

MINUTES OF THE MEETING  
FISH AND GAME COMMITTEE  
HOUSE OF REPRESENTATIVES  
50TH LEGISLATIVE SESSION

The meeting of the Fish and Game Committee was called to order by Chairman Orval Ellison on January 27, 1987, at 1:00 p.m. in Room 312 of the State Capitol.

ROLL CALL: All committee members were present.

HOUSE BILL NO. 266: Rep. Bob Ream, District #54, sponsor of the bill stated the propose of this bill is to clarify the language in the existing law. No one really knows what the stricken language "have authority to recommend that the legislature" means. The language has not been seen yet this session, however, last session, it was a problem. The department had a species it had asked to be included. In reading the language, they felt they had to go to the Speaker of the House and the President of the Senate to make a recommendation the Legislature would include. They did send a letter to the House and Senate asking what could be done about this. HB 266 simply makes it clear they can propose legislation, and is the purpose of the bill, to clarify the process needed to go through for any proposed legislation.

PROPOSERS: Ron Marcoux representing the Department of Fish, Wildlife and Parks submitted testimony (Exhibit 1). He stated HB 266 is intended to clarify the method by which the DFWP should propose action to the legislature regarding classification of fish and wildlife under the endangered species act (87-5-101). The present language directs the department to "recommend" to the legislature to list or delist species of fish and wildlife. The process by which the department would make such recommendations under HB 266 is by proposing specific legislation. Mr. Marcoux did suggest one amendment by the DFWP (Exhibit 1).

Janet Ellis representing the Montana Audubon Legislative Fund stated MALF supports the bill as amended by the Department.

Stan Bradshaw representing Trout Unlimited, stated as yet, trout or related species TU is interested in, have not shown up as an endangered species. Trout Unlimited supports the bill with the amendment suggested by the DFWP.

Tony Schoonen, concerned sportsman, stated he supports HB 266 with the Department's amendment.

NO OPPONENTS

Rep. Grady asked why this bill was needed, due to the fact the department proposes many pieces of legislation and all they are required to do is find a sponsor.

Rep. Ream stated as written before, they couldn't just directly propose legislation, at least that's how it was interpreted.

It says they have "the authority to recommend". The process itself was not clear, regarding directly proposing legislation.

Rep. Grady asked Mr. Marcoux if endangered species is any different than any other piece of legislation.

Mr. Marcoux stated we are talking about amending the act that provides for listing of endangered species in Montana and, this is the reason for the amendment. As mentioned, all we are doing is clarifying process in dealing with the endangered species list in Montana. Regarding changes to the bill, other than clarification from confusion resulting from last session, no other changes are being proposed for the bill.

Rep. Ream closed stating the amendment proposed by the Department is acceptable, and feels it does clarify and makes the bill more workable. It is a simple bill clarifying language and does not add anything else to the bill.

The hearing closed on HB 266.

HOUSE BILL NO. 329: Rep. Bob Ream, District #54, sponsor of the bill stated the purpose of HB 329 was prompted by concern heard throughout the state from sportsmen and others regarding the inequity in the court when dealing with illegally taken wildlife. Currently, in court cases, some judges are very lenient and give people a bare minimum fine, more or less treating wildlife offenses like a speeding or parking ticket, whereas, other judges have the ability or take the position to assess a charge perhaps right to the maximum allowed by law. This bill assesses a penalty fee for the illegal taking of certain species of wildlife and that fee has been determined by surveying a number of other states around the country that have similar kinds of restitution fees. The penalties that are in the bill roughly match those from other states. HB 329 does not prevent judges from assessing a charge for breaking the law, they can do that as well. However, HB 329 does provide these penalty fees for illegal taking of wildlife.

PROPOSERS: Ron Marcoux representing the Department of Fish, Wildlife and Parks submitted testimony (Exhibit 2). He stated the DFWP recommends requiring the illegal killing must have been done in a "willful" manner. Requiring a "willful" act means the act must have been done intentionally, knowingly and purposely, without justifiable excuse or distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. This change is needed to fully carry out the intent of the bill. A suggested amendment is attached (Exhibit 2). The civil restitution legislation would enable the citizens of Montana to redeem the value of illegally taken animals. A \$500 fine for a trophy elk or Rocky Mountain sheep worth over \$5,000 on the black market does not act as sufficient deterrent. Civil restitution would force a violator to pay for the value of that wildlife to Montana's citizens.

FISH AND GAME COMMITTEE

JANUARY 27, 1987

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Jeanne Klobnak representing the Montana Wildlife Federation submitted testimony (Exhibit 3). She stated HB 329 offers a method of just compensation to the state for the illegal taking of wildlife. Although current law provides criminal penalties may be weighed against a person convicted of illegally killing or possessing wildlife, it does not provide for restitution in such cases. HB 329 would also aid in discouraging poaching in providing a direct monetary disincentive.

