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The Rise Of Sportsmanship: The Legal Incorporation Of The Hunting Ethic Into Montana Hunting Regulations Between 1889 and 1941

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THE RISE OF SPORTSMANSHIP: THE LEGAL INCORPORATION OF THE HUNTING ETHIC INTO MONTANA HUNTING REGULATIONS BETWEEN 1889 AND 1941

A THESIS SUBMITTED FOR THE PARTIAL REQUIREMENT OF GRADUATION WITH HONORS

DEPARTMENT OF HISTORY

BY

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This thesis for honors recognition has been approved for the Department of History.

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Preface

For as long as I can remember, hunting has played an important part in my life. Even as a small child, I could remember entering the woods with my father to pursue deer. For me, the appeal of hunting has never been the act of killing the animal. Instead, I treasure the feeling that I have escaped the constraints and concerns of modernity and had somehow stepped back into the state of nature. Hunting provides me with an appreciation for the land that I would never have gained otherwise and a realization that forces vastly superior to man are at work within this world. Furthermore, I find myself attracted to the moral code of conduct expected of hunters in this age. After reading Jim Posewitz’s book, Beyond Fair Chase, for my hunter’s safety class, I began to understand how hunting tests the moral character of the individual as well as the individual’s physical character.

While I firmly believe that hunting should be actively encouraged, this paper does not stand as an apology or a rallying cry. Instead, this thesis has a very simple goal in mind. It seeks to explore the history of hunting within the state of Montana. This thesis will recount the massive destruction of game that occurred within the nation during the 19th century and the rise of a sportsman’s ethic that sought to counteract such devastation. The thesis further examines how a sportsman’s ethic emphasizing self-restraint and fair chase has been incorporated into Montana’s Legal Code and how that process has demonstrated a correlation with the broader reforms of the Progressive Movement of the early twentieth century.

I chose to use Montana as a case study for three reasons. First, hunting in Montana has a broad legacy for many individuals and groups, yet it has received little
scholarly attention. Second, laws within a society do not stand merely as prohibitions
against behavior, but also promote a specific ethic within the society. As such, the study
of a state’s laws provides a glimpse into the values prized by that state. Finally, due to
my connection to Montana, such a project would be infinitely easier than attempting to
study another state’s hunting legacy.

I would like to take this time to thank the many people who have helped me
throughout this project and enabled it to become a reality. First, I would like to thank my
mom, who not only worked very hard to make sure I would attend Carroll, but has always
reminded me that struggle brings out the best of my nature. Second, I would like to thank
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Chapter 1
Montana’s Hunting Roots and the Rise of Sportsmanship

A strong hunting tradition permeates throughout the history of Montana. The 1972 Montana Constitution guarantees to its citizens a right to hunt, stating, "The opportunity to harvest wild fish and wild game animals is a heritage that shall forever be preserved to the individual citizens of the state..." The people of Montana have embraced this right as shown in a 1995 survey conducted by the Montana Department of Fish, Wildlife, and Parks through random mailings. When asked if they agree that people should have an opportunity to hunt, respondents showed 95 percent agreement with the statement. Respondents also saw hunting as an important cultural tradition in Montana by a margin of 93 percent. While the survey admits that it excessively sampled hunters, 45 percent of the respondents hunted within the previous year, compared to the state estimate that hunters represent approximately 26 to 31 percent of the state population, it illustrates a series of ethical concerns regarding hunting. For example, 60 percent of respondents opposed hunting on game farms, 76 percent opposed hunting in state parks, 51 percent opposed hunting non-game species that did not threaten a person’s livelihood or safety, such as prairie dogs, and 57 percent felt that complex regulations that vary from district to district do not discourage hunter participation. This chapter will examine the Montana’s hunting tradition and the rise of the sportsmanship during the late nineteenth century to provide perspective of the concerns and beliefs that leads the Montana legislature to regulate hunting.

Hunting in Montana began with the very first inhabitants of the state - Asiatic peoples who crossed the Bering Strait into North America over 10,000 years ago. These
people moved southward, pursuing now extinct bison and mammoth. Around 5000 to 4000 B.C. climate changes transformed the plains into deserts, leading to a decline of these massive animals. Out of necessity, the hunters pursued the smaller mammals that emerged during this period. These prehistoric peoples often lived by a hunting ethic by which they killed only what was necessary, used the flesh of the animal killed, and kept the bones intact to please the deities they followed. These peoples entered what is now Montana through the southwest, crossing the desert regions of modern-day Utah and Idaho. As these prehistoric peoples disappeared, their Native American descendants assumed their hunting legacy, surviving and flourishing through pursuit of the buffalo, using the remains of the animal for food, clothing weapons, and tools. Some examples include the use of sinew to make bowstrings, bones to make knives and some bows, and hides to make shields and tepees. For these peoples hunting provide for their entire livelihood, thus defining their entire existence.

This way of life did not persist forever as Native American contact with Europeans during the 1600s led to trade for iron weapons and firearms. By the eighteenth century, Teton Sioux, originating in what is today Minnesota, discovered the advantages of firearms and began to aggressively hunt beaver. By acquiring pelt, the tribe could purchase the firearms necessary to defeat their rivals and expand into new hunting grounds. While Indians such as the Sioux adopted market hunting to fulfill their desire for firearms, it was the European fur traders who had the greatest impact on hunting during the period.

The fur trader, or “mountain man,” of the eighteenth century remains one of the most controversial figures in American history. Historian Clark C. Spence celebrates
them as “typical hard working Jacksonian men, expectant capitalists who were committed to free enterprise and the proposition that the vast West must fall under American institutions, not those of monarchical Britain or capricious Mexico.”5 Other historians, such as Malone and Roeder blame fur traders for initiating a period of the environmental devastation and the cultural damage against Native Americans. It is clear that the fur trade represented an initial force pulling Whites westward. Motivated by descriptions of abundant wildlife during the Lewis and Clark Expedition, many fur traders rushed west in search of profits. Despite these developments it was not the Americans but the French Canadians who first developed the fur trade in Montana. The industry began as the French-Canadian North West Company expanded into northwestern Montana during the winter of 1804-1805, establishing trading posts in the area, but by 1821, the Hudson Bay Company overtook and absorbed the North West Company.6

Challenges to the Canadian domination of the fur trade began with the Missouri Fur Company in 1809, but took root with the emergence of the Rocky Mountain Fur Company. The company found initial success, introducing a new model of business that allowed its employees to work independently in the wilderness and sell their furs once a year at an annual trade fair called the “rendezvous.” While successful, the company lost ground to the rising American Fur Company, based in New York, which paid better prices for pelts, but also made use of steamboats to navigate the Missouri River and alcohol to facilitate trade. As the American Fur Company subdued its rivals, it faced the stark reality of decline in the fur market as demand shifted to silk and textiles for clothing.7 The legacy of the fur trade in Montana includes the introduction of market hunting and the devastation of local wildlife.
The decline of the fur trade by the middle of the century threatened the livelihood of market hunters who thrived by selling the furs of animal they had killed. Despite this threat, market hunters found new opportunities in the next great demand for game, buffalo. Historian Richard White states that buffalo robes, hides, pemmican, and tongues replaced beaver as the main Indian trade item on the Missouri. The number of buffalo robes shipped annually down the Missouri increased from an average of 2,600 hides between 1815 and 1830 to between 40,000 and 50,000 in 1833 and up to 110,000 robes by 1848, resulting in the decline of buffalo populations along the Missouri River. Despite their decline along the Missouri, the true slaughter of the herds occurred in the West during the 1870s. Montana historians Michael P. Malone and Richard B. Roeder state that the influx of this destruction began in 1871 as tanners discovered more efficient methods to treat the hides into leather. Historian E. Douglas Branch remarks that aside from ranching, buffalo hunting became the most lucrative opportunity in the west. In 1870, New York dealers spent $16 for a good quality robe and $8 for a lesser quality robe. From 1872 to 1873 about 1,250,000 buffalo robes were shipped east. In addition to hides, eastern markets also sought buffalo meat and tongues, which became a novelty. Yet the greater demand for meat originated from butchers who successfully sold it as beef to unknowing customers. Due to such high demand, buffalo hunters often hunted year round instead of giving the buffalo the traditional break of the summer months, during which the buffalo would breed and recover their numbers. The slaughter continued throughout the decade until by 1883 only 2,000 buffalo existed in the entire west.

*Buffalo Jerky*
market hunting of buffalo from the mid to late nineteenth century devastated buffalo populations in the west and nearly drove the animal to extinction.

Although the destruction of the buffalo remains one of the greatest tragedies of this time period, they were not the only game squandered. One example of this time period is the wasteful hunting by Sir George Gore. According to historian Dave Walter, Gore’s 1854 to 1857 expedition through lands in modern-day Colorado, Wyoming, Montana, and the Dakotas used 115 horses, 20 yoke of oxen, and 50 hunting dogs to pursue any animal encountered, killing bison, coyote, timber wolf, deer, antelope, and various birds. Gore even refused to claim the animals that were not trophy quality, leaving many of the carcasses to rot. Overall, his destruction of over 4,000 bison, 1,500 elk, 2,000 deer, 1,500 antelope, 500 bear, and other animals enraged both Native Americans and frontiersman, leading to complaints from the Crow and Piegan to the American Fur Company against Gore’s conduct. Such practices proved common throughout the nineteenth century, especially among recreational hunters.

