

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

February 17, 1987

The meeting of the Fish and Game Committee was called to order by Chairman Orval Ellison on February 17, 1987, at 1:00 p.m. in Room 312 of the State Capitol.

ROLL CALL: Rep. Harry Fritz, District 56, sponsor, stated he is going to suggest an amendment to the bill which he will explain. The amendment he would like to propose is to change lines 11 and 12 to read as follows: "the Department shall cooperate with the National Parks Service in its attempts to seek other methods of controlling, as soon as possible, the migration of wild buffalo into Montana". As the bill stands now, the Department of Fish, Wildlife and Parks is asked to develop and implement these measures to prevent or restrict the migration of wild buffalo on its own. We are changing this to indicate that the department "shall" cooperate with the National Park Service who is already involved in these types of developments. He stated another minor amendment is found on page 15, which changes "must" to "may", so it ends up to read, "such measures may include" which lists the things that may be adopted. Many of these have already been employed, in part, by the National Parks Service. He stated the reason they are asking for this bill is, presently, they have the department managing the buffalo hunt. It is a 365 day hunt with no season. What they are looking at is the worse possible situation which might arise, sometime in the future, in which the entire northern herd of Bison in Yellowstone National Park walk across the border and get blown away. In giving the right season, with the right snow fall and the right climatic conditions, this could realistically happen. He stated in less than two years, they have been close already which prompted some measures to avoid the destruction of the entire northern herd. They are not asking the Department to do something that would undermine the hunt, but merely to take some measures in cooperation with the parks, as may be dictated by the season and by the number of buffalo involved, to avoid any kind of ecological disaster.

PROPONENTS: Jim Flynn, Director, Department of Fish, Wildlife and Parks, submitted testimony (Exhibit 1). He stated in 1985, the legislature approved a hunting season for buffalo to be administered by DFWP. HB 568, with the amendments of the sponsor, would seem to put that legislative intent into law. The department can support that action. Since the enactment of HB 763 in 1985, they have

conducted the bison hunt and harvested those animals outside the park boundaries. At the same time, they have cooperated with the Park Service in their efforts to try various means of controlling the migration from the park. They see no reason to change either of these activities. He urged the committee to give the bill a do pass.

NOEL LARAMIE, attorney, stated he was speaking as an individual interested in HB 568. He pointed out to the committee that once the buffalo do leave the park boundaries, it does turn into the state's problem in trying to control the buffalo. He felt HB 568 was a needed bill and urged the committee to give it favorable consideration.

JANET ELLIS, representing the Montana Audubon Legislative Fund, stated they support the amendments offered by the sponsor of the bill. Especially the change from "must" to "may". If the Department "must" erect barriers to limit movement of wild buffalo, MAF would have to oppose the bill because of the other animals that use this migration corridor including antelope, bighorn sheep, deer and elk. However, with the flexibility of using "may", they can support the bill.

MOUS TERGEN, representing the Montana Stockgrower's Association and the Montana Cattlemen, stated they do support HB 568. They also support the offered amendments to the bill. He urged the committee to do pass HB 568.

OPPONENTS: ROBERT VAN DER VERE, a concerned citizen lobbyist, stated he opposed the bill. One of the main reasons was that the Fish and Game, prior to passage of the legislation that allowed buffalo hunting, prompted them to move the buffalo back onto federal land. They used many of the sportsmen's dollars to do that. He stated, when looking at the record of how many buffalo have come out of the park, he felt the people testifying for the bill are exaggerating about 700 buffalo coming out of the park to be shot and slaughtered. He urged the committee to not pass HB 568 which he felt was totally unnecessary at the present time.

PERRY NELSON, an interested individual, submitted testimony in opposition to HB 568 (Exhibit 2).

QUESTIONS (OR DISCUSSION) ON HOUSE BILL NO. 568: REP. GIACOMETTO asked Mr. Flynn if they needed to see a fiscal note on this. He also wanted to know if they perceive any large expenditure in cost of doing this.

MR. FLYNN stated no, he saw no cost involved with it at all. As mentioned in his testimony, this basically puts into the law that which is already included in the statement of

intent. This accompanied the legislation that was passed last session. As he viewed the bill, with the amendments, it statutorily is requiring the Department to continue into their cooperative efforts with the park service.

REP. ELLISON asked Mr. Flynn if they contemplated doing anything other than what they have been doing should this bill pass.

MR. FLYNN stated his interpretation of the bill was that Fish and Game, with the legislative intent from 1985, should cooperate with the park service in attempting to keep bison from migrating out.

REP. ELLISON stated his only problem with the bill was that he did not want to see the sportsmen's dollars paying for a problem that was caused by the federal government. He stated he felt they should "foot" their own bills.

MR. FLYNN stated the Department's viewpoint was that the law was passed which stated there shall be the buffalo hunt and there will be a buffalo hunt until the legislature says there should not be.

IN CLOSING, REP. FRITZ stated what they were talking about is a herd of 700 buffalo living in the northern herd in Yellowstone National Park. There are over 2,000 buffalo in the entire park. In 1985, the Department killed 87 buffalo under its authority. In 1986, the first year of the hunt, 65 were taken. But there have been times since the law was passed, when nearly 300 buffalo have been outside the park in areas that were difficult to reach. They are saying a situation could easily arise for a massive migration. They are asking to simply give the Department the authority, which it now does according to legislative intent. They would like to make it a legislative law to use the authority to employ other methods of discouraging the buffalo from migrating, without destroying the hunt, as the legislature has established.

HEARING CLOSED ON HB 568.

HOUSE BILL NO. 454: Rep. Ray Brandewie, District 49, stated this bill was at the request of a number of constituents in his area who have a considerable amount of nuisance problems from noisy boats. Particularly the high powered ski type boats and boats that discharge water in the air. This bill would provide they directly "muffle" their boat if there is discharge behind the back of the boat or underwater. He stated there is a provision in the bill that exempts boats used in a Regatta during the time they are racing, or 48 hours immediately prior to a regatta when there would be no

restriction. They could obtain an operating permit from the Department for the purposes of tuning in and making test runs. They have taken care of most of the legitimate uses for that type of exhaust discharge. He urged the committee to look favorably on the bill.

PROPOSERS: DICK JOHNSON, Deputy Director, Department of Fish, Wildlife and Parks, submitted testimony (Exhibit 3). He stated HB 454 requires every engine on a motorboat, or vessel, must be muffled "to prevent excessive and unusual noise at all speeds". While they agree with this bill, they are concerned this definition is vague and sets no standards as to what constitutes "excessive or unusual noise". They suggested "excessive and unusual noise" be restated as "not to exceed eight decibels at a distance of 50 feet" to be consistent with Sec. 23-2-52(3). HB 454 also provides for a visual inspection of muffling devices without the motorboat being in operation. With that, and the establishment of a noise standard, they support the bill.

KEN REIKUM, representing the Echo Lake Association, stated they do support the bill as written. He stated there is currently a law on the books which has noise limit. It simply does not work and is not enforceable. He gave an example of what some of the residents experience with the noise coming from these boats that go right by their homes. This continues all weekend and all summer long. He stated it did not happen to a residential area because there is a law requiring mufflers on vehicles operating in residential areas. He further stated if nothing is done, he felt the problem will continue to grow. Something must be done sooner or later and urged the committee to give HB 454 a do pass.

OPPOSERS: None

REP. BULGER asked, as mentioned in previous testimony, if the 86 decibel standard was already in place on the books.

MR. REIKUM stated yes, there is a provision requiring boats on the water not to exceed 86 decibel noise limit as measured from the distance of four to about 50 feet through a prescribed course. He again emphasized the law has not been enforceable. He stated, in the first place, the game wardens are spread very thin in Flathead County; secondly, a game warden is in a small aluminum boat trying to catch a very large boat. In most cases, the only place he can catch him is at the dock. He stated, in those instances, what was a game warden suppose to do.

REP. PHILLIPS asked if research had been done on some of the new models of boats being manufactured today which would have difficulty meeting this type of requirement.

MR. REIKUM stated the number would be very small. He stated an outboard motorboat, the predominant type of boat on our state waters, all have underwater exhausts causing no problems. The big boats which they were talking about, with the high powered engines, are the boats HB 454 would be directed to.

