



# Environmental Appeal Board

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## DECISION NO. 2010-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:** Ray Collingwood **APPELLANT**

**AND:** Acting Regional Manager **RESPONDENT**

**AND:** BC Wildlife Federation  
North West Guides Association  
Tahltan Band Council **PARTICIPANTS**

**BEFORE:** A Panel of the Environmental Appeal Board  
David H. Searle, CM, QC, Panel Chair

**DATE:** December 1 and 2, 2010

**PLACE:** Smithers, BC

**APPEARING:** For the Appellant: Ray Collingwood, Carrie Collingwood  
For the Respondent: Joseph McBride, Counsel  
For the Participants:  
BC Wildlife Federation: Wilf Pfeleiderer  
North West Guides Association: George Leven, Counsel  
Tahltan Band Council: Chief Rick McLean

## APPEAL

[1] The Appellant appeals a decision of Larry Boudreau, Acting Regional Manager, Environmental Stewardship Division, Skeena Region, Ministry of Environment (the "Ministry"). The decision under appeal was issued by letter dated May 3, 2010, setting quotas for the 2-year allocation period (April 1, 2010 to March 31, 2012) in respect of moose, mountain goat, mountain sheep, grizzly bear and caribou, for the Appellant's guide outfitter licence. The appeal is in respect of the quotas set for moose, stone sheep, mountain goat and caribou, and seeks the following remedies:

1. a reversal of the decision of the Regional Manager and a return to the previous quotas;
2. an independent review of the quota reduction;
3. delay in implementation of the new harvest allocation policy until 2017; and
4. a consultation process that includes individual guide outfitters.

[2] The Environmental Appeal Board has the authority to hear these appeals under section 101.1 of the *Wildlife Act* (the "*Act*"), which provides that the Board may:

- (a) send that 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.

## BACKGROUND

### Licenses, Quotas and Allocations

[3] The province regulates hunting for big game species, such as moose, through legislation, regulation and policy. It regulates non-resident hunters by requiring that they hunt for big game only with a licensed guide outfitter. Each guide outfitter has exclusive rights to guide non-resident hunters within his or her guiding territory. Resident hunters holding limited entry hunting authorizations may hunt, without a guide, in a guide outfitter's territory.

[4] Guide outfitters must obtain annual guide outfitter licenses from the Ministry. Regional managers specify annual quotas as conditions of those annual licenses. The quotas limit the species and number of game that may be harvested by the guide outfitter's clients within the guide's territory during the period specified in the license. It is section 60 of the *Act* which gives a regional manager discretion to allocate wildlife to non-resident hunters. That discretion, however, is exercised within a framework that includes applicable provincial policies, population estimates for the particular game species, and other considerations including species conservation, traditional First Nation uses, and resident hunters' interests.

[5] As part of the quota assignment, regional managers also issue each guide outfitter a 2-year harvest allocation that is the maximum number of animals each guide's clients may take over the designated 2-year period. These 2-year allocations and annual quotas also are managed by administrative guidelines that are distinct from the license, but are delivered to guides with their licenses. Guides have the option to sign a written agreement indicating that they agree to the administrative guidelines. The administrative guidelines allow a guide outfitter to exceed the designated annual quota by a set number, but that number then counts against the total 2-year allocation. The guidelines give guide outfitters some flexibility in the numbers harvested each year, and are used for harvest planning purposes.

[6] In 2007, the province adopted a new harvest allocation policy, which is to be fully implemented by 2012. That policy was approved by the Ministry's Director of Fish and Wildlife (the "*Director*"), not the Regional Manager. The new policy indicates that resident hunters are to be given priority in the harvest of big game species. For category A species (i.e. big game species for which guided hunters' harvest is limited by quota in any portion of a region), the policy indicates that the Director should assign an initial allocation of 75% of the allowable harvest of the species to resident hunters, and 25% to guided hunters, in each region. The

Director may alter the initial 75/25 allocation in each region according to the relative importance of that species to each hunter group in the region. Once the Director sets the resident/guided hunter allocation for each region, regional managers apply that ratio to determine the quotas for each guide, based on further policy guidelines. The Regional Manager decided to apply the new policy in his decision-making process for big game harvests starting with the 2010-2011 allocation period. It was, in part, the application of that new policy to guide outfitters by the Regional Manager that triggered the changes to the Appellant's quotas for 2010 and his allocations for 2010-2012, and led to this appeal.

