SENATE BILL NO. 239

INTRODUCED BY VAN VALKENBURG, STRIZICH BY REQUEST OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS

IN THE SENATE

JANUARY 31, 1991

INTRODUCED AND REFERRED TO COMMITTEE ON FISH & GAME.

DO PASS AS AMENDED. REPORT ADOPTED.

FIRST READING.

- FEBRUARY 15, 1991
- FEBRUARY 16, 1991

SECOND READING, DO PASS.

COMMITTEE RECOMMEND BILL

FEBRUARY 18, 1991

ENGROSSING REPORT.

PRINTING REPORT.

THIRD READING, PASSED. AYES, 48; NOES, 0.

TRANSMITTED TO HOUSE.

IN THE HOUSE

MARCH 4, 1991

INTRODUCED AND REFERRED TO COMMITTEE ON FISH & GAME.

FIRST READING.

MARCH 15, 1991 COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.

MARCH 18, 1991 SECOND READING, CONCURRED IN.

MARCH 19, 1991 THIRD READING, CONCURRED IN. AYES, 89; NOES, 10.

RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

MARCH 23, 1991

RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS CONCURRED IN.

MARCH 25, 1991

.

THIRD READING, AMENDMENTS CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

LC 0972/01

1 DENATE BILL NO 1 239 INTRODUCED BY 1/ 2 3 BY REQUEST OF THE DEPARTMENT OF 4 FISH, WILDLIFE, AND PARKS 5 6 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING AS 7 FELONIES THE SALE OF UNLAWFULLY TAKEN WILDLIFE AND THE 8 POSSESSION OF UNLAWFULLY TAKEN WILDLIFE HAVING A VALUE OF 9 MORE THAN \$1,000; REVISING THE RESTITUTION PENALTIES FOR THE 10 ILLEGAL KILLING OR POSSESSION OF CERTAIN WILDLIFE; DEFINING 11 "LAWFULLY TAKEN WILDLIFE" AND "UNLAWFULLY TAKEN WILDLIFE"; AMENDING SECTIONS 87-1-111 AND 87-3-111, MCA; AND PROVIDING 12 13 AN EFFECTIVE DATE." 14 15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: NEW SECTION. Section 1. Definitions of lawfully taken 16 17 wildlife and unlawfully taken wildlife. As used in [section 18 2] and this section, the following definitions apply: 19 (1) "Lawfully taken wildlife" means wildlife, as 20 defined in 87-5-102, that is taken or possessed by hunting,

21 fishing, or trapping in conformance with this title and the 22 regulations adopted by the commission and the department 23 under authority of this title.

24 (2) "Unlawfully taken wildlife" means wildlife that is
25 not lawfully taken wildlife.

ontana Legislative Council

25

NEW SECTION. Section 2. Sale OF possession of 1 unlawfully taken wildlife -- penalty. (1) A person commits 2 the offense of sale of unlawfully taken wildlife if he 3 purposely or knowingly sells, barters, purchases, or Δ exchanges for anything of value or if he offers to sell, 5 barter. purchase, or exchange for anything of value, 6 unlawfully taken wildlife. 7

(2) A person commits the offense of possession of 8 unlawfully taken wildlife having a value of more than \$1,000 9 if he purposely or knowingly has actual or constructive 10 possession of or transports or causes to be transported 11 unlawfully taken wildlife having a value of more than 12 \$1,000. The value of the unlawfully taken wildlife must be 13 14 determined from the schedule of restitution values set out 15 in 87-1-111.

(3) A person who violates this section is guilty of a 16 17 felony and upon conviction shall be fined not more than \$50,000 or be imprisoned in the state prison for a term not 18 19 to exceed 5 years, or both. In addition, a person convicted 20 under this section or who pleads quilty to a violation of 21 this section shall lose all hunting, fishing, and trapping 22 permits and license privileges for a minimum of 3 years or 23 up to a maximum of a lifetime revocation from the date of 24 conviction.

Section 3. Section 87-3-111, MCA, is amended to read:

- SB 239

INTRODUCED BILL

LC 0972/01

1 *87-3-111. (Temporary) Unlawful to buy, sell, possess, 2 or transport fish or game -- exceptions -- penalties. (1) It is unlawful for any person to purchase, sell, offer to sell, 3 possess, ship, or transport any game fish, game bird, 4 migratory game bird, game animal, or fur-bearing animal or 5 6 part thereof protected by the laws of this state, whether 7 belonging to the same or different species from that native to the state of Montana, except as specifically permitted by 8 9 the laws of this state.

10 (2) The provisions of this section do not prohibit:

(a) the possession or transportation within the state
 of any legally taken fish, game bird, migratory game bird,
 game animal, or fur-bearing animal or part thereof;

(b) the sale, purchase, or transportation of hides,
heads, or mounts of lawfully killed game birds, game fish,
fur-bearing animals, or game animals, except that the sale
or purchase of a hide, head, or mount of a grizzly bear is
prohibited, except as provided in 87-3-110; or

19 (c) the donation and sale of paddlefish roe as caviar20 under the provisions of 87-4-601.

(3) Except-as--provided--in--subsection--(4), -any Any
person violating any of the provisions of this section is
guilty of a misdemeanor and upon conviction shall be
punished as provided by-law in 87-1+102.

