

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON FISH & GAME

Call to Order: By **CHAIRMAN DOUG WAGNER**, on February 28, 1995, at
3:00 p.m.

ROLL CALL

Members Present:

Rep. Douglas T. Wagner, Chairman (R)
Rep. William Rehbein, Jr., Vice Chairman (Majority) (R)
Rep. Emily Swanson, Vice Chairman (Minority) (D)
Rep. Charles R. Devaney (R)
Rep. Jim Elliott (D)
Rep. Daniel C. Fuchs (R)
Rep. Marian W. Hanson (R)
Rep. Hal Harper (D)
Rep. Chase Hibbard (R)
Rep. Dick Knox (R)
Rep. Rod Marshall (R)
Rep. Robert J. "Bob" Pavlovich (D)
Rep. Bob Raney (D)
Rep. Robert R. "Bob" Ream (D)
Rep. Paul Sliter (R)
Rep. Bill Tash (R)
Rep. Jack Wells (R)

Members Excused: Rep. Brad Molnar (R)

Members Absent: None.

Staff Present: Doug Sternberg, Legislative Council
Mary Riitano, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 210, SB 259, SB 269
Executive Action: SB 269 BE CONCURRED IN

{Tape: 1; Side: A; Approx. Counter: 000; Comments: N/A.}

HEARING ON SB 210

Opening Statement by Sponsor:

SEN. AL BISHOP, Senate District 9, Billings, introduced SB 210 at the request of the Department of Fish, Wildlife, and Parks. He said the purpose of the bill was to make enforcement laws more effective and fair. Wildlife has become big business in Montana. People come from all over the world to observe wildlife as well as to hunt them.

Proponents' Testimony:

Pat Graham, Director, Department of Fish, Wildlife, and Parks, distributed written testimony and a section-by-section analysis of SB 210. This bill amended various criminal statutes relating to hunting, fishing, and trapping. Many definitions were provided in the bill to help with enforcement of statutes and prosecution of violations. Fines were increased for many violations to provide a greater deterrent. Proposals have been made to standardize the methods used to enforce revocation of hunting or fishing privileges. Restitution values for certain species have been increased. The bill allowed FWP to appoint retired game wardens as ex officio officers during times when extra enforcement was needed. Residency statutes were revised through more clearly defined criteria. The information required to apply for a resident license has been updated to include an actual street address of the applicant because FWP has had problems with nonresidents obtaining a local post-office box and then applying for a resident license. Language was added regarding the requirement of possessing a valid license while in the act of hunting or fishing. The tagging statute was updated along with regulations regarding harvesting of game animals. The sale of game over \$1,000 in value has been changed from a misdemeanor to a felony. Many serious violators investigated by FWP commit violations over a long period of time. The revised language would enable FWP to address serious violators by grouping violations that occurred over a 45-day time period cumulatively, allowing felonies to be charged if warranted. The statute regarding fur-bearing animals was also updated. **EXHIBITS 1 AND 2**

REP. BILL WISEMAN, House District 41, Great Falls, asked for favorable consideration of SB 210. However, he asked the committee to examine Section 6 carefully. Perhaps the concerns regarding military personnel residency could be taken care of through amendments.

Beth Baker, Department of Justice, said that they experienced many problems with the current law, particularly regarding tags attached to harvested game animals. Some of the proposed changes

were the result of their recommendations. She stated that SB 210 represented good clarification of current statutes.

Janet Ellis, Montana Audubon Legislative Fund, expressed their support for the bill because it represented good management of potentially endangered species. She believed it was desirable to be proactive on these issues.

Dave Brown, Montana Bowhunters, said that they reviewed the revisions and supported the legislation.

Vicki Frasier, Deputy County Attorney, stated that the most difficult laws to prosecute were the fish and game statutes. She spoke in favor of the changes. With the increasing number of people coming to recreate in Montana, it has been difficult in court cases to establish residency. SB 210 was a positive step toward a resolution of the difficult cases that go through the court system. The proposed language tightened up current statute loopholes. She expressed strong support for the bill.

Brett Noltie, citizen, said he has been a Montana resident all his life. He expressed concern over the proposed language regarding residency. If he was stationed out of state, he would be considered a resident for taxes and other responsibilities. However, he would not be considered a resident for the application of fish and game licenses.

Opponents' Testimony:

CHAIRMAN DOUG WAGNER handed out a copy of a letter from **J.A. Brouelette, citizen**, opposing SB 210. **EXHIBIT 3**

{Tape: 1; Side: B; Approx. Counter: 000; Comments: Lost 5 seconds.}

Questions From Committee Members and Responses:

REP. PAUL SLITER gave the scenario of a friend wounding an animal and him having an opportunity to finish the kill. He asked if the friend could not place his tag on the animal because he finished the kill under this bill. **Mr. Graham** said that would be a field interpretation and up to the discretion of the game warden. He referred the question to **Beate Galda, Enforcement Division, Department of FWP**. **Ms. Galda** said the person who killed the animal would be the only person legally entitled to tag the animal. **REP. SLITER** mentioned the case of an outfitter that was with a "greenhorn hunter" who wounded the animal but did not make the kill. He asked if the outfitter was to let animal take off into the brush and not finish the kill even though the outfitter had the opportunity. The outfitter may be compelled to let the animal go because the client was the only one who had the tag. **Ms. Galda** spoke about the intent. However, there was a lot of background noise, and it was not recorded into the minutes or on tape. She also stated that it was not currently legal and

would not be under the proposed language in SB 210. However, she believed that the situation arose occasionally.

REP. BOB PAVLOVICH asked **Vicki Frasier** if she had specific amendments to Section 11 and 21. **Ms. Frasier** explained that she had come the hearing to testify in favor of the bill, specifically Sections 11 and 21, which were recommended by her office.

REP. JACK WELLS asked **Mr. Graham** if he knew how many ex officio wardens would be utilized during hunting seasons. **Mr. Graham** said FWP currently had the authority to contract with retired game wardens during peak work seasons. About five ex officio wardens were utilized per year to complement the existing game wardens. **REP. WELLS** asked **Ms. Galda** about addressing the concern presented about military personnel's residency in Montana. He suggested a possible amendment on page 8, Section 3, to take care of those concerns. **Ms. Galda** believed there was a possibility of adding the necessary language. They have had problems with people stationed elsewhere and claiming Montana as their state of residency on license applications.

REP. MARIAN HANSON asked **Mr. Graham** about the changes in requiring "address of permanent residence." She asked if her permanent address would be the legal description of where her home was located. **Mr. Graham** referred the question to **Ms. Galda**. **Ms. Galda** said it would suffice to put a highway, ranch, or road on the application, so as long as there was some indication of where the physical residence was located.

REP. BOB REAM referred to page 8, line 8, where it indicated that a person must live in Montana at least 120 days per year. He asked **Mr. Graham** why it was not 180 days, which would make it the same as the regular residency requirements. **Mr. Graham** said there was a lot of discussion over people who go south for the winter and return to Montana who were still considered residents. It was the best number considering all people who regard Montana as their place of residence. However, it excluded people who might come for the summer and do not intend to reside in Montana. The 120 days seemed to be a balance for Montana residents and would provide a deterrent for nonresidents.

REP. REAM asked **Brent Noltie** about the problems had regarding military personnel's residency for Montana game licenses. **Mr. Noltie** said the bill referred to one's home or primary place of abode being in Montana. If he was transferred to Washington, under this law, he would not be considered a resident despite the fact that he continued to pay taxes and registered his vehicle in Montana. **REP. REAM** asked **Ms. Galda** about the residency requirements. **Ms. Galda** said that the way the bill was written she did not believe a person would still be considered a resident. If a person had left their family and was stationed for a short time elsewhere, that person would still be considered a resident. An amendment could be made to clarify this point.

REP. REAM said that subsections (1)(a) and (1)(b) gave people who were stationed in Montana "a break" by only requiring that they be in the state 30 days to be considered a resident. If a person was transferred from Montana, that person was considered a nonresident. **Ms. Galda** said he was correct.

REP. REAM asked **REP. WISEMAN** if the issue had been clarified. **REP. WISEMAN** said the problem existed that even if a military personnel's record showed that Montana was the "home of record," when that person was transferred out of state they were considered a nonresident. He believed this was wrong and asked the committee to address the issue.

REP. BILL TASH asked **Mr. Graham** if the ex officio wardens spoke of in Section 3 would require peace officer training. **Mr. Graham** said they would not. It costs a person time and money to maintain a peace officer status after retirement. A former game warden could not become ex officio unless his current license was active. They have to maintain the license in order to be appointed.

