

MINUTES OF THE MEETING  
FISH AND GAME COMMITTEE  
MONTANA STATE SENATE

March 17, 1987

The thirteenth meeting of the Senate Fish and Game committee was called to order at 1:00 P.M. on March 17, 1987 by Chairman Ed Smith in Room 402 of the Capitol Building.

ROLL CALL: All members were present at roll call, with the exception of Chairman Smith who was temporarily excused to present a bill in another committee. Senator Bengtson was absent.

CONSIDERATION OF HOUSE BILL 322: Representative Ralph Eudaily, House District No. 60, stated that the bill was drafted at the request of the Department of Fish, Wildlife and Parks and is an act to establish blood alcohol standards for persons who operate motorboats, including sailboats which are propelled by a motor of any kind, or are manipulating water skis, surfboards, or similar devices attached to motorboats while under the influence of alcohol or drugs. The legislation is proposed so that an effective statute is on the books when a problem arises. The present statute is confusing. The language does not utilize recognized legal concepts used in drinking related offenses. The statutes do not contain standards constituting intoxication of being under the influence. Local prosecutors have experienced significant problems in proving contested charges under present statutes. The courts and prosecutors are familiar with the term "under the influence", while the term "intoxicated" is not defined in the criminal law context. The standards proposed are the same as the motor vehicle standards for DUI's.

PROPOSERS

Dick Johnson, Fish, Wildlife and Parks Department, presented written testimony. (Exhibit 1)

OPPOSERS

There were no opposers to HB 322.

QUESTIONS FROM THE COMMITTEE

Senator Yellowtail queried committee members concerning similar legislation in Judiciary Committee that may be in conflict with this legislation.

When the bill was originally submitted, the phrase, "under the influence" was defined in case law as opposed to the statutes. The Department did not put forward a bill at that time which would have included the definition of "under the influence." The Department of Justice has submitted a bill this legislative session that deals with the definition of "under the influence." The definition is to be inserted in the Motor Vehicle Codes. Although the Department does not anticipate any severe problems by not having the term defined, the statute definition would clarify the law. The other solution to the problem would be to refer to the definition adopted during this Legislative session in regards to Title 61 of the Motor Vehicle Code.

Senator Yellowtail asked for the definition adjustment to be consistant with the Motor Vehicle Code. Although it is uncertain to the outcome of the proposed legislation, the Department will put together an amendment that will reference the definition of "under the influence" with that of the definition of the Motor Vehicle Code. Then, if the legislation passes, the language would be included in HB 322. (Exhibit 2)

Representative Eudaily closed on House Bill 322, and expressed satisfaction in regards to a forthcoming amendment. It is important to keep legislation consistent.

CONSIDERATION OF HOUSE BILL 533: Representative Bud Campbell, House District No. 48, sponsor of the bill, stated that the bill is an act to reserve 25 antelope licenses for nonambulatory disabled persons. The bill was drafted because of a hunting expedition in Lewistown, MT. The hunt was not able to be completed because the clients were unable to obtain the antelope licenses. Special ramps had been constructed to accommodate the nonambulatory disabled person. The Department, according to the proposed legislation, shall reserve for applicants who are permanently physically handicapped and nonambulatory, as determined by the Department, up to 25 of the total special antelope licenses authorized for sale in the state, for use in the district designated by the Commission. If the number of valid disabled applicants exceeds the number of licenses available, the Department may hold a drawing whereby all applicants have an equal chance of being selected.

#### PROPOSERS

Dick Johnson, Fish, Wildlife and Parks Department, submitted written testimony to the committee. (Exhibit 3)

Smoke Elser, Montana Outfitters and Guides Association, Missoula, stated that the association supports HB 533. The association handles disabled hunters and feels the disabled deserve that type of hunting recreational opportunities.

#### OPPONENTS

There were no opponents to HB 533.

#### QUESTIONS FROM THE COMMITTEE

Senator Jergeson asked if 25 licenses were enough. Johnson replied that it is impossible to say if the 25 licenses will cover the actual need.

Senator Yellowtail asked for an explanation why the Lewistown disabled hunting group could not obtain the needed antelope licenses. Senator Yellowtail asked if it was a function of a particular district. Mr. Johnson stated that was true, yet, there are some districts in Eastern Montana where the districts were virtually unlimited in regards to the availability of licenses. In some areas around Great Falls, larger Montana cities, or in Northeastern Montana, the permits are restricted to approximately 10 to 15 in the hunting districts. Senator Severson asked how a disabled person would choose what area they wanted to hunt in. Representative Campbell stated the proposed legislation would allow the applicant to apply by listing the first three choices. If there were 25 applications, the commission would determine the location of the hunt. If for some reason, all the applicants wanted a certain district and that district was limited as to the number of permits, the Commission would the second choice to the applicant. The Department would work towards a fair alternative.

Representative Campbell closed by saying the bill was drafted specifically for nonambulatory disabled hunters because under the disabled classification, many categories defining the nonambulatory disable are addressed. These hunters will be afforded the opportunity to have a successful hunt.

CONSIDERATION OF HOUSE BILL 329: Representative Bob Ream, House District 54, sponsor of the bill, stated that the bill is an act requiring restitution for certain illegal killing or possession of wildlife; providing a penalty; and providing for disposition of restitution money. The bill provides for restitution to the State of Montana for wildlife that is illegally taken. The state is reimbursed for the value of the wildlife taken, above and beyond any penalties that may be assessed in Court.

Dick Johnson, Fish, Wildlife and Parks, offered written testimony for HB 329. (Exhibit 4)

Janet Ellis, Montana Audubon Legislative Fund, presented written testimony to the committee in support of HB 329. (Exhibits 5, 6, and 7)

Jeanne Klobnak, Montana Wildlife Federation, stands in support of this bill.

Jeanne-Marie Souvigny, Montana Sierra Club, stated support of HB 329.

Jim Hanes, Montana Majestrates Association, representing the Justices of the Peace and City Judges, stated support of the bill with coordinating amendments to conform the bill to HB 740 being heard by Senate Judiciary Committee. HB 740 changes bookkeeping distribution system. HB 329 requires the Justices of the Peace to collect restitution money. HB 740 relieves the Justices of the Peace of that burden of collecting restitution money should it be made part of the law. The proposed amendment would essentially remove Justices of the Peace from the requirements of the bill. Fifty percent would go to the county under HB 740; and the other fifty percent would go to the state. The amendment is coordinating HB 329 with HB 740.

#### OPPONENTS

There were no opponents for HB 329.

#### QUESTIONS FROM THE COMMITTEE:

Senator Yellowtail asked Johnson if the department was able to evaluate the amendments by Ellis. Johnson found the amendments to be acceptable. Again, Yellowtail queried Johnson in regards to HB 740 addressed by Hanes. Johnson requested time to evaluate the policy decision of HB 740.

Hanes stated that the goal of HB 329 is to create a detrimental impact, a deterrent to violator. The money collected is the deterrent, so where ever the money goes, the money will not negate or diminish deterrent effect.

Senator Yellowtail stated that under the present drafting of HB 329, the collections would go to state special revenue fund as provided in 87.1601 Sub.1, which is the Fish, Wild Life and Park's general fund. There is a separate account for the retirement fund. It is not earmarked for one particular purpose.

Senator Severson asked if an individual was illegally picked up for shooting an elk or a moose, would the court be able to fine the individual for the illegal hunt. Would the individual be fined and be made to pay restitution. Yes. Senator Severson commented that the fine would be hefty.

Mr. Johnson reported that the fines are hefty. Wildlife is becoming very valuable. The going price of a trophy size sheep head is \$5,000. Velvet antlers are valuable in the Orient trade. The restitution law would be an attempt to make fines compatible with the offense and illegal profit.

Stan Bradshaw commented on Senator Severson's scenario: The nonresident hunter who shoots a moose by mistake and goes directly to report the accident to the warden. Bradshaw stated that an amendment was placed on the bill by the House in order to resolve an identical situation. The amendment specifically excluded the accidental shooting, but goes after the premeditated hunter. The bill, as it is written addresses the individual who knowingly hunts illegally.

