

MINUTES OF THE MEETING
FISH AND GAME COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

March 19, 1985

The meeting of the Fish and Game Committee was called to order by Vice-Chairman Orval Ellison on March 19, 1985, at 3:45 p.m. in room 317 of the State Capitol.

ROLL CALL: All members were present with the exception of Representative Eudaily who was excused by the Chairman.

CONSIDERATION OF SENATE BILL NO. 388: Senator Judy Jacobson, District 36, Butte, appeared before the committee as sponsor of Senate Bill No. 388. Senator Jacobson said that this bill was proposed to her by her husband, Dr. John Jacobson, and there is a very good reason for this bill. She said that hunting and fishing are quite a tradition in the state of Montana; and there are a lot of people, particularly older people, who become disabled and have a hard time getting around, but still enjoy having wild game meat. She said that there are many people who have heart disease, emphysema, or loss of eye sight, who still enjoy getting out to a certain limited extent. She said that many of these people would like to have a game animal and be able to have a license just like anyone else. She said she felt that these people should be able to buy a limited license, and then name specifically, the person that they would have shoot the game for them. She said that this bill would enable those people to have a license.

PROPOSERS: Robert Van Der Vere, a concerned citizen lobbyist, appeared before the committee in support of this bill. He said that we have taken care of about every segment of our population, except the disabled referred to in this bill. He said he felt that this was a good bill and urged the committee to concur on it.

There were no further proponents to Senate Bill No. 388.

OPPOSERS: Jim Flynn, Director of the Department of Fish, Wildlife, and Parks, appeared before the committee

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in opposition to Senate Bill No. 388. He handed out a copy of his testimony to all committee members. (See Exhibit No. 1)

There were no further opponents to Senate Bill No. 388.

DISCUSSION OF SENATE BILL NO 388: Representative Jenkins asked Senator Jacobson if the bill that allowed disabled people to hunt from a motorized vehicle, wouldn't also cover what she was trying to do with this bill. Senator Jacobson said that a person with failing eyesight may be able to go along on a hunting trip, but they probably would not be able to shoot the animal. She said that the other bill may cover certain aspects of what this bill covers, but it does not cover all the disabled people. She said that it may not be wise for some people with heart disease or emphysema to even be out in the field. So these people would not be covered by the other bill. She said that there are a lot of proud people who do not like to go begging meat from other people, and this bill would allow them to have their own license.

Representative Cobb asked Senator Jacobson why the terminology "in the presence of the licensee," and "who will accompany" were taken out of the bill. Senator Jacobson said that she asked that these be taken out because she did not mean for them to be in the bill when it was drafted.

Representative Jenkins asked Senator Jacobson if she felt that this bill would discourage the people to hunt, who were disabled and in wheelchairs. He said he felt that some of these people would just allow others to hunt for them, if this bill were to pass. Senator Jacobson said that she does not envision it to be that way. She said she felt that many disabled people in wheelchairs enjoy getting out and hunting or trap-shooting, and she does not think this will keep them home. She said that Representative Harp and she felt that the two bills were compatible and that is why they co-sponsored them. She said that she felt that it was worth a two year trial. She said that if it does not work out, they can always repeal the bill.

Representative Grady referred to the bill, lines 4-6, page 2, and asked if a disabled person could have more

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than one person out there hunting for him. Senator Jacobson said that the bill should probably be amended to designate just one person. Representative Grady then asked Senator Jacobson if the person designated to hunt for the disabled, would also have to have a license of the same class. She said that the designated person would have to have the same class license, whether it be deer, elk or game bird. She said she felt it should be left to common licenses, because she felt if it were to include special permits, then there may be some abuse.

Representative Jenkins asked Mr. Flynn if part of the licensing was not to harvest and keep the population of game animals in balance with nature. Mr. Flynn said that there is no implication in the issuance of any license that a person will get a deer, elk or any other game animal. He said that this is not an opportunity bill, it is a "meat" bill. Representative Jenkins then asked Mr. Flynn that from the harvest aspect, wouldn't this bill be viable. Mr. Flynn said that he does not feel that the passage of this bill is going to enhance the harvest in the state of Montana. He said that he does not see an impact one way or another.

