



Environmental Appeal Board

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DECISION NO. EAB-WIL-21-A005(a)

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

BETWEEN:	Paul Trepus	APPELLANT
AND:	Regional Manager of Recreational Fisheries and Wildlife Programs	RESPONDENT
BEFORE:	A Panel of the Environmental Appeal Board Shannon Bentley, Panel Chair	
DATE:	Conducted by way of a videoconference hearing on March 14, 2022 and concluded in writing on March 30, 2022	
APPEARING:	For the Appellant: Self-represented	
	For the Respondent: Sonja Sun, Counsel	

FINAL DECISION

APPEAL

Introduction

[1] This is an appeal by Paul Trepus (the "Appellant") of a decision by James Jacklin, Regional Manager of Recreational Fisheries and Wildlife Programs (the "Respondent"), to suspend the Appellant's guide outfitter licence from June 11, 2021 until August 31, 2021. The Respondent works in the Ministry of Forests, Lands, Natural Resource Operations and Rural Development (the "Ministry"). The Respondent suspended the Appellant's licence after concluding that the Appellant had herded a wolf with his snowmobile in contravention of the *Wildlife Act*, R.S.B.C. 1996, c. 488 (the "Act"), during a hunt in 2014.

[2] The Environmental Appeal Board (the "Board")'s authority to hear this matter stems from section 101.1 of the *Act*. Section 101.1(4) of the *Act* grants the Board the power to conduct an appeal by way of a new hearing. Section 101.1(5) of the *Act* provides that the Board may, when deciding an appeal:

- (a) send the matter back to the regional manager or director, 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] The Appellant requests that the Board reverse the Respondent's decision.

BACKGROUND

[4] The Appellant owns and operates Inzana Outfitters, a fish and wildlife guiding company that has operated in the Inzana Lake area, near Fort St. James, for about 22 years. The Appellant holds guide outfitter licence #100002460, which authorizes him to guide clients in hunting activities. His guide outfitter licence was issued in September 2020 for a five-year period. In addition, the Appellant holds the guide territory certificate for the area where he guides. The Appellant also holds a trapping licence and operates a trapline in the area.

[5] In the winter of 2014, the Appellant took a client on a multi-day trap-line adventure and wolf hunt. The client hunter (the "Client") hosts a television show on hunting and brought a camera operator along to film the wolf hunt for the show. On February 12, 2014, one of the Client's last days with the Appellant, they spotted two wolves. The Appellant, the Client, and the camera operator pursued the wolves on two snowmobiles. The camera operator recorded video footage of the events that followed, and a copy of the video was provided to the Board. I have summarized the relevant aspects of that video, below.

[6] The Appellant and the camera operator were on one snowmobile and the Client was on the second, lower-powered, snowmobile. When the wolves became aware of the snowmobiles, they immediately split up. The men pursued one wolf out onto a frozen lake (Pinci Lake) with both snowmobiles.

[7] Both snowmobiles sped up until the Client was within shooting range. He got off his snowmobile, loaded his gun and shot at the wolf, but missed. He remounted the snowmobile and both snowmobiles pursued the wolf.

[8] The video footage shows that, out on the frozen lake, the faster snowmobile, carrying the Appellant (guide) and camera operator, was able to catch up to wolf, as it kept changing speeds and directions. The Appellant tried to keep his snowmobile close to the wolf and manoeuvre around it, as indicated by the rise and fall of the snowmobile engine sounds. The audio on the footage includes a comment that they were so close they could almost touch the wolf. This interaction was sustained for about 15-20 minutes.

[9] While the video footage at times shows a second snowmobile's headlight in the distance, it is unclear exactly how close the Client's snowmobile got to the wolf during this pursuit.

[10] The video footage then shows the wolf in the distance running at a slow pace across the lake as we hear the Client hurrying to set up for second shot at the wolf and checking that the camera was recording.

[11] The Client shot the wolf with his second attempt. The shot was caught on video for the show.

[12] About the same time, the United States Fish and Wildlife Service ("USF&WS") was investigating the Client for numerous hunting violations in the United States. Through their investigation, the USF&WS learned that the Client had been guided in

the winter wolf hunt in British Columbia. On October 22, 2018, the USF&WS notified the British Columbia Conservation Officer Service ("COS") of the hunt because they believed a wolf was unlawfully harvested.

[13] The COS and the USF&WS conducted a joint investigation. As part of their investigation, the USF&WS executed search warrants in three states regarding the Client's activities. Video footage taken of the B.C. winter wolf hunt was seized. The footage was for the Client's TV show called *The Best of the West*, for an episode entitled "Trap Line Adventures". The footage was provided to the COS and included as part of COS's investigation into the Appellant.

[14] In the summer of 2020, the COS requested that the Respondent hold a hearing into the Appellant's 2014 guided hunt. The COS provided its evidence to the Respondent in a report (the "COS Report").

