



Environmental Appeal Board

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APPEAL NO. 2003-WIL-006(a)

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

BETWEEN:	Mike Christensen	APPELLANT
AND:	Regional Manager	RESPONDENT
BEFORE:	A Panel of the Environmental Appeal Board Alan Andison, Chair	
DATE:	June 11, 2003	
PLACE:	Cranbrook, B.C.	
APPEARING:	For the Appellant: Mike Christensen For the Respondent: Wayne Stetski	

APPEAL

This is an appeal by Mike Christensen of the February 6, 2003 decision of Wayne Stetski, Regional Manager of the Kootenay Region, Ministry of Water, Land and Air Protection (the "Ministry"), with regard to Mr. Christensen's 2003 quota, and 3-year allocation, of mountain goats. The Regional Manager issued an annual quota of 6 mountain goats for the 2003 season, and provided an allocation of 6 goats for the 2003-2005 allocation period, a reduction from 7 in the previous allocation period. The quota and allocation limit the number of mountain goats that may be harvested by guided hunters within the Appellant's guide outfitter territory.

The Environmental Appeal Board has the authority to hear this appeal under section 11 of the *Environment Management Act*, R.S.B.C. 1996, c. 118, and section 101.1 of the *Wildlife Act* (the "Act"). Section 101.1(5) of the *Act* provides that the Board may:

- (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.

Mr. Christensen requests that the Board set aside the Regional Manager's decision and order that the Regional Manager increase his 3-year allocation to the pre-2000 allocation of 9 mountain goats.

BACKGROUND

Mr. Christensen is a guide outfitter operating in the Kootenay Region of southeastern British Columbia. He is licensed to operate his guiding business in guide outfitter territory G0426G001. Each guide outfitter has exclusive rights to guide non-resident hunters within a guide's territory. Non-residents of British Columbia may not hunt in the province unless accompanied by a guide outfitter. Guide outfitter licences have an annual quota for specific wildlife, which is attached as a condition of the licence. Resident hunters holding Limited Entry Hunting ("LEH") authorizations may also hunt, without a guide, within a guide outfitter's territory.

Guide outfitters must obtain annual licenses that specify an annual quota for certain big game species, such as mountain goat. The quotas are attached as conditions of their guide outfitter licenses. Regional managers have express discretion under the *Act* to issue guide outfitter quotas and licenses.

To facilitate wildlife management and provide greater certainty to guide outfitters, the Ministry uses 3-year allocation periods which provide a guideline for the maximum number of animals a guide's clients may kill over the 3-year period. Regional managers issue 3-year allocations as administrative guidelines, and not under express authority of the *Act*.

In exercising their discretion to issue quotas and advise on allocations, regional managers may seek guidance from relevant Ministry policies and procedures.

In determining Mr. Christensen's quota and allocation, the Regional Manager considered Ministry policy and procedures, staff and stakeholder recommendations, and social, economic, and biological factors. In his appeal submissions, the Regional Manager described the method by which guide outfitter allocations were determined for mountain goats, which is summarized as follows:

1. The total allowable harvest for the Region is determined based on available mountain goat population data.
2. The allowable non-resident harvest for the Region is 25 percent of the total allowable harvest.
3. Individual guide outfitters are assigned allocation numbers based on the proportion of the mountain goat population living in their guide territory.

In a letter dated February 6, 2003, the Regional Manager informed Mr. Christensen of his decision to set a 3-year allocation of 6 mountain goats for the period of 2003-2005, and issue a quota of 6 mountain goats for 2003, with regard to Mr. Christensen's guide territory. Mr. Christensen was allocated 7 mountain goats in the previous allocation period.

On March 4, 2003, Mr. Christensen appealed the Regional Manager's decision. His grounds for appeal are as follows:

- There has been no recent mountain goat inventory within two drainages of Findlay Creek [an area within Mr. Christensen's guide territory].