Janet Ellis representing the Montana Audubon Legislative Fund submitted testimony (Exhibit 4). She stated HB 329 will increase penalties for illegally taking Montana's wildlife, yet, increase those penalties in a way we believe the resource will benefit. HB 329 is a way of setting up a system of penalties that ensures the people of Montana are at least partially reimbursed for the loss of their wildlife. Another aspect of this legislation we support is, the resource will benefit from the fines in two ways; higher fines, which will make poaching less lucrative, and this money would then go back into the resource, by supporting the operating budget of Fish, Wildlife and Parks. MALF has offered an amendment to HB 329. (Exhibit 4).

Stan Bradshaw representing Trout Unlimited stated they feel it will be a positive inducement for better biddings of the law. The current fine structure does not provide the kind of positive inducement we need. This will make the punishment more commensurate with the size and abuse of the crime committed, and should be more effective in dealing with the kinds of illegal actions seen in the past.

Jeanne-Marie Sourigney representing the Montana Sierra Club stated they support HB 329 including the amendments offered by MALF. The Sierra Club members feel quite strongly these laws are valid and the bill is not attempting to change laws regarding illegal taking. These laws are only as good as the enforcement or the penalties associated with them. The penalty must be strong enough to discourage people who violate these laws and to encourage those who do abide by the law.

NO OPPONENTS

Rep. Pavlovich wanted to know if these fines were singular or plural, and if three bighorn sheep were taken illegally, would these fines be a certain amount for the entire violation or would each sheep taken receive a penalty fee.

Rep. Ream stated each animal taken would be give a penalty fee.

Rep. Pavlovich asked Rep. Ream if he feels the fines are "stiff enough."

Rep. Ream stated he feels they are "reasonable."

FISH AND GAME COMMITTEE

JANUARY 27, 1987

PAGE FOUR

Rep. Phillips had concerns regarding the game birds and non-game birds included in the bill. He wanted to know where a crow fits among all the other birds listed.

Janet Ellis stated there is a list with the Department of Agriculture of predatory birds that can be taken, and the crow is part of that such list.

Rep. Cobb had concerns with the wording "willfully" as opposed to "knowingly" and used an example of a landowner who may have shot a deer unintentionally and wanted to know if he would receive a fine along with the penalty.

Mr. Flynn explained if you take it in context, willful would in some cases, mean the rancher/landowner who might shoot a deer on his land. Purposely, would be directed toward those people out there that are intentionally trying to break the law or take an animal illegally, and this is what HB 329 is aimed at.

Rep. Hanson wanted to know why turkeys were not included in the list, and felt the fine should be more than \$25, because turkeys are better than grouse or pheasant.

Rep. Ream stated they could be separated out with an additional amount added to the fee.

Rep. Giacometto suggested an amendment be added to clarify "willfully" and "knowingly."

Rep. Ream closed stating the amendment would serve as a clarification, but the bill would insure the penalty fees be assessed along with a judges ruling. Hopefully, this will deter some of the illegally taken wildlife in Montana and serve as a notice to those people who are thinking about breaking the law. He feels the fees set are appropriate and not too stiff.

Hearing closed on HB 329.

HOUSE BILL NO. 247: Rep. John Cobb, District #42, sponsor, stated the bill is another B-10 license bill to allow the Fish and Game to allocate a portion of the Class B-10 nonresident big game combination licenses to applicants employing license outfitters. He stated the commission cannot decide what to do about this. They feel the legislature should set the numbers, but if the legislature cannot seem to come to a conclusion, it might be best to give it back to the commission so they can decide.

PROPOSERS: Rep. Bob Gilbert was unable to testify as a proponent of the bill and offered amendments to HB 247, which were submitted by Jeanne Klobnak (Exhibit 5).

Jeanne Klobnak representing the Montana Wildlife Federation submitted testimony (Exhibit 6). She stated MWF agrees with the concept of HB 247, in that it authorizes the Fish and Game Commission rather than the department director to determine how B-10 licenses should be allocated. This allows for a group of diverse individuals who represent sportsman's interests to make such a decision, rather than one individual. HB 247 also works within the presently legislated allocation limit of 17,000 B-10 licenses. MWF feels HB 247 is a better proposal than that of a strict legislatively mandated set aside, however, MWF opposes the inequity of a potential set aside, and therefore, support the amendments offered by Rep. Gilbert, and upon passage of the amendments, support HB 247.

Paul Berg representing the Billings Rod and Gun Club distributed testimony (Exhibit 7). Mr. Berg stated their organization feels the random drawing method is the only fair way to assure all persons applying will have an equal opportunity of obtaining one of the 17,000 licenses. An outfitter set-aside would encourage more outfitters to get into this already overcrowded business. Current economic conditions should not be used as an excuse to jeopardize our big game resources by overcommercialism to benefit outfitters. The Montana Department of Fish, Wildlife and Parks should not be in the business of guaranteeing economic security to any group.

