

INTRODUCED BY _____
(Primary Sponsor)
BY REQUEST OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE DONATION OF PADDLEFISH EGGS FOR
6 PROCESSING AND MARKETING AS CAVIAR; AMENDING SECTIONS 87-6-202, 87-6-206, AND 87-6-707,
7 MCA; REPEALING SECTION 87-4-601 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE "

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

Section 1. Section 87-6-202, MCA, is amended to read:

"87-6-202. Unlawful possession, shipping, or transportation of game fish, bird, game animal, or fur-bearing animal. (1) A person may not possess, ship, or transport all or part of any game fish, bird, game animal, or fur-bearing animal that was unlawfully killed, captured, or taken, whether killed, captured, or taken in or outside of Montana.

(2) This section does not prohibit the possession, shipping, or transportation of:

(a) hides, heads, or mounts of lawfully killed, captured, or taken game fish, birds, game animals, or furbearing animals, except that the sale or purchase of a hide, head, or mount of a grizzly bear is prohibited, as provided by federal law:

(b) naturally shed antlers or the antlers with a skull or portion of a skull attached from a game animal that has died from natural causes and that has not been unlawfully killed, captured, or taken or that has been lawfully killed:

(c) the bones of an elk, antelope, moose, or deer that has died from natural causes and that has been unlawfully killed, captured, or taken or accidentally killed:

(d) paddlefish roe as caviar under the provisions of 87-4-601;

(d) captive-reared migratory waterfowl; or

(e) salvaged antelope, deer, elk, or moose subject to 87-3-145.

(3) A person may not possess, ship, or transport live fish away from the body of water in which the

1 fish were taken except:

2 (a) as provided in Title 87, chapter 4, part 6, or as specifically permitted by the laws of this state;

3 (b) fish species approved by the commission for use as live bait and subject to any restrictions

4 imposed by the commission; or

5 (c) within the boundaries of the eastern Montana fishing district, as established by commission
6 regulations.

7 (4) Except as provided in 87-3-310, possession of all or part of a dead game fish, bird, game
8 animal, or fur-bearing animal is *prima facie* evidence that the person or persons in whose possession the fish,
9 bird, or animal is found killed, captured, or took the fish, bird, or animal.

10 (5) The value of a game fish, bird, game animal, or fur-bearing animal that is unlawfully possessed,
11 shipped, or transported must be determined from the schedules of restitution values in 87-6-906 and 87-6-907.
12 The value of game fish, birds, game animals, or fur-bearing animals that are unlawfully possessed, shipped, or
13 transported pursuant to a common scheme, as defined in 45-2-101, or as part of the same transaction, as
14 defined in 46-1-202, may be aggregated in determining the value.

15 (6) The following penalties apply for a violation of this section:

16 (a) If a person is convicted or forfeits bond or bail after being charged with unlawful possession,
17 shipping, or transportation of a game fish or bird and if the value of all or part of the game fish or bird or
18 combination thereof does not exceed \$1,000, the person shall be fined not less than \$50 or more than \$1,000
19 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person
20 may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the
21 privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes
22 for a period of time set by the court.

23 (b) If a person is convicted or forfeits bond or bail after being charged with unlawful possession or
24 transportation of a mountain sheep, moose, wild buffalo, caribou, mountain goat, black bear, or grizzly bear or
25 any part of these animals and if the value of all or part of the animal or combination thereof does not exceed
26 \$1,000, the person shall be fined not less than \$500 or more than \$2,000 or be imprisoned in the county
27 detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting,
28 fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this

1 state for 30 months from the date of conviction or forfeiture unless the court imposes a longer period.

2 (c) If a person is convicted or forfeits bond or bail after being charged with unlawful possession or

3 transportation of a deer, antelope, elk, or mountain lion or any part of these animals and if the value of all or

4 part of the animal or combination thereof does not exceed \$1,000, the person shall be fined not less than \$300

5 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In

6 addition, the person shall forfeit any current hunting, fishing, or trapping license issued by this state and the

7 privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture unless the court

8 imposes a longer period.

9 (d) If a person is convicted or forfeits bond or bail after being charged with unlawful shipping of a

10 mountain sheep, moose, wild buffalo, caribou, mountain goat, black bear, grizzly bear, deer, antelope, elk, or

11 mountain lion or any part of these animals and if the value of all or part of the animal or combination thereof

12 does not exceed \$1,000, the person shall be fined not less than \$50 or more than \$1,000 or be imprisoned in

13 the county detention center for not more than 6 months, or both. In addition, the person may be subject to

14 forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or

15 trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set

16 by the court.

17 (e) If a person is convicted or forfeits bond or bail after being charged with unlawful possession,

18 shipping, or transportation of a fur-bearing animal or pelt of a fur-bearing animal and if the value of all or part of

19 the animal or combination thereof does not exceed \$1,000, the person shall be fined not less than \$100 or

20 more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In

21 addition, the person shall forfeit any current hunting, fishing, or trapping license issued by this state and the

22 privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture unless the court

23 imposes a longer period, and any pelts possessed unlawfully must be confiscated.

24 (f) If a person is convicted under this section or forfeits bond or bail after being charged with a

25 violation of this section and if the value of all or part of the game fish, bird, game animal, or fur-bearing animal

26 or combination thereof exceeds \$1,000, the person shall be fined not more than \$50,000 or be imprisoned in

27 the state prison for a term not to exceed 5 years, or both. In addition, the person shall forfeit any current

28 hunting, fishing, or trapping license or permit issued by this state and the privilege to hunt, fish, or trap in this

1 state for not less than 3 years up to a revocation for life from the date of conviction.