- The mountain goat allocation for this area should not be reduced as the Ministry population estimates are the same as they were in the last allocation period.
- The Regional Manager's decision to reduce Mr. Christensen's mountain goat allocation was made for mathematical reasons without biological justification.
- The viability of Mr. Christensen's business is severely affected by a reduction in mountain goat allocation.
- The mountain goat population in this area is recovering, and a reduction in allocation is not necessary for conservation purposes.
- Ministry policy indicates that the quota allocation for non-residents should be increased in a Limited Entry Hunting area where the resident annual harvest has not been fully utilized in each of the immediately preceding three years. The resident annual harvest for mountain goats has not been met for the past three years in the management unit in which Mr. Christensen operates. Therefore, he should receive an increase in quota allocation.
- The total annual allowable harvest of mountain goat has not been met in this area.

Mr. Christensen requests that his 3-year allocation be increased to 9 goats.

ISSUE

This appeal raises the following issue:

Whether the Board should increase Mr. Christensen's allocation of mountain goats to 9 for the 2003-2005 period.

RELEVANT LEGISLATION

The relevant provisions of the *Act* are as follows:

Compulsory guide outfitter licence

- 48** (1) A person commits an offence if the person acts as a guide for game, or offers to act as a guide for game, unless the person
- (a) holds a guide outfitter licence,
 - (b) holds an assistant guide licence,
 - (c) holds another licence to guide for game, or
 - (d) accompanies or assists a person to hunt game birds or small game on land other than Crown land.

Issue of guide outfitter licence

- 51** (1) A regional manager may issue a guide outfitter licence to a person who
- (a) is a citizen of Canada or a permanent resident of Canada,

- (b) has held assistant guide licences for 24 months and actively guided during that time, and
 - (c) has public liability insurance and other qualifications prescribed by regulation.
- (2) A guide outfitter licence authorizes the holder to guide persons to hunt only for those species of game and in the area described in the licence.

Quotas

- 60** (1) If a regional manager issues a guide outfitter licence, the regional manager may attach a quota as a condition of the licence and may vary the quota for a subsequent licence year.
- (2) If a guide outfitter has a quota assigned as a condition of his or her guide outfitter licence and allows his or her clients to kill game to the extent that the number killed exceeds the quota assigned to the guide outfitter, the regional manager may reduce or take away his or her quota for a period and may take action under section 61.

DISCUSSION AND ANALYSIS

Whether the Board should increase Mr. Christensen's allocation of mountain goats to 9 for the 2003-2005 period.

Mr. Christensen testified that there has been no population inventory of mountain goats in the Findlay Creek area, which is within his guiding territory, since 1988. He argues that the Ministry's population estimate for his area has been much higher in the past, and that the current estimate of 140 mountain goats in his area is based primarily on "guess work." He further argues that the Ministry's population estimate is the same as it was for the previous allocation period; therefore, his allocation should not have been reduced. In his opinion, the Regional Manager erred by reducing his quota for "mathematical reasons."

Mr. Christensen submits that a reduction in allocation has serious financial consequences for a small guiding operation. In his case, one mountain goat represents 4 percent of his yearly income, or \$7800.

Mr. Christensen testified that the mountain goat population in his area is healthy and is recovering from previously low population numbers. In his opinion, since the severe winters of 1995/96 and 1996/97, there have been mild winters that have allowed the mountain goat population to gradually increase. He stated that he spends a considerable amount of time in his guide territory, and that the cougar population has decreased by 80 percent to 90 percent, which means that predation of mountain goats is low. He further testified that there are no roads on the western half of his area, and no helicopter access in the whole area, which indicates a low level of human interference in the area.

Mr. Christensen further submits that the Regional Manager failed to follow the Ministry policy of transferring unused resident hunting opportunities to non-resident hunters (the "transfer policy"). The transfer policy is found in the Ministry's *Policy*

Manual, volume 4, section 7, subsection 01.06.1, item 2.3, titled "Limited Entry Hunting", and states as follows:

- 2.3 The quota allocation to non-residents is **increased** in an LEH area where the resident AH is not fully utilized in each of the immediately preceding three (3) years.

