

2021 Montana Legislature: Attacks on Wildlife, Lands and Public Sporting Opportunities

The 2021 Montana Legislature was one of the most difficult for our public wildlife, habitat, access and sporting opportunity in over two decades. This was the first time we've had complete one-party control of both Legislative chambers and the governor's office in 16 years.

We saw numerous bills to micro-manage Montana Fish, Wildlife and Parks; write elk management into state law; bar any future of bison restoration on public lands; and extreme anti-predator measures that harken back to the 19th Century and threaten state management in favor of federal protections for large carnivore species.

The Montana Wildlife Federation, working with our affiliates and partners, was able to help kill a handful of the worst bills. Many others passed and were signed into law. Collectively these bills erode the authority of the Montana Fish and Wildlife Commission to manage public wildlife, make land conservation efforts harder to complete, mount an all-out assault on predator wildlife species like wolves and bears, and end the opportunity to establish a public wildlife herd of bison on appropriate public lands.

The session also indicated a shift away from resource management toward a more retail view of fish and wildlife. Bills to increase the opportunity for outfitters to sell trophy hunts were passed, as well as to require less accountability from outfitters to abide by the rules and regulations on their trade.

Elk Management

Management of elk is always controversial in Montana, and this session saw numerous bills to essentially write state elk management into state law. Those included bills barring the use of limited permits in some districts, require crop damage payments from hunter dollars without a public access requirement to manage elk, and bills to create landowner licenses for elk.

The bills included:

HB 417, sponsored by Rep. Josh Kassmier, R-Ft. Benton, would have barred FWP from using limited permits in any hunting district over the objective population. The bill targeted the archery elk permits in the Missouri River Breaks and other parts of eastern Montana, but would have applied statewide, including in areas like the Elkhorn and Bearpaw mountains. The bill drew such strong opposition that Kassmier dropped it before it had a hearing.

HB 697, sponsored by Rep. Josh Kassmier, R-Ft. Benton, would have used hunter license dollars to pay for a crop damage program. It had no public hunting access requirement to help manage big game to objective numbers, and had the potential to cost FWP millions of dollars. The bill was heard in the House Agriculture committee and passed there, then passed on the House floor despite strong opposition from public hunters. It died in the House Appropriations committee because of concerns over its cost to FWP's budget.

Hunting License Allocations

HB 637, sponsored by Rep. Seth Berglee, R-Joliet, had been labeled a cleanup bill by Montana FWP, but in fact it was a catch-all bill full of significant policies. It included stocking pheasants using \$1 million in FWP funding; removing required hound handler licenses for non-resident landowners; and removing the 24-hour waiting period on black bear and mountain lion licenses.

But the most significant part of the bill came in the second to last day of the Legislature. In a free conference committee, the bill had an amendment added on that gives unlimited outfitter-sponsored licenses for 2021, and permanently gives non-resident hunters using an outfitter an extra bonus point for B-10 and B-11 big game licenses. The bill passed the same day with two votes in the House and Senate.

SB 143, sponsored by Sen. Jason Ellsworth, R-Hamilton, was the precursor to the provisions in HB 637 that gave a leg up to outfitted nonresident hunters to draw big game combination licenses. SB 143 proposed to allocate 60 percent of all nonresident big game combination licenses to hunters using an outfitter. It would have returned us to a system with specific outfitter set asides, against the will of Montana voters. The bill drew fierce opposition from public hunters, both resident and nonresident, on the grounds that everybody should have a fair chance to hunt in Montana. It was amended on the Senate floor to create a two-tiered system, with an early draw for a higher fee, but died after it didn't get passed in the Senate Finance and Claims committee. The bill was used as justification for the amendments in HB 637 for outfitters.

HB 505, sponsored by Rep. Wylie Galt, R-Martinsdale, would have created 10 landowner-sponsored elk licenses for landowners in hunting districts that had reached the elk objective population. It was supported by Montana FWP and billed as an incentive for landowners to reach objective. The bill died in a 9-9 vote in the House FWP committee.

Bison Bills

Two bills that passed this session reduce local input and makes it far more difficult to restore bison on appropriate public lands.

HB 302, sponsored by Rep. Josh Kassmier, R-Ft. Benton, requires county commission approval to ever translocate bison in the state. This sets a terrible precedent getting counties engaged in wildlife management, when they have no professional staff or expertise to handle these issues.

HB 318, sponsored by Rep. Ken Holmlund, R-Miles City, redefines all bison that have ever been held in captivity – including in a quarantine facility for disease testing – as livestock. This removes any possibility to use bison from Yellowstone National Park as seed stock to establish a wild herd on public lands. It turns public wildlife into livestock and sets a bad precedent for future of other wildlife in Montana.