REP. PHILLIPS wondered about a jet boat. Mr. Reikum stated this would also apply to a jet boat.

REP. JENKINS asked if the boat was required to have some type of a siren.

REP. BRANDEWIE stated a boat must have a horn audible for a certain number of feet in order to warn other boats, or people, when coming up to the dock area.

REP. PETERSON asked if the objection to putting the muffler on the big powered engine is due to lack of good gas mileage or was it that the person running the boat just wants the big noise. She also asked why they would not have a muffler or an underwater exhaust.

REP. BRANDEWIE stated it all has to do with the performance of the boat. A lot of these big boats will have a 454 big block Chevy engine in them. Some will have more in the engine than he, himself, would have in a new fishing type cruiser. At times, they will get them up to 800 horsepower. He stated not only is it an ear-splitting sound, but you can feel your insides vibrate when they go by.

REP. BULGER stated he felt he had an amendment that might help solve the problem. He suggested amending HB 454 to read "all boats must have a muffler capable of muffling the noise at the 86 decibel standard". This would cover the part of the law which states they have to have a muffler capable of meeting the 86 decibel standard. He then asked Rep. Brandewie if he would be agreeable to the amendment. Rep. Brandewie stated he would be agreeable to that; however, he felt it should include the requirement of boats to be tested at the dock, while in the water, for the 86 decibel standard and at approximately 50 feet. Another requirement he would like to see is they have to have a muffler if they do not discharge the exhaust underwater. Outboard motors, as they exist now, do not have a muffler and their noise suppression is the water itself. He felt the amendments could be worked out further in Executive Action.

IN CLOSING, Rep. Brandewie encouraged the committee to support the bill. He stated during the summer in his area, to avoid the heat, he and his crew often times start early in the morning. At 6:15 a.m., the noise previously described in testimony, is already going. He urged the committee to look favorably on the bill and hopefully alleviate some of these problems on Echo Lake.

HEARING WAS CLOSED ON HB 454.

HOUSE BILL NO. 530: Rep. Orval Ellison, District 81, sponsor, stated HB 530 changes the Montana regulations on raptors and the sale of progeny of raptors to conform with the federal act.

PROPOSERS: RALPH ROGERS, representing the Montana Falconers' Association, submitted testimony (Exhibit 4). he stated HB 530 as written, would enable the Fish and Game Commission to promulgate regulations allowing the sale of raptorial birds (hawks and falcons) which have been produced in captivity. The major concern with this legislation, is that it appears externally to be an attempt at privatization of a wildlife resource much the same as game farming elk, pheasants or fur bearers. He stated the request, different on almost every point, is not comparable. They are not in favor of privatization; however, they agree the controls on these birds should be maintained to insure they only come into the possession of licensed, qualified individuals which is the case right now. The ironical fact is that privatization is not an issue and there is no way the State Legislature can, even if it wished to, privatize wildlife under federal protection. The control and ownership of raptors is governed by the Migratory Bird Treaty with Mexico. Not until that treaty is renegotiated and resigned by the President, can changes in ownership be made. Under current law, the State and Federal Government continues to own the birds held for breeding. They own the eggs; they own the feathers as the birds molt; they own the offspring even after being sold. This bill leaves these concepts intact. The federal government has taken the position that captive propagation of raptors held in public trust is an activity which should be continued, and therefore, allowing the breeders some way to regain their losses. They asked the committee to concur and urged a do pass on HB 530.

CRAIG CAMPBELL, a Belgrade resident, stated he has been a practicing falconer for approximately 25 years. He stated recently, he had attempted to breed raptors in captivity. His experience has been none, as far as raising the birds. He stated he has put considerable time and effort into researching and studying how to breed. In a year or two, he felt he would possibly have some success. He merely wanted

to encourage the committee to look favorably on the bill because he felt the amount of people involved in this is small and hopefully, will stay that way in hopes of deterring any type of abuse which might occur in this field.

ANNE MCPARTLIN, a practicing falconer, submitted testimony (Exhibit 5). She stated she is currently President of the Big Sky Hawking Club, which is a falconry organization in Montana. She stated, presently, Montana law provides licensed falconers, who are residents of Montana, the privilege to remove certain species of raptorial birds from the wild for the use in the sport of falconry. As it is now legal under federal law for licensed raptor breeders to offer their captive-bred progeny for sale, the state could extend the same privilege to raptor breeders in this state by passage of HB 530. The "Big Sky Hawking Club" wishes to further clarify one point as they extend support to HB 530, which is it should not be construed that the sale of captive bred birds of prey will reduce any "drain" on wild raptor populations should any such "drain" even exist. The number of birds of prey removed annually from the wild in Montana for falconry purposes is extremely insignificant when compared to the numbers annually killed by such things as power lines, vehicles and illegal shooting by hunters. In conclusion, as long as Montana falconers may continue to legally take raptors from the wild for falconry, they support HB 530. However, they never wish to see themselves in the position where they are forced, by law, to rely on a few "raptor breeders" as their sole source of birds for their sport. The free enterprise system is one thing, but creating a monopoly through legislation would be terribly detrimental to many falconers and the sport they know and love.

MARLOWE RAMIS, a member of the Montana Falconers Association, stated his support for HB 530 which he felt is a fair and necessary bill.

OPPONENTS: DICK JOHNSON, representing the Department of Fish, Wildlife and Parks, submitted testimony (Exhibit 6). He stated the department does not support the sale of captive-reared raptors. In 1983, the legislature allowed the captive breeding of raptors. The department supported that legislation, but indicated they had concerns regarding the potential for future requests to sell the progeny. That time has come and they must express their opposition. DFWP's position on this subject stems from their general concern with Montana's wildlife being taken from the wild for breeding purposes and the progeny sold. They have opposed that activity for game farms, bird farms and fur farms. They felt their position was correct and take it with respect to raptors.

JANET ELLIS, representing the Montana Audubon Legislative Fund, submitted testimony (Exhibit 7). She stated MALF opposed HB 530 because it changes the ownership of raptors used in falconry. The parents, if taken from the wild, would not be owned by the falconer. However, the progeny of those wild birds would be owned by the falconer and could be sold at a profit. They do not condone or condemn such ownership changes. MALF felt it was important to point out to the legislature that the decisions made by passing HB 530 changed state policy in a number of ways. Currently, falconers are allowed to take birds from the wild after obtaining the proper permit. HB 530 will then allow falconers to commercialize their breeding efforts by selling progeny. When you make the decision whether or not to allow the commercial sale of raptors, you must realize that by continuing to allow these birds to be taken from the wild, you are changing the state's policy as it relates to game farms and fur farms. She then submitted amendments to HB 530 which are included in her testimony. She urged the committee to give consideration to her amendments and hoped the committee would not give HB 530 a do pass.

JEANNE KLOBNAK, representing the Montana Wildlife Federation, stated MWF did not necessarily oppose the bill; however, she did encourage the committee's consideration of Ms. Ellis's suggested amendments to the bill.

QUESTIONS (OR DISCUSSION) ON HOUSE BILL NO. 530: REP. MOORE asked Mr. Rogers how much a bird like this would cost.

MR. ROGERS stated they can cost as much as \$2,000.00; however, most of them do not run that expensive.

REP. PAVLOVICH asked Janet Ellis if she had talked with Rep. Ellison regarding the amendments she had proposed. He stated after all, HB 530 was his bill and he questioned if there was any consideration given there.

MS. ELLIS stated she had talked to the Department of Fish, Wildlife and Parks on several things suggested in amendment form. Basically, she stated, she felt this was a falconers bill. She apologized to Rep. Ellison if he felt offended and stated she did not want to re-write the bill. She had a few main concerns. One concern was a couple of things they said they did have in the bill but said they did not intend to have in the bill; and did not intend to change the rule making authority.

REP. PAVLOVICH then asked her what her main objection to the bill was.

MS. ELLIS stated at this time, she did not feel that peregrines should be commercialized until they were taken off the endangered species list. That was her main concern and she emphasized she had hoped she would have conveyed this to the committee in her testimony.

