

MINUTES OF THE MEETING
FISH AND GAME COMMITTEE
MONTANA STATE SENATE

January 27, 1987

The meeting of the Senate Fish and Game Committee was called to order at 1:00 P.M. on January 27, 1987 by Chairman Ed Smith in Room 325 of the State Capitol.

ROLL CALL: All members were present with the exception of Senator Al Bishop, who was excused.

EXECUTIVE ACTION

DISPOSITION OF SENATE BILL 53:

Senator Smith requested Director Flynn to give further explanation of Senate Bill 53. Flynn stated the stimulus for SB 53 comes from two sets of directions concerning trapping laws in Montana. Between the 1981 and 1983 sessions, the Governor requested the Legislature to select a committee to study the game, bird, and fur farm laws. Membership of the committee consisted of members of the Montanan Wildlife Federation, the Board of Livestock, and operators of game, bird and fur farms. The recommendations of the committee have become law. Flynn stated that furbearing legislation began during the 1930's. At that time, laws allowed fur bearing animals taken out of the wild to establish fur farms because fur farm industry did not exist. The department drafted present legislation due to a discrepancy between the 1981 and 1983 law. Animals in the fur farm's possession will not be included.

Senator Smith asked if fur farms are licensed and fully supervised by the Fish, Wildlife and Parks Department according to the number of animals in the fur farm. Mr. Flynn stated that the department issues licenses for fur farm operators including operating inventory. The department does not govern the transportation outside the state in regards to fur bearing animals. This task is accomplished by the Department of Livestock. Senator Smith asked if the animals were taxed. Yes, the animals are taxed as property taxes.

Senator Severson questioned if the bill was killed in committee, would the department continue to have conflict between the two laws. Director Flynn replied no. The department has the 1983 repeal statutes, but the 1933 law is still on the books.

Andrea Merrill explained that title 70 has to do with property rights. The new section will be codified in the Fish and Game Laws. Title 87, Chapter 4, part 10 is the fur farm section.

Senator Jergeson asked if changing the law from a repealer to a new section would be considered in the realm of the bill title. What can be done if the committee moved from the property right issue to a governing issue. Merrill stated that the substance of the title of the bill would be altered. The title says eliminating private property rights in fur bearing animals. The department explained the new section was inadvertently omitted last session. The section is the same as the game farm statutes.

Senator Jergeson questioned the amendments being within the realm of the law. Smith replied the situation is just opposite of what had been established in the game farm bill. Property rights are established once the animals are put into the game farm. The bill eliminated private property rights in wild fur bearing animals. This is just the opposite. Smith stated concern if the action is timely because if there are property rights or the right to tax the animals in the game farm, the opposite should not apply in regards to game farms.

Merrill stated in the fur farm law there is a section that addresses fur bearers as private property. Otherwise, if the animals were acquired, they can be kept as private property. Animals cannot be taken from the wild.

Senator Severson asked what is wrong with creating a business with an animal that is caught in the wild. Either way the animal is caught, the animal is out of the wild, and the animal is dead or captured.

DISPOSITION OF HOUSE BILL 81:

Senator Bengtson moved that HB 81 BE NOT CONCURRED IN.

Senator Yellowtail asked for an explanation of the motion. Bengtson said that the bill is premature, data is incomplete. Sportsmen have made a concerted effort to enhance the Walleye population. The bill gives the department the right to take Cisco, yet because of this action, another group becomes alienated because they have provided habitat by placing Christmas trees for cover. This decision is made in the best interest of the majority of people.

Senator Smith commented on the plantation of Cisco and stated the project was not thought to be successful. Today the Cisco

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have multiplied and millions of salmon and Northern Pike will be planted in the future. These fish will feed on the Cisco.

Senator Severson stated in his opinion, the commercial fisheries will not fish only for Cisco. This bill gives the commercial Fishery the go-ahead to keep the Cisco if they are included in the catch.

Senator Bishop stated the bill is designed for one purpose. The purpose is to give the commission the authority to allow the commercial fisheries to keep the Cisco, not just the ones that are caught in the net. If a quota is set it would provide a method of control.

Senator Jergeson suggested a statement of intent that would allow the commission to commercially take Cisco only after conclusive evidence shows there is an over-abundance of Cisco. Also, the forage needs have been supplied for the game fish. Merrill stated the original Statement of Intent addresses such an issue. Senator Jergeson said the original Statement of Intent is unsatisfactory because the language implies that a number determination has been made regarding the over-abundance. When the supply exceeds the demand for forage, the Cisco harvest will be allowed should be the direction of the Department.

Senator Smith stated consideration of the Cisco population in the next session would allow sufficient time to supply adequate data.

Senator Jergeson provided language for the suggested Statement of Intent: It is the intent of the Fish and Game Committee that the department will allow commercial fishing of Cisco when there is conclusive evidence that the supply exceeds the forage requirements of the game fish.

Senator Bengtson stated the people involved in the Walleye Unlimited activity making Fort Peck Reservoir a haven for sportsmen should not be overlooked. Many hours of volunteer time have been devoted to the project.

Senator Smith stated the Walleye Unlimited organization is not limited just to northeastern Montana. Walleye Unlimited has many members in Montana and the largest chapter is located in Great Falls.

Senator Jergeson made a substitute motion that a Statement of Intent be attached to the bill. Merrill suggested that part of the original Statement of Intent could be retained to provide historic information. The commission does not address commercial fishing, therefore, a statement of intent is not needed according to Senator Bishop. Senator Bishop stated he is comfortable with

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the commission being delegated such authority, but is not currently needed. The public perception to the issue is that the timing is premature. The decision-making authority should be kept at the legislative level. The purpose and intent of the Fish and Game Commission is to preserve the outdoor resources and is not responsible to provide commercial activities to support such industries.

