



Environmental Appeal Board

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DECISION NO. EAB-WIL-21-A003(a)

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

BETWEEN:	Derrick Miller Gair	APPELLANT
AND:	Deputy Regional Manager, Recreational Fisheries and Wildlife Programs	RESPONDENT
BEFORE:	A Panel of the Environmental Appeal Board Darrell Le Houillier, Chair	
DATE:	Conducted by way of written submissions concluding on July 15, 2021	
APPEARING:	For the Appellant: Derrick Miller Gair on his own behalf For the Respondent: Sonja Sun, Counsel	

BACKGROUND AND APPEAL

[1] On December 29, 2020, a conservation officer (the "Officer") shot and killed a cougar (the "Cougar") because he considered it to be "problem wildlife". According to the Officer, the Cougar was large, and the body was in good condition after its death.

[2] The Appellant requested a permit to possess the Cougar. Troy Larden, the Deputy Regional Manager of the Recreational Fisheries & Wildlife Programs in the Skeena Region (the "Respondent"), considered this request. The Respondent works for the Ministry of Forests, Lands, Natural Resource Operations and Rural Development.

[3] Ultimately, on February 26, 2021, the Respondent denied the Appellant's request. The Appellant appeals that decision.

[4] The appeal was held in writing. By the agreement of the parties, the Respondent provided evidence and submissions first, then the Appellant provided his submissions, and the Respondent had a final right of reply.

[5] Section 101.1(5) of the *Wildlife Act*, R.S.B.C. 1996, c. 488 (the "Act") gives the Board the power to:

- send the matter back to the Respondent with or without directions;
- confirm, reverse or vary the Respondent's decision; or
- make any decision the Respondent could have made and that the Board considers appropriate in the circumstances.

[6] The Appellant asks the Board to grant him a permit to possess the Cougar.

ISSUE

[7] The issue to be decided in this appeal is whether the Appellant should be granted a permit for the possession of the Cougar.

DISCUSSION AND ANALYSIS

Legislative and regulatory framework

[8] Under section 2(1) of the *Act*, ownership in all wildlife in British Columbia is vested in the government. This includes the Cougar.

[9] Sections 2(2) and 2(3) of the *Act* say that a person can only acquire a right of property in any wildlife in three ways: through a permit or licence issued under the *Act*; through a permit or licence issued under the *Animal Health Act*, S.B.C. 2014, c. 16; or after lawfully killing wildlife and complying with all applicable provisions of the *Act* and its regulations.

[10] The *Animal Health Act* is inapplicable to this appeal and the Appellant did not kill the Cougar. As a result, the relevant consideration is whether the Appellant should be issued a permit under the *Act*.

[11] Section 19 of the *Act* allows a regional manager, or someone authorized by a regional manager, to issue permits in accordance with the regulations. For the purposes of this appeal, the relevant regulation is the *Wildlife Act Permit Regulation*, B.C. Reg. 253/2000 (the "*Regulation*"). Specifically, section 2(p) of the *Regulation* allows for permits "... transferring the right of property in dead wildlife or wildlife parts from the government to a person ...". There are two limitations on the authority from section 2(p) of the *Regulation* that are relevant to this appeal.

[12] First, section 6(1)(b) of the *Regulation* says that, if an animal is killed by accident, for a humane purpose, or for the protection of life or property, a permit under section 2(p) must not be issued unless the regional manager (or their delegate) is satisfied that "... special circumstances exist ...".

[13] Second, section 6(1)(d) of the *Regulation* says that a permit cannot be granted under section 2(p) of the *Regulation* if the value of the wildlife or wildlife parts is greater than \$200, unless the person applying for the permit either:

- is receiving the wildlife or wildlife parts as compensation for doing work on behalf of the government, or
- is applying for the permit on behalf of a charitable organization in British Columbia.

[14] Section 6(2) of the *Regulation* says that the value of the wildlife or wildlife parts under section 6(1)(d) must be 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."

The Respondent's Submissions

[15] The Respondent says that section 6(1)(b) and 6(1)(d) of the *Regulation* precluded him from issuing the permit requested by the Appellant. The Appellant did not describe any special circumstances that would allow the Respondent to issue the permit under section 6(1)(b), given that the Cougar was killed for the protection of life or property.

[16] Furthermore, the Respondent says that wildlife auctions were held in 2005 to 2008, 2010, and 2013. No whole cougars were sold at any of those auctions, but cougar hides and skulls were sold. The Respondent took averages of auction sales from 2005 to 2007 and valued the Cougar at \$276. On appeal, the Respondent also provided information from 2008, 2010, and 2013.¹ For each of those three averaged timeframes, the cougar hides alone sold for more than \$200 on average. The Respondent argues the value of the whole Cougar would be greater and, as such, he had to deny the Appellant's application under section 6(1)(d) of the *Regulation*.

