



Environmental Appeal Board

Citation: *Doug Heard v. Regional Manager, Recreational Fisheries and Wildlife Programs*, 2026 BCEAB 24

Appeal No.: EAB-WIL-25-A003

Decision Date: 2026-05-07

Method of Hearing: Conducted by way of written submissions concluding on October 16, 2025

Decision Type: Final Decision

Panel: Michael Tourigny, Panel Chair

Appealed Under: *Wildlife Act*, RSBC 1996, c. 488

Between:

Doug Heard

Appellant

And:

Regional Manager, Recreational Fisheries and Wildlife Programs

Respondent

Appearing on Behalf of the Parties:

For the Appellant: Self-represented

For the Respondent: Robyn Gifford
Sonja Sun

FINAL DECISION

INTRODUCTION

[1] Doug Heard (the “Appellant”) appeals the May 1, 2025, decision of James Jacklin, Regional Manager, Recreational Fisheries and Wildlife Programs, (the “Respondent”) made under section 25 of the *Wildlife Act*, RSBC 1996, c. 488 (the “Act”). The decision of the Respondent under appeal is the cancellation of a wildlife permit held by the Appellant and the imposition of a prohibition on the Appellant from holding a new permit under the Act for a period of one year (the “Determination”).

[2] The Appellant is a wildlife biologist and researcher studying caribou in north central British Columbia. The permit in question, permit PG21-625366 (the “Permit”), was issued to the Appellant on September 16, 2021, for a period from September 16, 2021, to June 26, 2025. The Permit authorized the Appellant to, among other things, possess and dispose of parts of caribou, specifically hair and fecal pellets for DNA and hormone analysis. The operational area of the Permit was the Kennedy Siding low elevation caribou winter range located in Management Unit 7-23 of the Omineca Region of north central British Columbia (the “Kennedy Siding”).

[3] The Permit required the Appellant to comply with the written terms contained in Appendix A of the Permit, including the requirement that the Appellant must comply with all laws applicable to the activities carried out under the Permit.

[4] The Permit did not authorize any methods to collect hair directly from caribou.

[5] Having been provided evidence of the Appellant’s conduct in November 2024, along with further relevant materials, the Respondent gave notice to the Appellant of his intention to conduct a hearing under section 25 of the Act in relation to the possible suspension or cancellation of the Permit. The Appellant was given an opportunity to be heard conducted by way of written submissions made between December 24, 2024, and January 30, 2025 (the “OTBH”).

[6] Evidence at the OTBH established that on November 7, 2024, the Appellant used what was described by the Appellant as a “cable caster” to deploy an “alligator clip” to strike and capture hair from caribou at the Kennedy Siding caribou feeding station.

[7] Following the OTBH, the Respondent found in the Determination that the Appellant was “hunting,” as defined in the Act, in a No Hunting area (specifically, during a closed season) at the Kennedy Siding caribou feeding station on November 7, 2024, without being authorized to do so by permit under the Act. The Respondent found this to be in violation of section 26(1)(c) of the Act and therefore a failure to comply with the Permit, which is an offence under section 8 of the *Permit Regulation*, B.C. Reg. 253/2000, under the Act. Having found the Appellant was in contravention of the Permit, the Respondent also

found that the Appellant was not authorized to possess the caribou hair samples in question, resulting in a contravention of section 33(2) of the *Act*.

[8] In his notice of appeal submitted to the Environmental Appeal Board (the “Board”), the Appellant asks the Board to reinstate the Permit and rescind the ineligibility order on the basis that the Determination was in error in considering his actions to be “hunting,” failed to consider available information regarding the animal care risks, and was unreasonable.

[9] Counsel for the Respondent submits that the Board should confirm both the contravention findings and the reasonableness of the Permit cancellation and ineligibility period imposed in the Determination and dismiss the appeal.

[10] The Board directed that this appeal be conducted by way of written submissions and was conducted as a new hearing of the matter as provided for in section 101.1(4) of the *Act*.

[11] As authorized in section 101.1(5) of the *Act*, on this appeal the Board may:

- a. send the matter back to the Respondent, with directions,
- b. confirm, reverse or vary the Determination, or
- c. make any decision that the Respondent could have made, and the Board considers appropriate in the circumstances.