Question on the motion regarding the Statement of Intent was called for by Senator Bengtson. Senator Severson asked if the bill was requested by the Fish, Wildlife and Parks, to which the answer was yes.

Senator Smith stated that if SB 81 is passed, there must be a statement of intent to allow for rule-making authority. The motion regarding the statement of intent received a unanimous DO PASS.

The Motion by Senator Bengtson was made to move the committee to recommend a DO NOT PASS. Senators Yellowtail, Jacobson, and Jergeson voted nay.

DISPOSITION OF SENATE BILL 62

Senator Severson moved SB 62 DO PASS. Senator Smith stated there was only one individual that testified in favor of the bill and thirty testified against the bill. Senator Severson stated that the bill may only affect one person, but when the archers come out in great force against the legislation, the impact is made. Senator Ed Smith stated that representative government is important and proves that people are interested in the legislative process.

Senator Jacobson expressed concern as to who would be making the classification decisions of whom was handicapped. Senator Jacobson questioned whether the criteria would be justifiable in regards to medical reports and records. A roll call vote was taken. A tie vote was recorded with Senators Smith, Yellowtail, Jacobson and Bengtson voting no.

DISPOSITION OF SENATE BILL 53

Senator Smith stated that the game farm bill passage made all animals in game farms private property. These animals are taxable. However, SB 53 may be different in the fact that if the animals were trapped, but not killed, these animals would become taxable property.

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Senator Severson stated the mink bill introduced in the 1985 Session set precedent involving animal value. Beaver farms were also included the 1985 legislation. Senator Smith stated data gathered from fur farm operators about bobcats gives substance to the fur farm argument. Under the quota system, what difference would it make if the animal was killed or used for breeding purposes.

Senator Bengtson moved SB 53 DO NOT PASS. Senator expressed hope that any abuse would be controlled. Senator Jergeson claimed the live animal would be worth \$3,000, while a pelt would be worth \$300. The economic incentive would be reason for the animals to be taken out of the wild. Senator Smith stated the Fish, Wildlife and Parks Department can determine abuse within the game farm industry because regulations are made to determine how many animals can be taken or kept on the game farm.

Senator Yellowtail asked if the 1983 Legislature's intent was to prohibit the taking of fur bearing animals for use in game farms. Mr. Flynn affirmed the intent. The existing statutes brought to Director Flynn's attention by a county attorney challenged the conflict of the 1983 Legislative intent. The question to be currently addressed is whether the conflict should be removed or whether the legislation should be amended to permit bobcats to be included in game farm classifications. This is an inadvertant loophole that is contrary to the 1983 intent and must be closed. Senator Yellowtail stated the air should be cleared. The amendments would clarify the legislative intent. Later, the bobcat interest groups could draft a bill which would permit the capture of bobcats.

Senator Smith requested the researcher to present to the committee an exact version of the bill defining exactly what the bill would do.

Senator Bengtson withdrew the motion.

ADJOURNMENT

There being no further business to come before the committee, the hearing was adjourned at 2:27 P.M.

SENATOR ED SMITH, Chairman

ROLL CALL

SENATE COMMITTEE--FISH AND GAME

50TH LEGISLATIVE SESSION - 1987

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Date: *January 27, 1987*

NAME	PRESENT	ABSENT	EXCUSED
Senator Ed Smith, Chairman	X		
Senator John Anderson	X		
Senator Judy Jacobson	X		
Senator Elmer Severson	X		
Senator Greg Jergeson	X		
Senator Al Bishop			X
Senator Esther Bengtson	X		
Senator Wm. Yellowtail Vice-Chair	X		

ROLL CALL VOTE

SENATE COMMITTEE -- FISH AND GAME

DATE: January 27 BILL NO. SB 62 TIME: _____

NAME:	YES	NO
Senator Ed Smith, Chairman	X	
SENATOR WM. YELLOWTAIL		X
Senator John Anderson	X	
Senator Judy Jacobson		X
Senator Elmer Severson	X	
Senator Greg Jergeson		X
Senator Al Bishop	X	
Senator Esther Bengtson		X

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Mary Florence Root
Secretary

Senator Ed Smith
Chairman

MOTION: Do Pass

ROLL CALL VOTE

SENATE COMMITTEE -- FISH AND GAME

DATE: Jan. 27, 1987 BILL NO. SB 81 TIME: _____

NAME:	YES	NO
Senator Ed Smith, Chairman	X	
SENATOR WM. YELLOWTAIL		X
Senator John Anderson	X	
Senator Judy Jacobson		X
Senator Elmer Severson	X	
Senator Greg Jergeson		X
Senator Al Bishop	X	
Senator Esther Bengtson	X	
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Mary Florence Root
Secretary

Senator Ed Smith
Chairman

MOTION: DO NOT PASS

STANDING COMMITTEE REPORT

January 27

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MR. PRESIDENT

We, your committee on Fish and Game Committee

having had under consideration Senate Bill No. 81

First reading copy (White)
color

COMMERCIAL FISHING OF CISCO

Respectfully report as follows: That Senate Bill No. 81

~~DO PASS~~

DO NOT PASS

STATEMENT OF INTENT ATTACHED

.....
Senator Ed Smith

Chairman.

SB 81

STATEMENT OF INTENT

STATEMENT OF INTENT FOR SB 81

A statement of intent is required for this bill because it grants rulemaking authority to the fish and game commission with regard to the commercial taking of the game fish cisco.

It is the intent of the legislature that the fish and game commission will only allow commercial fishing of cisco when there is conclusive evidence that supply of cisco exceeds the forage requirements of such game fish as walleye, salmon, and northern pike.

6351e/c:Jeanne\WP:jj

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Senator Ed Smith, Chairman