Silver Bow, Beaverhead, Madison, Jefferson, Broadwater, Gallatin, Park, and Sweet Grass Counties;   
     (c) District No. 3, consisting of Glacier, Toole, Liberty, Hill, Pondera, Teton, Chouteau, Cascade, Judith Basin, Fergus, Blaine, Meagher, and Wheatland Counties;   
     (d) District No. 4, consisting of Phillips, Valley, Daniels, Sheridan, Roosevelt, Petroleum, Garfield, McCone, Richland, Dawson, and Wibaux Counties;   
     (e) District No. 5, consisting of Golden Valley, Musselshell, Stillwater, Carbon, Yellowstone, Big Horn, Treasure, Rosebud, Custer, Powder River, Carter, Fallon, and Prairie Counties.   
     (3) Appointments must be made without regard to political affiliation and must be made solely for the wise management of fish, wildlife, and related recreational resources of this state. A person may not be appointed to the commission unless the person is informed or interested and experienced in the subject of fish, wildlife, ~~and~~ recreation, ~~and~~ the requirements for the conservation and protection of fish, wildlife, ~~and~~ recreational resources, or the interests and values of consumptive and nonconsumptive users and uses of wildlife and natural resources as may be necessary to fulfill the requirements of (6) below.)     (4) A vacancy occurring on the commission must be filled by the governor in the same manner and from the district in which the vacancy occurs.   
     (5) The fish and wildlife commission is designated as a quasi-judicial board for purposes of [2-15-124](http://leg.mt.gov/bills/mca/2/15/2-15-124.htm). Notwithstanding the provisions of [2-15-124](http://leg.mt.gov/bills/mca/2/15/2-15-124.htm)(1), the governor is not required to appoint an attorney to serve as a member of the commission.

**NEW SECTION**  (6) **Representation of consumptive and nonconsumptive uses and users**. In each district one member shall represent the interests, values, and views of consumptive users of wildlife and resources such as hunters, trappers, anglers, outfitters, guides, and businesses related to consumptive uses. The other member shall represent the interests, values, and views of nonconsumptive uses and users of wildlife and natural resources such as birders, backyard wildlife watchers and bird feeders, nature photographers and artists, nature writers, environmental rights philosophers, animal rights organizations, humane societies, wildlife conservationists and preservationists not part of an organization that promotes a species primarily for taking, biodiversity advocates, ecotourism, and other related commercial and noncommercial interests.

**NEW SECTION**. (7) **Citizen advisory groups**. Any citizen advisory group, board, panel, or other similar assembly appointed by the governor or agency for any reason to assist the Department of Fish, Wildlife, and Parks or the commission in carrying out its statutory duties is composed of persons representing consumptive and nonconsumptive users and uses of wildlife and fish. To the maximum extent possible the representation of these diverse interests shall be balanced in any such assembly.

The following section of the MCA is ridiculous and unnecessary and grants a special privilege to a landowner that other persons do not have. Trespass for any purpose is illegal in Montana and because of public safety concerns, a landowner is already constrained in many ways from being able to just go out and fire a gun at an animal for instance if the private property is in a residential subdivision. Anyone hunting must already possess a license to hunt anywhere they do it. This is just a sop to private property interests that muddies the water on property rights and does not need to be in the law.

**REPEAL. 87-2-121, MCA~~. Lawful method of hunting on landowner's private property.~~**~~In recognition of the inalienable right of persons to acquire and possess property in all lawful ways contained in Article II, section 3, of the Montana constitution and of the heritage of individual citizens to harvest wild game animals contained in Article IX, section 7, of the Montana constitution, a landowner and a landowner's guests and lessees may hunt on the landowner's private property as long as the hunting is conducted in the manner provided by law and is consistent with regulations.~~

**2. Enable and empower citizens as beneficiaries of the public trust in wildlife to sue for mismanagement of wildlife by the state.**

**NEW SECTION**. **MCA 2-15-3407**. **Fiduciary duty of state in regard to wildlife.(**1) In regard to all matters concerning management of the state’s wildlife, the state of Montana, its agencies, and commissions function as the trustee of wildlife as the common property of all state citizens with all the duties and responsibilities of any trustee of the property of others.

**NEW SECTION. Rights and powers of citizens as public trust beneficiaries.** (1) As beneficiaries of the public trust in wildlife, any citizen or group of citizens may maintain an action in the courts of the state against the state, its agencies, and commissions for:

1. violation of the statutory requirements for management of wildlife, or
2. breach of the fiduciary duties of the state in its role as trustee to manage all the state’s wildlife for the diverse interests of consumptive and nonconsumptive users.

(2) If the citizen suit is successful, the state shall pay all reasonable court costs and legal fees of the citizen(s) pertaining to the suit.