While market hunting during the mid to late nineteenth century commonly featured the, overwhelming devastation of animals, recreational hunting displayed waste and overall disrespect for game, new hunting attitudes arose during this period, seeking to curb the excesses of market hunting. According to Daniel Justin Herman’s book, *Hunting and the American Imagination*, the emergence of the celebration of hunting among the middle class began during the nineteenth century in response to the pressures of the market revolution, which many feared would create a society of effeminate men

*Despite being pushed to the brink of extinction, buffalo numbers eventually recovered due to the creation of game preserves and national parks, specifically Yellowstone National Park. For more information, read Francis Haines' *The Buffalo: The Story of American Bison and their Hunters from Prehistoric Times to the Present* and E. Douglas Branch’s *The Hunting of the Buffalo.*
through the rise of material comforts, and the increasing popularity of individualism as a means to prosper in the new society. Hunters became the ideal role model because they emphasized both manliness and the rising individualism of the nineteenth century. The celebration of hunters led to the rise of a new group who hunted neither for money nor subsistence, the sport hunter.

The rise of sport hunting introduced one of the most enduring legacies of hunting, the code of sportsmanship. According to Herman, although sport hunting was linked to leisure and eighteenth-century Englishmen, it held a different appeal to middle-class Americans who saw it as a test of character. As such, sport hunters in the United States developed a code of ethics or sportsmanship to regulate their behavior. Middle-class sportsmen challenged the practices of aristocratic hunters, such as using dogs to pursue deer (instead of hunting on foot) and spotlighting. * Sportsman's associations, such as Theodore Roosevelt's Boone and Crockett Club, prohibited driving and spotlighting, and refused to grant membership to any hunter who used such practices. Such hunting clubs became a powerful force in organizing hunters' interests and lobbying for laws to protect game. The code of sportsmanship, which emphasized the merciful kill, self-restraint, and respect for the animal hunted, held meaning to many middle-class hunters. By this time, sport hunters seriously challenged the excesses of market and aristocratic hunters.

The reforms of this period also coincided with the rise of the Progressive Movement. Historian Richard Hofstadter describes Progressivism as a middle-class reform movement, characterized by the presence of professionals and intellectuals who

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* Spotlighting refers to the practice by which hunters use torches or lights to pursue game at night and use the brightness of the light to blind the animal. Driving refers to the practice of using animals such as dogs to pursue deer, exhaust them, and/or push them to a pre-determined location where a group of hunters would await for their arrival. Both practices are widely condemned as unethical and, by today, illegal within several states.
were motivated by indignation against corporations. According of Hofstadter, Progressives feared that the organization and mechanization of American industry and society threatened moral values hard work, individual initiative, and competition. Historians Arthur S. Link and Richard L. McCormick similarly attribute to Progressivism a fear of industrial capitalism’s reckless pursuit of profit. In response, Progressives sought to institute a degree of social responsibility in the industrial world, endorsing the use of an active government to control natural forces in economic and social life. The nature of Progressive Movement defines emerges through the combination of two great forces of society; evangelical Protestantism and the natural and social sciences. The influence of Evangelical Protestants on Progressivism can be traced to the promotion of the Social Gospel, a movement that successfully orients many Christians towards alleviating the misery of the poor and downtrodden of the nineteenth century instead of preparing for the afterlife. Combined with religious calls for reform, the natural and social sciences gave the movement its faith in human progress and the belief that society’s problems could be solved through experts carefully examining evidence and using proper scientific analysis to enact reforms. Included in these groups were trained professionals that sought to impose strict standards of competence on fellow their respective trade and to use that expertise to solve society’s problems. Despite the multiple forces that shaped the Progressive Movement, nearly all participants shared the sentiment they society must be saved from its own indulgences.

As a Progressive reformer, Theodore Roosevelt played a prominent role addressing the concepts of ethical and unethical hunting. In his book, *Outdoor Pastimes*
of an American Hunter, Roosevelt lamented the destruction of game and called on people to act as he stated the following:

"... if we are a sensible people, we will make it our business to see that the process of extinction is arrested... Every believer in manliness, and therefore in manly sport, and every lover of nature, every man who appreciates the majesty and beauty of the wilderness and of wild life, should strike hands with the far sighted men who wish to preserve our material resources, in the effort to keep our forests and our game beasts, game birds, and game fish... from wanton destruction."  

Furthermore, he claims preservation of game is a democratic movement stating that "the lack of such legislation and administration will result in harm to all of us, but most of all in harm to the nature lover who does not possess vast wealth" and "It is foolish to regard proper game laws as undemocratic, un republic an. On the contrary, they are essentially in the interests of the people as a whole..." Here Roosevelt reveals his ideology that hunting is democratic in nature and that sportsmanship through government actions must be implemented to protect the future of the sport. He further emphasized this belief when he further stated that the "True sportsman, worthy of the name, men who shoot only in season and in moderation, do no harm to game. The most objectionable of all game destroyers is, of course, the kind of game butcher who simply kills for the sake of record of slaughter, who leaves deer and ducks and prairie chickens to rot after he has slain them." He also criticized market hunters as "the real enemies of game." Overall, Roosevelt's statements illustrated the necessity of introducing an ethic of sport hunting as a means to preserve game, eliminate waste, and oppose market hunting. His call to implement laws as the means by which to reform hunting also reveals his progressive nature, specifically his willingness to use the government as the means of improving the character of society.
Roosevelt’s statements encapsulate the progressive sentiment regarding hunting and the necessity of game regulation to institute the social control required to save the sport from its own indulgences. Roosevelt’s concerns certainly reflect the dire game condition in Montana and the perilous position the sport faced at the turn of the century. While the environmental devastation of the nineteenth century certainly bears testament to the flaws of human nature, it also testifies the humanity’s awareness of these vices and willingness to suppress these vices to pursue a greater good. In recognizing these truths, several states introduced laws to control hunters’ conduct and preserve game populations. The next chapter will address the Montana Territorial and State Legislature’s attempts to implement the progressive call for reform up to 1919 and how those attempts formed the framework of a legal code of sportsmanship.
Chapter 1 Notes

1 1972 Montana Constitution, art. 9, sec. 7.

2 Scott A. McCollough, Gary L. Dusek, and Dana E. Dolsen, A Survey of Montanan’s Beliefs about Hunting, Fishing, and Trapping (Helena, MT: Montana Department of Fish, Wildlife, and Parks, 1995), 11-12, 14-17, 20.


6 Malone and Roeder, 32-37.

7 Ibid., 37-45.

8 White, 330.

9 Branch, 152-155, 169; Malone and Roeder, 115.


12 Ibid., 145, 156-157, 238.


14 Theodore Roosevelt, Outdoor Pastimes of an American Hunter (New York: Charles Scribner’s Sons, 1905), 322
15 Ibid., 323.
16 Ibid., 324.
17 Ibid., 325.
Chapter 2

The Incorporation of Sportsmanship into the Legal Code

By the later nineteenth century, sportsman recognized that the depletion of game threatened the future of hunting. Historian Daniel Justin Herman declares that the rise of hunting clubs provided a means for sportsman to organize and lobby for new game laws as a means to promote the sportsmanship necessary to save hunting. The documentary, *Back from the Brink: Montana's Wildlife Legacy*, recalls that local groups such as the Helena Gun Club, Deer Lodge Rod and Gun Club, Bozeman Gun Club, and Butte Gun Club arose by 1877 and that such groups played an important role, agitating for legal hunting reforms and promoting fair chase. Motivated by the rising ethical concerns regarding hunting, Montana began to introduce hunting regulations to restrict wasteful conduct and preserve game populations. This chapter will address those attempts at reform from 1869 to 1919. The earliest form of hunting regulations appeared during the territorial period. The Montana Territorial Legislature of 1869 to 1870 implemented a three-month closed season during which those who killed any grouse, prairie chicken, pheasant, and fool-hen faced a fine of $5 to $30, and a three-year closed season for quail and partridge. The 1872 legislature instituted the first closed season for big game, protecting buffalo, moose, elk, blacktail deer, whitetail deer, mountain sheep, and Rocky Mountain goats. It also closed the season for game birds and songbirds for a period of four years. Those who killed big game or game birds faced a $25 to $100 fine and those who killed songbirds faced a $5 to $25 fine. The law furthermore stated that the possession of dead animals would be taken as evidence of guilt. After recovering the fines, the court would have paid one half to the informant whose information led to the
charge and paid the other half to the county treasurer to fund schools. Also, the law specified that a grand jury would investigate all infractions. While the law established many restrictions, it relied heavily on local residents to police game laws and report their violations to the courts.

While the 1874 legislature achieved little regarding game regulation, the legislature of 1876 passed many new regulations, increasing the fines for poaching game animals and birds, adding antelope to the list of big game animals protected, and prohibiting the killing of game animals for hides, and fining each offender between $50 to $200. The legislature also instituted a four-month closed season on the hunting and trapping of otter, beaver, martin, and fisher, charging each violation with a fine of between $50 and $200, and established a closed season for duck and wild geese from May 15 to August 10. The 1876 law’s prohibition against killing game simply their for hides represented the first attempt to limit market hunting in Montana.

