



Environmental Appeal Board

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DECISION NO. 2014-WIL-030(a)

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

BETWEEN:	Ross Goodwin	APPELLANT
AND:	Regional Manager Fish and Wildlife	RESPONDENT
BEFORE:	A Panel of the Environmental Appeal Board: Alan Andison, Panel Chair	
DATE:	Conducted by way of written submissions concluding on March 10, 2015	
APPEARING:	For the Appellant: Ross Goodwin For the Respondent: John Krebs	

APPEAL

[1] This is an appeal by Ross Goodwin of a decision made on November 12, 2014 by John Krebs, Regional Manager (the "Regional Manager"), Recreational Fisheries and Wildlife Programs, Kootenay Boundary Region, Ministry of Forests, Lands and Natural Resource Operations (the "Ministry"). In his decision, the Regional Manager refused Mr. Goodwin's application for a permit to possess a dead Northern Hawk Owl.

[2] The Environmental Appeal Board has the authority to hear this appeal under section 93 of the *Environmental Management Act* and section 101.1 of the *Wildlife Act*. Section 101.1(5) of the *Wildlife Act* provides that the Board may:

- a) send the matter back to the person who made the decision being appealed, with directions,
- b) confirm, reverse or vary the decision being appealed, or
- c) make any decision that the person whose decision is appealed could have made, and that the Board considers appropriate in the circumstances.

[3] The Appellant asks the Board to issue him a permit to possess the owl.

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

BACKGROUND

[5] The circumstances that led to the dead Northern Hawk Owl coming into the Appellant's possession are unknown. Based on his appeal submissions, it is evident that the Appellant has a keen interest in birds, and he watches for dead birds in roads and ditches.

[6] After the Appellant found the dead Northern Hawk Owl, he applied for a permit to keep it. In a decision dated November 12, 2014, the Regional Manager denied the permit. The Regional Manager's decision letter states:

Thank you for your application requesting a permit to possess a dead Northern Hawk Owl. I cannot grant your request.

The general permit issued to individuals who wish to acquire ownership of dead wildlife or wildlife parts for personal use (such as mounting and display) is issued under section 2(p) of the *Wildlife Act Permit Regulation*. However, section 6(1)(d) of the *Permit Regulation* specifically forbids me from issuing a 2(p) possession permit for an item with a value greater than \$200.

Section 6(2) of the regulation requires me to determine the value based on the average auction price. The average price the government received for Northern Hawk Owl for the period of 2007, 2008 and 2010 of all sizes and condition was \$500.00.

I have determined that the value of Northern Hawk Owl is greater than \$200 because it is an adult species in good condition, and would likely fetch the average auction price of \$500 or more. The Northern Hawk Owl is an uncommon bird in much of BC which maintains high value. I therefore cannot grant your request.

[7] The Regional Manager then outlined the exceptions to the \$200 value limit in section 6(1)(d) of the *Permit Regulation*, B.C. Reg. 253/2000 (the "*Permit Regulation*"). Section 6(1)(d) provides for exceptions when the wildlife is received in exchange for work performed for the government, or if the person applying for the permit is applying on behalf of a charitable organization in BC. The Regional Manager did not make an express finding on whether the Appellant fell into either exception, but it appears that he concluded that neither exception applied since he denied the permit.

[8] The Appellant appeals this decision. He argues that he should be able to keep the owl for the following reasons:

- Educational: he will have the bird mounted in its natural state for public display and for educational purposes (at the local school);
- Justice and respect for the bird: he is concerned that the bird will "end up in a freezer only to freezer burn and be of no use to anyone";
- Inaccurate valuation: the \$200 valuation is unfair as it has been over four years since the last auction of a Northern Hawk Owl; and

- Exemption for services performed for government: if the owl is valued at over \$200, he should be eligible for a permit under section 6(1)(d)(i) of the *Permit Regulation* because of his public service contributions to the government over the years.

[9] The Regional Manager submits that the appeal should be denied because the value of the Northern Hawk Owl exceeds \$200, and the Appellant does not qualify for a permit to possess dead wildlife valued at over \$200.

ISSUES

1. Is the discretion to issue a possession permit limited in this case based on the restrictions in sections 6(1)(d) of the *Permit Regulation*? If not, should a permit be issued in the circumstances?

RELEVANT LEGISLATION

[10] The relevant provisions of the legislation are as follows:

Wildlife Act

Property in wildlife

- 2 (1) Ownership in all wildlife in British Columbia is vested in the government.
- (2) A person does not acquire a right of property in any wildlife except in accordance with a permit or licence issued under this Act or the *Game Farm Act* or as provided in subsection (3) of this section.

