

July 2018

Environmental Quality Council  
Joe Kolman

**FINAL REPORT TO THE 66<sup>TH</sup> MONTANA LEGISLATURE**

**CAN'T LET SLEEPING DOGS LIE:  
A STUDY OF BIRD DOG REGULATIONS**

# ENVIRONMENTAL QUALITY COUNCIL

Before the close of each legislative session, the House and Senate leadership appoint lawmakers to interim committees. The members of the EQC, like most other interim committees, serve one 20-month term. Members who are reelected to the Legislature, subject to overall term limits and if appointed, may serve again on an interim committee. This information is included in order to comply with 2-15-155, MCA.

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# CAN'T LET SLEEPING DOGS LIE

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**Environmental Quality Council  
Legislative Environmental Policy Office**

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## Executive Summary

This report is a summary of the work of the Environmental Quality Council (EQC) specific to the council's 2017-2018 work pertaining to regulations related to the training of bird dogs. Members received additional information and public testimony on the subject, and this report is an effort to highlight key information and the processes followed by the EQC in reaching its conclusions. To review additional information, including audio minutes, and exhibits, visit the EQC website: [www.leg.mt.gov/eqc](http://www.leg.mt.gov/eqc).

After twice objecting to attempts by the Department of Fish, Wildlife, and Parks to implement a decades-old statute for regulating the training of bird dogs, the EQC delved into the matter. The council examined the history of the current law and how training and field trials are regulated in other jurisdictions.

### Draft Findings

1. The current law regulating bird dog field trials and training is out-of-date and difficult to enforce.
2. Agency attempts to implement the statute through administrative rule were objectionable to members of the public as well as the EQC.
3. Other EQC findings as approved.

### Draft Recommendations (Reflect LCDog3 bill draft)

1. The current law regulating bird dog field trials and should be repealed.
2. Training of bird dogs is allowed without a permit from the department provided that if the training uses game birds that will be killed in training, the game birds are tagged or marked prior to release.
3. A person who kills an untagged or unmarked game bird during training outside of the established season for that species, or who is not licensed to take that species, shall immediately report the taking to a representative of the department.
4. Field trial permits are required only for field trials in public land.
5. Field trials on public land are prohibited from April 1 through August 31.
6. The department may deny an application that is not in the best interests of the protection, preservation, propagation, and conservation of game birds.
7. The department may condition a permit for a field trial as necessary for the protection, preservation, propagation, and conservation of game birds.
8. A person who kills an untagged or unmarked game bird during a field trial outside of the established season for that species, or who is not licensed to take that species, shall immediately report the taking to a representative of the department.
9. Other EQC recommendations as approved.



# TABLE OF CONTENTS

|  |   |
|--|---|
| Environmental Quality Council.....                 |   |
| Senate Members.....                                |   |
| House Members .....                                |   |
| Public Members.....                                |   |
| Legislative Environmental Policy Office Staff..... |   |
| Governor’s Representative .....                    |   |
| Executive Summary .....                            |   |
| Findings.....                                      |   |
| Recommendations .....                              |   |
| Introduction.....                                  | 1 |
| Bird Dog Regulations.....                          | 3 |
| MONTANA.....                                       | 4 |
| NORTH DAKOTA.....                                  | 4 |
| SOUTH DAKOTA .....                                 | 4 |
| WYOMING.....                                       | 5 |
| IDAHO.....   | 5 |
| COLORADO.....                                      | 6 |
| UTAH.....  | 6 |
| NEBRASKA.....                                      | 7 |
| IOWA.....  | 7 |
| KANSAS .....                                       | 7 |
| MINNESOTA.....                                     | 8 |
| SASKATCHEWAN .....                                 | 8 |

# CAN'T LET SLEEPING DOGS LIE

## INTRODUCTION

The EQC did not begin the interim intending to study laws and regulations pertaining to the training of bird dogs. At its first meeting of the interim in June 2018, the EQC reviewed a rule proposed by the Department of Fish, Wildlife, and Parks.