The legislature of 1877 continued efforts to regulate market hunting, banning the hunting of game birds for speculative, or market purposes, fining each offense between $50 and $100. The 1883 legislature prohibited the use of dogs to pursue big game animals and prohibited hunting on private property without the owner’s permission, penalizing offenders with a fine of between $5 and $100 and with possible jail time for a maximum of 30 days. The law also fined people, corporations, agents of railways, or other companies from $10 to $25 for receiving, transporting, selling, or attempting to sell

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*A closed season refers to a period of time that hunting is prohibited. Market Hunting refers to the practice by which people or groups would kill game for furs, hides, meat, etc. that could then be sold to a willing buyer. Market hunting is widely blamed for the waste and devastation of game during this period.

* The practice of using dogs to pursue game violates the concept of fair chase and is widely considered immoral.
illegally taken game. However, this act also reduced the established fines for poaching big game, for illegal trapping of beaver out of season, for poaching game birds out of season or for market, and for killing songbirds. The 1885 territorial legislature banned the shipment of moose, deer, elk, bison, buffalo, antelope, and mountain sheep hides out of state and increased the fine on people, corporations, agent of railways, or other companies who violated the act from $50 to $300, and added a possible prison term of between 30 days and 6 months. While these laws constituted a serious attack against market hunting, the greatest changes were implemented in the final legislative session of the Montana Territory.

While the territorial legislatures seemed to have addressed many complaints against unethical and wasteful hunting, such laws were rarely effective. First, initial laws were complex and often poorly written, leading to widespread confusion among the populace. Second, the state simply lacked the ability to enforce game laws. Historian Thomas Lund shows that this problem seemed commonplace throughout the country, stating that, “Nullification of these laws through nonenforcement pervaded American wildlife policy through the nineteenth century . . . . Legislators sought to draft the populace at large into the enforcement process through those rewards so prominent throughout all or early game law, but the technique was inadequate to the task.” Montana’s system, like many other states’ systems, lacked the necessary tools to effectively enforce game laws. Due to such failures, the legislature would soon address game reforms with a new approach, the creation of an effective enforcement infrastructure to ensure obedience to the law.
Fortunately, the territorial government recognized the failures of previous attempts to reform hunting. In an address to the 1889 territorial legislature, Governor Preston H. Leslie admitted to the ineffectiveness of fish and game laws, stating, “I have reason to believe the laws already on the statute book on these subjects are violated in every county in the territory, and within the last two years great injury to the wealth of the country has been inflicted. I charge you to scrutinize well these laws, and to tighten the bands against this reckless waste and destruction.”5 In response to the address, the legislature, with a strong majority in both houses, created the Office of Game and Fish Warden. The law stated that the warden would be an appointed position charged with investigating violations of fish and game laws, and would be authorized to use police powers to make arrests and institute prosecutions of offences. The law enabled the Board of County Commissioners to appoint a game and fish warden for each county that requested a warden and presented a petition of a minimum of 100 residents. The warden earned a salary of $100 a month, along with the funds traditionally given to informers.6 The legislature’s overwhelming support of the game warden recognized the need of active enforcement to truly implement the hunting ethic of Montana.

The territorial legislature of 1889 also passed a separate act prohibiting the killing of buffalo, bison, or quail for 10 years and the killing of moose, elk, and beaver for six years. Those who violated the act would face a fine of between $200 and $500 and a possible prison term of six months to two years. In 1893, the state legislature increased the fine for hunting big game out of season to between $50 and $100 and added a possible jail sentence of between 30 and 60 days. The legislature also added a possible maximum jail term of 30 days for shooting game birds out of season and for shooting
songbirds. The law also increased the penalty for people, corporations, and other groups that transported, possessed, or sold illegally taken game to a fine of between $50 and $200 per offense and a possible prison term of between one and six months. The game laws of these sessions followed a general pattern of increasing the severity of penalties of previously established law.

Instead of strengthening established laws, the 1895 legislature emphasized the creation of several entities to aid the enforcement of game laws. First, the new law created a Game and Fish Fund supported by one half of the fines collected through prosecuting game laws, the other half being distributed to the fish and game warden. The legislature also created the Board of Game and Fish Commissioners. The legislature empowered the board, made of three members appointed by the governor for a period of three years, to enforce the game and fish. Board members would appoint a game warden to serve as the board’s secretary and business agent, and examine violations of game law. Also, any obstruction against the board’s actions in pursuing enforcement would result in a minimum fine of $100 and possible jail time of between 90 and 120 days. In a separate law, the legislature instituted bag limits on big-game animals, restricting hunters to only two bull moose, three bull elk, eight deer, eight mountain sheep, eight mountain goats, eight antelope, or 100 grouse and prairie chickens in one season, or face a fine of between $50 and $100 and possible jail time from 30 to 60 days. The 1895 session’s creation of the Board of Fish and Game Commissioners developed the administrative foundations necessary to strictly enforce game laws, and the institution of bag limits continued the legislature’s attempts to promote responsible hunting.
The following sessions continued adding restrictions as the 1897 legislature reduced the elk bag limits to two head and increased the poaching penalty to a fine of between $100 and $500 and a possible jail time of between six months and two years. The bag limits of deer, antelope, and Rocky Mountain goat were reduced to six head and increased the poaching penalty to a fine between $100 and $500 and a possible jail time of between three months and one year. The bag limits on game birds were more generous, limiting hunters to 20 birds in one day and penalizing poachers with a fine of between $25 and $250 and a possible jail term of between one and three months. The law also increased the maximum fine for owning, transporting, selling, or attempting to sell illegal game to $300, prohibited the sale of all game except songbird with a fine of between $25 to $250 dollars and a possible jail term of between 30 and 90 days, and prohibited the attempt to capture buffalo, elk, moose, or mountain sheep for sale, with a fine of between $100 and $500 and a possible maximum jail term of 6 months. The legislature did exempt people from game laws to prevent possible starvation or collect specimens for the State Educational Institution.\(^9\) This would be the last significant attempt by the legislature to control hunting before the new century.

While the 1899 legislative session did not address game laws, the United States Senate and House of Representatives passed the Lacey Act in 1900, prohibiting the interstate transportation of game killed in violation of local game laws, fining the shipper, carrier, and recipient a maximum of $200. The act further stipulated that the animals transported into another state would be subjected to the game laws of that state.\(^10\) Historian Thomas Lund praised the effectiveness of this legislation, stating, “In its total effect, the legislation dealt a death blow to illegal market hunting.”\(^11\) The implementation
of the Lacey Act allowed Montana, along with other states, to successfully regulate market hunting out of existence.

After the turn of the century, the 1901 Montana Legislature passed a law by a vast majority in both houses that expanded the game warden’s term to four years, and increased the warden’s salary. The law entrusted the warden with appointing between five and eight deputy game and fish wardens for a term of four years, during which each deputy would investigate violations of game and fish law within the corresponding game districts. However, the State Game and Fish Warden retained the power to remove deputies. To fund the expansion of the State Game and Fish Warden, the legislature instituted a property tax in all counties, the revenue of which was deposited into the Game and Fish Fund along with fines. Most importantly, this law expanded the search and seizure power of the warden. The warden could now search people, boats, vehicles, and game and fish receptacles that he suspected possessed evidence of a violation. Furthermore, the warden could ask the courts to produce search warrants for examining any building, car, or container suspected of holding contraband. Any property seized and found to be have been killed illegally would be sold. The property found to have been taken legally would be returned to the legal owners, but game wardens would not be liable for any damage to the seized property. While the law represented a massive expansion of governmental authority to prosecute game laws, the institution of a property tax to fund such efforts indicates that all Montana citizens would contribute to conservation. These traits also suggest the presence of progressive values within the legislative process, such as the endorsement of the use of strong-governmental powers to reform society.
In addition to the 1901 legislature expansion of the powers of the State Game and Fish Warden, the new laws forced non-residents of the state to purchase a $25 license to hunt big game and a $15 license to hunt game birds from the game warden. Both licenses would show the hunter’s name, age, place of residence, post office address, and color of hair and eyes. Funds generated by the licenses would be deposited in the Game and Fish Fund. HB 13, passed with overwhelming support in both houses, specified that the failure to purchase the license would result in a jail term of between one month and one year or a fine of between $100 and $500. The 1901 legislature’s implementation of non-resident licenses provided not only a future source of revenue for the state but also an enforcement mechanism that effectively catalogs hunting within the state.

Many reforms occurred in 1903, as the legislature passed a law reducing big-game bag limits to three deer, one Rocky Mountain goat, and one mountain sheep per season with a significant majority in both houses. The legislature also passed a law increasing funding for game wardens, as the state’s coverage of game warden expenses increased to $1,500, and the state began coverage of deputy warden expenses at a rate of $.05 per mile, both of which were paid through the Game and Fish Fund. Lastly, the legislature also easily passed a law restricting the shipping of game out of state and requiring hunting guides and taxidermists to become licensed professions. The increased regulations, especially the restriction on shipping game out of state, showed the increasing victories of sports hunters over market hunters as the market hunter has been increasingly legislated out of existence.

