



# Environmental Appeal Board

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## DECISION NO. 2013-WIL-036(a)

In the matter of an appeal under section 101.1 of the *Wildlife Act*, R.S.B.C. 1996, c. 488.

<b>BETWEEN:</b>	Francis Baller	<b>APPELLANT</b>
<b>AND:</b>	Regional Manager	<b>RESPONDENT</b>
<b>BEFORE:</b>	A Panel of the Environmental Appeal Board: Les Gyug, Panel Chair	
<b>DATE:</b>	Conducted by way of written submissions concluding on July 26, 2013	
<b>APPEARING:</b>	For the Appellant: Francis Baller For the Respondent: Mike Ramsay	

## APPEAL

[1] The Appellant, Francis Baller, appeals the February 5, 2013 decision of Mike Ramsay, Regional Manager, Recreational Fisheries and Wildlife Programs, Cariboo Region, Ministry of Forests, Lands and Natural Resource Operations (the "Ministry") denying Mr. Baller a permit to acquire ownership of a dead Snowy Owl for personal use.

[2] The Environmental Appeal Board has the authority to hear this appeal under section 93 of the *Environmental Management Act* and section 101.1 of the *Wildlife Act*. Section 101.1(5) of the *Wildlife Act* provides that the Board may:

- a) send the matter back to the person who made the decision being appealed, with directions,
- b) confirm, reverse or vary the decision being appealed, or
- c) make any decision that the person whose decision is appealed could have made, and that the Board considers appropriate in the circumstances.

[3] Mr. Baller asks the Board to reverse the Regional Manager's decision. Specifically, Mr. Baller asks the Board to issue him a permit for the "skin and feathers of the snowy owl for mounting."

[4] This appeal was conducted by way of written submissions.

**BACKGROUND**

[5] Mr. Baller found a dead Snowy Owl on the side of the road at an unspecified location and on an unspecified date. Mr. Baller then applied to the Regional Manager for a permit under the *Wildlife Act Permit Regulation*, B.C. Reg. 253/2000, as amended (the "*Permit Regulation*") that would allow him to keep the Snowy Owl. The application was not provided to the Panel.

[6] In a letter dated February 5, 2013, the Regional Manager informed Mr. Baller that his permit application was denied. The Regional Manager stated as follows:

The general permit issued to individuals who wish to acquire ownership of dead wildlife or wildlife parts for personal use (such as mounting and display) is issued under section 2(p) of the *Wildlife Act Permit Regulation*. However, section 6(1)(d) of the *Permit Regulation* specifically forbids me from issuing a 2(p) possession permit for an item with a value greater than \$200.

Section 6(2) of the regulation requires me to determine the value based on the average auction price. The average price the government received for a Snowy Owl for the period of 2005 through to 2007 of an adult in average condition is \$538.

I have determined that the value of the Snowy Owl is greater than \$200 because it is an adult in good condition. I therefore cannot grant your request.

The only exceptions to the \$200 value rule are if the wildlife is received in exchange for work performed for the government or if the person applying for the permit is applying on behalf of a charitable organization in British Columbia.

If you are currently in possession of the wildlife or wildlife parts, you must cease that possession. ....

You have the right to appeal this decision to the Environmental Appeal Board within 30 days. ....

[7] In a letter dated February 18, 2013, Mr. Baller filed a Notice of Appeal. His Notice of Appeal states, in part, as follows:

The decision not to grant a permit for the snowy owl because of its value set by recreational fisheries and wildlife seems unfair to me. The bird was found dead, there was no foul play, and it is not going up for auction therefore really has no value other than scientific.

I phoned Prince George wildlife and fisheries last week about the snowy owl and he said the owl would be sent for study to a university. I agree totally to find out why these beautiful birds are out of there [sic] normal region, are they starving, all the questions that would be answered by studying these birds.

As the carcass is returned to wildlife and fisheries after it has been skinned by a taxidermist, for examination to check out why the bird died (this is standard procedure with all owls) and is not returned to the person

requesting a permit I cannot see why granting me a permit would in anyway [sic] stop the study of this snowy owl. This way we both achieve what we want, the study of this bird and the display of a beautifull [sic] snowy owl.

[8] Mr. Baller goes on to state that he is not in possession of the Snowy Owl "because part of the normal procedure to acquire a permit is to take any owl to the conservation officer ...."

[9] The original written hearing schedule closed on June 4, 2013. Each party provided a one-page submission. No supporting documents were attached.

[10] In a letter dated June 19, 2013, the Panel wrote to the parties asking them to clarify certain submissions and information, and asking follow-up questions. The Regional Manager responded to the questions; no response was provided by Mr. Baller. The Panel's letter and the Regional Manager's response will be discussed below.