Representative Ellison asked Mr. Flynn if all the people that qualified under Representative Harp's bill, would qualify under this bill. Mr. Flynn said that he assumed that they would. Representative Ellison asked Mr. Flynn if it would be possible to give the disabled more consideration during the game sales. Mr. Flynn said that is what they were attempting to do when they introduced House Bill No. 159. He said that piece of legislation was to give the Department more flexibility, so that they could give more to the needy people in certain communities. Representative Ellison then asked Mr. Flynn if that legislation would give them enough flexibility to include disabled persons. Mr. Flynn said that it was their intent to be able to include them.

Representative Grady asked Mr. Flynn if a disabled person could now buy a license. Mr. Flynn said that they can, and they also get a discount. Representative Grady then referred to Mr. Flynn's testimony concerning the State Supreme Court statement that "in Montana, big game hunting is a sport. The licensed sportsman-

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hunter must kill his own animal; he cannot have it done for him." Representative Grady then asked Mr. Flynn if they would be going against the Supreme Court, if they approved this legislation. Mr. Flynn said that they would not, because it was not a binding court decision. He said that he had noted it in his testimony because it has been a long-standing tradition in the state of Montana.

There being no further questions from the committee, Chairman Ream asked Senator Jacobson to close. In closing, Senator Jacobson said that she would encourage the committee to look very closely at this bill, because she does not think the dangers that are being suggested are there. She said that there are a lot of proud people, who do not want to go to an auction or ask others for wild-game meat. She said that she felt this bill would allow those people to purchase their own license and have a limited opportunity to get out and be a part of the hunt. She said that they are trying to help address the disabled people; and now even if a disabled person can buy a license, it does not do him any good if he is incapable of going out and using it. She encouraged the committee to concur on this bill.

EXECUTIVE SESSION: Representative Pavlovich made a DO PASS motion on Senate Bill No. 388. Representative Hart suggested an amendment and then made a motion to delete "or persons" on lines 5 and 6, page 2.

Representative Moore said that she would like to remind the committee about the "old code of the mountains," which is that one does not go out and shoot something for someone else.

Question was called on Representative Hart's amendment. The motion carried unanimously.

Representative Rapp-Svrcek then made a substitute motion of DO NOT PASS. Representative Moore seconded the motion.

Representative Rapp-Svrcek said that he made the motion with some trepidation because he is really in support of the handicapped people and likes to see them get out in the mainstream, but he does not see this bill as giving them anymore opportunity to hunt. He said that he feels that all this bill is doing is allowing some

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person who does not get in enough hunting during a regular season, to go out and hunt some more. He said he feels that Mr. Flynn put it very succinctly in his testimony. He feels that hunting is something that is a recreational opportunity and not something that can be done by proxy.

Representative Ellison said that he would have to agree with and support Representative Rapp-Svrcek's motion. He said he felt that many of the people are already included in House Bill No. 764.

Representative McCormick said that he felt this had nothing to do with House Bill No. 764, because that bill proposed that the disabled shoot their own game.

Representative Phillips suggested that the committee delay further executive action so that Senator Mohar could present his bill.

CONSIDERATION OF SENATE BILL NO. 371: Senator John Mohar, District 1, Troy, appeared before the committee as sponsor of Senate Bill No. 371. He said that this was an act prohibiting the purchase and sale of grizzly bear parts; providing for the disposition of seized grizzly parts; and removing the grizzly bear from the definition of game-farm animals. He said that this bill would make it illegal to sell all grizzly bear parts in Montana. He referred to subsection 2, page 2, lines 7-14, and explained the amendments that had been made by the Senate Fish and Game Committee.

