

HOUSE BILL NO. 137

INTRODUCED BY S. REICHNER

BY REQUEST OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS

A BILL FOR AN ACT ENTITLED: "AN ACT GRANTING THE FISH, WILDLIFE, AND PARKS COMMISSION RULEMAKING AUTHORITY RELATED TO THE TAKING OF LAKE TROUT IN FLATHEAD LAKE; AUTHORIZING THE SALE OF LAKE TROUT TAKEN; AND AMENDING SECTIONS 87-1-301, 87-4-601, AND 87-4-609, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 87-1-301, MCA, is amended to read:

"87-1-301. Powers of commission. (1) The commission:

(a) shall set the policies for the protection, preservation, management, and propagation of the wildlife, fish, game, furbearers, waterfowl, nongame species, and endangered species of the state and for the fulfillment of all other responsibilities of the department as provided by law;

(b) shall establish the hunting, fishing, and trapping rules of the department;

(c) shall establish the rules of the department governing the use of lands owned or controlled by the department and waters under the jurisdiction of the department;

(d) must have the power within the department to establish wildlife refuges and bird and game preserves;

(e) shall approve all acquisitions or transfers by the department of interests in land or water, except as provided in 87-1-209(4);

(f) shall review and approve the budget of the department prior to its transmittal to the budget office;

(g) shall review and approve construction projects that have an estimated cost of more than \$1,000 but less than \$5,000; and

(h) shall manage elk, deer, and antelope populations based on habitat estimates determined as provided in 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as provided in 87-1-323. In developing or implementing an elk management plan, the commission shall consider landowner tolerance when deciding whether to restrict elk hunting on surrounding public land in a particular hunting district. As used in this subsection (1)(h), "landowner tolerance" means the written or documented verbal

1 opinion of an affected landowner regarding the impact upon the landowner's property within the particular hunting
2 district where a restriction on elk hunting on public property is proposed.

3 (2) The commission may adopt rules regarding the use and type of archery equipment that may be
4 employed for hunting and fishing purposes, taking into account applicable standards as technical innovations in
5 archery equipment change.

6 (3) The commission may adopt rules regarding the establishment of special licenses or permits, seasons,
7 conditions, programs, or other provisions that the commission considers appropriate to promote or enhance
8 hunting by Montana's youth and persons with disabilities.

9 (4) (a) The commission may adopt rules regarding nonresident big game combination licenses to:

10 (i) separate deer licenses from nonresident elk combination licenses;

11 (ii) set the fees for the separated deer combination licenses and the elk combination licenses without the
12 deer tag;

13 (iii) condition the use of the deer licenses; and

14 (iv) limit the number of licenses sold.

15 (b) The commission may exercise the rulemaking authority in subsection (4)(a) when it is necessary and
16 appropriate to regulate the harvest by nonresident big game combination license holders:

17 (i) for the biologically sound management of big game populations of elk, deer, and antelope;

18 (ii) to control the impacts of those elk, deer, and antelope populations on uses of private property; and

19 (iii) to ensure that elk, deer, and antelope populations are at a sustainable level as provided in 87-1-321
20 through 87-1-325.

21 (5) The commission may adopt rules establishing license preference systems to distribute hunting
22 licenses and permits:

23 (a) giving an applicant who has been unsuccessful for a longer period of time priority over an applicant
24 who has been unsuccessful for a shorter period of time; and

25 (b) giving a qualifying landowner a preference in drawings. As used in this subsection (5)(b), "qualifying
26 landowner" means the owner of land that provides some significant habitat benefit for wildlife, as determined by
27 the commission.

28 (6) (a) The commission may adopt rules to:

29 (i) limit the number of nonresident mountain lion hunters in designated hunting districts; and

30 (ii) determine the conditions under which nonresidents may hunt mountain lion in designated hunting

1 districts.

2 (b) The commission shall consider, but is not limited to consideration of, the following factors:

3 (i) harvest of lions by resident and nonresident hunters;

4 (ii) history of quota overruns;

5 (iii) composition, including age and sex, of the lion harvest;

6 (iv) historical outfitter use;

7 (v) conflicts among hunter groups;

8 (vi) availability of public and private lands; and

9 (vii) whether restrictions on nonresident hunters are more appropriate than restrictions on all hunters.

10 (7) The commission may adopt rules for the issuance of bounty payments to anglers using hook and line
 11 to take lake trout from Flathead Lake."

12

13 **Section 2.** Section 87-4-601, MCA, is amended to read:

14 **"87-4-601. Sale of fish or spawn unlawful -- exceptions.** (1) Except as provided in subsections (2)
 15 through (4), a person may not, for speculative purposes, for market, or for sale, in any way, catch game fish or
 16 remove or cause to be removed the eggs or spawn of any game fish. A person may not sell or offer for sale game
 17 fish or the eggs or spawn from game fish.