**3. Clarify FWP responsibility, policy statement, wildlife as a public trust**

**NEW SECTION**. **87-1-100 MCA. Policy.**(1) The legislature, recognizing the profound impact of human activity on the interrelations of humans and wildlife and its habitats, particularly the profound influences of population growth, urban sprawl, high-density urbanization, industrial expansion, resource exploitation, demands of consumptive uses and poaching, conflict with grazing stock, new and expanding technological advances; recognizing the critical importance of restoring and maintaining biodiversity and fully stocked and functional ecosystems in the environment to the overall welfare and human quality of the life, environmental health, and general welfare; and further recognizing that government regulation enacted to protect the above rights, interests, and values may appropriately and necessarily restrict the use of private property, declares that it is the continuing policy of the state of Montana, in cooperation with the federal government, local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which humans and nature can coexist in productive harmony, to recognize the right to use and enjoy private property bears a duty not to impair or damage the rights of other citizens to the enjoyment of the common resource in wildlife and the benefits that wildlife contributes to the social, economic, aesthetic, ecological, environmental, and other requirements of present and future generations of Montanans.   
     (2) In order to carry out the policy set forth in (1) the legislature recognizes that wildlife is a common property resource of the citizens of the state entrusted to the state as the property of the state and which owns the wildlife in its sovereign capacity as trustee for the citizens and is bound by strict fiduciary duty to manage wildlife for the benefit of all the people of the state in their diverse interests in wildlife under all legal duties and responsibilities of a trustee of property of others. It is the continuing responsibility of the state of Montana to use all practicable means consistent with other essential considerations of state policy and the public trust in wildlife to improve and coordinate state plans, functions, programs, and resources so that the state may:   
     (a) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;   
     (b) ensure for all Montanans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;   
     (c) attain the widest range of beneficial uses of wildlife and the environment without loss of biodiversity, degradation of ecosystems, risk to human health or safety, breach of the fiduciary duty of the state in regard to wildlife, or other undesirable and unintended consequences;   
     (d) protect the right to use and enjoy private property consistent with protecting the public wildlife trust asset and the quality of the environment;   
     (e) preserve important historic, cultural, and natural aspects of our unique heritage and maintain, wherever possible and consistent with protection of the public wildlife, and a human and natural environment that supports diversity and variety of individual choice;   
     (f) achieve a balance between population and resource use that will produce and maintain a sustainable standard of living and a wide sharing of life's amenities; and   
     (g) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.   
     (3) The legislature recognizes that each person is entitled to a healthful environment, that each person has the right to pursue life's basic necessities, to enjoy the rights and duties of private property ownership, and that each person has a duty to contribute to the preservation and enhancement of biodiversity and the environment and to respect the rights, values and interests of others. The implementation of these rights and duties requires the balancing of competing interests associated with wildlife by the legislature in order to protect the public health, safety, and welfare and the public trust in wildlife.

(4) The legislature recognizes that humane treatment of all animals is a hallmark of a nurturing and livable society. Due respect for Nature and the life support systems of the natural world necessarily limit the options of humans with regard to economic, recreational, and other personal choices. Each citizen is called upon and reminded to respect and appreciate the blessings of Nature and the quality of life enjoyed by the citizens of Montana due to the high quality of the state’s unique natural environment.

Section 87-1-101, MCA, is amended to read:

**87-1-101. Definitions.**Unless the context requires otherwise, in this title the following definitions apply:   
     (1) "Board" means the state parks and recreation board provided for in [2-15-3406](http://leg.mt.gov/bills/mca/2/15/2-15-3406.htm).   
     (2) "Commission" means the fish and wildlife commission provided for in [2-15-3402](http://leg.mt.gov/bills/mca/2/15/2-15-3402.htm).   
     (3) "Department" means the department of fish, wildlife, and parks provided for in Title 2, chapter 15, part 34.   
     (4) "Director" means the director of fish, wildlife, and parks provided for in [2-15-3401](http://leg.mt.gov/bills/mca/2/15/2-15-3401.htm).   
     (5) "Warden" means a state fish and game warden.

(6) “Wildlife" means a wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean, or other wild animal or any part, product, egg, or offspring or the dead body or parts of the animal.(MCA 87-5-102(9)).

(7) “Consumptive use or users” means any human use of wildlife or any person engaged in such use that results in lethal taking, killing, and injurious catching or trapping of any fish, bird or animal usually described as hunting, fishing, trapping, or lethal management of wildlife for the benefit of livestock and land owners and other related commercial and noncommercial activities. Consumptive use also includes any taking or capture necessary for scientific management or study, preservation of species, protection of habitat, and protection of human health and safety.

(8) “Nonconsumptive use or users” means any human use of wildlife or any person engaged in such use for which obtaining the benefit of such use does not require lethal taking, killing, and injurious catching or trapping usually described as birding and bird feeding, backyard wildlife watching, nature photography and art, nature writing and journalism, contemplation of nature, participating in animal rights organizations or humane societies, supporting wildlife conservation and preservation organizations that do not promote conservation of a species primarily for taking, biodiversity advocacy, ecotourism enjoyment, and other related commercial and noncommercial activities. Non-lethal capture of animals in whole-body, live traps for relocation due to predation livestock,, biological study, protection of human health or safety, reduction of populations for ecosystem health and similar purposes are non-consumptive uses.

(9) “Species in need of management plan” means a species for which, after the required scientifically valid field study, population census and other activities have been completed completed including an evaluation of the species’s number and genetic vigor; its role and importance to ecosystems and its habitat and the natural life support systems of the state’s environment, it has been determined by science-based decision making that a species specific management plan is required to maintain the health of the species, its role in any habitat, its function in the various ecosystems of the state, or to protect a threatened or endangered species as defined by federal law or biodiversity in general.