REP. RAPP-SVRCEK stated he was not clear on why the bill was needed and questioned why it was even before the committee.

MR. ROGERS stated in order to answer that question regarding why it was needed, they have an activity of breeding these birds in captivity for release and for recreational purposes which is to the advantage of the wild birds, conservation agencies, and falconers. It is too expensive to expect that non-institutional individuals who have made a significant contribution to these goals, can continue this without some way of being recompensated. It is recognized in 19 other states surrounding Montana. It is recognized in the Federal Government, and it is recognized by the International Association of Game and Fish agencies. They are asking the State of Montana to allow them to get their money back for the breeding of these birds. He stated in order to have access to these birds, falconry is the only way these interested individuals can do this.

REP. REAM asked Mr. Rogers regarding his testimony in which he had mentioned hybrids, what the potential problems are with hybrids.

MR. ROGERS stated that problem has been looked into. First of all, it is illegal to intentionally release them. Secondly, there has only been one chick raised out of all the attempts. And out of all the fertile female eggs, very few ever survive. He stated they have one instance of a hybrid that was defending the territory, meaning trying to solicit people. He stated they are required by law to either surgically or behaviorly sterilize them. He stated the federal and state have come to the conclusion that once they have been sterilized, there is no threat to the hybrid birds.

IN CLOSING, Rep. Ellison stated he hoped the committee had heard sufficient testimony, and urged the committee's consideration in the passage of HB 530.

HEARING CLOSED ON HB 530.

EXECUTIVE SESSION

HOUSE BILL NO. 406: Rep. Daily moved HB 406 DO PASS. Rep. Grady moved the amendments to HB 406 and distributed a copy to the committee (Exhibit 8).

QUESTION (OR DISCUSSION) ON HOUSE BILL NO. 406: Rep. Grady stated the committee members thought the penalty was built into the transfer to the Department of Commerce and the outfitters thought they would have to enforce more on their own. They wanted to build in some penalties; however, the Attorney General seemed to have written in some language. Therefore, it has been modified considerably by the amendments they had before them.

Question was then called on the amendments. The motion CARRIED unanimously. Rep. Grady then moved HB 406 DO PASS AS AMENDED.

REP. REAM asked Rep. Grady pertaining to what he had previously said about enforcement, if the DFWP had no involvement anymore. He thought they did not.

REP. GRADY stated yes, they will still get out there in the field and do the enforcement they have always done with the game wardens carrying out all their responsibilities as usual.

REP. HANSON asked if the fines were back in line with what they were in the original bill.

REP. GRADY stated ye, they are pretty much in line with the original bill.

REP. PHILLIPS asked when considering all the boards that have been organized, approximately 31, if there were any other boards where the fines and forfeitures and any penalties or fines go to that board for review.

DAVE COGLEY, Staff Researcher, stated he could not answer that, at the present time, without looking into statutes.

REP. ELLISON stated there are several boards covering the internal operations. He stated just because you have a board does not mean you can take over the administration of the laws of Montana.

REP. GRADY stated on page 13, paragraph 3, it talked about fines. He stated it says "must be deposited in the General Fund of the County in which the conviction is obtained and that 50% must be deposited in the State Special Revenue Fund for the use of the board". Rep. Phillips stated that was the part he was questioning as to whether or not there is any other board that is receiving any of this money because he knows of no other board that uses that money in this respect. Titles 45 and 46 cover this regarding misdemeanor.

REP. DAILY stated he was concerned with the time limit and he urged the committee to quit stalling on some of the bills because they needed to start moving the bills.

Question was then called on the DO PASS AS AMENDED motion on HB 406. The motion CARRIED with Rep. Rapp-Svrcek voting NO. See Standing Committee Report Nos. 1-16.

REP. GRADY then moved the Statement of Intent for HB 406 DO PASS.

Question being called, the motion CARRIED unanimously. See Page 4 of the Standing Committee Report.

HOUSE BILL NO. 568: Chairman Ellison stated there were amendments proposed by Rep. Fritz and these were distributed to the committee (Exhibit 9). Rep. Pavlovich moved HB 568 DO PASS and he also moved the amendments proposed by Rep. Fritz. Rep. Ellison explained the amendments incorporate the language that was in the original buffalo hunting bill and they met with the approval of the Fish and Game. He also explained to Rep. Grady, who voiced concerns about the amendments, that with the amendment, the bill would do just exactly in law what the statement of intent has done with the original bill.

QUESTION (OR DISCUSSION) ON HOUSE BILL NO. 568: REP. PAVLOVICH agreed with Rep. Ellison stating he was co-sponsor of the bill two years ago, and as stated by Rep. Fritz, it could have gotten out of hand. There could have been a time when the herd came out and we do not want to kill the whole herd at one time. What we want to do is get their fair share, thus, following the statement of intent of the 1985 bill brought before the committee by Rep. Menahan.

REP. DAILY then made a substitute motion to TABLE HB 568. Question was then called. A roll call vote was taken. The motion FAILED 10-8.

REP. ELLISON stated the amendments have already been moved, so the committee is back on the discussion of the amendments.

REP. BULGER moved the previous question on the amendments. Question was then called on the amendments. The motion CARRIED unanimously. Rep. Brandewie moved HB 568 DO PASS AS AMENDED. Question was then called. A roll call vote was taken, the motion CARRIED 11-7.

HOUSE BILL NO. 429: Rep. Bulger moved HB 429 DO PASS. Rep. Giacometto stated there were a couple of minor amendments. He then moved the amendments to the bill. He explained the

amendments; on line 24, strike "a", and on line 25 strike "is" and insert "a".

Question was then called on the amendments, the motion CARRIED unanimously. Rep. Bulger moved HB 429 DO PASS AS AMENDED.

REP. KELLER moved to amend on line 20, by striking "commission" and inserting "department". He stated this would also demand a title change.

REP. ELLISON stated he felt the commission generally made all the hunting rules and regulations which pass yearly. He felt this did rightly belong in the commission.

REP. BRANDEWIE stated the commission did not always meet when there was going to be a fishing derby at certain lakes, and they may not meet until the next fishing derby. This would make it too late for the department.

DAVE COGLEY, Staff Researcher, stated that was reflected in the statement of Intent so that would need to be changed there as well. He also pointed out that under Title 87-1-307, the commission is given the statutory ability to protect, preserve, propagate all Fish and Wildlife in the state. That is a duty that is spelled out for the commission. If they want to change it to department, they are not really in total conformance with the commission's responsibilities under other statutes.

REP. KELLER withdrew his motion.

Question was then called on the bill as amended. The motion CARRIED unanimously. Rep. Giacometto moved the Statement of Intent for HB 429. Question was then called. The motion CARRIED unanimously. See Standing Committee report nos. 1-2 and attached Statement of Intent.

HOUSE BILL NO. 454: Rep. Brandewie moved HB 454 DO PASS. He then stated he did have some amendments to the bill. First, on page 2, line 1, which involves the discharge under water by the boats. Secondly, on page 2, line 20, following "cutout", insert "The department may require a test at dockside to determine exhaust noise level". Question was called on the amendments. The motion CARRIED unanimously. Rep. Brandewie then moved HB 454 DO PASS AS AMENDED. Question was then called. The motion CARRIED, with Reps. Daily, Phillips and Giacometto voting NO. See Standing Committee Report Nos. 1-2.

HOUSE BILL NO. 530: Rep. Ellison moved HB 530 DO PASS.

QUESTIONS (OR DISCUSSION) ON HOUSE BILL NO. 530: Rep. Rapp-Svrcek stated he was not going to make a substitute motion; however, he stated the bill made him extremely nervous. When talking about the propagation of, primarily an endangered species, it seemed fairly clear from the testimony that they are not interested in breeding more common species of birds. They are interested in breeding endangered species and he felt they could be getting into all sorts of problems when that goes on.

REP. DAILY stated he felt the committee had wasted an hour and a half of valuable time on this bill. With that he moved to TABLE HB 530.

REP. ELLISON stated this being a nondebatable motion, asked for a roll call vote. The motion FAILED 10-8. Rep. Ellison stated that automatically puts them back to the DO PASS motion.