REP. TASH asked **Mr. Graham** what would be the extent of an ex officio warden's authority. **Mr. Graham** said their authority was more restricted. However, it provided additional manpower and experience in the field. **REP. TASH** stated that they would have no authority to arrest a violator of the law. **Mr. Graham** said ex officio wardens had the same power as regular game wardens to enforce fish and game laws. However, they do not perform additional duties. Their primary role was to assist other game wardens. They do not have a general peace officer status as a law enforcement officer.

REP. CHARLES DEVANEY asked **Mr. Graham** if ex officio wardens were paid on a contractual basis. **Mr. Graham** explained that ex officio wardens could enter into contracts, which would include a specific time period, duties, and amount of money.

CHAIRMAN WAGNER referred to the restitution for catching a bull trout over 18 inches long. He asked **Mr. Graham** what would happen if a bull trout over the limit was caught by accident. He wanted to know if it should be released to take its chances. **Mr. Graham** said yes. In areas where species were being protected, a certain amount of loss was planned for.

Closing by Sponsor:

REP. BISHOP said many of the changes proposed in the bill were suggested by the county attorney. He stated that Montana's valuable resources must be protected. Because of the recent increase in the desire for animal parts, wildlife must be protected.

HEARING ON HB 259Opening Statement by Sponsor:

SEN. DON HARGROVE, Senate District 16, Belgrade, stated that HB 259 allowed for the use of an atlatl for a special 2-day deer hunting season during the special archery season. The idea for the bill came from a constituent. SB 259 would promote an industry that manufactured the hunting weapon. The atlatl was originally used for hunting in Montana by early natives.

Proponents' Testimony:

REP. GEORGE HEAVY RUNNER, House District 85, Browning, supported the bill. He reviewed the research on the weapon and was not surprised by its effectiveness. It was an excellent opportunity for Montana to become attuned to the potential of this sport.

William Perkins, BPS Enterprises, distributed a large packet of information and testimony. It included a history of the atlatl, along with archeological and mathematical evidence supporting the its use as a primary big game weapon of prehistoric Americans. There were several copies of magazine articles regarding the atlatl. **Mr. Perkins** had brought an atlatl to show the committee what it looked like. It was a fairly accurate weapon and travelled at about 120 feet per second when thrown properly. Included in the packet were research papers written by **Mr. Perkins**. He asked the committee to support the bill. **EXHIBIT 4**

{Tape: 2; Side: A; Approx. Counter: 000; Comments: Tape was turned over at the beginning of Mr. Perkin's testimony.}

Troy Helmick, citizen, presented written testimony. It covered the history of the atlatl. The atlatl has experienced a renewal of interest worldwide during the past decade. An annual competition is held in about 17 states across the United States and in several countries. He felt that atlatl hunters should be allowed to hunt during the regular archery season to allow a much closer approach distance than would generally be possible during the rifle season. Included with his testimony was a letter from **Bonifacio Cosyleon, President, The World Atlatl Association,** in support of the bill. **EXHIBIT 5 AND 5A**

Dave Brown, Montana Bowhunters Association, explained that at the Senate Fish and Game hearing they appeared as opponents. However, since that time they have compromised and learned more about the sport. They could support the 2-day limited season if they received commitment from the atlatl organization for help in bow hunter education courses. This would help people understand the sport and teach ethics regarding the harvest of game animals.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

REP. DICK KNOX asked **SEN. HARGROVE** if he knew how many people used the atlatl. **REP. HARGROVE** said there was a lot more than he originally thought. Many of the people who use them would like to be able to harvest a game animal. Initially, there may not be a large number of people involved, but it could gain more over time.

REP. KNOX asked **Mr. Perkins** if it was more difficult to gain accuracy with an atlatl than with a bow. **Mr. Perkins** said yes. It did not take a long period of time; however, it did require some practice. He estimated that there would be about 100 people who would be involved in the first hunting season.

REP. WELLS asked **Mr. Perkins** how many people were employed at the business. **Mr. Perkins** said there was a subcontractor and himself. There were seven other manufacturers. **REP. WELLS** asked about the cost of an atlatl. **Mr. Perkins** replied that their top-of-the-line model cost \$93.

REP. TASH asked **Mr. Perkins** if the atlatl was used for any other purposes. **Mr. Perkins** said it was always used as a dart launcher. **REP. TASH** said that **Mr. Brown** conditioned his support on whether the Montana Bowhunters received help in bowhunters education. He asked **Mr. Perkins** to respond. **Mr. Perkins** had spoken with people and planned to attend Montana Bowhunters meetings. He had offered his services and made himself available for educational purposes. **Mr. Perkins** suggested that even people taking rifle education courses should be informed about the atlatl. **REP. TASH** asked if **Mr. Perkins** would agree to amendments addressing the issue. **Mr. Perkins** said yes.

REP. TASH asked **Mr. Graham** about FWP expenditures and enforcement regulations. **Mr. Graham** said much was unknown. He did not know how much the atlatl was currently used in hunting seasons.

REP. CHASE HIBBARD stated there was currently nothing to prevent atlatl hunters from hunting during the regular rifle season. He asked **SEN. HARGROVE** if that was correct. **SEN. HARGROVE** said yes. **REP. HIBBARD** stated that if the bill passed, the atlatl could still be utilized during the regular hunting season. **SEN. HARGROVE** said yes. **REP. HIBBARD** asked why the Senate amended the bill from "preceding a special archery season" to "during the special archery season." **SEN. HARGROVE** said it was amended in executive session. The 2-days attempted to give atlatl hunters a brief time by themselves. It would be easier this way and would be a test to see how it would work. They did not want to complicate things but wanted some visibility and legitimacy. **REP. HIBBARD** asked if during their 2-day special season, would atlatl users hunt in conjunction with archers. **SEN. HARGROVE** said yes.

REP. PAVLOVICH asked Mr. Graham why the bill was not effective for one year. Mr. Graham referred the question to Doug Sternberg, Legislative Council. Mr. Sternberg said the general license year began on March 1. In order for the bill to be effective for a full season, it was being delayed until the beginning of the 1996 license year.

REP. BILL REHBEIN asked Mr. Sternberg if there would be a problem changing the effective date to perhaps May 1 or June 1 and have the first season be a short season. Mr. Sternberg said he was unsure of when the general archery season began. The season for the atlAtl was set to coincide with the special archery season. If the bill was processed prior to the beginning of the 1995 special archery season, it may be feasible for the department to issue a license for that short season.

REP. REHBEIN asked Mr. Graham when the special archery season started. Mr. Graham said it began September 2. REP. REHBEIN asked if there would be a problem making the first season a short season. Mr. Graham said one of the reasons for the proposed starting date in 1996 was to incorporate atlAtl information into bowhunters education classes. Another reason was to ensure integration between atlAtl and other hunting. REP. REHBEIN asked why only 2-days were being considered for the hunting season.

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Mr. Graham said the FWP review committee examined the proposed season and found no conflicts. Therefore, they approved what was asked for.

CHAIRMAN WAGNER asked Mr. Graham if bow hunters' education was offered by the department. Mr. Graham said it could be, but it was mainly offered through volunteers. There were some department personnel that provided training sessions. CHAIRMAN WAGNER asked if he had anyone who was currently qualified to teach atlAtl safety. Mr. Graham stated the educational session was not a proficiency course. Appropriate use of the weapon would probably be covered. Educational courses would need to be updated with atlAtl information. Archery has come under criticism because animals were wounded before the kill was made. AtlAtl may have the same problem.

CHAIRMAN WAGNER asked Mr. Graham if a new license would be established for atlAtl. Mr. Graham said no. CHAIRMAN WAGNER asked if the atlAtl would be included in a bow hunting license. Mr. Graham said yes. CHAIRMAN WAGNER asked about the fiscal impact. Mr. Graham said there was no fiscal impact.

CHAIRMAN WAGNER asked Mr. Perkins if he knew of anyone who used the atlAtl during the general rifle season. Mr. Perkins said he had used it during that season. CHAIRMAN WAGNER asked about the success rate. Mr. Perkins said he had been 100% successful. CHAIRMAN WAGNER asked how accurate an atlAtl was on a moving

target. As a bow hunter, sometimes the sound of the string makes the animal run away. **Mr. Perkins** said this weapon system was used for 10,000 years by Native Americans. It is highly successful. The atlatl was their main weapon and was accurate.

REP. HIBBARD asked **Mr. Brown** if a person needed to take the bow hunters safety, proficiency, and ethics course to obtain a bow hunting license. **Mr. Brown** said yes. However, some people were grandfathered in so that they did not need to take the course.

