

MINUTES OF THE MEETING  
FISH AND GAME COMMITTEE  
MONTANA STATE SENATE

March 12, 1987

The meeting of the Senate Fish and Game Committee was called to order at 1:00 P.M. on March 12, 1987 by Chairman Ed Smith in Room 402 of the State Capitol.

ROLL CALLS: All members were present, with the exception of Senator Bengtson, who was excused.

CONSIDERATION OF HB 211: Representative Gerry Devlin, House District No. 25, sponsor of the bill, stated that the bill is an act to prohibit the harrassment of hunters or trappers, while they have the right to hunt, trap, pursue, shoot or kill wild animals. No person may intentionally, with intent, harrass the hunter or the penalty is a misdemeanor, or a court injunction if the harrassment continues. The bill was introduced because of the bison hunt threats were made in Yellowstone Park by certain groups of persons to disrupt the hunt. Although the bill was patterned after similar legislation in other states, the penalties are less severe and do not cover punitive damages, payment of guide fees, or payment of the complete trip. The penalty proposed is a misdemeanor.

PROPOSERS: Ron Marcoux, Fish, Wildlife and Parks Department, presented the committee with written testimony. (Exhibit 1)

Jeanne Klobnak, Montana Wildlife Federation, stands in support of HB 211.

OPPOSERS:

There were no opposers to HB 211.

QUESTIONS FROM THE COMMITTEE:

Senator Jergeson asked what would happen if someone was doing mischief on was asked to leave the private property. The person asked to leave could make accusations concerning harassment. The legislation deals with land other than private property. The person who is hunting would have the effective right to pursue the game.

Senator Smith stated the purpose of the bill is to address situations like people gathering to make noise with pots and pans in order to make noise to drive away the animals that are being hunted. A similar situation happened in Idaho. The airplane pilot was fined \$10,000 for disturbing a rabbit hunt and the pilot's license was revoked for five years.

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Senator Yellowtail questioned the bill. More problems could be created. A group or organization could assert the "right to be present on public property", "right to carry on as they wish on public property within the bounds of the law", or the "right to express themselves freely on public property." The bill may create a constitutional argument. Devlin replied that the intent would have to be considered. The determination would have to be made by the judge in the event harrassment charges were filed.

Senator Yellowtail established a like scenario: A permit for natural forest ground had been obtained to run cows, but the leasee observes hunters shooting game near the herd of cattle. Would the cattlemán-landowner be subject to a misdemeanor charge if the landowner interfered with the hunting. Marcoux replied that the law reads "it is the right or privilege to pursue." On private land, particularly, the hunters must have permission from the land owner. This would be a case of trespassing, and the hunter would be in violation of the tresspassing laws.

Representative Devlin stated that he would welcome an amendment to address livestock that is ran on federal land.

Senator Severson asked Mr. Marcoux if many complaints have been received by the Department concerning situations like the one discribed above, or have the complaints been concerning the bison hunts only. Mr. Marcoux replied that the bison hunts have been the main concern of the Department.

Senator Bishop asked if there is a certain area where cattle are still allowed on public land during hunting season, and asked if there is an uniform deadline to remove cattle from public land. Senator Severson stated in his area there are no requirements that the cattle be taken off the land at an specific time. Severson's area is like a checkerboard of federal and private land. BLM land has no requirements. The management program with the federal government is on going.

Senator Anderson stated that the livestock are off the Forest Land by a certain date, which is before hunting season. This is not true of BLM land. Senator Anderson pointed out that recreation on public land also interferes with livestock.

Representative Devlin reported that there have been threats made concerning certain groups of people who would intend to interfere with hunting situations such as bison hunts. Therefore, Montana should have a written law that deals with such a situation.

Senator Smith closed the hearing on HB 211.

CONSIDERATION OF HB 266: Representative Ream, House District No. 54, sponsor of the bill, stated that the bill is an act to authorize the Department of Fish, Wildlife, and Parks to propose legislation for any addition or deletion of species of wildlife on the endangered species list. The bill is to clarify language in the law so that the department may propose legislation to specifically include any species or subspecies of fish and wildlife appearing on the United States' list of endangered native fish and wildlife as it is designated in the law. The Department may propose specific legislation to amend the list by such additions or deletions as are deemed appropriate and at such times as are deemed appropriate.