The legislature of 1905 took further actions to regulate hunting, passing HB 138 with an overwhelming majority in both houses, limiting the elk bag limits to one head
and game bird bag limits to 10 grouse, prairie chicken, fool hen, sage hen, pheasant, partridge, or turtle dove. Most importantly, the legislature passed HB 120 with similar support, requiring all persons over the age of 15 years of age to purchase a license to hunt in Montana from the Game and Fish Warden. Now all licenses provided a physical description of the license holder, along with age, place of residence, business, and post office box. To receive the license, the applicant had to prove residency in the state for the previous six months, except for soldiers, and pay $1. The license applied to all members of the entire household, enabling females in the household, along with males under 21 years of age, to hunt. Any attempt to alter the license would result in a $50 to $200 fine and a possible jail term of between 30 and 90 days. The failure to show a license to a game warden while hunting would result in a fine of between $50 and $100 and a possible jail term of between 30 and 90 days. The State Game and Fish Warden would also retain a copy of the license. Historian Thomas Lund states that the benefits of licensing hunters included the generation of state revenue, creation of a statistical means to estimate hunting pressure, and limit unintended taking of game.15 This legislation expanded on the game licenses instituted in 1901, producing not only revenue but an effective law-enforcement tool for the State Game and Fish Warden.

In accordance with previous sessions, the legislature continued its efforts to strengthen the State Game and Fish Warden. The 1907 law increased the warden’s salary to $2,400 a year and the state’s coverage of expenses up to $2,000 a year. It also increased deputy warden salaries to $1,500 dollars a year and the state’s coverage of deputy expenses up to $300 dollars a year. Furthermore the law increased the salary of the clerk to $1,200 dollars per year. All funds were paid out of the Game and Fish Fund.
Another law allowed for hunters to purchase hunting licenses without appearing before
the game warden and an authorized person would sell the license instead. The issuer
might force the applicant to bring two witnesses to verify the residency of the applicant,
would receive 10 percent of the revenue of the sold, and forward a duplicate of the issued
license to the State Game and Fish Warden. The law moreover enabled the Game and
Fish Warden to create four additional hunting districts and hire four deputies to police
those districts and prohibited deputies from performing any job other than their duties
enforcing game laws.16 While this session continued the pattern of increased funding and
support for the Fish and Game Warden, it also encouraged hunting through easing the
process of obtaining a hunting license.

The 1909 legislature returned to the pattern of increasing the severity of penalties.
The new law increased the fine for killing big game out of season to between $100 and
$1,000 and increased the fine for killing game birds to between $50 and $1,000. The law
furthermore reduced big game bag limits to three deer, one elk, one mountain sheep, and
one mountain goat, reduced game bird bag limits to five birds, except wild ducks, which
were limited to 20 ducks a day. Fines for those violating these regulations were set from
$25 to $1,000. The same legislature continued the pattern of increasing financial support
of the Game and Fish Warden, permitting the Warden to sale confiscated animal, birds,
or remains at a public auction. The warden would give the money raised by the auction to
the original owner if that owner was found innocent. But, if the owner was found guilty,
the money from the sale would be deposited in the Game and Fish Fund.17 This law
further promoted the conception that punitive restrictions on hunter’s behavior were the
key to successful conservation policy.
The 1911 Legislature gave further assistance to the warden, establishing the position of Chief Deputy State Game and Fish Warden, who would perform the duties of deputy wardens, receive a salary of $1800 dollars and state coverage of expenses up to $600 dollars. The Chief Deputy State Game and Fish Warden would also perform the duties of the State Game and Fish Warden when that person was not available. Furthermore, the law gave the game warden the authority to appoint additional game wardens and additional clerks as the situation demands. While much of the legislation addressed the game wardens, the most important acts in 1911 involved the expansion of the protected game preserve in Park County, the creation of the Snow Creek Game Preserve in Dawson County, and the Prior Mountain Game Preserve in Carbon County. All game preserves prohibited hunting of game birds and animals and threatened poachers with a fine between $25 and $100 dollars and a possible jail term of between 30 and six months. The legislature also authorized the State Game and Fish Warden to appoint two deputy wardens to police the Snow Creek and Prior Mountain game preserves. The establishment of game preserves recognized wild game’s need for living space without human presence for survival.

The 1913 Legislature continued to expand executive control over game and fish regulations with the creation of the Montana Game and Fish Commission. The commissioned included a board featuring the game warden and four other members, who are appointed by the governor and ratified by the Senate. However, the legislature states that members on this board would not receive a regular salary and would only be compensated for expenses incurred during the performance of their duties. Although the responsibilities the legislature delegated to the commission dealt mostly with fishing
concerns, the creation of the commission provides a new method to implement policy and illustrates the rising importance of bureaucratic agencies in implementing the legislature’s agenda.

The 1913 legislature further tightened restrictions on taking game. The deer bag limit was restricted to only 1 doe and no fawns. Also, the new law forbade the taking of ewe mountain sheep and lambs, fining each offender between $100 and $1000. Furthermore, it prohibited the hunting of elk until 1918, except in Sweetgrass, Park, Gallatin, Madison, Teton, and Flathead Counties and portions of Powell and Missoula County. The law charged each violation with a fine from $500 to $1000. Any of the before mentioned offenses could result in a maximum jail term of 1 year. The law also established the Sun River game preserve, located within the Lewis and Clark National Forest, and prohibited any hunting and any discharge of firearms within the preserve. Failure to comply with the act would result in a fine from $25 to $100 and a possible jail term of between 30 days to six months. The law also showed attempts on the part of the government to assert greater control over the licensure of hunters, prohibiting authorized dealers from issuing temporary permits and declaring that the state will not recognize temporary permits. Under the law, the state would charge such holders with a fine from $25 to $100 and a possible jail sentence between 30 days and 90 days. However, not every legislative action included restrictions as the law opened resident licenses to any person living within the state for 6 months, serving in the United States Army, serving as a forest ranger, working for the United States Office of Forestry, and students attending a college or university. \(^{20}\) The 1913 session continued the overall pattern of Montana’s
game legislation, emphasizing the expansion of bureaucratic authority and increasing specifications to regulate hunting conduct and promote a code of sportsmanship.

The 1915 Legislature spent little attention to administrative functions, instead focusing on tightening previous game regulations. The law passed by the legislature limits hunters to taking only 2 deer of either-sex and charged poachers with a fine of $100 to $500 and a possible prison sentence of between 60 days and one year. It also increases the fine for poaching mountain goats and sheep, charging poachers between $200 and $1,000 and prohibited hunters from trespassing on land marked with a no hunting sign, charged trespassers with a fine of $10 to $500 and a maximum jail term of six months. The legislature also addressed game preserves, enlarging the territory of the Snow Creek Game Preserve.\(^{21}\) This session doesn’t enact much in the way of new regulation, instead choosing to make minor adjustments to previous law.

By contrast, the 1917 legislature addressed the patchwork system by codifying the game laws. In addition to unifying game law, the legislature forbade issuing licenses to any person whose license had been previously revoked and gave the State Game Warden the power to revoke a person’s license when that person has been convicted of violated game and fish laws. It also defined elk poaching as a felony and closed elk hunting indefinitely in the following counties: Lewis and Clark, Jefferson, Silver Bow, Deer Lodge, Broadwater, Cascade, Fergus, Musselshell, Meagher, Choteau, Hill, Blaine, Fergus, Valley, Sheridan, Yellowstone, Big Horn, Custer, Fallon, Prarie, Wibaux, Rosebud, Dawson, Richland, Mineral, Sanders, Toole, Granite, Beaverhead, and Ravalli. The law also restricted deer limits to one deer in season, prohibited the hunting of mountain goat and mountain sheep before 1922, and banned the hunting of moose,
buffalo, caribou, and antelope, charging poachers with a misdemeanor. The law also banned the use of devices that reduce the silence the muzzle blast of a firearm. It also defines the borders and provides the establishment of the Snow Creek, Pryor Mountain, Sun River, Gallatin, Snowy Mountain, Powder River, Flathead Lake, Twin Buttes, and South Moccasin Mountain Game Preserves and Highwood National Forest. Furthermore, the law enabled individuals to construct private game preserves, provided that the reserve holds an annual license and complies with the regulations of the State Fish and Game Commission. These steps demonstrate the efforts of the legislature to preserve game populations and deprive poachers of tools, such as silencers, by which they may circumvent the law.