REP. HIBBARD said that the issue was addressed in the bill. For anyone applying for a new license, it was a requirement to have completed an educational course. **Mr. Brown** said yes. If a person did not purchase a license last year, the course would have to be taken before the license could be issued.

REP. HIBBARD asked if he supported the notion that atlatl hunters should be required take bow hunter's education course. **Mr. Brown** said yes. **REP. HIBBARD** asked if he felt the current license was inadequate and if provisions should be extended to grandfather in the people hunting with atlatl under existing bow licenses. **Mr. Brown** said no. It would not be fair. Under current regulations if an atlatl hunter was a bow hunter last year, they could buy a bow hunters license this year. If they did not bow hunt last year, they would have to take the bow hunter's education course.

REP. WELLS asked **SEN. HARGROVE** why the bill only included deer and not elk. **SEN. HARGROVE** said it had been considered. Currently, there were many unknown aspects regarding atlatls and hunting. There was plenty of deer and SB 259 would be a step toward legitimacy.

Closing by Sponsor:

SEN. HARGROVE said the committee should take advantage of the opportunity to promote something that was unique in Montana. There would be some unique stalking challenges while hunting with the weapon. Everyone would need to take the bow hunters safety course. He remembered when bow hunting came under the same scrutiny when it was first being established in Montana.

HEARING ON SB 269

Opening Statement by Sponsor:

SEN. BRUCE CRIPPEN, Senate District 10, Billings, presented SB 269 on behalf of FWP. SB 269 dealt with the problem of nonresidents who were unable to obtain a game license in their own state, so they come to Montana to apply for a license. The bill gave the authority to FWP to make Montana part of an Interstate Wildlife Violator Compact. Currently there were seven western states belonging to the compact. The compact would benefit Montana. If a Montana resident received a citation in another state, they would be subject to that state's game laws

and penalties. Montana would gain the ability to suspend licenses of violators from other states who violate Montana laws or laws of their home state. The first portion of the bill contained the articles of the Interstate Wildlife Violator Compact. The articles included declaration of policy, purpose, standardization of some definitions, procedures for home state, suspension regulations, and administration of the compact. The bill was far-reaching. There was some concern expressed in the Senate regarding how Montana residents would be treated in hearings about violations in other states.

Proponents' Testimony:

Pat Graham, Director, Department of Fish, Wildlife, and Parks, distributed written testimony along with an in-depth description of the Interstate Wildlife Violator Compact articles. FWP believed membership in the compact would benefit the people of Montana by creating an additional deterrent to wildlife resource violators. The compact avoided delays that normally occurred for nonresidents cited for violations in another state. A major benefit of the compact was that violators from compact member states were notified that their violations in one state affected their privileges to hunt, fish, and trap in all of the other participating states. The compact would not prevent unlawful activity in Montana, but would provide a good tool to discourage unlawful activities. EXHIBIT 6 AND 6A

Janet Ellis, Montana Audubon Legislative Fund, handed in written testimony in support of SB 269. EXHIBIT 7

{Tape: 3; Side: A; Approx. Counter: 000; Comments: Lost 5 seconds.}

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

None.

Closing by Sponsor:

SEN. CRIPPEN closed.

EXECUTIVE ACTION ON SB 269

Motion/Vote: REP. PAVLOVICH MOVED THAT SB 269 BE CONCURRED IN. Motion carried unanimously. REPS. HANSON, ELLIOTT, and MOLNAR were absent for the vote. REP. DAN FUCHS will carry the bill on the House floor.

ADJOURNMENT

Adjournment: 5:20 p.m.

Douglas T. Wagner
REP. DOUG WAGNER, Chairman

Mary Riitano
MARY RIITANO, Secretary

DW/mr

HOUSE OF REPRESENTATIVES

Fish and Game

ROLL CALL

DATE February 28, 1995

NAME	PRESENT	ABSENT	EXCUSED
Rep. Doug Wagner, Chairman	✓		
Rep. Bill Rehbein, Vice Chairman, Majority	✓		
Rep. Emily Swanson, Vice Chairman, Minority	✓		
Rep. Charles Devaney	✓		
Rep. Jim Elliott	✓		
Rep. Daniel Fuchs	✓		
Rep. Marian Hanson	✓		
Rep. Hal Harper	✓		
Rep. Chase Hibbard	✓		
Rep. Dick Knox	✓		
Rep. Rod Marshall	✓		
Rep. Brad Molnar			✓
Rep. Bob Pavlovich	✓		
Rep. Bob Raney	✓		
Rep. Bob Ream	✓		
Rep. Paul Sliter	✓		
Rep. Bill Tash	✓		
Rep. Jack Wells	✓		



HOUSE STANDING COMMITTEE REPORT

March 1, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Fish and Game report that Senate Bill 269 (third reading copy -- blue) be concurred in.

Signed: Douglas T. Wagner
Doug Wagner, Chair

Carried by: Rep. Fuchs

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3/1

Committee Vote:
Yes 15, No 0.
3 ABSENT FOR VOTE

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TSB210.HP

Senate Bill No. 210
February 28, 1995
Testimony presented by Pat Graham
Montana Fish, Wildlife & Parks
before the House Fish and Game Committee

This bill amends various criminal statutes relating to hunting, fishing and trapping. In addition, section 4 both amends and adds definitions of the terms "hunting," "angling," "trapping," and "baiting" to clarify what actions are prohibited by law. These clarifications will help with the enforcement of statutes and the prosecution of violations.

Many of the amended sections are included in this bill only to incorporate the revised definitions within existing law. Those sections that simply incorporate the new definitions are listed in the summary we've passed out. (Sections numbered 7, 12, 13, 15-20, 22-24, 26, 30, 31, 32, 34, and 35.)

I will explain the substantive changes to the criminal law which are also discussed in the section-by-section summary provided for your reference. Section 1 of the bill proposes to amend the penalty section (87-1-102). The addition of the term "negligently" to "purposely or knowingly" prevents use of the frequently attempted defense of "I can't be guilty because I didn't know." It places a reasonable requirement of responsibility on the sportsperson to know the laws before participating in hunting, fishing, or trapping.

Proposed changes to the fines category of the penalty section raise the minimum fines from \$50 to \$100 and some of the maximum fines from \$1,000 to \$2,000. This will provide a greater deterrent. The minimum fine has been \$50 since 1977. A court could impose a \$50 fine (plus \$15 in court costs) on a nonresident who failed to buy a \$40 fishing license. The small size of the fine and slight risk of getting caught does not deter violators. In addition, increasing the maximum fine will better enable the courts to address the more serious misdemeanor offenders. The court retains its discretion to set the fine at whatever dollar amount it considers appropriate within the minimum and maximum amounts set by the statute. Maximum amounts are rarely imposed but can be used for serious or repeated violations.

The bill also proposes to increase the fine for the illegal taking of black bears. We feel the deterrent effect of raising the fine from the \$300-\$1,000 range, to the \$500-\$2,000 level will help address growing illegal commercialization problems with black bears and the Asiatic market.

The changes dealing with loss of privileges do not affect the term of suspension, but merely clarify the relationship of the court and the Department to assure a consistent statewide imposition of suspensions. Some courts now notify individuals of the loss of privileges while others believe the Department is responsible. This proposal will standardize the method by requiring the Department to notify the convicted violators and collect any licenses forfeited under this statute. Since revocations are mandatory for some violations, everyone forfeiting bond or found guilty of a violation that mandates loss of privileges will in fact lose them and be so notified.

Section 2 amendments increase the restitution values of black bear, adult bull trout and river dwelling grayling. There is a very lucrative market for black bear parts including claws, teeth, paws and, most notably, gall bladders. We are proposing to raise black bear restitution from \$500 to \$1,000 per bear, enabling prosecutors to file a felony charge with two, rather than three, unlawful takings or sales of bears.

Bull trout and river dwelling grayling are species of special concern to Montana. Deterring unlawful harvest or commercialization of these fish species is essential to the state's management of these populations. Both species are under consideration by the U.S. Fish and Wildlife Service for listing as threatened species. Bull trout restitution is currently \$10 per fish and all grayling are \$100 per fish. We are requesting that restitution for bull trout over 18 inches long be raised to \$500 per fish. This is necessary to protect adult spawners. Similarly we feel it is necessary to protect river dwelling grayling by raising restitution to \$300 per fish. This change will not apply to lake dwelling grayling, as their populations are not in danger, and the restitution for them will be lowered to the standard \$10 per fish.