[7] To ease the transition to the new policies and procedures for calculating guide quotas and allocations, and to limit the immediate impacts on individual guide outfitters, the Regional Manager made a policy decision to limit the reductions in the 2010 quotas and the 2010-2012 allocations to approximately 20% compared to the previous period. However, in some cases, the actual reductions exceeded 20%.

[8] The Appellant's 2-year allocations for the 2010 to 2012 period are:

- 43 moose;
- 7 mountain goat, of which no more than 3 may be taken from Zone A, 3 from Zone B, and 1 from Zone C of Management Unit ("MU") 6-20;
- 15 mountain sheep; and
- 38 caribou.

[9] The Appellant submits that the new 2-year allocations lead to a 28% reduction in moose compared to the previous period, and he requests a quota of at least 24 moose per year (48 over 2 years). He also requests a return to his previous quota of 20 caribou annually (40 over two years). Similarly, he requests a return to 16 mountain sheep over two years. As for mountain goat, the Appellant submits that management zones A, B, and C are new in his guiding area, and were implemented in response to an increase in resident hunter authorizations and their impact on specific access areas. He submits that the zones will directly impact his main base camps and his ability to offer combination sheep/goat hunts. He requests 6 mountain goats annually (12 over two years), with 2 per year from Zone A, 3 per year from Zone B, and 1 per year from Zone C.

[10] The BC Wildlife Federation was granted participant status to represent the interests of BC resident hunters, and it supported the Respondent's position.

[11] The North West Guides Association (the "Association") was given participant status to support the Appellant's position.

[12] The Tahltan Band Council, as represented by Chief Rick McLean, was given participant status to support the position of the Appellant.

## **ISSUE**

[13] The issue is whether the Board should grant the remedies sought by the Appellant as set out in paragraphs 1 and 9 above.

[14] The jurisdiction of this Board is limited to the first remedy sought, plus the other options set out in section 101.1 of the *Act* referred to herein. There is no

jurisdiction to require an independent review of the quota reductions, delay the implementation of the new harvest implementation policy or to require the establishment of a consultation process involving individual guide outfitters. This Board is not a court of law with inherent jurisdiction but rather an administrative tribunal that derives its jurisdiction from statute, in this case, the *Act*. The powers given to this Board are those set out in section 101.1 of the *Act*.

## RELEVANT LEGISLATION

[15] The relevant sections of the *Act* are as follows:

### Issuance of guide outfitter license

**51** (1) A regional manager may issue a guide outfitter license to a person who

(a) is a citizen of Canada or a permanent resident of Canada,

(b) has held assistant guide licenses 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 license authorizes the holder to guide persons to hunt only for those species of game and in the area described in the license.

### Quotas

**60** (1) If a regional manager issues a guide outfitter license, the regional manager may attach a quota as a condition of the license and may vary the quota for a subsequent license year.

(2) If a guide outfitter has a quota assigned as a condition of his or her guide outfitter license 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 or may take action under section 61.

### Definitions

**1** (1) In this Act;

...

“**quota**” means

(a) total number of a game species, or

(b) the total number of a type of game species

specified by the regional manager that the clients or a class of client of a guide outfitter may kill in the guide outfitter's guiding area, or part of it, during a license year, or part of it, but does not include an angler day quota.

## **POLICY CONSIDERATIONS**

[16] The Policy Manual filed in these proceedings speaks to the guide outfitters' commercial interests as follows:

It is the policy of the Ministry:

That guide outfitters' commercial interests in the harvest of big game species will be addressed by:

- 1) requiring non-resident hunters to hire a guide outfitter to hunt big game in the province, except when permits to accompany have been issued;
- 2) providing guided hunters with predictable, fair shares of the allocations of category A species in certificated areas;
- 3) supporting the viability of the guide outfitting industry by committing to:
  - a. the timely application of decision making processes regarding the transfer and disposition of guide territories;
  - b. the timely review of the status of uncertified areas;
  - c. creating and maintaining a regulatory framework that maximizes guided hunters' success, enjoyment, and participation;
  - d. the maintenance of exclusive guided hunting rights for guide outfitters; and
- 4) removing unnecessary barriers to achievement of allocation prior to reducing allocation.

## **DISCUSSION AND ANALYSIS**

[17] By legislation, the Regional Manager is mandated to issue guide outfitters licences to those persons who qualify under section 51 of the *Act*, as well as to set game species quotas, as a condition of such licences pursuant to section 60.

