

MINUTES

MONTANA SENATE  
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON FISH AND GAME

Call to Order: By Chairman Severson, on January 19, 1989,  
at 1:00 p.m. in room 402 at the State Capitol.

ROLL CALL

Members Present: Sen. Elmer Severson, Sen. John Anderson,  
Jr., Sen. Judy Jacobson, Sen. Al Bishop, Sen. Paul  
Rapp-Svrcek, Sen. Loren Jenkins, Sen. Bill Yellowtail

Members Excused: None

Members Absent: None

Staff Present: Andrea Merrill, Legislative Council

Announcements/Discussion: None

HEARING ON HOUSE BILL 7

Presentation and Opening Statement by Sponsor: Rep. Ray Peck stated that this is a scuba diver's safety bill. If you look at the bill on page 1 you will note there are three items dealing with safety measures. One prohibits a person from anchoring a vessel or obstructing a water passageway. Two prohibits boats from getting any closer than 20 feet from a marked bathing or swimming area. Three says that operating a vessel from within 50 feet of a fisherman is prohibited.

So, we are not blazing new ground, we are merely bringing to you the concerns of those people who are diving under water and have motor boats going above them. You can imagine what a motor boat can do to a human being if he gets into that propeller. This bill says that if they have their flag up and are under water, then the motor boat must stay at least 100 feet away from that flag. It is strictly to protect the diver.

On the House floor, Rep. Cobb added the words "PURPOSELY, KNOWINGLY, OR NEGLIGENTLY". You might question the power given to the Fish and Game Commission, but I think this is a necessary part of the bill. This is because we are trying to take the public

waters of Montana and share them in a manner that is safe for all the citizens. I spoke to the acting director of the Fish and Game Commission he has suggested that you as a committee may want to add something in that section (c) on page two which provides for search and rescue by law enforcement agents.

List of Testifying Proponents and What Group they Represent:

Ray Bergh, Montana Dive Council  
Jerry Moore, Minuteman Search & Rescue Team  
Ron Marcoux, Department of Fish, Wildlife & Parks  
Rep. Greg Jergeson, Montana State Representative  
Chris Rice, Vice President of Montana Dive Council  
Jack Bakich, Minuteman Search & Rescue of Billings

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Ray Bergh stated that currently, what we have been able to find, according to the statues of Fish and Game, there is nothing that recognizes the dive flag as a law today. The concern for the diver is stated quite well in the bill. The scuba tanks that the divers use contain anywhere between 2,250 lbs. of air pressure and 3,500 lbs. of air pressure. An oxyacetylene torch system K-tank oxygen is 2,250 lbs. air pressure. You can imagine if one of those tanks gets damaged and bursts. The same thing could happen to a scuba tank if a boat struck it. It would kill the diver and probably kill all the people in the boat. So, the bill is also for the safety of the boat operator. When a boat passes within the safety zone at a no-wake speed the operators of the boat will be looking and will see the dive flag. Then maybe they can see the divers or the bubbles and the boat operator will move out of the way. I, as a diver, have seen that happen and that is no problem. There could be the chance that a diver could get in trouble and have to be rescued by a boat. That is why we feel quite strongly that a boat could enter that safety zone again under the no-wake speed to retrieve that diver.

In regards to section (c) for the Commission to rule areas where the safety zone would not be allowed, I support that. If the Commission were to meet and rule as a body on this, there would be a public hearing and the divers would have the opportunity to give input and

confirm, from a divers viewpoint, whether or not that area for a diver is indeed something to stay away from. I have no opposition to the bill as written right now. I support HB 7.

Jerry Moore left his testimony and is in support of HB 7.  
See Exhibit #1.

Ron Marcoux stated that the Department of Fish, Wildlife and Parks supports promoting the safety of underwater divers. The bill, with amendments, provides opportunities to address situations where diving may unreasonably restrict or eliminate existing recreational activities. In regards to the comments brought up previously, in rule making we would invite comment from the search and rescue groups.

Sen. Greg Jergeson wanted it to be on record that he supports this bill. Thank you.