Section 3 allows the director to appoint retired game wardens as ex officio officers. Many of these individuals have let their peace officer certification lapse since retirement. We would like to continue to be able to contract with them as needed for help during the hunting season. Their peace officer status allowed them to enforce Fish, Wildlife and Parks laws and regulations, but without this status they need ex officio authority.

Section 4, as mentioned, contains the definitions for angling, baiting, hunting and trapping. The changes are discussed beginning on page 3 of the handout. The major change is the addition of a definition for baiting which includes the use of foodstuffs or odors used to attract game animals. It will not affect the use of unscented decoys or the use of scents used to mask human odors.

Angling is redefined to include any method of fishing since many methods are used. A defense under present law is "I wasn't fishing

since I wasn't using a line, hook or rod." As a result of defining hunting many of the statutes in the bill could be simplified and streamlined. By defining trapping, we will be able to enforce individual quotas and prevent trapping by unlicensed persons.

Section 5 is a new section but the oldest law on fishing. The law became part of the definitions when in fact it should have been restricting fishing to the use of hook or single line, unless other means have been approved by the commission. Instead the definition limited what would be considered fishing. Other methods of obtaining fish were not specifically prohibited. This section will clarify lawful methods of fishing and simplify prosecutions.

Section 6 revises the residency statutes. As the desirability of hunting and fishing in Montana increases each year, our problems with persons purchasing resident licenses unlawfully also increase. County prosecutors have become frustrated with their increasing workload and the difficulties encountered prosecuting these cases. To remedy these problems we have more clearly defined the criteria needed to purchase resident hunting and fishing licenses in Montana. A person will have to physically live in Montana for 180 consecutive days and meet existing criteria before applying for a resident license. They must then physically live in Montana for 120 days per year to maintain that residency.

There is an exception for students from Montana under 24 years of age who are studying out of state. The residency status of persons in the armed forces is limited to persons stationed and on active duty in Montana. Reassignment to another state ends their residency status. Persons entering the military from Montana, however, will continue to be able to maintain their residency.

These amendments to the statute will enable prosecutors to spend far less time preparing these cases and be able to prosecute based on objective requirements.

Section 8 changes the information required to apply for resident licenses by requiring the person's actual street address. We have problems with nonresidents obtaining a local post office box then applying for resident licenses. This makes it more difficult to identify these individuals as nonresidents for licensing purposes.

Section 9 amends the statute on carrying and exhibiting a license by clarifying that licenses must be carried when sportspersons are in the field. The amendment does, however, allow a person to be carrying the license of their spouse or any minor children when in the field.

Section 10 is a new section dealing with possessing or carrying licenses in the field. In many of our undercover investigations, unfilled licenses were left with the hunting camp or outfitter and were later filled by others or used to cover illegally taken animals to be transported. This has become a very serious problem and it is difficult for wardens to identify illegally taken animals. This section would prohibit the practice of having or

controlling licenses of people other than spouse or minor children. The section was amended in the Senate to clarify that only unused licenses, those where the date of harvest has not been cut out, are included.

In addition, commercial offenders such as outfitters, guides, and meat processors could be charged with a felony if they control more than three licenses used or intended to be used on game animals not taken by the persons to whom the licenses were issued. Fewer than three licenses would be a misdemeanor offense. Examples of problems we've encountered are found in the handout on page 5.

Section 11 changes the tagging statute. Prosecutors have difficulty under the present language of the statute with cases in which an actual, physical transfer of the license from person to person does not take place. For instance, when an animal is taken by one person but tagged by another, wardens have had problems using this statute as a lesser offense to illegal taking, a harsher penalty. Persons convicted of illegal taking lose their hunting privileges.

Section 21 requires that game animals must be tagged with tags valid in the specified district. This seems obvious but is not clear from the law and was recently raised as a defense by a violator who chose to save the proper tag hoping to find a buck and used the tag valid only in another area on the doe which he shot.

Another amendment to the section clarifies that legal ownership of game does not change to the hunter unless the animal is lawfully taken and tagged. This avoids forfeiture problems with confiscating unlawfully taken game from violators.

Section 25 restricts the manner in which game may be harvested and forbids taking game by the use of a snare. To clarify when a snare may be used, this section was amended in the Senate to exclude sections 87-3-127 and 87-3-128, which allow the taking of stock killing animals and taking of animals by Department personnel performing their duties for the Department. This section also makes baiting, as defined, illegal. The present law is unclear since there is no definition of "other device to entrap or entice game animals or game birds."

Section 27 was added in the Senate to clarify that snares may be used only to capture fur-bearing animals, predatory animals, or nongame animals. Section 87-3-107 currently provides that any animal or bird may be taken by a snare if certain conditions are followed. This was not consistent with Section 87-3-101.

Section 28 clarifies the violation to be cited when charging an individual who has shot a wildlife decoy. It has been unclear if wardens should charge a violator using the unlawful taking statute that pertained to decoys even if the violation would have been a

DATE 2-28-951 SB 210

lesser charge if the violator had been shooting at an actual animal. For example, if the violator was shooting from a public road at the decoy, and this was the only violation that occurred, it is not appropriate to charge the individual with unlawful taking of the wildlife decoy. If the decoy had been a live animal, the only charge would have been shooting from the roadway, a lesser offense.

This section also provides a restitution charge of \$50 per violation of the decoy statute. This money will be used to repair decoys shot by violators and is estimated by the Department based on the average amount needed to cover expenses.

Section 29 amends the felony section to include sale of game of over \$1,000 in value and includes meat, organs, tissue, or fluids. Under existing law an individual can sell huge quantities of meat or other animal parts and risk only a misdemeanor fine. This change does not prohibit already lawful sales of heads, antlers, hides or mounts.

We have added a poundage limit to address quantities of processed meat. Many of our investigations deal with game that has already been processed, making it difficult to determine the number of animals represented. A buck deer averages 40 pounds of meat, a bull elk averages 172 pounds of meat (without bones). The proposed 150 pounds of meat would be equal to four buck deer or just over one bull elk. A lesser quantity would continue to be a misdemeanor violation, and the county attorney always has the discretion to charge the violator with a misdemeanor rather than a felony.

Another problem we have encountered is a number of individuals transporting game animal parts which are unlawful to sell in Montana to another state where they can be legally sold. This totally eliminates the effectiveness of our statutes and puts our wildlife in jeopardy of increased commercialization. Both Idaho and Wyoming allows sales prohibited under Montana law. We propose to make it unlawful to transport wildlife valued at over \$1,000 out of state for the purpose of selling it. Particular problems have involved bighorn sheep and black bear parts.

Many of the serious violators we investigate commit violations over a long period of time. Under present law, it is unclear if the violations can be grouped together for felony prosecution. The proposed amendment will enable us to address serious violators by grouping violations that occurred over a 45-day time period cumulatively, allowing felonies to be charged if warranted.

Section 33 amends the closed season statute for furbearing animals (87-3-501). This statute inadvertently omitted bobcats, wolverines and northern swift fox from the closed season statute. This amendment refers to furbearing animals which are defined in 87-1-101 (section 4 of the bill).

Privilege suspensions are mandatory for some violations, as are minimum lengths of suspension, when there is a conviction or forfeiture. This will insure a consistent method of application statewide, while retaining the court's discretion to impose loss of privileges.

With this system in place, we will avoid the situations where a violator was not notified of loss of privileges, purchased a license or licenses, then is required to return the licenses for a refund, as per the court's order. This may be a substantial inconvenience if plans and preparations for a hunting or fishing trip have been made.

The change proposed for this statute will improve the department's ability to comply with the responsibilities under the wildlife violator compact, if Montana becomes a member state through proposed legislation.

Section 2: Makes changes in restitution amounts.

- Increases black bear restitution from \$500 to \$1000 per bear. The intent of this revision is to curb the illegal traffic in black bear parts. Increasing restitution values allows prosecutors to file felony rather than misdemeanor charges with two unlawful takings or sales, rather than the current three.
- Increases restitution on bull trout. Currently restitution for illegal bull trout is \$10 per fish. Bull trout are a species of special concern to Montana. To deter illegal harvest and commercialization of bull trout we propose restitution at \$500 per fish over 18 inches long. This provides the capability of felony prosecution if three fish over 18 inches long are taken.
- River dwelling grayling have also been proposed for an increase in restitution from \$100 to \$300 because of their status. The taking of four river dwelling grayling could lead to a felony charge. Lake grayling are not in need of special protection and the restitution is lowered from \$100 to \$10 per lake grayling.