[18] From the Policy Statement above-referred to, it is clearly government policy that guide outfitters' commercial interests are to be protected and encouraged by providing them with a predictable fair share of the allocation of category A species in their areas. The provincial government is also committed to supporting the viability of the guide outfitting industry through, among other measures, "creating and maintaining a regulatory framework that maximizes guided hunters' success, enjoyment and participation".

*The Position of the Appellant*

[19] Though the licence holder, and hence the Appellant, in these proceedings is Ray Collingwood, the business is operated as "Collingwood Bros.", with Ray Collingwood's brother, Reg Collingwood, as a partner/shareholder in the business. Arriving in Smithers in 1965 as an accredited land appraiser, the Appellant bought a guide outfitter area in 1969 from the Campbell family. The guiding area in question is 3,600 square miles and is located in the Spatsizi Wilderness Park, a Class A provincially owned park. The guiding area is referred to as Spatsizi Region 6-20.

[20] The following discussion was filed in the proceedings by the Appellant describing the business

**COMPANY HISTORY**

Collingwood Bros. originated in 1969 as Omenica Guides Ltd. Collingwood Brothers had a small guiding business at the headwaters of the Skeena River, situated along Spatsizi Park's southern border. In 1976, Collingwood Brothers managed the Spatsizi area. The next year they were actively guiding in Spatsizi. At this time, big game hunts, steelhead fishing, and a small portion of adventure travel were the types of business offered. In 1978, Collingwood Brothers expanded their company. They formed Spatsizi Wilderness Vacations to expand into the adventure travel tourism industry. The scenery and terrain make Spatsizi park an excellent place for quality backpacking, horseback riding, paddling, and fly-fishing.

**GUIDING AREAS**

Ray Collingwood - Spatsizi Region 6-20

Spatsizi Plateau Wilderness Park is one of British Columbia's largest and most significant parks. The park is located 200 air miles north of Smithers, British Columbia. Spatsizi is over 3,600 square miles and our remote camps are not accessible by road; the only access is via air or an extensive journey by riverboat, packhorse or on foot. The western portion of Spatsizi is accessible from the Ealue Lake Rd then Klappan Railway grade.

Spatsizi encompasses three major vegetation zones: alpine tundra, spruce-willow birch, and boreal white and black spruce forest. The park spreads across two broad physiographic regions: Spatsizi Plateau and Eaglenest Range. The Plateau is a rolling upland, which extends in a broad curve from Mt. Brock in the northwest, to Tuaton Lake in the southeast. Elevation in the Plateau ranges from 1600 metres to 2000 metres. The mountains to the southwest are the Eaglenest Range. The Eaglenest Mountains are rugged and alpine glaciation has produced cirques, tarns, and hanging valleys. The highest peak is Mt. Will at 2,500 metres. The river drainage includes the Spatsizi River and Upper Stikine. The park has an excellent capability to support large populations of wildlife, including moose, caribou, stone sheep, mountain goat, grizzly bears, wolves, wolverine and some black bear.

**PROGRAM DELIVERY**

Collingwood Brothers and Spatsizi Wilderness Vacations offer a variety of adventure tours: fly fishing, wilderness trips, and hunting trips.

### *1. Fly Fishing*

The fishing season in Spatsizi Wilderness Park begins the end of June and goes through until the first week in September. The lakes are only free from ice in the first week of June and freeze up in early October. Conservation guidelines are taken when fishing Spatsizi lakes: catch and release policy and barbless hooks are mandatory. Clients are asked to use mesh nets, and preferably knotless, to prevent scale abrasions on the fish. If desired, clients are allowed to take a few fish.

### *2. Wilderness Trips*

Spatsizi Wilderness Vacations adventure tours operate during July and August. Several different tours are offered: photo safaris on horseback, pack train expeditions, and a combination paddle and horseback trek.

### *3. Hunting Trips*

Spatsizi Wilderness Vacations (Collingwood Brothers) offer several big game hunt expeditions: Osborne caribou, stone sheep, mountain goat, moose, black bear, grizzly, and wolf. The company is allocated a quota, (certain amount of tags), per species, to harvest within Spatsizi Park. The company operates under BC Parks regulations and BC hunting regulations.

