



# **Montana Fish, Wildlife & Parks**

## PRIVATE FISH POND PERMITTING

Based on state law first passed in 1945, Montana Fish, Wildlife & Parks (FWP) administers private fish pond licensing. Regulations are intended to allow the stocking of private fish ponds while ensuring that public resources are not adversely affected by unwanted fish, fish diseases, that nuisance aquatic species are not planted into ponds where they can escape or be introduced into state waters, and that habitat of wild fish is not harmed. Most of Montana's streams support wild fish without artificial stocking, and the introduction of unwanted fish species or the diversion of water for artificial ponds could potentially impact the natural ecological balance.

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 problem 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 some water. Every effort should be made to eliminate or minimize the use of stream surface water or alluvial groundwater for ponds.

Following is a brief overview of the private fish pond permitting process:

1. Obtain a private pond application from the internet at [fwp.mt.gov](http://fwp.mt.gov) or the nearest FWP office. Any additional questions should be directed to your Regional Fisheries Manager.
2. A private fish pond permit applicant must have a water right appropriate for the size and location of the pond. For existing ponds, the applicant's General Abstract from DNRC must include a "Reservoir Record" that is consistent with the size and location of the pond (see Abstract examples).
  - For existing ponds that have a valid Reservoir Record and a priority date prior to January 1, 2000 a private pond permit can be issued without a specific "fishery" or "fish and wildlife" purpose for the water body included in the water right.
  - For ponds with a water right priority date of January 1, 2000 or later, the water right must include a "fishery" or "fish and wildlife" purpose to obtain a fish pond permit.
  - Any impoundment created via the "stockwater exemption" in the Water Use Act (85-2-306(3), MCA) must obtain a new water right for fishery purposes if the stockwater exception was issued January 1, 2000 or later.
3. Most private ponds will require acquisition of water rights through application with the state Department of Natural Resources and Conservation (DNRC), 406-444-6610. One of three applications may be required:
  - Beneficial Water Use, Form 600
    - required if your proposed pond impounds surface water or impounds more than 10 acre-feet of groundwater
    - required if you have a diverted spring or well flow rate into the pond that exceeds 35 gpm or the appropriated volume exceeds 10 acre-feet
  - Notice of Completion of Groundwater Development, Form 602
    - required if your pond is a groundwater pit with a capacity of less than 10-acre feet
    - any use of groundwater less than 10 acre-feet requires a DNRC 602 Form
  - Application to Change a Water Right
    - Required to add a place of storage or a purpose of use (See "Water Rights in Montana" a booklet available from DNRC)

4. FWP cannot issue fish stocking permits until it is certain that legal water rights exist (if needed) for the pond or reservoir. It may take up to 210 days or longer for DNRC to process a correct and complete water right application, and be advised that FWP may file an objection to a requested water right if it is determined that the withdrawal will pose an unacceptable risk to fish in adjacent public/state waters. Please contact DNRC and your local County Conservation District before you begin any construction on your pond. It is recommended that you submit your fish pond application to FWP after you have completed your water right permitting process.
5. Ponds will not be permitted to stock fish if they are likely to flood or if they pose an unacceptable risk to game fish or species of special concern.
6. On stream ponds will not be permitted unless it can be demonstrated that there is no threat to game fish or species of special concern in adjacent waters. You must provide documentation verifying that game fish or species of special concern do not occur in the tributary, spring or stream for your instream (on stream) pond, and that your pond does not pose an unacceptable risk to game fish or species of special concern in adjacent waters. Verification must be in the form of a formal report from an FWP-approved professional fisheries consultant (contact FWP for a current list), or other reliable data and documentation (FWP survey/inventory data, university studies, scientific journal articles). A list of game fish and species of special concern is attached for your information.
7. Submit your completed pond application and all necessary attachments, including the \$10 application fee, to the regional FWP office. Allow a minimum of 6-8 weeks for processing your application. FWP is required by law to prepare an environmental assessment (EA) of any proposal to introduce fish into a pond and must provide a minimum 14-day public comment period on potentially controversial proposals or proposals which may have impacts that require mitigation. At least one site visit is necessary as part of the EA process.
8. The FWP regional office will contact you to conduct a pond inspection as part of the environmental assessment process and to ensure that the pond is properly screened to prevent fish from entering or escaping the pond. This inspection is conducted after completion of all pond construction activities and filling of the pond with water.
9. The Regional FWP office issues private fish pond permits. Permits are issued for 10 years.
10. Only approved species of fish may be stocked in the pond. Fish may not be stocked until a private pond permit is issued. Only fish species approved and obtained from a lawful source may be stocked. Pond owners are responsible for obtaining the required import permits to obtain fish from out-of-state sources.