Section 3: Adds retired game wardens to possible ex officio status

- Retired game wardens are being added to the list of persons the director may appoint as ex officio wardens. The department has the authority to contract with retired game wardens as needed. Not all retired game wardens are eligible to be ex officio under this statute. If their POST certification has lapsed, this change would still allow them to be appointed by the director and would clarify their

SENATE BILL 210

ENFORCEMENT REVISION BILL

SUMMARY OF CHANGES - BY SECTIONS

Section 1: Amends general penalty statute for fish and game violations.

- The addition of "negligently" was at the request of prosecutors. This addition places the reasonable responsibility of knowing the rules and regulations on the sportsmen and women, before they participate in their chosen activity. For the prosecutor, this negates the defense of "I can't be guilty, I didn't know."
- Raises minimum fines from \$50 to \$100. These values are more in line with today's penalties, as this category has not been changed since 1977. The increase is expected to work as a deterrent, especially where the cost of a license is similar to the fine for failing to have one.
- The maximum fine for flagrant violations would be increased from \$1000 to \$2000. Offenses would, for the most part, be filed in justice court, however justice and district court have concurrent jurisdiction for misdemeanors over \$1000. (3-10-303, MCA.)
- Amends subsection (2)(b) to insure that there is only one penalty for waste of game animals. The specific statute on waste of game, 87-3-102(3)(b), provides for a \$50 to \$1,000 fine and/or six months penalty, which is less than what is in subsection (2)(b).
- Elevates black bears to the higher category of fines under subsection (2)(a) (from fines of \$300 to \$1000 to fines of \$500 to \$2000). (Recommended because of the high commercial value of black bears and the increased poaching problem).
- Deletes subsection (d) of section (2). This section has been clarified and is contained the general penalty section. This allows the court discretion to suspend any or all license privileges.
- The other additions to the statute require the department to give notice of loss of privileges and to receive surrendered licenses. This clarifies the relationship of the court and the department with respect to forfeiture and notification of loss of privileges. This will assure notification of the violators if their license privileges are suspended, and for how long. Previously the department's only authority was in 87-1-108, MCA (under which it could suspend privileges for non compliance with a citation or sentence).

authority.

Section 4: Amends and adds definitions.

- Amends the definition of "angling" or "fishing" by omitting the "by hook and single line or single rod, in hand or within immediate control." Fishermen use a variety of methods to take fish, including spears, gigs, nets, bows and arrows, set lines and snagging. This proposal will enable prosecutors to avoid the defense "how could my client have been fishing, he wasn't using a line, hook or rod?"
- The definition of baiting is necessary for the enforcement of 87-3-101 (section 25 of this bill). By adding "bait" to 87-3-101 and a definition of bait in the definition section, the law will more clearly prohibit the use of foodstuffs or odors to attract game animals. Present law prohibits salt licks and other devices. The argument can be made that food or odors are not a "device." This will help greatly to successfully prosecute unethical hunters and outfitters who place salt blocks, scents, food stuffs or other attractants near their stands to attract game animals. The proposed changes will not affect the use of unscented decoys or replicas of wildlife currently legally used or the use of masking scents.
- Hunt is defined. With an encompassing definition of hunting our statutes are streamlined and understandable, enabling the courts to determine if a violation has been committed. This definition may enable the game warden to act before an animal is unlawfully harvested, if he observes someone shooting at a game animal for example. The law still requires proof of intent to take the animal.
- Trapping is defined to make it possible to enforce individual quotas. Under current law, anyone can work a trapline, regardless if they have reached their personal quota. The traps must give a name and address, but several people can be listed on the trap, and anyone may work the trapline so long as the owner of the trap does not complain. In one case in Central Montana, seven people were regularly working a trapline. Only one had purchased a trapping license. The county attorney advised against citing the unlicensed persons under the current law.

Section 5: Adds a new section restricting fishing to by hook or single line or single rod unless other means have been approved by the commission. Under current law there is no clear prohibition since the method of fishing was only in the definition section.

Section 6: Revises residency requirements.

- The proposed changes will require a person to physically live in Montana for 180 days before applying for a license. Once residency has been established, the person must live in Montana at least 120 days per year to maintain the residency.
- A person's Montana home must be his or her principal place of residence, and all other existing criteria must be met.
- There is a student exception for students from Montana under 24 years old who are studying out-of-state.
- Residency for persons in the military is clearly limited to military personnel stationed in Montana. Reassignment to another state ends their residency status. However, under present law, persons who entered the military as Montana residents can maintain their residency in Montana.
- Prosecutors have had numerous problems prosecuting nonresidents, especially under the "fixed intention to return." It is difficult to prosecute because the defendant claims that he is a Montana resident and will return to Montana as soon as he can. He intends to live here permanently (has a "fixed intent to return"). There is no clear objective criteria under the present statute. Convictions depend on whether the jury believes or dislikes the defendant.

Section 7: The license requirement statute is simplified because of the new definitions. (This change was made by Legislative Council.)

Section 8: The section on application for a license is amended to require the actual address in addition to a post office box. We have problems with nonresidents obtaining a post office box and using it as a local address. The change would make it easier to determine a person's actual residence.

Section 9: Carrying a license - amended to conform with section 10 which permits a person to carry the license of a spouse or a minor. Also clarified to conform to the definitions and to be more easily understood.

Section 10: Unlawful possession of hunting licenses issued to another person

- Prohibits one person from possessing or having another person's unused hunting or fishing license, unless the license is their spouse's or a minor child's. Although there are

legitimate reasons for a person carrying their spouse's or a child's license while they are hunting or fishing together, there is generally no good reason to carry or control licenses belonging to others.

- Without the proposed change, the mere possession of licenses of another is not an offense. The game warden has to wait until the wildlife is killed or tagged illegally to cite them.
- Examples of abuses:
 - During undercover investigations, officers have found "extra" licenses which were used or intended to be used to cover illegally taken wildlife. One suspect had a coffee can full of licenses in his meat packing business which were used to cover untagged and illegally taken wildlife brought into his business.
 - Undercover investigators observed guides filling their neighbors' licenses and clients leaving their unfilled licenses with the outfitter for use by other clients. One suspect normally fills ten to twelve licenses for non-family members where he keeps the racks and capes and gives the license holders the meat. Another suspect offered his wife's license to an investigator under the proposal that the investigator bring them the meat but keep the rack.
 - In another case, an outfitter supplied illegally obtained resident licenses for out-of-state hunters. Another unlicensed outfitter purchased several doe licenses to supply to non-resident hunters. These were used to cover illegal taking of buck deer which had all evidence of sex removed.
 - In another case, an unlicensed outfitter promised his clients that he would supply licenses for all the wildlife they took. Seventeen hunters were prosecuted for hunting without licenses.
- Because of the significant potential for abuse of the licensing process, the department supports a felony penalty for possession by a commercial violator (outfitter, guide or meat processor) of three or more licenses used or intended to be used on game animals not taken by the persons to whom the licenses were issued. Fewer than three licenses not in the name of the violator would be a misdemeanor under the proposed bill.

Section 11: Attachment or transfer of a license.

- Under current law it is unlawful to transfer a license to

another person. This amendment would make it unlawful to attach a license to an animal shot by someone else. The action of placing a tag on another animal could also be considered unlawful possession, but such a charge would result in a much harsher penalty which may be inappropriate in some cases. This change gives a game warden the option to charge a person with a lesser offense.

Sections 12 and 13: These amendments were made by Legislative Council due to definition changes.

Section 14: Wild Turkey Tags - These amendments were made by Legislative Council due to definition changes.

- Also "department" was changed to "commission" because the commission sets the seasons, not the department.

Sections 15 through 20: These amendments were made by Legislative Council due to definition changes.

Section 21: Tagging game animals

- This statute is amended at the request of prosecutors. This change clarifies the violation when a person attaches a tag valid in one district to an animal killed in another district. In a recent case, the defendant had an A-tag license. He also had a B-tag valid in a specific area. He shot a doe and attached the B-tag. He was cited for failure to have a valid license, but he had a valid license he chose not to use. The defense counsel raised this issue. The statute would be clarified by making it an express violation under the tagging requirements.
- The amendments also clarify that legal ownership of a game animal does not change from the public to a hunter if the hunter has taken the animal unlawfully. This change avoids legal problems with forfeitures. Confiscating an unlawfully taken game animal is thus not a forfeiture because the hunter never legally possessed the animal.

Sections 22 through 24: These amendments were made by Legislative Council due to definition changes.

Section 25: General restrictions

- The proposed amendment exempts sections 87-3-127, the taking of stock killing animals, and 87-3-128, the taking of animals by department employees acting in the scope of their duties, from the prohibition of the use of snares. The amendment will clean up conflicting language in the present statutes (see

section 27 below).