Mr. Christensen submits that the policy is clearly worded, and applying the policy in his area will not result in an over-harvest of mountain goats. Mr. Christensen testified that, in the previous allocation period, there were a total of 11 unused mountain goat opportunities in his guide territory, of which 5 were unused resident opportunities. He argues that the Ministry could transfer some of those opportunities to his guiding operation, and is not bound to transfer all of them.

Mr. Christensen testified that the allocation process for his guiding business is unfair compared to the allocation process for resident hunters. He submits that when residents fail to meet their annual allowable harvest, their target harvest goes up, but if he fails to meet his allowable harvest, his allocation is reduced.

The Regional Manager submits that, in making his decision regarding Mr. Christensen's quota and allocation, he considered the needs of resident and non-resident hunters, Ministry policy and procedure, staff and stakeholder recommendations, and biological, social, and economic factors.

The Regional Manager stated that the population estimate of 140 mountain goats for Mr. Christensen's area in 2003 is based on an August 1998 aerial survey of the East Kootenay Region, and the estimate is unchanged from 2000.

The Regional Manager argues that the transfer policy is ambiguously worded and dangerously designed, and should not be applied in this case. He submits that applying the policy would conflict with the Ministry goal of a 75/25 resident/non-resident split in harvest, as it would increase the non-resident harvest to more than 25 percent of the total harvest. The Regional Manager also argues that to transfer the unused resident harvest opportunities in the Appellant's area would be detrimental to the mountain goat population. He submits that, if he were to transfer these "leftover" goats to Mr. Christensen, he would also need to apply the same policy to all of the other guide outfitters. This would cause a decline in mountain goat numbers in the Region, which would be detrimental to conservation goals.

The Regional Manager submits that, in any case, Mr. Christensen has harvested less than his allocation in the past, and that his current allocation of 6 is greater than his harvest of 3 goats in the previous allocation period.

Robert Forbes testified as a witness in support of the Regional Manager's submissions. Mr. Forbes advised that he has worked as a wildlife biologist for 31 years, and has worked in the Kootenay Region for the last 8 years. He has 30 years of experience in mountain goat management, and currently holds the position of Regional Fish and Wildlife Section Head.

Mr. Forbes testified that the mountain goat population in the East Kootenays has declined significantly over the past nine years. He stated that the 1994 mountain goat population of this area was approximately 10745 goats, and the 2003

population is approximately 7132 goats. Mr. Forbes testified that the decline in goat population can be attributed primarily to high mortality rates due to extreme winter weather in 1995/96 and 1996/97. He stated that increasing predation and human disturbance also contribute to the decreasing mountain goat population in the Region. Mr. Forbes also testified that the mountain goat population in the Findlay Creek drainage was measured by the 1998 aerial survey, shortly after the severe winters of 1995/96 and 1996/97.

Mr. Forbes stated that the Ministry policy of dividing the allowable mountain goat harvest on a 75/25 basis between resident and non-resident hunters is advantageous for non-resident hunters. He testified that although the entire Region is not covered by guiding areas, it is the goat population of the entire Region that is used when calculating the non-resident share of allowable harvest. Therefore, the total non-resident allocation of mountain goats is higher than it would be if the allocation process was restricted to mountain goat populations within guide territories.

With regard to the allocation process for residents, Mr. Forbes testified that resident hunting opportunities have not been reduced in Mr. Christensen's area because of the manner in which they are calculated, which is different from the way in which guide outfitters' allocations are calculated. He stated that the resident hunting opportunities are based on the number of animals available for harvest divided by the previous resident hunter success rate.

With regard to the transfer policy, Mr. Forbes stated that the policy is used only when it is not in conflict with other Ministry policies, such as conservation policies.

The Panel finds that the data from the 1998 aerial survey is the most accurate and objective population information that was available to the Regional Manager in this case. The Panel finds that the anecdotal evidence provided by Mr. Christensen is insufficient to discredit the population estimates provided by the Regional Manager, and does not provide a more reasonable basis for estimating mountain goat populations for the 2003-2005 period. While his anecdotal evidence suggests that there may have been an increase in the mountain goat population in his guiding territory since 1998, it must be given less weight than the data used by the Regional Manager, because Mr. Christensen's evidence has not been independently verified or tested using objective scientific methodologies.