Yellowtail questioned whether the amendment creates a burden of proof that may be impossible to define. Bradshaw reported that he did not think this to be the truth. It is a burden that is greater than simply going out and showing that someone has illegally killed an animal. The intent under the law can be shown by the surrounding actions of the individual who knowingly hunts illegally.

Hanes stated that purpose and knowledge can be shown by the surrounding circumstances.

Representative Ream closed by stating that there are cases when illegal hunters kill five elk, knowing well that it is illegal. These are situations that call for restitution. The bill calls for restitution to compensate the state for the value of the game taken. The true sportsmen are angered over the small fines that are assessed. The fines should be higher for the blatant cases of illegally taking wildlife. The wildlife resources are being lost. The bill will provide the minimum level of compensation to the state. Representative Ream pointed out to the committee that the "six point or larger bull" language should be deleted. Cow elk are certainly as important or more important when considering the herd population. Antelope should also be reconsidered.

Senator Yellowtail returned the gavel to Chairman Smith, and closed the hearing of HB 329.

CONSIDERATION OF HOUSE BILL 424: Representative Bob Ream, House District No. 54, stated that he is presenting the bill in behalf of Representative Janet Moore, who has been hospitalized. The bill is an act to revise the penalty for the unlawful taking or possession of a fur-bearing animal. A person convicted of purposely or knowingly taking, killing, possessing, transporting, shipping, labeling, or packaging a fur-bearing animal or pelt of a fur-bearing animal in violation of any provision of this title shall be fined not less than \$50 or more than \$1000 or imprisoned in the county jail for not more than 6 months, or both. In addition, that person shall forfeit any current license and the privilege to hunt, fish, or trap for not less than 24 months from the date of conviction and any pelts possessed unlawfully must be confiscated. Ream stated that the Montana Trappers' Association supports HB 424. Many trappers feel that when animal pelts are valuable, there are problems with people stealing animals from trap lines. The value of the fur-bearers is much larger than the value indicated in the current statutes. A separate category has been established by this proposed law and the fine is not less than \$50 nor more than \$1,000 which provided a greater fine range than the existing law.

PROPOSERS

Dick Johnson, Fish, Wildlife and Parks, presented to the committee written testimony. (Exhibit 8)

Janet Ellis, Montana Audubon Legislative Fund, stood in support of HB 424.

OPPOSERS

There were no opposers to HB 424.

QUESTIONS FROM THE COMMITTEE: Senator Yellowtail asked Representative Ream the reason for the difference in fine and provision for jail term between the law in response to the previous bill: HB 424. Johnson explained that there is a potential imprisonment in the county jail for not more than 30 days in the existing law.

CONSIDERATION OF HOUSE BILL 568: Representative Harry Fritz, House District No. 56, Missoula, stated that two years ago during the legislative session, 88 bison crossed the confines of Yellowstone National Park, and were killed by sharpshooters employed by the Fish, Wildlife and Parks Department. The reason the killings took place was the disease, Brucellosis,

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which in turn could affect the Montana cattle industry. A bill, passed by the 1985 legislature, established a legal bison hunt which was administered by the Department. Last year, 57 bison were legally killed by hunters who had obtained permits and were transferred to the Northern border of the Park in January and February. This year, only three bison have come out of the Park, and were legally killed. There are 2,000 bison in Yellowstone National Park; 700 of the bison are located in the Northern Herd around Mammoth and Gardiner. The Northern Herd tends to migrate out of the northern border of the Park. Some year Montana is bound to have peculiar configuration of climate conditions such as snow fall. These conditions may propel the entire Northern Herd outside the confines of the Park. Fritz stated that state of Montana would not want to recall or order back a superseding contrary order to prevent the slaughter of the entire Northern Herd. The bill requires the department to take whatever measures necessary in cooperation with Yellowstone National Park to deter bison from migrating into Montana if a massive migration is bound to take place. This bill writes the legislative intent of the 1985 law into law and gives the Department of Fish, Wildlife and Parks the needed legal backing.

PROPOSERS:

Robert Vandervere, a concerned citizen lobbyist, stated a radio news release of March 17, 1987 verbalized concern that Yellowstone Park will control the migration of the bison herds.

Dick Johnson, Fish, Wildlife and Parks Department, presented written testimony. Exhibit 9)

Mons Teigen, Montana Stockgrowers and Cattlemen, stated that the bison situation in Yellowstone Park constitutes a large problem to the Montana Cattle Industry, as well as to the cattle industry in Wyoming and Idaho. Brucellosis is rampant in the bison herds. The Park is unable to control the brucellosis for various reasons, although the disease has been controlled in the buffalo herds located at Moiese. The bison leave the Park for various reasons: weather, breeding patterns, and overpopulation. As long as the Park continues to stick their heads in the sand and refuse to recognize the obvious over use and grazing that occurs within the confines of the Park, the problem will continue. The animals must migrate "someplace." The Park must control the bison herd. Mr. Teigen stated that HB 568 is a step in the right direction.

Noel Larrivee, attorney in private practice, stated that he has been involved in bison situations for two years.

Larrivee stated the bill will prove the department flexibility in dealing with Yellowstone National Park. The Legislature or the Fish and Game Commission do not have the legal capacity to command Yellowstone Park to control the brucellosis problem of the migratory bison. Even if the buffalo were killed, the brucellosis problem would continue. The contamination problem can accrue through the placenta as the innards are left in the field after giving birth. Sixty-seven percent of the bison are contaminated. The intention of the bill is to identify methods that could address the problems. Larrivee pointed out that the problem is in a constant state of change. For example, on February 24, 1986, approximately 280 buffalo migrated into an area outside the Park that was not accessible. The hunters did not kill the bison at that time because the hunters could not enter the the Park area. The Yellowstone National Park officials have recognized the need to deal with the problem. Based on the legislative intent, communication began in 1985. HB 586 incorporates the legislative intent and codifies the law. Larrivee urges passage of HB 568.

Smoke Elser, Outfitter and Guide, representing a personal interest, stated that he was involved in the kill that took place in Yellowstone National Park in the early 1960's. At that time, the Park Service attempted to kill 10,000 elk to reduce the herd population to 18,000. The current elk population is in excess of 25,000 elk. The total buffalo herd, according to the Park Service, should be approximately 500 head of buffalo. The area of the Park, in the early years, was considerable larger than it actually is due to the fact that the surrounding ranches did not manage the ranching property. Now the opposite is true due to economic reasons. Currently, the Park does not contain enough area to properly managed the large number of game. Extensive game management problems will continue to exist until the proper officials deal with the pertinent problems in the proper manner.

There were no further proponents to HB 568.

#### OPPONENTS

There were no opponents to HB 568.

QUESTIONS FROM THE COMMITTEE: Senator Smith accepted a question from the audience. Gene Dudley asked if the buffalo could be given to the Sioux, Crow, and Cheyenne Tribes at the Tribe's expense. According to the Fish, Wildlife and Parks Department, the buffalo are the Park's responsibility when the buffalo remain in the confines of the Park.



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The Park has the authority to act on Mr. Dudley's proposal. The management of the herd and the methods of population control are under the jurisdiction of the Park officials. Once the bison enter Montana, the management and population problem is the responsibility of the Fish, Wildlife and Parks. The current law states that the buffalo will be killed by the way of a public hunt conducted by the Department. The carcasses become the property of the certified hunters.

Senator Anderson commented on the fact that a buffalo ranch once operated in Yellowstone Park. It was located in the LaMar Valley. Although the ranch was abandoned in 1949 or in 1950, the buffalo were transferred to various Indian reservations in the state.

Senator Jergeson asked for information concerning the brucellosis infection if left untreated. Senator Smith stated that it is nature's way of controlling the herd population. It is an unfortunate situation when many people go hungry and cannot afford meat for their meals.