2 (7) A person convicted of unlawful possession of more than double the legal bag limit may be
3 subject to the additional penalties provided in 87-6-901.

4 (8) As used in this section:

5 (a) "lawfully killed, captured, or taken" means killed, captured, or taken in conformance with this
6 title, the regulations adopted by the commission, and the rules adopted by the department under authority of
7 this title;

8 (b) "possess" includes the act of killing, capturing, or taking a game fish, bird, game animal, or fur-
9 bearing animal regardless of whether the person takes or retains physical possession of the fish, bird, or
10 animal; and

11 (c) "unlawfully killed, captured, or taken" means not lawfully killed, captured, or taken.

12 (9) A violation of this section may also result in an order to pay restitution pursuant to 87-6-905
13 through 87-6-907."

14

15 **Section 2.** Section 87-6-206, MCA, is amended to read:

16 **"87-6-206. Unlawful sale of game fish, bird, game animal, or fur-bearing animal.** (1) A person
17 may not purposely or knowingly sell, purchase, or exchange all or part of any game fish, bird, game animal, or
18 fur-bearing animal.

19 (2) The value of the game fish, bird, game animal, or fur-bearing animal must be determined from
20 the schedules of restitution values set out in 87-6-906 and 87-6-907. The value of game fish, birds, game
21 animals, or fur-bearing animals that are sold, purchased, or exchanged pursuant to a common scheme, as
22 defined in 45-2-101, or as part of the same transaction, as defined in 46-1-202, may be aggregated in
23 determining the value.

24 (3) This section does not prohibit the:

25 (a) sale, purchase, or exchange of hides, heads, or mounts of game fish, birds, game animals, or
26 fur-bearing animals that have been lawfully killed, captured, or taken, except that the sale or purchase of a hide,
27 head, or mount of a grizzly bear is prohibited, except as provided by federal law;

28 (b) sale, purchase, or exchange of naturally shed antlers or the antlers with a skull or portion of a

1 skull attached from a game animal that has died from natural causes and that has not been unlawfully killed,
2 captured, or taken or accidentally killed;

3 (c) sale, purchase, or exchange of the bones of an elk, antelope, moose, or deer that has died
4 from natural causes and that has not been unlawfully killed, captured, or taken or accidentally killed; or
5 (d) ~~donation, sale, purchase, or exchange of paddlefish roe as caviar under the provisions of 87-4-~~
6 601 ;or
7 (d) sale, purchase, or exchange of captive-reared migratory waterfowl.

8 (4) If a person is convicted or forfeits bond or bail after being charged with a violation of this
9 section and if the value of all or part of the game fish, bird, game animal, or fur-bearing animal or combination
10 thereof does not exceed \$1,000, then the person shall be fined not less than \$50 or more than \$1,000 or be
11 imprisoned in the county detention center for not more than 6 months, or both. In addition, the person may be
12 subject to forfeiture of any current hunting, fishing, or trapping license or permit issued by this state and the
13 privilege to hunt, fish, or trap in this state for a period set by the court.

14 (5) If a person is convicted or forfeits bond or bail after being charged with a violation of this
15 section and if the value of all or part of the game fish, bird, game animal, or fur-bearing animal or combination
16 thereof exceeds \$1,000, then the person shall be fined not more than \$50,000 or be imprisoned in the state
17 prison for not more than 5 years, or both. In addition, the person shall forfeit any current hunting, fishing, or
18 trapping license or permit issued by this state and the privilege to hunt, fish, or trap in this state for not less than
19 3 years up to a revocation for life from the date of conviction.

20 (6) As used in this section:

21 (a) "lawfully killed, captured, or taken" means killed, captured, or taken in conformance with this
22 title, the regulations adopted by the commission, and the rules adopted by the department under authority of
23 this title; and

24 (b) "unlawfully killed, captured, or taken" means not lawfully killed, captured, or taken."

25

26 **Section 3.** Section 87-6-707, MCA, is amended to read:

27 **"87-6-707. Unlawful sale of fish or spawn.** (1) Except as provided in 87-4-601 and subsections (2)
28 and (3) of this section, a person may not, for speculative purposes, for market, or for sale, catch game fish or

1 remove or cause to be removed the eggs or spawn of any game fish in any way. A person may not sell or offer
2 for sale game fish or the eggs or spawn from game fish.

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

4 (a) catching of fish or the collecting of eggs or spawn in a private fish pond licensed under 87-4-
5 603 by the owner of the pond;

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

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

11 (d) taking of whitefish by nets or traps in the Kootenai River and in its tributary streams within 1
12 mile of the Kootenai River under rules of the commission; or

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

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

17 (4) A person convicted of a violation of this section shall be fined not less than \$50 or more than
18 \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the
19 person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing,
20 or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands,
21 as defined in 77-1-101, for recreational purposes for a period of time set by the court."

22

23 **NEW SECTION. Section 4. Repealer.** The following section of the Montana Code Annotated is
24 repealed:

25 87-4-601. Sale of fish or spawn.

26

27 **NEW SECTION. Section 5. Effective date.** [This act] is effective on passage and approval.

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