25 (4)--Any-person-engaging-in-the-activities-prohibited-in

LC 0972/01

1	subsection-(1)-in-furtherance-of-a-scheme-to-traffic-inthe
2	body-parts-of-unlawfully-taken-species-is-guilty-of-a-felony
3	andshallbe-punished-by-a-fine-of-\$10,000-or-imprisonment
4	in-thestateprisonforatermof1year7orboth-
5	(Terminates June 30, 1993sec. 5, Ch. 409, L. 1989.)
6	87-3-111. (Effective July 1, 1993) Unlawful to buy,
7	sell, possess, or transport fish or game exceptions
8	penalties. (1) It is hereby-made unlawful for any person to
9	purchase, sell, offer to sell, possess, ship, or transport
10	any game fish, game bird, migratory game bird, game animal,
11	or fur-bearing animal or part thereof protected by the laws
12	of this state, whether belonging to the same or different
13	species from that native to the state of Montana, except as
14	specifically permitted by the laws of this state.
15	(2) The provisions of this section shall not prohibit:
16	(a) the possession or transportation within the state
17	of any legally taken fish, game bird, migratory game bird,
18	game animal, or fur-bearing animal or part thereof; or
19	(b) the sale, purchase, or transportation of hides,
20	heads, or mounts of lawfully killed game birds, game fish,
21	fur-bearing animals, or game animals, except that the sale
22	or purchase of a hide, head, or mount of a grizzly bear is
23	prohibited, except as provided in 87-3-110.
24	(3) Exceptasprovidedinsubsection(4)7any Any

25 person violating any of the provisions of this section is

guilty of a misdemeanor and upon conviction thereof shall be
 punished as provided by-law in 87-1-102.

3 (4)--Any-person-engaging-in-the-activities-prohibited-in 4 subsection--(1)-in-furtherance-of-a-scheme-to-traffic-in-the 5 body-parts-of-unlawfully-taken-species-is-guilty-of-a-felony 6 and-shall-be-punished-by-a-fine-of-\$10,000--or--imprisonment 7 in-the-state-prison-for-a-term-of-1-year,-or-both-"

8 Section 4. Section 87-1-111, MCA, is amended to read: 9 *87-1-111. (Temporary) Restitution for illegal killing or possession of certain wildlife. (1) In addition to other 10 11 penalties provided by law, a person convicted or forfeiting bond or bail upon a charge of the illegal killing or 12 possession of a wild bird, mammal, or fish listed in this 13 section shall reimburse the state for each such bird, 14 15 mammal, or fish according to the following schedule:

16 (a) bighorn sheep, mountain--goat;--caribou;-buffalo;
17 grizzly bear, moose; and endangered species, \$17000 \$2,000;

18 (b) elk, mountain goat, caribou, and moose, \$1,000;

19 (b)(c) elk, mountain lion, black bear, lynx, and 20 wolverine, <u>buffalo</u>, golden eagle, osprey, falcon, antlered 21 <u>deer as defined by commission regulation</u>, and <u>adult buck</u> 22 antelope as defined by commission regulation, \$500;

23 (c)(d) deer not included in subsection (1)(c), antelope
24 not included in subsection (1)(c), fisher, raptor not
25 included in subsection (1)(c), swan, bobcat, pallid and

white sturgeon, and paddlefish, \$300;

2

defined in 87-2-101, and not listed in subsection (±)(a);
(±)(b); or (1)(c) or (1)(d), \$100;
(e)(f) game bird (except swan), \$25;
(f)(g) game fish, \$10.
(2) When a court enters an order declaring bond or bail
to be forfeited, the court may also order that some or all
of the forfeited bond or bail be paid as restitution to the

(d)(e) grayling and furbearers fur-bearing animals, as

10 state according to the schedule in subsection (1). A hearing 11 to determine the amount of restitution, as required under 12 46-9-504, is not required for an order of restitution under 13 this section. (Terminates June 30, 1993--sec. 5, Ch. 409, L. 14 1989.)

15 87-1-111. (Effective July 1, 1993) Restitution for 16 illegal killing or possession of certain wildlife. (1) In addition to other penalties provided by law, a person 17 convicted or forfeiting bond or bail upon a charge of the 18 illegal killing or possession of a wild bird, mammal, or 19 20 fish listed in this section shall reimburse the state for 21 each such bird, mammal, or fish according to the following 22 schedule:

(a) bighorn sheep, mountain--goat, --caribou, --buffalo,
grizzly bear, moose, and endangered species, \$1,000;
(b) elk, mountain goat, caribou, and moose, \$1,000;

-5-

-6-

LC 0972/01

1 (b)(c) elk; mountain lion, black bear, lynx, and 2 wolverine, <u>buffalo, golden eagle, osprey, falcon, antlered</u> 3 <u>deer as defined by commission regulation, and adult buck</u> 4 <u>antelope as defined by commission regulation,</u> \$500;

5 (c)(d) deer not included in subsection (1)(c), antelope
6 not included in subsection (1)(c), fisher, raptor not
7 included in subsection (1)(c), swan, bobcat, and pallid and
8 white sturgeon, \$300;

9 (d)(e) paddlefish, grayling, and furbearers <u>fur-bearing</u>
10 <u>animals, as defined in 87-2-101, and not listed in</u>
11 subsection (1)(a); -(1)(b); or (1)(d), \$100;

13 (f)(g) game fish, \$10.

14 (2) When a court enters an order declaring bond or bail 15 to be forfeited, the court may also order that some or all 16 of the forfeited bond or bail be paid as restitution to the 17 state according to the schedule in subsection (1). A hearing 18 to determine the amount of restitution, as required under 19 46-9-504, is not required for an order of restitution under 20 this section."