[15] The COS Report recommended that the Appellant be prohibited from all guiding (fishing and hunting) activities indefinitely or for a duration determined by the Respondent. The evidence in the COS Report included a synopsis of the investigation, a detailed narrative of the COS investigation, interview transcripts, video footage of the wolf hunt, and the Appellant's compliance history since 1994 as recorded in the Ministry's Conservation Officer Online Reporting System ("COORS")¹.

[16] On March 22, 2021, the Respondent convened an in-person oral hearing pursuant to section 61 of the *Act*. The COS made five allegations against the Appellant at the hearing, all related to the wolf hunt on February 12, 2014. The COS alleged that the Appellant:

- shot from a motor vehicle;
- harassed wildlife with a device or machine;
- herded wildlife with a motor vehicle;
- unlawfully possessed wildlife; and
- provided inaccurate information to obtain a certificate.²

[17] In his June 11, 2021 Notice of Determination (the "Determination") on the matter, the Respondent concluded that the Appellant herded the wolf with a snowmobile in contravention of the *Act* (allegation 3, above). For that contravention, the Respondent suspended the Appellant's guide outfitter licence from June 11, 2021 until August 31, 2021. The Respondent concluded that the Appellant had not committed the other alleged contraventions.

[18] The Respondent's analysis of the evidence concerning allegation #3, herding wildlife with a motor vehicle, is explained in the Determination as follows:

Similar to the harassment of wildlife, the Evidence Binder provides similar information related to the herding of wildlife.

Section 27(3) of the *Wildlife Act* speaks to contraventions for both herding or harassment of wildlife with a motor vehicle or mechanical device. Unlike

¹ A case management system that tracks potential violations of legislation administered by the Ministry.

² This certificate is for the export of the wolf carcass to the Client.

harassment of wildlife, the *Wildlife Act* does not provide an exemption to herding through the definitions of 'hunt' and/or 'harass'. As such, while in pursuit of wildlife using snowmobiles, it would be a contravention of the *Wildlife Act* to 'herd' wildlife.

The *Wildlife Act* does not include a definition of herd. Without a provided definition, I use the ordinary meaning of the word herd, used as a verb, with reference to a group of people or animals(s) to move in a particular direction.

When reviewing the Evidence Binder statements and videos, I reference video 95801. This video shows [the Appellant] riding adjacent to the wolf at significant length, including changing the behaviour and direction the wolf was running while guiding the wolf in a specific direction. I conclude, on a balance of probabilities, this was likely intended to better position the wolf for a kill shot by [the Client]. I have considered the fact the wildlife was running and the practical nature of a licenced guide trying to support his client in a successful hunt. In consideration of all the evidence, statements, the ordinary meaning of the word herd, the intent of the provisions of the *Wildlife Act* and based on the balance of probabilities, I conclude that [the Appellant] herded the wolf with a motor vehicle or other mechanical device (reference to snowmobile).

[19] By way of a letter dated June 21, 2021, the Appellant appealed the Determination. He submits that he was legally hunting a wolf in full compliance with the *Act*, and he requests that his suspension "be revoked and his COORS file cleaned up".

[20] The appeal was heard using a combination of written and oral submissions. In a prehearing conference, the parties agreed that while the hearing was primarily based on written submissions, a portion of the Respondent's evidence would also be presented through an oral hearing. The parties also agreed that the main issue in the appeal is whether the Appellant herded the wolf with a snowmobile contrary to the *Act*. However, when the Board received the Appellant's written submission on October 20, 2021, he raised an additional issue regarding the "statutes of limitation". The Appellant questioned the COS' authority to begin an investigation in December 2018, given that the wolf hunt happened in December 2014.

[21] With the parties' agreement, the oral hearing was held by videoconference on March 14, 2022, and was limited to Respondent's Counsel leading the Respondent and two expert witnesses through their affidavit evidence concerning the video recordings made of the hunt, the Appellant's cross-examine of the witnesses, and the Respondent's reply, if any new issues arose.

[22] At the conclusion of the hearing, I offered the parties a final opportunity to make written closing arguments, which they both did.

ISSUES

[23] The questions to be answered in this appeal are:

1. Does a limitation period apply to the Determination?
2. Did the Appellant herd a wolf with a snowmobile in contravention of the *Act*?

[24] The Appellant's request to the Board that his COORS file be cleaned up, is not a remedy that the Board can provide in this case. The remedies that the Board can provide are set out in section 101.1(5) of the *Act*, as stated above. Those remedies relate to the decision that has been appealed, in this case the Determination that the Appellant contravened the *Act* during the wolf hunt in 2014. In deciding the appeal of that Determination, the Board cannot order the Ministry to change information in the COORS database that relates to other matters.