Senator Smith asked Representative Fritz about the proposed barrier construction that would limit the movement of elk and other wildlife. Representative Fritz stated that it was not the intent of the legislation to construct a permanent barrier. A seasonal barrier such as a snow fence could be constructed. The buffalo migrate in the months of January and February. Senator Bishop reported that the "snow fence would have to be a pretty good size fence." The elk migrate at the same time of the year, and the barrier would prevent elk migration.

Senator Bishop asked what percentage of the elk herds had the brucellosis infection. Mr. Johnson reported that the brucellosis infection was low in the elk herds. In areas such as the Gallatin and the Gardiner locales, the brucellosis infection rate is very low. Senator Bishop asked if the disease was transmitted from the wild animals to the domestic animals. Mr. Johnson did not recall a transmission occurring. Dr. March documented the same organism tends to breed back and forth between cattle and buffalo. A Wyoming veterinarian employed by the state is conducting experiments. The results of the tests show that one of the main problems is due to the congestion of the elk herds.

Senator Bishop asked what can be done about the severe elk congestion in the Park. Representative Fritz said the solution is not addressed in the legislation, but acknowledged severe criticism of the Park's management of wildlife.

Representative Fritz stated that HB 586 may impact the Park Service to undertake a different form of animal management within Yellowstone National Park. The debate concerning the different types of animal management includes massive killing of wildlife to gain control of the population.

Senator Bishop asked Representative Fritz about the intent of the bill. The bill does not keep the hunters from killing the buffalo as they leave the confines of the Park, but the bill will avert a massive killing of the entire herd.

Senator Severson commented on the success rate of the National Bison Range in connection with game management. The buffalo are managed in the manner that cattle are managed. A buffalo crop is sold every year. The direction of the Yellowstone Park's management must come from the federal level: Congress.

Senator Bishop stated that the bison coming out of the Park into Montana are killed in a legal manner. The hunts bring revenue into Montana, as well as to the Department of Fish, Wildlife and Parks. House Bill 586 will necessitate additional revenue be spent to construct fences that will not control the migration.

Senator Yellowtail asked what money was generated for the state in regards to the buffalo hunts as the animals cross the state line. The revenue consists of: \$5.00 drawing fee; \$200 for a resident license or \$1,000 for a nonresident license; and minus administrative costs. The intent of the legislation is to develop dialogue with the Park Service in order to solve the management problems.

Senator Anderson commented that cooperation has been accomplished with Yellowstone Park on different occasions, and stated that the legislation may accomplish better management cooperation. Mr. Johnson stated the intent is better management.

Senator Severson stated the Park Service is governed by their own rules, regulations and laws. Congress must give the Park Service direction. Active game management is the key.

Representative Fritz stated the book, "Playing God in Yellowstone," by Austin Chase offered solutions. Representative Fritz questioned whether or not Montana wants to do "the dirty work" in pursuing the matter further. The Department needs the legislative backing in order to give the legislation the needed credibility.

The hearing was closed on HB 568.

EXECUTIVE ACTION

Senator Smith accepted a question from the audience. Mr. Dudley asked who owns the buffalo after they have entered the state of Montana. The buffalo become the responsibility of the state after they cross the state line. Mr. Dudley asked why space would be a problem in Yellowstone National Park. Senator Smith stated that the only available grass is sometimes on private property and the buffalo need space, especially when the herds are so large.

Senator Anderson made a motion to BE CONCURRED IN on HB 586. Senator Yellowtail pointed out that there is not sufficient scientific evidence concerning the brucellosis problem in the bison. Deer and elk travel freely among domesticated animals. This is cause for concern in regards to the other stains of the disease; brucellosis.

Senator Smith stated that this issue is the only legislation that attempts to address the brucellosis problem. Senator Yellowtail stated, as a practical matter, any individual running livestock in close proximity of the infected bison has reason to be concerned.

Senator Smith stated Brucellosis is not the only problem. The overpopulation of the bison is also a grave concern. The forage is inadequate. The buffalo "belong to the Park Service", and animal management must originate on the Park Service's side.

Senator Bishop stated that it would take a great amount of revenue to devise ways of putting the "squeeze" on the Park Service. What is the point of spending additional revenue when every bison leaving the Park is killed. Senator Smith stated that the Park Service will have to continue current management procedures until a solid agreement is made. Approximately 1,500 buffalo should be killed in order to control the herds. Senator Severson stated if the legislation requires a substantial amount of revenue, he is not in favor of the bill.

Senator Bishop stated that the bill is designed to use all the available means to keep the buffalo confined in the park. The definition of "by other methods" means

that the bison will not be shot or killed, but restrained by other methods. The cost of confining the bison to the Park under the previously described methods will be very costly.

Mr. Johnson stated that it is the Park's responsibility to keep the bison confined to the Park. Mr. Johnson stated there has to be another method of "getting at the bison" if the overgrazing issue is not resolved. The herds must be reduced at any cost. The Department will continue to shoot the bison as they step foot in Montana. Another problem that must be addressed by the Forest Service is the water quality problem.

Senator Severson asked Mr. Johnson if the Department of Fish Wildlife and Parks intends to become involved in building fences such as snow fences. Mr. Johnson replied no.

Senator Bishop stated that he is opposed to the building of any type of fence no matter who decides to build the fences.

Senator Jergeson stated that the fence will not contain the buffalo should the animal "decide to take off." Senator Severson stated that he did not think the bill was necessary because the same accomplishments would take place with or without the legislation. Mr. Johnson agreed with Senator Severson.

Senator Severson made a substitute motion to recommend to the committee a BE NOT CONCURRED IN. Senator Yellowtail questioned the passage of the substitute motion. Will the action of the committee discourage communication between the Fish, Wildlife and Parks Department and the Park Service. Senator Smith agreed that the dialogue could be in jeopardy.

A roll call vote was taken on the substitute motion of BE NOT CONCURRED IN. The substitute motion failed with Senators Jacobson, Severson, and Bishop voting aye. At the wisdom of the committee, the vote was reversed for consideration of the original motion. The motion passed. Senator Yellowtail will carry the bill.

DISPOSITION OF HOUSE BILL 533: Senator Severson moved that the committee recommend a BE CONCURRED IN. The motion passed unanimously.

DISPOSITION OF HOUSE BILL 424: Senator Bishop moved that HB 424 BE CONCURRED IN. The Motion passed unanimously.

DISPOSITION OF HOUSE BILL 329: Senator Severson made a motion that the committee recommend a BE NOT CONCURRED IN. Senator Anderson stated the committee agreed that HB 740 would be considered before the final vote. Senator Yellow-tail asked why Senator Severson objected to the bill. The fines are too large and it would be a double fine. The amendments made some improvement in the language. Senator Smith stated the purpose of the bill is to control bounty hunters from exporting the animals out of state. The fines are not large enough for the type of people that would illegally hunt trophy animals. This is a lucrative and illegal activity. Senator Bishop moved the amendments offered by Janet Ellis. (Exhibit 6) At the wisdom of the committee, the amendments will be examined by staff, Andrea Merrill.

DISPOSITION OF HOUSE BILL 568: Senator Jacobson stated the Department already had the authority to kill the buffalo when they crossed the state line. The 1985 legislation was not necessary. The way the legislature could make the Department kill the bison was to enact the legislation. The Department will now repeal the law by the language: "other method".

Senator Smith stated the Department must kill the buffalo coming out of the park because of statutes. Senator Jergeson stated that there is not a fence or a can of mace that is "large enough" to contain a buffalo.

Mr. Johnson stated that the bison hunting season is administered by the Department of Fish, Wildlife and Parks

The Statement of Intent states the Legislature encourages further negotiation and cooperations between the Department of Fish Wildlife and Parks and the National Park Service to seek other means or methods of controlling, as soon as possible, the migration of wild buffalo into Montana from Yellowstone National Park. The new bill with the amendment would put the legislative intent into law.