The legislature also addressed market interest in hunting, prohibiting vendors and restaurants from selling game meat killed in Montana and forcing vendors and restaurants to preserve shipping and transportation receipts and to display those receipts to any game warden when demanded. The law also requires individuals buying or selling game meat to preserve shipping and transportation receipts that display the time and place of shipment. In addition to further regulating the sell of game meat, the law also establishes regulations for hunting and fishing guides. According to the legislature, guides must acquire a license, certifying the person’s residency in Montana, responsibility as a guide, and good moral standing in the community. Guides must provide a written statement to the State Game Warden stating the days of employment, names and addresses of the hunters present and number of game taken. Furthermore, the law commanded guides to act as deputy game wardens without pay. Those that failed to follow this act would lose their license and would have faced a misdemeanor charge. Also, any person packing for
hunters during the trip would legally be considered a guide. Taxidermy also falls under the legislature’s eye, as the new law requires taxidermists to obtain an annual license to operate within the state. Furthermore, they must distribute a monthly report to the State Game and Fish Warden detailing all game animals processed, addresses of the owners of processed game, and the number of game shipped and addresses to which they were shipped. The regulation of game-related business demonstrates the legislature’s constant attempt to stamp out market hunting, the practice that posed the greatest threat to game population and the practice of hunting.

As the decade drew to a close, the 1919 Legislature implemented only a few measures of game protection such as prohibiting operators of game preserves from selling any game grown for three years after birth. From the beginning of the Territorial Legislature up to the Seventeenth Legislature of the State of Montana, congressmen undertook the efforts to protect game populations and the legacy of hunting within the state. Such measures demonstrated the realization that not only self-regulation but government intervention was necessary to protect the future of hunting. Yet, early laws often failed due to complexity and lack of enforcement mechanisms. In response, bureaucratic agencies began to play greater roles in game regulations. Initially, the agencies merely enforced the law as defined by the legislature but eventually the legislature entrusted those agencies to drive game policy. However, these efforts also faced difficulties, as the main assumptions behind conservation policies were incomplete. The massive elk starvation that occurred during the winter of late 1919 to early 1920 would demonstrate that game management required more than regulating hunting and providing refuges. The following examination of the legislative sessions from 1921 to
1941 demonstrates the increasing importance of bureaucratic institutions as the vehicle by which game policies are enacted and enforced. Furthermore, the next chapter will show how events such as massive elk starvations challenged previous assumptions regarding wildlife, leading to the incorporation of scientific disciples within game management policies.
Chapter 2 Notes

1 Daniel Justin Herman, Hunting and the American Imagination (Washington: Smithsonian Institution Press, 2001), 238-240; Back from the Brink: Montana’s Wildlife Legacy, narrated by Joseph Campanella, DVD (Bozeman, MT: Mediaworks, 2005); Act to Protect Fur-Bearing Animals and Fish in the Territory of Montana, Laws, Memorials, and Resolutions of the Territory of Montana passed at the Sixth Regular Session of the Legislative Assembly (Helena, MT: Herald, 1870), 65; Act to Protect Game, Fur-Bearing Animals and Fish in the Territory of Montana, Laws, Memorials, and Resolutions of the Territory of Montana passed at the Seventh Regular Session of the Legislative Assembly (Deer Lodge, MT: James H Mills, 1872), 581-583.

2 Act to Protect Game, Fur-Bearing Animals and Fish in the Territory of Montana, Laws, Memorials, and Resolutions of the Territory of Montana passed at the Ninth Regular Session of the Legislative Assembly (Helena, MT: Daily and Weekly Herald, 1876), 102-106; Act to Protect Game, Fur-Bearing Animals and Fish in the Territory of Montana, Laws, Memorials, and Resolutions of the Territory of Montana passed at the Tenth Regular Session of the Legislative Assembly (Helena, MT: Daily and Weekly Herald, 1877), 231; Act to Protect Game, Fur-Bearing Animals and Fish in the Territory of Montana, Laws, Memorials, and Resolutions of the Territory of Montana passed at the Thirteenth Regular Session of the Legislative Assembly (Helena, MT: Geo. E. Boos, 1883), 103-105.

3 Act to Protect Game, Fur-Bearing Animals and Fish in the Territory of Montana, Laws, Memorials, and Resolutions of the Territory of Montana passed at the Fourteenth Regular Session of the Legislative Assembly (Helena, MT: Robert E. Fisk, 1885), 83; Act to Prevent Persons from Hunting or Shooting within the Enclosures of Others Without Leave, Laws, Memorials, and Resolutions of the Territory of Montana passed at the Fourteenth Regular Session of the Legislative Assembly (Helena, MT: Robert E. Fisk, 1885), 104-105.


6 Ibid, 78; Council Journal, 16th Session (Helena, MT: Journal Publishing, 1889), 151; Act Providing for the Better Protection of Game and Fish and for the Creation of the Office of Game and Fish Warden, Laws, Memorials, and Resolutions of the Territory of Montana passed at the Sixteenth Regular Session of the Legislative Assembly (Helena. MT: Journal Publishing, 1889), 157-159.

7 Ibid, 159; Malone and Roeder, 161; An Act to Provide Further Protection to Game, Fur-Bearing Animals, Birds, and Fish, Laws, Memorials, and Resolutions of the
State of Montana passed at the Third Regular Session of the Legislative Assembly (Butte City, MT: Inter Mountain Publishing, 1893), 72-76.


9 House Bill 123, Laws, Memorials, and Resolutions of the State of Montana passed at the Fifth Regular Session of the Legislative Assembly (Helena, MT: State Publishing, 1897), 249-255.


11 Lund, 87.


15 Chapter 38, Laws, Memorials, and Resolutions of the State of Montana passed at the Eighth Regular Session of the Legislative Assembly (Helena, MT: State Publishing, 1903), 54-55; Lund, 65; Chapter 52, Laws, Memorials, and Resolutions of the
State of Montana passed at the Ninth Regular Session of the Legislative Assembly
(Helena, MT: State Publishing, 1905), 113-114; HB 138, House Journal, 9th Session
(Helena, MT: State Publishing, 1905), 117, 261; HB 138, Senate Journal, 9th Session
(Helena, MT: State Publishing, 1905), 194-195; Chapter 57, Laws, Memorials, and
Resolutions of the State of Montana passed at the Ninth Regular Session of the
Legislative Assembly (Helena, MT: State Publishing, 1905), 123-130; HB 120, House
Journal, 9th Session (Helena, MT: State Publishing, 1905), 88, 222; HB 120, Senate

16 Chapter 139, Laws, Memorials, and Resolutions of the State of Montana passed
at the Tenth Regular Session of the Legislative Assembly, (Helena, MT: State
Publishing, 1907), 362-363; Chapter 142, Laws, Memorials, and Resolutions of the State of
Montana passed at the Tenth Regular Session of the Legislative Assembly, (Helena, MT: State

17 Chapter 81, Laws, Memorials, and Resolutions of the State of Montana passed
at the Eleventh Regular Session of the Legislative Assembly, (Helena, MT: State
Publishing, 1909), 110-112; Chapter 104, Laws, Memorials, and Resolutions of the State of
Montana passed at the Eleventh Regular Session of the Legislative Assembly, (Helena, MT: State

18 Chapter 28, Laws, Memorials, and Resolutions of the State of Montana passed
at the Twelfth Regular Session of the Legislative Assembly, (Helena, MT: State
Publishing, 1911), 46-47; Chapter 63, Laws, Memorials, and Resolutions of the State of
Montana passed at the Twelfth Regular Session of the Legislative Assembly, (Helena,
MT: State Publishing, 1911), 126-127; Chapter 87, Laws, Memorials, and Resolutions of
the State of Montana passed at the Twelfth Regular Session of the Legislative Assembly,
(Helena, MT: State Publishing, 1911), 156-157; Chapter 100, Laws, Memorials, and
Resolutions of the State of Montana passed at the Twelfth Regular Session of the
Legislative Assembly, (Helena, MT: State Publishing, 1911), 173-175.

19 Chapter 79, Laws, Resolutions, and Memorials of the State of Montana passed
at the Thirteenth Regular Session of the Legislative Assembly, (Helena, MT: Independent

20 Chapter 33, Laws, Resolutions, and Memorials of the State of Montana passed
at the Thirteenth Regular Session of the Legislative Assembly, (Helena, MT: Independent
Publishing, 1913), 45-46; Chapter 34, Laws, Resolutions, and Memorials of the State of
Montana passed at the Thirteenth Regular Session of the Legislative Assembly, (Helena,
MT: Independent Publishing, 1913), 46-47; Chapter 79, Laws, Resolutions, and
Memorials of the State of Montana passed at the Thirteenth Regular Session of the

21 Chapter 36, Laws, Resolutions, and Memorials of the State of Montana passed
at the Fourteenth Regular Session of the Legislative Assembly, (Helena, MT: State


25 Montana Fish and Game Department Game Management in Montana, ed. Thomas W Mussehl and F. W. Howell (Helena, MT: Montana Fish and Game Department, 1971), 12.
By 1919, the Montana State Legislature seemed to address the problems of wasteful hunting and depleted game populations by regulating wasteful hunting practices. Yet, such efforts to save hunting would be meaningless if the state could not restore game populations to a level of viability. In this respect, early laws failed as the elk population suffered through a massive starvation during the winter of late 1919 to early 1920. By the end of the season, approximately 14,000 elk died due to excessive growth within limited space. These failures resulted from incorrect assumptions regarding game management, as state officials believed that the solution lied simply within closing hunting seasons, killing predators, and maintaining game preserves and game farms. However, these policies resulted in substantially larger game populations that outgrew the available habitat, resulting in mass starvations. This chapter demonstrates that the legislatures of 1921 to 1941 addressed these failures by increasing the professionalism and scientific background of the State Fish and Game Commission and entrusting the commission with greater power to regulate hunting seasons and manage game populations.

