

HOUSE BILL NO. 187  
INTRODUCED BY S. GALLUS  
BY REQUEST OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND CLARIFYING THE LAWS GOVERNING REGULATION OF FISH; DESIGNATING YELLOW PERCH AND CRAPPIE AS GAME FISH; AUTHORIZING A PURCHASER OF A RESIDENT TEMPORARY FISHING LICENSE TO PURCHASE A PADDLEFISH TAG; PROVIDING THAT A SCIENTIFIC COLLECTION PERMITTEE MAY NOT COLLECT FISH USING ANY EXPLOSIVE; ALLOWING THE FISH, WILDLIFE, AND PARKS COMMISSION TO AUTHORIZE THE TAKING OF WHITEFISH WITH SPEARS OR GIGS; REVISING THE LAWS GOVERNING REGULATION OF FISHING TO CHANGE THE TERM "DEPARTMENT" TO "COMMISSION" TO MAKE THE LAW CONSISTENT WITH THE DUTY OF THE COMMISSION TO ESTABLISH FISHING RULES; ELIMINATING THE AUTHORITY OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO AUTHORIZE TAKING BLACK BASS IN FLATHEAD LAKE; ELIMINATING THE AUTHORITY TO AUTHORIZE SNAGGING OF COHO (SILVER SALMON); EXPANDING AND CLARIFYING THE AUTHORITY OF THE DEPARTMENT AND THE COMMISSION TO REGULATE COMMERCIAL FISH OPERATIONS; AMENDING SECTIONS 87-2-101, 87-2-306, 87-2-806, 87-3-204, 87-3-205, 87-4-601, 87-4-609, AND 87-4-610, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**Section 1.** Section 87-2-101, MCA, is amended to read:

**"87-2-101. Definitions.** As used in ~~this chapter, chapter 3, and 87-1-102, chapter 3, and this chapter,~~ unless the context clearly indicates otherwise, the following definitions apply:

(1) "Angling" or "fishing" means to take or the act of a person possessing any instrument, article, or substance for the purpose of taking fish in any location that a fish might inhabit.

(2) (a) "Bait" means any animal matter, vegetable matter, or natural or artificial scent placed in an area inhabited by wildlife for the purpose of attracting game animals or game birds.

(b) The term does not include:

(i) decoys, silhouettes, or other replicas of wildlife body forms;

(ii) scents used only to mask human odor; or

(iii) types of scents that are approved by the commission for attracting game animals or game birds.

(3) "Closed season" means the time during which game birds, fish, and game and fur-bearing animals may not be lawfully taken.

(4) "Commission" means the state fish, wildlife, and parks commission.

(5) "Fur-bearing animals" means marten or sable, otter, muskrat, fisher, mink, bobcat, lynx, wolverine, northern swift fox, and beaver.

(6) "Game animals" means deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, mountain lion, bear, and wild buffalo.

(7) "Game fish" means all species of the family salmonidae (chars, trout, salmon, grayling, and whitefish); all species of the genus stizostedion (sandpike or sauger and walleyed pike or yellowpike perch); all species of the genus esox (northern pike, pickerel, and muskellunge); all species of the genus micropterus (bass); all species of the genus polyodon (paddlefish); all species of the family acipenseridae (sturgeon); all species of the genus lota (burbot or ling); the species perca flavescens (yellow perch); all species of the genus pomoxis (crappie); and the species ictalurus punctatus (channel catfish).

(8) "Hunt" means to pursue, shoot, wound, kill, chase, lure, possess, or capture or the act of a person possessing a weapon, as defined in 45-2-101, or using a dog or a bird of prey for the purpose of shooting, wounding, killing, possessing, or capturing wildlife protected by the laws of this state in any location that wildlife may inhabit, whether or not the wildlife is then or subsequently taken. The term includes an attempt to take by any means, including but not limited to pursuing, shooting, wounding, killing, chasing, luring, possessing, or capturing.

(9) "Migratory game birds" means waterfowl, including wild ducks, wild geese, brant, and swans; cranes, including little brown and sandhill; rails, including coots; wilson's snipes or jacksnipes; and mourning doves; however, the open season on mourning doves is restricted to the open season on upland game birds ~~as defined in subsection (15).~~

(10) "Nongame wildlife" means any wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or other animal not otherwise legally classified by statute or regulation of this state.

(11) "Open season" means the time during which game birds, fish, and game and fur-bearing animals may be lawfully taken.

(12) "Person" means individuals, associations, partnerships, and corporations.

(13) "Predatory animals" means coyote, weasel, skunk, and civet cat.

(14) "Trap" means to take or participate in the taking of any wildlife protected by the laws of the state by

setting or placing any mechanical device, snare, deadfall, pit, or device intended to take wildlife or to remove wildlife from any of these devices.