Chris Rice stated that the officers of the Montana Dive council have reviewed this bill and they are in favor of it, as are members of the Dive Council. We know there is some education that needs to be done with voters in Montana as far as knowing what a dive flag is, but we are willing to help in that. It is to our benefit as well as the boaters to work a bill like this through.

Jack Bakich of the Minuteman Search & Rescue team of Billings left his testimony. See Exhibit #2.

Questions From Committee Members: Sen. Paul Rapp-Svrcek asked Rep. Peck, on page 3, line 9 it says "...IF 23-2-525(4) occurs, then it talks about mandatory restitution. I don't see anything that requires restitution, I don't see where the two fit together.

Answer: Rep. Peck said if you violate that sub (4) and there is damaged caused to that diver, even though the court doesn't do anything to him, restitution is required. That's the intent of that and that is what was done in the House committee.

Question: Sen. Yellowtail asked if it was conceivable that the court might find that there is no guilt or violation, and in spite of that there might be some restitution required. Sen. Bishop mentioned that this is a criminal penalty item and we are running into a civil situation. I don't know how a court could order restitution on a criminal case where there isn't any conviction.

Answer: Rep. Peck stated that the intent of this section is what was discussed in the committee and on the floor of the House. Now whether that is appropriate, I don't know. It says "if" they violate the section. They have to violate the section before restitution can be imposed upon them. If the court says they haven't violated the section, I don't think you have restitution.

Closing by Sponsor: Rep. Peck expressed his thanks to the committee for their time and commitment to this bill.

#### HEARING ON SENATE BILL 47

Presentation and Opening Statement by Sponsor: Sen.

Bengtson stated that she was asked by her constituents to introduce this bill. I have not sought support for it, it has to stand on it's own. It makes sense to me to delete that language which ties the mourning dove hunting season directly to the upland game season. If the Fish and Game Commission manages the wildlife in this state, then I think that is restricted language.

List of Testifying Proponents and What Group they Represent:

Robert Van Der Vere, Helena Citizen  
Ron Marcoux, Department Fish, Wildlife & Game  
Larry Michnevich, Missouri Headwaters Gun Dog Club  
Bud Elwell, Montana Weapons Collectors  
Don Chance, Montana Wildlife Federation

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Robert Van Der Vere stated that on the Trail Russell Refuge they have over 500,000 mourning doves there in the summertime. They are along the Musselshell riverbottom in an exposed weedy flat along the reservoir as well as the west side of CMR. Weeds are one of the favorite foods of the mourning dove. About 98% of their diet consists of weed seeds. The mourning dove has two broods ever season, with three to four young and usually only one or two survive. They start to fly about 14 days after hatching. They have a lot of babies so I support SB 47.

Ron Marcoux left his testimony. See Exhibit #3.

Larry Michnevich stated that the issue here is when does the mourning dove hunting season start. In Colorado, which is further south of us, hunting mourning doves takes place in the first few days of the season. Mourning doves are very sensitive and all it takes is an impulse and the birds are gone. They migrate very readily, and very early September. That means that shooting must take place within the first week of September. So, we would like the Commission to have the opportunity to set the rules as they see it. If you start hunting of Sept. 9, you can almost forget about dove shooting.

Bud Elwell stated that he is originally from California but has hunted mourning dove in Montana and likes hunting here. He thinks mourning dove hunting is the most exciting wing shooting of any bird in the Northern Hemisphere. Those who haven't hunted the mourning dove have missed an experience of a life-time. I do urge that this bill be passed.

Don Chance stated the Montana Wildlife Federation is very much in favor of this bill. There aren't many dove hunters in this state primarily because we lack opportunity because the doves migrate so early in the season.

Opponents:

None

Questions From Committee Members: None

Closing by Sponsor: Sen. Bengtson spoke to people who have had lots of inquiries into the mourning dove hunting season. They say that they go to Colorado because it is so difficult to do in Montana. The language was put into the bill because landowners did not want hunters on their property so early in the season. But the landowners can still put "No Hunting" signs on their land. So that isn't really a good reason to have that in the bill. If it is a game bird, let's allow those who want to shoot at it let them go ahead.

DISPOSITION OF SB 47

Discussion: None

Amendments and Votes: Sen. Jacobson moved for the amendments. See Exhibit #5.