18 (2) The restrictions of subsection (1) do not apply to:

19 (a) the catching of fish or the collecting of eggs or spawn in a private fish pond licensed under 87-4-603
 20 by the owner of the pond;

21 (b) the taking of fish by state authorities for the purpose of obtaining eggs for propagation in state fish
 22 hatcheries or by any person who receives a permit from the department to take eggs for use in a private fish pond
 23 licensed under 87-4-603;

24 (c) the catching of whitefish by the holder of a valid fishing license fishing with hook and line or rod in
 25 specified waters designated by rules of the commission;

26 (d) the taking of whitefish by nets or traps in the Kootenai River and in its tributary streams within 1 mile
 27 of the Kootenai River, under rules that the commission prescribes; or

28 (e) the sale by the department of fish eggs produced from brood stock owned by the department but
 29 determined to be in excess of the department's needs.

30 (3) (a) Until June 30, 2018, a person issued a paddlefish tag under 87-2-306 who legally takes a

1 paddlefish from the Yellowstone River between the Burlington northern railroad bridge at Glendive to the North
2 Dakota state line during an authorized paddlefish season may donate the paddlefish roe, or eggs, to a Montana
3 nonprofit corporation as specified in subsection (3)(b) for processing and marketing as caviar. A paddlefish may
4 be brought only to the Intake fishing access site for donation to the paddlefish roe donation program and must
5 be a properly tagged, whole paddlefish. Roe separated from the paddlefish is not acceptable for donation to the
6 program. A paddlefish intentionally cut in any manner to identify its sex is also unacceptable for donation to the
7 program.

8 (b) The department shall develop rules for selecting one Montana nonprofit organization to accept
9 paddlefish egg donations and process and market the eggs as caviar. The department shall also develop rules
10 for the marketing and sale of caviar under this section.

11 (c) The department may enter into an agreement with the organization selected pursuant to the rules
12 provided for in subsection (3)(b) specifying times, sites, and other conditions under which paddlefish eggs may
13 be collected. The agreement must require the organization to maintain records of revenue collected and related
14 expenses incurred and to make the records available to the department and the legislative auditor upon request.

15 (d) (i) Thirty percent of the proceeds from the sale of paddlefish egg caviar products in excess of the
16 costs of collection, processing, and marketing must be deposited in a state special revenue fund established for
17 the department. The fund and any interest earned on the fund must be used to benefit the paddlefish fishery,
18 including fishing access, administration, improvements, habitat, and fisheries management, or to provide
19 information to the public regarding fishing in eastern Montana, which could include the design and construction
20 of interpretive displays.

21 (ii) Seventy percent of the proceeds from the sale of paddlefish egg caviar products in excess of the costs
22 of collection, processing, and marketing must be paid to the nonprofit organization that processes and markets
23 the caviar. The nonprofit organization's administrative costs must be paid from its share of the proceeds. An
24 advisory committee must be appointed by the commission and consist of one member from the organization
25 selected pursuant to the rules provided for in subsection (3)(b), two area local government representatives, and
26 two representatives of area anglers. The advisory committee shall solicit and review historical, cultural,
27 recreational, and fish and wildlife proposals and fund projects. The committee shall notify the commission of its
28 actions. Proceeds may be used as seed money for grants.

29 (4) A person may possess and sell:

30 (a) legally taken nongame fish, as provided in 87-4-609 and rules adopted by the department pursuant

1 to 87-4-609; and

2 (b) lake trout legally taken from Flathead Lake pursuant to rules adopted under 87-1-301(7) and
 3 87-4-609(2)."

4

5 **Section 3.** Section 87-4-609, MCA, is amended to read:

6 **"87-4-609. Regulation of commercial taking of fish or aquatic organisms -- permit -- rulemaking**
 7 **authority.** (1) The department shall regulate the taking, for sale or commercial distribution, of:

8 (a) crayfish for fishing bait;

9 (b) crayfish from private fish ponds regulated under 87-4-603;

10 (c) mysis shrimp;

11 (d) designated species of nongame fish in waters designated by the commission pursuant to 87-3-204;

12 (e) whitefish as authorized by statute; and

13 (f) other aquatic organisms.

14 (2) The commission may adopt rules for the taking of lake trout from Flathead Lake by one or more
 15 commercial fishing operators using hook and line.

16 ~~(2)~~(3) It is unlawful for a person to take fish or aquatic organisms for commercial purposes without
 17 obtaining a permit from the department. A permit applicant shall provide the department with sufficient details of
 18 the proposed operation to take any fish or aquatic organism for sale or commercial distribution to enable the
 19 department to evaluate any potential overharvest or conflict with existing fishing and recreational uses of the
 20 waters.

21 ~~(3)~~(4) The department may:

22 (a) deny a permit if it determines that there is substantial potential that the proposed operation may harm
 23 a fishery or conflict with existing recreational uses of the waters;

24 (b) condition a permit to restrict the method of taking, the location of the taking, and the quality and
 25 quantity of harvest to prevent overharvest or conflict with existing fishing and recreational uses of the waters; or

26 (c) require a permittee to submit harvest data to the department.

27 ~~(4)~~(5) A permit may be revoked for a violation of the conditions of the permit.

28 ~~(5)~~(6) The department may adopt rules for the regulation of commercial taking of fish or aquatic
 29 organisms, including but not limited to the setting of seasons, methods of taking, quantities of harvest, size
 30 limitations, and reporting requirements, to prevent overharvest or conflict with fishing and recreational uses of

1 the waters."

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