REP. PHILLIPS stated the falconry folks came in to testify and stated if they would let them breed raptors in captivity, they would never try to sell, but this question was asked more than once. He stated he has some trouble with that kind of bird being raised at all.

REP. ELLISON stated, in defense of the bill, that it is allowed by federal rules and it is allowed by several other states. He felt it was up to the committee to decide who is right or not.

REP. GIACOMETTO commented that he does not have any feelings one way or the other, but if they were interested in having more of these falcons in the United States or in Montana and make it profitable, he felt positive they would see more of the birds.

Question was then called. A roll call vote was taken on the DO PASS motion. The motion CARRIED on a 10-8 vote.

HOUSE BILL NO. 407: Rep. Grady moved HB 407 DO PASS. He stated he would like to know how the committee felt about the bill because he stated if no one is really interested in pursuing the bill, he would just as soon not get into a length discussion on it.

REP. COBB stated the only way he would vote for the bill was to amend it by stating "members of the immediate family". He stated, however, that strikes out the intent of most of the bill.

REP. GIACOMETTO felt to open this up to be used was a bad idea. If you are not a resident of the state, owning land

and having hunting going on, he felt they would just be opening it up to anyone coming in and buying acres here, there, and everywhere. He felt it was a bad bill.

REP. BRANDEWIE stated he felt the bill was a great "real estate broker's relief act", and felt it was a bad bill which should not be passed. He then moved to TABLE HB 407.

Question was then called. The motion CARRIED with Reps. Grady and Cobb voting NO.

ADJOURNMENT: There being no further business to come before the committee, the meeting was adjourned at 2:45 p.m.


ORVAL ELLISON, Chairman

DAILY ROLL CALL

FISH & GAME

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Feb 17, 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

FEBRUARY 18

19 37

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

report HB 406

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☒ as amended
☒ statement of intent attached

REP. ORVAL ELLISON

Chairman

1. Title.

Following: line 5

Insert: "TO REVISE THE METHOD OF SELECTION OF MEMBERS;"

2. Title, line 9.

Following: "OUTFITTERS;"

Insert: "TO PROVIDE PENALTIES FOR VIOLATIONS;"

3. Title, line 10.

Following: "MCA;"

Strike: "AND"

4. Title, line 11.

Following: "MCA"

Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE FOR A
PORTION OF THE ACT"

5. Page 1, line 18.

Following: "(2)"

Insert: "(a)"

6. Page 1, line 18.

Following: "members"

Strike: remainder of line 18 through line 17, page 2.

Insert: "to be appointed by the governor."

(b) Five members must be licensed outfitters, each of whom has a minimum of 3 years' experience as a licensed outfitter and is actively involved in the outfitting business. Each outfitter member shall represent one of the five districts designated in 2-15-3402(?). Two qualified persons in each district must be nominated for appointment by the licensed outfitters residing in that district at an annual meeting of the outfitters in that district to be held on a Saturday during March or April. A licensed outfitter who does not attend the annual meeting may assign his vote to an attending outfitter by a written and signed proxy. Only one such proxy vote may be cast by an attending outfitter. Names of nominees must be submitted to the governor, who will select one outfitter from each district to be a board member.

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(c) The governor shall also appoint one member who is an employee of the department of fish, wildlife, and parks and one member from the general public.

(3) A vacancy on the board must be filled in the same manner as the original appointment."

7. Page 3.

Following: line 2

Insert: "(6) Each member of the board is entitled to receive compensation and travel expenses as provided for in 37-1-132."

8. Page 5, line 10.

Following: "year."

Strike: remainder of lines 10 through 12

9. Page 5, line 13.

Following: "government"

Strike: "through its appropriate agencies or instrumentalities"

10. Page 5, line 24 through line 9, page 6.

Strike: subsection (3) in its entirety

Insert: "(3) enforce the provisions of this chapter and rules adopted pursuant to this chapter;"

11. Page 7, line 16.

Strike: "fee shall be used"

Insert: "fees must be deposited in the state special revenue fund and must be used by the board"

12. Page 7, line 13.

Following: "costs"

Insert: ", subject to 37-1-101(6)"

13. Page 10.

Following: line 16

Insert: "NEW SECTION. Section 8. Penalties--disposition of

fines. (1) A person who violates any provision of this chapter or rule adopted under this chapter is guilty of a misdemeanor and is punishable by a fine not exceeding \$500.

(2) A person who represents himself as an outfitter or purposely engages in outfitting without a license as required by this chapter is guilty of a misdemeanor and is punishable by a fine of not less than \$200 and not more than \$500. In addition, the person must be assessed the amount of all costs incurred by the board in investigating and preparing the case for trial.

(3) Fifty percent of all fines paid under this section must be deposited in the general fund of the county in which the conviction is obtained, and 50% must be deposited in the

state special revenue fund for the use of the board in enforcing this chapter.

NEW SECTION. Section 9. Enforcement. Investigations and arrests for violations of this chapter may be made by any peace officer; warden of the department of fish, wildlife, and parks; or federal agency enforcement personnel."

Renumber: subsequent sections

14. Page 11, line 3.

Following: "instruction."

Insert: "(1)"

15. Page 11.

Following: line 9

Insert: "(2) The code commissioner shall recodify section 2-15-3403 as an integral part of Title 2, chapter 15, part 18."

16. Page 11.

Following: line 11

Insert: **"NEW SECTION. Section 13. Transition--effective date.**

(1) Members of the board of outfitters may be nominated and appointed upon passage and approval of [sections 1 through 12] but may not take office prior to the effective date in [sections 1 through 12]. The board upon appointment may adopt rules as authorized in [sections 1 through 12], but such rules may not become effective prior to the effective date in [sections 1 through 12].

(2) This section is effective on passage and approval."

7048k/L:JEA\WP:jj (rev 2-12-87)

MS

STATEMENT OF INTENT

House Bill No. 406

A statement of intent is submitted for this bill because the board of outfitters established in section 1 is required to adopt rules under section 4 concerning the licensing of outfitters and guides. Because the licensing and enforcement authority is simply being transferred from the department of fish, wildlife, and parks to the board with no substantive change in requirements, it is intended that the board of outfitters should adopt rules substantially similar to those currently in place as adopted by the department.

7027e\c:\eleanor\wp:ee

2/2

STANDING COMMITTEE REPORT

FEBRUARY 13

19 37

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

report HB 368

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☒ as amended
☐ statement of intent attached

REP. ORVAL ELLISON

Chairman

1. Title, line 5.

Following: "PARKS"

Insert: ", IN COOPERATION WITH THE NATIONAL PARK SERVICE,"

2. Page 1, line 11.

Strike: "The department" on line 11 through "Montana" on line 15

Insert: "The department shall cooperate with the national park service in its attempts to seek other methods of controlling, as soon as possible, the migration of wild buffalo into Montana"

3. Page 1, line 15.

Strike: "must"

Insert: "may"


FIRST

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color

ROLL CALL VOTE

HOUSE COMMITTEE FISH & GAME

DATE FEBRUARY 17, 1987

BILL NO. HB 568

TIME 1:55 p.m.

NAME	EXCUSED	AYE	NAY
ORVAL ELLISON, CHAIRMAN		X	
MARION HANSON, V. 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

TALLY

8 10

Lisa Routh
Secretary

Chairman

MOTION: Rep. Daily made a substitute motion to TABLE HB 568.

Question was then called, a roll call vote was taken. The
motion FAILED, 10-8.

ROLL CALL VOTE

HOUSE COMMITTEE FISH & GAME

DATE February 17, 1987 BILL NO. HB 568 TIME 2:00 p.m.

NAME	EXCUSED	AYE	NAY
ORVAL ELLISON, CHAIRMAN		X	
MARION HANSON, V. 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	

TALLY

11 7

Lisa Rantz
Secretary

Chairman

MOTION: Rep. Brandewie moved HB 568 DO PASS AS AMENDED.
Question was then called, a roll call vote was taken. The
motion CARRIED 11- .