Recommendation and Vote: The amendment was moved and seconded and the bill passed as amended.

## DISPOSITION ON SB 33

Discussion: Sen. Jenkins asked if 1/4 or 1/3 of this money could go into pheasant funds. Sen. Bishop stated that conceivably all of it could go into pheasant planning. Sen. Jenkins thought the Dept. of Fish, Wildlife and Parks will have to spend a percentage of this money before they can be reverted into enhancement. Let's use 1/3 of the money to get plants out there rather than put 100% of this into enhancement.

Ron Marcoux stated that those funds are available. He then referred us to the booklet he handed out to us at the previous meeting dealing with procedures of how to raise pen reared birds. We have received 55 inquires and many of those people who spent their individual time to see what it took to raise pheasants, decided that the effort to raise birds wasn't there.

Sen. Bishop responded to Sen. Jenkins by saying that putting no money into planning wasn't that important. The habitat is the most important thing. If they have habitat, the pheasants will fill up the area completely.

Sen. Jenkins stated that this bill was originally passed as only to plant pheasants. It wasn't originally passed as a pheasant habitat enhancement bill. I am disagreeing with the Department in aggressiveness of getting the plants out.

Sen. Jacobson thought the original intention of the bill was to encourage ranchers to embark on a program where there would be pheasant enhancement. My concern is that you are going to bind the hands of the Department by putting that kind of a restriction in this bill so that we will have money we can't use.

Sen. Severson asked Mr. Marcoux if there has been any encouragement for 4H projects from the Department along this line. Don Childress of the Department of Fish, Wildlife and Parks answered. We have had inquiries from 4H members looking into the possibility. But we have not had anyone come forward with a project.

Sen. Severson then asked Don Childress where the \$3 and \$8 figures came from. He said the \$3 was placed on there when the legislation was being passed. It was

Sen. Smith's original intent that this was not a program that the Department could afford to fully fund; that there was an obligation of those participating to share the cost.

Amendments and Votes: Sen. Bishop offered an amendment for the bill. Refer to Exhibit #4.

Recommendation and Vote: The motion was moved and seconded and the amendment was passed on a voice vote.

ADJOURNMENT

Adjournment At: 2:49 p.m.

  
ELMER D SEVERSON, Chairman

LB/FISMIN.119

FISMIN.119





WITNESS STATEMENT

NAME: Jerry C. Moore DATE: 1-19-89.


ADDRESS: P.O. Box 30233 (7914 Spear Dr.)

PHONE: (406-373-DIVE) <sup>Home</sup> (406-3657-6417) <sup>work</sup>

REPRESENTING WHOM? Minute Men Search and Rescue  
Team of Billings area scuba  
divers

APPEARING ON WHICH PROPOSAL: HB-7

DO YOU: SUPPORT? \_\_\_\_\_ AMEND? X OPPOSE? \_\_\_\_\_

COMMENTS: Page 1 line 6. The international diver  
down-symbol is not used in the inland waters  
of the U.S.. The international flag is blue and  
white . Section 1 (4) line 8 should read  
displaying the red (orange) flag (symbol) with  
a white slash.

The divers gear  
~~I oppose~~ should not be confiscated  
if sited for a violation.

The FGC should get the divers involved  
in areas that problems occur before  
closing the area to diving. Divers input  
is a necessity to obtain the hole picture.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE FISH AND GAME

EXHIBIT NO. 1

DATE January 17, 1989.

BILL NO. HB 7

## WITNESS STATEMENT

NAME: Jack R. Batich DATE: 1-19-89ADDRESS: 3392 Barley Circle Billings MT 59102PHONE: 652-2864REPRESENTING WHOM? Minute Men Search and Rescue, PersonalAPPEARING ON WHICH PROPOSAL: HB.7 and AmendmentDO YOU: SUPPORT?        AMEND? X OPPOSE?       

COMMENTS: I agree with the original HB.7 as it stood unamended with the exception of the mandatory 100ft limit. The problem here is how to measure the distance, for the diver and the Warden. In this situation ropes become a problem and safety hazard to the diver because of the possibility of being tangled.