The Appellant's Submissions

[17] The Appellant also argues that he should not be denied possession of the Cougar just because it was killed by accident, for a humane purpose, or for the protection of life and property. He did not decide to kill the Cougar and he was not involved in the Officer attending his property to do so. He had nothing to do with the killing of the Cougar.

[18] The Appellant says the Respondent overestimated the value of the Cougar corpse for three reasons:

- the information from 2007 to 2010 is likely outdated;
- the information from 2007 to 2010 was likely based on the sale of hides and not whole animals that have not been examined for quality; and
- the Cougar was shot three times by the Officer and the pelt will have six holes in it.

[19] The Appellant also argues that comparing the values is difficult because the size of the pelt that can be taken from the Cougar is unknown.

[20] The Appellant is uncertain what he wants to do with the Cougar, but if he is granted possession, he will take it to a taxidermist and base his decision on the quality of the hide. The Appellant does not want to sell or trade away the Cougar.

¹ The Respondent described different years in the letter which led to this appeal; however, on appeal the Respondent provided the auction data and explained that he mistakenly referenced the incorrect year ranges when he made his decision.

The Respondent's Reply

[21] The Respondent argues that the Appellant did not provide any evidence to support that bullet holes reduce the value of pelts. The Respondent says most cougars sold at auction were shot, and the Appellant has not established that the value of the Cougar was less than \$200.

Panel's Findings

[22] There is no dispute between the parties about the facts of the case that have informed my decision. My factual findings are as follows.

[23] First, I find that the Officer killed the Cougar for the protection of life or property. While it is not clear what the Officer meant by noting in his paperwork that the Cougar was "problem wildlife", the Respondent asserted that this meant the Cougar was killed for the protection of life or property. The Appellant did not disagree.

[24] The Appellant submitted that he did not call the Officer to his property, but clearly the Officer was there. The Appellant did not argue that the Officer trespassed on his land and, given the Appellant's phrasing (emphasizing that it was not he who called the Officer), I conclude that someone called the Officer, who attended a residential area and considered the Cougar to be "problem wildlife", such that he had to kill it. Given these overall circumstances, I consider the most likely explanation to be that the Officer was protecting life or property when he killed the Cougar.

[25] Given that finding, the Respondent was obligated to consider section 6(1)(b) of the *Regulation* when deciding whether to grant the Appellant's request for a permit to possess the Cougar.

[26] My second finding is that the Respondent was properly delegated authority to issue a permit under section 19 of the *Act*. While the delegation decision has not been provided to me, I note that the Respondent's title is "Deputy Regional Manager". I consider it likely that the Regional Manager delegated appropriate decision-making authority under section 19 to their deputy. Given that the Appellant has not argued this point or presented any evidence on it, I find it most likely that the Respondent had the statutory authority to decide the Appellant's request.

[27] My third finding is that the Appellant has not argued that any "special circumstances" exist which would allow the Respondent to grant the Appellant's request.

[28] I acknowledge that the Appellant argued that he had nothing to do with the death of the Cougar, or even calling the Officer to his property. These are not, however, "special circumstances". Section 2(2) of the *Act* defines different requirements in order for people to gain rights to wildlife: one relates to those who lawfully kill an animal and another relates to those who need to get a licence or permit. All someone who lawfully kills an animal must do is to obey the relevant portions of the *Act* and its regulations. More is required of those who need to get a licence or permit. As such, the *Act* already contemplates differences between those who lawfully kill an animal and those who do not. The fact that the Appellant did

not kill the Cougar is not "special circumstances", it is why he needs to get a permit to possess the Cougar in the first place.

[29] Furthermore, although I am not bound by the Board's previous decisions, it is useful to consider some of the past decisions where the Board found that "special circumstances" existed. In *Robert Swalwell v. Regional Wildlife Manager* (Decision No. 2001-WIL-006, July 30, 2001), the Board found that special circumstances existed where Mr. Swalwell found Bighorn Sheep horns at the bottom of a ravine covered by brush, and exerted special effort to recover the horns by carrying them strapped to his back for approximately two miles through the woods. The Board found that, if not for Mr. Swalwell's efforts, the horns would not likely have been recovered. The Board also found that he would not receive a substantial financial gain by being allowed to keep the horns.