Normally, fish approved for stocking will be limited to those species presently occurring in the drainage. In some instances applications to stock ponds with fish will be denied, and in other cases there may be special restrictions to protect native or sport fish species in an area. Only species that will not pose a threat to any threatened or endangered species, or species of special concern will be approved. To reduce the potential for introduction of fish diseases and exotic aquatic nuisance species, FWP encourages pond owners to obtain fish for their ponds from private fish hatcheries in Montana. An import permit is required of a pond owner to bring fish into Montana from another state.

Because FWP is funded by general license dollars, department biologists cannot provide technical assistance to private pond owners unless free public access is provided. There are private fisheries consultants who can provide any necessary technical assistance. Contact FWP headquarters (444-2449) for more information and a list of possible consultants.

Submit a completed application form, along with all required attachments to the Fisheries Manager in your region. Tentative approval may be provided before pond construction is completed. A permit will not be issued for any pond prior to final inspection and determination that the pond is in compliance with

permit conditions. The statutes regarding private fish ponds are included for your information. Please remember that it is our responsibility to protect Montana's valuable public fisheries. We appreciate your cooperation in this permitting process.

## **FWP ADMINISTRATIVE REGIONS**

### **STATE HEADQUARTERS**

MT Fish, Wildlife & Parks  
1420 East 6th Avenue  
PO Box 200701  
Helena, MT 59620-0701  
406-444-2535

TELEPHONE DEVICE  
FOR THE DEAF  
406-444-1200

### **REGION 1**

490 North Meridian Rd  
Kalispell, MT 59901  
406-752-5501

### **REGION 2**

3201 Spurgin Rd  
Missoula, MT 59804  
406-542-5500

### **BUTTE Area Res Office (BARO)**

1820 Meadowlark Ln  
Butte, MT 59701  
406-494-1953

### **REGION 3**

1400 South 19th  
Bozeman, MT 59718  
406-994-4042

### **HELENA Area Res Office (HARO)**

930 Custer Ave W  
Helena, MT 59620  
406-495-3260

### **REGION 4**

4600 Giant Springs Rd  
Great Falls, MT 59405  
406-454-5840

### **LEWISTOWN Area Res Office (LARO)**

2358 Airport Rd  
Lewistown, MT 59457  
406-538-4658

### **REGION 5**

2300 Lake Elmo Dr  
Billings, MT 59105  
406-247-2940

### **REGION 6**

54078 US Hwy 2W  
Glasgow, MT 59230  
406-228-3700

### **HAVRE Area Res Office (HvARO)**

2165 Hwy 2 East  
Havre, MT 59501  
406-265-6177

### **REGION 7**

PO Box 1630  
Miles City, MT 59301  
406-234-0900



# Montana Fish, Wildlife & Parks

FWP Use Only

\_\_\_\_ New

\_\_\_\_ Modification of License

License # \_\_\_\_\_

## NON-COMMERCIAL PRIVATE FISH POND - FEE \$10.00/10 YEARS APPLICATION FORM (Revised 8/2005)

This application is for a private fishpond that does not sell fish or fish eggs. Permits are issued to the individual applicant and are good for 10 years. These permits are transferable within the term of the permit. When issued, a permit authorizes the permittee to stock approved fish species in the designated pond. A new/transfer application is required when ownership of a pond changes or if the pond is reconstructed.