## **FACILITIES/AMENITIES**

The central lodge for Collingwood Bros. and Spatsizi Wilderness Vacations is situated at the headwaters of the Stikine River, Laslui Lake. The facilities include a chalet cookhouse, log cabins, running water, showers, sauna and outdoor privy. The cabins have carpet, electric lights, wood heaters, sleeping foams and flannel bedding. A floatplane is situated at Laslui Lake for fly-fishing tours and emergency purposes. Laslui camp is predominately used for fly-fishing and wilderness trips. Other main camps, Hyland Post and Bug Lake, have similar amenities: chalet cookhouse, log cabins, showers, and outdoor privy. These camps are used for wilderness tours and hunting trips. Several other camps, more rustic, include Firesteel River, situated in Tatlatui Park, and Buckingham. Several other tent frames (spike camps) are located within the Park; providing accommodation for the hunting and wilderness trips. See enclosed map outlining camps and lodges in detail.

[21] The number of hunters guided by the business annually are 50, 80% of whom are American, with the balance mainly from European countries such as Spain, Austria, Germany, the Scandinavian countries, some from Mexico, and a few Canadians. Combination hunts, (more than 1 species) are 85% of the business. An average cost is \$15,000 for a hunt but depending on the hunt, that can go up to \$35,000.

[22] The evidence is that the hunters subsidize the eco-tourism side of the business and that without a viable guide outfitting business, eco-tourism could not be a viable business standing on its own.

[23] While included in this appeal is the annual reduction in quota of 1 stone sheep, 1 caribou and 6 moose, the Appellant submitted that the real issue is in respect of the goat quota, which was 13 per year and is now down to 7 per year. It is not just the goat quota but also the establishment of new goat zones described

as A, B and C and the quotas established within those zones. In addition, goat hunts, seemingly, are the most expensive, making the financial loss to the Appellant significant.

[24] The Respondent's response to the goat quota issue is that "The portion of the guiding area outside the zones which is open to hunting has a substantial population of goats, but harvest there is not limited by quota under the new licence." So, put simply, the Appellant is being advised to re-direct his hunting from zones A, B and C, where he has traditionally hunted, to the portion of the guiding area outside those zones.

[25] Asked what happens to the meat of the animals taken by the hunter, as it was admitted that the non-resident hunter is interested only in the trophy, usually the head and horns, the response was that the meat is packed out by pack horses and then flown to Tahltan villages where it is donated to elders and others.

[26] Chief Rick McLean, on behalf of the Tahltan Band Council, was called as a witness for the Appellant. He explained that the Spatsizi is part of the traditional territory of his people and that the head waters of the Spatsizi are regarded by the Tahltan as sacred waters. The name "Spatsizi" in Tahltan, means red goat, because of the iron oxide that the goats roll in, making them appear red in colour.

[27] Chief McLean indicated that when the time comes for the Collingwoods to retire, his band will be interested in the possible acquisition of the business. But he added that mountain goats are critical to the financial viability of the business. A lower goat quota makes their business less attractive.

[28] Chief McLean described the Tahltan relationship with the Collingwood brothers as long-standing and beneficial. Examples include the hiring of Tahltan in all aspects of the business, from cooks to guides, assistance with fund raisers, trapping of wolves and providing meat for elders and the less fortunate.

[29] Also part of the Appellant's case is the expert opinion in writing of Dr. David F. Hatler, PhD, RP Bio. While the Respondent consented to the filing of the report containing the expert opinion, Respondent's counsel objected to the calling of Dr. Hatler because of lack of notice. In his report, Dr. Hatler says that "soft information is a flimsy platform for hard decisions that have such large-scale impacts on the users involved." As to the "soft" information relied upon by the Respondent, Dr. Hatler added the following:

- 1) For all the species of interest, the population estimates are extrapolations from other areas or "models" (MU 6-07) or from old surveys (7-20 years ago, MU 6-20). Their applicability to the current situation is not demonstrably supported in the documentation provided.

As will be seen later, in the review of the evidence of the Respondent's biologist, Rick Marshall, he admitted that he uses "stale dated" information because that is all that is available to him.

[30] In writing about the implementation of the Allocation Policy, Dr. Hatler aptly quotes M.J. Moroney, author of Facts from Figures where he writes:

It is an easy and fatal step to think that the accuracy of our arithmetic is equivalent to the accuracy of our knowledge about the problem at hand.