Anti-predator Measures

This was an awful Legislative session for predator species in Montana, and throws into doubt the ability of Montana FWP to manage wolves, black and grizzly bears, and mountain lions responsibly. The measures seek to push wolves down to an absolute bare minimum number,

ensure that grizzly bears will never be removed from the federal Endangered Species Act list, and are harmful to other species through potential catch and killing of non-target species. The bills included:

HB 224 and HB 225 – Allows neck snaring of wolves and extends the season for wolf trapping. Neck snares set for wolves will result in the capture of many non-target wildlife, including mountain lions, black bears and potentially grizzly bears in select areas. The extension of the wolf trapping and snaring season will overlap with the times that grizzly and black bears are out of their dens resulting in bears being caught in wolf snares and traps.

SB 267 – Allows paying a bounty to people to kill wolves. This reflects a 19th Century attitude toward wolves and violates the public trust concept to not commercialize wildlife. Paying people to kill Montana wildlife will harm the image of hunters and hunting in Montana. We have more than 17,000 wolf hunters in Montana and an annual harvest of more than 300 every year. There is no need for this measure.

SB 314 – Revises laws related to wolf harvest that amounts to an all-out war against wolves in an effort to drive their numbers down to a bare minimum number. It includes baiting around traps, spotlighting at night, and the take of multiple wolves with one license. This bill sets a terrible precedent not only ethically, but also practically in allowing multiple wolves with a single license. We have elk populations over the objective in some areas, yet always require a hunter to have one license for every elk they kill. Baiting will result in the loss of non-target species and is counter to fair chase. And spotlighting is also not within the bounds of fair chase hunting, and will give hunters a poor public image.

SB 98 – States that people can kill grizzly bears threatening livestock. People always have a right to self-defense, and Montana law already allows the taking of a grizzly caught in the act of attacking livestock. However, the language in this bill is vague, and the definition of threatening is open to interpretation. This bill will certainly raise alarms with the U.S. Fish and Wildlife Service in providing adequate regularly mechanisms to conserve and manage grizzly bears. It will result in never delisting grizzly bears from federal Endangered Species Act protections in Montana.

SB 337 - Revising laws on relocation of grizzly bears. This bill will prevent Montana FWP bear management specialists from relocating any grizzly bears captured outside recovery zones. This runs counter to 40 years of grizzly management in Montana that has helped us soundly manage the species while it remains under federal protection. This bill is contrary to the Interagency Grizzly Bear Guidelines, which Montana FWP has been a party to, and it will result in the unnecessary death of many grizzly bears.

HB 468 – Allows hound hunting of black bears and a recreational chase season for hound hunters. – Hound hunting black bears can result in cub abandonment, chronic stress, heat exhaustion in warm weather, and abandonment of home ranges. Grizzly bears can be found throughout western Montana and hounds will chase grizzly bears who will fight and kill hounds. This will result in hound hunters shooting grizzly bears to defend their dogs or themselves when chased grizzly bears are encountered. Hound hunting of bears has been banned since 1921 in

Montana. Hound hunting of bears is opposed by most hunters and is not considered fair chase hunting by most of the public.

Land Conservation Bills

We saw several attacks on conservation easements, and bill drafts that would have outright barred use of hunter dollars to purchase land, or worked to strip funding from Habitat Montana. Those died, but they signaled the continued opposition to FWP protecting crucial big game winter range and other wildlife habitat through fee title purchases. The bills that did come forward included:

SB 115, sponsored by Sen. Keith Regier, R-Kalispell, requires that the state Land Board approve conservation easements using Habitat Montana dollars. This bill comes following a 2018 Montana Supreme Court ruling that Land Board approval is specifically not a requirement for easements. The bill drew strong opposition from sporting groups and land trusts, both of which contended the board offers nothing to the process and creates uncertainty for landowners who spend tens of thousands of dollars and several years to work with FWP on easements. The bill passed and was signed by Gov. Gianforte.

HB 352, sponsored by Rep. Jed Hinkle, R-Belgrade, would have barred the use of any public funds for conservation easements that don't have a mandatory public access requirement. MWF strongly supports public access, but every conservation easement and the programs that fund them have different purposes and requirements. This bill would have dramatically reduced land conservation projects through federal programs and worsened wildlife conservation outcomes. Habitat Montana easements do include an access component, and that's why they pay a premium to landowners because of that requirement. The bill drew strong opposition from the land trusts, agricultural organizations and sporting organizations and died in the House Fish, Wildlife and Parks committee.

There were also bills drafted that would have either outright prohibited the use of hunter dollars for land purchases (LC 1747, Rep. Matt Regier, R-Kalispell), or defunded the Habitat Montana program by making it an opt-in fund (LC 2504, Rep. Steve Gunderson, R-Libby). Both were so unpopular that they did not get introduced after the sponsors heard significant opposition to them.