[30] In *Colin Priest v. Regional Manager* (Decision No. 2002-WIL-007, July 26, 2002), the Board found that special circumstances existed where Mr. Priest, a licensed trapper, found a dead cougar on family property in the Skeena region. The cougar was killed in a trap set to catch wolves. Cougars were rare in the region, were not open to hunting and cougar traps were not allowed. Mr. Priest argued that catching a cougar in a wolf trap was a "once in a lifetime" event and amounted to special circumstances. The Board agreed but declined to issue a possession permit for other reasons not relevant to this case.

[31] The circumstances of this case are unlike those in the cases described above. The Appellant did not find the Cougar in a remote location where it was unlikely to ever be discovered otherwise. The Cougar did not die as a result of an unusual accident, but rather an unfortunate but seemingly necessary animal control exercise. These circumstances are not sufficiently unusual to amount to "special circumstances".

[32] I also acknowledge that the Cougar was killed on the Appellant's property; however, I do not consider that to amount to "special circumstances". Property owners of the locations where animals are killed are a broad and easily-defined category. If the government had intended for property owners to have easier access to permits for the possession of wildlife killed on their property, they could easily have said so in the *Regulations*. Furthermore, and in any event, I do not find the circumstances of this case particularly unusual, and do not consider them to amount to "special circumstances".

[33] Lastly, I note that the Appellant is unsure what he would do with the Cougar. As such, there are no "special circumstances" related to how he might use the Cougar if he were granted possession.

[34] For the reasons provided above, I have concluded that no "special circumstances" exist that would allow the Appellant to be granted a permit for the possession of the Cougar under section 6(1)(b) of the *Regulation*. This decides the appeal. I do not need to address section 6(1)(d), but I will do so briefly.

[35] The valuation of the Cougar is difficult. While section 6(2) of the *Regulation* requires that the valuation be based on auction results "... of the particular species, of similar size and in similar condition", there are no results for cougars in a similar condition. Significantly, the auction results are for hides and skulls, not for whole animals. It is not clear to me if the value of a whole animal is greater than the sum

of the hide and the skull, or if the expense associated with taxidermy or harvesting of the hide and skull means that a cougar is worth less before any processing is done. Some evidence would have been helpful on this point.

[36] Even assuming that the value of the Cougar is greater than the value of its hide and its skull added together, the lack of information about the Cougar and the vast majority of wildlife parts sold at auction makes meaningful comparison impossible. As such, it is impossible to gauge what auctioned items are "... in similar condition ..." to the Cougar, as required by section 6(1)(d) of the *Regulation*. The lack of descriptive information about the Cougar and about most of the auctioned cougar parts prevents comparison based on size, overall condition, the number of bullet holes present in the hides, and so on.

[37] While the Officer described the Cougar as having been in "good" condition, it is not clear what this means. The cougar pelts sold at auction mostly do not have an associated condition listed. The conditions were not all assessed by the same person and there is insufficient evidence to conclude that any standard ranking system exists to ensure consistency in descriptions of the hides or animals.

[38] Furthermore, the \$276 dollar figure calculated by the Respondent is based on uncertain mathematics. It is the average of the average sale prices of cougar hides and skulls, in government auctions held in 2005, 2006, and 2007. Raw data was provided only with respect to 2007. This prevents me from relying on the data from 2005 and 2006, as I have no way of verifying the accuracy of the averaging. I note this is particularly a concern, given that the annual average from skulls in 2007 was reportedly \$14, but the 11 skulls listed in the raw data had a mean value of \$15.60.

[39] Additionally, the raw data from 2007 is enough to show that the average of the three annual averages was not weighted; it was simply the average of the three averages. This introduces an additional level of approximation into the analysis. The averages relied upon by the Respondent were not weighted, but rather were just the average of the three annual averages of all cougar hides and skulls obtained from that dataset. This adds an unnecessary level of approximation and lowers the reliability of the data for use in estimating the value of the Cougar.

[40] For these reasons, I find none of the information on the value of the Cougar to be reliable enough to determine a precise value for the Cougar. That said, the Appellant bears the burden of proof and has not met it. I am not satisfied that the Cougar is worth less than \$200. It is not enough that the Respondent's evidence on this point is problematic; the Appellant must present some evidence in order to meet the burden of proof. Even had the Appellant done so, however, section 6(1)(b) of the *Regulation* would still apply and the outcome of the appeal would be the same.

[41] I conclude that, under section 6(1)(b) of the *Regulation*, the Appellant should not be granted a permit for possession of the Cougar.

DECISION

[42] For the reasons provided above, I dismiss the appeal. The Respondent's decision dated February 26, 2021 is confirmed.

[43] In making this decision, I have carefully considered all the evidence submitted and arguments made by the parties, whether or not they were specifically referenced in the decision.

“Darrell Le Houillier”

Darrell Le Houillier, Chair
Environmental Appeal Board

August 3, 2021