With regard to the transfer policy, the Panel notes that regional managers exercise statutory discretion when they issue guide outfitter quotas and licenses. In exercising that discretion, and in advising guide outfitters as to 3-year allocations, regional managers may seek guidance from relevant Ministry policies, including the transfer policy, but regional managers are not obligated to apply Ministry policies. Indeed, as statutory decision-makers, regional managers must not apply Ministry policies in a manner that fetters their discretion. Regional managers must, however, exercise their discretion in a manner that is consistent with the purposes of the *Act*. Wildlife conservation and the sustainable management of wildlife populations, through the regulation of hunting, trapping and other uses of the province's wildlife resources, are important purposes of the *Act*. As such, regional managers must consider, when issuing guide outfitters' quotas, whether

conservation measures should be applied, and whether policies such as the transfer policy should be applied.

The Panel also notes that, underlying this appeal is a dispute concerning the state of mountain goat populations and the need for conservation measures. The Regional Manager has considered the need for conservation measures based on a regional view of the resource, and the fact that there has been a decline in the regional mountain goat population decline since 1994. Mr. Christensen's position focuses on the mountain goat population in his individual guide outfitter territory, and not in the Region as a whole. Depending on the geographical perspective, conservation measures may or may not be needed, and similarly, it may or may not be prudent to apply the transfer policy. Viewed regionally, the mountain goat population has decreased since 1994, and has not returned to 1994 levels despite the fact that resident and non-resident hunters in the region have not fully utilized their annual allocations in recent years. Viewed in terms of Mr. Christensen's guide territory, Mr. Christensen claims that the mountain goat population in his area has increased in recent years.

The Panel finds that, in issuing the Mr. Christensen's quota and allocation, and in deciding whether to apply the transfer policy, it was prudent for the Regional Manager to view the mountain goat population on a regional basis. The Panel finds that it was reasonable for the Regional Manager to consider the decline of mountain goat populations in the entire Kootenay Region, and East Kootenay Region in particular, since 1994, and to consider the need for conservation measures to restore the regional population to its former levels. Given the regional decline in the mountain goat population, and that the regional population has not returned to its 1994 level even though hunters in the Region have not fully utilized their annual mountain goat allocations in recent years, the Panel finds that it was reasonable for the Regional Manager to decide against using the transfer policy. The Panel finds that, in this case, using the unused resident hunting opportunities from the 2000-2002 period to increase the non-resident hunting opportunities in the 2003-2005 period may be contrary to the Ministry's valid objective of conserving mountain goat populations and ensuring the long-term sustainability of the resource for the benefit of all stakeholders, including guide outfitters.

Finally, the Panel notes that, given the way that quotas and allocations are distributed among guides in the Region, the only way to increase Mr. Christensen's allocation would be to decrease the allocation of another guide outfitter, which may lead to unfair results. The Panel accepts that the Regional Manager fairly applied reasonable conservation measures to resident and non-resident hunting groups, as well as between individual guide outfitters, when he determined the Appellants' quotas and allocations.

In summary, the Panel finds that Mr. Christensen has provided insufficient evidence to justify an increase in his quota and allocation. The population estimates used by the Regional Manager were based on the best available information and provide a reasonable basis from which to calculate Mr. Christensen's quota and allocation. The Panel also finds that it was reasonable for the Regional Manager to decline to apply the Ministry's transfer policy to increase Mr. Christensen's quotas and 3-year allocation of mountain goats.

For all of these reasons, the Panel finds that the Regional Manager's decision with regard to Mr. Christensen's mountain goat quota for 2003 and his allocation for the period of 2003-2005 should be confirmed.

DECISION

In making this decision, the Panel has considered all the evidence and arguments presented at the hearing, whether or not specifically reiterated here.

For the reasons set out above, the Panel confirms the Regional Manager's decision.

Accordingly, the appeal is dismissed.

A handwritten signature in black ink, appearing to read 'C. J. Andison', with a long horizontal flourish extending to the right.

Alan Andison, Chair
Environmental Appeal Board

April 27, 2004