The 1921 legislature entered the new decade with the expansion of the Fish and Game Commission’s authority to enforce all game regulations and establish regulations concerning the commission’s authority. The law also gave the commission the sole power to spend funds on the protection and expansion of wildlife populations, limit
predator populations for the protection of game, and build game farms. * When establishing a game farm, the commission would have to hire a person with expertise in game breeding to manage the farm. Furthermore, the legislature gave the commission the authority to establish small game preserves with the approval of 75 percent of the affected property owners, or 75 percent of those persons affected by the closure of the land to hunting. The commission could also sell lands in its possession that it deemed unfit for game reclamation. Prior to taking action, the commission had to first publish a notification of potential action in the affected country, and hold a public hearing before taking such action. The law also paid the commissioners a rate of $10 a day for every day the commission met, up to a maximum of $200, along with reimbursement of travel expenses. Most importantly, the law required the commission to collect and preserve biological data to better enable the commission to perform its duties. ² These actions not only demonstrated the growing power and influence of the commission over wildlife management, but also recognized that previous beliefs regarding game management had proved to be inadequate in promoting wildlife-population growth.

To correct the failings of previous regulations, the legislature attempted to promote professionalism within the State Fish and Game Commission. The new law stated that members needed to possess knowledge in wildlife management and that only three members could belong to the same political party. The law also gave the commission the power to appoint the State Fish and Game Warden on the condition that the appointee demonstrated experience, skill, and training in wildlife management before taking the position. Furthermore, the commission held the power to fire the warden for

* Game Farms are establishments that raise game animals within a defined territory, much like a rancher attempting to raise livestock. Not to be confused with game preserves which simply prohibit hunting within a defined territory.
neglect, incompetence, or other good cause. In addition, the law placed the appointments of deputy wardens under the control of the commission, with similar prerequisites that the appointee had demonstrated ability and competence in wildlife management. The law also redefined the pay structure of deputy game wardens, implementing a three-tier system based on merit, by which members in the first and second tiers would receive a yearly raise of $10 and $5 a month, respectively, and were guaranteed of a hearing before dismissal. However, wardens in the third tier would only receive the base salary of $125 dollars a month, with no annual raises or employment protections. In addition, the law forced wardens and deputies to swear off any allegiance to a political party and prohibited the warden and deputies from actively participating in political campaigns, interfering with elections, or influencing political action. These reforms demonstrated the legislature’s efforts to implement standards of professionalism within the bureaucracy and de-politicize the commission. It further demonstrated the presence of Progressive values in the legislature. First, by instituting professional requirements, the legislature followed the belief that the power to form policy should be placed in the hands of technical experts. Second, the attempt to de-politicize the commission emphasized the Progressive belief that such issues should not be subjected to political concerns.

The 1921 legislature did not only address the Fish and Game Commission and its personnel, but also implemented important reforms promoting fair chase. The law prohibited hunters from taking any game from an automobile, airplane, powerboat, sailboat, or along the highway and further banned hunters from using silencers, artificial lights, salt licks, set-guns, or traps to kill game, with the exception of using decoys to hunt fowl. It narrowed the open season for elk to one month, banned the hunting of quail,
Chinese, Mongolian, and Hungarian pheasant, and banned deer hunting in the following counties: Yellowstone, Rosebud, Custer, Powder River, Carter, Richland, Roosevelt, McCone, Dawson, Stillwater, Gallatin, Teton, Phillips, Garfield, Valley, and parts of Fergus. It also expanded the types of hunting licenses to the following six categories: a Class A license for $2 that enabled Montana residents to hunt and fish within the state, a Class B license for $30 that enabled non-residents to hunt and fish, a Class C license for $30 that enabled non-residents to fish but restricted hunting privileges to small game and game birds, a Class D license for $3.50 that enabled non-residents to fish, a Class E license for $50 that enabled aliens to hunt and fish, a Class F license for $10 that granted aliens fishing privileges, and Class G licenses that enabled individuals to trap fur-bearing animals. These laws were most important in demonstrating the legislature’s attempts to promote ethical hunting by limiting the technology hunters could use to pursue game. By this point, it became evident that the technological advances of the twentieth century had greatly reduced the effort needed to pursue game. Such a development gave hunters an unhealthy advantage over game and had to be restricted to protect wildlife. In addition, the license structure not only provided necessary funding for the commission, but also reiterated the principle that residents have the greatest claim to hunting privileges within the state.

The 1923 legislature continued the pattern of expanding the authority of the State Fish and Game Commission. The new law enabled the commission to fire any employee with or without cause, gave it the power to open and close hunting seasons on its own authority, and permitted the commission to form game districts within the state. The commission furthermore had the power to close districts when 20 percent of residents in
the district called for closure to protect game populations. However, the law also relaxed regulations against shipping game, as it declared that residents could ship game out of state with a permit given by the State Fish and Game Warden and enabled non-residents to ship game out of state. The law also required that game packages contain a label detailing the contents of the package. In regards to specific hunting practices, the new law set the price of a Class G license at $10, restricted deer hunting to only one buck with antlers of four inches length or longer, extended the ban against hunting mountain sheep and goats to 1926, and prohibited hunters from using a shotgun with a larger diameter than ten gauge. However, not every action was restrictive, as the new law opened portions of Gallatin and Park counties to elk hunting and enabled landowners to hunt muskrats that damaged private property, provided the landowner obtained a permit from the commission.5

The 1925 legislature empowered the commission to actively import live game instead of simply relying on game preserves to restore wildlife populations and permitted a two-day elk hunt within Jefferson County, but only allowed hunters to take one bull elk. The law also banned the hunting of marten until the commission provided an open season and established the penalties for violating the act as a fine of $25 to $500, a jail term of 10 to 180 days, and a suspension of hunting privileges for one year. Furthermore, the new law mandated that the commission would use $.25 collected from every hunting and fishing license to create a fund to reduce predatory animal populations – $7,500 from the new fund would be transferred to the bounty fund.6 Unfortunately, the law continued the problematic assumption that the key to game management lay within the control of predators, since the hunting of predators removed the natural check on game populations
that otherwise would have prevented the excessive population growths that result in starvations.

The 1927 Legislature expanded hunting opportunities, stating that individuals do not need a license to hunt predatory animals, prairie dogs, ground squirrels, skunks, weasels, jack-rabbits, gophers, English sparrows, crows, hawks, snow owls, great gray owls, great horned owls, blackbirds, kingfishers, magpies, jays, and eagles. In addition, the law stated that any youth 15 years old or younger could hunt game birds and animals in season without a license. The legislature also expanded the commission’s powers, enabling the commission to use dogs to pursue bears that killed livestock. This action was notable because the law prohibited individuals from using dogs to pursue big game. The new law also established an open season for bull elk from November 12 to November 14 in Jefferson County and opened elk hunting during the regular season in portions of Lewis and Clark, Missoula, Powell, and Gallatin counties, while the restricted portions of Lewis and Clark County would be open from November 1 to November 15. The law further reintroduced open seasons for deer within the counties previously closed by the 1921 legislature and enabled hunters to kill a single deer of either sex within Mineral, Beaverhead, Madison, Glacier, Lake, Flathead, Lincoln, Sanders, and Ravalli counties. The actions taken during this session reveal an important aspect of game legislation during this period. Mainly, the emphasis of such legislation was not the protection of ecosystems but the encouragement of specific game species to preserve the future of sport hunting. This reality reveals itself most clearly through the encouragement of hunting predators in game preserves while restricting the hunter’s ability to pursue game animals.
While the laws of this session focused on increasing hunting opportunities, they also addressed other concerns. The 1927 legislative session focused on the expansion of the cap on a commissioner’s pay to $400, the introduction of restrictions against disturbing muskrat or beaver homes, and regulations against the hunting, capturing, of otherwise handling of wild birds not specified as game birds without a permit issued by the commission. However, this rule did not apply to English sparrows, crows, hawks, snow owls, great gray owls, great horned owls, blackbirds, kingfishers, magpies, jays, and eagles. The failure to extend protections to the previously mentioned birds demonstrated the narrow focus of game laws, which neglected to protect predatory animals.

The 1929 legislature continued the pattern of expanding hunting opportunities as it opened portions of Teton and Lewis and Clark counties to seasonal elk hunting and charged poachers with a fine of between $200 and $500 and a prison term from 30 days to 6 months. The legislature also established the Judith River Game Preserve, and allowed individuals to hunt predatory animals, such as wolves, within the preserve. The law further addressed the regulation of game-based businesses. The law defined fur dealers as any entity involved in the trade of skins or pelts of fur-bearing or predator animals and required such businesses to keep records of each transaction. Records kept by the dealer had to include the number and type of skins traded, the location the animal was taken, and the trapping license number of the trapper who initially acquired the pelt. The law also required that businesses obtain a fur-dealers license and required agents of fur dealers to obtain an agent’s license before operating in the state of Montana. Any person that violated this act would face a fine of $25 to $300 and a possible prison term.
of 30 days. Most importantly, the new law accepted provisions of the Migratory Bird Conservation Act passed in the United States Congress, giving the national government the power to acquire lands within the state that the government deems necessary to protect bird populations. In addition to regulating hunting conduct, this session demonstrated the growing involvement of the federal government into wildlife management.