## ISSUE

1. Is the discretion of the Regional Manager to issue a permit under section 2(p) of the *Permit Regulation* limited in this case based on the restriction in sections 6(1)(d) and 6(2) of the *Permit Regulation*? If not, should a permit be issued in the circumstances?

## RELEVANT LEGISLATION

[11] The relevant provisions of the legislation are as follows:

### ***Wildlife Act***

#### **Property in wildlife**

- 2 (1) Ownership in all wildlife in British Columbia is vested in the government.
- (2) A person does not acquire a right of property in any wildlife except in accordance with a permit or licence issued under this Act or the *Game Farm Act* or as provided in subsection (3) of this section.

#### **Permits**

- 19 (1) A regional manager or a person authorized by a regional manager may, to the extent authorized by and in accordance with regulations made by the Lieutenant Governor in Council, by the issue of a permit, authorize a person
  - (a) to do anything that the person may do only by authority of a permit or that the person is prohibited from doing by this Act or the regulations,  
...

***Permit Regulation*****Authorization by permit**

- 2 A regional manager may issue a permit in accordance with this regulation on the terms and for the period he or she specifies

...

- (p) transferring the right of property in dead wildlife or wildlife parts from the government to a person,

...

**Restrictions on permits providing possessory or property rights**

- 6 (1) A regional manager must not issue

...

- (d) a permit under section 2(p) for wildlife if the value of the wildlife or wildlife parts is greater than \$200 unless

- (i) the person applying for the permit will receive the dead wildlife or wildlife parts as compensation for conducting work or an activity on behalf of the government, or

- (ii) the person applying for the permit is applying on behalf of a charitable organization in British Columbia.

- (2) For the purpose of subsection (1) (d), the value of wildlife or wildlife parts is to be determined by the regional manager based on the average price the government receives at auction for wildlife or wildlife parts of the particular species, of similar size and in similar condition.

[Emphasis added]

**DISCUSSION AND ANALYSIS**

1. **Is the discretion of the Regional Manager to issue a permit under section 2(p) of the *Permit Regulation* limited in this case based on the restriction in sections 6(1)(d) and 6(2) of the *Permit Regulation*?**

[12] According to section 6(1)(d) of the *Permit Regulation*, the Regional Manager is prohibited from issuing a permit under section 2(p) if the value of the wildlife is greater than \$200, subject to certain exceptions which are discussed later in this decision. Section 6(2) of the *Permit Regulation* provides that, for the purposes of section 6(1)(d), the value of the dead wildlife or wildlife parts is to be determined "based on the average price the government receives at auction for wildlife or wildlife parts of the particular species, of similar size and in similar condition."

[13] According to his decision letter, the Regional Manager obtained his average price of \$538 from government auctions that took place between 2005 and 2007.

[14] In his submission to the Panel, Mr. Baller states:

Setting a value on any thing by an outdated auction seems unrealistic to me. If I hadn't picked the bird up when I did it could have been run over several times and been totally wrecked for mounting.

They do not have auctions for these birds any more so I do not understand how that can even be used as a standard of value. When I phoned the ministry in Pr. George they said there was no more auctions held, then I asked what was done with the birds the answer is they are sent to a university for study. That means it no longer has a monetary value to the ministry doesn't it?

[15] Mr. Baller goes on to state that if a university will use the specimen for study, when they are done with it, he could have the skin back for mounting (under permit), and that would appear to satisfy both parties.

[16] The Regional Manager states as follows:

The snowy owl he had asked to retain was in good condition. Reviewing the information available to me the value of the owl would be about \$2,000.

This was consistent with the recent valuation of a snowy owl auctioned off at the 2013 BC Wildlife Federation AGM [annual general meeting] for \$2,300.

[17] The Regional Manager did not provide any evidence to support his \$2,000 valuation of the Snowy Owl. He states that it was based upon "information available to me," but this information was not provided to the Panel. As it is unclear what this amount is based upon, and why it is so much higher than the average government auction price of \$538 cited in the Regional Manager's decision, the Panel does not accept this valuation.

[18] The Panel also finds that the amount for which a Snowy Owl was auctioned by the BC Wildlife Federation, a non-government auction, is not relevant to this decision. Section 6(2) of the *Permit Regulation* specifies that the value is "based on the average price the government receives at auction". Based upon this section, whatever the value may be on any commercial market or at any auction other than an auction where the government receives the money, cannot be used to support the valuation. In particular, auctions typical of annual general meetings are fund-raising based on donated items, and may, or may not, bear any relation to the commercial value when sold on the open market.

[19] In addition, there is no indication that the government provided the Snowy Owl that was put up for auction in 2013, and, even if the government had donated that owl to the BC Wildlife Federation for auction, the government would not have likely received any amount in return; therefore, section 6(2) of the *Permit Regulation* would not have applied.