21 <u>NEW SECTION.</u> Section 5. Codification instruction. 22 [Sections 1 and 2] are intended to be codified as an 23 integral part of Title 87, chapter 3, part 1, and the 24 provisions of Title 87, chapter 3, part 1, apply to 25 [sections 1 and 2]. 1 NEW SECTION. Section 6. Effective date. [This act] is

2 effective July 1, 1991.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0239, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

This bill: 1) establishes as felonies the sale of unlawfully taken wildlife and the possession of unlawfully taken wildlife having a value of more than \$1,000; 2) revises the restitution penalties for the illegal killing or possession of certain wildlife; and 3) defines "lawfully taken wildlife" and "unlawfully taken wildlife".

ASSUMPTIONS:

Department of Fish, Wildlife and Parks

1. The Department of Fish, Wildlife, and Parks has collected \$72,424 in restitution since the fall of 1987 (an average of \$18,105 per year). If the proposed civil restitution amounts had been used the department would have received \$105,053 (an average of \$26,282 per year). This represents an average increase of \$8,157 per year.

2. The department will not receive any significant increase in revenue from fines assessed by the Justices of the Peace. Department of Institutions:

3. The prison will experience an additional two admissions per year.

4. There will be 2 new prisoners to house in FY92 and 3 in FY93.

FISCAL IMPACT:

Department of Institutions:

	FY 92			FY 93		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Expenditures:</u> Operating Costs	0	3,620	3,620	0	6,077	6,077
<u>Funding:</u> General Fund	0	3,620	3,620	0	6,077	6,077

Revenue:

Department of Fish, Wildlife and Parks: General License Acct. (02) 18,105

26,262

8,157

ROD SUNDSTED, BUDGET DIRECTOR Office of Budget and Program Planning

SPONSOR

18,105

FRED VAN VALKENBURG, PRIMARY

Fiscal Note for SB0239, as introduced

DATE

SB 239

8,157

26,262

52nd Legislature

SB 0239/02

15

in 87-1-111.

APPROVED BY COMM. ON FISH AND GAME

1	SENATE BILL NO. 239
2	INTRODUCED BY VAN VALKENBURG, STRIZICH
3	BY REQUEST OF THE DEPARTMENT OF
4	FISH, WILDLIFE, AND PARKS

"AN ACT ESTABLISHING AS A BILL FOR AN ACT ENTITLED: 6 FELONIES THE SALE OF UNLAWFULLY TAKEN WILDLIFE AND THE 7 POSSESSION OF UNLAWFULLY TAKEN WILDLIFE HAVING A VALUE OF 8 MORE THAN \$1,000; REVISING THE RESTITUTION PENALTIES FOR THE 9 ILLEGAL KILLING OR POSSESSION OF CERTAIN WILDLIFE; DEFINING 10 "LAWFULLY TAKEN WILDLIFE" AND "UNLAWFULLY TAKEN WILDLIFE"; 11 AMENDING SECTIONS 87-1-111 AND 87-3-111, MCA; AND PROVIDING 12 AN EFFECTIVE DATE." 13

14

5

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 15

NEW SECTION. Section 1. Definitions of lawfully taken 16 wildlife and unlawfully taken wildlife. As used in [section 17 2] and this section, the following definitions apply: 18

(1) "Lawfully taken wildlife" means wildlife, as 19 defined in 87-5-102, that is taken or possessed by hunting, 20 fishing, or trapping in conformance with this title and the 21 regulations adopted by the commission and the department 22 under authority of this title. 23

(2) "Unlawfully taken wildlife" means wildlife that is 24 25 not lawfully taken wildlife.



NEW SECTION. Section 2. Sale 1 OI possession of 2 unlawfully taken wildlife -- penalty. (1) A person commits the offense of sale of unlawfully taken wildlife if he 3 purposely or knowingly sells, barters, purchases, or 4 exchanges for anything of value or if he offers to sell, 5 purchase, or exchange for anything of value, 6 barter. unlawfully taken wildlife. 7 8 (2) A person commits the offense of possession of unlawfully taken wildlife having a value of more than \$1,000 9 10 if he purposely or knowingly has actual or constructive 11 possession of or transports or causes to be transported 12 unlawfully taken wildlife having a value of more than \$1,000. The value of the unlawfully taken wildlife must be 13 determined from the schedule of restitution values set out 14

16 (3) A person who violates this section is guilty of a 17 felony and upon conviction shall be fined not more than 18 \$50,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both. In addition, a person convicted 19 20 under this section or who pleads quilty to a violation of 21 this section shall lose all hunting, fishing, and trapping 22 permits and license privileges for a minimum of 3 years or 23 up to a maximum of a lifetime revocation from the date of 24 conviction.

Section 3. Section 87-3-111, MCA, is amended to read: 25 SECOND READING

```
SB 239
-2-
```

SB 0239/02

SB 239

1 "87-3-111. (Temporary) Unlawful to buy, sell, possess, 2 or transport fish or game -- exceptions -- penalties. (1) It 3 is unlawful for any person to purchase, sell, offer to sell, 4 possess, ship, or transport any game fish, game bird, 5 migratory game bird, game animal, or fur-bearing animal or 6 part thereof protected by the laws of this state, whether 7 belonging to the same or different species from that native 8 to the state of Montana, except as specifically permitted by 9 the laws of this state.

10 (2) The provisions of this section do not prohibit:

(a) the possession or transportation within the state
of any legally taken fish, game bird, migratory game bird,
game animal, or fur-bearing animal or part thereof;

(b) the sale, purchase, or transportation of hides,
heads, or mounts of lawfully killed game birds, game fish,
fur-bearing animals, or game animals, except that the sale
or purchase of a hide, head, or mount of a grizzly bear is
prohibited, except as provided in 87-3-110; or

19 (c) the donation and sale of paddlefish roe as caviar20 under the provisions of 87-4-601.