STANDING COMMITTEE REPORT

FEBRUARY 17

19 37

Mr. Speaker: We, the committee on FISH AND GAME
report HB 429

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☒ as amended
☒ statement of intent attached

REP. ORREAL ELLISON

Chairman

1. Page 1, line 24.

Strike: "a"

2. Page 1, line 25.

Strike: "is"

Insert: "are"

7048/L:JEA\WP:jj


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STATEMENT OF INTENT

House Bill No. 429

A statement of intent is required for this bill because it grants rulemaking duties to the fish and game commission with regard to the awarding of prizes for the taking of protected fish in state waters. It is the intent of the legislature that the commission adopt rules that address an approval process for the conditions or operations of fishing tournaments, derbies, or contests in order to protect and preserve the fish resources in the state from potentially harmful practices or results of such events.

It is the intent of the legislature that the commission adopt rules that are designed to prevent adverse impacts on the fish resources. To accomplish the purpose, the commission may adopt rules that include but are not limited to:

- (1) the duties of the department of fish, wildlife, and parks to recommend approval or disapproval of a tournament, derby, or contest or its conditions, based on sound wildlife conservation criteria;
- (2) reporting requirements for the rules and conditions of a tournament, derby, or contest that awards a prize for the taking of fish;
- (3) purse or participation limits for such events;
- (4) time limits for reporting such events to obtain commission approval or disapproval; and
- (5) details of the approval process, including any appeal process.

Notwithstanding the general rulemaking areas listed, it is the intent of the legislature to permit the commission to adopt rules that allow the commission enough flexibility to consider the merits of each tournament, derby, or contest on a case-by-case basis.

7020h/1:JEA\WP:jj



STANDING COMMITTEE REPORT

FEBRUARY 18

19 37

Mr. Speaker: We, the committee on FISH AND GAME
report HB 496

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☒ as amended
☐ statement of intent attached

REP. ORVAL ELLISON

Chairman

1. Page 2, line 16.

Strike: "effectively" through "and a" on line 19

Insert: "muffled either by discharge underwater or by a
functioning muffler capable of muffling exhaust noise
at full throttle to 86 dbA or less when measured at
a distance of 50 feet. The "

2. Page 2, line 20.

Following: "cutout."

Insert: "The department may require a test at dockside to
determine exhaust noise level."


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color

STANDING COMMITTEE REPORT

FEBRUARY 13

19 37

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

report HB 330

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

REP. ORVAL ELLISON

Chairman

"AN ACT TO PERMIT THE SALE OF PROGENY RAPTORS HELD FOR BREEDING PURPOSES; AND AMENDING SECTIONS 37-5-206 AND 37-5-210, MCA."

MS

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ROLL CALL VOTE

HOUSE COMMITTEE FISH & GAME

DATE _____ BILL NO. HB 530 TIME 2:15 p.m.

NAME	EXCUSED	AYE	NAY
ORVAL ELLISON, CHAIRMAN			X
MARION HANSON, V. 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	

TALLY

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Lia Rute
Secretary

Chairman

MOTION: Rep. Daily moved to TABLE HB 530. Question was then
called, and a roll call vote was taken. The motion FAILED on a
9-8 vote.

ROLL CALL VOTE

HOUSE COMMITTEE FISH & GAME

DATE February 17, 1987 BILL NO. HB 530 TIME 2:30 p.m.

NAME	EXCUSED	AYE	NAY
ORVAL ELLISON, CHAIRMAN		X	
MARION HANSON, V. 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

TALLY

10 8

Lisa Rosta
Secretary

Chairman

MOTION: Rep. Ellison moved HB 530 DO PASS. Question being called,
a roll call vote was taken. The motion CARRIED on a 10-8 vote.

HB 568
February 17, 1987

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

The 1985 legislature approved a hunting season for buffalo to be administered by the Department of Fish, Wildlife & Parks. Along with the bill was a statement of intent which stated in part, "The legislature encourages further negotiations and cooperation between the department and the National Park Service to seek other methods of controlling as soon as possible, the migration of wild buffalo into Montana from Yellowstone National Park."

House Bill 568, with the amendments of the sponsor, would seem to put that legislative intent into law. The department can support that action. Since the enactment of HB 763 in 1985, we have conducted the bison hunt and harvested those animals outside the park boundaries. At the same time, we have cooperated with the Park Service in their efforts to try various means of controlling the migration from the park. We see no reason to change either of these activities.

We would inform the committee that should the amendments not be adopted, we could not support the bill. The bill without the amendments would serve to require the department to conduct both a hunt and activities to drive the bison back into the park. We could not support that contradictory responsibility.

4371 Sourdough Rd
Bozeman MT 59715
2/9/87

Representative Orval Ellison, Chairman
House Fish & Game Committee
House of Representatives
Helena, MT 59620

EX-101 101
DATE 2/11/87
HB 568

Dear Chairman Ellison,

I wish to be on record opposed to the intent of HB 568 asking the state to help keep buffalo in Yellowstone Park.

The Legislature allowed buffalo hunting by good margins in 1985. Both the antihunters and Director Flynn of Fish, Wildlife & Parks have run an active campaign against buffalo hunting and they are telling citizens that buffalo should be kept in Yellowstone Park, even enlisting the aid of Governor Schwinden (see eclosed letter 6/11/86).

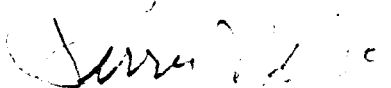
I do not approve using any of my hunting license money by the Director to oppose buffalo hunting and to promote the absurd idea that buffalo should be kept inside Yellowston Park. See my letter 12/28/86. Some of my tax money is already being spent by the park service, trying to keep buffalo in the park.

The hunters doing the hunting, and the people overseeing it, feel hunting is the way to handle the buffalo problem. The upper Yellowstone Drainage is the most abused and overused winter wildlife habitat that I have ever seen in my lifetime. This bill would just add to that problem

Director Flynn is always asking sportsmen for more license dollars, he should just take the buffalo hunters money, and let them enjoy hunting the buffalo migrating from the park, just like the elk, the deer, and the bighorn sheep that migrate from the park in winter.

Please consider this letter and the enclosures part of the record against the intent of keeping buffalo inside Yellowstone Park as proposed in HB568.

Sincerely,



Perry Nelson

enc. 2

EXHIBIT (2)

DATE 2-17-87

HB 568



State of Montana
Office of the Governor
Helena, Montana 59620
406-444-3111

TED SCHWINDEN
GOVERNOR

June 11, 1986

Ms. Jan Dunbar
P. O. Box 368
West Yellowstone, Montana 59758

Dear Ms. Dunbar:

Bison wandering outside the boundaries of Yellowstone National Park create a difficult situation--one we have discussed with the National Park Service for nearly a decade. The State of Montana's position is that the bison ought to be maintained within the Park boundaries so that no state action is necessary.

The 1985 Legislature passed legislation directing the Department of Fish, Wildlife and Parks (DFWP) to conduct a hunting season involving any bison roaming outside the Park. DFWP did not support this legislation. However, now that the bill has become law, DFWP is responsible for administering it.

We are continuing discussions with the National Park Service to develop alternate methods for keeping the bison within the Park boundaries. We are hopeful these discussions will be fruitful, so there will be no need to conduct the hunting season in the future.

Sincerely,

A handwritten signature in dark ink, appearing to read "Ted Schwinden", is written over the typed name.

TED SCHWINDEN
Governor

cc: Jim Flynn, Director, DFWP

Bozeman
Daily Chronicle

Sunday, December 28, 1986

Management of buffalo not natural

The news in The Chronicle, about park rangers chasing buffalo back into Yellowstone National Park, is almost beyond belief. Could such actions really be part of their latest management policy for wildlife — which for lack of a better definition, is called "natural" management?

But then, by really stretching the imagination, just about anything in this world can legally be called natural. Their new natural policy, like many of the old ones, has all the elements needed to bring both comedy and tragedy to wildlife management in the park.

Past management policy alone has adversely influenced the former primitive status of more than a dozen animal species in Yellowstone National Park, including man. Ever changing policies have caused a violent shift from primitive abundance and position for some species, and total annihilation in the park for others.

Had this happened on National Forest land around the park, the Forest Service would be put in purgatory, their collective souls made to write environmental impact statements forever. Each EIS would be judged in heaven by a court composed of the most holy of the holies in the Greater Yellowstone Ecosystem.

