

SENATE JOINT RESOLUTION NO. 16

INTRODUCED BY M. SPRAGUE

BY REQUEST OF THE SENATE FISH AND GAME STANDING COMMITTEE

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT CONGRESS REVISE THE ENDANGERED SPECIES ACT TO ALLOW HAZING OF CARNIVORES LISTED AS AN ENDANGERED SPECIES; AND URGING THE STATE ATTORNEY GENERAL TO JOIN THE STATE IN ANY LEGAL ACTION BROUGHT TO ALLOW THE DEFENSE OF PROPERTY AGAINST LISTED PREDATORS.

WHEREAS, the grizzly bear and the gray wolf have been declared by the U.S. Fish and Wildlife Service to be endangered species, notwithstanding plentiful numbers of grizzly bears and wolves in Montana; and

WHEREAS, 16 U.S.C. 1532 defines the term "take" to include to harass or attempt to harass an endangered species; and

WHEREAS, 50 CFR 17.3 defines "harass" in the definition of "take" as "an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering"; and

WHEREAS, in *Babbitt v. Sweet Home Chapter of Communities for a Great Oregon*, 515 U.S. 687 (1995), the United States Supreme Court noted that several of the words in the definition of "take", including "harass", refer to actions or effects that do not require direct applications of force; and

WHEREAS, 16 U.S.C. 1535 directs the Secretary of the Interior to cooperate with the states to the maximum extent practicable in administering the Endangered Species Act; and

WHEREAS, even though 16 U.S.C. 1540(a)(3) provides that a civil penalty may not be imposed on a defendant who kills a threatened species in self-defense or in the defense of others, it is unreasonable to expect a property owner to stand idly by and allow an endangered species to threaten and kill livestock or pets or threaten family members; and

WHEREAS, in *Christy v. Hodel*, 857 F.2d 1324 (9th Cir. 1988), it was held that the Endangered Species Act and the grizzly bear regulations as applied to prevent owners of livestock from killing grizzly bears to protect their sheep against imminent destruction did not deny them equal protection of the laws and did not constitute a "taking" of the sheep without just compensation; and

WHEREAS, the definition of "take" in 16 U.S.C. 1532 was not written in contemplation of large carnivores

being included as endangered species; and

WHEREAS, a property owner should be able to haze wolves and grizzly bears away from livestock and residential buildings without fear and if necessary to kill the marauding carnivores to protect private property; and

WHEREAS, unchecked predation by carnivores listed as endangered species will almost certainly impact wildlife resources, livestock, pets, and outdoor recreation; and

WHEREAS, these negative impacts will also have a profound economic and social consequence for Montana people and communities.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Governor, the Montana Congressional Delegation, and the U.S. Secretary of the Interior be strongly urged to seek a revision to the Endangered Species Act allowing reasonable efforts by property owners to protect property and people against carnivores listed as endangered species.

BE IT FURTHER RESOLVED, that the Montana Attorney General be urged to join the state in any lawsuit establishing or clarifying the right of Montana citizens to protect their property and their lives against carnivores listed as endangered species.

BE IT FURTHER RESOLVED, that copies of this resolution be sent by the Secretary of State to the Governor, the Montana Congressional Delegation, the Montana Attorney General, and the U.S. Secretary of the Interior.

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