Senator Jergeson stated the Legislative intent is to be a control issue. Mr. Johnson stated the bill was drafted because of the concern that 2,000 buffalo would migrate out of the Gardiner area at one time and be eliminated.

The Department will continue to shoot the buffalo as they come out of the Park.

Senator Jergeson moved that the committee reconsider action on HB 568. The motion carried unanimously. Senator Jergeson made a motion to table House Bill 568. The motion passed unanimously.

DISPOSITION OF HOUSE BILL 329: Senator Yellowtail discussed the amendment concerning magistrates and the collection and distribution of fines. As the bill is written presently, the department collects 100% of the fines, but the magistrate's bill would standardize the collection and distribution of the fine. The proposed magistrate's amendment would amend a coordination instruction. Therefore, the department would get 50% of the fine, and the county would get 50%. This is a major policy decision. The Department and the Magistrate employees are in dialogue concerning this issue. Action on HB 329 will take place at a future committee hearing.

ADJOURNMENT: There being no further business before the Senate Fish and Game Committee, the meeting was adjourned at 2:35 p.m.

A handwritten signature in cursive script that reads "Ed Smith".

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SENATOR ED SMITH, Chairman

# ROLL CALL

## SENATE COMMITTEE--FISH AND GAME

50TH LEGISLATIVE SESSION - 1987

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Date: March 17, 1987

NAME	PRESENT	ABSENT	EXCUSED
Senator Ed Smith, Chairman	X		presented bill at committee
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		

COMMITTEE ON

DATE

March 17, 1987

## VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Janet Ellis	MT Audubon	HB 329 HB 424	✓	
Sheff Anderson	Self	HB 329	✓	
Arthur Evans	Dept of Fish, Wildlife + Parks	HB 322		
Dick Johnson	Mont Fish Wildlife + Parks			
Clarence Blatten				
Elizabeth Russell	Shelby High			
Dan Tesdal	Shelby High			
Bum Alkhal	"			
Steve Brunk	"			
Jack Wilkin	"			
Mike Lager	"			
John McCarty	"			
Paul Brandt				
Ralph Eubank	Rep. H. D 60 - Animals			
Simka Elson	M.O.G.A.	533	✓	
Roy Currey	M.O.G.A.	533	✓	
John Klokriach	MWF (C)	524	✓	
Neil Larrabee	Self	568	✓	
HARRY FLITZ	HID 56	568		
Nous Teigen	Int Stockgrowers + Cattlemen	568	✓	
Stan Bradshaw	Trout Unlimited	329	✓	
Jeane-Marie Soungrey	MT Seira Club	329	✓	
Geckling	Shelby High			
Mary Whitford	"			
Dan H. Sturm	Prickly Pear Sportsmen Ass.	HB 535		✓
Karen Sturm	guest			





# ROLL CALL VOTE

## SENATE COMMITTEE -- FISH AND GAME

DATE: March 17, 1987 BILL NO. HB 568 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	ABSENT	

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Mary Florence Root  
Secretary

Senator Ed Smith  
Chairman

MOTION: Substitute Motion on  
HB 568 BE NOT CONCURRED IN.

SENATE FISH AND GAME

EXHIBIT NO. # 1

HB 322  
March 17, 1987

DATE March 17, 1987

BILL NO. HB 322

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

The intent of this legislation is to amend our existing statute which makes unlawful the operation of boats while under the influence of alcohol or drugs. The bill is a response to comments from local county attorneys, many of whom feel the existing statute is poorly worded and lacks the standards necessary for effective prosecution.

The legislation first changes the wording of the existing statute so that it more closely resembles the language used in the DUI statute.

The bill then adds a new section of law which will accomplish several things. It will provide for the use of the same standards regarding the phrase "under the influence" as are used in the DUI context. It also allows for the introduction into evidence of any BAC test results, as well as any other competent evidence bearing on the "under the influence" question. It further provides that if a person charged with violating this section of the law were asked to take a BAC test and refused, such refusal would be admissible evidence in any future prosecution.

Finally, the new section incorporates some provisions from the motor vehicle code which specify how, procedurally, BAC testing is to be done and adopts the motor vehicle code definition of "blood alcohol concentration".

The Department supports these changes and believes their adoption will eliminate the problems inherent in the language of the existing statute.

Amendments to HB 322  
SECOND READING COPY  
Second Printing, As Amended

SENATE FISH AND GAME

EXHIBIT NO. #2

DATE March 17, 1987

BILL NO. HB 322

1. Page 4, line 18.  
Insert: (5) As used in 23-2-523(2), the term "under the influence" shall have the meaning provided in 61-8-401(3).
2. Page 5, line 2.  
Insert: New Section. Section 5. Coordination Instruction. If House Bill 163, including the section defining the phrase "under the influence" is not passed and approved, Section 2(5) of this act is void.

SENATE FISH AND GAME

EXHIBIT NO. #3

DATE March 17, 1987

BILL NO. HB 533

HB 533  
March 17, 1987

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

This proposed legislation provides a pool of 25 antelope permits for disabled hunters to hunt in areas approved by the Fish and Game Commission. If more than 25 applications are received, a drawing will be held to determine the successful applicants.

The department issued 59,000 antelope licenses statewide last year. Reserving 25 for the disabled should have no impact on the general hunting public.

We recommend approval of HB 533.

HB 329  
March 17, 1987

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

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

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

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

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

The department supports the House amendment requiring a finding that the criminal act must have been done knowingly or purposely before a restitution penalty is ordered. A person who was only negligent or careless would not be subject to the penalty. However, a person who knew he was committing an act that is illegal or acted with the purpose of committing an act that is illegal would be subject to the penalty.

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

We recommend your approval of this bill.

HB 329: Restitution for illegally taking wildlife

SENATE FISH AND GAME

#5  
March 17  
HB 329

-HB 329 sets up schedule for illegally taking wildlife

-Idea behind bill is to equalize the penalties assessed on illegally taken wildlife throughout the state.

-certain judges always charge poachers the lowest possible fine - treating wildlife offenses like "parking tickets."

-Examples:

- 1) Recently a bighorn sheep ram was poached and the poacher was charged a \$500 penalty for the offense.
- 2) Another incident happened near Kalispell where a man killed 2 bull moose, left one to rot, and was convicted and charged a \$300 fine.

-Judges still have the ability to assess a charge for breaking the law. This does not take that away from them. Additionally, Montana would get some of the value of the lost wildlife back.

-The restitution money goes back to the resource by supporting the operating budget of Fish, Wildlife & Parks. This point is worth emphasizing: current fine money collected by FWP (with the exception of boating and snowmobile fines) are earmarked by the legislature to pay the unfunded liability of the game warden's retirement system. If additional fines are levied, we feel that the resource should benefit from those fines.

-If a person has caught "one over the limit." The person gets to keep his/her legal limit. The only fine that could be assessed is for the illegally taken fish or game.

-What about landowners defending their property from depredating animals? In the Supreme Court case of the State vs Rathbone, it was clearly established that landowners can defend their property from depredating animals. Landowners would hence be not fined if they were protecting their property. Must contact FWP before acting.

-HB 329 is <sup>especially</sup> important because of the increase in commercial poaching operations in Montana:

- 1) Operation Trophy Kill a few years ago confiscated a long list of animals (see attached sheet).
- 2) In June, 1986, the following animals were confiscated from one individual:

3 grizzly bears	4 mule deer mounts
1 mountain goat mount	1 6'X7' elk rack
1 black bear cub mount	1 4'X4' mule deer rack
3 whitetail deer mounts	

BACKGROUND:

- 10 <sup>states</sup> were surveyed to set up the restitution schedule found in this bill: Arizona, Washington, Idaho, Colorado, Oregon, Nevada, South Dakota, Nebraska, Tennessee, & Michigan.

-The penalties set in this bill reflect average values seen in other states (although there is obviously some variation among states):

Example: Bighorn Sheep: Arizona (lowest) at \$500, most states at \$1000 (including Montana in HB 329), So. Dakota high at \$10,000.