I feel the amendment is wrong because it discriminates against divers by restricting their activity of use only. We as divers should have equal rights to use state waters. Also I feel that divers should be included in the process of determining ~~use~~ what is safe diving. I also feel

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

That the confiscating of any scuba equipment should not take place, because of the delicate nature of this equipment. If it is not handled ~~properly~~ properly when used again it could malfunction and cause a fatality.

SENATE FISH AND GAME

EXHIBIT NO. 2DATE January 19 1989

SB 47  
January 19, 1989

Testimony presented by Ron Marcoux, Department of Fish, Wildlife & Parks

The Department of Fish, Wildlife & Parks supports SB 47. The mourning dove, a migratory game bird, is becoming popular among many bird hunters. Currently, the Montana Fish and Game Commission is restricted to setting the mourning dove season with the upland bird season, according to Montana Statute 87-2-101.

Mourning doves migrate south from Montana during late August and early September as weather patterns begin to change; therefore, delay in the opening of the dove season past the early part of September results in diminished opportunity for dove hunters, as birds simply are not available.

The Montana Fish and Game Commission has the authority to establish open seasons for migratory game birds, which include the mourning dove, but only within the frameworks established by the U. S. Fish & Wildlife Service under the Migratory Bird Treaty Act of 1916. Federal frameworks do not allow Montana to open its season prior to September 1.

Passage of this bill would allow flexibility for the Fish and Game Commission to set the opening date of dove season and not be constrained by the opening of the upland bird season. Under the current statutes the Commission must open the upland bird season early in order to provide dove hunting opportunity to Montana hunters.

A suggested amendment is attached to this testimony to enable the bill to be valid upon passage. This would provide the flexibility for the commission to address dove hunting relative to the 1989 fall season.

We urge passage of SB 47 to provide additional opportunity for Montana sportsmen when doves are most available.

SENATE FISH AND GAME  
EXHIBIT NO. 3  
DATE January 19, 1989  
BILL NO. SB 47

AMENDMENT TO SB 47  
INTRODUCED (WHITE) COPY

1. Title, line 8

Following: "MCA"

Insert: "AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

2. Page 3.

Following: line 15

Insert: "Section 3. Effective date. This act becomes  
effective upon passage and approval."

STANDING COMMITTEE REPORT

January 20, 1989

MR. PRESIDENT:

We, your committee on Fish and Game, having had under consideration SB 33 (first reading copy -- white), respectfully report that SB 33 be amended and as so amended do pass:

1. Title, line 8.

Strike: "AND"

Following: "MCA"

Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

2. Page 4.

Following: line 6

Insert: "NEW SECTION. Section 7. Effective date. [This act] is effective on passage and approval."

SENATE FISH AND GAME

EXHIBIT NO. 4

DATE January 19, 1989

BILL NO. SB 33

AND AS SO AMENDED DO PASS

Signed: Elmer D. Severson  
Elmer D. Severson, Chairman

H.C.  
1/20/89  
4:38 p.m.

Amendments to SB Bill No. 33  
1st Reading Copy

Requested by Senate Fish and Game

Prepared by  
January 19, 1989

1. Title, line 8.

Following: "MCA;"

Insert: "and providing an immediate effective date"

2. Page 4, line 7.

Following: line 6

Insert: "NEW SECTION. Section 7. [This act] is effective on  
passage and approval."

SENATE FISH AND GAME

EXHIBIT NO. 4

DATE January 19, 1989

BILL NO. SB 33

STANDING COMMITTEE REPORT

January 20, 1989

MR. PRESIDENT:

We, your committee on Fish and Game, having had under consideration SB 47 (first reading copy -- white), respectfully report that SB 47 be amended and as so amended do pass:

1. Title, line 8.

Following: "MCA"

Insert: ";AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

2. Page 3.

Following: line 15

Insert: "NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval."

AND AS SO AMENDED DO PASS

Signed: Elmer D. Severson  
Elmer D. Severson, Chairman

SENATE FISH AND GAME  
EXHIBIT NO. 5  
DATE January 19, 1989  
BILL NO. SB 47

4. e. 189  
1120  
4:38 p.m.