(3) Except-as--provided--in--subsection--(4);--any Any
person violating any of the provisions of this section is
guilty of a misdemeanor and upon conviction shall be
punished as provided by-law in 87-1-102.

25 (4)--Any-person-engaging-in-the-activities-prohibited-in

-3-

subsection-(i)-in-furtherance-of-a-scheme-to-traffic-in--the body-parts-of-uniawfully-taken-species-is-guilty-of-a-felony and--shall--be-punished-by-a-fine-of-\$107000-or-imprisonment in-the--state--prison--for--a--term--of-l--year7--or--both (Terminates June 30, 1993--sec. 5, Ch. 409, L. 1989.)

87-3-111. (Effective July 1, 1993) Unlawful to buy, 6 sell, possess, or transport fish or game -- exceptions --7 penalties. (1) It is hereby-made unlawful for any person to 8 purchase, sell, offer to sell, possess, ship, or transport 9 any game fish, game bird, migratory game bird, game animal, 10 or fur-bearing animal or part thereof protected by the laws 11 of this state, whether belonging to the same or different 12 13 species from that native to the state of Montana, except as specifically permitted by the laws of this state. 14

(2) The provisions of this section shall not prohibit: 15 (a) the possession or transportation within the state 16 of any legally taken fish, game bird, migratory game bird, 17 game animal, or fur-bearing animal or part thereof; or 18 (b) the sale, purchase, or transportation of hides, 19 heads, or mounts of lawfully killed game birds, game fish, 20 21 fur-bearing animals, or game animals, except that the sale or purchase of a hide, head, or mount of a grizzly bear is 22

23 prohibited, except as provided in 87-3-110.

24 (3) Except--as--provided--in--subsection--(4);--any Any
 25 person violating any of the provisions of this section is

-4-

SB 239

SB 0239/02

SB 239

guilty of a misdemeanor and upon conviction thereof shall be 1 2 punished as provided by-law in 87-1-102. 3 (4)--Any-person-engaging-in-the-activities-prohibited-in 4 subsection--{1}-in-furtherance-of-a-scheme-to-traffic-in-the 5 body-parts-of-unlawfully-taken-species-is-quilty-of-a-felony 6 and-shall-be-punished-by-a-fine-of-\$107000--or--imprisonment 7 in-the-state-prison-for-a-term-of-1-yeary-or-both-" 8 Section 4. Section 87-1-111, MCA, is amended to read: 9 87-1-111. (Temporary) Restitution for illegal killing 10 or possession of certain wildlife. (1) In addition to other 11 penalties provided by law, a person convicted or forfeiting 12 bond or bail upon a charge of the illegal killing or 13 possession of a wild bird, mammal, or fish listed in this 14 section shall reimburse the state for each such bird, 15 mammal, or fish according to the following schedule: 16 (a) bighorn sheep, mountain--goat7--caribou7-buffalo7 17 grizzly bear, moose; and endangered species, \$17000 \$2,000; 18 (b) elk, mountain goat, caribou, BALD EAGLE, and moose, 19 \$1,000; tbt(c) etky mountain lion, black bear, lynx, and 20 wolverine, buffalo, golden eagle, osprey, falcon, antlered 21 deer as defined by commission regulation, and adult buck 22 23 antelope as defined by commission regulation, \$500; 24 (d) deer not included in subsection (1)(c), antelope not included in subsection (1)(c), fisher, raptor not 25

-5-

1 included in subsection (1)(c), swan, bobcat, pallid and 2 white sturgeon, and paddlefish, \$300; 3 (d)(e) grayling and furbearers fur-bearing animals, as 4 defined in 87-2-101, and not listed in subsection flittatr 5 titter or (1)(c) or (1)(d), \$100: 6 fef(f) game bird (except swan), \$25; 7 f = f(g) game fish, \$10. 8 (2) When a court enters an order declaring bond or bail to be forfeited, the court may also order that some or all 9 10 of the forfeited bond or bail be paid as restitution to the 11 state according to the schedule in subsection (1). A hearing 12 to determine the amount of restitution, as required under 46-9-504, is not required for an order of restitution under 13 14 this section. (Terminates June 30, 1993--sec. 5, Ch. 409, L. 15 1989.) 16 87-1-111. (Effective July 1, 1993) Restitution for illegal killing or possession of certain wildlife. (1) In 17 18 addition to other penalties provided by law, a person convicted or forfeiting bond or bail upon a charge of the 19 20 illegal killing or possession of a wild bird, mammal, or 21 fish listed in this section shall reimburse the state for 22 each such bird, mammal, or fish according to the following 23 schedule: 24 (a) bighorn sheep, mountain--goaty--caribouy--buffaloy 25 grizzly bear, moose; and endangered species, \$17000 \$2,000;

-6-

SB 239

1	(b) all mountain such assides. BAID PACIE and manage
Ŧ	(b) elk, mountain goat, caribou, BALD EAGLE, and moose,
2	<u>\$1,000;</u>
3	<pre>tb;(c) elk; mountain lion, black bear, lynx, and</pre>
4	wolverine, buffalo, golden eagle, osprey, falcon, antlered
5	deer as defined by commission regulation, and adult buck
6	antelope as defined by commission regulation, \$500;
7	<pre>tet(d) deer not included in subsection (1)(c), antelope</pre>
8	not included in subsection (1)(c), fisher, raptor not
9	included in subsection (1)(c), swan, bobcat, and pallid and
10	white sturgeon, \$300;
11	<pre>{d}(e) paddlefish, grayling, and furbearers fur-bearing</pre>
12	animals, as defined in 87-2-101, and not listed in
13	<pre>subsection +1++a+-++++++++++++++++++++++++++++++++</pre>
14	<pre>(f) game bird (except swan), \$25;</pre>
15	(f)<u>(g)</u> game fish, \$10.
16	(2) When a court enters an order declaring bond or bail
17	to be forfeited, the court may also order that some or all
18	of the forfeited bond or bail be paid as restitution to the
19	state according to the schedule in subsection (1). A hearing
20	to determine the amount of restitution, as required under
21	46-9-504, is not required for an order of restitution under
22	this section."
23	NEW SECTION. Section 5. Codification instruction.