Amendments to HB 329

1. Page 1, line 18  
Following: "(2)"  
Strike: "SIX-POINT OR LARGER BULL"
2. Page 1, line 20  
Following: "(3)"  
Strike: "FOUR-POINT OR LARGER BUCK"
3. Page 1, line 20  
Following: "deer,"  
Insert: "antelope"
4. Page 1, line 25  
Following: "SWAN)"  
Insert: "and nongame birds (except raptors)"
5. Page 1, line 21  
Following: "and"  
Insert: "pallid and white"
- 6.a. Page 2, line 24  
Strike: "AND TURKEY"
- b. Page 2, line 24  
Strike: "AND TURKEY"
- Page 1, line 23  
Following: "grayling"  
Insert: "turkey"

These 3 amendments  
restore penalties for  
deer, elk and antelope.

One of these two  
amendments need to be  
accepted.



MEMORANDUM

Oct, 1984

names and location of known kills in Montana  
in guided hunts

Bear Creek, Gardiner  
Sphinx Creek, Gardiner  
Wine Glass Mtn., Livingston  
West Boulder, Livingston  
Hellroaring Creek, Gardiner  
Arch Lake, Columbus  
Townsend

lands and offered for sale

Townsend  
Townsend  
Townsend  
Townsend  
Deer Creek, Big Sky  
Big Sky  
Miner Basin, Gardiner  
Cinnibar Mtn, Gardiner  
Gardiner Area  
Boulder River, Big Timber  
Stillwater River, Columbus  
Hellroaring Creek, Gardiner  
Yellowstone National Park  
West Boulder, Livingston  
West Boulder, Livingston  
Gardiner Area  
Gardiner Area  
Pray Area  
Wineglass Mtn., Livingston  
Crazy Mtns. Big Timber  
Hellroaring Creek, Gardiner  
Slough Creek, Gardiner  
West Boulder River  
West Boulder, Livingston

and two other groups that are known to be in the area but the other around Big  
we are not aware of.

means of taking stock-killing bears, stock-killing mountain lions, and stock-killing bobcats may be used except the use of the deadfall.

(2) Traps used in capturing bears shall be inspected twice each day with the inspections 12 hours apart.

History: En. Sec. 14, Ch. 238, L. 1921; re-en. Sec. 3694, R.C.M. 1921; amd. Sec. 5, Ch. 77, L. 1923; amd. Sec. 15, Ch. 192, L. 1925; amd. Sec. 12, Ch. 59, L. 1927; amd. Sec. 1, Ch. 162, L. 1931; amd. Sec. 1, Ch. 159, L. 1941; amd. Sec. 5, Ch. 224, L. 1947; amd. Sec. 1, Ch. 157, L. 1949; amd. Sec. 1, Ch. 126, L. 1951; amd. Sec. 1, Ch. 223, L. 1953; amd. Sec. 1, Ch. 193, L. 1955; amd. Sec. 1, Ch. 53, L. 1963; amd. Sec. 1, Ch. 34, L. 1967; amd. Sec. 1, Ch. 90, L. 1969; amd. Sec. 1, Ch. 201, L. 1969; amd. Sec. 1, Ch. 177, L. 1971; amd. Sec. 1, Ch. 124, L. 1973; amd. Sec. 1, Ch. 305, L. 1973; amd. Sec. 1, Ch. 108, L. 1975; amd. Sec. 1, Ch. 152, L. 1975; amd. Sec. 9, Ch. 9, L. 1977; amd. Sec. 1, Ch. 196, L. 1977; amd. Sec. 3, Ch. 235, L. 1977; amd. Sec. 1, Ch. 400, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 1, Ch. 465, L. 1977; R.C.M. 1947, 26-301(part 5)(a)).

87-3-128. Exceptions -- department personnel. The provisions of this chapter relating to methods of herding, driving, capturing, taking, locating, or concentrating of fish, game animals, game birds, or fur-bearing animals do not apply to the department or to any employee thereof while acting within the scope and course of the powers and duties of the department.

History: En. Sec. 14, Ch. 238, L. 1921; re-en. Sec. 3694, R.C.M. 1921; amd. Sec. 5, Ch. 77, L. 1923; amd. Sec. 15, Ch. 192, L. 1925; amd. Sec. 12, Ch. 59, L. 1927; amd. Sec. 1, Ch. 162, L. 1931; amd. Sec. 1, Ch. 159, L. 1941; amd. Sec. 5, Ch. 224, L. 1947; amd. Sec. 1, Ch. 157, L. 1949; amd. Sec. 1, Ch. 126, L. 1951; amd. Sec. 1, Ch. 223, L. 1953; amd. Sec. 1, Ch. 193, L. 1955; amd. Sec. 1, Ch. 53, L. 1963; amd. Sec. 1, Ch. 34, L. 1967; amd. Sec. 1, Ch. 90, L. 1969; amd. Sec. 1, Ch. 201, L. 1969; amd. Sec. 1, Ch. 177, L. 1971; amd. Sec. 1, Ch. 124, L. 1973; amd. Sec. 1, Ch. 305, L. 1973; amd. Sec. 1, Ch. 108, L. 1975; amd. Sec. 1, Ch. 152, L. 1975; R.C.M. 1947, 26-301(10); amd. Sec. 9, Ch. 44, L. 1979.

87-3-129. Exception in cases of extreme hunger. When it is shown that any violation of the provisions of this title was for the purpose of preventing great suffering by hunger of any person which could not otherwise have been avoided, the provisions of this title shall not apply to the case.

History: En. Sec. 79, Ch. 173, L. 1917; re-en. Sec. 3758, R.C.M. 1921; re-en. Sec. 3758, R.C.M. 1935; amd. Sec. 25, Ch. 9, L. 1977; R.C.M. 1947, 26-1006.

87-3-130. Taking of wildlife to protect persons or

87-3-129. This section makes it clear that the restitution penalties will not apply to persons who need food for survival.

87-1-223a. Regulation of wild animals damaging agriculture. Upon the request or complaint of any landholder or person in possession and having charge of any land in the state that wild animals of the state protected by the fish and game laws and regulations are doing damage to the property or crops thereon the department shall investigate and study the situation with respect to damage and depredation. The department may then decide to open a special season on the game or, if the special season method be not feasible, the department may destroy the animals causing the damage. The department may authorize and grant the holders of said property permission to kill or destroy a specified number of the animals causing the damage. No wild ferocious animal damaging property or endangering life shall be covered by this section. History: En. Secs. 1 & 2, Ch. 60, L. 1937; and Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-135.

87-1-226a. Disposition of wild animals damaging agriculture. The meat of all animals killed or destroyed pursuant to 87-1-225 by the department or the authorized landholder shall be conserved and given to state institutions, school lunch programs or the department of social and rehabilitation services. The department shall provide transportation and distribution of the meat. History: En. Sec. 2, Ch. 60, L. 1937; and Sec. 22, Ch. 511, L. 1973; R.C.M. 1947, 26-136.

87-1-227a. Hunting clubs on adjoining federal wildlife preserves. (1) The department shall negotiate for and enter into written agreements with owners, lessors, lessees or others having control of areas, tracts or parcels of land adjoining or contiguous to any United States federal wildlife preserve including any wildlife refuge for migratory waterfowl in any section of Montana for the purpose of securing equal hunting and shooting rights for all resident holders of fish and game licenses in Montana on such adjoining and contiguous lands and preventing such preserves from being surrounded by lands whereon such licenses may not enter. The department shall, further, open or cause to be opened to public hunting and shooting of migratory waterfowl on any roads, lanes and trails not a part of the traveled portion of any federal-aid highway system within a 1-mile limit from the boundaries of any such preserve or refuge. The department shall cause any such areas, tracts, road, lane, or trail to be plainly posted with clear signs showing the boundaries of the areas, tracts, roads, lanes or trails open to shooting and hunting by licensees.