Natural management in the Greater Yellowstone Ecosystem must now include keeping all of the buffalo in the park. Perhaps a government policy ruled that natural dispersal of wildlife from a population center in the park is now unnatural. The idea that buffalo should be kept in the park was supported by the Fund for Animals and Gov. Schwinden. It must also be supported by the park administration because park rangers do not use government equipment for chasing buffalo on their own. That order comes from higher up!

My search in the science of wildlife management produced little explanation for the park's concept of natural management in the ecosystem. And those people wanting to keep all of the buffalo in the park probably would not recognize an ecosystem if they stepped in one!

Only in another science is there a possible explanation for the park's behavior towards the wandering buffalo. After searching from the bits, bytes of binary systems to old high school algebra I think there is at least a theory of chasing buffalo back into park naturally.

My high school teacher often said something like this, "In algebra you add two negative numbers and get a positive number." And right before my eyes in a Haines byline, Chronicle 12/16/1986, was a report showing how the park translated the theoretical into a practical application.

The park rangers, by committing two (negative) unnatural acts — shooting the wandering buffalo with rubber bullets or cracker shells, and making noise with coffee cans partially filled with ball bearings — are able to make the buffalo commit a (positive) natural act — running like hell back into the park naturally!

If I wasn't laughing so hard about the absurdity of wildlife management in Yellowstone National Park right now, I would be crying.

Perry Nelson
4371 Sourdough Rd.
Bozeman

EXHIBIT (2)

DATE 2-17-87

HB 568

HB 454
February 17, 1987

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

HB 454 requires that every engine on a motorboat or vessel must be muffled "to prevent excessive and unusual noise at all speeds." While we agree with this bill, we are concerned that this definition is vague and sets no standards as to what constitutes "excessive or unusual noise." We suggest that "excessive and unusual noise" be restated as "not to exceed 86 decibels at a distance of 50 feet" to be consistent with Sec. 23-2-526(3).

This bill also provides for a visual inspection of muffling devices without the motorboat being in operation, and this we support.

With the establishment of a noise standard, we support this bill.

TESTIMONY SUPPORTING HB 530
"THE COMMERCIALIZATION OF CAPTIVE PRODUCED RAPTORS"

FROM: MONTANA FALCONERS ASSOCIATION
BY: RALPH ROGERS

(4)

2-17-87

530

I Am Ralph Rogers from Winifred, Montana today representing the Montana Falconers' Association, a 15 year old non-profit organization incorporated in this state to act as legal voice and advocate for falconry. We are in support of this proposed bill.

This bill as written would enable the Fish and Game Commission to promulgate regulations allowing the sale of those raptorial birds (hawks and falcons) which have been produced in captivity. In order to understand the necessity for this request, it is necessary to look at the legal and legislative history of falconry and captive breeding and to look further into the results of the passage of this bill.

Falconry is a field sport which has a history traceable back some 4000 years and involves the taking of wild quarry with trained hawks or falcons. The continuation of falconry is directly tied to a continuous supply of game animals to hunt and raptors to hunt them with; we are therefore vitally interested in acquiring legislation favorable to an increase in the numbers of either. In addition to this, modern falconers have become proud of their efforts to encourage the public to appreciate these birds and have become involved in conservation efforts aimed at decreasing the shooting of raptors, restoring endangered species into areas where they have disappeared and have worked with and supported the Montana Department in the creation of films and in other conservation measures. Our existence is tied to the availability of hawks just as duck hunting is tied to the availability of ducks, and we tend to think of ourselves as the "Ducks Unlimited" type advocates for raptors.

From about 2000 b.c. until recently falconry was controlled only by tradition. Then in the 1970's falconers, game commissions, and legislatures wrote detailed laws governing our activities. The Montana Law included the phrase; "A person may not sell or offer for sale Montana raptors in this state." (25-501-15) This was designed to protect wild raptors from sale... a position we continue to support. Raptors produced in captivity, captive-bred raptors, were not considered at that time simply because there were none.

By the late 70's the technique for the breeding of raptors was developed to the extent that it was obvious that this could be a source of birds for falconry and release programs. Falconers and game departments, working through the Peregrine Fund, have now re-established from captive produced stocks the endangered peregrine falcon along the east coast of the U.S. and even into Montana where it was extinct. Recognizing that non-institutional (private) breeders could contribute to the goals of falconry and release programs, and further that these activities were extremely expensive, the federal government promulgated regulations allowing the sale of captive produced raptors enabling breeders some way of regaining their expenses and continuing to produce.

During the last legislature, Montana adopted the federal regulations for captive raptor breeding but without the sale provision. We supported that position along with Fish and Game and along with them, decided to "wait and see". In the last two years 19 states have adopted provisions allowing sale of captive produced raptors, including Colorado, Wyoming, Idaho, Minnesota, Washington, and Oregon. Montana is virtually surrounded by states which have these provisions and in fact many of the birds used by falconers in this state today were purchased within the last two years in a neighboring state. Since 1980 the Montana Department has essentially bought birds for release from the Peregrine Fund in Colorado and later in Idaho. Current state law would prohibit them from purchasing falcons from breeders in this state. The game departments in Missouri, Illinois and Minnesota are buying birds for release from private breeders in their own states and Wyoming, and there are other examples.

Within the last six months, the organization to which all Game and Fish Departments belong, Montana included, the International Association of Fish and Wildlife Agencies, wrote and distributed a position supporting commercialization of captive-bred raptors. To date the response of the states and organizations involved have been very positive. The Montana Falconers along with the Federal Government, surrounding states, and the Association of Game and Fish Agencies are convinced that this is a positive measure.

The major concern with legislation such as this, especially in this legislature, is that it appears externally to be an attempt at privatization of a wildlife resource... much the same as game farming elk, pheasants or fur bearers. Individuals not familiar with this request might assume that we are attempting to secure a posture where individuals can remove hawks from the wild for parent stock, breed them, reduce the offspring to possession and sell them on the open market for profit. Our request is different on almost every point; it is not comparable.

For 4000 years falconers have been allowed to remove hawks from the wild. We are currently allowed to remove species of hawks common in Montana and in fact removed a total of 24 from the entire state in 1986 ... less than 1 for every two counties. It is illogical to assume that people will breed and attempt to sell raptors which are available in the wild for free. The only birds with any commercial attraction are those which are of value to fish and game agencies for reintroduction, or do not occur in Montana or cannot be taken from the wild... especially hybrids and peregrines. In order to buy an elk, or any animal from a game farm, one only needs the purchase price. There are no seasons, no licenses no controls exercised on the consumer. It is an open market system where anyone can buy in any time of the year. In order for a falconer to have some types of hawks, he must be inspected annually, must pass a rigid test, have suitable facilities, and lastly he must serve an apprenticeship for two years; then he must spend 4 more years practicing falconry with the more common species. It is not an open market but a very small market of highly regulated, licensed individuals. Not only the breeders, but the individuals desiring to purchase hawks will remain under the complete control of Fish and Game. By determining who is issued licenses, the Fish and Game determines who the purchasers of hawks are... certainly, vastly different from "game farms" and certainly not privatization of wildlife.

We are not in favor of privatization. We agree that the controls on these birds should be maintained to insure that they only come into the

2-17-87 530
possession of licensed, qualified, individuals.. such is the case right now. The ironical fact is that privatization is not an issue here. There is no way that the state legislature can, even if it wished to, privatize wildlife under federal protection. The control and ownership of raptors is governed by the Migratory Bird Treaty with Mexico. Not until that treaty is renegotiated and resigned by the president can changes in ownership be made. Under current law, the state and federal governments continue to own the birds held for breeding; they own the eggs; they own the feathers as the birds molt; they own the offspring even after being sold. This bill leaves these concepts in tact. The federal government has taken the position that captive propagation of raptors held in public trust is an activity which should be continued, and they, therefore, are allowing the breeders some way to regain their losses. We are asking you to concur.