OPPONENTS: Jim Flynn, Director, Department of Fish, Wildlife and Parks submitted testimony (Exhibit 8). Mr. Flynn stated HB 247 would grant to the Fish and Game Commission authority to allocate a portion of the Class B-10 licenses to applicants employing licenses outfitters. Such authority would be a single exception of comprehensive authority granted to the Department to make rules regarding the issuance of fishing, hunting and trapping licenses. The Department, since 1977, has established the procedures by which licenses have been sold. The Legislature has set the number of B-10, and the commission may set numbers for other classes. The Department has under its annual rule-making authority established a set aside of 5,600 nonresident combination licenses for applicants employing licensed outfitters. To substitute the Commission for the Department in a single aspect of rulemaking for the sale of licenses is inconsistent with the direction of the 1977 legislation and unnecessarily creates the potential for rules not coordinated or unified. The Department has held this rulemaking authority since 1977 and has not abused it. We see no need for change.

Bob Lamberson representing the Montana Outfitters and Guides stated they appreciate the consideration it gives the outfitting industry for an allocation of licenses, but feel the proper place for allocation lies within the legislature, rather than having a yearly determination made by the Fish and Game Commission.

Al Jenkins, a concerned sportsman, feels the wording in Section 2 is too ambiguous. The sportsmen has has talked with are strictly opposed to out of state persons getting licenses for any reason. They feel all licenses should be kept on a drawing basis, which seems to be the most fair for all persons.

NO FURTHER OPPONENTS

Rep. Jenkins asked Mr. Al Jenkins, as stated in his testimony, he would like to have all licenses kept on a drawing basis, and asked if that means we should raise the price of the resident licenses up to \$350 or \$400.

Mr. Jenkins stated, no, we still enjoy living in the state and being able to "afford" hunting here, but feels if residents have to draw for licenses and special permits for special seasons, nonresidents should also have to go through the same process to obtain the same privileges.

Rep. Rapp-Svrcek asked Mr. Lamberson in regard to his testimony, he indicated he did not want the commission setting the quotas from year to year and it seems if the set aside was set every year by whatever body, it would be more responsive to fluctuations in game populations, rather than the Legislature meeting every two years.

Mr. Lamberson directed this to Roland Cheek from MOGA to better address this question.

Mr. Cheek stated what basically is being talked about is merely a percentage within the framework that presently exists. Therefore, it's still within the providence of the commission and the department to set up to the 17,000 licenses. The legislative body meets every two years and we have a two year break, instead of an annual occurrence, which seems more practical.

Rep. Rapp-Svrcek stated you indicated you get a "break" due to the legislature meeting every two years, however, if perhaps, there was a catastrophic shift in the game population, would it not be better responded to, if it were dealt with a a year to year basis, rather than every other year at the whim of the Legislature.

Mr. Cheek feels this presently exists, and even if it was legislatively mandated, a certain percentage of those licenses would be allocated to the outfitters.

Rep. Moore asked Jim Flynn to elaborate on this.

Mr. Flynn stated the set aside is directly and only related to the 17,000 statutory limit on nonresident combination licenses.

These 17,000 nonresident combination licenses will be issued, even if the elk population crashed in the state next month, and unless there is a drastic change, we will issue the 17,000 in 1987 and 1988. The set aside question has no relationship to population numbers and is strictly a factor of the law which mandates the department to issue the 17,000.

Rep. Gilbert was able to give his testimony at this time with the Chairman's permission, stating the main reason he introduced the amendments, is the fact that he does not believe in preferential treatment. He feels those sort of applications should stand on their own.

Rep. Grady stated he feels the amendments offered by Rep. Gilbert completely change the intent of the bill and wondered if Rep. Gilbert agreed with this.

Rep. Gilbert stated no, he did not feel they change the entire content of the bill, however, the reason for the length was merely to get the wording in as to the apportion shares, rather than the even number. The intent of the bill was to allow the Fish and Game Commission to make the decision, where as now, the director makes the decision. The intent hasn't changed, merely the method of handing out the permits.

Rep. Grady felt the original intent of the bill gives the commission that prerogative, where the amendments seem to narrow this down.

Rep. Gilbert stated if the amendments are read into the bill, it still gives the commission that prerogative, they are just somewhat limited in the number they give out, with the intent they would be going to guides and outfitters.

Rep. Rapp-Svrcek asked Rep. Cobb if he thinks these amendments change the intent of the bill and overall, what he thinks of the suggested amendments.

Rep. Cobb stated he did not like the amendments and does not want them on the bill. What prompted HB 247 was when these two groups were not able to agree on how to divide these, with allocations already made by the department, then, the department requests the Legislative body to set these numbers. They feel we should decide this, and he questions whether we should be involved in setting numbers at all. His point being, how can we tell what numbers will change their year. However, no one seems to want the department setting these, so it reverts back to the commission. The only job the legislature should be doing is setting the number of nonresidents we want in the state and let them divide this number. That authority should be delegated to the commission, or left with the department.

