

The Early Beginning of Fish

By
MISS PEARL TYER*

When Idaho was declared a territory by the United States Congress, it was not the small state it is now, if a state could be called small. It contained an area in national forests as large as some of the New England states, and was an enormous expanse of primitive land including most of the present states of Montana and Wyoming.

So when the first territorial legislature met at Lewiston in 1863, it made laws for all this expanse of land.

The members of this first legislature, riding hundreds of miles from their own cabins and holdings, had few neighbors and no organized government. They had no federal laws for the acquisition of land on the public domain, the taking of timber therefrom, or trespass thereon. No federal officers riding from post to post, no irrigation systems, no courts, and boundaries for counties. Although some had far-eastern backgrounds and education, they were not prepared to write an original code of civil procedure or criminal laws.

But California, whose beginnings were far different from the northwest, did have such codes, and its law books had spread to the gold camps near Lewiston and Boise.

Thus the founding legislature had available a competent set of working statutes, and after two months' discussion and study, on February 1-4, 1864, adopted these as their own. But before these were voted upon, a law which presumably arose from local conditions and experiences (for none similar has been found in California) was put in operation in the territory of Idaho. This law protected the most spectacular portion of wildlife, big game, and was passed January 16, 1864.

It read: "It shall be unlawful for any person at any time after the first day of February, and before the first day of July, to catch, kill or destroy or to pursue with intention any buffalo, deer, antelope, elk, mountain sheep or goat, or to have in his possession for sale any of the animals mentioned in this section, during the season when the killing is prohibited; Provided, that nothing in this act shall prohibit any person from taking any animals at any time for the purpose

of taming the same, or for scientific purposes.

"Any person offending against this act on conviction shall pay not less than five dollars nor more than two hundred dollars in a civil action in the name of the people of the United States of the territory of Idaho and such defendant may be confined within the county jail until such fine shall have been paid."

Wild game was an everyday experience with these law makers. The log cabin used as a legislative hall (its picture is framed and hung in the state law library), looks like a primitive mountain resort, where deer and elk abound. Probably as they journeyed here, fried venison was in their saddle bags; and their menu, while sojourning in this clearing could have well been wild duck, with fried prairie chicken for Sunday dinner.

As one reads the list of animals in this foundation statute there may be a little shock at the first word, "buffalo."

Buffalo. Did we have buffalo in Idaho? Most of us can remember no stories of pioneers meeting buffalo in Idaho. But this law was passed not only for the mountain fastnesses where the eagles nest, and the parched deserts where the sage grouse lived, but for the grazing plains of Montana and Wyoming where buffalo did roam in droves. Nevertheless, as late as 1908 the code mentions buffalo, for a few, even in recent years, have wandered over the boundary line into Idaho.

Montana was cut from the Idaho domain and made a territory in its own name in May, 1864. Then, according to a recent historical sketch

*Miss Tyer recently completed compiling and indexing the Idaho Fish and Game Code for the game department. While she was doing research connected with the project she came across our first laws protecting Idaho wildlife. We felt her findings were of interest and important historically and asked her to prepare an article on her findings.

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—The Editor

received at the Idaho law library, the picture showed an even greater need for written law than had been in Idaho, for there were no lively, growing, posts which the discovery of gold had caused to spring up in Idaho. The Montana historian states that there was one law book available, to the man appointed to administer law, where no law existed. This was a paper-bound copy of the Idaho code, and this book soon became thumb-worn and ragged from use.

When the first Montana legislature was booked to meet, a man was sent to Lewiston to purchase six copies of this book, containing the proceedings of the first Idaho territorial legislature.

The Montana founding legislature adopted it in its entirety. This may have meant that the first game law in Idaho became the first game law in Montana.

George Curtis, former Idaho legislator and Secretary of State, deeply learned in Idaho history, has given a light on the adoption of the Idaho code by Montana by stating that Judge Edgerton, appointed as judge of a section of Idaho, became a judge for that section in Montana. When Montana was made a territory, he automatically had his residence changed from Idaho to Montana, and it is to be presumed that he had in his possession a copy of the Idaho code, which he had studied and assisted in making. He became the first governor of Montana territory, and administered the law from that book.

There are no following game laws in the territorial statutes until 1875 where three sections say that it shall be unlawful to kill quail or partridge, during the summer months, nor any species of wild duck, nor any prairie chickens or wild grouse, and ends with a sudden stop with the sentence, "Provided that sections 2, 3, and 4, shall apply and be in force alone in Ada county."

A lawyer said, when recently this law was recited to him, "It couldn't be enforced in the primitive areas;" a sportsman, "The county was sufficiently settled for the sportsmen to get together;" and a woman, ranch-born, "The wild game was needed for food. The miners, when working their claims through the summer, lived on that food."

The next game law was passed in

and Game Laws in Idaho

1893 after Idaho had become a state, and county boundaries and government had been established and functioning for years. It provided that county commissioners shall appoint a game warden for their county to protect game by bringing offenders into a court of justice and sentencing them with a cash fine.

The wardens were to receive no compensation but one-half of the amount of the fine. The other half was to go to the common school fund. If the offender was put in jail for not paying his fine, the maximum amount of the fine fixed by law was declared by the judge, and one-third of it paid to the warden, and the offender was left undisturbed to lay out his fine.