WITNESS STATEMENT

NAME: KH Stevens DATE: 20 Jan 88

ADDRESS: 3711 3<sup>rd</sup> Ave No

PHONE: 452 6388

REPRESENTING WHOM? Scuba Divers

APPEARING ON WHICH PROPOSAL: HB 7

DO YOU: SUPPORT? X AMEND?        OPPOSE?       

COMMENTS:       

In case there is a recommended change  
to HB 7 by the Fish & Game Commission please  
notify one of the following who are  
officers of the Montana Dive Council

<u>Pres.</u>	<u>Vice Pres</u>	<u>KH Stevens</u>
<u>To Ann Hison</u>	<u>Chris Rice</u>	<u>3711 3<sup>rd</sup> Ave No</u>
<u>P.O. Box 111</u>	<u>11617 Central Ave</u>	<u>Great Falls MT</u>
<u>Polson mt 59860</u>	<u>Great Falls mt 59401</u>	

If one of the above are notified all  
divers in MONT will be notified

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.



## WITNESS STATEMENT

NAME: Schulz W. Tye DATE: 1/19/89ADDRESS: 634 Bench Blvd. Blgs. MT. 59105PHONE: 256-5588REPRESENTING WHOM? Myself and Minute Man Search & RescueAPPEARING ON WHICH PROPOSAL: H.B. #17DO YOU: SUPPORT? \_\_\_\_\_ AMEND?  \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: WE BELIEVE the authority given to the Fish & Game Commission should be limited as to assure Fairness to the sport of Diving. WE do not believe that, Boating, fishing, Skiing, Swimming or any other sport is any more important than ours. We ask that Divers Be involved in making the decision whether the area is unsafe for Diving. The Yellowstone Co. Search & Rescue has a number of certified Divers to assist the Fish & Game Com. in these decisions. We want to assure that we are not victims of ~~Five~~ happy Game Wardens trying to Build their retirement funds. We would hope that the People deciding this issue will take ALL measures within their power to insure that Divers are not discriminated against and are recognized to Be equal to all other sports. and that WE have access to ALL public waters.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

WITNESS STATEMENT

NAME: RAMON BERTH DATE: 19 JAN 89

ADDRESS: 609 MT. AVE, HAVER, 59501

PHONE: 265-6524

REPRESENTING WHOM? DIVERS, SCUBA

APPEARING ON WHICH PROPOSAL: HB 7

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENTS: I support VERY STRONGLY HB-7  
AS PASSED BY THE HOUSE - I AM NOT  
FAVORABLE TO ANY AMENDMENTS, OTHER THAN  
DELETING "INTERNATIONAL".

RB

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Amendments to SB Bill No. 47  
1st Reading Copy

Requested by Senate Fish and Game

Prepared by Andrea Merrill  
January 19, 1989

1. Title, line 8.

Following: "MCA;"

Insert: "and providing an immediate effective date"

2. Page 3, line 16.

Following: line 15

Insert: "NEW SECTION. Section 3. [This act] is effective on  
passage and approval."

VISITORS' REGISTER

FISH AND GAME

COMMITTEE

BILL NO. HB 7

DATE 1/19/89

SPONSOR Rep. Pech

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
KH Stevens	Great Falls	X	
Jack R Bakich	Billings		X
B. Bengt	Haure	✓	
CHRIS Rice	Gr. Falls	✓	
Tye Schulz	Blgs. W.H.	✓	
Jerry Moore	Billings, MT.	✓	
<del>Ann Andrich</del>	<del>Rocky Mountain</del>	✓	
Ron Marcum		✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.  
PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.



ROLL CALL VOTE

SENATE COMMITTEE FISH AND GAME

Date Jan. 19, 1989 Senate Bill No. 33 Time 2:05 p.m.

NAME	YES	NO
Sen. Elmer Severson	X	
Sen. John Anderson Jr.	X	
Sen. Judy Jacobson	X	
Sen. Al Bishop	X	
Sen Paul Rapp-Svrcek	X	
Sen. Loren Jenkins		X
Sen. Bill Yellowtail	X	

Lucy Borer  
Secretary

Sen. Severson  
Chairman

Motion: Bill passed as amended.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_