*Modifications to License: If you have already provided all of the information required in this application, you need only complete part A, part D, specify any changes to your current license (i.e. new contact person, new fish species to be stocked) and include your license # \_\_\_\_\_*

### A. APPLICANT

Owner's Name (Print): \_\_\_\_\_

Corporations must provide a single contact person: \_\_\_\_\_

DOB/ALS: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Local Phone # and Address (if different from above): \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

FWP receives requests for mailing lists. Do you want your name included on lists provided by FWP to requestors? Yes \_\_\_\_\_ No \_\_\_\_\_

### B. LOCATION AND OWNERSHIP INFORMATION

Legal Description where pond is located.

Township \_\_\_\_\_ Range \_\_\_\_\_ Section \_\_\_\_\_, \_\_\_\_\_ Nearest ¼ section

County: \_\_\_\_\_

Do you own or lease the land? Own \_\_\_\_\_ Lease \_\_\_\_\_

- Attach a copy of the lease agreement.
- Attach a copy of the U.S. Geological Survey topographic map showing the exact location of this pond. Copies of aerial photos will not be accepted.
- **Draw a map giving detailed directions to this pond on the back of this application or on a separate piece of paper with your name at the top and attached to your application.**

*APPLICATIONS LACKING ABOVE MATERIALS WILL BE RETURNED TO APPLICANT*

**C. GENERAL INFORMATION**

**License History:** Was this pond previously licensed by FWP? No \_\_\_\_\_ Yes \_\_\_\_\_

If yes, license number if known or name of former pond owner: No \_\_\_\_\_ Yes \_\_\_\_\_

**Fish Species** requested for stocking in this pond?

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**Pond Information:** Has pond been constructed? No \_\_\_\_\_ Yes \_\_\_\_\_

Was this pond created by artificial means? No \_\_\_\_\_ Yes \_\_\_\_\_

How was it constructed? Dam \_\_\_\_\_ Excavated \_\_\_\_\_ Diversion \_\_\_\_\_ Other \_\_\_\_\_

Describe: \_\_\_\_\_

Pond surface area: \_\_\_\_\_ (Acres)

Ponds larger than 500 acres cannot be licensed and your application will be denied.

Are there any fish in this pond at this time? No \_\_\_\_\_ Yes \_\_\_\_\_

List Species: \_\_\_\_\_

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**Water Rights --**

If you already have a water right for the pond, you must attach a General Abstract (available from DNRC, see examples provided) that includes the reservoir record for the pond. Contact DNRC if your right does not include a reservoir record.

If your water right for this pond does not include a "fishery" or "fish and wildlife" purpose and the water right priority date is January 1, 2000 or more recent, you must apply to add a Fish & Wildlife purpose to your water right (DNRC 606 Form). A "fishery" or "fish and wildlife" purpose is not necessary for ponds with priority dates prior to January 1, 2000.

\_\_\_\_\_ **600 Form for surface water – DNRC permit must be attached, it may take 210 days or longer for DNRC to process your application.**

\_\_\_\_\_ **602 Form for groundwater – application must be attached.**

\_\_\_\_\_ **606 Form to add a place of storage to a current water right.**

FWP will not issue a fish stocking permit for impoundments created with the 1981 stockwater pond exception (MCA 85-2-306(3)) if the stockwater exception was issued after Dec 31, 1999. This exception was created for stock-only reservoirs. Persons desiring ponds for fish should apply to add a fisheries purpose to the stockwater right.