(10) “Management” means the collection and application of biological information for the purposes of conserving populations of wildlife consistent with other uses of land and habitat. The term includes the entire range of activities that constitute a modern scientific resource program, including but not limited to research, census, law enforcement, habitat improvement, control, and education. The term also includes the periodic protection of species or populations as well as regulated taking (MCA 87-5-102(5)).

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

**87-1-201. Powers and duties.**(1) Except as provided in subsection (11), the department shall ~~supervise~~ manage all the wildlife (def. MCA897-5-102(9)) including fish, game and non-game animals including furbearing animals, game and non-game birds, and waterfowl~~., and the game and fur-bearing animals~~ of the state according to the science and principles of wildlife biology and ecology; prioritizing the sustainability and diversity of species and populations, ecosystem function, and protection of necessary habitat for all species; respecting the rights, interests, and values of both consumptive and nonconsumptive uses and users of wildlife, and in accord with the strict fiduciary duty to manage the state’s wildlife as a public trust for all citizens regardless of the ownership of the land where wildlife occurs in the state**.** ~~.and~~ The department may implement voluntary programs that encourage hunting access on private lands and that promote harmonious relations between landowners and the hunting public. The department possesses all powers necessary to fulfill the duties prescribed by law and to bring actions in the proper courts of this state for the enforcement of the fish and game laws and the rules adopted by the department.

The intent of this change is to install a consistent all-encompassing definition for the term wildlife in the MCA. Changing this section may require multiple other amendments to either insert reference to the definition in MCA 87-5-102 or a comprehensive list of fauna in the meaning of the term “wildlife”. The intent of this change is to make it clear that the department’s responsibility extends to all natural fauna in the state not just those of interest to hunters, trappers, anglers and livestock owners.

**4. Provide adequate funding for FWP from the General Fund and other Tax Sources.**

As evidenced by the two recent studies of funding for FWP, the lack of funding of FWP in general, but especially for management of non-game species is both stingy and irresponsible on the part of the legislature and a breach of the state’s fiduciary duty as trustee to manage all wildlife for all the people. Taking pride in a budget surplus is a hollow victory and an act of political hubris when the legislature shirks its duties and responsibilities in favor of achieving ideological goals. It is easy to balance a state budget when mandatory obligations of governance are ignored.

Here below is the exact language from the FWP website concerning its inability to manage non-game wildlife in Montana, the vast majority of species that exist in the state. By its own admission, it does not have the necessary funding to carry out its fiduciary duty to manage ALL the state’s wildlife for ALL the diverse interests of the people. Instead the state relies on a meager sum collected from a check off program on the state income tax form for the bulk of the funding for management of non-game wildlife. This is a clear breach of the state’s obligation to manage wildlife in a way that reflects loyalty to the state’s citizen beneficiaries of the public trust in wildlife. The fact that the legislature is relying on about $24,000 a year to manage most of the wildlife in the state is reprehensible.

From FWP website*. “Hunters and anglers fund the majority of fish and wildlife management and conservation activities conducted by FWP through the purchase of hunting licenses and federal matching funds from excise taxes on guns, ammunition, and angling equipment. The U.S. Fish and Wildlife Service provides limited funds to help recover wildlife species listed under the Endangered Species Act. Many FWP management activities that are funded through hunting and fishing licenses provide enormous benefits to native nongame species as well as game species through habitat protection and enhancement. Some of these include wildlife management areas, conservation easements, and wetland restoration. However, FWP has limited funding dedicated for research and monitoring efforts for Montana's nongame wildlife species.*

*The first nongame biologist hired by FWP in 1974 had to cover all nongame species in the entire state of Montana with a very limited budget. This started to change in 1983, when the legislature passed a new law that allowed Montanans to donate a part ($2, $5, or $10) of their tax refund to nongame research, monitoring, and education efforts through a checkoff on their state income tax forms. Donations were further facilitated in 1985, with an amendment that added a blank space to the check-off to allow donations for any dollar amount. In 1987, the Nongame Wildlife Funding bill was passed which permanently reauthorized the Nongame Wildlife Checkoff, unless repealed.*

***In the 20+ years since its inception, the Nongame Wildlife Checkoff has brought in over $496,000 to benefit the native species of Montana. Annual contributions have ranged from $16,500 to $34,000, and contributions during the last 5 years have hovered around the long-term average of $24,000 per year****. Montana has a higher donation rate than many other states in terms of both the percentage of people who contribute and the amount contributed per person. However, Montana's relatively small population limits the total amount of funding that can be generated by the Nongame Wildlife Checkoff.*

*FWP stretches these precious contributions by working together with other entities on most nongame species projects. Nongame Wildlife Checkoff funds are usually matched several times over by a combination of federal funds and grants, in-kind contributions and matching funds from private nonprofit organizations, universities and private businesses, and the service of numerous volunteers. Checkoff contributions provide an important source of the nonfederal match required by the State Wildlife Grants (SWG) program and other federal grants. Many of the nongame projects we fund involve multiple partners, including private businesses, nonprofit organizations, other state and federal agencies, and volunteers. Without Nongame Wildlife Checkoff contributions, most of these partnerships would not be possible.*

*The Nongame Wildlife Checkoff will continue to provide a vital source of funding for nongame monitoring and research in the future. The Nongame Wildlife Checkoff also provides an important source of funding for popular watchable wildlife products such as posters, books, bird checklists, and brochures.”*

These lame excuses do not release the state and FWP from their public trust duties. The fact that such a statement would be made is prima facie evidence that the state is failing in its public trust duties toward most of the state wildlife and the interests and values of many citizen beneficiaries, and rather is managing wildlife in its own interests namely to secure the political and ideological benefits that come from not having to collect sufficient taxes and allocate general fund revenues for wildlife management. The maintenance of legislator patronage from livestock and consumptive use interests also undoubtedly figures into this situation as well.