PROPONENTS

Ron Marcoux, Fish Wildlife and Parks Department, offered written testimony in support of HB 266. (Exhibit 2)

Janet Ellis, Montana Audubon Legislative Fund, explained that a White Sturgeon endangered specie hearing received a less than favorable consideration due to a confused process dictated by legislation procedure in the 1985 session. This bill will clarify how species are to be added to the endangered species list. This allows the animals to be heard on their merits rather than caught up in the bureaucracy. Ellis urged the committee to recommend a do pass.

OPPONENTS

There were no opponents to HB 266.

QUESTIONS FROM THE COMMITTEE:

Senator Smith stated that the bill proposed that the Fish Wildlife and Parks Department take the responsibility. Perhaps the word "require" was not the intent of the legislation, and that the word "authorize" is in line with the intent.

DISPOSITION OF HB 266:

Senator Severson made a motion that the committee recommend a BE CONCURRED IN. The motion passed unanimously. Representative Ream requested that Senator Jacobson carry the bill in the Senate.

CONSIDERATION OF HOUSE BILL 298: Representative Paul Rapp-Svrcek, House District No. 51, Thompson Falls, chief sponsor of the bill, stated that the bill is presented at the request of the Fish, Wildlife and Parks Department. The bill proposes that before application is made for a special permit, a regular hunting permit must be obtained for that particular species. After, the law takes effect, only one grizzly bear can be taken by a hunter during that hunter's lifetime.

PROPOSERS

Ron Marcoux, Fish, Wildlife and Parks Department, offered written testimony. (Exhibit 3)

Janet Ellis, Montana Audubon Legislative Fund, offered support of HB 298 due to the restriction of grizzly bear hunting. Hunting grizzly bear is a remarkable and unusual opportunity offer only in two states; Alaska and Montana. Such a rare opportunity should be a quality experience and treated with due respect allowing any single hunter to take more than one grizzly, an uncommon species, abuses the nature of the resource and deprives others of the experience. The Fund understands that abuses have occurred. An example was given of an Outfitter who applied in an area that was excellent for grizzly hunting. After using the in-state permit to kill the grizzlies, the Outfitter sold the grizzly to out-of-state clients. This is not appropriate since only seven grizzly bears can be taken each year. (Exhibit 4)

Jeanne Klobnak, Montana Wildlife Federation stood in support of HB 298.

OPPOSERS

There were no opposers to HB 298.

QUESTIONS FROM THE COMMITTEE

Senator Greg Jergeson asked if HB 298 conflicted with HB 183. Ron Marcoux reported that the licenses are completely different. The issue is that an elk license is not required up front, before the special elk drawing. Senator Smith asked if the hunter must buy a license to hunt the grizzly prior to placing the application. No. The department is proposing that if an individual is successful in taking a grizzly, that individual is not eligible to obtain an additional permit to take another grizzly. The limit will be one per lifetime.

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Senator Jacobson asked if there are plans to require applicants to obtain special permits to obtain a valid big game license for game other than elk. Representative Rapp-Svrcek said that it applied only to elk, no future plans are forthcoming in legislation.

Senator Yellowtail asked why the language was changed from requiring the sportmen have a regular license before being allowed to apply for a special permit to read now that the commission may require. What are the circumstances that the commission would or would not choose to require the special permit. Marcoux replied that the situation would provide an opportunity to have a special drawing.

Senator Smith asked how many opportunities are there for special elk permits. Marcoux replied that there are approximately 80,000 people applying for approximately 20,000 elk permits. The department would anticipate that there would be less elk hunters applying for elk permits according to the fiscal note. The people would have to put money up front to buy elk licenses, which would decrease multiple family application. Currently there is no up-front money and this is reflected in the fiscal note.

Senator Smith said that the actual money would be different from the proposed fiscal note if the applicants had to buy the license first. Marcoux agreed. The department does not anticipate overall decrease.

Senator Severson asked if the legislation would be clarified if the language read "shall require" a license for a special hunt. Marcoux replied that the word "may" in the language provides the commission flexibility. Rapp-Svrcek said the language in regards to the valid license is if there is no sufficient applicants for the special. Then, the application will come from a pool of hunters that currently have the licenses. This is unrelated to the authority of the commission to require a regular permit.

DISPOSITION OF HOUSE BILL 298:

Senator Severson made a motion to recommend to the committee a BE CONCURRED IN. The motion carried unanimously. Senator Al Bishop will carry the bill on the floor of the Senate.

DISPOSITION OF HOUSE BILL 211:

Senator Greg Jergeson suggested that language be created to address the leesee's right to make normal business decisions.