**Inlets and Outlets**

Are there inlets: No \_\_\_\_\_ Yes \_\_\_\_\_

Describe water source and method of delivery to pond and the screening system you will use to prevent escape of stocked fish:

Are there outlets: No \_\_\_\_\_ Yes \_\_\_\_\_

Describe where outlet water drains (to what surface water) and the screening system you will use to prevent escape of stocked fish:

**On Stream Ponds**

Is this an instream (on stream) pond? No \_\_\_\_\_ Yes \_\_\_\_\_

Does any tributary spring/stream to the pond support game fish or species of special concern? No \_\_\_\_\_ Yes \_\_\_\_\_

Describe normal streamflow: \_\_\_\_\_ Dry \_\_\_\_\_ Intermittent \_\_\_\_\_ Perennial

**You must provide documentation verifying that game fish or species of special concern do not occur in the tributary, spring or stream for your instream (on stream) pond.**

**NOTE:**

- Species available for stocking are restricted in areas supporting species of special concern (e. g. westslope cutthroat trout, Yellowstone cutthroat trout, bull trout, inland redband rainbow trout, pallid sturgeon, white sturgeon, and sauger).
- An import permit is needed to bring any fish into Montana from other states or countries. You must contact FWP to obtain the import permit application. FWP maintains a list of authorized commercial fish growers. Call the FWP Fish Health Lab (406-452-6181) for the current list.

**No sale of fish or fish eggs is allowed with a private pond permit. Please contact your regional FWP office for a commercial pond permit application if you want to sell fish or fish eggs.**

**D. CERTIFICATION**

I certify that I am the owner or legal lessee of the property on which this pond is located and have secured, applied for, or am exempt from all other necessary permits and water rights for this pond. (A copy of the lease agreement must be attached for all leased property.)

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date

Send completed application with all attachments to the Fisheries Division of your regional FWP office. Incomplete applications will be returned.

**\*\*\*\*\* STOP \*\*\*\*\***

**BEFORE MAILING YOUR APPLICATION**

**Please check that all required attachments are included with your completed application:**

- U.S.G.S. topographic map with pond location identified. An 8 ½"x11" photocopy of the area with the pond is acceptable.
- Directions and road map to pond site with local address and phone number.
- Lease agreement unless you own the property on which the pond is located.
- Copy of general abstract for the pond water right or copy of water right permit or change application is acceptable. Water rights for irrigation, livestock and/or domestic use will not be accepted without a reservoir record.
- For instream (on stream) ponds: verification of presence/absence of fish species of concern in tributaries to the pond and adjacent waters.
- \$10.00 Application fee.

**Private pond applications without all required information will be returned to you.**

## Montana Private Fish Pond Laws

**87-4-603. Fish pond license for artificial lake or pond -- records.** (1) A person who owns or lawfully controls an artificial lake or pond or a private fish pond may apply to the director for a fish pond license. The holder of a private fish pond license may stock the fish pond with fish procured from a lawful source. The department may designate the species of fish that may be released in the pond and otherwise condition the license if there is a possibility of fish escaping from the pond into adjacent streams or lakes. The license holder may take fish from the lake or pond in any manner. Before a license holder may sell fish or eggs or fry from the lake or pond, the license holder shall furnish a corporate surety bond to the state for \$500, conditioned to the effect that the license holder will not sell fish or spawn from any of the public waters of this state or violate the conditions of the license and also conditioned to the effect that the license holder will submit an annual report on transactions to the director.

(2) (a) "Artificial lake or pond" or "private fish pond", as used in this section, means a body of water that is:

(i) created by artificial means or by a diversion of water that does not exceed 500 acres in surface area; or

(ii) an instream pond that does not exceed 500 acres with a tributary spring or stream that does not support game fish or fish species of special concern; and

(iii) not determined by the department to pose an unacceptable risk to game fish or fish species of special concern in adjacent waters.

(b) The term does not include all other natural ponds or bodies of water, including streams or rivers and impoundments or reservoirs of or on a natural stream, river, lake, or pond.