DISCUSSION AND ANALYSIS

1. Does a limitation period apply to the Determination?

[25] The Appellant's written submissions received by the Board on October 21, 2021, raise a question about the "statute of limitations" given that the hunt was in December 2014 and the investigation commenced in December 2018. However, the Appellant provided no submissions in support of his concerns about the time lapse.

[26] The Respondent did not make submissions on this question.

[27] The *Act* is broad in scope, and two types of enforcement actions can be taken if the *Act* is violated. The two types of enforcement action are: 1) administrative actions, which involve the Director as decision maker and the Director's power to impose administrative sanctions; and, 2) offence charges, which involve the provincial court system with the power to impose sanctions upon conviction of an offence under the *Act*.

[28] Another difference between the two types of enforcement action that is relevant to this appeal is the time limit for bringing an action. This difference was recently addressed by the Board in *Abraham Dougan v. Deputy Director of Wildlife and Habitat*, Decision No. 2018-WIL-008(a), December 23, 2019 ["*Dougan*"]. The appeal involved an issue about whether section 103(1) of the *Act* applies to administrative actions. Section 103(1) specifies a time limit for prosecuting an offence under the *Act*. In *Dougan*, the Board concluded in paragraph 63 that:

... the *Wildlife Act* distinguishes between administrative actions and offence charges, and that the time limit in section 103(1) applies only to offences: it does not apply to administrative actions, including section 24(2) or (5) proceedings for which there is no statutory limitation period.

[29] The Board's interpretation was later affirmed by the British Columbia Supreme Court in *Dougan v. British Columbia (Forests, Lands, Natural Resource Operations and Rural Development)*, 2021 BCSC 2300 (CanLII), at paragraphs 54 and 55.

[30] I find that the Determination of the Director to temporarily suspend the Appellant's guide outfitter licence falls within the administrative actions provided in the *Act*. I further find that the BC Supreme Court has confirmed that there is no statutory limitation period in the *Act* with respect to administrative actions. Accordingly, the Appellant's argument on this point does not provide a basis for reversing the Determination.

2. Did the Appellant herd a wolf with a snowmobile in contravention of the Act?**Summary of the Appellant's Submissions**

[31] The Appellant submits that the Respondent's finding that he herded a wolf contrary to the *Act* was wrong. He submits that if he was "legally pursuing a wolf with a snow-machine how can [he] at the very same time be guilty of harassing or herding a wolf with a snow-machine?"

[32] As part of his written submissions, the Appellant references five sources of information in support of his position: himself, the Client, the camera operator, the video evidence provided by the Respondent, and the Respondent. Neither the Client nor the camera operator provided direct evidence at the hearing, either in person or in an affidavit.

[33] Other than his own statements, the Appellant did not provide evidence to support his position, although that is not fatal to his appeal. The focus of the Appellant's submission is on his accounts of the day, his interpretation of the *Act*, and his interpretation of the Respondent's evidence.

[34] The Appellant submitted his account of the day in question. In his written submissions dated June 21, 2021 (received by the Board on October 20, 2021), he reports that:

During our trip we were out on snowmobiles checking traps and snares when we spotted a wolf out on a frozen lake. As a professional guide outfitter I had researched the use of snowmobiles for hunting in our area and knew that it was legal to pursue a wolf with a snow machine if you intended to kill it. In other words, you could only pursue with the intent to kill or it would be considered harassment. We gave chase and got to within range for a shot. [Client] got off his machine, turned off the motor, loaded his gun and shot at the running wolf but missed. [Client] then had to unload his gun, start his machine and pursue the wolf again to get within shooting range. When he got within shooting range the second time, [Client] again dismounted from his machine, turned off his machine, loaded his gun and shot. This time he connected and killed the wolf. Getting to within shooting range of a wolf is getting very close as indicated in the video and difficult to do on a 250 cc tundra snow-machines. Once the hunter stops the machine, dismounts and loads his gun, the wolf keeps going and is a considerable distance away making it very difficult to hit. These are not my rules and laws, these are the laws that the Province of BC established in the Wildlife Act. As a professional guide outfitter, I followed the law 100%. [Client] testified that he pursued with the intent to kill as proven by the wolf that he shot, that he got off his machine and loaded his gun as per my instructions and the laws. [Camera operator] testified to the same events and the film that he took was consistent with all the testimony.

[35] The Appellant submits that several years later, the Client had a business deal "go sideways" and in retaliation he was reported to the USF&WS for violations in

the USA. He submits that the Client "later pleaded guilty to his hunt up in Canada in order to have all his US charges dropped."

[36] Also, the Appellant submits that his COORS file, entered by the COS into evidence at the section 61 hearing, contains "falsified reports" and that the COORS system is "deeply flawed".