The agency stated that in recent years complaints alleged massive dog training events, mostly in eastern Montana, of as many of 60 dogs, that harmed local bird populations and decreased hunting opportunities. Bird hunters also told the Fish and Wildlife Commission about a large decrease in birds during hunting season.<sup>1</sup>

The current statute first appeared as a rule in 1972 that was later put into law as part of a legislative package to regulate farms for game animals, game birds, and fur animals.<sup>2</sup>

The part of law pertaining to bird dog training states, “Dogs may be trained in open fields at any time without permission of the director only if live game birds are not killed or captured during training and the training is more than 1 mile from any bird nesting or management area or game preserve.”<sup>3</sup>

The department proposed a rule that said: “A person wishing to train dogs in open fields must apply for a permit by filing an application on a form provided by the department at the regional office in the region where the person will conduct such activity.”<sup>4</sup>



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<sup>1</sup> Montana Administrative Register Notice [12-473](#), May 2017.

<sup>2</sup> [Overview and history](#) of section 87-4-915(5)(a), MCA, referred to as the "bird dog statute," Erin Bills, EQC legal staff, 2017.

<sup>3</sup> [87-4-915, MCA](#).

<sup>4</sup> Montana Administrative Register Notice [12-473](#), May 2017.

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By defining terms, the rule required training to be more than a mile away from a bird nesting area where “ the targeted game bird(s) could make a reasonable attempt to successfully produce a nest.”<sup>5</sup>

The DFWP did not plan to conduct a public hearing, but the proposal received public attention and was on the June 2017 agenda for the EQC. The [council objected](#) to the rule, effectively delaying its implementation. The agency revised its proposal and in early September published notice of meetings around the state in October.

The revised proposal allowed dog training within one mile of a bird nesting or management area or game preserve if live game birds are not killed or captured during training, and if the person, party, group, or business is training fewer than four dogs a day. If more than four dogs a day are trained, the rule said training could only occur between September 1 and March 31.<sup>6</sup>

In a letter to the council, DFWP Director Martha Williams said, “The language in the proposed rule provides for permission for these activities on a smaller scale during the nesting season and grants permission for larger scale activities outside of the nesting season.

“Granting this permission will provide clarity and limit administrative process for permission for the public as well as for enforcement purposes.”<sup>7</sup>

However, in September the EQC [continued its objection](#), but asked the DFWP to proceed with the scheduled hearings. The council also raised the possibility of tackling the issue through legislation rather than agency rulemaking. The agency received a [slew of comments](#) and in November decided to stop pursuing the rule and instead work with the EQC on a legislative proposal.<sup>8</sup>

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<sup>5</sup> Ibid.

<sup>6</sup> Montana Administrative Register Notice [12-473](#), September 2017.

<sup>7</sup> [Letter](#) to EQC, Martha Williams, Sept. 6, 2017.

<sup>8</sup> Montana Administrative Register Notice [12-473](#), November 2017.

