



Environmental Appeal Board

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DECISION NO. 2013-WIL-043(a)

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

BETWEEN:	Fernie Corbel	APPELLANT
AND:	Regional Manager	RESPONDENT
BEFORE:	A Panel of the Environmental Appeal Board Ken Long, Panel Chair	
DATE:	Conducted by way of written submissions concluding on July 4, 2013	
APPEARING:	For the Appellant: Fernie Corbel For the Respondent: Dana Atagi	

APPEAL

[1] The Appellant, Fernie Corbel, appeals the January 23, 2013 decision of Dana Atagi, Regional Manager (the "Regional Manager"), Recreational Fisheries and Wildlife Programs, Skeena Region, Ministry of Forests, Lands and Natural Resource Operations (the "Ministry"), denying Mr. Corbel a permit to acquire ownership of a dead wolverine for personal use.

[2] The 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. Corbel asks the Board to reverse the Regional Manager's decision.

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

BACKGROUND

[5] Mr. Corbel found a dead wolverine on Highway 37A in the vicinity of Stewart, British Columbia. He brought the wolverine to the Conservation Officer Service where an initial examination was carried out by Conservation Officer ("CO") Matthew Corbett on July 16, 2012. CO Corbett determined that the wolverine was female, was in good condition, and appeared to have been killed by a motor vehicle.

[6] Mr. Corbel applied to the Regional Manager for a permit authorizing him to keep the dead wolverine for personal use. A copy of the permit application was not provided to the Board.

[7] In a letter dated January 23, 2013, the Regional Manager informed Mr. Corbel that he could not grant Mr. Corbel's request for a permit. He considered his authority under the *Wildlife Act Permit Regulation*, B.C. Reg. 253/2000 (the "*Permit Regulation*") and states 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 [sic] 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 government received for a Wolverine for the period 2005 through to 2007 in average condition is \$271.

I have determined that the value of adult female wolverine is greater than \$200 because the Conservation Officer indicated that the condition of the animal was good (i.e. better than average). 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.

[8] CO Flint Knibbs later determined that the wolverine was actually a male.

[9] Mr. Corbel received the Regional Manager's decision by registered mail on February 18, 2013, and filed an appeal on March 13, 2013.

The Appellant's Position

[10] In his appeal, Mr. Corbel states that CO Corbett led him to believe that there would not be an issue with his application. He then raises a number of points which are summarized as follows:

1. If he had known that, due to the value of the wolverine, he would be prevented from possessing it, he could have saved the \$35 permit application fee.
2. The wolverine is a male, not a female, which should change the value.
3. Section 6(2) of the *Permit Regulation* requires the value to be determined at government auction; however, there was no government auction for the Skeena Region last year, and none announced for the near future.
4. Mr. Corbel is willing to “exchange work” for this wolverine.
5. Mr. Corbel and his wife have seven children and eight grandchildren. Obtaining the wolverine “is the only way some of them will ever get to see a lifelike wolverine up close.”
6. Mr. Corbel believes that, if he obtains a permit for the wolverine, his children and grandchildren “will be more motivated to do their part in preserving the environment and the habitat needed for the future conservation of these species.”

[11] Mr. Corbel also submits that releasing the wolverine to him, and allowing future generations to appreciate the beauty of the wolverine, is better than allowing the wolverine to sit in “someone’s deep freeze”.

[12] He also states that he doesn’t want his \$35 permit application fee, and \$25 appeal fee, “to be wasted”.

The Regional Manager’s Position

[13] The Regional Manager’s submission was in two parts: the first provided greater detail on how he made his decision; the second was a response to matters raised in Mr. Corbel’s appeal.

[14] Regarding his decision, the Regional Manager submits:

- Section 6(1)(d) of the *Permit Regulation* forbids a regional manager from issuing a permit under section 2(p) of the *Permit Regulation* for an animal with a value greater than \$200.
- Section 6(2) of the *Permit Regulation* specifies that the value of wildlife is determined based on the average auction price of the animal.
- The determination of average value for a whole wolverine was challenging, as few whole specimens have been disposed of via auction. For the period of 2005 – 2012, only a single whole specimen was sold at auction for \$275. A review of six wolverine hide sale prices over the same period resulted in an average price of \$219. Compared to bobcat and wolverine hides, whole specimens tend to yield much higher values at auction.

- A section 2(p) permit was refused because: (1) the value of the whole wolverine was greater than \$200; (2) the applicant was not receiving it as compensation from the government; and (3) the applicant was not applying for it on behalf of any charitable organization, scientific organization or educational institution.
- Another permitting section, section 2(k)(i) of the *Permit Regulation*, authorizes a regional manager to issue a permit to possess dead wildlife for scientific or educational purposes. Mr. Corbel is not affiliated with a recognized scientific organization. Further, it is only under extraordinary circumstances that a regional manager considers issuing such an authorization to an individual. Mr. Corbel's permit application did not indicate a scientific or education objective or use.

[15] In response to Mr. Corbel's appeal submissions, the Regional Manager states:

- CO Corbett admits that he may have indicated to Mr. Corbel that a permit should not be a problem or issue; however, the Regional Manager submits that CO Corbett is not the statutory decision maker for the purposes of issuing these permits, and the value of the wildlife is to be determined by the Regional Manager.
- Regarding the \$35 permit application fee, the Ministry's policy is to refund fees for permits where an applicant has been denied a permit. Mr. Corbel's fee was not processed.
- The sex of the wolverine should not affect its value. However, if the sex of the animal does affect its value, as adult males are 50% larger (by weight) than females, they could be of greater value. The sex of the wolverine sold at auction was not documented.
- Mr. Corbel's undefined "work" in exchange for the wolverine is not the same as providing a professional service to the Ministry, and is not the intended use of this exception in the *Permit Regulation*.
- Although educating Mr. Corbel's children and grandchildren is an admirable objective, such objectives are not recognized as an exception to the prohibition in the *Permit Regulation*, and does not meet the scientific or education purpose contemplated by section 6(3)(i) or (ii) in the *Permit Regulation*.