Summary of the Respondent's Submissions

[37] The Respondent provided the Board with the following evidence in support of his position:

- Affidavit of the Respondent, attached to which are the following exhibits from the oral hearing he conducted:
 - audio recording and transcript of the hearing;
 - the COS Report submitted for that hearing, which included unedited video footage with audio of the wolf hunt taken by the camera operator for the TV show;
 - the Appellant's submissions for that hearing; and
 - the Determination.
- Expert evidence of Morgan Anderson, MSc, R.P. Bio., a wildlife biologist employed by the Ministry in Prince George.
- Expert evidence of Michael Klaczek, MSc, Biology R.P.Bio, a senior wildlife biologist employed by the Ministry in Prince George.

[38] The expert witnesses were tendered as experts in wolf behaviour and biology, based on their professional and educational background. The Appellant did not object to the witnesses' qualifications to give expert opinion evidence on that subject.

[39] The Respondent submits that herding wildlife with the use of a motor vehicle and/or mechanical device, such as a snowmobile, even while hunting, is prohibited under section 27(3) of the *Act*, which states:

27 (3) A person who herds or harasses wildlife with the use of a motor vehicle, aircraft, boat or other mechanical device commits an offence.

[40] The Respondent submits that the snowmobile used by the Appellant is a motor vehicle or a mechanical device for the purposes of section 27(3), and that this is not in dispute.

[41] The Respondent notes that although he is not alleging that the Appellant harassed the wolf, he submits that it is nevertheless instructive to consider how the *Act* defines "harass", in contrast to the lack of a definition of "herd".

[42] Section 1(1) of the *Act* defines harass to "include worry, exhaust, fatigue, annoy, plague, pester, tease or torment, but does not include the lawful hunting, trapping or capturing of wildlife." The Respondent submits that as long as the person's activities falls with the definition of "hunt" in the *Act*, that person cannot "harass" wildlife and contravene section 27(3).

[43] The Respondent notes that in contrast, the word herd is not defined and there is no exemption from the prohibition on herding for lawful hunting. Therefore, a person who herds wildlife with the use of a motor vehicle and/or mechanical device, such as a snowmobile, even while hunting, commits an offence under section 27(3).

[44] The Respondent's affidavit evidence outlined the factors he considered to arrive at the conclusion the Appellant herded the wolf in a violation of section 27(3) of the *Act*. The factors he considered are:

- Since "herd" is not defined in the *Act*, he applied "the ordinary meaning of herd", taking into account the purpose of the provision and the general context of the *Act*. In this context, he interpreted "herd" to mean re-directing, guiding, and moving the wolf with the goal of better positioning it for a kill shot.
- He considered video #WF095801 to be most relevant. The video is 5 minutes and 13 seconds long and was shot by the camera operator on the back of the Appellant's snowmobile. The Respondent submits that the video shows a wolf "running around at length on a frozen lake at significant speed". More specifically, the Respondent submits that the video shows:

The snowmobile approaching the wolf, with the wolf looking towards the snowmobile and altering the direction of its travel in response at 12 seconds and 28 seconds. At 30 and 35 seconds in the video, I observed the wolf changing its running direction in response to the throttle and activity from the snowmobile. The wolf increases its rate of speed at 40 seconds in response to the snowmobile and at 44 seconds moves to the left to avoid the snowmobile from hitting it [the wolf]. At 48 seconds, I observed the wolf cutting in front of the snowmobile trying to escape, followed by the snowmobile changing direction, speeding up, and riding adjacent to the wolf once again. Near the 2 minute mark of the video, the footage shows the wolf changing its direction once again in response to the snowmobile, with the 2:25 mark showing a second snowmobile in the distance. I then observed the Appellant using his snowmobile to push the wolf back towards this second snowmobile. As the footage progresses, the wolf continues its attempts to escape, while the Appellant (such as at 2:55) continues to use his snowmobile to push the wolf in a different direction on the lake. At 3:44 of the video, the second snowmobile in the distance can be observed to be much closer than previously, and the wolf continues to be pushed in the direction of the second snowmobile by the Appellant with his snowmobile. At 4:36 of the video, the Appellant can be heard indicating that he was trying to "tucker him out" and asking the Client if he had a shot.

In short, to me, the video shows that the Appellant drove his snowmobile closely adjacent to the wolf at significant length (for at least the duration shown in the video), including changing the behaviour and direction the wolf was running in while guiding and moving the wolf in specific directions. This is in contrast with directly pursuing and following the wolf's trajectory on a snowmobile.