Rep. Pavlovich asked Mr. Flynn that when the set aside was established, there must have been public comment, and wanted to know what process was needed to inform the public of a change being made with the department.

Mr. Flynn stated when the department embarked on this process in the fall of 1985, we did follow the law. There is a procedure in the law that states when an agency takes this type of action, you have to notice the public regarding this action, and give a certain amount of time for public comment, before a final decision is made. The department did adhere to this.

Rep. Ream asked Mr. Flynn what involvement the commission had throughout the process.

Mr. Flynn stated the law is fairly clear that the commission has certain authorities and responsibilities as does the department, and within that legal framework, we are still a hand and glove operation.


The hearing closed on HB 247.

EXECUTIVE SESSION

HOUSE BILL NO. 183: Rep. Ellison moved HB 183 DO PASS. Rep. Bulger moved the amendment on HB 183 DO PASS. Question being called on the amendment, the motion carried unanimously. See Standing Committee Report Nos. 1, 2 and 3. Rep. Brandewie moved HB 183 DO PASS AS AMENDED. Question being called, the motion carried unanimously.

HOUSE BILL NO. 210: Rep. Grady moved HB 210 DO PASS. Rep. Rapp-Svrcek moved to amend HB 210. Question being called on the amendment, the motion carried unanimously. See Standing Committee Report No. 1. Rep. Brandewie moved HB 210 DO PASS AS AMENDED. Question being called, the motion carried unanimously.

ADJOURNMENT: Being no further business, the meeting was adjourned at 2:55 p.m.

  
ORVAL ELLISON, CHAIRMAN



DAILY ROLL CALL

FISH & GAME

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Jan. 27 1987

NAME	PRESENT	ABSENT	EXCUSED
ORVAL ELLISON, CHAIRMAN	X		
MARIAN HANSON, VICE CHAIRMAN	X		
RAY BRANDEWIE	X		
TOM BULGER	X		
JOHN COBB	X		
FRITZ DAILY	X		
GENE DEMARS	X		
JERRY DRISCOLL	X		
LEO GIACOMETTO	X		
ED GRADY	X		
LOREN JENKINS	X		
VERNON KELLER	X		
JANET MOORE	X		
BOB PAVLOVICH	X		
MARY LOU PETERSON	X		
JOHN PHILLIPS	X		
PAUL RAPP-SVRCEK	X		
BOB REAM	X		
STAFF: DAVE COGLEY			

# STANDING COMMITTEE REPORT

JANUARY 28

19 87

Mr. Speaker: We, the committee on FISH AND GAME

report HB 183

do pass  
 do not pass

be concurred in  
 be not concurred in

as amended  
 statement of intent attached

Chairman

1. Page 1.

Following: line 23

Insert: "Class A-3, Class A-4, Class B-7, Class B-8, or special antelope"

2. Page 1, line 24.

Strike: "of any class"


Insert: "to an applicant"

3. Page 1, line 24.

Strike: "such a license"

Insert: "these game management licenses"

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FIRST reading copy (WHITE) color

# STANDING COMMITTEE REPORT

JANUARY 28

19 37

Mr. Speaker: We, the committee on FISH AND GAME

report HB 210

do pass  be concurred in  as amended  
 do not pass  be not concurred in  statement of intent attached

Chairman

**"AN ACT TO REQUIRE THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO INVESTIGATE GAME DAMAGE COMPLAINTS WITHIN 48 HOURS; AND AMENDING SECTION 87-1-225, MCA."**

1. Page 1, line 17.  
Following: "and"  
Insert: "arrange to"

  
FIRST

reading copy ( WHITE )  
color

EXHIBIT (1)  
DATE 1-27-87  
HB 266

HB 266  
January 27, 1987

Testimony presented by Jim Flynn, Dept. of Fish, Wildlife & Parks

This bill is intended to clarify the method by which the DFWP should propose action to the legislature regarding classification of fish and wildlife under the endangered species act (87-5-101). The present language directs the department to "recommend" to the legislature to list or delist species of fish or wildlife. The process by which the department would make such recommendations under HB 266 is by proposing specific legislation.

In the 49th session of the legislature the department acting under current law wrote a letter to the President of the Senate and Speaker of the House recommending placing the white sturgeon on the endangered species list. The legislature was thus informed, but the leadership was then responsible for introducing a bill on the subject. There is no formal process in which the appropriate action can be taken once a letter of recommendation is submitted.

We would like to have line 23 of the bill amended to leave in the words have authority to. As presently written it appears the department would have no choice but to propose legislation to list all federally listed endangered species to be included on the state list.