PROPOSERS: Jim Flynn, Director of the Department of Fish, Wildlife, and Parks, appeared before the committee in support of Senate Bill No. 371. He handed out a copy of his testimony to all committee members. (See Exhibit No. 2)

Janet Ellis, representing the Montana Audubon Council, appeared before the committee in support of Senate Bill No. 371. She said that Montana is one of the most attractive locations for poachers because of inadequate state laws. She said that pressures on grizzly bears from poachers are pressures that should be eliminated, and she urged the committee to support Senate Bill No. 371. She handed in a copy of her testimony. (See Exhibit No. 3)

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Dan Heinz, representing the Montana Wildlife Federation, appeared before the committee in support of Senate Bill No. 371. He said that recent, highly publicized sting operations have shown the extent and seriousness of the illegal kill and marketing of wildlife and wildlife parts in Montana. He said that the grizzly is a unique and very valuable part of our Montana heritage. He said that they are in deep trouble over much of their range, and if forbidding the sale of Grizzly parts prevents only a very few illegal kills, then it is well worth our efforts to pass this bill. He handed in a copy of his testimony. (See Exhibit No. 4)

There were no further proponents and no opponents to Senate Bill No. 371.

DISCUSSION OF SENATE BILL NO. 371: Representative Ellison asked Mr. Flynn how they were going to identify the parts of the grizzlies that are already legally in existence in the state of Montana. Mr. Flynn said that he did not think that it would be much of a problem, because everything that is already out there has some kind of identification with it. He said that if a person had legally killed a bear, then they would have had a license and it would be recorded with their department. He said that they could also refer back or trace records to Alaska, Alberta, or other states. Representative Ellison then asked Mr. Flynn what they would do if they caught someone with grizzly bear claws, and the person said that they had these before this legislation became law. He wanted to know the retroactive effects of this legislation. Mr. Flynn said that he did not know what the retroactive effects would be, and said that he would have to refer that to the legal council. He said that if they run into the supposition that a person has something that is illegal, then they would have to trace the trail back to find out the origination. Senator Mohar said that this bill does not keep people from having the parts, it just keeps them from selling the different parts. Senator Mohar said they would have to prove that there was a transaction in receiving possession of the parts.

Representative Moore asked Mr. Flynn that if a person was to get a legal grizzly bear, could they give those parts to their family. Mr. Flynn said that he would assume that they could be given, but they could not be sold.

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Representative Rapp-Svrcek asked Senator Mohar what effect this legislation would have on the Indian tribes. Senator Mohar said that he was not sure. Janet Ellis said that this would not affect anything on reservations, but if Native Americans wanted to sell them off the reservations, then it would apply.

Representative Jenkins asked Researcher Dave Cogley, if he would give him a legal opinion on a portion of the bill--page 3, lines 4 through 7. Representative Jenkins said that according to this, no one can transport any game animal. Mr. Cogley said that he did not have a good answer and he would have to check this through. Representative Jenkins then asked Mr. Flynn how many grizzly bears the Department had confiscated in the last two years. Mr. Flynn said that the greatest number of bears that they had in any one year is about 21, and 13 of those killed were hunted. He said that the Department usually ends up with eight or nine carcasses a year.

Representative Phillips referred to subsection B, page 3, lines 4 through 7, and asked Mr. Cogley if this could not be changed at the end to read, "except that grizzly bear parts may not be sold other than as specified in section 1, subsection 2, page 2, lines 7-14. Mr. Cogley said that it would be one way of changing it or perhaps they could add a new subsection.

Representative Moore asked Mr. Flynn that if some of these bear parts could be sold, could they be sold to a person from another state. Mr. Flynn said that he assumed that if the amendments offered on page 1 were not adopted, and the ones on page 3 were adopted, then they would still be in the posture of selling, but they could not be taken anywhere. He said that if the whole bill passed, they would not be selling the bear parts, so they would not have a transportation problem. Representative Moore then asked Mr. Flynn if out-of-staters were now allowed to come in and hunt the grizzly bears. Mr. Flynn said that yes, there are out-of-state licenses. Representative Moore asked how a person was then to get his bear out of this state. Mr. Flynn said that there would be a problem there if this bill passes.

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Representative Cobb asked Mr. Flynn if there were currently any grizzly bears in game farms in Montana. Mr. Flynn said that he was not aware of any in game farms, but there might be one in the zoo in Red Lodge.