We did see a big win for efforts to conserve key wildlife habitat, including through both conservation easements on private agricultural and timberlands, and through targeted fee-title purchases. MWF working with numerous conservation partners were able to secure an additional \$16 million for the Habitat Montana program, which is our best state conservation and public access program.

HB 701, sponsored by Rep. Mike Hopkins, implemented the provisions of the legalization of recreational marijuana, as approved overwhelmingly by the Montana voters last year. The ballot initiative laid out that half of the revenue would go toward conservation and access programs. The largest portion in the measure would go to Habitat Montana, at 37 percent, with 4 percent

each going to state parks, state trails and recreational facilities, and to non-game wildlife programs.

In the end, HB 701 set aside 20 percent for Habitat Montana. However, the revenue projections came in higher, and this represents a big investment in conservation and access. The money will accrue in the fund, but it cannot be spent for two years, so we will need to engage the 2023 Legislature to get the spending authority for this funding. MWF and our partners will continue working toward that, and in the meantime will push for solid land conservation projects that show the incredible value of Habitat Montana and the access it provides.

Custom Hunting Seasons

This session included several measures that wrote into state law specific hunting seasons and weapon types tailored to a specific constituency. MWF stands firmly for these types of decisions being made by the state Fish and Wildlife Commission, which has broad authority under state law to manage wildlife including by setting seasons and other regulations for hunting. The bills included:

HB 242, sponsored by Rep. Caleb Hinkle, R-Belgrade, wrote permanently into state law a nine-day muzzleloader season that begins after the general deer and elk season. This is terrible policy that opens the floodgate to individuals writing custom seasons into statute. And our deer and elk do not need additional hunting pressure following the five-week rifle season, which remains the most generous in the West. The bill passed and was signed by Gov. Gianforte.

SB 111, sponsored by Sen. Brad Molnar, R-Laurel, would have established a crossbow season for some disabled hunters during Montana's archery-only season in September and October. This bill drew fierce opposition from the Montana Bowhunters Association and MWF affiliate the Traditional Bowhunters of Montana. MBA has worked for years to build adapted archery equipment for disabled or injured hunters, and the use of these draw locks is administered by Montana FWP under its Permit to Modify Archery Equipment program. The bill passed the Senate but died in the House Human Services committee, then died again during a blast motion on the House floor.

Public Land Attacks

Once again, this session we saw numerous attacks on our federal public lands, including National Forest, Bureau of Land Management, National Wildlife Refuge and other federal agency land holdings. These bills came after years of seeing efforts for the state to takeover these lands through the "transfer" movement that has swept the West. The bills included:

HB 320, sponsored by Rep. Steve Gunderson, would prohibit the sale of any federal lands transferred to the state of Montana. It sounds great, right, like it's a land protection bill. However, this bill paves the way for Montana to push to take over our federal lands, and that would be a budget-buster for the state to cover the costs of fire protection and other management. Furthermore, MWF and our conservation partners don't support transfer because federal lands have a multiple use mandate, including conserving key wildlife habitat, while state lands have a

different mandate that includes maximizing revenue, with no consideration of wildlife habitat protection. This bad bill passed the House but died in the Senate Natural Resources committee.

HB 418, sponsored by Rep. Steve Gunderson, R-Libby, was dubbed the Public Lands Access Act. Again, this bill sounds great, but in fact this bill aimed to open potentially thousands of motorized routes through some of Montana's remote backcountry lands through what are known as "RS 2477" roads. These historic routes are often old two track horse trails, or other old historic uses that cut through some incredible wildlife habitat and other backcountry lands. The bill passed the House Natural Resources committee but died on the House floor.

Public Access to Public Land and Waters

Getting to our public lands and waters was, as always, an issue this session. One positive bill to enhance public access to public lands came forward, as well as several bad bills. We were able to fend off the worst bills, or get them amended to make them less damaging to public access. The bills included:

SB 256, sponsored by Sen. Pat Flowers, D-Bozeman, was the only pro-public access law this session that would have tied gating public roads that lead to public land to Montana's hunter harassment law, and created more of a deterrent to gating public roads. The bill was heard in the Senate Judiciary committee, and died there in a party-line vote.

SB 354, sponsored by Sen. Steve Hinebauch, R-Wibaux, was in its original form a bill that clarified easements across private land to give landowners more certainty, but didn't affect public access. The bill was amended in the House Judiciary committee to essentially eliminate all prescriptive easements within five years, and put major burdens on establishing historic prescriptive easements. The bill passed the full House but the amendments were unanimously rejected by the full Senate after a strong outcry from public hunters, anglers and recreational users. Ultimately the bill was restored to its original form, passed the Legislature and was signed by Gov. Gianforte.