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Some provision must be made concerning animal husbandry in regards to public land. Congressman Marlenee introduced legislation in this area that may be incorporated into the bill. Smith said the legislation should be worded in such a manner that livestock or agricultural production does not interfere with the normal operations of the lessee or the landowner and can not be considered as a means of harassment.

ADJOURNMENT: There being no further business before the Senate Fish and Game Committee, the meeting was adjourned at 2:20 P.M.



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SENATOR ED SMITH, Chairman



HB 211  
March 12, 1987

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

In recent years, groups and individuals have threatened to appear or have appeared in hunting areas during the fall with the expressed objective of disrupting sport hunting. While these efforts have achieved questionable success, they have generated hostile feelings and confrontations between sportsmen and preservationists. Incidents of this kind have been increasing nationwide and could produce a serious confrontation at some point in time. These situations pose a threat to the safety of all concerned, including the professionals employed by fish and wildlife management agencies.

Montana's experience to date involved the first buffalo hunt we conducted in 1985. Members of an activist preservation group threatened to intervene on behalf of the bison and stop the killing of buffalo. The threat was not carried out, but the hunt proceeded with a contingent of wardens called in to keep the peace in case of incident. We went to some effort to brief our people on crowd control, as well as to have the local sheriff and county attorney involved to prepare for contingencies.

One clear purpose of these demonstrators is attracting publicity to the anti-hunting, anti-trapping cause. We do not dispute the right of all persons to be heard, but we feel adequate public forums exist where these views can be expressed.

As an example, we would point to the extensive public hearing process of the Fish and Game Commission during the season setting process conducted each year.

The proposed legislation is designed to prevent only actual interference with hunters and trappers or disturbance of game during legitimate pursuit. Should these incidents become more prevalent in Montana - and occurrences in other states suggest they will - the law can be used to preserve the peace before a serious incident occurs.

Our concern is for order and safety, and this bill serves to help ensure that when protesting citizens purposely interfere with the lawful activities of other citizens, a reasonable alternative to confrontation is available.

We urge your favorable consideration of HB 211.



SENATE FISH AND GAME

EXHIBIT NO. 4-2

DATE 3-12-87

BILL NO. HB 266

HB 266  
March 12, 1987

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

This bill is intended to clarify the method by which the Department of Fish, Wildlife & Parks should propose action to the legislature regarding classification of fish and wildlife under the Endangered Species Act (87-5-101). The present law directs the department to "recommend" to the legislature species for listing or delisting.

As an example, 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 the placement of 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. A letter of recommendation does not meet the need.

The bill, as amended, provides the department the direction to propose legislation based on the status of species in Montana. It then becomes our responsibility to bring the matter before the legislature in bill form for consideration.

We recommend your approval of HB 266.

HB 298  
March 12, 1987

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

We are testifying in support of HB 298. The 1981 legislature eliminated Section 87-2-703, which included requiring sportsmen to have the appropriate big game license when applying for special drawings. Since dropping this requirement, the number of elk applicants has increased significantly. Many sportsmen feel this increase was caused by the deletion of the requirement for an elk license prior to application.

The department conducted a survey during the 1986 public hearings which resulted in 353 sportsmen supporting reinstatement of this requirement with 78 voting against the proposal. Based upon this information, the Fish and Game Commission has recommended, and the department supports, returning to the requirement that sportsmen purchase an elk license before applying for an elk permit.

The department also proposes implementing a limit to the taking of one grizzly bear per lifetime by any one sportsman. There are about 7 grizzly bears taken each year by hunters. The intent of limiting one grizzly per lifetime of the sportsman is to elevate the status of the grizzly as a trophy and to allow more sportsmen an opportunity to take a grizzly trophy.

Because of public support and our management objectives for grizzly bears, we would like to encourage passage of HB 298.

## Montana Audubon Legislative Fund

Mr. Chairman and Members of the Committee,

My name is <sup>Janet Ellis</sup> ~~Dana Field~~ and I represent the Montana Audubon Legislative Fund. The Audubon Fund is composed of members of the National Audubon Society, and includes 2500 members in nine chapters throughout Montana.

The Audubon Fund supports House Bill 298 because it encourages a fair allocation of a very limited wildlife resource.

Hunting a grizzly is a remarkable and unusual opportunity offered only in two states, Alaska and Montana. Such a rare opportunity should be a quality experience and treated with due respect. Allowing any single hunter to take more than one of such an uncommon species abuses the nature of the resource and deprives others of the experience. The privilege should be seen as a rare adventure - - who needs to climb Mount Everest more than once?