[16] For all of these reasons, the Regional Manager submits that his decision should be confirmed and the appeal dismissed.

ISSUES

1. Whether the Regional Manager's decision is reasonable in the circumstances.

RELEVANT LEGISLATION

[17] 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, or
- (b) ...
- subject to and in accordance with those conditions, limits and period or periods the regional manager may set out in the permit and, despite anything contained in this Act or the regulations, that person has that authority during the term of the permit.

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
- ...
- (k) authorizing
- (i) a person to possess and dispose of dead wildlife or parts of wildlife for scientific or educational purposes, or
- ...
- ...
- (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.

(3) Despite subsection (1), a regional manager may issue a permit under section 2(j) or (p), as applicable, to an educational institution or a scientific organization or an agent of either

(i) to authorize the possession of, or

(ii) to transfer property rights in

wildlife or parts of wildlife for an educational or scientific purpose.

...

DISCUSSION AND ANALYSIS

Whether the Regional Manager's decision is reasonable in the circumstances.

[18] Section 6(1)(d) of the *Permit Regulation* specifies that a regional manager must not issue a permit under section 2(p) if the value of the wildlife is greater than \$200 unless

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

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

[19] Section 6(2) of the *Permit Regulation* states:

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.

[20] The *Permit Regulation* is clear that a regional manager “must not issue” a permit unless certain conditions are met. Put another way, a permit can be issued only if certain conditions are met.

[21] To determine whether a permit can be issued to Mr. Corbel, the Panel has considered the following two questions:

1. Is the value of the animal greater than \$200?

If the answer is “no”, then a permit transferring the dead wildlife *may* be issued.

If the answer is “yes”, then the following must be considered.

2. Does Mr. Corbel meet the requirements of either section 6(1)(d)(i) or (ii); specifically:
 - a. is the wildlife compensation for some work carried out for the government, or
 - b. is Mr. Corbel making the application on behalf of a British Columbia charitable organization (section 6(1)(d)(ii)), an educational institution or scientific organization (section 6(3)) - that is, is the end recipient of the wildlife a charitable organization, educational institution or scientific organization in British Columbia.

[22] Mr. Corbel argues that the reclassification of the animal as a male, rather than a female, would change the value accordingly. However, he provides no evidence to support this assertion. Further, the Regional Manager states that as male wolverines are generally larger than females they may, in fact, be more valuable.

[23] Mr. Corbel also suggests that, as there was no government auction last year, and none have been announced for the “near future”, it would be reasonable to release the carcass to the public rather than to let it sit in a freezer and deteriorate.

[24] However, the *Permit Regulation* requires a regional manager to make the value determination based upon the average price received by government at auction. The *Permit Regulation* does not provide a regional manager with the discretion to issue a permit because there has not recently been an auction. This prescribed method of valuation in section 6(2) of the *Permit Regulation* may cause problems for the government if there is no auction data, or if there is no recent auction data. The Panel notes the concerns recently expressed by a different panel of the Board in an appeal by Francis Baller (*Baller v. Regional Manager*, Decision No. 2013-WIL-036(a)).

[25] In the *Baller* case, a permit was requested for a snowy owl. In the Board's decision dated August 7, 2013, it raised concerns about losing "up-to-date" valuation data, and states at paragraph 30:

... 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.

[26] This Panel shares these concerns and reiterates this recommendation.

[27] In making his original value determination, the Regional Manager looked at three years of auction information, 2005 through 2007, and found a value of \$271. In his submission to the Panel, the Regional Manager provided greater detail about wolverine sales at auction for the period of 2005 through 2012. One whole wolverine had sold, and six hides. The value of the whole wolverine was \$275 and the average for the hides was \$219.

[28] Notwithstanding that there was just one whole wolverine that had been sold by government at auction in the past several years, the Panel finds that it is sufficient to meet the requirement of section 6(2) of the *Permit Regulation*; the animal was similar, in that it was whole, and the price received at auction established the average price, as an average price is just the total value received divided by the number of animals sold.

[29] The Panel notes the discrepancy between the \$271 value set out in the original determination and the \$275 value set out in the submission. Regardless of which number is correct, it is clear that the only data provided to the Panel establishes that the average value was greater than \$200.

[30] The Panel also finds that sections 6(1)(d)(i) and 6(1)(d)(ii) do not apply to Mr. Corbel. The Panel notes that, in his submission, Mr. Corbel offers to carry out work for government; however, such work, should it take place, would apply to a future application, not to the application under appeal. Further, Mr. Corbel apparently applied for the permit for personal use and, in any event, there is no indication that he is acting as an agent for an educational institution, scientific organization or applying on behalf of a charitable organization.

[31] Accordingly, the Regional Manager's decision was reasonable in the circumstances.

[32] Finally, the Panel notes that Mr. Corbel also raises the issue of the loss of his \$35 application fee for the permit. This matter is outside of the Board's jurisdiction, although the Panel notes that, in his submission, the Regional Manager makes it clear that Mr. Corbel's application fee was not processed.

DECISION

[33] 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.

[34] For the reasons stated above, the Panel confirms the Regional Manager's decision not to issue a permit to Mr. Corbel.

[35] The appeal is dismissed.

"Ken Long"

Ken Long, Panel Chair
Environmental Appeal Board

December 2, 2013