Leaving in the words have authority to would give discretion to the department to propose legislation based on the status of species in Montana. For example, the bald eagle is a federally endangered species. However, there are now 60 breeding pairs in Montana and the number is increasing. Listing the bald eagle does not appear to be necessary.

If the data support listing of any species of fish or wildlife as endangered the department would propose legislation to list that species. The department supports the bill with our recommended amendment.

EXHIBIT (1)  
DATE 1-27-87  
HB 266

AMENDMENT TO HB 266  
INTRODUCED (WHITE) COPY

Requested by Department of Fish, Wildlife & Parks

Page 1, line 24

Following: "have-authority-to"  
Insert: "have authority to"

HB 329  
January 27, 1987

Testimony presented by Jim Flynn, Dept. of Fish, Wildlife & Parks

Montana has some of the best fish and wildlife resources still available to the public within the continental United States. As other states have experienced expanded population growth and the accompanying development, Montana's resources have risen in relative quality.

As demand for our fish and wildlife resources becomes more important, it also becomes more susceptible to illegal hunting and fishing. We are aware of this susceptibility and have taken some steps to address it.

With the support of the public and the legislature, we have increased our enforcement capability and developed closer ties with enforcement officials of other states and the federal government. In addition, the 1985 legislature authorized the Tip Mont Program, designed to curb poaching. During its first year this program led to 79 investigations and 21 arrests with fines in excess of \$22,000.

Today the black market in wildlife seeks out items such as trophy heads and skins, velvet elk antlers, grizzly and black bear parts, eagle feathers and birds of prey.

Revenues from this legislation would be placed in the state special revenue fund to the credit of the Department of Fish, Wildlife & Parks. This money could be used to fund additional enforcement activities directly related to commercial poaching activities.

The department recommends requiring that the illegal killing must have been done in a willful manner. Requiring a willful act means the act must have been done intentionally, knowingly, and purposely, without justifiable excuse or distinguished from an act done carelessly, thoughtlessly, heedlessly, or inadvertently. This change is needed to fully carry out the intent of this bill. A suggested amendment is attached.

The civil restitution legislation would enable the citizens of Montana to redeem the value of illegally taken animals. A \$500 fine for a trophy elk or Rocky Mountain sheep worth over \$5,000 on the black market does not act as sufficient deterrent. Civil restitution would force a violator to pay for the value of that wildlife to Montana's citizens.

We request your approval of this bill.

EXHIBIT (2)  
DATE 1-27-87  
HB 329

AMENDMENT TO HB 329  
INTRODUCED (WHITE) COPY

Requested by Department of Fish, Wildlife & Parks

Page 1, Line 12

Following: "of the"  
Insert: "willful and"

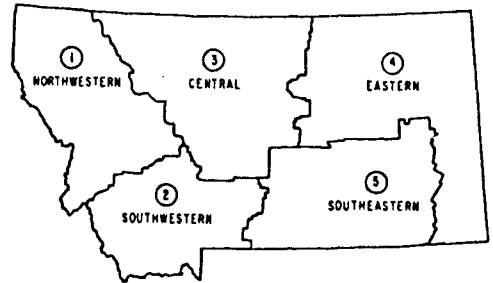
# Montana Wildlife Federation

AFFILIATE OF NATIONAL WILDLIFE FEDERATION

Testimony on HB 329

House Fish & Game Committee

January 27, 1987



Mr. Chairman, members of the Committee, my name is Jeanne Klobnak. I stand before you today to represent the Montana Wildlife Federation in their support of HB 329.

The Montana Wildlife Federation (MWF) is a conservation organization, comprised of 4600 members, dedicated to promoting wildlife, wildlife habitat, and sportsmen's interests.

HB 329 offers a method of just compensation to the state of Montana for the illegal taking of wildlife. Although current law provides that criminal penalties may be weighed against a person convicted of illegally killing or possessing wildlife, it does not provide for restitution in such cases.

The sportsman who legally purchases a license to kill or possess wildlife has paid the state something in return for the taking of that resource. An individual who takes wildlife who has not either purchased a license or been otherwise legally authorized to do so, violates the public's rights. It is just that he or she be both penalized and forced to compensate the state for its loss upon conviction.

HB 329 also would aid in discouraging poaching in providing a direct monetary disincentive.

MWF urges that this committee do pass HB 329.





(4)  
1-27-87  
329

Montana  
Audubon Legislative Fund

January 27, 1987  
HB 329

Mr. Chairman and Members of the Committee,

My name is Janet Ellis and I'm here before you representing the Montana Audubon Legislative Fund. The Audubon Fund is composed of members of the National Audubon Society, and includes 2500 members in nine chapters located throughout the state.

The Audubon Fund wants to go on record in support of HB329. This legislation will increase penalties for illegally taking Montana's wildlife, yet increase those penalties in a way we believe the resource will benefit.