As the state entered the 1930s, it faced a series of problems that further threatened game populations. According to historians Michael Malone and Richard B. Roeder, the droughts of the 1930s surpassed the previous decade’s droughts in terms of intensity and time. Furthermore, the destruction from the droughts, coupled with the Great Depression, brought much misery to the state. In the documentary Back from the Brink, narrator Joseph Campanella describes how the starvation resulting from the Great Depression in Montana forced many people to resort to poaching for subsistence, although the practice was accepted due to the nature of the times. In light of these problems, the 1931 Legislature provided further protections for game populations, establishing the Little Saint Joe Game Preserve in Mineral County and the Little Snowy Mountain Game Preserve in Musselshell County. In both counties, the new laws allowed the state game warden to issue permits to hunters for the purpose of thinning predator populations within the reserves. Also, the legislature reaffirmed the prohibition against wasteful hunting, banning hunters from taking only the head, hide, antlers, tusks, or teeth of the dead animal and required hunters to properly field dress carcasses* and take those carcasses to a hunting camp within 24 hours of its death. The law permitted elk hunting within Park

* Field dressing is the process by which the hunter cut open the chest cavity of the killed animal to remove the internal organs of the animal. The process must be completed soon after the animal has been killed, otherwise the edible meat would spoil.
and Teton counties for two months, Gallatin for one month, Granite County for two days, and portions of Lewis and Clark County for fifteen days. In addition, the law banned hunting within a town or city's limits and further specified that hunters may not use airplanes or boats to pursue or drive game birds or animals. Such laws passed during the Great Depression seem to indicate an attempt to ensure that hunters properly utilized the meat of taken game.

Furthermore, the legislature redefined the license classifications. The Class A resident's license was expanded into the following categories: a $2 Class A license that permitted residents to hunt game birds and fish, a $1 Class AA license, purchased in conjunction with a Class A license, that permitted residents to hunt big game, or a $5 Class AAA or "Sportsman's" license that permitted residents to hunt game animals, game birds and to fish. The law expanded the Class B license into the following categories: a $3.50 Class B license that permitted non-residents to fish, a $10 Class B-1 license that permitted non-residents to hunt game birds, and a $30 Class B-2 license that permitted non-residents to hunt game animals. The law expanded the Class C license into the following categories: a $10 Class C license that enabled aliens to fish, a $30 Class C-1 license that enabled aliens to hunt game birds, and a $50 Class C-2 license that enabled aliens to hunt game animals. Also, the trapper's license was classified as a Class D license and the Class E license applied to fur dealers. Furthermore, the law required that the licenses provide a tag that the hunter would place upon the taken carcass to mark the remains as a legal kill. Those who failed to properly tag a carcass would be charged with a misdemeanor fine of $25 to $500 and a possible jail sentence up to 180 days, as well as a loss of hunting privileges for one year. This session presented an example of
legislating with increased attention to detail and specification within the law, attempting to remove possible ambiguities within the law. The implementation of tags to mark legally taken carcasses became a staple of hunting seasons and an effective tool to reduce poaching. Yet, despite the increased legislation against poaching, the practice was generally tolerated during the Great Depression as hunters attempted to provide food for their struggling families throughout Montana.

The 1933 Legislature placed the authority to open and close elk seasons solely within the hands of the State Fish and Game Commission in regards to areas previously closed. The law stated that elk seasons would remain closed until the commission decided that the elk population has recovered to the size that would warrant a hunt. The law also gave the commission similar power over antelope in Choteau County. However, the law did not additionally close elk hunting in counties where hunting was legal. In fact, the law expanded the season in Park County to January 10. Furthermore, the legislature enabled game farm operators to stock fur-bearing animals along with game animals and forbade people from entering those enclosures that were marked. It also limited trapper’s licenses to those landowners and tenants of private property and restricted them to trap only on their property. These laws continued the pattern of tightening regulations and expanding the power of the commission in regards to elk hunting, with the notable exception of Park County.

Despite their best efforts, these laws still were not successful in promoting game populations due to problematic assumptions previously discussed. Yet, new hope arose in the same year as Aldo Leopold published his book, *Game Management*, calling on officials to disregard previous policies and instead focus on preserving all wildlife and
wildlife habitat. Leopold’s contribution led to the application of scientific principles in game management. Most importantly, Leopold’s work demonstrated that game agencies must actively promote a sustaining ecosystem that preserves the natural balance of predators and prey. Soon, his work would have powerful ramifications within game legislation and game policy.

Despite the importance of Leopold’s work, the 1935 legislature did not act on its findings. Instead, the 1935 legislature simply continued to expand hunting opportunities in Park County, declaring the open season for elk to last from October 15 to March 1, although the commission retained the power to close the season after posting a five-day notice. The new law also banned organizations for offering prizes to hunters for taking their bag limit, although the law did not ban such organizations from offering prizes based on one animal in regards to size, quality, or rarity. Groups that violated this law would face a fine of between $25 and $500 for each offense. Furthermore, the new law limited hunting of beaver only to landowners whose property had been damaged by beaver. Such persons had to apply for a permit between May 1st and November 30, and after capturing beaver, that person was to send the pelt and $.50 per pelt to the commission. Also, the trapper has to submit a statement that detailed the trapper’s name, place of residence, permit number, place of capture, and number of beavers captured. Afterwards, the game warden would charge an additional $.10 per pelt for the cost of attaching metal tags to the pelt. The law allowed the trade of beaver pelts with the metal tag, which would remain on the pelt until it has been manufactured into an article of clothing or some other consumer good. However, any trade of pelts without a tag would
be considered contraband.\textsuperscript{14} Such attempts demonstrate legislature's constant attempt to address the human element of game management.

In a separate law, the legislature addressed the need to restore game populations and rethink previous strategies. The law gave the Fish and Game Commission the power to use its funds to operate and maintain game farms and other properties established to protect and expand game and fur-bearing animal populations, to provide waterfowl food based on expert advice, and to maintain public hunting lands. Furthermore, the legislature sought to encourage the science of game management as it allowed the commission to enter into cooperative agreements with educational institutions and Federal agencies to promote wildlife research and wildlife-management training. The commission would also have the authority to form coalitions with educational institutions, federal agencies, homeowners, corporations, and organized groups to develop animal management and development projects. The legislature also affirmed the commission's powers to establish bag limits on game. However, the law clearly stated that the commission did not have the authority to authorize anyone except game wardens to carry concealed weapons.\textsuperscript{15} Again, the legislature continued that pattern of expanding the authority and scope of the game commission, affirming the progressive belief that skilled bureaucrats should have the power to form policy. Yet, the legislature's greatest contribution was the recognition that the commission must apply sound scientific principles to its policies.

While the 1937 Legislature took few actions, it did institute one of the hallmarks of hunter safety – the requirement that hunters wear clothing of a bright red color while pursuing game.\textsuperscript{16} Although little occurred in the state legislature, a national coalition of
conservationists, scientists, sportsman, and ammunition and firearms companies successfully pushed through the United States Congress one of the most important pieces of legislation promoting game protection. The Pittman-Robertson Act of 1937 declared that the Secretary of Agriculture would cooperate with the states' respective fish and game departments in wildlife-restoration projects focusing on improving suitable wildlife habitats. The law implemented a tax on firearms, cartridges, and shotgun shells to raise revenue for wildlife projects. Prior to receiving federal money, the states had to first ban the use of hunting-license fees for any purpose other than the state's fish and game department. Moreover, all projects managed by such departments were required to conform to standards set by the United States Secretary of Agriculture. However, the states would maintain control over the active management of such projects. This law stands as the triumph of the conservation movement and laid the foundation for successfully saving game populations. By funding such projects through the taxation of firearms and ammunition, the act placed the future success of wildlife management squarely upon the shoulders of hunters.

The Montana Legislature of 1939 expanded upon previous laws. It created a $2.50 Class BB temporary license that allowed non-residents to fish for 10 days and required trappers to purchase a Class AA license with a trapper's license. The law also required that the state maintain sufficient areas of range for game to use and that game should use such range in common with livestock. It specified that the Montana Grass Conservation Commission would act in an advisory capacity to the State Fish and Game Commission to provide such range. Although this session took few actions, the 1941
Legislature implemented broad changes to the Montana game law that determined the
direction of wildlife management for the following decades.

The 1941 Legislature implemented many changes, and most importantly
recognized the terms of the Pittman-Robertson Act of 1937. In the new law the state
acknowledged the requirement that only state fish and game departments could spend
license fees, but reserved the right to manage wildlife within state borders. This law
further stated that Montana would not give its consent to the national government to
taking lands for the new Migratory Bird Conservation Act. The new law also gave the
Fish and Game Commission, with the consent of the governor, the power to purchase or
lease lands to create wildlife projects under the Pittman-Robertson Act. This law stands
as a turning point in Montana’s game management as it gave the state the funds necessary
to move beyond simple enforcement and refuges in order to promote the restoration of
habitat. Restoration of habitat emerged as a most important feature of this bill because
Leopold’s work showed that only such restoration could stabilize game populations.