(2) The department is hereby authorized to negotiate the payment of a reasonable sum to landowners, lessors or lessees for the right of the department to create a public shooting area upon their lands. The amount that may be paid for such purpose shall rest in the discretion of the department. History: En. Secs. 1 & 2, Ch. 224, L. 1943; and Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1120, 26-1121.

87-1-228a. Agreement with Indians concerning hunting and fishing on Indian lands. (1) Whereas, by treaty of July 16, 1855, between the United States of America, represented by Isaac L. Stehens Governor and Superintendent of Indian Affairs for the territory of Washington and the chiefs, headmen and delegates of the confederated tribes of the Flathead, Kootenai and Upper Pend Oreille Indians, the said Indians were given the exclusive right to fish and hunt on the Flathead Indian reservation and the

87-1-225. If an animal is "protected" under Montana law, this section gives the Department of Fish, Wildlife & Parks the authority to destroy an animal that is causing damage to property or crops.

#6  
3-17-73  
14 B 329

(5) Money derived from tax checkoff contributions to the account will replace license fee funding for nongame wildlife programs after June 30, 1985, and may not be used to replace money that would otherwise be appropriated for nongame wildlife programs.

(6) The department of revenue may deduct from collections an amount not to exceed \$7,884 in fiscal year 1986 and \$7,884 in fiscal year 1987 for administering the voluntary checkoff program. The department is authorized to spend the amounts and hire necessary personnel and shall provide an itemized accounting to the legislative finance committee of the cost of administering the checkoff program during fiscal years 1986 and 1987. (Terminates December 31, 1987--sec. 7, Ch. 627, L. 1983.)

History: En. Sec. 2, Ch. 627, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 2, Ch. 436, L. 1985.

87-5-122. (Temporary) Duties of commission. (1) The commission shall review and approve annually the nongame wildlife programs projects recommended by the department for funding from the nongame wildlife account. The commission shall provide for public comment during the review and approval process.

(2) The commission may adopt rules governing:

- (a) the use of the nongame wildlife account set forth in 87-5-121; and
  - (b) the review and approval process set forth in subsection (1).
- (Terminates December 31, 1987--sec. 7, Ch. 627, L. 1983.)

History: En. Sec. 4, Ch. 627, L. 1983.

87-5-123. (Temporary) Report. The department shall report to the 50th legislature the results of any program using money from the nongame wildlife account and shall list in detail how the money collected was used. (Terminates December 31, 1987--sec. 7, Ch. 627, L. 1983.)

History: En. Sec. 5, Ch. 627, L. 1983.

## Part 2 Wild Birds -- Regulation of Raptors

87-5-201. Protection of wild birds and their nests and eggs. (1) It is unlawful for a person to hunt, capture, kill, possess, purchase, offer or expose for sale, ship, or transport any wild bird, other than a game bird, or any part of the plumage, skin, or body of the bird, irrespective of whether the bird was captured or killed within the state, or to take or destroy the nest or eggs of a wild bird, except under a certificate, falconer's license, or permit issued by the director.

(2) This section does not apply to:

(a) the hunting, trapping, or killing of house sparrows, crows, starlings, rock doves, blackbirds, magpies, and other birds the department designates or to the taking or destruction of their nests and eggs;

(b) the possession or transportation of parts or plumage of eagles used for religious purposes by a member of an Indian tribe when possessed or transported as permitted by 16 U.S.C. 668a.

History: En. Sec. 41, Ch. 173, L. 1917; re-en. Sec. 3723, R.C.M. 1921; amd. Sec. 18, Ch. 77, L. 1923; amd. Sec. 20, Ch. 59, L. 1927; re-en. Sec. 3723, R.C.M. 1935; amd. Sec. 16, Ch. 224, L. 1947; amd. Sec. 2, Ch. 309, L. 1971; amd. Sec. 33, Ch. 511, L. 1973; amd. Sec. 38, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-501; amd. Sec. 1, Ch. 301, L. 1983.

87-5-201. Under this section it is made clear that the hunting and killing of depredating birds such as crows and magpies is allowed.

#6  
3-17-85  
209  
(25)

History: En. Sec. 3, Ch. 309, L. 1971; *amd.* Sec. 34, Ch. 511, L. 1973; *amd.* Sec. 1, Ch. 34, L. 1974; *amd.* Sec. 39, Ch. 9, L. 1977; *amd.* Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-501.1(10), (11).

87-5-208. Nonresidents allowed raptors in state. Nonresidents who are working, attending schools, or otherwise living temporarily in the state of Montana may obtain a Montana falconry license and bring raptors, legally acquired in other states or countries, into the state of Montana. Such nonresidents shall be allowed to hunt with falcons in the state of Montana subject to all Montana laws and rules.

History: En. Sec. 3, Ch. 309, L. 1971; *amd.* Sec. 34, Ch. 511, L. 1973; *amd.* Sec. 1, Ch. 34, L. 1974; *amd.* Sec. 39, Ch. 9, L. 1977; *amd.* Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-501.1(16).

87-5-209. Destruction of eagles or predatory hawks and owls. Predatory hawks and owls destroying livestock or poultry may be killed at any time by the livestock or poultry owners. Eagles may be killed in compliance with federal law and regulation.

History: En. Sec. 3, Ch. 309, L. 1971; *amd.* Sec. 34, Ch. 511, L. 1973; *amd.* Sec. 1, Ch. 34, L. 1974; *amd.* Sec. 39, Ch. 9, L. 1977; *amd.* Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-501.1(17).

Part 3

Grizzly Bear and Wild Buffalo

87-6-301. Policy toward grizzly bear. It is hereby declared the policy of the state of Montana to protect, conserve, and manage grizzly bear as a rare species of Montana wildlife.

History: En. Sec. 1, Ch. 134, L. 1969; R.C.M. 1947, 26-307.2.

87-6-302. Commission regulations on grizzly bear. The commission shall have authority to provide open and closed seasons; means of taking; shooting hours; tagging requirements for carcasses, skulls, and hides; possession limits; and requirements for transportation, exportation, and importation of grizzly bear.

History: En. Sec. 2, Ch. 134, L. 1969; R.C.M. 1947, 26-307.3.

87-6-303. Wild buffalo protected. It is unlawful to hunt, shoot, kill, capture, or possess wild buffalo except as permitted by rules adopted by the department.

History: En. Sec. 4, Ch. 167, L. 1973; *amd.* Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-301.1.

87-5-209. Under this section eagles, hawks & owls destroying livestock or poultry may be killed.

# 6  
3-1-75

## Warden nabs greedy anglers

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

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

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

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

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

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

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

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

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

### Californians nabbed with 187 fish

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

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

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

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

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

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

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

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

*Montana Tribune-Examiner Friday Oct. 10, 1986*

HB 424  
March 17, 1987

SENATE ROOM AND GOWNS  
8  
3-17-87  
HB 424

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

HB 424 revises the penalties for the unlawful taking or possession of fur-bearing animals. It increases the maximum fine from \$200 and/or 30 days in jail in the existing statute to \$1,000 and/or imprisonment in the county jail for not more than 6 months.

With the present value of furs at an all-time high, fines have not kept pace with the dollar value of pelts. A \$50-\$200 fine does not act as sufficient deterrent for violators when bobcat pelts brought up to \$716 and lynx \$980 in U.S. currency at the Canadian auctions during February. Bobcats raised in private fur farms are worth \$600-\$700. This high monetary value puts a tremendous strain on the resource.

We feel this legislation is more reflective of the current situation, and recommend your approval of this bill.

HB 568  
March 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 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 recommend approval of this legislation.



SENATE FISH AND GAME  
EXHIBIT NO. \_\_\_\_\_  
DATE \_\_\_\_\_  
BILL NO. \_\_\_\_\_

TO: REP. BOB REAM  
FROM: Jim Haynes, Montana Magistrate's Association Lobbyist  
RE: H.B. 329 - Coordination with H.B. 740  
DATE: March 17, 1987

H.B. 740 amends sixty-four (64) existing code sections to relieve Justice Courts of their current burdensome bookkeeping method without shifting the work to any other agency.