Permits

- 19 (1) A regional manager or a person authorized by a regional manager may, to the extent authorized by and in accordance with regulations made by the Lieutenant Governor in Council, by the issue of a permit, authorize a person
 - (a) to do anything that the person may do only by authority of a permit or that the person is prohibited from doing by this Act or the regulations,
 - ...

Permit Regulation

Authorization by permit

- 2 A regional manager may issue a permit in accordance with this regulation on the terms and for the period he or she specifies
 - ...
 - (k) authorizing

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

...

- (p) transferring the right of property in dead wildlife or wildlife parts from the government to a person,

...

Restrictions on issuing permits generally

- 5 (1) Before issuing a permit under section 2, 3 or 4 the regional manager or the director, as applicable, must be satisfied
- (a) that the applicant meets the specific requirements, if any, for the permit as set out in this regulation, and
 - (b) that issuing the permit is not contrary to the proper management of wildlife resources in British Columbia.

Restrictions on permits providing possessory or property rights

- 6 (1) A regional manager must not issue

...

- (d) a permit under section 2(p) for wildlife if the value of the wildlife or wildlife parts is greater than \$200 unless

- (i) the person applying for the permit will receive the dead wildlife or wildlife parts as compensation for conducting work or an activity on behalf of the government, or
- (ii) the person applying for the permit is applying on behalf of a charitable organization in British Columbia.

- (2) For the purpose of subsection (1)(d), the value of wildlife or wildlife parts is to be determined by the regional manager based on the average price the government receives at auction for wildlife or wildlife parts of the particular species, of similar size and in similar condition.

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

- (i) to authorize the possession of, or

- (ii) to transfer property rights in

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

...

DISCUSSION AND ANALYSIS

- 1. Is the discretion to issue a possession permit limited in this case based on the restrictions in section 6(1)(d) of the *Permit Regulation*? If not, should a permit be issued in the circumstances?**

The Parties submissions

[11] The Appellant submits that it has been four years since the last auction of a Northern Hawk Owl, and the price for a Northern Hawk Owl may have dropped since then to \$200 or less. In that regard, he advises that he is a trapper, and the price for lynx has dropped from \$900 to \$200.

[12] The Appellant also submits that he has performed various services for the government, including fighting forest fires, helping a game warden to relocate beaver, and being an active member of the local volunteer fire department for more than 20 years. In support of those submissions, he provided letters from a number of people confirming that he has participated in those activities.

[13] Regarding his intention to display the Northern Hawk Owl for educational purposes, the Appellant submits that he has displayed birds from his collection at the local school for learning and visual aids. He has also displayed birds from his collection for public viewing at the Radium Hot Springs information centre, and the Pynelogs Cultural Centre during the Wings Over the Rockies Festival for the last five years. In support of those submissions, he provided letters from the Radium Hot Springs Chamber of Commerce and the Wings Over the Rockies Festival, expressing support for his permit application and confirming that he has displayed birds from his collection for public viewing at those locations.

[14] The Regional Manager submits that one Northern Hawk Owl was sold at a government auction for \$500, which is well above the \$200 threshold. The Regional Manager acknowledges that the government wildlife auction is no longer being held, but he argues that it is unlikely that the value of the Northern Hawk Owl has decreased below \$200 since the last auction. The Regional Manager submits that the Northern Hawk Owl is an uncommon species, and therefore, pricing data will be sparse and the value of this owl will be higher than the value of more common owl species. For example, the Regional Manager submits that the Great Horned Owl, which is an abundant species, had an average auction price of \$137.50, whereas the Snowy Owl, which is a rare species, had an average price of \$687.50. He submits that the decrease in prices for marketed furbearers (such as lynx) is not an accurate index of value for non-marketed species.

[15] In addition, the Regional Manager submits that, although the Appellant has indicated that he would display the Northern Hawk Owl at the local school and visitor centre for learning purposes, he applied for the permit as an individual for personal display, and not on behalf of a charitable organization or as an agent for a scientific or educational institution.

[16] Regarding the Appellant's submission that he should receive the Northern Hawk Owl in exchange for work done on behalf of the government, the Regional Manager submits that he is unaware of any agreement between the Appellant and

the Ministry to complete specific activities on behalf of the government in exchange for this wildlife.

The Panel's findings

- a) Should the Appellant's request be considered only under section 2(p) of the *Permit Regulation*, or does section 2(k) also apply in this case?