# CAN'T LET SLEEPING DOGS LIE

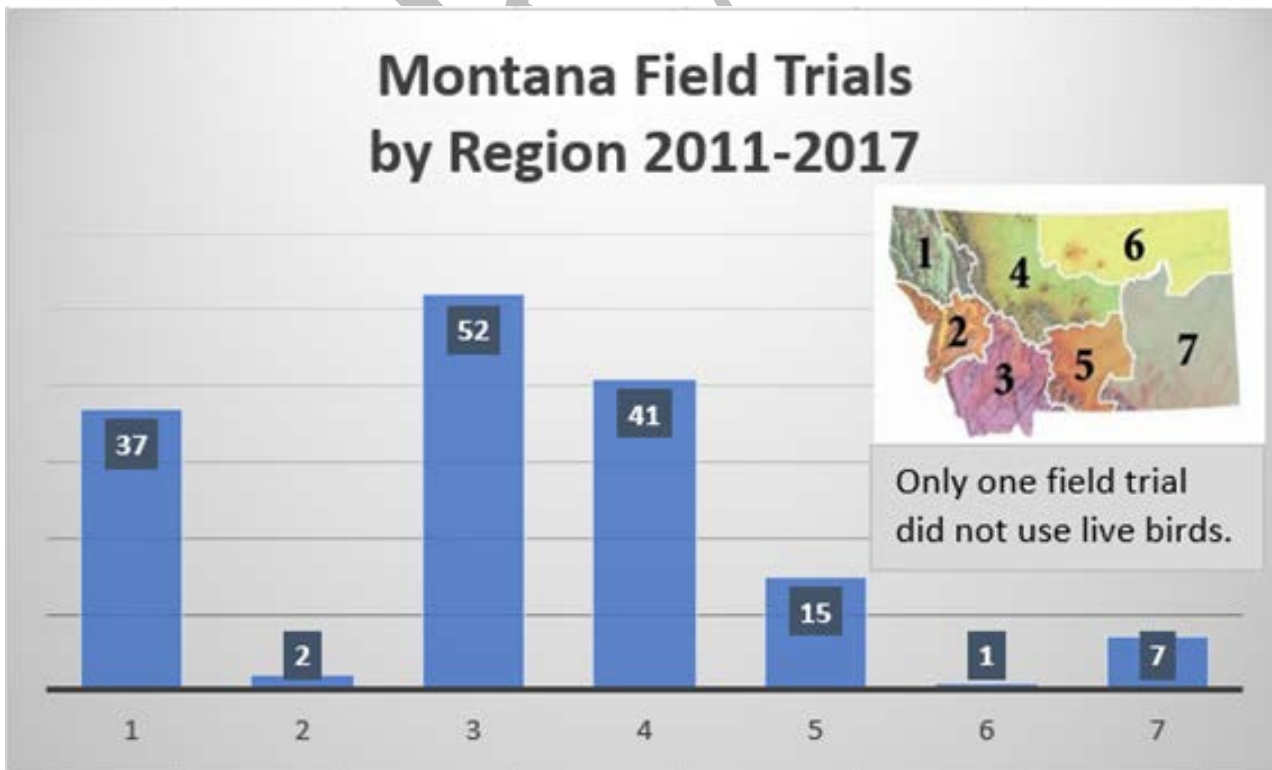
## BIRD DOG REGULATIONS

The EQC examined bird dog regulations in Montana, 10 other states, and Saskatchewan.



| State | Field Trial Permit | Individual Dog Training Permit | Professional Dog Training Permit | Exemption for Personal Dogs | Exemption for Exercise/Conditioning | Permit to Use Live Wild Birds | Permit to Use Pen-Raised Birds | No Kill Wild Birds | Distance Criteria | Number of Dogs | Landowner Permission | Public Land | Permission/Restrictions | Seasonal Prohibition | Firearm Restrictions | Conditions to Protect Wildlife |
|-------|--------------------|--------------------------------|----------------------------------|-----------------------------|-------------------------------------|-------------------------------|--------------------------------|--------------------|-------------------|----------------|----------------------|-------------|-------------------------|----------------------|----------------------|--------------------------------|
| MT    | X                  |                                |                                  |                             |                                     | X                             | X                              | X                  |                   |                |                      |             |                         |                      |                      |                                |
| ND    | X                  | X                              | X                                | X                           |                                     | X                             |                                | X                  | X                 | X              | X                    | X           |                         |                      |                      |                                |
| SD    |                    |                                |                                  | X                           |                                     |                               |                                |                    |                   |                | X                    | X           | X                       |                      |                      |                                |
| WY    | X                  | X                              |                                  |                             |                                     | X                             |                                |                    |                   |                |                      |             | X                       | X                    |                      |                                |
| ID    | X                  | X                              |                                  | X                           |                                     |                               |                                |                    |                   | X              |                      |             |                         |                      |                      |                                |
| CO    | X                  | X                              |                                  | X                           |                                     | X                             |                                | X                  | X                 | X              | X                    | X           | X                       |                      |                      |                                |
| UT    | X                  |                                |                                  |                             |                                     | X                             |                                | X                  | X                 |                | X                    | X           | X                       | X                    |                      |                                |
| NE    | X                  |                                |                                  |                             |                                     | X                             |                                |                    | X                 | X              | X                    | X           |                         |                      |                      |                                |
| IA    | X                  |                                |                                  |                             |                                     | X                             |                                |                    |                   |                | X                    | X           | X                       |                      |                      |                                |
| KS    | X                  | X                              | X                                |                             |                                     | X                             | X                              |                    |                   | X              |                      |             |                         |                      |                      |                                |
| MN    | X                  | X                              |                                  |                             |                                     | X                             |                                |                    |                   | X              | X                    | X           | X                       |                      |                      |                                |
| Sask  | X                  | X                              |                                  | X                           |                                     |                               |                                | X                  | X                 |                | X                    | X           | X                       | X                    |                      |                                |

The table includes components of various regulations. Refer to individual states and links for more information.