- Behaviour of the Appellant and Client: the Respondent noted that, in video #WF095802, someone could be heard saying that he could have touched the wolf several times. The Respondent submits that:
 - If the Appellant was pursuing the wolf to shoot rather than herd, there were many instances shown in the video where the Appellant's snowmobile was so close in range to the wolf that there was ample opportunity to stop the snowmobile, dismount and shoot.
 - The Respondent determined that the Appellant's behaviour (continually chasing and moving the wolf in specific directions, and not shooting it) was likely intended to herd the wolf to better position it for a kill shot by the Client, who was driving the second snowmobile that can be seen at several points on video #WF095801. The Client did ultimately shoot and kill the wolf later in the hunt, as evidenced by video #WF096001. That video showed the wolf exhausted and running at slow speed.
 - The COS interview evidence of the camera operator described the Appellant's snowmobile as having chased and circled the wolf for about 15 to 20 minutes to exhaustion. The length of the hunt and the reference to the exhausted state of the wolf supported the Respondent's view of the videos.

[45] Ms. Anderson's testimony (both written and oral) concerned the seven pieces of video footage of the wolf hunt taken by the camera operator. She testified that video #WF095801 was the most relevant in her reaching her opinion that the wolf was being herded by the snowmobile.

[46] Ms. Anderson considers herding an animal "to require that the animal react to its pursuer" and "to be pushing an animal in a direction it would not otherwise go by its own choice". The examples she observed in the video footage where the wolf reacts to its pursuer were when:

- the wolf changes gait and increases speed when the snowmobile gets closer;
- the wolf looks at the camera then increases its speed; and
- the wolf attempts to evade by doubling back. Ms. Anderson states that the "doubling back is a more advanced evasive manoeuvre than running away or running faster, and in my experience, is usually observed when we get very close to a wolf and it doesn't have another choice."

[47] Ms. Anderson identifies examples in the video footage that show the wolf being pushed in a direction it would not otherwise go. She explained that, in her opinion:

- Wolves are reticent to be out on open frozen lakes when they feel threatened. In those situations, wolves generally try to move into dense cover where they cannot be seen, particularly if they are alone. They will go out onto or remain on frozen lakes where it is easier to run if they are being chased. They will respond to pursuing persons and/or vehicles by moving away from it.

- The wolf's gait indicates a run, with increased pace as the snowmobile approaches closer. A wolf at top speeds can reach 50 to 60 kilometres per hour. Had it been directly followed instead of herded by the Appellant's snowmobile for the duration of the video to the 4 minutes and 12 seconds mark, at which point the snowmobile stops, the wolf could have covered close [to] the maximum width of Pinchi Lake (around 3.5 km). However, she observed that the wolf was on open ice for the entire duration of the video. She believes that if the wolf was not being actively herded (i.e., forced to change direction multiple times in response to the snowmobile, doubling back, and running back and forth), it would have had ample opportunity to run to the timber at the edge of the lake.

[48] Ms. Anderson testified that she has "flown wolf and moose captures and moose surveys over and around Pinchi Lake for the last 5 years and wolf tracks have always been concentrated along the shorelines with straight-line directional movement across the open ice." She opines that "the close proximity of the snowmobile to the wolf is in itself part of herding, whether or not intentional, as the nearness of the machine prevents the wolf from moving in certain directions and generally affects the wolf's behaviour with his snowmobile".

[49] Mr. Klaczek's testimony (both written and oral) also concerned the video evidence of the wolf hunt and his expert opinion on whether the wolf was being herded by the Appellant. Klaczek reviewed all the video evidence, and he considered video #WF095801 to be the most relevant. He concludes that in that video, "the snowmobile can be seen multiple times changing the direction of the wolf including pushing the wolf towards an approaching second snowmobile, and not letting the wolf escape the lake. In my view, such manoeuvring of the wolf's travel direction clearly constitutes herding".

[50] In reaching that conclusion, Mr. Klaczek discussed his observations on the entire length of video #WF095801, identifying the movements of the wolf and snowmobile and his interpretation of the behaviour. I have summarized Mr. Klaczek's comments in chronological order, as follows:

- Video #WF095801 starts with wolf running towards edge of lake as the Appellant's snowmobile approaches it. Typically, when wolves travel over lakes, they are moving across the lake directly towards a destination with more cover.
- Next, the wolf is seen trying to run to the edge of the lake and the Appellant's snowmobile manoeuvres in front of the wolf. The manoeuvring constitutes herding because it is diverting the wolf's movement away from the lake shore and keeping the wolf on the lake in the open.
- Next, the wolf is running in front of the Appellant's snowmobile and crosses over to the side of the lake shore, as it is attempting to get to the lake shore and nearby forest cover.
- Next, the Appellant's snowmobile manoeuvres in front of the wolf again, and is once again diverting the wolf's movement and pushing it away from the lake shore and the forest cover to keep the wolf in the open.