To begin, fines for wildlife-related crimes in the state are not consistent. Some judges and prosecuting attorneys always levy the lowest fine possible. Several cases in point:

- \*recently a bighorn sheep ram was poached and the convicted poacher was charged a \$500 penalty for the offense.
- \*another incident happened near Kalispell where a man killed two bull moose, left one to rot, and was convicted and charged with a \$300 fine.

HB 329 is a way of setting up a system of penalties that ensures that the people of Montana are at least partially reimbursed for the loss of their wildlife.

More and more states are adopting restitution legislation as a way to regain at least a portion of the value of the wildlife lost by illegal means. Another aspect of this legislation that we support is that the resource will benefit from the fines in two important ways:

- 1) higher fines will make poaching less lucrative; and
- 2) this money would go back into the resource by supporting the operating budget of Fish, Wildlife & Parks. This second point is worth emphasizing: current fine money collected by FWP (with the exception of boating and snowmobile fines) are earmarked by the legislature to pay the unfunded liability of the game warden's retirement system. We feel that the resource should benefit from any additional fines and are pleased that this legislation sends the fines to a place that can more directly touch the resource.

Finally, while we support HB 329, we would like to suggest two possible amendments:

- 1) Specify on page 1, line 21 that the fine of \$300 is for pallid and white sturgeons and not just "sturgeons." The shovelnose sturgeon, the only other sturgeon in the state, is not in any trouble at all. The shovelnose should hence be included under game fish fines at \$10.

EXHIBIT (4)

DATE 1-27-87

HB 329

Memorandum Filey Oct. 10, 1986

### Warden nabs greedy anglers

DILLON (AP) — A pair of California fishermen had good luck fishing the Big Hole River and other southwestern Montana trout streams last week — a little too good, state wildlife officials said.

The two men were cited for having too many trout in their possession after being found with 187 trout during a random check by a game warden.

The men, Frank Sanchez, 52, of Sunvale, Calif., and Frank Benassi, 51, of San Jose, each posted \$500 bond and returned to California late last week.

State Warden Sarge Hoehm said he stopped to check the men's licenses last Thursday and became suspicious when the men told him they had caught 30 or 40 fish.

He asked to check their cooler found it was full of food, but a refrigerator in their motor home was "stuffed full of fish."

"That was the most fish I ever spotted by far," Hoehm told the Dillon Tribune-Examiner. "I once got 38 fish on an undercover operation. I just could not believe it."

Hoehm alleged the men had in their possession 97 brown, rainbow or cutthroat trout and 90 brook trout. They had been fishing in southwestern Montana, including trout streams such as the Big Hole and Beaverhead rivers, for a week.

The warden cited them for possession of unlawfully taken game fish and violation of possession limits.

### Californians pay \$1,000 for 187 illegal fish — Page 5

### Californians nabbed with 187 fish

DILLON — A local game warden's random fishing license check of two California men led to the discovery of a cache of 187 illegal fish and hefty fines for the pair.

Frank Benassi of San Jose and Frank Sanchez of Sunvale, each forfeited \$500 bonds in Justice of the Peace Dick Later's court on misdemeanor charges of possession of unlawfully taken fish and taking over the limit of game fish.

State Department of Fish, Wildlife and Parks warden Sarge Hoem said the men had more than 100 brook trout in their possession. The limit is 20 fish each, he said.

They also had nearly 50 rainbows, cutthroats and brown trout in their possession. The limit on those fish is five fish per man with only one fish over 18 inches allowed.

The majority of the catch "were good pan fish" size, Hoem said. "They didn't have any trophy fish."

The Californians had been fishing Sheep and Red Rock Creeks south of Dillon; the Big Hole River and

Governor Creek, northwest of Dillon; and the Ruby River in Madison County. They arrived in the area for their fishing excursion Sept. 25 and before their arrest Oct. 1, planned to leave the next day.

The fish will be sold at public auction Thursday at 5:30 in the Beaverhead County courthouse back parking lot. The sale will also include confiscated elk and deer meat.

## Amendments to H.B. 247 (Introduced copy)

1. Title, line 5.

Strike: "ALLOCATE A PORTION OF"

Insert: "APPORTION"

2. Title, line 6.

Strike: "TO"

Insert: "BETWEEN"

3. Title, line 7.

Following: "OUTFITTERS"

Insert: "AND OTHER APPLICANTS ACCORDING TO THE NUMBER OF APPLICANTS IN EACH CATEGORY; TO PROVIDE FOR A DRAWING WHEN THE NUMBER OF APPLICANTS EXCEEDS THE NUMBER OF LICENSES AUTHORIZED TO BE ISSUED"

4. Title, line 7.

Strike: "AND"

5. Title, line 8.

Following: "MCA"

Insert: "; AND PROVIDING AN APPLICABILITY DATE"

6. Page 2, line 1.

Following: "may"

Strike: "allocate a portion of"

Insert: "apportion"

7. Page 2, line 3.

Following: "outfitter"

Insert: "in the same ratio that the number of such applicants bears to the total number of applicants"

8. Page 2.

Following: line 3.