State management of wildlife is not and can never be strictly a license fee driven, active user pays proposition. License fees and federal taxes on firearms and sporting goods distributions alone are not enough to meet the state’s fiduciary duties in the management of wildlife. Grants and payments from self-interested hunting and fishing organizations are nice, but if they result in entitlements and special privileges their influence is corrosive to democratic management of the state’s wildlife. That would be a breach of loyalty by the state to many citizen beneficiaries under its trusteeship responsibilities.

Even if no consumptive uses of wildlife were authorized by the state, the state through FWP would still have the duty to manage wildlife for the people. Wildlife provides many ecological and other environmental services by its mere existence as many nonconsumptive users will attest. Funding wildlife management activities from the general fund is therefore not just reasonable, it is demanded of the legislature as an allocation of the taxes collected from the broad spectrum of users.

**License fees and federal tax sharing are inadequate revenue**. What are license fees? Hunting and fishing license fees are necessary assessments on persons who want to hunt and fish or trap. Their desire to take public wildlife causes the state to incur costs for management of the licensing and licensees as well as the species they target. These state actions are necessary to prevent the wholesale slaughter, waste, and abuse that occurs when wildlife species are taken at will. A license is a privilege granted to take a limited number of animals from the common store, nothing more. It is not a right but a privilege, despite any constitutional language implying otherwise. A public trust resource cannot be alienated to a private party except by grant of privilege.

Protection of the trust corpus—the wildlife-- is the primary and fundamental duty of the state. Therefore, a hunting or fishing license is a secondary “right” at best. A license certainly should not be viewed as a demand that FWP manage the state’s wildlife solely in the interest of these consumptive users, but that is the present state of affairs. Also, livestock owners and landowners have been granted special privileges to take wildlife at reduced licenses fees and the handed the ability to kill wildlife based solely on their assessment of risk to property alone and pay little or nothing for the privilege. This grant of power is an abdication of trustee obligation of the legislature and the state. All of this discriminatory policy, practice, and breach of the state’s trustee duty toward wildlife must end.

**Allocation of portion of accommodation tax for FWP**. In light of the importance of the wildlife viewing, national park visitation, and nature tourism to the state economy especially from out-of- state visitors, some part of the state accommodations tax should be reallocate to help pay for management of the wildlife these visitors come to see. This part of the economy will surely become even more important in the future as “last best places” get harder and harder to find.

**5. Establish a right of citizen review of agency records, studies, and data used in decision making**

State law should ensure that FWP can comply with the below requirement by funding from the general fund of the state regardless of any other sources of funding available. But this is not enough to democratize wildlife life management. This requires establishment of a right of citizen review of agency research, required investigations, and decision making procedures. There should also be legal penalties for departmental violation of due process or failure to base management activities on established wildlife biology, field studies, and other valid scientific methods and information before prescribing any management activity that takes wildlife, sets limits and quotas, and so forth.

Section 87-5-104, MCA is amended to read:

**87-5-104. Investigations by department.**The department shall conduct ongoing investigations on all wildlife species including non-game wildlife in order to develop information relating to population, distribution, habitat needs, limiting factors, and other biological and ecological data to determine management measures necessary for their continued ability to sustain themselves successfully. ~~The department shall conduct ongoing investigations of non-game wildlife.~~

**6. Recreational shooting of non-games species and predators**

The language below is found on the FWP website concerning recreational shooting of wildlife for target practice or just to kill animals for fun. In the past this kind of behavior was considered a legitimate form of sport or recreation and a good way to sharpen one’s marksman ship not to mention shooting certain types of high power rifles that can turn a prairie dog or ground squirrel into “pink mist”. This type of killing done just “for the hell of it” really needs not argument against it because it can have to rational argument for it except to say this is the way we have always done it, which is no justification at all. To claim the practices described below as legitimate heritage activities steeped in farm and ranching tradition and culture casts an ethical pall over rural life, a reeking inhumane miasma over Montana’s otherwise beautiful landscapes.