BACKGROUND

Background Facts

Caribou in the Kennedy Siding

[12] The caribou herd resident in the Kennedy Siding area during the winter is grouped under the Southern Mountain Caribou Central Group (“Southern Group”) by the Committee on the Status of Endangered Wildlife in Canada, which lists the Southern Group as “endangered.” The Southern Group is listed as “threatened” by the federal government and “red-listed” by the Province of B.C. To recover this caribou herd, three management actions have been taken by the Ministry of Water, Land and Resource Stewardship (the “Ministry”) under the *Act*:

1. The Kennedy Siding is closed to hunting.
2. Predator removal is ongoing; and
3. Supplemental feeding is occurring.

[13] The Kennedy Siding caribou feeding station is located within the seasonal “no hunting or shooting” areas that encompass the relevant portion of management unit 7-23 and is closed to hunting of any wildlife species from September 1 to March 31 inclusive

under Schedule 4 of the *Closed Areas Regulation*, B.C. Reg. 76/84, under the *Act*. There is no open season for caribou in that area during that period.

The Appellant's Prior Permit

[14] The Appellant was issued permit PG18-37335 ("Permit PG18") in September 2018, which authorized him to possess and dispose of caribou hair and skin samples from the Kennedy Siding caribou herd. Permit PG18 stated that samples could be collected via biopsy darts fired from a dart gun, but the appropriate permit regulations that would authorize the collection of samples using a dart gun were not specified in the permit.

[15] By written decision of September 16, 2021 (the "2021 Decision"), the Appellant was advised that the sample collection technique authorized under Permit PG18, while non-lethal, was considered "hunting" based on the definition in the *Act* and Kennedy Siding was within a designated no shooting and no hunting area. In result, Permit PG18 was cancelled.

[16] The 2021 Decision also issued the Permit to the Appellant based on a permit application he made earlier in 2021. The Permit was described in the 2021 Decision as permitting the collection and disposition of samples for research purposes, mainly pellets but including hair if it could be collected opportunistically. The Appellant's application for sample collection via dart gun or pole technique was rejected in the 2021 Decision in consideration of the risk of cumulative disturbance impacts to caribou.

[17] The 2021 Decision was not appealed by the Appellant.

[18] At some point in 2022, the Appellant submitted a further permit application to sample the Kennedy Siding caribou herd for research purposes, using a poke stick, a dart gun, or a toy crossbow. By written decision of July 9, 2022 (the "2022 Decision"), this application was refused. The 2022 Decision stated that the permit application was denied due to the potential for stress upon these species at risk from the proposed sampling techniques, identified public safety concerns, and the availability of non-invasive data collection methods.

[19] The 2022 Decision was not appealed by the Appellant and the Permit remained in effect until the Determination.

The November 2024 incident

[20] There is a live webcam in operation at the Kennedy Siding caribou feeding station. On November 7, 2024, Ministry staff observed the Appellant on that webcam using a projectile device to collect hair directly from caribou at the feeding station. A copy of the webcam video taken of the Appellant's activities at the Kennedy Siding caribou feeding station on November 7, 2024 (the "Video"), was put before the Respondent at the OTBH and was included in the record on this appeal.

[21] In the Determination, the Respondent made the following findings of fact based on his review of the Video:

I've reviewed the video evidence, which is a 3 minute, 50 second compilation video of different points in time, all occurring on November 7, 2024. The video is a capture from a LiveStream online video feed, located at the Kennedy Siding feeding station. This feeding station is one part of the caribou recovery actions currently underway for the Kennedy Siding caribou herd.

As part of my review, I specifically note the following:

- 1) The 14 second mark of the video provides a visual confirmation of HEARD.
- 2) The 54 second mark provides visual confirmation of a caribou being shot with a non-lethal projectile (I note that HEARD is not directly observed shooting the caribou).
- 3) The 2 minute, 12 second mark provides visual confirmation of a caribou being shot with a non-lethal projectile. The video shows HEARD taking this shot.
- 4) The 3 minute, 11 second mark provides visual confirmation of a caribou being shot with a non-lethal projectile. The video shows HEARD taking this shot.
- 5) The 3 minute, 27 second mark provides visual confirmation of a caribou being shot with a non-lethal projectile. The video shows HEARD taking this shot.

The Determination

[22] At the OTBH, the Respondent considered all of the submissions and evidence put before him by the parties.

[23] After reviewing the relevant evidence, submissions, and regulatory framework, the Determination first considered whether the actions of the Appellant were in violation of the *Act*, the *Permit Regulation*, or the Permit.

[24] In his analysis in the Determination, the Respondent considered whether there was substantial evidence to prove the Appellant hunted in a No Hunting area (no open season) on November 7, 2024.

[25] As to whether the Video and other evidence presented at the OTBH established that the Appellant was hunting on November 7, 2024, the Respondent considered the Appellant's actions in the context of the definition of "hunt" in the *Act*. He held that key aspects of the "hunt" definition include "searching for, ... pursuing, following after, [and] stalking..." with the intention to capture the wildlife.