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# CAN'T LET SLEEPING DOGS LIE

## MONTANA

- Permits required for field trials (examinations to determine the ability of dogs to point, flush, or retrieve game birds).
  - Location and date of field trial required.
  - Wild game flushed prior to field trial.
  - Live birds must be tagged and planted or released in presence of FWP representative.
- Dog training means “the handling, exercising, teaching, instructing, and disciplining of dogs in the skills and techniques of hunting and retrieving game birds characterized by absence of judging, awards, or any fees related to the shooting of captive-reared birds.”
- Dog training allowed in open fields without agency permission if:
  - Live game birds not killed or captured;
  - Training more than 1 mile from:
    - Any bird nesting area;
    - Management area;
    - Game preserve.
- Permit required for training that kills game farm birds.

## NORTH DAKOTA

- Permit and fee required for:
  - Training by professional trainer, which is a person who trains any breed of gun dog for remuneration which is the basis for the person's livelihood;
    - Professional training prohibited April 1 – July 14.
    - Professional training prohibited year round on wildlife management areas.
  - Training by nonresident amateur trainer with more than four gun dogs;
  - Field trials that use live wild birds;
  - Training on wildlife management area by nonprofessional except April 1 – Aug. 15;
  - Exempt training area up to 40 acres for professional training of any dog at any time.
- No permit required for field trials or training of personal dog if:
  - Landowner permission acquired;
  - Trainer is present;
  - No native game birds captured or killed;
  - No training in designated game management or waterfowl production areas.

## SOUTH DAKOTA

- Training on wild game birds prohibited April 15 – July 31.
- Commission rules include:
  - Any event, activity related to sport dog training, or field trials allowed at any time for certain birds obtained from a holder of a state captive bird license on private land.
    - On public land, allowed with prior approval of land manager.

# CAN'T LET SLEEPING DOGS LIE

- Dog training prohibited from Aug. 1 to third Saturday in September for the purpose of locating, pursuing, pointing, or retrieving wild game birds on public land or road right of way. Firearms prohibited.
  - Exemption for up to four dogs per day owned by the person and not for sale.
  - With approval of public land manager, exemption for using a horse for dog training on public lands until 12:00 noon central time on Fridays, Saturdays, and Sundays from the first Friday of August to the first Sunday of September.

## WYOMING

- Dog training using pen-raised birds is allowed year-round provided:
  - The person possessing the pen-raised birds has a valid permit from the Game and Fish Department;
  - The pen-raised game bird is toe clipped or banded;
  - The person provides a legal description of site or sites for training;
  - Pen-raised game birds may not be released in areas inhabited by wild game birds of the same species unless the season for the taking of the game bird is open;
  - Department personnel may witness taking of pen-raised game birds;
  - Pen-raised game birds may only be taken with approved firearms or archery equipment.
  - Only nontoxic shot may be used on captive-reared mallards used for dog training.
- Dog field trials include organized competition and training of dogs preparing for a trial.
  - Participants may take game birds with a permit provided that:
    - The department is notified of date and location of the field trial;
    - Department personnel may witness taking of game birds.



## IDAHO

- Permit required:
  - To [train bird dogs](#) on public or private land (except licensed shooting preserves) when releasing artificially propagated upland game birds or waterfowl;
    - Permit valid for 2 years.
  - To conduct organized competitive [dog trials](#) on private or public lands (excluding licensed shooting preserves) when artificially propagated game birds are used;
  - For all trials on Wildlife Management Area lands.

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# CAN'T LET SLEEPING DOGS LIE

- [No permit](#) required to exercise or train dogs in areas open to public use when no attempt to take wild birds is made or when feral pigeons are used.

## COLORADO

- On property owned by Parks and Wildlife Division:
  - Permit required for field trial or group training.
    - Field training is a hunting dog trial under rules of a club, including sanctioned practice or organized test.
    - Group training involves 10 or more people and associated dogs.
      - Exercising or conditioning dogs is not training.
  - Annual permit required for training where release and shooting of privately owned game birds on Parks and Wildlife property where release authorized.
    - Valid April 1 through March 31.
    - Maximum of two dogs trained by an individual at a time.
  - No permit required for nine or fewer people not releasing privately owned birds.
- Private or other public land:
  - No license required for field trials.
    - 30-day notice required.
    - Permission of landowner required.
- Individuals may train dogs on wild game birds Aug. 1 through April 15.
  - Only blank shells allowed outside hunting season.