Recreational shooting

*There are a number of species found in Montana that are classified by Montana statute as nongame wildlife, some are shot for sport while others are shot for consumption. Examples of these species include raccoon, red fox, hares, marmots, tree squirrels, ground squirrels and prairie dogs. There are currently no regulations restricting the shooting of nongame species.*

*Shooting of any animals on private land requires landowner permission. Shooting of animals on public land may require land management agency permits or fees. For details on Forest Service, BLM or other public lands, contact the appropriate land management agency.*

*Prairie dogs and other nongame species are protected on many national wildlife refuges. Check with each refuge before shooting on refuge lands. [*[*Prairie dog distribution map*](http://fwp.mt.gov/doingBusiness/reference/dataResources/recreationalShooting/)*]*

*Montana statute classifies predators as coyote, weasel, (striped) skunk, and civet cat (spotted skunk). Predator shooting is not regulated by federal or state law or regulation. Predators can be shot in Montana year-round without a license by both resident and nonresident hunters. A Conservation License, or a state school trust lands recreational use license, is required to shoot predators on state school trust lands. Permission must be obtained to shoot predators on private land.*

*Nonresidents are required to purchase a Nonresident Trapping License to take nongame or predatory species using traps and/or snares. See the Deer, Elk and Antelope regulations below for more information about take of predatory species.*

See for yourself at http://fwp.mt.gov/hunting/regulations/nongameShooting.html

This repugnant practice is inhumane and disrespectful of Nature. Indiscriminate killing and target or sport shooting of any species such as ground squirrels, marmots, prairie dogs, small predators, etc. must be banned. Killing these animals is legitimate activity only when it is necessary to protect public health or safety or to prevent injury to private property. Such taking should require application to the FWP for permission to undertake any such activity and require FWP investigation and monitoring of the activity. Suitable penalties including restitution must be set for unauthorized killing of any species no matter where it occurs whether on public or private land.

**NEW SECTION. 87-2-127. License required for taking any species of wildlife by any means with exceptions** (1) No species of wildlife may be taken by shooting with a firearm or other gun of any kind including pellet and BB guns, spearing, bow hunting, trapping, fishing, netting, or poisoning unless the person so doing has a license issued by the department for the activity.

(2) Taking any animal solely for recreation or sport shooting is prohibited. No license shall ever be issued to take any animal solely for recreational or sport shooting. Killing an animal only for the sake of killing or to practice marksmanship is waste of a natural resource and theft of state property. Authorized private taking of any species to protect human health and safety or private property shall be closely monitored by the department by field personnel. Claims of taking in the case of emergency or imminent danger shall be investigated by the department to determine the validity of the claim of emergency or imminent danger.

(3). Exception. Species that may be classified as vermin such as mice and rats that are a threat to humans by means of damage to property or spread of disease may be taken without a license on the owner’s property or by a licensed pest control contractor.

(4) Penalty. Penalties for violations of this section shall be the same as for taking wildlife without a permit. The department shall enforce this section by means of public information and field personnel. Firearms and ammunition dealers must prominently display any department educational material informing the public of the requirements and penalties for this section.

**7. Trapping**

The practice of trapping--the taking of wildlife using mechanical means such as leg hold traps, Conibear type body traps, snares, or poison dispensing devices--is neither a necessary tool for sound biological and ecological management of wildlife nor an important, really negligible, part of the state economy. Trapping licensees represent about .6 of one percent of Montanans. In 2013 trapping brought about $1.5 million gross personal income but at what cost?

To tens of thousands of Montanan, trapping is the worst kind of human/Nature relationship, requiring a certain depraved indifference by trappers to the suffering of the trapped animals not to mention the moral crime of killing an animal just to rip its hide off for profit and throw away the body. At least hunting and fishing potentially yield human food with the mitigating fact that there are fair chase hunting ethics and catch and release fishing practiced by many enthusiasts of these pursuits. Wittingly or not, trapping and trappers routinely thumb their noses at the psychic distress of citizens with more humane ethical sentiments toward animals. Many persons suffer just knowing that this barbaric practice is still sanctioned and facilitated by the state and that animals continue to be exploited in this way.

As a wildlife management tool trapping is non-selective for species, gender, or age. Management and quota setting is largely based on the reports of self-interested trappers themselves rather than active, independently verified field studies by FWP personnel.

Trapping also causes a major reduction in enjoyment of public lands and the outdoor experience especially in winter when trappers are active in areas frequented by hikers, skiers, and other non-trapping outdoor recreationists. All in all, trapping is an unwanted, unneeded, thoroughly repugnant practice with hardly any redeeming social values. It has no place in a modern, humane society. It must be eliminated as a legitimate, publicly sanctioned use of the wildlife commons and a choice for individual fun and profit.

Amend all FWP statutes to prohibit trapping for profit or pleasure and permit trapping only in special cases to eliminate animals including top predators that have actually caused damage to livestock or other property or for public health and safety. Allow such trapping only after all non-lethal and live trapping options have been exhausted. Issue permits for a specific brief time period under the strict supervision of FWP field personnel.

If trapping for fun and profit cannot be eliminated all together at least repeal the following. This privilege granted to landowners is unjustified and discriminatory to the non-landowning public and, as such, is completely arbitrary and capricious law-making.

Section 87-2-602, MCA, is repealed:

**87-2-602. ~~Class C-1--landowner's trapping license.~~**~~Except as otherwise provided in this chapter, any individual who owns land in this state or any tenant or member of the immediate family of the owner or tenant, upon making application to the department and payment of the fee of $1, may receive a Class C-1 license that entitles the holder to trap any fur-bearing animal and to hunt bobcat, wolverine, and lynx on land owned or leased by the individual or the individual's immediate family at times and in a manner that is lawful under the laws of the state and the regulations of the department and at places that may be designated in the license.~~

Allow trapping of wildlife such as squirrels, skunks, raccoons, etc. that cause problems for homeowners, but only using live traps and working with FWP personnel to relocate problem animals. FWP should keep a supply of live traps for use by homeowners and designate personnel to assist homeowners with this trapping.