[31] Dr. Hatler concludes by making the following recommendation;

It is my considered opinion that the allocation decisions under appeal by the Collingwoods represent an attempt by government to start at the theoretically desired endpoint, despite the lack of adequate information to accomplish that and without regard for the socioeconomic impacts involved. A more pragmatic approach, offering the proverbial “win-win” for both residents and the outfitters, is to proceed with implementation of the measures to increase resident opportunity, leave the Collingwood quotas as stipulated in their most recent license agreements, monitor the results for a transitional period (at least two years), and then apply adaptive management measures as required (with improved consultation on all sides).

*The Position of the Respondent*

[32] The Respondent’s case relies on the evidence of Rick Marshall, the senior wildlife biologist in the Skeena Region. By agreement, Mr. Marshall’s prior testimony in the companion cases involving Ron Fitch, Robert Cork, Sonny Perkinson, and Gary Blackwell (see Decision Nos. 2010-WIL-003(a), 2010-WIL-004(a), 2010-WIL-007(a), 2010-WIL-012(a) and 2010-WIL-015(a), issued on the same date as this decision), both in direct as well as in cross examination, apply to these proceedings, as well as the further testimony in these proceeding discussed below.

[33] Mr. Marshall explained how, using 1990 moose survey results, 1993 and 1994 caribou survey information, 1993 and 1994 thimhorn sheep observations, and the estimates of other biologists for arriving at the goat populations, he established the species population base line. He then applied the allocation between resident and non-resident hunters, did his modeling and his arithmetic and arrived at quotas.

[34] Mr. Marshall admitted that the information he relied upon is “soft” and “stale dated” but he says he also used judgment. Asked to respond to Dr. Hatler’s recommendation contained in paragraph 32 hereof, he said that he agreed with Dr. Hatler. Mr. Marshall also admitted that, provided resident hunters continue to under achieve in their harvest of species, there is no biological supportable reason to reduce non-resident levels, but he added, however, we have experience with only one year.

[35] When asked to rate the Appellant’s guide outfitting operations, he responded that they were first class. From the material filed and the testimony of witnesses, particularly Chief Rick McLean, the Panel concurs.

*The Position of the Participants*

[36] The Association did not make independent submissions per se but its counsel, George Leven, provided valuable assistance to the Appellant.

[37] The BC Wildlife Federation made submissions that were generally supportive of the position of the Respondent, particularly in respect of the Allocation Policy favouring residents of BC over non-residents.

[38] Chief McLean, on behalf of the Tahltan Band Council, testified as a witness for the Appellant as outlined herein.

**DECISION**

[39] Taking the evidence as a whole, it is clear that the Appellant's operations in the Spatsizi Wilderness Park are a successful first class operation. That success, supported enthusiastically by the Tahltan First Nation, could be seriously impaired by the imposition of certain of the new quotas proposed, principally the reduced quotas for goats, seemingly the main attraction for many non-resident hunters, and certainly a substantial revenue source for the Appellant's business.

[40] If science supported the new proposed quotas, recognizing conservation as a paramount and over-riding consideration, this Panel would not hesitate to order their implementation. However, since the science is "soft" and admittedly "stale dated", and bearing in mind that the Respondent's senior wildlife biologist concurs with the views expressed by Dr. Hatler, this Panel is persuaded that the proper course of action is to vary the Regional Manager's decision as it pertains to the 2011/12 season by granting the quotas requested by the Appellant, which are generally the same as Appellant's quotas prior to the decision of the Regional Manager herein appealed. The exception is the mountain goat quota, which is now subdivided into the zones A, B, and C. Given that the 2010/2011 season is almost ended, the Panel will not vary those quotas.

[41] The Panel directs that the Appellant's quotas for 2011/12 are as follows:

- 24 moose;
- 6 mountain goat, of which no more than 2 may be taken from Zone A, no more than 3 from Zone B, and no more than 1 from Zone C;
- 8 mountain sheep; and
- 20 caribou.

[42] In addition, the Panel recommends that the Regional Manager take the following steps:

1. Proceed with implementation of the measures to increase resident opportunity;
2. Monitor the results for a transitional period (at least 2 years, i.e. to March 31, 2013); and
3. With improved consultation, apply adaptive management measures as required.

[43] Accordingly, the appeal is allowed.

"David H. Searle"

David H. Searle, CM. QC., Panel Chair  
Environmental Appeal Board

February 16, 2011