

HB520: MANAGEMENT OF PRIVATE FISH

WATER POLICY INTERIM COMMITTEE
JULY 15, 2024

STUDY OF PRIVATE FISH PONDS

Chasing trout in Montana's lakes and streams is an established tradition. While many anglers cast for wild rainbows, browns, and cutthroats on public rivers and streams, others ply quieter waters of private fish ponds for these species.

Montana has more than 2,000 licensed private fish ponds, which are licensed by the Montana Department of Fish, Wildlife and Parks. Department fishery biologists and administrators license these ponds to ensure these do not become a conduit for invasive species or lead to habitat destruction.

The program charges low fees, but incurs much-larger costs to administer the program.

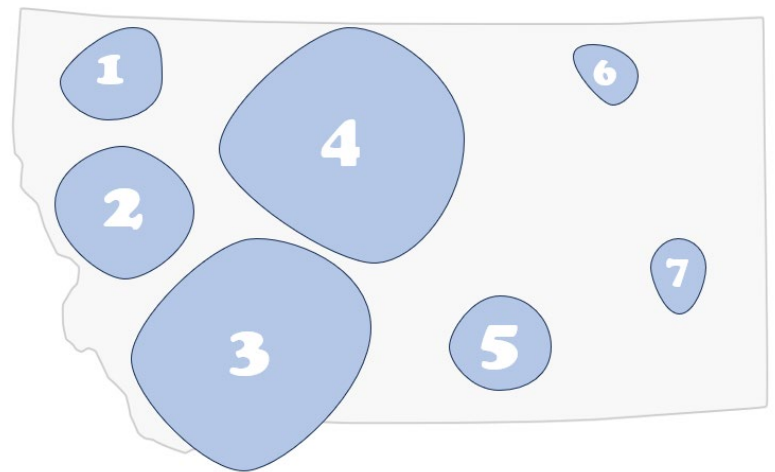
But private landowners believe having a private fish pond is free of choice and an exercise of their private property rights, as well as providing water, wildlife habitat, fire protection, and even gravel.¹ Some private ponds are stockwater ponds licensed to hold authorized fish species.

Montana's program of licensing private fish ponds generally conforms to practices throughout the Northern Rockies region.²

The 2023 Legislature passed a study bill, House Bill 520, which the Legislative Council assigned to the Water Policy Interim Committee. The bill requires the committee to examine:

- Private pond policies, including permitting and protocols
- Impacts of private ponds on aquatic resources as well as water quality and quantity related to drought, high water temperatures, and evaporation and options to mitigate these impacts
- Costs of regulating private ponds, including for permitting, enforcement, fines, fees, and restitution
- Options to provide in-state certified fish to stock private ponds

This report serves as a record of the committee's efforts to examine these issues.



Relative number of private fish ponds by FWP region

¹ Testimony of John Keller to WPIC, Jan. 16, 2024.

² See table on p. 6, "Regional comparison of private pond regulations."

MONTANA'S REGULATION OF PRIVATE FISH PONDS

Montana law regulating private fish ponds dates to 1923. As noted in the state license application, “Regulations are intended to allow stocking private fish ponds with appropriate fish species while ensuring that public resources and not adversely affected by unwanted fish or fish diseases...”

State law defines a private fish pond as a “body of water that does not exceed 500 surface acres.”³ The pond may be created by “artificial means or from a tributary spring or stream.”⁴

A person developing a pond must:

- Obtain a license from the Montana Department of Fish, Wildlife, and Parks
- Procure approved species of fish from a lawful source. Fish approved for stocking are typically limited to those present in the hydrologic basin
- Meet requirements to prevent fish from escaping into adjacent streams or lakes, such as screening inlets and outlets
- Verify through a professional fisheries consultant or with data and documentation that “game fish or fish species of special concern do not occur in the pond and that they do not pose an unacceptable fish game fish or fish species of special concern in adjacent waters.” Species of concern include arctic grayling, bull trout, cutthroat trout, burbot.⁵
- Allow a pond inspection as part of the environmental assessment process (under MEPA)

During the 10-year span of the license, the department may take “appropriate action” to address any threat posed by a pond to state’s fisheries resources, including quarantine or destruction of fish, spawn, or eggs. FWP must approve fish pond license transfers. The department may also revoke a license.⁶

A commercial pond permit is required to sell fish or spawn. Additional annual sales reports are also required, including who buys or sells fish or eggs.