HB 298 is a small but respectable step towards an equitable apportionment of a precious wildlife resource. Audubon urges that the committee do pass this legislation.

Thank you.

SENATE FISH AND GAME

EXHIBIT NO. 4

DATE 3-12-87

BILL NO. HB 298

Amendments to HB 211

3rd Reading copy

1. Page 2.

Following: line 2

Insert: "(4) Nothing in this section prohibits a landowner or lessee from taking reasonable measures to prevent imminent danger to domestic livestock and equipment."

14331 Osborne Street  
Panorama City, California 91402

March 14, 1987

Mrs. Theresa Reiser  
13941 Portnell Road  
Gallatin Gateway  
Montana 59738

Dear Mrs. Reiser:

We were very unhappy to hear that the situation on September 4, 1986, turned out as it did. We hope you will read this letter because it makes a few points that we know must be brought out in future unfortunate instances such as this are to be prevented. First we envy you being able to live in bear country. We have been fighting to allow the great bear to survive in the lower 48 for several years. Our attitude is similar to that of Charles Jonkel (world renowned wildlife biologist and educator); Lance Olson (founder of the Great Bear Foundation in Missoula) and Douglas Chadwick's (author and wildlife biologist) attitude (fellow Montanans) - that it is a privilege to be able to reside in such an area. With that privilege comes responsibility. The responsibility of which we speak has to do with how one lives in bear country. Apparently most of your neighbors fail to recognize, or certainly are unwilling to accept, any responsibility to ALLOW THE GREAT BEAR TO SURVIVE in the lower 48 especially when they adopt a shoot, shovel and shut-up attitude. The truth is that if the bear is to survive, we, especially you and your neighbors, have to make concessions. From what we know of the situation in the Gallatin Gateway, you are at a crossroad where you and your neighbors can make an effort to coexist with the Grizzly as Douglas Chadwick, author; Len Sargent, rancher; and a few other lead thinkers have done. Or you can adopt the attitude that no bear will be tolerated in your domain around your family and your livestock.

If you choose the route that allows the bear to survive, which is contrary to many of your neighbors, we feel you would make an excellent spokesperson and a great ally for the Grizzly Bear. Since you are an educator, you know that Montana's school children overwhelmingly chose to adopt the Grizzly Bear as their state animal. I might mention that the state animal in California is also the Grizzly Bear and they were eliminated some years ago. We do not have the opportunity to see a live, free-ranging Grizzly Bear as you and your neighbors do.

At this juncture I would like to pose to you that the rural lifestyle of you and your neighbors is tied to the Grizzly Bear and will slowly disappear if the Grizzly is not allowed to survive. We make this statement knowing that Montana is a special place, sparsely populated. However, present demographic trends coupled with liberal immigration policies, indicate that situations will change. I know that you or your family would not trade your present lifestyle for mine where overcrowding and massive traffic congestion, air pollution and every

imaginable type of crime are daily facts of life. What you might consider is that your lifestyle is directly tied to the survival of the Grizzly Bear and the wilderness that must be protected if he is to survive.

I understand that it is human nature to oppose authority which says you cannot shoot Grizzly Bears. You may or may not know that the Grizzly Bear, which is a great part of OUR NATIONAL HERITAGE, is now down to 1% of their former numbers and 1% of their former range. WITHOUT LAWS TO PROTECT THEM THERE WOULD BE NO GRIZZLY BEARS. If the Great Bear is not allowed to survive in the lower 48 it will become more difficult to protect the surrounding lands and forests from being developed; the harvesting of timber leaving vast areas of clear-cut land and numerous roads accessing areas previously protected by the relative inaccessibility, and the mining and petroleum industry moving in to extract petroleum and minerals. With all this "progress" comes more and more people and yes, true, many jobs and local business prospers and grows - all of which looks great to politicians and short-run thinkers. Remember, while the value of your real property may virtually double overnight, so does the cost of any future properties you purchase, but your income will not. In the long-run, what's happened, is an irreversible momentum has been unleashed and your children and grandchildren will be no better off in the Gallatin Gateway than if they were in Los Angeles.

We maintain that ONLY BY PROTECTING the Grizzly Bear can you hope to extend your lifestyle on to future generations. The predictions I make for Montana are occurring at an alarming rate in Alaska, where, in just the last fifteen years, powerful development interests have begun to reek havoc with wildlife and wilderness at an alarming rate.