SB 359, sponsored by Sen. Steve Hinebauch, R-Wibaux, would have allowed some landowners to gate roads while moving cattle if it didn't impede public access by using the road. The bill drew a strong response from hunting, hiking and recreational user groups and died in the Senate Agriculture committee under the tremendous comments against it.

Outfitter Accountability

SB 275, sponsored by Sen. Jeff Welborn, R-Dillon, removed two sportspersons from the state Board of Outfitters, and removed the requirement that they report leased acres of private land for private hunting operations. The bill takes away accountability from outfitters for the public wildlife resource. It passed and was signed by the governor.

Fish and Wildlife Commission makeup

The Montana Fish and Wildlife Commission will grow to seven members, with one from each of the FWP administrative regions. That was the result of one bill, with another one that dictated who would serve on those seats passing the Legislature but getting vetoed by the governor.

HB 160, sponsored by Paul Fielder, R-Thompson Falls, added two members to the commission and laid out that they represent each of the seven regions. MWF supported the bill, and has discussed this concept for years. The bill passed and was signed into law.

SB 306, sponsored by Sen. Mike Lang, R-Malta, incorporated the same language of seven commissioners, but also originally required that four of the seven be landowners in agricultural production. The bill passed the Senate on party lines, but was amended down to two landowners in the House. The Senate rejected the amendment and a conference committee settled on three landowners. The bill was vetoed by Gov. Gianforte, who wrote in his letter that it was unclear if ranchers operating under a limited liability company would qualify, and whether all four forms of production, including timber, would be required of a landowner to qualify to serve. MWF was appreciative of the veto for a bill that was bad public policy in the management of public trust fish and wildlife resources, with no provision for inclusion of sporting group representatives.

Hunting within Reservation Boundaries

HB 241, sponsored by Rep. Joe Read, R-Polson, would have allowed non-tribal members with land inside the boundaries of an American Indian reservation to hunt on their property. The bill ran counter to agreements for non-tribal members to hunt on reservations with a tribal agency license, and was fiercely opposed by tribal nations. It died in the House FWP committee.

Good Bills

Some passed, while most were killed either in their first committee hearing, or on the floor of either chamber of the Legislature. This was a difficult session to advance positive policies for wildlife, habitat, access and improving hunter-landowner relations. Here is a rundown of some of the bills MWF supported, and how they fared this session:

HB 147, sponsored by Rep. Tom France, D-Missoula, would have established a voluntary fund that hunters could contribute to that would go toward grants in rural communities. It was intended to build relations between hunters and rural communities, and could have been used for anything. The bill passed the House FWP committee but died on the floor.

HB 260, sponsored by Rep. Seth Berglee, R-Joliet, revamped non-resident fishing licenses to give more options for people visiting Montana. It also was projected to pump an additional \$1.4 million into the fisheries program. The bill passed and was signed into law.

HB 353, sponsored by Rep. Steve Gunderson, R-Libby, allows FWP to issue a replacement hunting license when a killed game animal is unsuitable to be eaten. That includes when it tests positive for chronic wasting disease. The bill passed and was signed into law.

HB 647, sponsored by Rep. Steven Galloway, R-Great Falls, revised non-resident college student license fees to allow them to purchase deer, elk, upland game bird, turkey and fishing licenses at resident rates. Students must come from a state that extends the same opportunity to Montana students attending college full time in their states. Students must be full time, and cannot attain resident licenses in any other state. MWF strongly supported a major overhaul of our hunting licenses back in 2015, but this bill was a reasonable exception to the standard half price for

certain license applicants, and is intended to recruit new hunters. The bill passed and was signed into law.

SB 2, sponsored by Sen. Jill Cohenour, D-East Helena, would have given FWP the ability to buffer some specific wildlife location data to ensure fair chase. It had been worked on in the interim and was a consensus bill meant to address the concerns of the petroleum industry with sage grouse data, as well as journalism interests in terms of public information requests. The bill died in the Senate Fish and Game committee.

SB 60, sponsored by Sen. Pat Flowers, D-Bozeman, established a mandatory trapper education program after years of debate on the issue. The bill passed and was signed into law.

SB 61, sponsored by Sen. Pat Flowers, D-Bozeman, allows for free fishing for families on Mother's Day weekend, similar to the existing allowance on Father's Day. The bill passed and was signed into law.

SB 62, sponsored by Sen. Bob Brown, R-Thompson Falls, clarified what constitutes possession to give game wardens better ability to catch poachers. The FWP requested bill passed and was signed into law.

SB 208, sponsored by Sen. Jill Cohenour, D-East Helena, would have allowed hunters to donate their drawing fees when unsuccessful to the Hunters Against Hunger and Block Management programs. The bill died in the House FWP committee.