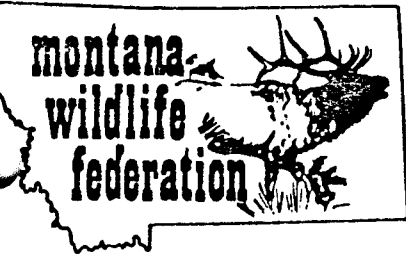
Insert: "(3) If the number of valid applications for the Class B-10 licenses exceeds 17,000, the licenses must be awarded by a drawing in accordance with rules established by the commission providing for apportionment of licenses as required by this section. A list of successful license applicants must be made available to the public."

(4) The commission shall provide for party drawings, with up to four applications drawn together, for applicants so requesting."

9. Page 2.

Following: line 7.

Insert: "NEW SECTION. Section 3. Applicability. This act does not apply to licenses issued for the 1987 hunting season."



# Montana Wildlife Federation

AFFILIATE OF NATIONAL WILDLIFE FEDERATION

P.O. Box 3526  
Bozeman, MT 59715  
(406) 587-1713

Testimony on HB 247

House Fish & Game Committee

January 27, 1987

Mr. Chairman, honorable members of the committee, my name is Jeanne Klobnak. I stand before you today on behalf of the Montana Wildlife Federation in their support of HB 247 as amended by Representative Gilbert.

The Montana Wildlife Federation (MWF) is a conservation organization, comprised of 4600 members, dedicated to promoting wildlife, wildlife habitat, and sportsmen's interests.

MWF agrees with the concept of HB 247, in that it authorizes the Fish and Game Commission rather than the department director to determine how B-10 licenses should be allocated. This allows for a group of diverse individuals who represent sportsmen's interests to make such a decision, rather than simply one individual.

HB 247 also works within the presently legislated allocation limit of 17,000 B-10 licenses. MWF furthermore agrees with this provision.

MWF however opposes the opportunity for preferential treatment to be offered to a certain group of hunters by setting aside B-10 licenses for those hunters. HB 247 would allow the Fish & Game Commission to authorize such a set aside, although we recognize that they would not have to do so.

MWF agrees that HB 247 is a better proposal than that of a strict legislatively mandated set aside; we do however oppose the inequity of a potential set aside, and therefore support and urge this committee's thoughtful consideration of the amendment offered by Representative Gilbert.

Upon passage of the above amendment, MWF supports a do pass vote on HB 247. Thankyou.

(Nonresident Big Game Combination Hunting Licenses) HB 247

1. We believe that the random drawing method is the only fair way to assure that all persons who apply will have an equal opportunity of obtaining one of the 17,000 licenses.
2. Any outfitter set-aside would encourage more outfitters to get into this already overcrowded business. That would encourage more leasing of private lands and blocking of public access to public lands to reduce competition from hunters who do not hire outfitters to hunt on public land.
3. Resident hunters must apply for antelope and deer B tags and many elk tags which are randomly drawn by computer. We believe that the nonresident hunters should follow the same process for the 17,000 licenses.
4. The current economic conditions should not be used as an excuse to jeopardize our big game resources by overcommercialism to benefit outfitters. The Montana Department of Fish, Wildlife and Parks should not be in the business of guaranteeing economic security to any group.
5. Hunting is a management tool which should not be doled out to preferred groups.
6. Hunting is a natural resource recreational activity -- not a monopolistic economic venture.
7. Hunting is a privilege -- not a right to be overcommercialized by outfitters.
8. Hunting is a source of food -- not trophy heads to adorn a Wall Street office.
9. We take our hunting heritage seriously -- that is why we chose to live in Montana.
10. Our heritage is not for sale.

Thank you for the opportunity to comment.

*Paul F. Berg*

Paul F. Berg, Legislative Committees  
Billings Rod and Gun Club, and  
Southeastern Sportsman Assoc. \*  
3708 Harry Cooper Place  
Billings, Montana 59106

\* Representing 9 clubs and 5,000  
Southeastern Montana Sportsmen.

Phone: 656-2015

HB 247  
January 27, 1987

Testimony presented by Jim Flynn, Department of Fish, Wildlife and Parks

This bill would grant to the Fish and Game Commission authority to allocate a portion of the Class B-10 licenses to applicants employing licensed outfitters. Such authority would be a single exception to comprehensive authority granted to the Department of Fish, Wildlife and Parks to make rules regarding the issuance of fishing, hunting and trapping licenses.

The 1977 legislature made sweeping changes in the respective functions, duties and authority of the Department and Commission. While previously the Commission had authority for establishing procedures for the issuance of licenses, that duty was transferred to the Department with an amendment to Section 87-1-201(7), MCA, by Chapter 417, section 13, 1977 Laws of Montana. This section is now the general grant of rulemaking to the Department.