- Also amends the statute by making baiting, as defined in section 4(2) of the bill, unlawful. The language "other device to entrap or entice game animals or game birds" was unclear and difficult to enforce. The statute now does not clearly show what is prohibited.

Section 26: 87-3-104 - These amendments were made by Legislative Council due to definition changes.

Section 27: Lawful Use of Snares

- This statute is being amended because it is inconsistent with 87-3-101. Section 87-3-101 prohibits the use of snares to take or kill game while section 87-3-107 makes the use of snares lawful under certain conditions. The two statutes do not refer to one another thus are confusing and unclear. The amendment limits the lawful use of snares to fur-bearing animals, predatory animals, and nongame animals.

Section 28: Wildlife Decoy

- The change in subsection (2) clarifies that the same violation should be charged in a decoy violation as if the decoy were an animal. For example, it is not an "unlawful taking" if a person shoots at a decoy from a public road. The violation is "shooting from a public road." The use of "unlawful taking" was confusing and needs clarification.
- This section is also proposed to be amended to provide restitution of \$50 per violation. The money collected will be used to repair or replace decoys damaged or destroyed by violators. The department feels \$50 per violation is reasonable and will enable the department to repair and replace decoys that now cost approximately \$400 to \$1200 each, depending on the animal and the electronic equipment installed. Construction uses 15 to 33 hours of labor which is difficult for the wardens to provide, especially during the hunting season. Cost estimates from private taxidermists to provide decoys, ranged from \$855 to \$2205.

Section 29: Felony sale or possession

- Adds a potential felony offense of sale of wildlife or those wildlife parts prohibited from sale under current law and valued at over \$1000. This change does not affect any sale of parts allowed under 87-3-111 (heads, hides or mounts). Subsection (1) currently makes the sale of unlawfully taken wildlife a felony, regardless of its value. The new subsection (3) makes the sale of lawfully or unlawfully

acquired wildlife meat, organs, tissue or fluids a felony if the value of the wildlife exceeds \$1000 or if the meat exceeds 150 pounds. The 150 pounds is based on the average amount of processed meat in deer and elk. A buck deer averages 40 pounds of meat (58 pounds with bone), and a bull elk averages 172 pounds (216 pounds with bone).

- Also makes the transportation of wildlife valued over \$1000 to another state for the purpose of selling a violation. Currently it is possible for a person to take animals lawfully killed in Montana to another state where the sale of such animals is not prohibited (such as Idaho and Wyoming). A person could have killed a bear lawfully and be "given" another bear by a friend and take the gall bladders and paws to Idaho for sale. They would then avoid Montana's prohibition against selling wildlife but increase abuse of wildlife.
- New subsection (4) would allow the department to add together the value of wildlife collected within a 45-day period. Under current law, a person may avoid a felony violation by transporting or possessing unlawfully killed wildlife one at a time. It is not clear under present law whether like violations can be lumped. A person commercializing in wildlife generally does so over periods of time. This change would allow the department to charge serious violators by cumulating the violations within a 45-day period.

Sections 30 through 31: These amendments were made by Legislative Council due to definition changes.

Section 32: 87-3-402 - Substitutes "commission" for "department" because the commission sets seasons.

- Also makes changes due to definition changes.

Section 33: Season for fur-bearing animals

- The bill deletes the individual listing of protected species under 87-3-501 because the list omitted bobcats, wolverines and swift fox and substitutes "fur-bearing animals" which are defined in 87-2-101. The omissions appear to have been unintentional.
- The other changes are made as a result of the definition changes.

Sections 34 through 35: These amendments were made by Legislative Council due to definition changes.

Q:SB210.exp

EXHIBIT 3
DATE FEB 28 1995
SB 210

January 30, 1995

HOUSE OF REPRESENTATIVES- Committee on Fish and Game

TO: Doug Wagner, Chairman

Bill Rehbein
Jim Elliott
Hal Harper
Rod Marshall
Bob Raney
Bill Tash

Emily Swanson
Daniel Fuchs
Chase Hibbard
Brad Molnar
Bob Ream
Jack Wells

Charles Devaney
Marian Hanson
Dick Knox
Bob Pavlovich
Paul Sliter

Representatives:

I would like to address some concerns with Senate Bill No. 210 which was requested by the Department of Fish, Wildlife and Parks.

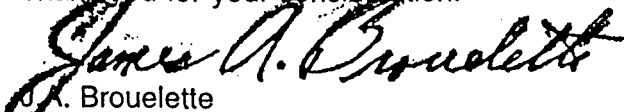
Sec. 87-1-102 and 87-1-111 There is no reason to increase penalties or move the black bear to a higher priced designation. The penalties are not enforced consistently and the department can not demonstrate that increased penalties will prevent illegal taking of game animals. Also, a warden - Dan Burns - illegally killed a spike elk and was only fined \$65.00 and did not lose his hunting privileges or pay restitution for the animal. This unabashed failure to consistently enforce the penalties clearly indicates the Department of F W & P is not capable of properly handling penalties and therefore, should not be allowed to increase or modify the current law at this time.

Sec. 87-1-503 Former game wardens are just that, let's not let the general public be ex-officio wardens based on their past association with the department. Unless, of course, it can be opened up to the rest of the public to have the same powers and privileges.

Sec. 87- 2-101 Definitions of (1) "Angling or fishing" and (8) "hunt" are overly broad and probably unconstitutional. If a person were to "hunt" game animals with a camera, or just to view them, it would be illegal under this definition. There are enough problems with enforcement today without adding overly broad regulations and definitions that can be interpreted by each warden in the field.

I request that this bill be killed until there can be more public input. The department should be required to hold public hearings on this bill, since they work on the sportmen's money and are attempting to get more of it.

Thank you for your consideration.

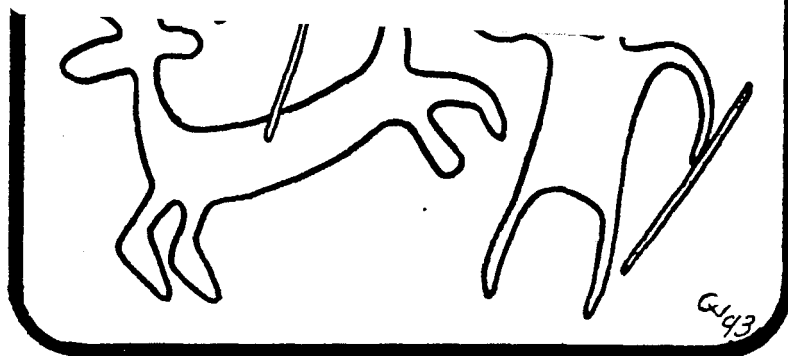

J. A. Brouelette
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Stevensville, MT 59870
(406) 777-3974

BPS ENGINEERING →
TM

EXHIBIT 4
DATE FEB 28, 1995
BB 259

Box 797
Manhattan, MT 59741
Phone: (406) 284-3307

PRECISION
ATLATL & DART SYSTEMS



Over 12,000 years ago, hunters tracking the migrating herds of the last ice age across the frozen tundra of what is now the state of Alaska became the first emigrants to enter the North American continent. These hunter/gatherers brought with them a weapon that reigned supreme among them and their descendants for thousands of years to come, the *atlatl*. It was the first true weapons system developed by humans, originating in Europe over 30,000 years ago and spreading to every corner of the globe that humans occupied. In fact, the atlatl and dart were used and improved upon for so long by our ancient ancestors that, comparatively speaking, the bow and arrow can be considered a recent development in projectile technology. So powerful and effective was the atlatl that scientists and scholars speculate that it, along with the overkill tactics so common to the human race, caused the extinction of the woolly mammoth in North America before the end of the last ice age.

Largely replaced by the bow and arrow around the birth of Christ, it was still being used by some Native Americans during the Age of Discovery, 500 years ago. When Columbus encountered Natives using the atlatl during his voyages to the New World, Europeans who had long forgotten the weapon, soon became familiar with it again. These encounters were most certainly with the business end of the weapon, the European wondering "What was that?" just before dying.

The Aztecs preferred the atlatl as a weapon of war. In fact we get the word "atlatl" (pronounced at-la-tal) from their language. The atlatl and dart was the only weapon Cortez and his men feared, easily piercing Spanish armor and often sending the hapless conquistador to meet his Maker. If Monezuma had not mistaken Cortez for the Feathered Serpent God Quantzaquatl, history may have been very different, with the two hundred or so Spanish soldiers being only a footnote in the history of that nation, foolish invaders who were overwhelmed by superior firepower.