The law read: "The county commissioners shall appoint a game warden who shall hold his office for two years, unless sooner removed." To those acquainted with the stormy life of the fish and game protection activity and the spectacular change of personnel of its officials, the phrase, "unless sooner removed," seems like an ill omen, a fear, foisted upon it from the early days of its appointors.

The state legislature of '99 created the office of state game warden with an appropriation of \$1200 per annum in full for salary, and \$300 for expenses. The state warden was empowered to appoint a deputy warden for each county who was to be compensated as his predecessors were by one-half of the fine.

Charles Arbuckle was the first appointee. Steunenberg was governor, and S. H. Hayes, attorney general. sive thinking for aiding a great move-

ment! The esteem for Governor Steunenberg's character is evidenced by the statue that now faces the capitol building. Sam Hayes, later mayor of Boise, administered a career in Idaho of progressive mentality that could look and did look beyond the present method of life; and the name of Arbuckle stands for staunch, honest pioneering.

Arbuckle's first biennial report to the governor is like a pointing finger, a voice that is speaking, saying that the wildlife as found in Idaho was an important asset, a resource that must not only be protected, but developed. Every one of his recommendations has been fulfilled in today's regulations.

Another legislature, that of 1903, started a great change, an initiation of a new system. This was the licensing system, making the game resource an industry. Heretofore the wildlife had been revenue-bearing only by penalties. If no one transgressed, there was no money. Which of the three great Idaho builders named above saw the false foundation of making sin the cornerstone, and turned to the valid recreation and food supply as the solid rock on which to build, may be for a future historian to uncover. Or perhaps the three were thinking the same thoughts.

The legislature of 1903 established a license fee for use of our resource. They set a fee of one dollar for both fishing and hunting for a resident. But for an easterner, searching for a few days outing in the primitive area, the charge was \$25.00.

Placing the state's wildlife resource as a part of its wealth, and handling it as a business as had been the policy with mining and irrigation, has worked toward a more satisfying era. The miner does his annual labor and pays a tax to the state. And the man who uses water from the river to sprinkle his lawn or grow his wheat pays for it. And now the man who has wild duck for supper, and a venison roast for dinner, pays for it.

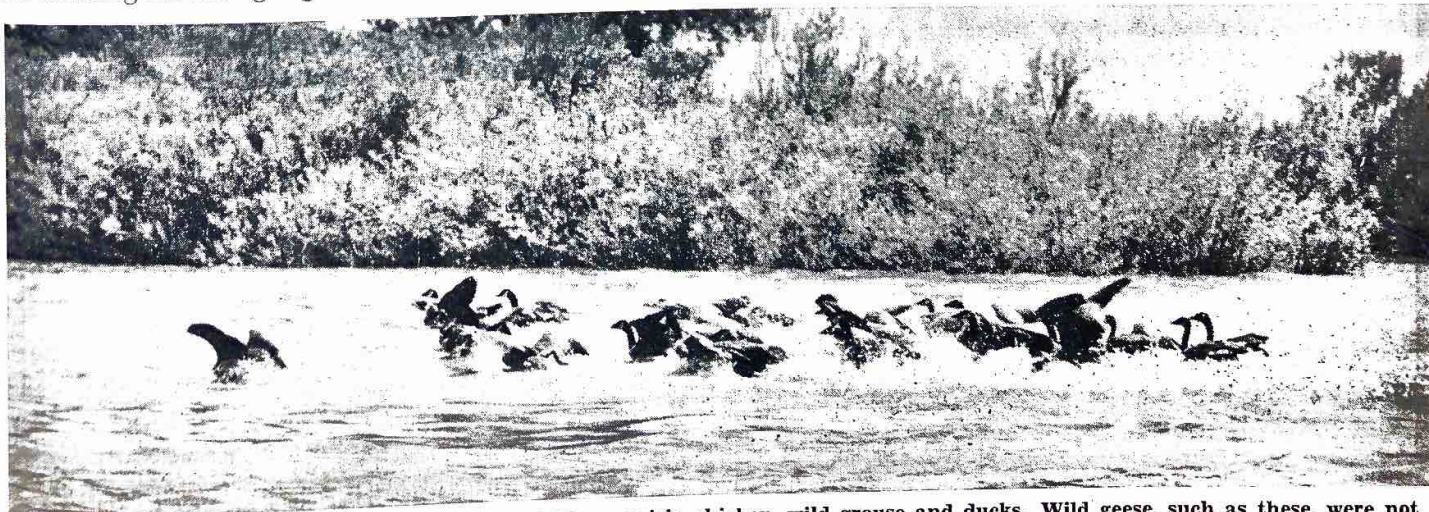
The wildlife resource, its protection and development, has become a great industry, self-supporting. No appropriations are made from the general fund, and all revenues are from sale of licenses, permits, fines and sale of fur.

Adding to this great movement, the state operation was taken out of politics in the general election of 1939 by an initiatory measure. The state fish and game director receives his appointment, not from the governor, but from a co-partisan commission. Lesser employees are under civil service regulations. ▲▲▲

FORESTRY WEEK

Forestry Week April 18 through April 24, has been designated to inform Idaho's populace of the values of our forest, range and wildlife resources and to emphasize some of the problems involved in management.

This is the 15th year that the Associated Foresters of the University of Idaho have sponsored a statewide forestry week. Their program will include news and radio releases, exhibits, displays and personal contacts, and talks before high school students.



In 1875 laws were enacted protecting quail, partridge, prairie chicken, wild grouse and ducks. Wild geese, such as these, were not considered for some unknown reason.