[17] According to section 6(1)(d) of the *Permit Regulation*, the Regional Manager is prohibited from issuing a permit under section 2(p) of the *Permit Regulation* if the value of the wildlife is greater than \$200, subject to the exceptions in section 6(1)(d) and 6(3). However, the Panel notes that the \$200 value limitation in section 6(1) of the *Permit Regulation* only applies to permits issued under section 2(p), which transfer the right of property in dead wildlife or wildlife parts from the government to a person. Similarly, the exception in section 6(3) of the *Permit Regulation* is specific to permits issued under section 2(p) or (j).

[18] The Regional Manager's decision and appeal submissions assume that the Appellant sought a permit under section 2(p) of the *Permit Regulation*. However, the Panel notes that section 2(k) of the *Permit Regulation* provides for the issuance of a permit authorizing a person to possess dead wildlife for scientific or educational purposes. Based on the Regional Manager's decision and his appeal submissions, there is no indication that the Regional Manager turned his mind to the question of whether a section 2(k) permit should be issued to the Appellant.

[19] A copy of the Appellant's permit application was not provided to the Board. Consequently, it is unknown to the Panel whether his permit application indicated an intention to obtain the right of property in the Northern Hawk Owl for personal purposes (under section 2(p)), or whether he indicated an intention to possess it for educational purposes (under section 2(k)). Although the Appellant's appeal submissions refer to section 2(p) of the *Permit Regulation*, and he explains his personal appreciation of birds, he also clearly indicates a desire to possess the Northern Hawk Owl for educational purposes. He provided letters from groups in his local community supporting his application, and confirming that he has provided birds from his collection for public display and education purposes. This indicates that a section 2(k) permit to possess the Northern Hawk Owl should also be considered.

[20] The Board is authorized under section 101.1(4) of the *Wildlife Act* to conduct an appeal by way of a new hearing. Further, under section 101.1(5)(c) of the *Wildlife Act*, the Board may make any decision that the Regional Manager could have made and that the Board considers to be appropriate in the circumstances. Accordingly, the Panel has considered the merits of the Appellant's request for a permit under section 2(k) based on his appeal submissions, regardless of what his permit application may or may not have stated.

[21] Before turning to the merits of the Appellant's request, the Panel notes that the Board considered similar circumstances in *Kelly Hassel v. Regional Manager* (Decision No. 2008-WIL-004(a), issued July 4, 2008). In that case, the appellant had applied for a permit to possess a dead wolverine that he found beside a highway. His application was denied under section 2(p) based on the value of the wolverine, and under 2(k) on the basis that he sought the wolverine for personal

display. However, in his appeal submissions, the appellant indicated that he wanted to display the wolverine at local schools as a learning instrument, and that he had previously donated his time and materials to local schools. In support of his appeal, he provided letters from representatives of two schools. Based on the appellant's submissions and the letters he provided, the Board concluded that his primary purpose in seeking a possession permit was to display the wolverine in schools and to share it with students in presentations. The Board also found that there was no indication that he intended to dispose of the wolverine for personal financial benefit, and in any case, a permit issued under section 2(k) does not transfer "the right of property" in the dead wildlife from the government to the permit holder. Therefore, the government still holds "the right of property" in the wildlife, and the permit holder has no right to sell it. Furthermore, if the wildlife ceased to be used for educational purposes, the government could revoke the permit and take possession of the wildlife. The Board was also satisfied that issuing a permit under section 2(k) was "not contrary to the proper management of wildlife resources in British Columbia", as required by section 5(1)(b) of the *Permit Regulation*.

[22] The Panel finds that the Board's reasoning in *Kelly Hassel v. Regional Manager* is applicable to the present case. The Appellant's appeal submissions indicate that he intends to display the Northern Hawk Owl at the local school for learning and visual aids, and he has displayed birds from his collection for public viewing at the Radium Hot Springs information centre, and the Pynelogs Cultural Centre during the Wings Over the Rockies Festival for the last five years. The Appellant has provided letters from those community organizations supporting his application and confirming that he has displayed birds from his collection at those public facilities for several years. There is no indication that the Appellant intends to dispose of the Northern Hawk Owl for personal financial benefit. In any event, a permit issued under section 2(k) would not transfer "the right of property" in the Northern Hawk Owl from the government to the Appellant, and therefore, the Appellant would have no right to sell it. If the Northern Hawk Owl ceased to be used for educational purposes, the government could revoke the permit and take possession of the owl.

[23] In addition, the Panel is satisfied that issuing a permit under section 2(k) for the Northern Hawk Owl is "not contrary to the proper management of wildlife resources in British Columbia", as required by section 5(1)(b) of the *Permit Regulation*. Although the Regional Manager described the Northern Hawk Owl as "uncommon", the Panel notes that the Northern Hawk Owl is "yellow" listed by the BC Ministry of Environment, which means that the species is not at risk in BC.