**8. Predator management**

Large predators, especially wolves, bears, and big cats are essential parts of well balanced, healthy, self-renewing ecosystems. By law and as a public trust, these ecosystems and the values they represent and benefits they bestow belong to all Montanans. Neither ecosystems nor species are not to be manipulated for the benefit of a select part of the population. This type of management amounts to a breach of the state’s fiduciary loyalty duty as trustee by allowing special interests to command management of a common resource for their personal, private benefit.

Also, singling out large predators for special control to enhance big game numbers and serve the interests of livestock owners is ecologically ignorant and unsupportable from an equal protection viewpoint with regard to the rights of non-consumptive users and uses of wildlife.

Repeal Senate Bill 200 from 2013 legislature in its entirety or at least the part granting landowners special hunting privileges to kill up to 200 wolves merely on their suspicion that a wolf is a threat to property or livestock.

Repeal MCA 87-1-901--just another biased, non-science based demand from the legislature to subsidize and grant special privileges to the livestock industry over our commonly-owned wildlife and to the detriment of many other parts of the state economy.

Section 87-1-901, MCA is repealed:

 87-1-901~~. Gray wolf management -- rulemaking -- reporting. (1) Except as provided in subsection (2), the commission shall (may) establish by rule hunting and trapping seasons for wolves. For game management purposes, the commission may authorize:   
     (a) the issuance of more than one Class E-1 or Class E-2 wolf hunting license to an applicant; and   
     (b) the trapping of more than one wolf by the holder of a trapping license.   
     (2) The commission shall adopt rules to allow a landowner or the landowner's agent to take a wolf on the landowner's property at any time without the purchase of a Class E-1 or Class E-2 wolf license when the wolf is a potential threat to human safety, livestock, or dogs. The rules must:   
     (a) be consistent with the Montana gray wolf conservation and management plan and the adaptive management principles of the commission and the department for the Montana gray wolf population;   
     (b) require a landowner or the landowner's agent who takes a wolf pursuant to this subsection (2) to promptly report the taking to the department and to preserve the carcass of the wolf;   
     (c) establish a quota each year for the total number of wolves that may be taken pursuant to this subsection (2); and   
     (d) allow the commission to issue a moratorium on the taking of wolves pursuant to this subsection (2) before a quota is reached if the commission determines that circumstances require a limitation of the total number of wolves taken.   
     (3) Public land permittees who have experienced livestock depredation must obtain a special kill permit authorized in~~[~~87-5-131~~](http://leg.mt.gov/bills/mca/87/5/87-5-131.htm)~~(3)(b) to take a wolf on public land without the purchase of a Class E-1 or Class E-2 license.  
     (4) The department shall report annually to the environmental quality council regarding the implementation of~~[~~87-5-131~~](http://leg.mt.gov/bills/mca/87/5/87-5-131.htm)~~,~~[~~87-5-132~~](http://leg.mt.gov/bills/mca/87/5/87-5-132.htm)~~, and this section.~~

Repeal all of MCA 87-2-601 as it exists and write new sections stating that anyone using mechanical leg or body hold traps or poison to remove damage-causing predators must be duly licensed by the state and possess the skills and knowledge to use the traps and visit traps at least daily during any allowed trapping period to project public health, safety, or property.

Repeal 87-1-625. Funding for wolf managementinits entirety**.** This statute mandates FWP to spend $900,000 annually on mostly lethal wolf “management”. Thus it represents ham-handed and mean-spirited meddling in FWP wildlife management abilities to assign and prioritize its resources where it needs them. Given that the legislature provides less than 1% of the FWP budget from the general fund, this mandate is an arrogant demand by the legislature that prevents the department from meeting its other duties to non-consumptive users and uses and non-game species. It is also probably the impetus behind the ill-conceived wolf stamp recently floated by the FWP as a means of raising part of this money to liberate funds for other purposes.

Section 87-1-625, MCA, is repealed:

87-1-625~~. Funding for wolf management. (1) The department shall allocate $900,000 annually for wolf management.   
     (2) For the purposes of this section, the term "management" has the same meaning provided in~~[~~87-5-102~~](http://leg.mt.gov/bills/mca/87/5/87-5-102.htm)~~and includes:   
     (a) wolf collaring conducted pursuant to~~[~~87-5-132~~](http://leg.mt.gov/bills/mca/87/5/87-5-132.htm)~~; and   
     (b) lethal action conducted pursuant to~~[~~87-1-217~~](http://leg.mt.gov/bills/mca/87/1/87-1-217.htm)~~to take problem wolves that attack livestock.   
     (3) Not more than 25% of the total funding allocated under this section may be used for administrative costs.   
     (4) Pursuant to~~[~~87-1-201~~](http://leg.mt.gov/bills/mca/87/1/87-1-201.htm)~~, the department may allocate funds from any source to meet the requirements of this section.   
     (5) The department may contract with the United States department of agriculture wildlife services and county governments for the purposes of this section.~~

Repeal MCA 87-1-217 in its entirety. This sort of benighted statement of policy simply has no place in a wildlife management paradigm that meet the needs of a modern society with people holding many divergent values in wildlife. It is prejudicial toward nonconsumptive users and uses and prevents management of state wildlife and habitat based on science by qualified FWP wildlife biologists.