Representative Grady asked Mr. Flynn if it was approved by federal law, would they still be able to sell parts at public auction. Mr. Flynn said that the grizzly is on the federal threatened species list, and as long as they are on this list, the federal government would not authorize such an auction.

The committee discussed further, several sections of the bill.

Representative Jenkins asked Senator Mohar what his feelings were concerning the suggested changes and questions of the committee. Senator Mohar said he felt that they raised a really good point, in that the purpose of the bill was not so that someone could not transport game legally shot. He said that the intent was to discourage poaching and to make illegal the sale of the parts. He said that he agreed that the language was confusing and he supported the committee's interest in trying to get it back to the original intent of the bill.

There being no further questions from the committee, Chairman Ream asked Senator Mohar to close. In closing, Senator Mohar said that he appreciated the diligence of the committee. He said that this bill was to simply discourage the poaching of grizzly bears.

EXECUTIVE SESSION: The discussion on Senate Bill No. 388 resumed. Representative Jenkins said that he feels there are many elderly people who would like and could use the wild meat.

Representative Pavlovich said that there are some people who get four or five deer and he feels that the disabled should at least be allowed to get one animal.

Representative Cobb said he agreed that there are disabled people who can really use the food.

Representative Rapp-Svrcek said that he agrees that there are people that need the meat, because there are some in

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his area, but he said he still opposes the fact that this will allow some people to hunt for months. He said that he felt the intent was admirable, but it goes against the traditions of this state.

Representative Grady said that he also had to speak against this bill because it is going too far. He said that he feels it will just create more problems with landowners, and he said that it was supposed to be a sport. He said the sport of shooting is half of hunting. He said that in all the thousands of hunters that he has dealt with, he has never heard of this complaint. He said he felt that they are getting way too liberal when they allow such things as this to start.

Representative Montayne expressed his agreement with Representative Grady.

Question was called. A roll-call vote was taken on the DO NOT PASS motion, and the motion failed 7-6. (See roll-call vote)

More committee discussion followed concerning suggested amendments.

Representative Jenkins suggested that they limit this to deer only.

Representative Cobb made a motion to leave only the A-3 and A-4 tags in this bill. More committee discussion followed concerning this proposed amendment. Question was called. The motion on the amendment carried with the dissenting votes of Representatives Rapp-Svrcek, Grady, and Montayne. A roll-call vote on the DO PASS AS AMENDED motion was taken. The motion carried 7-6. (See roll-call vote) The motion passed with the dissenting votes of Representatives Ream, Ellison, Grady, Montayne, Moore, and Rapp-Svrcek.

SENATE BILL NO. 371: Researcher Dave Cogley discussed the anticipated language problems with the committee. Representative Ellison moved that Senate Bill No. 371 DO PASS. The motion was seconded. Question was called and the motion passed unanimously.

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SENATE BILL NO. 255: Representative Pavlovich moved that Senate Bill No. 255 DO PASS. Representative Cobb said that he would like to propose an amendment so that the Augusta Preserve would be exempt from this legislation. He made a motion to that effect.

Representative Rapp-Svrcek seconded the amendment motion. Committee discussion followed. Question was called on the amendment. The motion carried with the dissenting votes of Representatives Ream and Grady.

Mr. Cogley discussed an amendment that had been suggested by Representative Eudaily. This amendment would insert "only" after "shotgun" page 1, line 23. Representative Rapp-Svrcek made a motion to adopt that amendment. The motion was seconded and committee discussion followed. Question was called on the amendment. The motion passed with the dissenting vote of Representative Montayne. A vote was then taken on the DO PASS AS AMENDED motion made by Representative Rapp-Svrcek and seconded by Representative Jenkins. Question was called. The motion passed unanimously.

ADJOURNMENT: There being no further business before the committee, the meeting adjourned at 5:20 p.m.


BOB REAM, Chairman

STANDING COMMITTEE REPORT

MARCH 19

85

19.....

SPEAKER

MR.