(3) An applicant for licensing of an instream private fish pond shall present to the department verification that game fish or fish species of special concern do not occur in the tributary, spring, or stream and that the instream private fish pond does not pose an unacceptable risk to game fish or fish species of special concern in adjacent waters. Verification must be in the form of:

(a) a formal report from a department-approved professional fisheries consultant; or

(b) other reliable data and documentation.

(4) The department may condition the license to require the construction, implementation, and maintenance of measures or devices to prevent fish in an artificial lake or pond from escaping into adjacent waters.

(5) (a) A licensee who sells fish or eggs shall keep accurate records of:

(i) the species and quantities of fish or eggs sold or purchased;

(ii) dates of sales or purchases;

(iii) names of purchasers or sellers; and

(iv) locations to or from which fish or eggs are transferred.

(b) On or before January 31 of each year, a licensee who sells fish or eggs shall file a report with the department, on forms made available by the department, summarizing the records required under subsection (5)(a).

(6) A person who owns or controls an artificial lake or pond may request an inspection by the department to ascertain the presence of disease in fish or the illegal introduction of fish species. Whenever the department has reasonable cause to believe that a fish species in the body of water may have been illegally introduced or may have a disease that may affect fish in another body of water, the department shall notify the landowner or landowner's agent by mail or in person of the intention to enter upon the land and shall enter only after notice has been given to the landowner or agent or after every reasonable effort has been made to notify the landowner and receive permission to enter upon the land. Thereafter, the department may enter upon land under the provisions of this subsection for the purposes of inspecting the pond or the body of water, the species of fish in the pond or the body of water, the presence of disease in a fish species, the construction of any impoundment, dam, or fish barrier, and the physical connection of an artificial lake or pond to an adjacent natural lake, pond, or body of water, including a stream or river. The department is responsible for actual damages to any property.

(7) If the department finds an illegal introduction of fish or the presence of disease in fish in a licensed fish pond, an artificial lake or pond, or a natural lake, pond, or body of water, the department shall consult with the landowner or the landowner's agent to determine the appropriate action unless an emergency exists. In an emergency situation, the department may order or take appropriate action to address any threat to the state's fisheries resources, including quarantine or destruction of fish, eggs, or the source of a disease. Whenever privately owned fish are destroyed and the private owner is not responsible for an illegal introduction or the introduction of fish with a disease, the department may replace the destroyed fish without charge to the private owner. A landowner or agent who has granted permission for the department to enter is not considered responsible for an illegal introduction of fish or disease unless proved otherwise.

**History:** En. Sec. 14A, Ch. 238, L. 1921; re-en. Sec. 3695, R.C.M. 1921; amd. Sec. 6, Ch. 77, L. 1923; amd. Sec. 1, Ch. 43, L. 1929; re-en. Sec. 3695, R.C.M. 1935; amd. Sec. 1, Ch. 125, L. 1949; amd. Sec. 28, Ch. 511, L. 1973; amd. Sec. 32, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-306; amd. Sec. 9, Ch. 376, L. 1989; amd. Sec. 1, Ch. 425, L. 1995; amd. Sec. 1, Ch. 108, L. 1999.

**87-4-606. Term of license -- fees -- site inspections -- license not transferable** -- exception for transfer.

(1) Except as provided in subsections (3) and (4), a private fish pond license is valid for 10 years.

(2) There is a \$10 application fee and a \$10 renewal fee for each private fish pond license.

(3) (a) Except as provided in subsections (3)(b), (3)(c), and (4), a private fish pond license expires on February 28 of the 10th year succeeding the year of issuance or renewal.

(b) A private fish pond licensee who sells fish or eggs under 87-4-603 shall renew the license annually. The license expires on February 28 of the year succeeding the year of issuance.

(c) For a license that has been in effect for more than 10 years as of April 8, 2005, the license holder shall apply for renewal within 1 year of April 8, 2005.

(d) An application for renewal must be made before a license expires. The department shall renew the license if the licensee has not violated any condition upon which the license was granted and if the licensee has met all of the requirements governing private fish ponds in 87-4-603 and this section.