- Next, the Appellant's snowmobile manoeuvres the wolf back to the opposite side of the lake, towards the direction of lights in the distance from the second snowmobile.
- Next, the wolf doubles back behind the Appellant's snowmobile to try to head back towards the lake shore and forest cover, but the Appellant's snowmobile changes direction and appears to manoeuvre back to prevent the wolf from reaching the shoreline and forest cover.
- Next, the Appellant's snowmobile manoeuvres around the left side of the wolf further preventing the wolf from reaching shoreline and surrounding forest cover. The Appellant's snowmobile turns the wolf back to the center of the lake toward the second snowmobile.
- Next, the Appellant's snowmobile manoeuvres to the left side of the wolf and the second snowmobile can be seen getting closer.
- Next, the Appellant's snowmobile continues to be driven closely to the wolf's left side, and appears to be pushing the wolf closer towards the second snowmobile.
- Next, the wolf doubles back behind the Appellant's snowmobile further away from the second snowmobile.
- Next, the Appellant's snowmobile is stopped and meets the second snowmobile. The wolf can be seen running back toward the lake shore.
- Next, the wolf can be seen running away from the snowmobiles and towards the lake shore and forest cover.

[51] Mr. Klaczek testified that, in his professional opinion, based on the totality of what is shown in the videos, the Appellant herded the wolf with his snowmobile, and likely herded it towards the second snowmobile.

[52] In his closing submissions, the Respondent submits that the *Act* treats herding as something separate from, and in addition to, lawful hunting, and it is an offence to herd wildlife even while hunting. The dictionary and ordinary meaning of the word "herd", combined with the way herding is treated in the *Act*, show that herding has an element of causing or driving the direction of movement of wildlife that is separate and/or in addition to the pure chase, pursuit and following of wildlife allowed as part of lawful hunting under the *Act*.

[53] The Respondent submits that his two experts in wolf behaviour testified that the action of the Appellant was herding the wolf from his snowmobile, based on specific examples in the video evidence. He asserts that the experts' testimonies demonstrate that herding is distinct from lawful hunting. Although chasing, pursuing and following an animal is not always herding, their opinions demonstrate that herding can involve chasing, pursuing, and following after an animal. Therefore, the Respondent submits, that although the experts sometimes described the Appellant's actions as a hunt, pursuit, chase, etc., this does not mean that the Appellant's actions did not amount to herding. Rather, it is the Appellant driving his snowmobile in a way that continuously and actively moved and redirected the wolf in particular directions, that the wolf would not have otherwise moved in, that takes his actions into the realm of herding.

[54] Finally, the Respondent concludes that while the Appellant provided no evidence or experts to support his argument, the evidence and expert opinions

show that, taken as a whole, the Appellant's actions went above and beyond the direct pursuit, chase and following of the wolf as permitted by lawful hunting. While some of the Appellant's actions are part of hunting, the actual circumstances of his hunt and his actions amounted to unlawfully herding the wolf.

Summary of the Appellant's Final Submissions

[55] In his closing submissions, the Appellant submits that section 27(3) of the *Act* uses the words "herd" and "harass" in the same sentence, so both activities should be exempted activities when hunting.

[56] He is critical that Ms. Anderson created her own definition for "herd" because it is vague and should not be considered the legal definition.

[57] The Appellant highlights that the Respondent and the two biologists' testimony concerning the video of the wolf's movements affirm that a legal hunt occurred. In support of this, the Appellant notes that Ms. Anderson testified that "the wolf made rapid directional changes" and what she saw was a chase. He notes that Mr. Klaczek testified that "the wolf moved and then [the Appellant] moved" and described the Appellant's movements as a pursuit; and the Respondent testified the same hill in the background indicated that the wolf made a large circle. Additionally, he notes the Respondent's Legal Counsel referred to the video as "the 'Hunting Video', which he submits is the correct characterization.

[58] The Appellant asserts that this is the correct characterization because the proof is in the outcome—the wolf did not end up herded in a pen, but was shot and killed. He explains that both the Client and camera operator testified to USF&WS that the Client pursued the wolf, got off his machine, turned it off, loaded the gun and shot the wolf. He notes that the Respondent, in the Determination, concluded that they were not harassing the wolf because they were hunting the wolf. The Appellant questions, "How can something be legal and illegal at the same time?"

[59] The Appellant submits that the difference between herding and hunting is multi-faceted. First, it is a mental state of mind. While hunting, you have a weapon and are trying to kill the animal. While herding, you are trying to get the animal to go to a specific place and are not trying to kill it. The Appellant argues that he and the Client were not herding the wolf to any specific place; they were chasing it and trying to dispatch it. The Appellant submits that he was the only witness who was there that saw the whole thing, and he had no intention of herding the wolf, they were only pursuing and chasing the wolf, trying to shoot it which is completely lawful.

[60] The Appellant submits that the Determination was made on "probabilities", not facts or evidence. He asks, "how can I be conducting a legal hunt as [the Respondent] agreed that I did and then as the very same time be guilty of harassing and herding wildlife with a snow-machine?"