FISH AND GAME

We, your committee on

SENATE

having had under consideration Bill No. **388**

THIRD

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color

**ALLOW DISABLED PERSON TO MAKE ANOTHER PERSON TO SHOOT A GAME
ANIMAL FOR HIM**

SENATE

329

Respectfully report as follows: That..... Bill No.

BE AMENDED AS FOLLOWS:

1. Page 1, line 24.
Following: "Class"
Strike: "A-1,"
Following: "A-3"
Strike: "1"
Insert: "or"
Following: "A-4"
Strike: ", A-5, or A-6" on line 25
2. Page 2, line 5.
Following: "person"
Strike: "or persons"

**AND AS AMENDED,
BE CONCURRED IN
XXXXXX
DO PASS**

STANDING COMMITTEE REPORT

MARCH 19

19 85

MR. SPEAKER

We, your committee on FISH AND GAME

having had under consideration SENATE Bill No. 371

THIRD reading copy (BLUE
color)

PROHIBIT PURCHASE AND SALE OF GRIZZLY BEAR PARTS

Respectfully report as follows: That SENATE Bill No. 371

*(★
reconsidered 3-21-85)*

BE CONCURRED IN

~~ISSUES~~

STANDING COMMITTEE REPORT

MARCH 21

19 85

MR. SPEAKER

We, your committee on FISH AND GAME

having had under consideration SENATE Bill No. 255

THIRD reading copy (BLUE)
color

**AN ACT TO PROVIDE FOR THE USE OF MUZZLELOADERS IN SHOTGUN ONLY
HUNTING AREAS**

Respectfully report as follows: That SENATE Bill No. 255

BE AMENDED AS FOLLOWS:

1. Page 1, line 23.
Following: "SHOTGUNS"
Insert: "only"

g.n. Amendment #1 Included Augusta Game Preserve.
Bill reconsidered 3-21-85.

**AND AS AMENDED,
BE CONCURRED IN**

DO-PASS

Exhibit #1
3-19-85
SB # 388

SB 388

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

March 19, 1985

The department appears in opposition to SB 388.

While we certainly understand and sympathize with the right of the disabled, this bill attempts to address that plight to a degree that is unacceptable.

The concept of a person who holds the license doing the harvesting of the animal is one of long standing in our state. In fact, in 1968, this concept was outlined by our State Supreme Court when it said: "In Montana, big game hunting is a sport. The licensed sportsman-hunter must kill his own animal; he cannot have it done for him."

When the department issues a license, we are issuing primarily a recreational opportunity. There is no guarantee of success nor assurance that an animal will be taken. Each individual buys his license with this in mind and does or does not purchase such license depending upon his personal circumstances with regard to hunting.

This legislation would seem to indicate that a special circumstance should be set up to assure that a disabled person who qualifies can have a successful hunt. While we prefer to see individuals have successful hunts, the filling of another's tag is an approach we cannot support.

We request that the committee not approve SB 388 and maintain the integrity of each individual filling the bag limits for his license.

Exhibit # 2
3-19-1985
SB # 371

SB 371

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

March 19, 1985

The department supports Senate Bill 371.

The grizzly bear, as a threatened species, requires all of the protection from illegal sources that it can get. This legislation would provide some of that protection.

The bill allows flexibility for the use of parts which may come into our possession, and thus meets with our approval.

Montana Audubon Council

SB 371

March 19, 1985

Exhibit #3

3-19-1985

SB# 371

Mr. Chairman and Members of the Committee,

My name is Janet Ellis and I'm here today representing the Montana Audubon Council. The Council supports SB371.

According to our talks with U.S. Fish & Wildlife agent Joel Scrafford of Billings, Montana is one of the most attractive locations for poachers because of inadequate state laws. For example, if our state allows the sale of certain wildlife parts, animals that were poached in other states end up being sold here. We also encourage poaching to go on in Montana with these laws.

According to our research, a relatively new type of poacher is threatening wildlife. That poacher is more of a professional - and is hunting for a profit.

Grizzly bears are a unique animal in the west. Although they are hunted in certain areas in Montana, their populations are carefully monitored because of the small populations within the state.