(15) "Upland game birds" means sharptailed grouse, blue grouse, spruce (Franklin) grouse, prairie chicken, sage hen or sage grouse, ruffed grouse, quail, pheasant, Hungarian partridge, ptarmigan, wild turkey, and chukar partridge.

(16) "Wild buffalo" means buffalo or bison that have not been reduced to captivity."

**Section 2.** Section 87-2-306, MCA, is amended to read:

**"87-2-306. Paddlefish tags.** (1) The department may issue paddlefish tags to persons listed in subsection (2) for a fee of \$5 for residents and \$15 for nonresidents. Each tag authorizes the holder to fish with hook and line for paddlefish as prescribed by rules of the department.

(2) The following persons may obtain paddlefish tags pursuant to this section:

- (a) holders of valid Class A, Class A-8, Class B, and Class B-4 fishing licenses;
- (b) residents under 15 years of age with a valid wildlife conservation license; and
- (c) residents 62 years of age or older with a valid wildlife conservation license."

**Section 3.** Section 87-2-806, MCA, is amended to read:

**"87-2-806. Taking fish or game for scientific purposes.** (1) ~~It is lawful for the~~ An duly accredited representative of an accredited school, college, university, or other institution of learning or of any governmental agency or ~~for an individual; who may be~~ is investigating a scientific subject for which collection ~~may be~~ is necessary, ~~to~~ may take, kill, capture, and possess for that purpose any birds, fish, or animals protected by Montana law or ~~state fish and game department or commission rule,~~ provided that if a permit to collect is authorized by the department. Under the provisions of this section, a permittee may take, kill, and capture protected or unprotected birds, fish, or animals in any way that is approved by the department, except by the ~~explosion of dynamite~~ use of explosives. A permittee may not take, kill, or capture more birds, fish, or animals than are necessary for the investigation. A collection permit may not be given for a species for which a taking is prohibited by statute or rule.

(2) A person who desires to engage in the scientific investigation shall apply to the department for a permit. The department may require the applicant to submit a plan of operations that includes the purpose for the collection, collection methodology to be employed, and the qualifications of the person who will be doing the collecting. The department may set qualifications for persons to whom permits are issued and may place special

authorizations or special requirements and limitations on any permit. If the department is satisfied of the good faith and qualifications of the applicant and that the collecting is necessary for a valid purpose, the department:

(a) may issue a permit that must place a time limit on the collections and may place a restriction on the number of birds, fish, or animals to be taken; and

(b) shall require a report of the numbers and species of animals taken by collection areas.

(3) The department may deny a permit if:

(a) the applicant is not qualified to make the scientific investigation;

(b) the proposed collecting is not necessary for the proposed scientific investigation;

(c) the method of collecting is not appropriate;

(d) the proposed collecting may threaten the viability of the species; or

(e) there is no valid reason or need for the proposed scientific investigation.

(4) By December 31 of each year, a permittee ~~is required to~~ shall submit a report to the department that lists the species and numbers of individuals of the species taken and locations from which collections were taken. A permittee who fails to file a required report may not be issued another permit.

(5) The permittee shall pay \$50 for the permit, except that a permittee who is a representative of an accredited school, college, university, or other institution of learning or of any governmental agency is exempt from payment of the fee.

(6) The permittee may not take, have, or capture any other or greater number of birds, fish, or animals than are allowed in the permit.

(7) A representative of an accredited school, college, university, or other institution of learning or an individual permittee who may have various students or associates assisting throughout the year may apply to have a permit issued that includes the individual and the students or associates. The department shall approve the qualifications of a student or an associate and the level of supervision required by the primary permittee. The students or associates, when carrying a copy of the permit, have the same authorizations and restrictions as the primary applicant. The primary applicant shall keep a record of all students or associates listed on the permit and of the dates when each student or associate conducts a collection under the permit. The primary applicant is responsible for the students' or associates' use of the permit or copies of the permit."

**Section 4.** Section 87-3-204, MCA, is amended to read:

**"87-3-204. Restrictions on fishing methods -- allowed fishing methods.** (1) ~~No~~ A game fish may not be caught, captured, or taken or attempted to be caught, captured, or taken by the aid or with the use of any gun

or trap, nor may any ~~such set~~ gun, trap, or other device to entrap game fish be used, made, or set.

(2) ~~It~~ Except when specifically authorized by law or commission rule, it is unlawful for a person to:

(a) take or catch fish in any of the waters of this state, except with hook and line held in hand or line and hook attached to rod or pole held in hand or within immediate control; to

(b) take or catch fish with hook baited with any poisonous substance or by means of the use of using any poisonous substance, including fish berries; or to

(c) take or catch fish by means of the use of using fishtraps, grabhooks, seines, nets, spears, gigs, or other similar means for catching fish.