We know that you have a more than casual familiarity with bears since you have taken courses with Dr. Charles Jonkel. You must be aware of the following facts regarding the Grizzly Bear:

- (1) They can be dangerous, especially when with a kill or cubs;
- (2) Do not recognize boundaries of national parks and forests and can cover great distances; and
- (3) They are foragers but are opportunistic in that they will, just because WE put them there, deplete livestock unless extra special precautions are taken to design and maintain bear-proof enclosures for penned up livestock. This is a predictable occurrence. You say, 'why should we have to incur the additional expense and trouble to protect OUR livestock from Grizzlies?' The answer, again, is that his survival is directly tied to your chosen lifestyle. In Los Angeles, we have numerous burglaries and break-ins occurring every minute. We are not allowed to shoot even drug-crazed burglars. If, instead of a bear in with your sheep (doing what is natural i.e., taking advantage of an opportunity, we as humans provide), a human had entered your sheep enclosure and maliciously destroyed the animals or taken them for his own consumption and was fatally shot as a result, there is no doubt that the outcome would be a long litigation and a virtual nightmare for you and your family.

We now know that it is vital to provide bear-proof dumpsters in bear country to avoid human/bear conflicts which have historically ended as your situation did i.e., in a bear mortality - in your instance a critical breeding female with cubs being removed from an endangered population. Historically, the number of humans lost to Grizzly Bears in the lower 48 can be counted on your hands and toes while the number of bears dispatched by humans numbers over many thousands. As you know, more livestock is struck by lightning, hit by motor vehicles or lost to weather and neglect and disease than has or ever could be deperadated by Grizzly Bears. In every instance when penned up livestock is deperadated by bears, it is a result of humans not being aware of, or being unwilling, to take the extra precaution to protect livestock in areas of KNOWN OR POTENTIAL BEAR HABITAT.

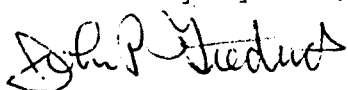
Mrs. Reiser, we are not criticising you or your actions last September. In your place we may have acted in a similar manner. What we hope is that you will use your influence as a community role model to educate your neighbors as to the plight of the Grizzly Bear in the Gallatin Gateway area and to prevent future bear mortality, epecially where domestic animals are involved. We can state with certainty that there will be future human/bear conflicts unless more people such as you and your family are willing to incur the inconvenience of coexisting with the Grizzly, for without your tolerance, the Grizzly will become extinct. Please keep in mind that that your lifestyle is directly tied to the survival of this magnificent and dangerous creature - the Grizzly Bear.

We realize that this whole situation was unfortunáte but it is also predictable that if others adopt the attitude that they will not tolerate bears in their space, then this act will be repeated and, as you stated, "The only Grizzly Bear I ever saw in 50 years is no longer." This is very regrettable when one considers that females produce cubs only once every two or three years. And that at present population levels, the difference between a recovering Grizzly Bear population and one that is heading towards extinction is so precarious that the loss of one or two adult females per year guarantees eventual extinction of the Grizzly in the Greater Yellowstone Ecosystem.

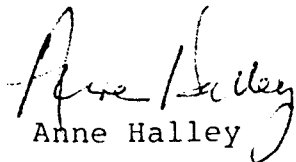
I (John Fredricks) would like to add in closing that I have been fortunate to see and be very close (within three feet in some cases), of adult Grizzly Bears in Alaska and I DID NOT CARRY ANY WEAPONS!

I welcome your thoughts and any comments you may have relative to this highly contraversial subject of national importance.

Sincerely yours,



John Fredricks



Anne Halley



Helena Moody

Richard Halley

# STANDING COMMITTEE REPORT

March 12, 1987

19.....

MR. PRESIDENT

FISH AND GAME

We, your committee on.....

HOUSE BILL

266

having had under consideration.....

No.....

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AMENDMENT OF ENDANGERED SPECIES LIST

Representative Bob Ream (Senator Judy Jacobson)

HOUSE BILL

266

Respectfully report as follows: That.....

No.....

BE CONCURRED IN

~~DO PASS~~

~~DO NOT PASS~~

Senator Ed Smith

Chairman.



# STANDING COMMITTEE REPORT

March 12, 1967

19.....

MR. PRESIDENT

## Fish and Game

We, your committee on.....

having had under consideration..... **House Bill** No. **298**

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### RESTRICTIONS ON SPECIAL BIG GAME LICENSES

Representative Paul Mapp-Svrcek (Senator Al Bishop)

Respectfully report as follows: That..... **House Bill** No. **298**

BE CONCURRED IN

~~DO PASS~~

~~DO NOT PASS~~

.....  
Senator Ed Smith

Chairman.