It is difficult to know what exactly the market is for grizzly bear parts. There are rumors of claws being sold in stores around Yellowstone and Glacier National Park. Evidently these merchants claim that these parts come from non-endangered Canadian or Alaska bears. We understand that claws sell for anywhere between \$25 and \$300. It is difficult to tell if a claw is from a legally - or illegally - taken bear.

SB 371 does not affect the average person. Hunters can still clearly possess the animals they have. Others who now own claws and other parts still have that right. SB 371 only asks that the sale of such parts not be possible.

Pressures on grizzly bears from poachers are pressures that should be eliminated. We are asking that you eliminate that pressure by voting for SB 371.

Thank you.

MEMORANDUM

TO: Erwin J. Kent
FROM: Joel Scrafford
SUBJECT: Operation Trophy Kill

The following is a list of species and location of known kills in Montana taken in Operation Trophy Kill:

Taken by Special Agents on guided hunts

1 5-point elk	Bear Creek, Jardine
1 4-point elk	Sphinx Creek, Gardiner
1 2-point mule deer	Wine Glass Mtn., Livingston
1 doe mule deer	West Boulder, Livingston
1 mountain goat	Hellroaring Creek, Gardiner
1 mountain goat	Arch Lake, Columbus
1 mountain lion	Townsend

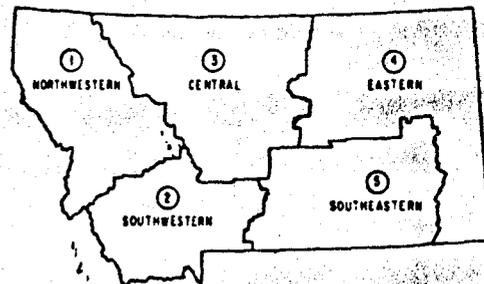
Known kills taken by defendants and offered for sale

2 mountain lions	Townsend
1 mountain goat	Townsend
5 lynx	Townsend
2 golden eagles	Townsend
2 bighorn sheep	Deer Creek, Big Sky
1 bighorn sheep	Big Sky
3 bighorn sheep	Miner Basin, Gardiner
2 bighorn sheep	Cinnibar Mtn, Gardiner
12 bighorn sheep	Gardiner Area
2 bighorn sheep	Boulder River, Big Timber
3 mountain goats	Stillwater River, Columbus
2 mountain goats	Hellroaring Creek, Gardiner
3 bighorn sheep	Yellowstone National Park
6 mountain lion	West Boulder, Livingston
9 lynx	West Boulder, Livingston
6 6-point elk	Gardiner Area
5 bull elk (velvet)	Gardiner Area
14 golden eagles	Pray Area
2 cow elk	Wineglass Mtn., Livingston
6 golden eagles	Crazy Mtns. Big Timber
1 grizzly bear	Hellroaring Creek, Gardiner
1 grizzly bear	Slough Creek, Gardiner
1 mink	Main Boulder River
3 black bear (whole)	West Boulder, Livingston

During this investigation we identified two other groups that are working similar types of operation. One is operating in the Gardiner and the other around Big Sky. Undoubtedly there are others that we are not aware of.

Montana Wildlife Federation

AFFILIATE OF NATIONAL WILDLIFE FEDERATION



Testimony on SB371
~~February~~ 19, 1985
March

My name is Dan Heinz. I am here today representing the Montana Wildlife Federation.

Recent, highly publicized sting operations have shown the extent and seriousness of the illegal kill and marketing of wildlife and wildlife parts in Montana.

It is doubly difficult to prevent or prosecute wildlife crimes if there are legal markets for wildlife parts.

The Grizzly is a unique and very valuable part of our Montana heritage. They are in deep trouble over much of their range. If forbidding the sale of Grizzly parts prevents only a very few illegal kills, then it is well worth our efforts to pass this bill.

We feel there should be a ban on the sale of some other wildlife parts and this certainly is a high priority first step.

This bill does not prevent the sportsmen from owning and displaying legally taken trophies.