~~————(3) The department may designate such waters within the state of Montana wherein, in the judgment of the department, spears or gigs may be used for taking walleyed pike, sauger, northern pike, and nongame fish and traps, seines, nets, and rubber or spring-propelled spears, when employed by sportsmen swimming or submerged in the water, may be used for the taking of designated species of fish. The waters so designated may be closed at the discretion of the department. The taking of all fish by such means in the waters, when so designated, is to be done under such rules as the department may prescribe with reference thereto and under the supervision of the department. All such nongame fish so taken may be possessed and sold in such manner and under such restrictions as the department may direct. All fish, other than those herein designated, so taken under department rules, when prescribed by the department, shall be returned uninjured to the waters from which they were taken.~~

~~(4) The taking of black bass in Flathead Lake may be permitted by the department.~~

(3) (a) The commission may designate waters within the state in which rubber or spring-propelled spears employed by persons swimming or submerged in the water or traps, seines, nets, spears, or gigs may be used for taking:

(i) nongame fish; or

(ii) walleyed pike, sauger, northern pike, burbot (ling), and whitefish.

(b) The commission may adopt rules for the taking of fish under this subsection (3), and the rules may be specific to the water designated. The designated waters may be closed at the discretion of the commission.

(c) Except when the taking of game fish is authorized pursuant to subsection (3)(a)(ii), all game fish captured while fishing as authorized under this subsection (3) must be returned uninjured to the waters from which they were taken.

~~(5)(4) The department shall have the power to~~ commission may designate certain waters where setlines may be used to fish for certain species of game or nongame fish, and the ~~department~~ commission may designate

the number of hooks and lines and the length of line or lines ~~which~~ that may be used as setlines.

~~(6)~~(5) Game fish ~~shall~~ must be taken only by ~~angling; that is,~~ by hook and single line ~~in hand~~ or single rod in hand or within immediate control. This does not prevent, however:

(a) the snagging of paddlefish, ~~coho (silver salmon),~~ and kokanee (sockeye salmon) when the ~~department~~ commission declares an open season when paddlefish, ~~coho (silver salmon),~~ and kokanee (sockeye salmon) may be taken by snagging;

(b) the taking of paddlefish, channel catfish, and nongame fish with longbow and arrow, under ~~such~~ rules and regulations ~~as that the fish, wildlife, and parks commission may prescribe~~ prescribes;

(c) the taking of walleyed pike, sauger, northern pike, burbot (ling), and nongame fish with spear or gig ~~when the department declares an open season for taking walleyed pike, sauger, northern pike, burbot (ling), and nongame fish with spear or gig~~ game fish pursuant to subsection (3);

(d) the use of landing net or gaff to land a game fish after the ~~same~~ game fish has been hooked by ~~angling~~ as ~~above~~ specified in this subsection (5);

(e) the taking of minnows other than game fish variety by the use or aid of a net not to exceed 12 feet in length and 4 feet in width in ~~such~~ waters ~~as may be~~ designated by the ~~department~~ commission;

(f) the taking of whitefish by nets or traps in the Kootenai River and in its tributary streams within 1 mile of the Kootenai River, under ~~such~~ the rules and regulations ~~as that the fish, wildlife, and parks commission may prescribe~~ prescribes; or

(g) the taking of any game fish through a hole in ice with an unattended line or rod as long as the angler is in the vicinity and within visual contact of the line or rod.

(6) The commission may designate waters where authorized commercial fishing operators may use approved nets, seines, and traps to fish for designated species of nongame fish."

**Section 5.** Section 87-3-205, MCA, is amended to read:

**"87-3-205. Unlawful to possess net or seine -- exceptions.** (1) It is unlawful for ~~any a person or persons~~ to have in ~~their~~ the person's possession or under ~~their~~ the person's control ~~any a~~ seine, net, or other similar device for capturing fish. A seine or net found in ~~any a~~ vehicle, at the camp, or on the premises of ~~any a~~ person ~~shall be~~ is prima facie evidence that the seine, net, or similar device belongs to the person or persons occupying ~~said~~ the camp or premises.

(2) ~~Nothing contained herein shall~~ The provisions of this section do not apply to:

(a) ~~the owners of a license holder for a private fish ponds pond who is licensed to sell fish and eggs,~~ as

~~defined under the statute under 87-4-603;~~

(b) ~~a person or persons having unexpired~~ with an unexpired seine or net license, ~~as provided for in the statutes of Montana;~~

(c) the use, by any person, of a landing net in connection or in addition to pole, line, and hooks in fishing for game fish; or

(d) the possession of traps, seines, or nets ~~where~~ when found in the vicinity of any waters ~~which that the department commission has designated within the state where~~ in which traps, seines, or nets may be used for the taking of nongame fish ~~and Dolly Varden trout, as provided for in the statutes of Montana~~ or game fish."