Panel's Findings

[61] The Respondent's video evidence provides insight to the original COS allegations for the hearing before the Respondent, and I find it equally helpful here

given that the issue before me is whether the Appellant herded the wolf with his snowmobile.

[62] Determining such an issue without the video evidence would be challenging to evaluate. I find the video evidence compelling because it provides a real-time record of portions of the events, it was recorded by the passenger on the Appellant's snowmobile, and it is uncontested.

[63] The video evidence corroborates the other evidence that there were two snowmobiles: one operated by the Client; and the other operated by the Appellant and carrying the camera operator as a passenger.

[64] The video evidence also corroborates the other evidence that three individuals were involved in the events of the day: the camera operator; the Client; and the Appellant.

[65] I find the roles of the individuals are relevant in understanding the context of the shooting of the wolf and the dynamics between the individuals involved. The following definitions in section 1(1) of the *Act* help us understand these roles further:

"guide" means a person who, for compensation or reward received or promised, accompanies and assists another person to hunt wildlife, but does not include a guide for fish;

...

"hunt" includes shooting at, attracting, searching for, chasing, pursuing, following after or on the trail of, stalking or lying in wait for wildlife, or attempting to do any of those things, whether or not the wildlife is then or subsequently wounded, killed or captured,

(a) with intention to capture the wildlife, or

(b) while in possession of a firearm or other weapon;

[66] According to the definition of "guide", a guide is a person who accompanies and assists another person to hunt. Section 50 of the *Act* states that an applicant for a guide outfitter licence must satisfy a regional manager that he or she possesses a working knowledge of the *Act* and its regulations, and section 61(1) states that a regional manager may suspend a guide outfitter licence if a guide is convicted of an offence under the *Act*, does not comply with the conditions or restrictions in his or her licence, or for another cause that the regional manager considers reasonable. Certainly, the *Act* places an obligation on the guide to ensure that client hunters comply with the *Act* by holding the guide accountable. This makes sense particularly when a hunter is a non-resident of the province, as in this case. What it does not do is transform a guide into a hunter. These are distinct roles under the *Act*.

[67] After reviewing the Appellant's submissions, the testimony of the camera operator presented at the hearing before the Respondent, and the video of the hunt, I find that the roles of the three individuals are clear. The camera operator's role was to film activities and acquire footage to later edit for the television show "Best of the West". The Client's role was to be the star hunter on the show and

actual hunter of the wolf. The Appellant's role was to guide the Client on a hunting adventure which was to be later featured on the Client's show.

[68] Through his submissions, the Appellant mostly focused on defending the actions of his Client, outlining the steps the Client took in shooting the wolf and assuring the Board that the Client complied with the rules and law set out in the *Act*. However, the question here is not whether the Client lawfully hunted the wolf, but rather, whether the Appellant herded the wolf, contrary to the *Act*.

[69] From my perspective, the Appellant has conflated his actions with the actions of his Client. It is not the actions of the Client or the camera operator that are at issue in this matter. The Appellant's actions, while acting within his role as hunting guide, are those being considered in this matter, and whether he herded the wolf.

[70] Section 27(3) of the *Act* makes it an offence to herd or harass an animal from a motor vehicle.

[71] The Appellant was on a snowmobile. Section 1 of the *Motor Vehicle Prohibition Regulation*, B.C. Reg. 196/99³, states that the definition of "motor Vehicle" includes a snowmobile. When I read that definition together with section 27(3) of the *Act*, I find that it is an offence to herd or harass wildlife with a snowmobile.

[72] What constitutes "herd" in the context of section 27(3) of the *Act*? The *Act* does not define the word "herd". Consequently, I considered the plain and ordinary meaning of "herd". The Oxford Advanced American Dictionary defines the verb herd as "to move or make someone or something move in a particular direction".

[73] The definition of "harass" in section 1(1) of the *Act* indicates that it is not an offence to "worry, exhaust, fatigue, annoy, plague, pester, tease or torment" wildlife when engaged in lawful hunting. I note that the definition of "harass" does not include "to move or make someone or something move in a particular direction". Consequently, I find that the word "harass" does not include action that falls within the common meaning of "herd", in the context of the *Act*. This interpretation is supported by the fact that the words "harass" and "herd" are separated by the word "or" in section 27(3) of the *Act*.

[74] The next question is whether the Appellant, during the wolf hunt, only engaged in action that falls within the definition of "harass", which is not an offence during a lawful hunt, or whether he also engaged in action that falls within the definition of "herd" which is prohibited under section 27(3) regardless of whether it occurs during a lawful hunt.