A coordinating amendment as follows would conform H.B. 329 with H.B. 740:

H.B. 329, Page 2, Line 17, "EXCEPT MONEY PAID TO A JUSTICE COURT"

*pursuant to [H.B. 740]*

TESTIMONY OF STAN BRADSHAW  
MONTANA STATE COUNCIL, TROUT UNLIMITED  
MARCH 16, 1987

Mr. Chairman, members of the Committee, my name is Stan Bradshaw. I am testifying on behalf of the Montana State Council of Trout Unlimited. Trout Unlimited is dedicated to the conservation of Montana's cold water fishery in Montana. To that end, we have always supported laws and regulations which would enhance cold water fisheries in Montana. We believe that H.B. 329 will be an important asset in the state's conservation efforts.

Recently, there has been considerable abuse of the state's bag limits on both trout and kokanee salmon. Existing penalties have not provided sufficient inducement to obey hunting and fishing regulations. H.B. 329 provides a penalty comensurate with the size of the infraction. It provides additional leverage to the department in its efforts to curb violation of the state's fish and game laws. Therefore Trout Unlimited urges the Committee to support the passage of H.B. 329.

# INDEPENDENT

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FROM MONTANA'S CAPITAL  
**RECORD**



**SUNDAY  
MORNING**  
February 1, 1986  
Helena, Montana  
Vol. 43 No. 72

## Outfitter trial

### S. Dakota hunters awarded \$5,200

By JILL SUNDBY  
IR Staff Writer

The two South Dakota brothers who sued outfitter Tag Rittel of Wolf Creek for fraud and unfair business practice were awarded \$5,200 in Helena District Court Saturday.

Lloyd and Larry Weaver's suit stated they had signed up for a 10-day hunting trip with two guides — including Rittel — and that they were promised a grizzly hunt.

THE BROTHERS DID not receive Rittel as a guide, and they alleged that the guides they did get were inexperienced, had never been in that particular hunting area (the Scapegoat Wilderness) before and had never hunted grizzlies.

The 12-person jury deliberated more than 12 hours, according to jury foreman David Maughan, but finally came to a unanimous verdict around 1 a.m. Saturday.

"WE WERE CAUTIOUS and we wanted to be fair," said Maughan when asked why a unanimous verdict took so many hours. During the deliberation "there were times we were not in agreement, but by the time we were polled in the courtroom we were unanimous."

He said they spent two-thirds

## Trial

Continued from Page 1A

of their deliberation time deciding on the monetary consideration. The plaintiffs asked for \$25,000 in actual and emotional damages, and unspecified punitive.

BECAUSE THE HUNT was planned mostly by telephone, "it took awhile to decide what the contractual basis of their hunt was," said Maughan.

He said the jury finally decided the Weavers had been wronged under the Montana Consumer Protection Act and that "Mr. Rittel or his agents did not present the full picture."

RITTEL HAD SOLD his outfitting business prior to the Weaver's hunt, and Maughan said Rittel neglected to tell the Weavers of this change of ownership.

Maughan said Rittel should have informed the Weavers he would not be their guide. (Rittel has a reputation for having good luck in hunting grizzlies, and the Weavers wanted him as their guide.)

The defense argued the Weavers were not specifically promised a grizzly hunt nor specifically promised Rittel as a guide.

(More TRIAL, back page)

# Meagher County News

White Sulphur Springs, Montana 59645 - Thursday, December 6, 1984

PRICE 25 CENTS

Unscrupulous hunting consultant . . .

## Hunting license transfers bring justice court charges

"This is just the tip of the iceberg" stated Montana Department of Fish, Wildlife and Parks Warden Gene Clark in describing the uncovering of a Michigan hunting consultant's transfer of non-resident hunting licenses to his clients who were unable to obtain the proper licenses in legal state drawings. Clark said that he is presently heading up an investigation which involves game wardens in Kansas, Michigan, Wyoming and Montana and that more charges will be forthcoming as the investigation unravels additional evidence.

Dennis Salsgiver of Davison, Michigan, who operates Grand Slam Hunting Consultants, plead guilty to a charge of transfer of license, a misdemeanor, in Justice of the Peace Court of Vernon Meyers Monday, November 26. A second charge of solicitation to hunt a big game animal within the State of Montana without first having obtained a proper license or permit to do so, was dropped in a plea bargain agreement reached with Meagher County Attorney John V. Potter. Salsgiver was fined \$500 and forfeited hunting and fishing privileges and licenses within the State of Montana for a period of 24 months after date of his conviction.

Two hunters from Overland Park, Kansas, an outfitter from Livingston, and a couple from Flint, Michigan were involved in the original case against Salsgiver.

Clark went on to say "It looks like transfer, even buying and selling of the B10 \$300 non-resident license may be more than just an occasional happening, but a thriving black market. With the limit of 17,000 and the speed of sell out, they will even be more endeared to the hunter of the future with no limit to the imagination of the unscrupulous booking agent like Salsgiver."

Clark further pointed out that these agents, like a travel agent, furnish a valuable service to both the hunter and the outfitter, but that there is no room in the hunting world for the dishonest types. "Clean up or stay out of Meagher County" was his comment.

Warden Clark went on to describe how the investigation uncovered Salsgiver's operation and the ultimate charges brought against him.

The first time that Warden Clark learned of Dennis Salsgiver was during a conversation with rancher-outfitter Bill Galt while Clark and Galt were discussing the 1984 hunt-

ing season and an upcoming trophy auction of confiscated items to be held in Bozeman. Galt told Clark that he was working with a booking agent named Dennis Salsgiver and that he also had expressed an interest in the trophy auction.

Galt, Clark and rancher Bill Loney made plans to attend the trophy auction, but when time came to go, Galt and Loney were unable to attend. Clark on his day off, his wife Alice and Pam Loney, Bill's wife, attended the sale.

During the sale a person doing a lot of bidding and buying attracted Clark's attention and upon checking with a clerk at the auction Clark learned that the buyer was Dennis Salsgiver. Eleven different lots at the auction went to Salsgiver, including a black bear cape, a mountain lion hide, five bighorn sheep horns and four bighorn sheep capes for which he paid a total of \$1,635.00.

Later on in late June or July, when Clark was discussing the upcoming fall hunt with Bill Galt, the name of Salsgiver again came up. Salsgiver had promised to book a certain number of whitetail deer hunts for Galt for a free deer hunt for himself. When Galt contacted Salsgiver to see if he could still find a hunter or two, he was informed that it would be no problem. Galt questioned Salsgiver about the fact that all the licenses had been sold, but he was told that would not be a problem.

Early in September Clark went on to state that he had learned that outfitter Doug Caltrider was also booking hunters through Dennis Salsgiver, doing business as Grand Slam Hunting Consultants. Part of the booking bargain was also a free hunt with Caltrider.

A young couple from Flint, Michigan, Thomas and Nancy Durance, booked hunts through Dennis Salsgiver for elk and mule deer with Doug Caltrider and at the same time booked a whitetail deer hunt with Bill Galt.

The Durances, who had obtained their B10 non-resident elk and deer tags during the first come, first served non-resident quota of 17,000 licenses, were instructed by Salsgiver to apply for Deer B tags for Area 446, the whitetail area where they wanted to hunt with Galt. After the drawing, when the Durances found out that they were unsuccessful in obtaining the Deer B tags, they contacted Salsgiver, ex-

pressing concern over the fact that they already had booked the whitetail deer hunt, but now had no tags to hunt with.

Salsgiver told them at that time that tags would be no problem, and before the Durances left for Montana, Salsgiver personally gave Thomas Durance a non-resident Montana Hunting license that had been issued to Ralph E. Dawson of Overland Park, Kansas. The license was a B10 non-resident license, with all tags attached plus a 1984 archery stamp on the back. He also stated to Durance that he would make sure that Galt would have the other license for them when they arrived to hunt whitetail deer.