**Section 6.** Section 87-4-601, MCA, is amended to read:

**"87-4-601. (Temporary) Sale of fish or spawn unlawful -- exceptions.** (1) Except as provided in subsections (2) ~~and (3)~~ through (4), a person may not, for speculative purposes, for market, or for sale, in any way, catch ~~any of the fish which in this title are classified as~~ game fish or remove or cause to be removed the eggs or spawn of any ~~such~~ game fish. ~~No~~ A person may not sell or offer for sale ~~any of the game fish of this state as defined in this title~~ or the eggs or spawn from ~~any~~ game fish.

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

(a) the catching of fish or the collecting of eggs or spawn in a private ponds pond by the ~~owners of private ponds~~ owner of the pond;

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

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

(d) the taking of whitefish by nets or traps in the Kootenai River and in its tributary streams within 1 mile of the Kootenai River, under rules ~~and regulations as that the fish, wildlife, and parks commission may prescribe~~ prescribes; or

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

(3) (a) A person issued a paddlefish tag under 87-2-306 who legally takes a paddlefish from the Yellowstone River between the burlington northern railroad bridge at Glendive to the confluence of Cottonwood Creek and the Yellowstone River during an authorized paddlefish season may donate the paddlefish roe, or eggs,

to a Montana nonprofit corporation as specified in subsection (3)(b) for processing and marketing as caviar. A paddlefish may be brought only to the Intake fishing access site for donation to the paddlefish roe donation program and must be a properly tagged, whole paddlefish. Roe separated from the paddlefish is not acceptable for donation to the program. A paddlefish intentionally cut in any manner to identify its sex is also unacceptable for donation to the program.

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

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

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

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

(4) A person may possess and sell legally taken nongame fish, as provided in 87-4-609 and rules adopted by the department pursuant to 87-4-609. (Terminates June 30, 2003--sec. 2, Ch. 196, L. 1993.)

**87-4-601. (Effective July 1, 2003) Sale of fish or spawn unlawful -- exceptions.** (1) Except as provided in ~~subsection~~ subsections (2) and (3), ~~no a person may not~~, for speculative purposes, for market, or for sale, in any way, catch ~~any of the fish which in this title are classified as game fish~~ or remove or cause to be



removed the eggs or spawn of any ~~such game~~ fish. ~~No~~ A person may not sell or offer for sale ~~any of the game fish of this state as defined in this title or the eggs or spawn therefrom~~ from game fish.

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

(a) the catching of fish or the collecting of eggs or spawn in a private ponds pond by the ~~owners thereof~~ owner of the pond;

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

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

(d) the taking of whitefish by nets or traps in the Kootenai River and in its tributary streams within 1 mile of the Kootenai River, under ~~such rules and regulations as~~ that the fish, wildlife, and parks commission may prescribe prescribes; or

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

(3) A person may possess and sell legally taken nongame fish, as provided in 87-4-609 and rules adopted by the department pursuant to 87-4-609."

**Section 7.** Section 87-4-609, MCA, is amended to read:

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

(a) crayfish for fishing bait;

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

(c) mysis shrimp;

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

(e) whitefish as authorized by statute; and

(f) other aquatic organisms that provide a food source for fish.

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

waters.

(3) The department may:

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

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

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

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

(5) The department may adopt rules for the regulation of commercial taking of fish or aquatic ~~fish food~~ organisms, including but not limited to the setting of seasons, methods of taking, quantities of harvest, size limitations, and reporting requirements, ~~for a particular aquatic fish food organism, in order to prevent overharvest~~ or conflict with fishing and recreational uses of the waters."

**Section 8.** Section 87-4-610, MCA, is amended to read:

**"87-4-610. Fees for commercial taking of fish or aquatic ~~fish food~~ organisms -- use of fees.** (1) To finance the administration and enforcement of the provisions of 87-4-609, the department may by rule set reasonable fees for:

(a) issuance of the permit required in 87-4-609; and

(b) use of traps, nets, or seines in Montana waters for the commercial taking of nongame fish, whitefish, ~~as authorized by statute, or~~ aquatic ~~fish food~~ organisms.

(2) The department shall deposit any fees collected under the provisions of subsection (1) in the state special revenue fund for use by the department."

NEW SECTION. **Section 9. Effective date.** [This act] is effective on passage and approval.

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