Section 87-1-217, MCA, is repealed:

**87-1-217~~. Policy for management of large predators -- legislative intent.~~**~~(1) In managing large predators, the primary goals of the department, in the order of listed priority, are to:   
     (a) protect humans, livestock, and pets;   
     (b) preserve and enhance the safety of the public during outdoor recreational and livelihood activities; and   
     (c) preserve citizens' opportunities to hunt large game species.   
     (2) With regard to large predators, it is the intent of the legislature that the specific provisions of this section concerning the management of large predators will control the general supervisory authority of the department regarding the management of all wildlife.   
     (3) For the management of wolves in accordance with the priorities established in subsection (1), the department may use lethal action to take problem wolves that attack livestock if the state objective for breeding pairs has been met. For the purposes of this subsection, "problem wolves" means any individual wolf or pack of wolves with a history of livestock predation.   
     (4) The department shall work with the livestock loss board and the United States department of agriculture wildlife services to establish the conditions under which wolf carcasses or parts of wolf carcasses are retrieved during wolf management activities and when those carcasses or parts of carcasses are made available to the livestock loss board for sale or auction pursuant to~~[~~2-15-3113~~](http://leg.mt.gov/bills/mca/2/15/2-15-3113.htm)~~.   
     (5) The department shall ensure that county commissioners and tribal governments in areas that have identifiable populations of large predators have the opportunity for consultation and coordination with state and federal agencies prior to state and federal policy decisions involving large predators and large game species.   
     (6) As used in this section:   
     (a) "consultation" means to actively provide information to a county or tribal government regarding proposed policy decisions on matters that may have a harmful effect on agricultural production or livestock operations or that may pose a risk to human health or safety in that county or on those tribal lands and to seek information and advice from counties or tribal governments on these matters;   
     (b) "large game species" means deer, elk, mountain sheep, moose, antelope, and mountain goats; and   
     (c) "large predators" means bears, mountain lions, and wolves.~~

Repeal this outmoded anachronism —a loathsome relic from the 1800s that needs to go away.

Section 87-1-206, MCA, is repealed:

**87-1-206~~. Bounty claims for wild animals.~~**~~(1) The department shall pay bounty claims for wild animals that have been filed with and approved by the board of livestock. The department shall pay out of the state fish and game funds, other than those funds derived from license fees paid by hunters and anglers, bounties on predatory wild animals as the bounty claims are presented, not exceeding $7,500 for each calendar year.   
     (2) The board of livestock shall, after approving the bounty claim, deliver the claim to the department for rejection or approval. If the claim or certificate is rejected, it must be returned by the department to the board of livestock. If approved, it must be delivered to the department of administration for allowance or disallowance. This section does not take from the department the exclusive power to administer the fish and game money at its discretion.   
     (3) If the department of administration allows the claim, the department shall draw a warrant on the state fish and game money in the state special revenue fund for the amount approved in favor of the claimant in the order in which the claim is approved.~~

Repeal and replace MCA 81-7--yet another impediment to the proper management of wildlife by biological and ecosystem focused rules. This gives the precedence for management of predators to the livestock industry and carte blanche for property owners to kill any predatory species, large or small, found on private property. Repeal this crime against Nature in its entirely and replace as below.

## CHAPTER 7. PREDATORY ANIMAL CONTROL

[Part 1. Predatory Animal Control](http://leg.mt.gov/bills/mca_toc/81_7_1.htm)  
[~~Part 2. County Bounty Program~~](http://leg.mt.gov/bills/mca_toc/81_7_2.htm)[~~Part 3. County Predator Control for Protection of Sheep~~](http://leg.mt.gov/bills/mca_toc/81_7_3.htm)[~~Part 4. Dogs~~](http://leg.mt.gov/bills/mca_toc/81_7_4.htm)[~~Part 5. Aerial Hunting of Predatory Animals~~](http://leg.mt.gov/bills/mca_toc/81_7_5.htm)[~~Part 6. County~~ Predator ~~Control for Protection of Cattle~~](http://leg.mt.gov/bills/mca_toc/81_7_6.htm)

Section 81-7-102, MCA, is amended to read:

81-7-102**. Department to report predation of livestock to the Department of Fish, Wildlife, and Parks** ~~supervise~~ ~~destruction of predatory animals -- cooperation with other agencies -- administration of money.~~(1) ~~The department shall conduct the destruction and control of predatory animals capable of killing, destroying, maiming, or injuring domestic livestock or domestic poultry and the protection and safeguarding of livestock and poultry in this state against depredations from these animals. The department shall formulate the practical programs for accomplishing these objectives in this state and for carrying out the programs in an efficient and practical manner responsive to the need for control in each area of this state.~~  The department shall refer all matters concerning livestock predation by wildlife to the Department of Fish, Wildlife, and Parks. The department of fish, wildlife and parks has the sole authority to manage predatory animals in accordance with scientific, ecosystem based plans and methods. Predation on livestock by predatory animals shall be confirmed and documented by FWP personnel. The need and means to remove them shall be based on actual damage by specific animals. Proximity to livestock is not a prima facie reason to remove or destroy predators.