The atlatl and dart have enjoyed widespread use throughout the world. At one time or another people everywhere have used it as their main weapon, and even today it is used by the natives of Australia, Papua New Guinea, and some tribes in South America and northwest Mexico. But it was in North America, more specifically in what is now the continental United States, that the weapon was developed to its fullest potential. In a trait so common to our species, Native Americans tinkered and toyed with this weapons system, developing and improving the technology to such a high level of sophistication that its technology is impressive even by today's standards. Just as firearms have developed from muzzleloaders to breechloaders, lever-actions and automatics, the atlatl has undergone a similar evolution.

EXHIBIT 5
DATE FEB 28, 1995
BB 259

SENATE BILL NO. 259
HOUSE FISH & GAME COMMITTEE.

February 28, 1995

ATLATL, (At' lat l) an aztec word that defines the total weapon system including a throwing stick and a flexible dart.

The Atlatl has been field tested for more than 25,000 years. Earliest evidence of the use of the Atlatl has been found in Europe and it is still used in several parts of the world. Australia, Cambodia, the Amazon, Arctic and other areas.

Archaeological evidence and modern testing shows the Atlatl to be an effective and efficient hunting instrument.

Dr. George Frison, University of Wyoming tested the Atlatl in Africa and showed that a stone tipped dart would penetrate the thick ,tough hide of a elephant to a depth sufficient to produce a lethal wound.

Dr. Dennis Stanford, Smithsonian Anthropologist did technical Studies of the Atlatl with the Physics Dept. at Colorado College. Their testing showed the Atlatl dart to have an increase of 15 times the velocity and 200 times the impact of a hand thrown dart. Dr. Stanford also successfully hunted Caribou, Deer, Seals and other animals with the Atlatl.

Ulrich Stodiek ,Cologne Germany did extensive research on the Atlatl for his doctoral thesis. BPS Engineering at Manhattan MT has researched, replicated and manufactured Atlatls for several years. Dr. Manuel White here in the Helena Valley did studies comparing the Atlatl dart impact and penetration force to that of Bows and Crossbows. All agreed , the Atlatl is a effective deer hunting weapon.

The Atlatl has experienced a renewal of interest world wide in the past decade. Annual competition is now held in at least 17 states across the U.S. and in several other countries. Demonstrations and exhibitions are common. Equipment is being manufactured and marketed. Local Clubs are being organized and in 1987, The World Atlatl Association was chartered in Colorado.

The World Atlatl Association has members from across the United States and seven other countries. Montana Atlatl enthusiasts from at least 10 cities, from Glendive to Missoula ,are members of the WAA.

Wayne Brian of Mesa Arizona was recently recognized in the Guinness Book of World Records for throwing a Atlatl Dart 616 feet 10 inches.

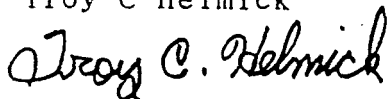
EXHIBIT 5
DATE 2-28-95
FILE SB 259

However: The Atlatl is a close range weapon. Stodiek found in his studies that the approach distance of Australian hunters using the Atlatl was generally 10 to 30 meters. Archaeological evidence from many sites indicate this was the case with most prehistoric hunters also.

Atlatl hunters should be allowed to hunt during the regular archery season to allow a much closer approach distance than would generally be possible during the rifle season.

The World Atlatl Association has stated their support of this bill to legalize the hunting of deer in Montana with the Atlatl. I ask that you vote for this bill.

Troy C Helmick



128 N. Cherry Box 303

Townsend, MT 59644

EXHIBIT 5A
DATE FEB 28, 1995
SB 259

THE WORLD ATLATL ASSOCIATION

P.O. BOX 56

OCOTILLO, CA 92259-0056

(619) 358-7835

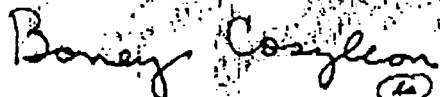
February 6, 1995

The Honorable Don Hargrove
The State Senate
State Capitol
Helena, Montana

Dear Senator Hargrove:

This letter is to advise you that The World Atlatl Association supports Senate Bill #259 which will legalize the use of the weapon system - the Atlatl/Spearthrower - for hunting in the State of Montana.

Sincerely,



Bonifacio A. Cosyleon

President

THE WORLD ATLATL ASSOCIATION

BC/lc

Senate Bill No. 269
February 28, 1995
Testimony presented by Pat Graham
Montana Fish, Wildlife & Parks
before the House Fish and Game Committee

Montana Fish, Wildlife & Parks is asking for authority to join the Interstate Wildlife Violator Compact. We believe membership in the compact will benefit the people of Montana by creating an additional deterrent to wildlife resource violators. The concept of a wildlife violator compact was first suggested in the early 1980's by member states of the Western Association of Fish and Wildlife Agencies. The idea is based on the existing Drivers License Compact and the Non-Resident Violator Compact which are related to motor vehicle operator licensing and enforcement. Montana has been a member of the Driver License Compact, 61-5-401, MCA, since 1963.

In 1985 draft compacts were developed by Colorado and Nevada. These were merged into the present Wildlife Violator Compact. In 1989 the Colorado, Nevada and Oregon legislatures passed bills adopting the compact. Since then Arizona, Idaho, Utah and Washington have joined. Wyoming is presently considering legislation to join.

The compact benefits hunters, anglers and trappers as well as law enforcement officers. For the sportsmen and women, the compact avoids the delay and inconvenience which normally occurs for nonresidents cited for a violation in another state. Under the compact, residents of member states are treated the same as residents in the state where the violation occurs. For most fish and game violations this means that a nonresident is allowed to show identification, agree to comply with the citation and go on their way rather than posting a cash bond or spending time in jail before seeing a judge. This procedure also benefits the officer who does not have to process a nonresident violator through the criminal justice system. Instead the officer can return to patrolling after giving the citation.

A major benefit of the compact is violators from compact member states are put on notice that their activities in one state can affect their privilege to hunt, fish, and trap in all of the participating states. We believe this will promote compliance with Montana's laws and regulations relating to hunting, fishing, and trapping.

The procedures under the compact are described in the section-by-section summary. I want to briefly describe each procedure using fictitious examples. Under Article III, let us assume a Montana game warden cites Hank, a Colorado fisherman, for catching an overlimit of rainbow trout. Hank will be asked to show identification and agree to comply with the citation. At that point, Hank will be able to get back to his hotel. Hank decides he wants to get home and throws away the citation. When he fails to

appear or post bond in justice court, the game warden notifies our Helena enforcement division which then notifies Colorado. In Colorado, the fish and game authority sends Hank a letter suspending his privileges to hunt, fish or trap in Colorado until he takes care of his Montana citation. Hank, who loves to fish, reconsiders and returns to Montana to face the justice of the peace. Once he pays his fine, Montana notifies Colorado that he has complied. At that point, Colorado ends Hank's suspension and returns his licenses to him.

Under Article IV of the compact, our Department notifies Colorado of Hank's conviction. The Colorado officials check their laws to see what would have happened to Hank if he had been cited for catching an overlimit in Colorado. They decide that although Hank would have been fined in Colorado, his fishing privileges would not have been forfeited for one offense. Therefore, they take no further action. Having learned his lesson, Hank plans to fish within the limit for the rest of his days.

I will use another example to illustrate the procedure under Article Five. Diana, a Washington resident, goes to Utah to hunt big game. She bought a nonresident hunting license, but while she's hunting for deer, she sees an impressive moose. She has always wanted to shoot a moose, so she takes a chance and kills it. A Utah game warden has been watching from across the valley and comes over to check her license. She's in trouble and pleads guilty to unlawful taking of a moose. Under Utah law, her privileges to hunt in Utah are suspended for three and a half years. Her name is sent out to the participating compact states. Her privilege to hunt in her home state of Washington is suspended for three and a half years.

We get Diana's name on a list from Utah. We run her name through our computer and find she has purchased a nonresident license to hunt in Montana in 1995. Under Montana law, a person convicted of unlawfully taking a moose would lose their hunting, fishing and trapping privileges for a minimum of 30 months. We send Diana a letter notifying her of our obligation under the compact, the suspension of her Montana hunting, fishing and trapping privileges for three and a half years, and the requirement that she send in her Montana hunting license within 10 days. She sends in the license but decides to hunt here anyway. She is caught hunting without a license and with her privileges suspended in Montana. She is heavily fined for both offenses, and because the court is not convinced she takes the laws seriously, she is also required to spend 10 days in jail.

These examples briefly illustrate how the compact would work in Montana. Section 1 of the bill is the compact itself. Sections 2 through 4 give the Department the authority to comply with the requirements of the compact. Section 5 provides an informal hearing procedure with the right to appeal to district court.