[24] For all of these reasons, the Panel concludes that the Appellant is qualified to receive, and should be granted, a permit to possess the Northern Hawk Owl under section 2(k) of the *Permit Regulation*.

- b) Alternatively, if the Appellant's request is considered under section 2(p), is there sufficient information to conclude that the Northern Hawk Owl has a value greater than \$200?

[25] If the Appellant did apply for a permit under section 2(p), the Panel finds that the Regional Manager failed to provide adequate reasons for his determination of

the Northern Hawk Owl's value. The Panel also finds that there is insufficient information for the Panel to conclude that the Northern Hawk Owl in this case has a value greater than \$200. As such, the limitations in section 6(1)(d) of the *Permit Regulation* do not apply.

[26] Section 6(2) provides that, for the purposes of section 6(1)(d), the value of the dead wildlife or wildlife parts is to be determined "based on the average price the government receives at auction for wildlife or wildlife parts of the particular species, of similar size and in similar condition" [underlining added]. The Regional Manager's decision letter states that he determined the value of the Northern Hawk Owl based on the average price obtained at government auctions over a period of years, for Northern Hawk Owls "of all sizes and condition[s]". In that regard, his decision letter states:

... The average price the government received for Northern Hawk Owl for the period of 2007, 2008 and 2010 of all sizes and condition[s] was \$500.00.

[27] However, in his appeal submission, the Regional Manager states:

... Based on a sale of 1 Northern Hawk Owl, the auction price for a Northern Hawk Owl was \$500 It is unfortunate that there is not a more comprehensive record of the value of this owl species, however, I considered that as an uncommon species, data will be sparse. Also, uncommon species such as the Northern Hawk Owl typically are of higher value than more common species.

[28] The Regional Manager did not describe, in his decision letter or his appeal submissions, the size or condition of the single Northern Hawk Owl that was sold at auction. Consequently, it is unknown to the Panel how the auction specimen's size or condition compares to the specimen in the present case. Without knowing the size or condition of the auction specimen that the Regional Manager considered, it is unclear how the auction specimen would compare to the present specimen for the purposes of section 6(1)(d), which expressly requires a value determination based on government auction prices for "the particular species, of similar size and in similar condition".

[29] In addition, the Regional Manager did not explain whether the auction specimen was sold in 2007, 2008 or 2010. If the specimen was sold at the 2007 auction, the auction value is eight years old. At best, if it was sold at the 2010 auction, the auction value is five years old. Although the Regional Manager submits that the decrease in prices for marketed furbearers is not an accurate index of value for non-marketed wildlife such as the Northern Hawk Owl, the Regional Manager provided no information or evidence to support that assertion. Given that government auctions are no longer taking place, it is unclear to the Panel how the Regional Manager would know that the value of "non-marketed" species such as the Northern Hawk Owl have not declined.

[30] In 2013, the Board issued two decisions in which it expressed concerns about the application of section 6(2) of the *Permit Regulation* given that government auctions have ceased: *Fernie Corbel v. Regional Manager* (Decision No. 2013-WIL-043(a) December 2, 2013); and, *Francis Baller v. Regional Manager* (Decision No.

2013-WIL-036(a) August 7, 2013) [*Baller*"]. In *Baller*, the Board stated as follows at para. 28:

As time goes by between the date when the last government auction for Snowy Owls took place (2008), and when a permit application is made, it appears to the Panel that Ministry decision makers may be tempted to find methods other than the prescribed method to justify their valuation. ...

[31] Indeed, in that case, the Regional Manager explained that, in addition to government auction prices for dead Snowy Owls, he had considered other factors and assumptions to determine the value of the dead Snowy Owl in that case. The Board concluded that he had resorted to considerations that are not set out in section 6(2) of the *Permit Regulation*. The Board held as follows at para. 27:

The Regional Manager stated that he used a method to determine the valuation of the Snowy Owl "post auction" by assuming the current value "would be at least as high a value as when the auctions were still taking place". He also stated that the value of the Snowy Owl should have increased from past auction values, because of barriers to possession which have limited the market to the purchase of already permitted specimens. The Panel finds that this approach to valuation is irrelevant to this decision because this is not the method prescribed by section 6(2) of the Permit Regulation. No such assumptions are prescribed or required.