(2) Livestock owners experiencing predation loses shall report the loss to FWP personnel who shall investigate the reported loss and make determinations as to whether or not removal of a predator is necessary.

(3) FWP personnel shall recommend proactive preventative measures to be established by the livestock or landowner to deal with present and future predation.

(4) Refusal to undertake any proactive preventative measures may be grounds for denial of compensation for livestock losses by the state.

(5) Any funds expended by FWP to remove predators causing actual damage to livestock shall be reimbursed by the livestock loss trust fund annually.

(6) Federal wildlife services shall not be used in Montana to manage wildlife including predatory animals causing livestock losses.

(7) Any killing or trapping authorized by FWP to manage predators shall be conducted by qualified and duly licensed professional contractors or FWP agency personnel.

~~(2) The department shall adopt rules applicable to predatory animal control that are necessary and proper for the systematic destruction of the predatory animals by hunting, trapping, and poisoning operations and payments of bounties. The department shall make field, area, range, or other orders and instructions, including orders and instructions to hunter and trapper personnel and others, that are appropriate in the various areas at different seasons of the year, taking into consideration the habits, presence, migrations, or movements of the animals and their attacks on livestock and poultry, either singly or in packs or bands.   
     (3) The department shall cooperate with authorized representatives of the federal government, including the biological survey and the fish and wildlife service, the department of fish, wildlife, and parks, boards of county commissioners, voluntary associations of stock growers, sheepgrowers, ranchers, farmers, hunters, and anglers, and corporations and individuals, in the systematic destruction of predatory animals by hunting, trapping, and poisoning operations.   
     (4) Section~~[~~81-7-103~~](http://leg.mt.gov/bills/mca/81/7/81-7-103.htm)~~and this section do not interfere with or impair the power and duties of the department of fish, wildlife, and parks in the control of predatory animals by the department of fish, wildlife, and parks as authorized by law or the obligation of the department of fish, wildlife, and parks to expend its funds in cooperation with the department for predatory animal control as required by law. Funds of the department of fish, wildlife, and parks for the cooperative predatory animal control must be administered and expended by the department of fish, wildlife, and parks.~~

**9. Livestock loss compensation-rancher responsibility**

Prohibit payment for wildlife damage to any livestock or landowners who have not taken a minimum set of mandated and documented steps to protect their property or reduce the threat of predation caused by grazing animals in close proximity to wildlands or in areas of where predators are known to exist, including private property. Ranchers must begin to take some personal responsibility for their private choice to try to ranch in predator territory.

Section 2-15-3111, MCA, is amended to read:

**2-15-3111. Livestock loss reduction program**. The livestock loss board shall establish and administer a program to cost-share with individuals or incorporated entities in implementing measures to prevent wolf and grizzly bear predation on livestock, including:   
     (1) eligibility requirements for program participation;   
     (2) application procedures for program participation and procedures for awarding grants for wolf and grizzly bear predation prevention measures, subject to grant priorities and the availability of funds;   
     (3) criteria for the selection of projects and program participants, which may include establishment of grant priorities based on factors such as chronic depredation, multiple depredation incidents, single depredation incidents, and potential high-risk geographical or habitat location;   
     (4) grant guidelines for prevention measures on public and private lands, including:   
     (a) grant terms that clearly set out the obligations of the livestock producer and that provide for a term of up to 12 months subject to renewal based on availability of funds, satisfaction of program requirements, and prioritization of the project;   
     (b) cost-share for prevention measures, which may be a combination of grant and livestock producer responsibility, payable in cash or in appropriate services, such as labor to install or implement preventive measures, unless the board adjusts the cost-share because of extenuating circumstances related to chronic or multiple depredation; and   
     (c) proactive preventive measures, including but not limited to fencing, fladry, night penning, increased human presence in the form of livestock herders and riders, guard animals, providing hay and dog food, rental of private land or alternative pasture allotments, delayed turnouts, and other preventive measures as information on new or different successful prevention measures becomes available; and   
     (5) reporting requirements for program participants to assist in determining the effectiveness of loss reduction relative to each grant, and

**NEW SECTION.** (6) provide for denial of future cost sharing or compensation payments to livestock or landowners who after suffering predation losses and applying for compensation or grant assistance do not establish and maintain adequate proactive preventive measures as described in (4) (c) above and having been duly advised and informed by department of livestock loss or fish, wildlife, and parks personnel regarding such measures.

**There are undoubtedly many more sections of the MCA that need to be addressed to remedy the bias and prejudice written into the law in favor of livestock interests and consumptive users of wildlife. However, the above would do for a start.**

**In the event that addressing any of these proposals seems like too much, an adult, possibly statesmanlike, and potentially productive solution would be to pass a proposal to study the fair management of wildlife to the legislature’s Environmental Quality Council for a thorough investigation --- not a perfect solution but if conducted fairly and impartially would be a great exercise in participatory democracy.**

Respectfully, but earnestly prepared and presented by Rocky Sehnert, Nature Rising, Inc. , [naturerising@earthlink.net](mailto:naturerising@earthlink.net) 12/21/2014