[26] The Respondent found the Video and other submissions at the OTBH established, on a balance of probabilities, that the Appellant was in fact shooting at, searching for, pursuing, following after, and stalking wildlife with the intention of capturing parts of that wildlife. He held this was hunting as defined in the *Act*.

[27] The Respondent then reviewed the relevant provisions of the *Closed Areas Regulation* confirming that, for purposes of section 26(1)(c) of the *Act*, there is no open season for any wildlife species in the Kennedy Siding area from September 1 to March 31 inclusive, and that the actions of the Appellant occurred during the closed season, in November 2024. Based on the evidence at the OTBH, he found that the Appellant was hunting during a closed season.

[28] The Respondent reviewed the Permit and found no authorization in the Permit for the Appellant to hunt during a closed season, either for scientific purposes as contemplated by section 2(c)(i) of the *Permit Regulation*, or otherwise.

[29] The Respondent found, on a balance of probabilities, that the Appellant was hunting during a closed season in violation of section 26(1)(c) of the *Act* and that he did not otherwise possess a permit that would have authorized the hunt. In result, the Respondent held that the Appellant failed to comply with the term of the Permit which required compliance with the *Act*. He found this non-compliance to be an offence under section 8 of the *Permit Regulation*.

[30] Having found the Appellant to have been in contravention of the Permit, the Respondent considered whether the Appellant breached section 33(2) of the *Act* by being in possession, without permit authorization, of any hair samples collected from Kennedy Siding during the September 1 – March 31 closed season. The Respondent found the samples collected on November 7, 2024, were not lawfully authorized for possession by any permit. On a balance of probabilities, he found the Appellant would have used the same unlawful sample collection method for other hair samples collected at Kennedy Siding during the closed season and found that any such additional samples were also not lawfully authorized for possession by any permit.

[31] Based on the foregoing findings, the Determination then engaged in an analysis to determine the appropriate response under section 25(1) of the *Act*.

[32] The Respondent considered the compliance history of the Appellant. In December 2020, an Advisory Letter was sent to the Appellant citing an infraction of the *Hunting Regulation*, B.C. Reg. 190/84, under the *Act* for discharging a crossbow from a vehicle in the Kennedy Crossing no hunting area to obtain hair samples from caribou. The Advisory Letter specified that a crossbow was not listed as an approved sampling method in the Permit.

[33] The Respondent then assessed the relevant aggravating and mitigating factors before making the Determination.

[34] The aggravating circumstances considered in the Determination were as follows:

- The actions and behaviours related to collection of hair samples from caribou were not authorized by permit and were contraventions of the *Act*.
- The Appellant twice applied for, and was twice denied, applications to collect caribou hair samples through invasive direct techniques, which would involve the activity of hunting, including use of a dart gun or poke stick. Reference was made to the 2021 and 2022 Decisions.
- There was no evidence that the Appellant contacted the Ministry prior to hunting in a Seasonal No Hunting Area to ensure he would be acting within the *Act* and the Permit.
- The Appellant was issued an advisory letter for utilizing collection methods not authorized by permit in 2020 at the same location as the incident captured by this 2024 incident.
- The Appellant did not provide any reasonable evidence to contradict the evidence of his actions on November 7, 2024.
- The Kennedy Siding caribou herd is a provincially red-listed species and is part of the Provincial Caribou Recovery Program priority list of herds (within the Southern Mountain Caribou – Central Group). Given the small size of this herd and that this herd has been at recent risk of elimination, he did not consider unauthorized invasive sampling techniques constituting hunting causing unnecessary disturbance to animals, to be consistent with the proper management of wildlife resources.

[35] The mitigating circumstances considered in the Determination were as follows:

- That the Appellant has provided regional and provincial contributions to wildlife recovery efforts and specifically to caribou. These have been significant and commendable. These contributions have benefited the Kennedy Siding caribou herd and its recovery. The Respondent stated that he had put significant weighting to these contributions as he considered his Determination.
- The Respondent stated he considered there may have been confusion from the Appellant on the definition of hunting.

[36] Having considered the aggravating and mitigating circumstances, the Respondent cancelled the Permit and imposed on the Appellant a one-year ineligibility period for a new permit under the *Act*, with a date of eligibility being May 2, 2026.