[75] I have reviewed the affidavits (with their attached curriculum vitae) of the two wildlife biologists that the Respondent tendered as expert witnesses on wolf behavior and biology. Both Ms. Anderson and Mr. Klaczek are wildlife biologists with graduate degrees in biology, and have about 25 years of relevant experience between them. The Appellant has not disputed their standing as experts; however, he does dispute their interpretations of the video evidence. Given their education and scope of experience working in the field generally, and particularly their work

³ The *Motor Vehicle Prohibition Regulation* is a regulation under the *Act*.

focused on observing and interpreting wolf behaviour in the Prince George area and other similar ecosystems, I accept Ms. Anderson and Mr. Klaczek as experts in the field of wolf behaviour and biology.

[76] The oral portion of the appeal hearing focused on the video of the hunt and the testimony of the two wildlife biologists and the Respondent. While all three of them had reviewed the video evidence and provided their interpretation of the wolf's behaviour in their written affidavits, they reiterated their interpretations in the oral hearing. During the hearing, the video evidence was played while each of them provided, in real time, a description of what they considered was occurring, what movements the wolf was making, and what behaviour the wolf was exhibiting by its movements. The video was stopped and started as each of the Respondent's three witnesses testified. They stopped the video at various points to explain, as they had in their affidavits, the wolf's specific movements and behaviours that they believe indicate the wolf was being herded by the Appellant.

[77] After each witness testified, the Appellant asked them questions. The Appellant followed up on the words they used to describe the Appellant's movements. He noted they used the words chase, pursuit, hunt when describing his actions, which he agrees occurred. However, he submits that these words describe a legal hunt, not herding the wolf.

[78] After viewing the video evidence and listening to each of the parties' analysis of the wolf's actions on the frozen lake in relation to how wolves generally behave, I accept the experts' opinions that this is the behaviour of a wolf attempting to return to the safety of the forested shoreline. I also accept their testimony and analysis of the actions of the Appellant, as shown on the video evidence, that he was using his snowmobile to make the wolf move in particular directions at particular times, to prevent the wolf from escaping to the forested shoreline.

[79] Certainly, the Appellant's actions included acts that can occur as part of a hunt, as well as actions that fit the definition of harassment under the *Act*. But such a narrow analysis of all the evidence provided, especially the video and expert opinions, misses the full range of the actions shown in the video evidence.

[80] I accept the Respondent's evidence, including the experts' evidence, that the Appellant used his snowmobile to redirect, manoeuvre the wolf. I consider the Appellant was clearly engaged in herding actions of the wolf. In support of the expert testimony to reach this conclusion, I also found the COS' evidence of USF&WS witness statement provided by the camera operator to be relevant. The camera operator confirmed that "it was 15 minutes of...of circling the wolf or whatever, basically trying to slow it down or head it off or whatever you want to say". I am left to wonder why, as stated by the camera operator, the Appellant asked him not to film the wolf chase. According to the COS' evidence, the camera operator said, "he told me not to film it ...as we were pursuing the wolf, he said please don't film this, but I filmed him".

[81] I recognized that simply causing a wolf "fatigue" does fall within the definition of "harass" under the *Act*, but that is not all that occurred here. All the actions and reactions between the Appellant and the wolf, taken as a whole, are important to reach a fulsome understanding of what occurred that day. In this case,

the Appellant used the snowmobile to repeatedly change the direction that the wolf was running in; he did not use the snowmobile to simply chase after or pursue the wolf.

[82] In addition, I find the context of the hunt to be important.

[83] The Appellant's evidence is that the Client was on a snow-machine with less power and a lower maximum speed than the Appellant's. The Appellant submitted that getting to within shooting range of a wolf is "difficult to do on a 250cc tundra snow-machine". Certainly, the video footage shows that the faster snowmobile carrying the Appellant and the camera operator was able to get close to wolf and quickly re-direct the wolf, while the Client's machine could not.

[84] I find that the Appellant worked in tandem with his Client. As the guide, he supported his Client in killing the wolf. The guide, on the faster snowmobile, herded the wolf to the Client, so the hunter could take the kill shot. The guide himself was not shooting or engaging in hunting; he was assisting the Client in his hunt.

[85] Based on the evidence I have described above, I find that the Appellant herded the wolf from his snowmobile.

[86] I did not ask for submissions on the appropriateness of the length of the suspension imposed on the Appellant in the Determination, and the parties did not raise specific arguments concerning the length of the suspension, other than indirectly by the Appellant who submits that the suspension should be reversed. I presume he would consider any length of suspension to be inappropriate.

[87] Without the benefit of submissions on the appropriate length of the suspension in this case or any specific argument for a reduced term of suspension, I confirm the decision to suspend the Appellant's guide outfitter licence from June 11, 2021 to August 31, 2021.

DECISION

[88] In reaching my decision, I have considered all submissions, whether or not I specifically mentioned them.

[89] Pursuant to my powers under section 101.1(5) of the *Act*, and for the reasons provided above, I confirm the Respondent's decision and dismiss the appeal.

"Shannon Bentley"

Shannon Bentley, Panel Chair
Environmental Appeal Board

July 6, 2022