Salsgiver travelled to Montana to hunt whitetails with Galt before the Durances arrived. Salsgiver hunted with legal Montana licenses, a B10 \$300 non-resident license and a non-resident Deer B tag for Area 446 good for either-sex whitetailed deer. At no time was any discussion had that he would be leaving any sort of license for the Durances during his deer hunt with Galt.

The Durances hunted with Doug Caltrider for their booked hunts, with Thomas Durance killing a 5x5 bull elk and a small whitetail buck and Nancy Durance killing a 4x4 bull elk and a 5x5 mule deer buck. With the taking of the elk and deer with Caltrider, the legally issued licenses of the Durances were used up. Caltrider recorded the names of the Durances, their license numbers and the type of game taken in his outfitter's log, required to be kept and submitted by all licensed outfitters in the State of Montana.

Although Salsgiver had been in the area hunting with Galt, he did not hunt with Caltrider.

After the deer and elk hunt with Caltrider, on November 5, the Durances and Caltrider met with Bill Galt for the whitetail deer hunt. The subject of deer tags came up in the conversation and Galt asked to see their licenses. At that time the license made out to R. E. Dawson was presented with the statement that Galt was supposed to have the other license for them.

The Durances stated that Galt was surprised and upset when the Dawson license was presented and the statement made that he was supposed to have a deer license for them. He told them that he was not taking them hunting without valid tags or with someone else's tags.

(Continued on Page Two)

# Illegal-hunting sting hauls in 34 suspects

By LORNA THACKERAY  
Of The Gazette Staff

Thirty-four people, including 12 Montanans, were arrested Thursday morning at the conclusion of a two-year undercover operation aimed at illegal hunting and trading in big game animals.

Some of the arrests resulted from an undercover tanning and taxidermy business operated in Colorado by the U.S. Fish and Wildlife Service. Others stemmed from illegal hunts arranged in Montana just outside the Yellowstone Park area.

"They've been bleeding those mountains around here," one Sweet Grass County official said after the arrests. He said illegal hunting had a significant impact on the number of animals found in the area.

Seventeen felony warrants and one misdemeanor complaint were filed by Pete Dunbar, U.S. attorney for Montana, in "Operation Trophy Kill." The remaining indictments came from Colorado. People from nine states will be charged.

U.S. Magistrate Jack Shanstrom arraigned 13 defendants Thursday in Livingston. Bonds for the suspects ranged from \$25,000 to \$350,000. These defendants will enter pleas to the charges before U.S. District Judge James Battin 10 a.m. Tuesday.

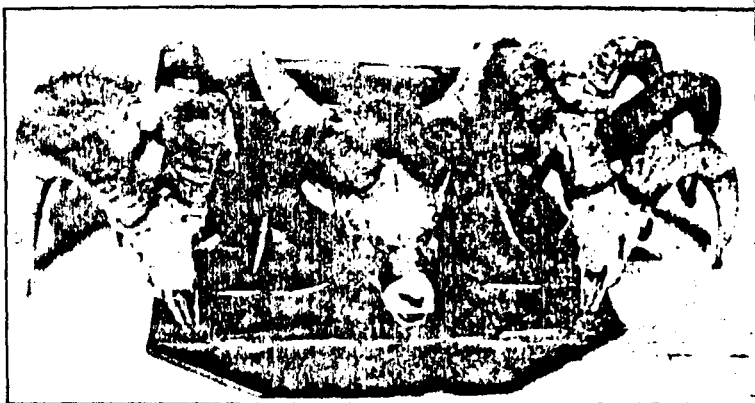
This is the second major wildlife case brought in Montana in the last four months. More than 30 people were arrested at the end of June in connection with an undercover investigation involving smuggling of endangered birds of prey.

Among those arrested was Loren J. Ellison, 33, of Livingston, who was charged with 14 counts of illegal sale and transportation of wildlife. Bond for Ellison was set at \$350,000. Ellison was arrested on similar charges last month in a sting investigation by Sweet Grass and Park County officials.

According to Dunbar, federal agents used the tanning and taxidermy business to detect smuggling of wildlife skins into the United States and to uncover trade in protected species of big game and rare birds.

Some charges allege illicit trade to the Orient, where certain wildlife parts, such as elk antlers in velvet, are believed to have medicinal and aphrodisiac powers. He said federal agents also posed as hunters to gather evidence on illegal hunts organized by some of the defendants.

(More on Trophy, Page 12A)



Three Bighorn sheep skulls and heads, above, taken or possessed illegally were part of the evidence gathered in Operation Trophy Kill. Also seized in the sting were the two spotted skins of endangered cheetah and jaguar, left, smuggled into the United States.

U.S. Fish & Wildlife Service

(This sheet to be used by those testifying on a bill.)

NAME: Janet Ellis

DATE: March 11, 1977

ADDRESS: Helena

PHONE: \_\_\_\_\_

REPRESENTING WHOM? MT Audubon Legislative Fund

APPEARING ON WHICH PROPOSAL: HB 424

DO YOU: SUPPORT? ☒

AMEND? \_\_\_\_\_

OPPOSE? \_\_\_\_\_

COMMENT: We support increased penalties for illegal taking or trafficking in furbearers just as we support higher penalties for poaching of other wildlife. Current law poses only a slight temptation to commercialize Montana's wildlife to the detriment of long-term management. Stiffer penalties would preserve the resource by reducing that temptation. Endangered species play an important role in the function of natural ecosystems, and therefore their wise management is important to the future of all other species sharing that ecosystem.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

~~(ANY OTHER INFORMATION)~~

Unsubstantiated,

~~(SOURCE)~~ -- THE QUESTION SEEMS TO BE WHY THE BUFFALO ROAM-LEK FOR THAT MATTER.

THE LONG CONTROVERSY OVER WHY THESE THINGS HAPPEN OUTSIDE YELLOWSTONE NATIONAL PARK'S BORDERS MAY BE SETTLED BY SATELLITE PHOTOGRAPHS.

PICTURES TAKEN FOR THE PAST 13 YEARS BY SATELLITE OF THE PARK'S GRASSLANDS WILL BE USED TO HELP PARK MANAGERS DECIDE WHETHER THERE IS SUFFICIENT FORAGE ON THE NORTHERN RANGE TO FEED THE PARK'S ELK AND WISON.

THE PARK HAS BEEN STUDYING THE CAPACITY OF THE NORTHERN RANGE FOR DECADES. BUT CHIEF RESEARCHER JOHN VARELY SAYS MANAGERS ARE TAKING A FRESH LOOK AT WHETHER THE RANGE CAN SUPPORT THE ELK AND WISON THAT LIVE THERE.

THE PARK SERVICE HAS AWARDED CONTRACTS WORTH 85-THOUSAND DOLLARS TO TWO SCIENTISTS TO STUDY THE NORTHERN RANGE TO SEE WHETHER IT PRODUCES ENOUGH FOOD FOR THE APPROXIMATELY 16-THOUSAND ELK AND TWO-THOUSAND WISON.

PARK SUPERINTENDENT ROBERT DARBEE SAID RECENTLY THAT IF RESEARCH INDICATES HERDS MUST BE REDUCED THEN THAT'S WHAT WILL HAPPEN.

# STANDING COMMITTEE REPORT

March 17, 1987 19

MR. PRESIDENT

Fish and Game

We, your committee on

House Bill 424

No. 424

having had under consideration

THIRD

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color

REVISE PENALTY FOR UNLAWFULLY TAKING FUR-BEARING ANIMAL

Representative Janet Moore (Senet. Al Bishop)

Respectfully report as follows: That

House Bill

No. 424

BE CONCURRED IN

XXXXX

XXXXXXXXXX

Senator Ed Smith

Chairman



June 17, 1967

18

533

INFORMATION CONCERNING THE STATUS OF APPLICATIONS

Form 5411

No. 533

Champion