The 1941 legislature addressed other concerns as well, allowing guides who lived
in counties that bordered Montana to purchase a guide license within the state. The
legislature also consented to the taking of state lands in Flathead County by the United
States for a migratory bird refuge and recognized the authority of the federal government
to declare open seasons and bag limits on migratory birds. The law also expanded the
authority of the State Fish and Game Warden, allowing the commission to appoint up to
27 deputy wardens. In addition, the legislature also divided the state into five game
districts and specified that the governor’s five appointees must come from each of the
five districts. Furthermore, the law gave the governor the power to remove any
commissioner for neglect, incompetence, or misconduct, although the governor had to
give the commissioner a hearing 15 days after the notification of termination of the
decision to provide the commissioner an opportunity to refute the stated reasons for
dismissal. By 1941, with the implementation of the Pittman-Robertson Act, the State
Fish and Game Commission emerged as the primary force behind hunting regulations, as
it finally held the necessary power and financing to effectively restore game habitat,
thereby preserving the future of hunting within the state.

The legislative efforts of the state of Montana from 1921 to 1941 have
demonstrated many important realities of that period. First, while legislators were clearly
aware of man’s negative impact on game due to wasteful hunting, it remained oblivious
to the role of ecosystems to promoting wildlife. The concept of a balance between
predator and prey was sadly absent during most of this period, leading to the legislature’s
adoption of counterproductive policies, such as massive hunting of predatory animals.
Indeed, the laws of this period revealed the unfortunate ability of a fallacy to have lasting
effects on society, even after it has been refuted. Second, the willingness of the
legislature to cede power and authority to the commission had correlates with the
Progressive Movement’s preference for bureaucracy. Indeed, by 1941, the State Game
Fish and Game Commission became the primary originator of game policy. Despite the
problems of this period, the legislatures from the middle 1930s to 1941 implemented
devices that would successfully correct counterproductive laws. By 1941, the legislature
set the state on the course that would save both wildlife populations and hunting.
Chapter 3 Notes

1 Montana Fish and Game Department *Game Management in Montana*, ed. Thomas W Mussehl and F. W. Howell (Helena, MT: Montana Fish and Game Department, 1971), 12; *Back from the Brink: Montana’s Wildlife Legacy*, narrated by Joseph Campanella, DVD (Bozeman, MT: Mediaworks, 2005).


12 Chapter 72, Laws, Resolutions, and Memorials of the State of Montana passed at the Twenty-third Regular Session of the Legislative Assembly (Helena, MT: State Publishing, 1933), 135-136; Chapter 73, Laws, Resolutions, and Memorials of the State of Montana passed at the Twenty-third Regular Session of the Legislative Assembly (Helena, MT: State Publishing, 1933), 137-138; Chapter 123, Laws, Resolutions, and Memorials of the State of Montana passed at the Twenty-third Regular Session of the Legislative Assembly (Helena, MT: State Publishing, 1933), 262.

13 Back from the Brink: Montana's Wildlife Legacy.


15 Chapter 1, Laws, Resolutions, and Memorials of the State of Montana passed at the Twenty-fourth Regular Session of the Legislative Assembly (Helena, MT: State Publishing, 1935), 1; Chapter 82, Laws, Resolutions, and Memorials of the State of Montana passed at the Twenty-fourth Regular Session of the Legislative Assembly (Helena, MT: State Publishing, 1935), 128-129; Chapter 167, Laws, Resolutions, and Memorials of the State of Montana passed at the Twenty-fourth Regular Session of the Legislative Assembly (Helena, MT: State Publishing, 1935), 333-336; Chapter 200, Laws, Resolutions, and Memorials of the State of Montana passed at the Twenty-fourth
Regular Session of the Legislative Assembly (Helena, MT: State Publishing, 1935), 446-449.

16 Chapter 74, Laws, Resolutions, and Memorials of the State of Montana passed at the Twenty-fifth Regular Session of the Legislative Assembly (Helena, MT: State Publishing, 1937), 139-140.


19 Chapter 167, Laws, Resolutions, and Memorials of the State of Montana passed at the Twenty-seventh Regular Session of the Legislative Assembly (Helena, MT: State Publishing, 1941), 342-344.

20 Chapter 103, Laws, Resolutions, and Memorials of the State of Montana passed at the Twenty-seventh Regular Session of the Legislative Assembly (Helena, MT: State Publishing, 1941), 169; Chapter 156, Laws, Resolutions, and Memorials of the State of Montana passed at the Twenty-seventh Regular Session of the Legislative Assembly (Helena, MT: State Publishing, 1941), 303-304; Chapter 158, Laws, Resolutions, and Memorials of the State of Montana passed at the Twenty-seventh Regular Session of the Legislative Assembly (Helena, MT: State Publishing, 1941), 309; Chapter 162, Laws, Resolutions, and Memorials of the State of Montana passed at the Twenty-seventh Regular Session of the Legislative Assembly (Helena, MT: State Publishing, 1941), 315; Chapter 166, Laws, Resolutions, and Memorials of the State of Montana passed at the Twenty-seventh Regular Session of the Legislative Assembly (Helena, MT: State Publishing, 1941), 340-341.
Conclusion

Due to the devastation of wildlife during the 19th century, hunting faced the possibility of fading out of existence. Indeed, that century’s legacy included tragic losses of game due to slob hunters and market demands for meat and hides. While hunting seemed doomed to the same fate of extinction that it threatened to impose upon many species of wildlife, a new breed of hunter emerged. These new hunters saw the need to reform the sport and develop a code of sportsmanship that effectively removed wasteful habits from hunting. As such, the ethical hunter, as described by Jim Posewitz, former wildlife biologist for the Montana Department of Fish, and Wildlife, and Parks, was “a person who knows and respects the animals hunted, follows the law, and behaves in a way that will satisfy what society expects of him or her as a hunter.” Posewitz further expanded upon this idea, stating: “Fundamental to ethical hunting is the idea of fair chase. This concept addresses the balance between the hunter and the hunted. It is a balance that allows hunters to occasionally succeed while animals generally avoid being taken.” Beginning in the late nineteenth century, Montana hunters, motivated by this new spirit, agitated for new laws that incorporated the code of sportsmanship into the region’s hunting practices. These efforts proved tremendously important because laws represent not only restrictions on behavior but also the implementation of specific ethical beliefs. The examination of Montana game laws reveals the incorporation of the values of ethical hunting and fair chase into the legal code, as evidenced by the implementation of closed seasons, bag limits, game preserves, the regulation of market hunting, and prohibition against unethical and wasteful practices.
While early legislation seemed to address the problems posed by unsavory hunting, it also contained many false assumptions that ultimately led to failure. The Montana Fish and Game Department stated that such polices were doomed to fail because the laws only considered the dangers posed by humans and predators and did not recognize the role of ecology and habitat in wildlife restoration, as evidenced by the massive elk starvations during the winter of 1919/1920 caused by herds outgrowing their habitat. Although slow to respond to such tragedies, the legislature eventually saw that previous policies were ineffective. The legislature expanded the power, responsibility, and funding of the Game and Fish Warden and the later Game and Fish Commission, enabling these groups to move beyond simple enforcement. From 1921 to 1941, the new laws enabled the bureaucracies to develop and implement management policies without legislative approval. This development fits within the overall pattern of increasingly bureaucratized government within the twentieth century, but it also reflects many values of the Progressive Movement, specifically the attempts to strengthen government institutions as a means to promote self-restraint and curb harmful behavior. Furthermore, the increasing professionalism of the game warden and the commission, and the reliance on the use of scientific expertise to shape game policy, correlates with the Progressives' belief that technical experts, instead of politicians, should control the formation of policy.

As the state further bureaucratized hunting policy and game management, the 1941 state legislature’s incorporation of the Pittman-Robertson Act gave the Game and Fish Commission the funding necessary to implement practical game management. Furthermore, it demonstrated how the role of the hunter had changed during the 20th century. While hunters may have been the scourge of the 19th century, within the 20th
century, they emerged as heroes. Hunters willing promoted the taxation provisions on firearms and ammunition for funding wildlife management, cementing a symbiotic relationship between wildlife and hunters.

The Montana Legislatures’ efforts between 1889 and 1941 successfully reversed the previous century’s legacy of wasteful destruction of game, replacing it with a new, Progressive ethic prizing moderation, self-restraint, and respect for game. The implementation of the sportsman’s ethic within Montana law saved not only declining game populations during the 19th century, but also saved the future of hunting in Montana. While the devastation of the 19th century must never be forgotten, people must also remember that hunters played a pivotal role in the revival of game populations within the state during the 20th century, enabling future generations to not only hunt, but also to gain a deeper appreciation for wildlife within their natural habitat.
Conclusion Notes


2 Ibid., 57.

3 Montana Fish and Game Department *Game Management in Montana*, ed. Thomas W Mussehl and F. W. Howell (Helena, MT: Montana Fish and Game Department, 1971), 12.
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