The expenses involved in captive propagation of raptors are extremely high. Falcons do not normally breed until they are between 3-4 years old and must be kept in perfect condition to expect results. During their entire lives they must be fed fresh quail or pigeons which the breeder must raise or purchase. They must be kept in large facilities specially built or modified to allow some degree of free flight. The breeder must have a microscope, sensitive modified incubators, a sensitive balance for weighing eggs, various chemicals, thermometers and other lab equipment; all of which is expensive. Also programmed into the balance sheet is the fact that falcons only breed once per year and a normal clutch is 4 eggs... some manipulation can extend the number of eggs in some cases. Because of the small market, low reproductive potential of falcons, expenses involved versus the return possible, large profits are not a realistic expectation which will entice many people to participate. Most participants are, like myself, people who would simply like to raise a few of the rarer falcons for themselves, their friends and a few to release. We are not profit motivated; we are asking for some way to regain the expenses involved.

The line of logic can be summed up as follows:

1. Captive propagation of raptors increases the number of hawks and falcons available for falconry and conservation purposes thereby helping our sport and management agencies.
2. While there aren't many, small, backyard, non-institutional breeders have made contributions to the number of birds produced.
3. The expenses involved in these projects are enormous.
4. The federal government, several surrounding states, and some organizations have recognized this problem and moved to alleviate it.
5. We would like to continue these activities in Montana and would ask for some way to be recompensated for our expenses.

We are not asking the state to spend money; we are not asking for increased services from the state; we are not asking for privatization, or a decrease in control or protection of raptors and in fact demand that these controls remain in place. We are a small group of individuals who love hawks and are firmly convinced that in the long term these changes are in the mutual best interest of the state, fish and game, falconers and especially the birds.

GOOD AFTERNOON LADIES AND GENTLEMEN. MY NAME IS ANNE McPARTLIN, AND I RESIDE IN GREAT FALLS, MONTANA. FOR OVER 20 YEARS I HAVE BEEN INVOLVED WITH BIRDS OF PREY BOTH AS A PRACTICING FALCONER AS WELL AS IN THE CARE AND REHABILITATION OF SICK AND INJURED RAPTORS. AT THIS TIME I HOLD A MASTER FALCONERS LICENSE AND AM THE PRESIDENT OF THE "BIG SKY HAWKING CLUB" WHICH IS A FALCONRY ORGANIZATION HERE IN MONTANA. I ALSO SERVE ON THE BOARD OF DIRECTORS OF "WINGS TO FREEDOM" WHICH IS A NON-PROFIT ORGANIZATION VERY ACTIVELY INVOLVED IN RAPTOR REHABILITATION EFFORTS.

I CAME TO THE CAPITOL TODAY TO BRIEFLY COMMENT ON HOUSE BILL 530 WHICH WOULD PERMIT THE SALE OF CAPTIVE-BRED BIRDS OF PREY HERE IN MONTANA. ALTHOUGH THE "BIG SKY HAWKING CLUB" WAS NOT CONSULTED ON PROPOSED HOUSE BILL 530 NOR INVITED TO PARTAKE IN DISCUSSIONS ON THIS BILL PRIOR TO ITS SUBMISSION TO THIS COMMITTEE EVEN THOUGH ATLEAST TWO MEMBERS OF THE ORGANIZATION HOLD RAPTOR PROPAGATION LICENSES, MEMBERS OF THE "BIG SKY HAWKING CLUB" COULD, IN THE FUTURE, BE EFFECTED BY PASSAGE OF HOUSE BILL 530. THEREFORE, WE WISH TO BE HEARD FOR THE RECORD.

AT PRESENT, MONTANA LAW PROVIDES LICENSED FALCONERS WHO ARE RESIDENTS OF THIS STATE THE PRIVELEGE TO REMOVE CERTAIN SPECIES OF RAPTORIAL BIRDS FROM THE WILD FOR USE IN THE SPORT OF FALCONRY. AS IT IS NOW LEGAL UNDER FEDERAL LAW FOR LICENSED RAPTOR BREEDERS TO OFFER THEIR CAPTIVE-BRED PROGENY FOR SALE, THE STATE OF MONTANA COULD EXTEND THIS SAME PRIVELEGE TO RAPTOR BREEDERS IN THIS STATE, BY PASSAGE OF HOUSE BILL 530. MONTANA COULD THEN, FOR SIMPLICITY, ADOPT THE PRESENT FEDERAL LAWS CONCERNING THIS ACTIVITY. THE "BIG SKY HAWKING CLUB" WILL SUPPORT HOUSE BILL 530 PROVIDED ONE CONCERN IS ELIMINATED. WE DO NOT WISH THE PASSAGE OF THIS BILL TO JEOPARDIZE THE PRIVELEGE WE NOW ENJOY TO CAPTURE OUR OWN BIRD FROM THE WILD IN THIS STATE. WE WILL NOT SUPPORT HOUSE BILL 530 IF A "TRADE OFF" OR "CONDITION" OF ITS PASSAGE NOW OR IN THE FUTURE WOULD MEAN LOSS OF ANY OF THE PRIVELEGES WE NOW ENJOY UNDER THE EXCELLENT FALCONRY LAWS IN THIS STATE.

THE "BIG SKY HAWKING CLUB" WISHES TO FURTHER CLARIFY ONE POINT AS WE EXTEND SUPPORT TO HOUSE BILL 530. IT SHOULD NOT BE CONSTRUED THAT THE SALE OF CAPTIVE-BRED BIRDS OF PREY WILL REDUCE ANY "DRAIN" ON WILD RAPTOR POPULATIONS, SHOULD ANY SUCH "DRAIN" EVEN EXIST. THE NUMBER OF BIRDS

(2)

DATE 2-17-87
HB 530

OF PREY REMOVED ANNUALLY FROM THE WILD IN MONTANA FOR FALCONRY PURPOSES IS EXTREMELY INSIGNIFICANT WHEN COMPARED TO THE NUMBERS ANNUALLY KILLED BY SUCH THINGS AS POWER LINE ELECTROCUTION, VEHICLES AND ILLEGAL SHOOTING BY HUNTERS. AS A POINT OF INTEREST IF THE TAKE OF WILD RAPTORS WERE TO BE REDUCED BY THE SALE OF CAPTIVE-BRED RAPTORS, SUCH SALES WOULD HAVE TO BE LIMITED TO MONTANA LICENSED FALCONERS, FOR ONLY MONTANA LICENSED FALCONERS MAY REMOVE BIRDS IN THE WILD IN THIS STATE FOR FALCONRY PURPOSES. THE SALE OF CAPTIVE-BRED PEREGRINE FALCONS WOULD NOT ELIMINATE ANY DRAIN ON WILD PEREGRINE POPULATIONS IN MONTANA BECAUSE UNDER PRESENT MONTANA LAW, FALCONERS ARE PROHIBITED FROM REMOVING PEREGRINES FROM THE WILD IN THIS STATE. AS CONCERNED AND RESPONSIBLE FALCONERS WE THOUGHT IT APPROPRIATE TO ADVISE THIS COMMITTEE THAT WE APPRECIATE THE PRIVILEGES WHICH WE NOW ENJOY UNDER MONTANA LAW. WE FURTHER FEEL THAT THE PASSAGE OF HOUSE BILL 530 WILL HAVE VERY LITTLE, IF ANY EFFECT ON WILD POPULATIONS IN THIS STATE.

IN CONCLUSION, AS LONG AS MONTANA FALCONERS MAY CONTINUE TO LEGALLY TAKE RAPTORS FROM THE WILD FOR FALCONRY, THE "BIG SKY HAWKING CLUB" WILL SUPPORT HOUSE BILL 530. HOWEVER, FOR THE RECORD, WE NEVER WISH TO SEE OURSELVES IN THE POSITION WHERE WE ARE FORCED, BY LAW, TO RELY ON A FEW "RAPTOR BREEDERS" AS OUR SOLE SOURCE OF BIRDS FOR OUR SPORT. THE FREE ENTERPRISE SYSTEM IS ONE THING, BUT CREATING A MONOPOLY THROUGH LEGISLATION WOULD BE TERRIBLY DETRIMENTAL TO MANY FALCONERS AND THE SPORT WE KNOW AND LOVE.