(4) A new license is required when a licensee proposes to plant a new species or stock a pond not designated in the original license.

(5) (a) Except as provided in subsection (5)(b), a private fish pond license granted under 87-4-603 is not transferable.

(b) If ownership or control of the private fish pond changes, the new owner or operator shall apply to the department for a license transfer. The transfer must be approved by the department before the new owner or operator may continue operation of the private fish pond.

(c) A transferred license retains the remaining portion of the original license's term.

**87-4-607. Revocation of fish pond license.** (1) A fish pond license may be revoked for failure to operate or use the pond according to the terms or conditions of the license or state statutes, rules, or orders covering importation, transportation, or introduction of fish or eggs.

(2) If the department discovers a violation under this section, it may institute revocation proceedings after providing reasonable notice and opportunity for a hearing to the licensee. After hearing and upon proof of the violation, the department may revoke the fish pond license.

**History:** En. Sec. 11, Ch. 376, L. 1989.

# FISH SPECIES IN MONTANA

<u>Native Species of Special Concern</u>	<u>Native Species</u>	<u>Non-Native Species</u>
<p><b><u>Game Fish of Special Concern</u></b></p> <p>Arctic Grayling (Candidate for Listing)  Paddlefish  Pallid Sturgeon (Endangered)  White Sturgeon (Endangered)  Bull Trout (Threatened)  Westslope Cutthroat Trout  Yellowstone Cutthroat Trout  Columbia Basin Redband Trout  Sauger</p> <p><b><u>Non-Game Fish of Special Concern</u></b></p> <p>Sicklefin Chub (Candidate for Listing)  Sturgeon Chub (Candidate for Listing)  Pearl Dace  Northern Redbelly X Finescale Dace  Shortnose Gar  Shorthead Sculpin  Spoonhead Sculpin  Blue Sucker  Trout-Perch</p>	<p><b><u>Game Fish</u></b></p> <p>Burbot  Channel Catfish  <b>Northern Pike</b>  Shovelnose Sturgeon  Lake Trout  <b>Mountain Whitefish</b>  Pygmy Whitefish</p> <p><b><u>Non-Game Fish</u></b></p> <p>Bigmouth Buffalo  Smallmouth Buffalo  River Carpsucker  Creek Chub  Flathead Chub  Lake Chub  Longnose Dace  Northern Redbelly Dace  Iowa Darter  Freshwater Drum  Goldeye  Plains Killifish  Brassy Minnow  Fathead Minnow  Plains Minnow  Western Silvery Minnow  Peamouth  Northern Pikeminnow  Shorthead Redhorse  Mottled Sculpin  Slimy Sculpin  Torrent Sculpin  Emerald Shiner  Golden Shiner  Redside Shiner  Sand Shiner  Brook Stickleback  Stonecat  <b>Longnose Sucker</b>  Mountain Sucker  White Sucker</p>	<p><b><u>Game Fish</u></b></p> <p>Largemouth Bass  Smallmouth Bass  Striped Bass  Tiger Muskellunge  Chinook Salmon  Coho Salmon  Kokanee Salmon  Splake  Brook Trout  Brown Trout  Golden Trout  Rainbow Trout  Walleye  Lake Whitefish</p> <p><b><u>Non-Game Fish</u></b></p> <p>Rock Bass  White Bass  Bluegill Sunfish  <b>Black Bullhead</b>  Yellow Bullhead  Common Carp  Grass Carp  Utah Chub  Cisco  Black Crappie  White Crappie  Goldfish  Sailfin Molly  Shortfin Molly  Mosquitofish  Central Mudminnow  Red Belly Pacu  Yellow Perch  Piranha  Variable Platyfish  Pumpkinseed  Gizzard Shad  Golden Shiner  Spottail Shiner  Rainbow Smelt  Green Sunfish  Green Swordtail</p>