REASONS FOR REGULATING PRIVATE FISH PONDS

Humans have maintained fish ponds for centuries, with first recorded uses in the gardens and palaces of China, Korea, and Japan and the monasteries and castles of medieval Europe. While early users constructed these early ponds to cultivate (and perhaps control) a food source, landowners, and organizations today in Montana construct private fish ponds for recreation and enjoyment.

Private fish ponds pose potential challenges including

- Cost of program administration
- Water rights

³ Section 87-4-603, MCA.

⁴ Ibid.

⁵ A complete list of native fish, game fish or special concern, and non-native species is available in the private pond licensing application at <https://fwp.mt.gov/buyandapply/fishinglicenses/commercial-fishing-and-floating>.

⁶ Section 87-4-603, MCA.

- Importation of fish species, illegal species
- Limited availability of hatchery fish

COST OF PERMITTING

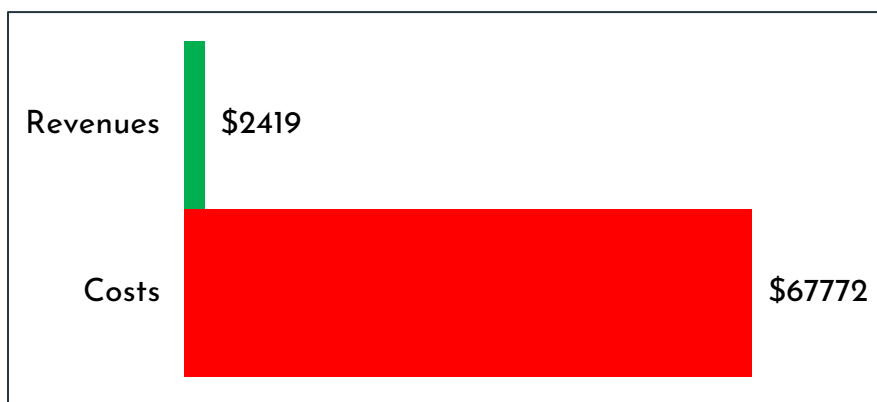
In 2005, the Legislature set the cost of a private pond license at \$10, which is valid for 10 years.⁷

However, these fees do not meet the department’s estimated costs. The department estimates the cost for its biologists and application administrators to inspect a site and process the paperwork costs the state nearly \$1,700 per new or renewed license.⁸

The department anticipates an average of 100 new pond permits and 140 permit renewals per year, although this number may vary from 81 to 486 a year, according to department calculations. (This number peaks also every 10 years since the statutory fee was passed, with the next peak in 2026.)

The department denies few permits every year, estimating zero to 3 in any given year. For the few that are denied, reasons include proximity to public waters, which may be susceptible during pond flooding, high risk of fish escape, or inappropriate species for the basin.

Relative annual FWP revenues, costs to administer fish pond licenses



WATER RIGHTS

Water rights must be secured to obtain a private fish pond licensure. As the FWP pond application states:

“Many streams suffer from de-watering by consumptive water uses that have been legal in Montana for over 100 years. Additional water withdrawals can compound an already serious problems for wild fish and their habitat. Pond builders should be aware of and be sensitive to the fact that water withdrawals for new fish ponds may negatively impact downstream public resources, including wild fish. All private fish ponds consume water. Every effort should be made to eliminate or minimize the use of stream surface water or alluvial groundwater for ponds.”

A permittee must either:

- Have an existing water right, or
- Provide proof of a groundwater permit exception

⁷ Ch. 376, L. 1989.

⁸ Montana Department of Fish, Wildlife, and Parks, *FWP Pond Permitting Cost Estimates* (2024)

Water rights with a Dec. 31, 1999 or later priority date must be changed to include a “fishery” or “fish and wildlife” purpose of use.

IMPORTATION OF SPECIES

Certain pathogens are designed as a substantial threat to the health of state fisheries, such as infectious hematopoietic necrosis virus, which affects the kidneys and spleen, causing high mortality in fry and juveniles; or viral hemorrhagic septicemia, which causes hemorrhaging in various organs. Pathogens such as these may be carried by illegal or improper importation of fish species.