tion. 24 [Sections 1 and 2] are intended to be codified as an 25 integral part of Title 87, chapter 3, part 1, and the

-7-

. \$ ٠

provisions of Title 87, chapter 3, part 1, apply to 1

2 [sections 1 and 2].

3 NEW SECTION. Section 6. Effective date. [This act] is

effective July 1, 1991. 4

-End-

-8-

not lawfully taken wildlife.

25

*

SB 0239/02

1	SENATE BILL NO. 239	1	NEW SECTION. Section 2. Sale or possession of
2	INTRODUCED BY VAN VALKENBURG, STRIZICH	2	unlawfully taken wildlife penalty. (1) A person commits
3	BY REQUEST OF THE DEPARTMENT OF	3	the offense of sale of unlawfully taken wildlife if he
4	FISH, WILDLIFE, AND PARKS	4	purposely or knowingly sells, barters, purchases, or
5		5	exchanges for anything of value or if he offers to sell,
6	A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING AS	6	barter, purchase, or exchange for anything of value,
7	FELONIES THE SALE OF UNLAWFULLY TAKEN WILDLIFE AND THE	7	unlawfully taken wildlife.
8	POSSESSION OF UNLAWFULLY TAKEN WILDLIFE HAVING A VALUE OF	8	(2) A person commits the offense of possession of
9	MORE THAN \$1,000; REVISING THE RESTITUTION PENALTIES FOR THE	9	unlawfully taken wildlife having a value of more than \$1,000
10	ILLEGAL KILLING OR POSSESSION OF CERTAIN WILDLIFE; DEFINING	10	if he purposely or knowingly has actual or constructive
11	"LAWFULLY TAKEN WILDLIFE" AND "UNLAWFULLY TAKEN WILDLIFE";	11	possession of or transports or causes to be transported
12	AMENDING SECTIONS 87-1-111 AND 87-3-111, MCA; AND PROVIDING	12	unlawfully taken wildlife having a value of more than
13	AN EFFECTIVE DATE."	13	\$1,000. The value of the unlawfully taken wildlife must be
14		14	determined from the schedule of restitution values set out
15	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	15	in 87-1-111.
16	NEW SECTION. Section 1. Definitions of lawfully taken	16	(3) A person who violates this section is guilty of a
17	wildlife and unlawfully taken wildlife. As used in [section	17	felony and upon conviction shall be fined not more than
18	2] and this section, the following definitions apply:	18	\$50,000 or be imprisoned in the state prison for a term not
19	(1) "Lawfully taken wildlife" means wildlife, as	19	to exceed 5 years, or both. In addition, a person convicted
20	defined in 87-5-102, that is taken or possessed by hunting,	20	under this section or who pleads guilty to a violation of
21	fishing, or trapping in conformance with this title and the	21	this section shall lose all hunting, fishing, and trapping
22	regulations adopted by the commission and the department	22	permits and license privileges for a minimum of 3 years or
23	under authority of this title.	23	up to a maximum of a lifetime revocation from the date of
24	(2) "Unlawfully taken wildlife" means wildlife that is	24	conviction.

Section 3. Section 87-3-111, MCA, is amended to read: 25 THIRD READING -2-SB 239

SB 0239/02

1 *87-3-111. (Temporary) Unlawful to buy, sell, possess, 2 or transport fish or game -- exceptions -- penalties. (1) It is unlawful for any person to purchase, sell, offer to sell, 3 4 possess, ship, or transport any game fish, game bird, 5 migratory game bird, game animal, or fur-bearing animal or 6 part thereof protected by the laws of this state, whether belonging to the same or different species from that native 7 8 to the state of Montana, except as specifically permitted by 9 the laws of this state.

10 (2) The provisions of this section do not prohibit:

(a) the possession or transportation within the state
of any legally taken fish, game bird, migratory game bird,
game animal, or fur-bearing animal or part thereof;

(b) the sale, purchase, or transportation of hides,
heads, or mounts of lawfully killed game birds, game fish,
fur-bearing animals, or game animals, except that the sale
or purchase of a hide, head, or mount of a grizzly bear is
prohibited, except as provided in 87-3-110; or

(c) the donation and sale of paddlefish roe as caviarunder the provisions of 87-4-601.

(3) Except-as--provided--in--subsection--(4), --any Any
person violating any of the provisions of this section is
guilty of a misdemeanor and upon conviction shall be
punished as provided by-law in 87-1-102.

25 (4)--Any-person-engaging-in-the-activities-prohibited-in

subsection-(i)-in-furtherance-of-a-scheme-to-traffic-in--the
 body-parts-of-unlawfully-taken-species-is-guilty-of-a-felony
 and--shall--be-punished-by-a-fine-of-\$10,000-or-imprisonment
 in-the--state--prison--for--a--term--of--l--year,--or--both;
 (Terminates June 30, 1993--sec. 5, Ch. 409, L. 1989.)