To see what kind of workload the compact might generate for Montana, we asked Colorado for a list of the persons who were

suspended in Colorado. We compared the 250 names with our list of license purchasers. There were no Montana residents on their list. Of the 250 names, only one person had purchased a license in Montana. His Colorado hunting, fishing, and trapping privileges had been suspended in 1992 for three years in Colorado for the unlawful taking of two cow elk, hunting without a valid license, unlawful transfer of an elk license, and failure to properly void an elk license.

He moved to Montana in 1992. We found that he was recently charged in Montana with two counts of possessing unlawfully taken cow elk, three counts of possessing unlawfully killed deer, two counts of possessing unlawfully killed buck antelope, one count of possessing an unlawful black bear hide, one count of possessing an unlawfully killed mountain lion, one count of possession of a protected bird (a woodpecker), two counts of using licenses issued to another person, one failure to keep accurate taxidermy records, and one failure to obtain landowner permission while hunting big game. These 14 counts are pending trial. Because of the Colorado list, we discovered that he claimed Montana residency while he was a Colorado resident in 1992. This is currently under investigation and may lead to additional charges.

The compact will not prevent unlawful activity within Montana, but it will provide us with a good tool to use to discourage unlawful actions. I'll be happy to answer any questions on how the compact will work.

bg 2/23/95 7:17am
blj 2/23/95 8:23am
blj 2/24/95 2:55pm

SENATE BILL NO. 269

INTERSTATE WILDLIFE VIOLATOR COMPACT

Section-by-section Summary

Section 1: Text of the compact.

Article I: Findings, declaration of policy, and purpose.

Policies

- Promote compliance with laws and rules relating to wildlife resource management.
- Recognize suspension of hunting, fishing, or trapping privileges by participating states.
- Allow violators from participating state to be treated the same as a resident - no need for cash bond or jail stay.
- Report convictions to home state which will recognize the convictions occurring in a participating state.
- Enforce compliance with citations in participating states.
- Maximize effective use of law enforcement personnel and information.

Article II: Definitions

Article III: Procedures for Issuing State

1. A wildlife officer must issue a citation to a person who is resident of a participating state in the same way as citations are issued to residents of the officer's state. (e.g. accept own recognizance, thus no bond necessary for violator).
2. Personal recognizance is acceptable if allowed by the participating state's law and the violator provides adequate proof of identity.
3. If a violator fails to comply with citation, the officer will notify licensing authority in his state.
4. Licensing authority will notify the home state of the violator.

Article IV: Procedure for Home State

1. Home state will notify a violator of consequences of failing to comply with citation in the participating state and

shall begin suspension process. Hunting, fishing, and trapping privileges will be suspended until the home state receives proof of compliance.

2. When the home state receives report of conviction from a participating state, it shall enter the conviction in its records and treat the conviction as though it occurred in the home state for the purpose of license suspension. (If the conviction would have led to suspension of privileges in Montana, the department will suspend the violator's privileges for the period required by law.)

3. Reports of actions taken in the home state under the compact will be reported to the other member states.

Article V: Reciprocal Recognition of Suspension.

1. Participating state will recognize suspensions of license privileges by other participating states as though the violation occurred in their state for the purpose of suspending privileges.

2. States will report suspensions as required in the manual.

Article VI: Applicability of other laws.

Nothing in the compact affects the right of any member state to apply its laws relating to license privileges to any person.

Article VII: Compact Administrator - Procedures

One representative from each state (known as the compact administrator) will serve on the board of compact administrators. The board will have bylaws, elect officers, be able to accept grants or donations, have contract authority, and develop procedures for administering the compact.

Article VIII: Entry into Compact and Withdrawal.

The compact is valid whenever two states are members. Entry is made by resolution of ratification by authorized officials providing required information (60 days written notice). A participating state may withdraw at any time by giving 90 days written notice.

Article IX: Amendments to Compact.

Amendments require endorsement by all participating states.

Article X: Construction and Severability.

Liberal construction required. The validity of remainder is not affected by invalidity of any section and will remain in full force.

Section 2: Department authorization to effect purpose of compact.

General authorization to allow department to join, enforce, agree to amend, and withdraw from the compact.

Section 3: Reciprocal recognition of license suspensions.

1. When department receives notice of suspension of privileges by participating state, it must determine whether same offense could have resulted in suspension here. If so, Montana must suspend the privileges for the same period as the participating state or for the minimum period under Montana law, whichever is longer.

(As a practical matter, Montana will compare the list of suspended persons with the list of license applicants or holders in Montana, and notify those applicants or licensees who may be suspended in Montana and any Montana residents on the list each year.)

2. When the department receives notice of a conviction of a Montana resident by a member state, it will treat the conviction as though it occurred in Montana. If the conviction would lead to suspension of privileges in Montana, the department will suspend the privileges for the minimum period required by Montana law. All of the member states treat their residents in the same way.

3. Notice of suspension must be sent and require surrender of Montana hunting, fishing and trapping licenses within 10 days.

4. If a person who has been suspended hunts, fishes, traps, or buys a license during the period of suspension, he or she is guilty of a misdemeanor.

Section 4: Suspension of privileges for failure to comply with citation issued in another state.

1. The department must suspend the privileges of any resident who has failed to comply with a wildlife citation issued in a member state. The suspension must stay in effect until the person complies and the member state so notifies the department.

(This process allows each state to treat nonresidents the same as residents when citations are issued. Normally, the nonresident would not have to post a cash bond or spend time

in jail because the home state will provide the hammer to enforce compliance. State generally do not extradite on misdemeanor charges. The compact thus helps get compliance with misdemeanor citations by having the home state impose the penalty of suspension of privileges until the person complies with the citation.)

2. Notice of suspension must be sent and require surrender of Montana hunting, fishing and trapping licenses within 10 days.

3. If a person who has been suspended hunts, fishes, traps, or buys a license during the period of suspension, he or she is guilty of a misdemeanor.

Section 5: Hearing on suspension

This section provides for an informal hearing procedure for a person notified of suspension of privileges under the compact. The person has 20 days to request a hearing.

The only issues at the hearing are:

Did the participating state suspend privileges?

Was there a conviction in a participating state?

Did the person fail to comply with the terms of a citation from a participating state?

Could the same offense lead to suspension of privileges under Montana law?

The department is the decisionmaker under the administrative hearing procedure. Further appeals on the record could be made to the district (and eventually supreme) courts.

EXHIBIT 7
DATE FEB 28, 1995
SB 269

HOUSE OF REPRESENTATIVES
54TH LEGISLATURE

HOUSE FISH & GAME

COMMITTEE

WITNESS STATEMENT

Please Print

NAME Janet Ellis BILL NO. SB 269

ADDRESS _____ DATE Feb. 28, 1995

WHOM DO YOU REPRESENT? Montana Audubon Legislative Fund

SUPPORT ☒ OPPOSE _____ AMEND _____

COMMENTS: _____

Good enforcement programs are an important part
of wildlife conservation efforts. This program is
successful in seven other western states. We
support SB 269 because it adds a good enforcement
tool to our state's efforts to curb wildlife violation
problems

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

FISH & GAME

COMMITTEE

DATE FEB 28, 1995

BILL NO. SB210

SPONSOR(S) BISHOP

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Beth Baker	Dept of Justice	✓	
Brett Nolte	116 Tamarack Circle Great Falls, MT 59405		✓
Janet Ellis	MT Audubon	✓	
Uchi Frasier	City Atty	✓	
Pat Graham	FWP	✓	
David Brown Montana	Montana Bowhunters Ass	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993

wp:visbcom.man

CS-14

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

FISH # GAME

COMMITTEE

DATE FEB 28, 1995

BILL NO. SB 259

SPONSOR(S) HARGrove

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PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
TROY HELMICK Box 303 TOWNSEND MT		X	
CHAR HELMICK 421 SEVENTH HELENA, MT		X	
KATHERINE HARTMAN PO Box 797 MANHATTAN MT		X	
Shirley Helmick Box 303 Townsend MT		X	
Brett NOOTE 116 TOWNSEND MT			
Willie R. Perkins Box 797 Manhattan		X	
Pet Gvaluen	FWP		no position
David Brown	Montana Bushwhacker Ass		
Bep Heavy Runner			

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

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CS-14

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

FISH & GAME COMMITTEE DATE FEB 28, 1995
BILL NO. SB 269 SPONSOR(S) CRIPPEN

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Janet Ellis	MT Audubon	✓	
Pat Graham	FWP	✓	
David Brown	Montana Bowhunters	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. * WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

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