[20] The valuation of the Snowy Owl in the Regional Manager's original decision letter of February 5, 2013, was based upon average auction price to government from 2005 to 2007 of \$538 for an adult Snowy Owl in average condition.

[21] Mr. Baller submits that this price from 2005 to 2007 is outdated. Mr. Baller's contention is that, if the information he received from the Ministry in Prince George is correct and the government's auctioning of dead Snowy Owls has ceased, then the birds have no auction value: it would only have scientific value to the government.

[22] In the Panel's letter to the parties dated June 19, 2013, it sought clarification on these matters. Specifically, the Panel asked the Regional Manager to provide the Panel with government auction results for all Snowy Owls from 2005 to 2012, as well as information on whether or not wildlife auctions are still undertaken or when they may have ceased, and whether or not Snowy Owls form part of any auction that still takes place. The Panel also asked for submissions on the following:

... whether the Regional Manager can rely upon section 6(1)(d) and section 6(2) as a basis to deny a permit under section 2(p) of the *Regulation* if auctions are no longer held. Also, within the context of the *Regulation*, what additional factors may be considered, if any, if the only available auction data available is six to eight years old.

Finally, the Regional Manager is asked to provide any written policy or policies that guide his assessment of a permit application for Snowy Owls, and for the disposal of Snowy Owls.

[23] The Regional Manager responded to these questions by providing a letter containing a list of Snowy Owl valuations from provincial auctions that listed details for 18 Snowy Owls from 2005 to 2008 which included, for each specimen, the barcode 4-digit number, year, ATDR#, species, specimen type and sold price. The letter also states, in part, as follows:

The Asset Investment Recovery wildlife auction in Prince George last held an auction in late 2012. That program has since shut down, and will not be running again for the foreseeable future. So in short there are no auctions available now for snowy owls.

It was my determination as Regional Manager that the direction to authorize the possession of wildlife under section 6(1)d and 6(2) is linked to the value of the wildlife as a public resource, not specifically as to if an auction still takes place. That is, I as a public official hold in my trust the authority to "give" away a public asset up to a certain valuation and not further. There are, in fact, other uses identified in these permits that the owl could be used for that are within my authorities. I could, for instance, give away the owl for educational purposes.

The limit, in my opinion was put in place so public officials were not to be disposing of significant public assets without due process, and in the case of wildlife not encouraging the illegal harvest of these animals by making them easier to access.

In assessing the value of the owl, post auction, I assumed the snowy owl would be at least as high a value as when the auctions were still taking place (see my original letter). In most circumstances, the value of wildlife

increases significantly with the barriers to possess it. As there are no other avenues to get a snowy owl other than to buy one that has already been permitted they become a limited resource and therefore increase in value.

To my knowledge there are no specific policies governing the issuance of snowy owl permits.

[24] Based on the information provided by the Regional Manager, the Panel finds that the average price received by government at auction for Snowy Owls for the period 2005 was \$614. Broken down by year, the average price in 2005 was \$625 for six Snowy Owls, in 2006 was \$450 for four Snowy Owls, and in 2008 was \$688 for eight Snowy Owls. The minimum price for any Snowy Owl in that period was \$400 and the maximum was \$1200. The price of \$538 provided in the Regional Manager's decision letter was the average of the average within-year price for 2005 and 2006. However, the average price for the ten Snowy Owls during those two years was \$555. The difference in the two averages is because there was not the same numbers of Snowy Owls auctioned in each year. In this case, the Panel finds that for the purposes of section 6(2) of the *Permit Regulation*, whether the average price received by government is calculated as the average of total birds auctioned within a given period, or is the average of each within-year average during a given period is immaterial; with the minimum price of \$400 received by government at auction, whatever averaging method is used, the valuation will always be more than \$200.

[25] With the Regional Manager unable to provide any prices received at auction by government since 2008, the Panel has assumed that no Snowy Owls were auctioned after 2008, even though government wildlife auctions did continue up until 2012 based on the statement of the Regional Manager.

[26] There is no dispute that the Snowy Owl in question here is in good condition, and that the valuation should be based on a Snowy Owl in good condition for mounting purposes. The Panel accepts that the portion of the process for price valuation done "for wildlife . . . of the particular species, of similar size and in similar condition" was done reasonably by the Regional Manager in accordance with section 6(2).

[27] The Regional Manager stated that he used a method to determine the valuation of the Snowy Owl "post auction" by assuming the current value "would be at least as high a value as when the auctions were still taking place". He also stated that the value of the Snowy Owl should have increased from past auction values, because of barriers to possession which have limited the market to the purchase of already permitted specimens. The Panel finds that this approach to valuation is irrelevant to this decision because this is not the method prescribed by section 6(2) of the *Permit Regulation*. No such assumptions are prescribed or required.