87-3-111. (Effective July 1, 1993) Unlawful to buy, 6 7 sell, possess, or transport fish or game -- exceptions -penalties. (1) It is hereby-made unlawful for any person to 8 purchase, sell, offer to sell, possess, ship, or transport 9 any game fish, game bird, migratory game bird, game animal, 10 or fur-bearing animal or part thereof protected by the laws 11 of this state, whether belonging to the same or different 12 13 species from that native to the state of Montana, except as specifically permitted by the laws of this state. 14

15 (2) The provisions of this section shall not prohibit:
16 (a) the possession or transportation within the state
17 of any legally taken fish, game bird, migratory game bird,
18 game animal, or fur-bearing animal or part thereof; or

(b) the sale, purchase, or transportation of hides,
heads, or mounts of lawfully killed game birds, game fish,
fur-bearing animals, or game animals, except that the sale
or purchase of a hide, head, or mount of a grizzly bear is
prohibited, except as provided in 87-3-110.

24 (3) Except--as--provided--in--subsection--(4); --any Any
 25 person violating any of the provisions of this section is

-3-

SB 0239/02

-4-

,

1	guilty of a misdemeanor and upon conviction thereof shall be	1	included in subsection (1)(c), swan, bobcat, pallid and
2	punished as provided by law in 87-1-102.	2	white sturgeon, and paddlefish, \$300;
3	(4)Any-person-engaging-in-the-activities-prohibited-in	3	(d)(e) grayling and furbearers fur-bearing animals, as
4	subsection	4	defined in 87-2-101, and not listed in subsection (1)(a)
5	body-parts-of-unlawfully-taken-species-is-guilty-of-a-felony	5	ti;tb; or (1)(c) or (1)(d), \$100;
6	and-shall-be-punished-by-a-fine-of-\$10,000orimprisonment	6	<pre>tet(f) game bird (except swan), \$25;</pre>
7	in-the-state-prison-for-a-term-of-l-year;-or-both:"	7	(f) <u>(g)</u> game fish, \$10.
8	Section 4. Section 87-1-111, MCA, is amended to read:	8	(2) When a court enters an order declaring bond or bail
9	*87-1-111. (Temporary) Restitution for illegal killing	9	to be forfeited, the court may also order that some or all
10	or possession of certain wildlife. (1) In addition to other	10	of the forfeited bond or bail be paid as restitution to the
11	penalties provided by law, a person convicted or forfeiting	11	state according to the schedule in subsection (1). A hearing
12	bond or bail upon a charge of the illegal killing or	12	to determine the amount of restitution, as required under
13	possession of a wild bird, mammal, or fish listed in this	13	46-9-504, is not required for an order of restitution under
14	section shall reimburse the state for each such bird,	14	this section. (Terminates June 30, 1993sec. 5, Ch. 409, L.
15	mammal, or fish according to the following schedule:	15	1989.)
16	(a) bighorn sheep, mountaingoat7caribou7-buffalo7	16	87-1-111. (Effective July 1, 1993) Restitution for
17	grizzly bear, moose, and endangered species, $\frac{1}{7}000$ $\frac{2}{2000}$;	17	illegal killing or possession of certain wildlife. (1) In
18	(b) elk, mountain goat, caribou, BALD EAGLE, and moose,	18	addition to other penalties provided by law, a person
19	\$1,000;	19	convicted or forfeiting bond or bail upon a charge of the
20	(b)(c) e lk, mountain lion, black bear, lynx, and	20	illegal killing or possession of a wild bird, mammal, or
21	wolverine, <u>buffalo, golden eagle, osprey, falcon, antlered</u>	21	fish listed in this section shall reimburse the state for
22	deer as defined by commission regulation, and adult buck	22	each such bird, mammal, or fish according to the following
23	antelope as defined by commission regulation, \$500;	23	schedule:
24	<pre>fc;(d) deer not included in subsection (1)(c), antelope</pre>	24	(a) bighorn sheep, mountain-goatzcaribouzbuffaloz
25	not included in subsection (1)(c), fisher, raptor not	25	grizzly bear, moose, and endangered species, 217000 ;
	-5- SB 239		-6- SB 239

SB 0239/02

1 (b) elk, mountain goat, caribou, BALD EAGLE, and moose, 2 \$1,000; 3 tbt(c) eikr mountain lion, black bear, lynx, and wolverine, buffalo, golden eagle, osprey, falcon, antlered 4 deer as defined by commission regulation, and adult buck 5 6 antelope as defined by commission regulation, \$500; 7 {c}(d) deer not included in subsection (1)(c), antelope 8 not included in subsection (1)(c), fisher, raptor not 9 included in subsection (1)(c), swan, bobcat, and pallid and 10 white sturgeon, \$300;

11 (d)(e) paddlefish, grayling, and furbearers fur-bearing 12 animals, as defined in 87-2-101, and not listed in 13 subsection (1)(d), \$100;

14 (e)(f) game bird (except swan), \$25;

15 (f)(g) game fish, \$10.

•

16 (2) When a court enters an order declaring bond or bail 17 to be forfeited, the court may also order that some or all 18 of the forfeited bond or bail be paid as restitution to the 19 state according to the schedule in subsection (1). A hearing 20 to determine the amount of restitution, as required under 21 46-9-504, is not required for an order of restitution under 22 this section."

23 <u>NEW SECTION.</u> Section 5. Codification instruction.
24 [Sections 1 and 2] are intended to be codified as an
25 integral part of Title 87, chapter 3, part 1, and the

-7-

1 provisions of Title 87, chapter 3, part 1, apply to

2 [sections 1 and 2].