## UTAH

- Registration required for field trials using pen-reared game birds, unless on a commercial hunting area.
  - Landowner permission required.
  - Registration may be denied if the trial or release of pen-reared game birds interferes with wildlife, wildlife habitat, or wildlife nesting periods.
- Dogs may be used for upland game birds, turkeys, and waterfowl during hunting seasons.
  - Dogs generally allowed on wildlife and waterfowl management areas, except [certain areas](#) prohibited from March 10 to Aug. 31.
- Requirements to use pen-reared game birds for dog training include:
  - Birds are marked;
  - No person may release more than 10 pen-reared birds per day or three pen-reared game birds per day per dog, whichever is greater.
  - No more than three firearms may be used at a time, except for four firearms when training retrievers using the American Kennel Club quad flyer test.
  - Training may not consist of more than four dogs at any time unless:
    - The dogs exceeding four dogs are 8 months or younger;
    - No live ammunition is possessed by the trainer.
  - Exceptions for number of dogs, birds, and firearms allowed on official dog training areas as designated by state.

# CAN'T LET SLEEPING DOGS LIE

- Requirements to use wild game birds for dog training include:
  - Wild game birds may not be harassed, caught, or injured, or killed except during legal hunting seasons.
  - Except during hunting season, may not possess a firearm except for a pistol firing blanks; Landowner permission required for training on properly posted private property.

## NEBRASKA

- For state Wildlife Management Areas:
  - Professional dog trainers prohibited year-round.
  - dog training, exercise, and hunting prohibited May 1 through July 31 unless posted otherwise.
- On private land, dog training allowed by landowner and those with landowner permission.
  - Dog training means a noncompetitive process to enhance hunting skills.
  - Sale or release of birds requires permit.
- Authorization required for [dog trials](#) where dogs compete and are judged.

## IOWA

- Permit required for sanctioned meets and trials to demonstrate skill of dogs.
  - Representative of agency must attend trial.
  - Birds must be tagged.
- [Dogs prohibited](#) on state-owned game management areas between March 15 and July 15, unless training is allowed on designated areas.
- Bird dog training on any game birds allowed at any time with valid hunting license and habitat fee.
  - Firearm use restricted during closed season.
  - Tagged, pen-raised birds may be used and shot for training bird dogs.
- Commission may adopt rules prohibiting training in the wild at any time if determined training may have an adverse effect on the population.



## KANSAS

- On land and water owned by Kansas Wildlife, Parks, & Tourism and designated for public hunting, noncommercial training of bird dogs and retrieving dogs authorized [year-round](#).
  - [Permit required](#) to release game birds, pen-raised bird, or wild trapped birds.



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# CAN'T LET SLEEPING DOGS LIE

- Pen-raised, banded game birds may not be shot during [training](#) except during hunting season for that species.
- [Permit](#) required for commercial dog training.
  - Allowed year round.
  - Pen-raised, banded birds may be released and shot.
  - Wild birds, except waterfowl, may be pursued during training, but only killed during hunting season for that species.
  - Dog training restricted to area listed on permit.
- Permit required for [field trial](#).
  - Banded, pen-raised game birds may be released and shot.
  - Wild birds, except waterfowl, may be pursued during training, but only killed during hunting season for that species.

## MINNESOTA

- Hunting dog training prohibited on Department of Natural Resources land from April 16 to July 14 except by permit or rule.
  - Allowed April 16 to July 14 on DNR land.
    - No live ammunition.
    - No taking of birds.
    - Does not include wildlife management areas due to ground nesting birds.
- [Permit](#) required for:
  - Organizations holding field dog trials that use live ammunition or take domesticated birds;
  - Individuals training hunting dogs using live ammunition live or taking domesticated birds.
- No taking of wild birds.

## SASKATCHEWAN

- Dog training license required, except for a resident of Saskatchewan who trains four or fewer bird dogs for personal use.
- Dog training license application includes legal description of area for training and permission of owners.
  - May require information regarding bird populations and dog training.
- Dog trainer (any person who trains dogs) may not:
  - Use a firearm with live ammunition except during game bird season;
  - Train bird dogs in an likely to be frequented by game birds between April 1 and July 15.
- Field trials require a permit subject to conditions.