For example in 2021, officials discovered goldfish in a pond near Big Sandy.⁹ While the source of the illegal importation could not be determined, the fish did pose a threat of escape to public waters. (Koi and goldfish, while not native species, are not illegal in Montana, but must be registered and kept contained if outdoors.) Goldfish may carry the koi herpes virus, a Class A pathogen in Montana. And while the virus may not affect trout, the pathogen profoundly affects goldfish and carp and could have other environmental effects. This pond was chemically treated to kill all fish.

The department has the authority to certify and inspect all importations of fish or eggs.

HATCHERIES

Approved fish species must come from an FWP-approved hatchery. The seven private hatcheries are mostly located in western Montana (Kalispell, Hamilton, Fortine, St. Ignatius, and Ronan), although trout and some warm-water species are raised at commercial hatcheries in Miles City and Lewistown.

The state of Montana operates 12 fish hatcheries. State law requires all fry, fingerlings, and fish “be used to stock the lakes and streams of the state and shall be for free and impartial distribution.” The U.S. Fish and Wildlife Service operates the Creston and Ennis national fish hatcheries within Montana.

Montana FWP has authorized certain out-of-state hatcheries to import stock to Montana. These hatcheries are in:

- Idaho (1)
- Wyoming (2)
- South Dakota (2)
- Kansas (1)



Location of Montana FWP hatcheries

⁹ Montana Department of Fish, Wildlife, and Parks, *Examples of Illegal Pond Introductions or AIS Introductions* (2024)

However, approved commercial fish ponds in and outside of Montana have had recent production constraints. A lack of readily available fish may lead to the illegal importation of fish.

For example, in 2022 FWP discovered rainbow trout and channel catfish were illegally imported from Oregon and stocked in seven unlicensed private ponds. While most of the fish did not survive, fish in ponds near Helena, Three Forks, and Bozeman did. These were tested for pathogens (none were detected), and the landowners were fined.

All FWP-approved hatcheries within or out of Montana are subject to inspection. The department conforms to fish health standards in the American Fisheries Society Fish Health Section Blue Book.

WORK OF THE WPIC

At the time of writing, the committee was scheduled to visit a restored private pond on the Ruby River near Sheridan and licensed private ponds in Twin Bridges and Dillon.

FINDINGS, RECOMMENDATIONS AND LEGISLATION

At the time of writing, the committee had not yet considered findings, recommendations, or legislation.

REGIONAL COMPARISON OF PRIVATE POND REGULATIONS

State	Authority	Authorization	Fee and notes
Idaho	Idaho Fish and Game	Private fish pond permits	<p>No fee; \$23.50 to collect fish and transfer to pond</p> <p>Inlets/outlets must be screened</p> <p>Only approved species from approved hatcheries</p> <p>Records must be kept of fish stocking, source</p> <p>At least 21 state-approved hatcheries</p> <p>Pond may not be constructed in or across natural stream bed, lake or other watercourse containing wild fish, except if water flow and volume of wildlife are not significant part of the wildlife resource of the state</p> <p>Many areas only allow stocking or sterilized rainbow trout or native cutthroat trout</p>
Wyoming	Wyoming Game and Fish Department	Private fish stocking authorization	<p>Free authorization</p> <p>Cannot be significant threat to native species or conflict with management goals from the drainage</p> <p>8 department-approved hatcheries</p> <p>Water rights information maintained by State Engineers Office</p> <p>Authorized species include tiger trout</p>
Alberta		Fish culture license	<p>Fees: recreational pond is \$100/5 years; commercial pond is \$500/5 years</p> <p>Water body must be isolated from other water to the point that stocking fish will not adversely affect the environment or native fish, or fish barriers are in place</p> <p>9 province-approved fingerling fish suppliers</p> <p>Cultured fish eligible for licensing include tilapia, tiger trout, American eel, Pacific white shrimp, freshwater prawn</p>

ACTIVE PRIVATE FISH POND LICENSES BY FWP REGION

Region 1	217
Region 2	302
Region 3	530
Region 4	518
Region 5	251
Region 6	110
Region 7	94
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