3 <u>NEW SECTION.</u> Section 6. Effective date. [This act] is

4 effective July 1, 1991.

-End-

HOUSE STANDING COMMITTEE REPORT

March 14, 1991 Page 1 of 1

Chairman

STRIZICH

Elliot,

Jim

Mr. Speaker: We, the committee on <u>Fish and Game</u> report that <u>Senate Bill 239</u> (third reading copy -- blue) <u>be concurred in as</u> <u>amended</u>.

Signed:

Corried by

And, that such amendments read: 1. Page 6, line 1. Strike: "pallid and"

2. Page 7, line 9. Strike: "pallid and"

> HOUSE 58 239

SB 0239/03

1	SENATE BILL NO. 239
2	INTRODUCED BY VAN VALKENBURG, STRIZICH
3	BY REQUEST OF THE DEPARTMENT OF
4	FISH, WILDLIFE, AND PARKS
5	
6	A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING AS
7	FELONIES THE SALE OF UNLAWFULLY TAKEN WILDLIFE AND THE
8	POSSESSION OF UNLAWFULLY TAKEN WILDLIFE HAVING A VALUE OF
9	MORE THAN \$1,000; REVISING THE RESTITUTION PENALTIES FOR THE
10	ILLEGAL KILLING OR POSSESSION OF CERTAIN WILDLIFE; DEFINING
11	"LAWFULLY TAKEN WILDLIFE" AND "UNLAWFULLY TAKEN WILDLIFE";
12	AMENDING SECTIONS 87-1-111 AND 87-3-111, MCA; AND PROVIDING
13	AN EFFECTIVE DATE."
14	
15	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
16	NEW SECTION. Section 1. Definitions of lawfully taken
17	wildlife and unlawfully taken wildlife. As used in [section
18	2] and this section, the following definitions apply:

19 (1) "Lawfully taken wildlife" means wildlife, as 20 defined in 87-5-102, that is taken or possessed by hunting, 21 fishing, or trapping in conformance with this title and the 22 regulations adopted by the commission and the department 23 under authority of this title.

24 (2) "Unlawfully taken wildlife" means wildlife that is25 not lawfully taken wildlife.

SB 0239/03

1 NEW SECTION. Section 2. Sale or possession of unlawfully taken wildlife -- penalty. (1) A person commits 2 3 the offense of sale of unlawfully taken wildlife if he 4 purposely or knowingly sells, barters, purchases, or 5 exchanges for anything of value or if he offers to sell, 6 barter, purchase, or exchange for anything of value, 7 unlawfully taken wildlife.

8 (2) A person commits the offense of possession of g unlawfully taken wildlife having a value of more than \$1,000 10 if he purposely or knowingly has actual or constructive possession of or transports or causes to be transported 11 12 unlawfully taken wildlife having a value of more than 13 \$1,000. The value of the unlawfully taken wildlife must be 14 determined from the schedule of restitution values set out 15 in 87-1-111.

16 (3) A person who violates this section is guilty of a 17 felony and upon conviction shall be fined not more than 18 \$50,000 or be imprisoned in the state prison for a term not 19 to exceed 5 years, or both. In addition, a person convicted 20 under this section or who pleads quilty to a violation of 21 this section shall lose all hunting, fishing, and trapping 22 permits and license privileges for a minimum of 3 years or 23 up to a maximum of a lifetime revocation from the date of 24 conviction.

25 Section 3. Section 87-3-111, MCA, is amended to read:

-2-



SB 239 REFERENCE BILL AS AMENDED

"87-3-111. (Temporary) Unlawful to buy, sell, possess, 1 or transport fish or game -- exceptions -- penalties. (1) It 2 is unlawful for any person to purchase, sell, offer to sell, 3 possess, ship, or transport any game fish, game bird, 4 migratory game bird, game animal, or fur-bearing animal or 5 part thereof protected by the laws of this state, whether 6 belonging to the same or different species from that native 7 to the state of Montana, except as specifically permitted by 8 the laws of this state. 9

10 (2) The provisions of this section do not prohibit:

(a) the possession or transportation within the state
 of any legally taken fish, game bird, migratory game bird,
 game animal, or fur-bearing animal or part thereof;

(b) the sale, purchase, or transportation of hides,
heads, or mounts of lawfully killed game birds, game fish,
fur-bearing animals, or game animals, except that the sale
or purchase of a hide, head, or mount of a grizzly bear is
prohibited, except as provided in 87-3-110; or

19 (c) the donation and sale of paddlefish roe as caviar
20 under the provisions of 87-4-601.

(3) Except-as--provided--in--subsection--(4)7--any Any
person violating any of the provisions of this section is
guilty of a misdemeanor and upon conviction shall be
punished as provided by-taw in 87-1-102.

25 (4)--Any-person-engaging-in-the-activities-prohibited-in

1 subsection-fl}-in-furtherance-of-s-scheme-to-traffic-in--the 2 body-parts-of-unlawfully-taken-species-is-guilty-of-a-felony and--shall--be-punished-by-a-fine-of-9107000-or-imprisonment 3 đ in-the--state--prison--for--a--term--of--1--yeary--or--both: (Terminates June 30, 1993--sec. 5, Ch. 409, L. 1989.) 5 6 87-3-111. (Effective July 1, 1993) Unlawful to buy, 7 sell, possess, or transport fish or game -- exceptions --8 penalties. (1) It is hereby-made unlawful for any person to 9 purchase, sell, offer to sell, possess, ship, or transport 10 any game fish, game bird, migratory game bird, game animal, 11 or fur-bearing animal or part thereof protected by the laws 12 of this state, whether belonging to the same or different 13 species from that native to the state of Montana, except as 14 specifically permitted by the laws of this state. 15 (2) The provisions of this section shall not prohibit: 16 (a) the possession or transportation within the state 17 of any legally taken fish, game bird, migratory game bird, 18 game animal, or fur-bearing animal or part thereof; or

(b) the sale, purchase, or transportation of hides,
heads, or mounts of lawfully killed game birds, game fish,
fur-bearing animals, or game animals, except that the sale
or purchase of a hide, head, or mount of a grizzly bear is
prohibited, except as provided in 87-3-110.