The Department since 1977 has established the procedures by which licenses have been sold. The Legislature has set the number of B-10 and the commission may set numbers for other classes. But the Department established the procedure in 1986 and for the coming 1987 license sales. The Department has under its annual rulemaking authority established a set aside of 5600 nonresident combination licenses for applicants employing licensed outfitters.

In 1986 the Department inquired of the Attorney General whether the Department had this authority. The Attorney General stated the Department had this grant of rulemaking power in a letter opinion of March 21, 1986. A copy is attached for your review.

To substitute the Commission for the Department in a single aspect of rulemaking for the sale of licenses is inconsistent with the direction of the 1977 legislation and unnecessarily creates the potential for rules that are not coordinated or unified. The Department has held this rulemaking authority since 1977 and has not abused that authority. We see no need for change.

We urge that this bill does not pass.

STATE  
OF  
MONTANA  
**ATTORNEY GENERAL  
MIKE GREELY**

JUSTICE BUILDING, 215 N. SANDERS, HELENA, MONTANA 59620  
TELEPHONE (406) 444-2026

RECEIVED

MAR 24 1986

DIRECTOR'S OFFICE

EXHIBIT (8)  
DATE 1-27-87  
HB 247

21 March 1986

James W. Flynn, Director  
Department of Fish, Wildlife,  
and Parks  
1420 East Sixth Avenue  
Helena MT 59620

Dear Mr. Flynn:

You requested my opinion on whether the Department of Fish, Wildlife, and Parks (the department) or the Fish and Game Commission (the commission) has authority to promulgate rules and regulations concerning the method by which "class B-10" nonresident combination licenses are issued.

The statutes outline the respective powers of the commission and the department. Section 87-1-301(2), MCA, empowers the commission to "establish the hunting, fishing, and trapping rules of the department." Section 87-1-201(7), MCA, authorizes the department to "make, promulgate, and enforce such reasonable rules and regulations not inconsistent with the provisions of chapter 2 as in its judgment will accomplish the purpose of chapter 2." Chapter 2 of Title 87 deals specifically with fishing, hunting, and trapping licenses, and includes section 87-2-505, MCA, which provides for issuance of class B-10 nonresident combination licenses.

Former section 26-202.4, R.C.M. 1947, provided:

The fish and game commission is hereby authorized to make, promulgate and enforce such reasonable rules and regulations not inconsistent with the provisions of this act as in its judgment will accomplish the purpose of this act.

The "act" referred to in the above-quoted statute is chapter 267 of the 1955 Montana Laws, which established classifications of licenses and procedures for the issuance of licenses by the commission. In chapter 417, section 13, 1977 Montana Laws, "department" was substituted for "fish and game commission," and the statute was eventually recodified in section

James W. Flynn  
Page 2  
14 March 1986

EXHIBIT 180  
DATE 1-27-87  
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87-1-201(7), MCA. Chapter 44, 1979 Montana Laws, substituted "chapter 2" for "act" in the statute. Chapter 417, 1977 Montana Laws, was entitled "an act to," inter alia, "reallocate certain functions of the State Fish and Game Commission to the Department of Fish and Game."

It is apparent that one of the functions the Legislature intended to transfer from the commission to the department is the rulemaking function connected with the issuance of fishing, hunting, and trapping licenses. It is therefore clear that the department is vested with authority to adopt rules concerning the method by which class B-10 nonresident combination licenses are issued.

Very truly yours,

  
MIKE GREELY  
Attorney General



VISITOR'S REGISTER

FISH AND GAME

COMMITTEE

BILL(S) HB 247; HB 266; HB 329

DATE JAN. 27, 1987

SPONSOR(S) COBB; REAM

NAME	REPRESENTING	BILL NO.	SUP-PORT	OP-POSE
Paul E. Berg	Billings Rods Gun Club Southeastern Sportsmen Assoc.	HB 247	amend insert	
Janet Ellis	MT Audubon	HB 266 HB 329	X	
Stan Bradshaw	Trout Unlimited	H.B. 266 H.B. 329	✓	
Scott Ross Box 5221 Helena 59604	Montana Bowhunters Assn.	HB 247 HB 329	✓ ✓	
Dana Field	MT Audubon Legis. Fund	HB 266 329	✓ ✓	
Jeanne Marie Souwigney	MT Sierra Club	HB 329	✓	
Jeanne C. Molnar	MT Wildlife Fed.	HB 247 HB 329	✓	
Roland Cheek	MOGA	HB 247		✓
BOB LAMBERTSON	MOGA	HB 247		✓
ESTHER STENBERG	MT Wildlife Fed.	HB 247 HB 329	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR VISITOR'S STATEMENT.  
IF YOU HAVE WRITTEN COMMENTS, PLEASE GIVE A COPY TO THE SECRETARY.