[28] As time goes by between the date when the last government auction for Snowy Owls took place (2008), and when a permit application is made, it appears to the Panel that Ministry decision makers may be tempted to find methods other than the prescribed method to justify their valuation. Indeed, the Regional

Manager has done so in this case. However, alternative methods will be irrelevant simply because they are other than the prescribed method. In his decision letter, the Regional Manager determined the valuation as prescribed by regulation, using the prices received at past auctions by government. However, under appeal, to justify that decision he used two irrelevant methods, presumably, it appears to the Panel, to provide for a current valuation when no current valuation was available using the prescribed method.

[29] Section 6(2) of the *Permit Regulations* prescribes how the decision maker is to determine the "value of the wildlife" as required in section 6(1)(d); i.e., the average price the government receives at auction. This is written in the present tense, not the past tense. However, there must be latitude in this interpretation because the decision maker can, of course, only look at past prices to make a valuation since auctions are held at intervals and not on an ongoing basis. The decision maker's task then becomes how to predict the price that would be obtained by government if the item were to go to auction, and this person does so under section 6(2) by averaging past prices received by government at auction. The Panel's interpretation of the wording of section 6(2) is that this was intended to be a part of an ongoing process, hence the use of the present tense. Therefore, once the government ceased conducting wildlife auctions in 2012 "for the foreseeable future" as stated by the Regional Manager, and as it appeared to have done for Snowy Owls after 2008, the former prices received by government at auction lose relevancy, in particular because they are no longer part of the process whereby a wildlife specimen can either be obtained by issuance of a permit or at auction, depending on valuation.

[30] The Panel finds that, in the absence of any current government auctions for wildlife, the valuation method of section 6(2) no longer provides up-to-date valuation data. Essentially, valuations are now 'frozen' in time. This creates a risk, which increases as more time passes, that the application of section 6(2) may lead to absurd results, and/or reduce the confidence in the valuation to the point where the accuracy of the valuation will be unknown. Although section 6(2) does not use words such as "current" or "recent" in relation to the phrase "average price" or the word "auction," and therefore, no conflict arises with the express language in section 6(2) when older government auction data is used, the Panel finds that the relevance of the government auction data decreases as it becomes increasingly outdated. As a result, there is an increasing risk that decisions under section 6(2) may be based on irrelevant data, and that section 6(2) will become obsolete as a method for valuing wildlife and wildlife parts. For these reasons, the Panel recommends that the government consider amending section 6(2) if the government no longer intends to conduct wildlife auctions.

[31] In the present case, the application of section 6(2) for the purposes of determining the value of the Snowy Owl does not lead to an absurd result, or one in which there is a complete lack of confidence. The Panel has found that the value of this Snowy Owl is far greater than \$200, and that all Snowy Owls auctioned between 2005 and 2008 sold for at least \$400, with the yearly averages being well above that. Consequently, the Panel finds that there is no risk that applying the available government auction data, which is five to eight years old, will cause an absurd result in this case.



[32] The Panel does not find merit in Mr. Baller's argument that there is no monetary value, only scientific value, to the Snowy Owl now that government auctions are no longer held. The express language of section 6(2) does not require the Regional Manager to determine whether auctions will be held, only that they have been held, and therefore provide a basis for valuation using average prices received by government.

[33] The Panel also finds that the exceptions in subsections 6(1)(d)(i) and (ii) do not apply in this case. Those exceptions apply if the person applying for the permit will receive the wildlife as compensation for conducting work or an activity on the government's behalf, or is applying on behalf of a charitable organization in BC. Given that Mr. Baller has indicated that he would like to acquire the Snowy Owl's skin and feathers so that he may display them for personal purposes, neither of those exceptions apply.

[34] For all of these reasons, the Panel finds that the value restriction in sections 6(1)(d) and 6(2) of the *Permit Regulation* limits the discretion of the Regional Manager, and now the Board, in issuing a permit under section 2(p) of the *Permit Regulation* for this Snowy Owl, and neither of the exceptions in section 6(1)(d) apply in this case.

## DECISION

[35] In making this decision, the Panel of the Environmental Appeal Board has carefully considered all relevant documents and evidence before it, whether or not specifically reiterated here.

[36] For the reasons stated above, the Panel confirms the Regional Manager's decision not to issue a permit to Mr. Baller in this case.

[37] In addition, the Panel recommends that the government consider amending section 6(2) of the *Permit Regulation* if the government no longer intends to conduct wildlife auctions.

[38] The appeal is dismissed.

"Les Gyug"

Les Gyug, Panel Chair  
Environmental Appeal Board

August 7, 2013