IN LENDING OUR SUPPORT TO HOUSE BILL 530 THE "BIG SKY HAWKING CLUB" WOULD RECOMMEND THAT SHOULD HOUSE BILL 530 BECOME LAW, ANY FUTURE VIOLATIONS OF THAT LAW SHOULD BE DEALT WITH BY PROSECUTION TO THE ABSOLUTE FULLEST EXTENT OF THE LAW.

Anne G. McPartlen 2/17/87

HB 530
February 17, 1987

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

The department does not support the sale of captive-reared raptors. In 1983, the legislature allowed the captive breeding of raptors. The department supported that legislation, but indicated we had concerns regarding the potential for future requests to sell the progeny. That time has come and we must express our opposition.

Our position on this subject stems from our general concern with Montana's wildlife being taken from the wild for breeding purposes and the progeny sold. We have opposed this activity for game farms, bird farms and fur farms.

We feel our position is correct and take it with respect to raptors.

Montana
Audubon Legislative Fund

Testimony on HB 530
February 17, 1987

Madame Chairman and Members of the Committee,

My name is Janet Ellis and I'm here today representing the Montana Audubon Legislative Fund.

In the United States all wildlife has been deemed to be the property of the people. It is important to note that a falconer who has birds to fly in the sport of falconry is not the owner of those birds, s/he only has a permit to fly that bird - the bird is still public property.

HB 530 changes the ownership of raptors used in falconry. The parents, if taken from the wild, would not be owned by the falconer. However, the progeny of those "wild" birds would be owned by the falconer and could be sold at a profit. We do not condone or condemn such ownership changes. We feel that it is important to point out to this legislature, however, that the decisions made by passing HB 530 change state policy in a number of ways.

Right now, it is the state's policy to not allow game to be taken from the wild and used for commercial game farm operations. It is also the state's policy not to allow fur farms to take wild furbearers from the wild for use in their commercial enterprises. In both these industries/businesses stock must be obtained from other commercial breeders and no animals can be taken from the wild.

Currently falconers are allowed to take birds from the wild after obtaining the proper permit. HB 530 will then allow falconers to commercialize their breeding efforts by selling progeny. When you make the decision whether or not to allow the commercial sale of raptors, you must realize that by continuing to allow these birds to be taken from the wild, you are changing the state's policy as it relates to game farms and fur farms: will owners of those industries also want the same privilege?

After talking to numerous falconers concerning this legislation, I know that falconers are not ready to give up their right to take birds from the wild. The state of Iowa, upon allowing the commercialization of raptor progeny, now prohibits the taking of the bird from the wild. Legislators must at least consider this as a possibility if you pass HB 530.

If HB 530 passes the legislature, we would like to see the following amendments placed on this bill:

1. By deleting the word "Montana" on page 2, line 6, a confusing part of current law will be removed. There are no residency requirements for raptors. This word became a problem during the recent sting operation "Operation Falcon." DFWP enforcement officers had a difficult time convicting several Texans who had taken (illegally) peregrine falcons from Lake Powell. Because the term "Montana" is in current statutes, 2 of the Texans were

not convicted. This would clarify that all raptors found in the state are covered under Montana laws.

2. Prohibit the sale of progeny peregrine falcons or hybrids of peregrines unless they are going to the recovery of this endangered species. Peregrines are listed on the federal and state endangered species list. Last summer there were 2 known peregrine nests in Montana (and 6 hack sites). We feel that commercialization of these birds would hurt, not help, these birds, because:

- Licensed breeders who want to trade birds to diversify their stock could get permits from the Fish and Wildlife Service for that purpose.
- A ban on commerce is important to protect endangered species. This is particularly true with peregrines, where birds can be sold for \$2000 to \$4000 in the U.S. and \$10,000 overseas. Such prices make it tempting to take birds from the wild - a pressure that peregrines cannot withstand.
- The sale of peregrines has not contributed to the recovery of wild populations. Over 95% of the peregrines released into the wild were produced by the Peregrine Fund (financed by public contributions and government grants).
- Operation Falcon revealed that there are people dealing illegally in peregrines. For example, in 1982-1984 two Canadian breeders took over 50 peregrines from the wild.
- No person in Montana is currently breeding peregrines.
- Federal regulations require that captive-bred falcons be marked with a seamless band. Dr. Tom Cade of the Peregrine Fund has testified that it is easy to cheat - peregrines taken from the wild as eggs or chicks can be marked with a seamless band and sold without fear of prosecution. The incentive to cheat with these band is enormous - with peregrine prices so high.
- Other states that allow the sale of peregrines show that people who can sell do not contribute birds to the wild.
- The paternity test described as proof that progeny of a given pair of adults are truly progeny is not a standard test. It is something that can be used in a court of law.
- Until peregrines are taken off the endangered species list, they should not be commercially sold.

3. Removing the word "on" and reinserting the current language on page 2, line 24 clarifies that the DFWP can do more than just pass rules on keeping records - they must also be able to pass rules on the process of trapping, taking, possession, etc.
4. Fees must be increased to adequately cover the cost of falconry in the state. This cost should include not only the licensing process, but also enforcement of the commercial enterprises to ensure that raptor populations in the state are not being abused.

Amendments offered on HB 530
MT Audubon Legislative Fund

1. page 2, line 6: delete the word "Montana".
2. page 3, line 1: following "projects", delete "." and insert "
", except that the department may not permit the sale of progeny of peregrine falcons or hybrids of peregrine falcons other than to an agency of the state or federal government for release to the wild as part of a peregrine recovery program."
3. page 2, line 24: following "records" delete "on" and insert "and for"
This section would then read: "The department may adopt rules for the keeping of records, and for the trapping, taking, possession, propagation, and release of, and the sale of progeny of raptors taken and held for captive breeding projects, except that the department may not permit the sale of progeny of peregrine falcons or hybrids of peregrine falcons other than to an agency of state or federal government for release to the wild as part of a peregrine recovery program."
4. Fees need to be increased to charge commercial facilities. This cost needs to cover licensing, screening applicants and facilities, and inspection of facilities to ensure that birds are properly being handled. This fee should also include training for game wardens and/or a person to be able to regulate the business. Such training is necessary so that enforcement officers can tell the different species and subspecies of birds as well as the different ages of birds. Currently, according to the DFWP, the fees collected by falconers and breeders (\$500 annually) does not cover licensing. There is definitely no money at this time for any law enforcement. Commercialization would increase the chances that illegal activities could go on - the money involved could tempt certain people into the business, whereas now it is the "love" of the birds that keeps people in Montana interested in raising birds.

Amendments to gray HB 406

1. Title, line 10.
Strike: "FINES AND FORFEITURES"
Insert: "PENALTIES"
2. Page 11, line 22.
Strike: "AND FORFEITURES"
3. Page 12, line 1.
Following: "WHO"
Insert: "represents himself as an outfitter or"
4. Page 12, line 3.
Strike: "FELONY"
Insert: "misdemeanor"
Strike: "\$2,000"
Insert: "\$200"
5. Page 12, line 4.
Strike: "\$5,000" through "AND 10]." on line 7
Insert: "\$500"
6. Page 12, line 10.
Strike: "AND FORFEITURES"
7. Page 12, line 11.
Strike: "AND" through "PROPERTY" on line 12
8. Page 12, line 17 through line 19, page 13.
Strike: sections 9 and 10 in their entirety
9. Page 13, lines 20 and 21.
Following: "INVESTIGATIONS"
Strike: ", SEIZURES,"
10. Page 13, line 23.
Strike: "AGENT DESIGNATED BY THE BOARD;"
11. Page 13, line 24.
Following: "AGENCY"
Insert: "enforcement"
Strike: "DESIGNATED BY THE BOARD"

Sponsors amendments - Buffalo Law
H. Fritz

HB 568

HB 568

(8)

2-17-87

1) Title, line 5.

Following: "PARKS"

Insert: ", IN COOPERATION WITH THE NATIONAL PARK SERVICE,"

2) Page 1, lines 11 through 15.

Strike: "The department" on line 11 through "Montana" on line

Insert: " The department shall cooperate with the national park service in its attempts to seek other methods of controlling, as soon as possible, the migration of wild buffalo into Montana"

Page 15.

Strike: "must"

Insert: "may"

FISH & GAME COMMITTEE

DATE 11-1-68

[illegible]

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.