24 (3) Except-as-provided-in-subsection--(4)7-any Any
 25 person violating any of the provisions of this section is

-3-

SB 239

SB 0239/03

-4-

.

guilty of a misdemeanor and upon conviction thereof shall be
 punished as provided by-law in 87-1-102.

3 (4)--Any-person-engaging-in-the-activities-prohibited-in 4 subsection--(1)-in-furtherance-of-a-scheme-to-traffic-in-the 5 body-parts-of-unlawfully-taken-species-is-guilty-of-a-felony 6 and-shall-be-punished-by-a-fine-of-\$10,000--or--imprisonment 7 in-the-state-prison-for-a-term-of-1-year,-or-both-"

Section 4. Section 87-1-111, MCA, is amended to read: 8 *87-1-111. (Temporary) Restitution for illegal killing 9 10 or possession of certain wildlife. (1) In addition to other 11 penalties provided by law, a person convicted or forfeiting 12 bond or bail upon a charge of the illegal killing or 13 possession of a wild bird, mammal, or fish listed in this 14 section shall reimburse the state for each such bird, 15 mammal, or fish according to the following schedule:

16 (a) bighorn sheep, mountain-goat7--caribou7-buffalo7
17 grizzly bear, moose7 and endangered species, \$17000 \$2,000;
18 (b) elk, mountain goat, caribou, BALD EAGLE, and moose,

19 \$1,000;

(b)(c) eik, mountain lion, black bear, lynx, and
 wolverine, buffalo, golden eagle, osprey, falcon, antlered
 deer as defined by commission regulation, and adult buck
 antelope as defined by commission regulation, \$500;
 (c)(d) deer not included in subsection (1)(c), antelope

24 fef<u>(d)</u> deer <u>not included in subsection (1)(c)</u>, anterope
 25 <u>not included in subsection (1)(c)</u>, fisher, raptor <u>not</u>

1 included in subsection (1)(c), swan, bobcat, pallid-and 2 white sturgeon, and paddlefish, \$300;

3 (d)(e) grayling and furbearers <u>fur-bearing animals</u>, as
4 <u>defined in 87-2-101</u>, and not listed in subsection (1)(a),
5 (1)(b), or (1)(d), \$100;
6 (e)(f) game bird (except swan), \$25;

7 tf)(g) game fish, \$10.

8 (2) When a court enters an order declaring bond or bail 9 to be forfeited, the court may also order that some or all 10 of the forfeited bond or bail be paid as restitution to the 11 state according to the schedule in subsection (1). A hearing 12 to determine the amount of restitution, as required under 13 46-9-504. is not required for an order of restitution under 14 this section. (Terminates June 30, 1993--sec. 5, Ch. 409, L. 15 1989.)

16 87-1-111. (Effective July 1, 1993) Restitution for illegal killing or possession of certain wildlife. (1) In 17 18 addition to other penalties provided by law, a person 19 convicted or forfeiting bond or bail upon a charge of the 20 illegal killing or possession of a wild bird, mammal, or fish listed in this section shall reimburse the state for 21 22 each such bird, mammal, or fish according to the following 23 schedule:

24 (a) bighorn sheep, mountain-goat;--caribou;--buffalo;
 25 grizzly bear, moose; and endangered species, \$1,7000 \$2,000;

SB 239

1	(b) elk, mountain goat, caribou, BALD EAGLE, and moose,
2	<u>\$1,000;</u>
3	<pre>tb;(c) elk; mountain lion, black bear, lynx, and</pre>
4	wolverine, buffalo, golden eagle, osprey, falcon, antlered
5	deer as defined by commission regulation, and adult buck
6	antelope as defined by commission regulation, \$500;
7	<pre>fef(d) deer not included in subsection (1)(c), antelope</pre>
8	not included in subsection (1)(c), fisher, raptor not
9	included in subsection (1)(c), swan, bobcat, and pallidand
10	white sturgeon, \$300;
11	(d)(e) paddlefish, grayling, and furbearers fur-bearing
12	animals, as defined in 87-2-101, and not listed in
13	subsection (1)(a), (1)(b), or (1)(c) <u>or (1)(d)</u> , \$100;
14	(c)<u>(f)</u> game bird (except swan), \$25;
15	(f)<u>(g)</u> game fish, \$10.
16	(2) When a court enters an order declaring bond or bail
17	to be forfeited, the court may also order that some or all
18	of the forfeited bond or bail be paid as restitution to the
19	state according to the schedule in subsection (1). A hearing
20	to determine the amount of restitution, as required under
21	46-9-504, is not required for an order of restitution under
22	this section."
77	NEW SECTION Section 5 codification instruction

instruction. NEW SECTION. Section 5. Codification 23 [Sections 1 and 2] are intended to be codified as an 24 integral part of Title 87, chapter 3, part 1, and the 25

provisions of Title 87, chapter 3, part 1, apply to 1

[sections 1 and 2]. 2

NEW SECTION. Section 6. Effective date. [This act] is 3

effective July 1, 1991. 4

-End-

SB 239

-7-