[underlining added]

[32] Similarly, the Panel finds that the Regional Manager in the present case has resorted to assumptions and factors that are not found in the language in section 6(2) of the *Permit Regulation*. In particular, the Regional Manager's submissions indicate that he considered that the Northern Hawk Owl is uncommon relative to some other owl species. In addition, he assumed that the value of the Northern Hawk Owl has not decreased since the last government auction, and that the value of "non-marketed" wildlife would not have decreased even though the value of some "marketed" wildlife has decreased over time. The Panel finds that none of those factors or assumptions are contemplated in section 6(2) of the *Permit Regulation*.

[33] In para. 29 of *Baller*, the Board noted that section 6(2) of the *Permit Regulation* states that the value of the wildlife is to be determined based on the average price the government "receives" at auction, which is written in the present tense, and not the past tense. The Board interpreted the use of the present tense as indicating a legislative intention that government auctions would be an ongoing process. The Board concluded that, once the government ceased conducting wildlife auctions, the past prices received at government auctions would lose relevancy over time. At para. 30 of *Baller*, the Board stated:

The Panel finds that, in the absence of any current government auctions for wildlife, the valuation method of section 6(2) no longer provides up-to-date valuation data. Essentially, valuations are now 'frozen' in time. This creates a risk, which increases as more time

passes, that the application of section 6(2) may lead to absurd results, and/or reduce the confidence in the valuation to the point where the accuracy of the valuation will be unknown. ... As a result, there is an increasing risk that decisions under section 6(2) may be based on irrelevant data, and that section 6(2) will become obsolete as a method for valuing wildlife and wildlife parts. For these reasons, the Panel recommends that the government consider amending section 6(2) if the government no longer intends to conduct wildlife auctions.

[underlining added]

[34] The Panel agrees with those concerns, especially given that the single auction value presented in this case is five to eight years old.

[35] In *Baller*, the Board concluded that the application of section 6(2) of the *Permit Regulation* in that case did not lead to an absurd result, or one in which the Board had a complete lack of confidence. Notably, the Board reached that conclusion after conducting a thorough review of the Regional Manager's evidence in that case, which included the government auction data for 18 dead Snowy Owls, including the year that each owl was auctioned and its condition. Based on that evidence, the Board concluded that, regardless of whether the average price was calculated as the average of total birds auctioned within a given period, or as the average of each within-year average during a given period, the average price received was well over \$200. As a result, the Board concurred with the Regional Manager's determination that the dead Snowy Owl in that case, which was an adult in good condition, was worth well over \$200. In contrast, the Regional Manager in the present case has presented no such evidence. He has not even explained the condition of the single Northern Hawk Owl that was auctioned, or the year in which it was auctioned.

[36] In summary, the Panel finds that, in the absence of sufficient reasons from the Regional Manager to support his value determination, and in the further absence of sufficient relevant information about the single Northern Hawk Owl sold at a government auction that the Regional Manager considered, it is unclear how the size or condition of the auction specimen compares to the present specimen for the purpose of determining the value in accordance with section 6(2) of the *Permit Regulation*. In addition, the Panel finds that, in determining the value of the present specimen, the Regional Manager considered factors and assumptions that are not contemplated under section 6(2) of the *Permit Regulation*. For all of these reasons, the Panel concludes that there is insufficient basis to support a determination under section 6(2) of the *Permit Regulation* that the value of the dead Northern Hawk Owl in this case exceeds \$200. Therefore, the limitations in section 6(1)(d) of the *Permit Regulation* would not apply if the Appellant's permit application is considered under section 2(p) of the *Permit Regulation*.

[37] Additionally, the Panel is satisfied that issuing a permit under section 2(p) for the Northern Hawk Owl is "not contrary to the proper management of wildlife resources in British Columbia", as required by section 5(1)(b) of the *Permit Regulation*, for the reasons provided above regarding a section 2(k) permit.

[38] Accordingly, the Panel also finds that the Appellant should be granted a permit transferring the right of property in the Northern Hawk Owl from the government to the Appellant under section 2(p) of the *Permit Regulation*.

DECISION

[39] In making this decision, the Panel has carefully considered all of the evidence before it, whether or not specifically reiterated here.

[40] For the reasons provided above, the Regional Manager's decision is reversed. The Board directs the Regional Manager to either: (a) issue the Appellant a permit to possess the dead Northern Hawk Owl for educational purposes under section 2(k) of the *Permit Regulation*; or, (b) issue the Appellant a permit transferring the right of property in the Northern Hawk Owl from the government to the Appellant under section 2(p) of the *Permit Regulation*. The Regional Manager should choose which section is most appropriate to issue the permit under based on the Appellant's permit application together with the information provided in the Appellant's appeal submissions.

[41] The appeal is allowed.

"Alan Andison"

Alan Andison,
Chair

August 21, 2015