Submission of McLeod Lake Indian Band to the Board

[37] The record on this appeal includes a letter submitted by the Appellant dated September 11, 2025, from the McLeod Lake Indian Band, (the “MLIB”), affirming their strong support for the research the Appellant has been conducting on the Kennedy Siding

caribou herd. It states that caribou recovery is a high priority for the MLIB, and the Appellant's research has been a vital part of advancing conservation efforts in the MLIB's territory. The letter notes that the Appellant has worked closely with the MLIB for many years and has supported the Kennedy Siding supplementary feeding project in many ways. The letter emphasizes the importance of the collection of DNA from caribou hair for research purposes aimed at the long-term conservation of the herd. The MLIB fully supports the continuation of the Appellant's research, including the collection of caribou hair samples, and asks the Board to recognize the importance of this work and its contribution to caribou recovery in their territory.

ISSUES

[38] Before defining the issues that are live in this appeal, I will first address the Appellant's written submissions that challenge the underlying basis for, or the approach taken, by the decision makers in both the 2021 and 2022 Decisions. Neither of those decisions were appealed by the Appellant. The facts of those decisions are relevant background on this appeal, but the merits of those decisions are not properly in issue here.

[39] In his detailed reasons for appeal filed with his notice of appeal and in his written submissions, the Appellant challenges the reasonableness of the findings in the 2021 and 2022 Decisions that his proposed collection methods of hair samples directly from caribou posed a risk of disturbance to the caribou. Whether or not his criticism of these findings had merit could have been tested on an appeal of those decisions. However, it was not. The findings of disturbance risk to caribou from the Appellant's caribou hair collection methods in the 2021 and 2022 Decisions are not before the Board as an issue on this appeal.

[40] Likewise, the Appellant's criticism of the approach taken by the decision makers in the 2021 and 2022 Decisions and whether they should have been more supportive of his innovation in conducting his hair sample collections are not an issue on this appeal.

[41] Based on the relevant submissions of the parties, I have considered the following issues on this appeal:

- a. Did the Appellant hunt caribou during a closed season, contrary to the *Act* and without permit authorization?
- b. If so, what is the appropriate prohibition under section 25 of the *Act*?

DISCUSSION AND ANALYSIS

Did the Appellant hunt caribou during a closed season, contrary to the *Act* and without Permit authorization?

[42] Section 19 of the *Act* authorizes a regional manager to issue a permit in accordance with the regulations to do anything that a person is otherwise prohibited from doing under the *Act*.

[43] The *Permit Regulation* sets out the specific authorizations that may be included in a permit under the *Act*. Relevant to the issues in this appeal, section 2 of the *Permit Regulation* provides:

- 2 A regional manager may issue a permit in accordance with this regulation on the terms and for the period the regional manager specifies...
 - (c) authorizing a person to hunt, trap or kill wildlife during the open or closed season for the following purposes:
 - (i) scientific purposes; ...
 - (k) authorizing
 - (i) a person to possess and dispose of dead wildlife or parts of wildlife for scientific or educational purposes, ...
 - (n) authorizing a person to export from British Columbia
 - (i) wildlife, ...

[44] While the Permit authorized the Appellant, under section 2 (k)(i) of the *Permit Regulation*, to possess and dispose of parts of caribou, specifically hair and fecal pellets, for scientific purposes, it did **not** authorize the Appellant to hunt, trap, or kill wildlife during the open or closed season for scientific purposes, such as can be authorized under section 2 (c)(i).

[45] As noted above, the Kennedy Siding caribou feeding station is located within a seasonal “no hunting or shooting” area and is closed to hunting of any wildlife species, including caribou, from September 1 to March 31, inclusive, under the *Closed Areas Regulation*.

[46] At the time the Appellant was observed on the Video at the Kennedy Siding caribou feeding station on November 7, 2024, he had not been granted any permit under the *Act* or *Permit Regulation* authorizing him to hunt caribou in that location at that time for any purpose.

[47] Section 26 of the *Act* provides:

- 26 (1) A person commits an offence if the person hunts, takes, traps, wounds or kills wildlife...
 - (c) at a time not within the open season, ...

[48] Section 8 of the *Permit Regulation* provides that a person who holds a permit under the *Act* or the *Permit Regulation* commits an offence if the person fails to comply with a term of the permit.

[49] Section 33(2) of the *Act* states that a person commits an offence if the person has dead wildlife or a part of any wildlife in their possession except as authorized under a licence or permit or as provided by regulation.

Was the Appellant hunting?

[50] The *Act* defines “hunt” as follows:

“**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;

[51] My review of the Video confirms the accuracy of the findings in the Determination, set out above in the background facts, as to what the Appellant was doing at the Kennedy Siding feeding station on November 7, 2024. I adopt those findings as fact. The Video shows that the Appellant walked towards, waited for and shot the alligator clip from his cable caster striking caribou taking live hair samples from them. That it was the intention of the Appellant to capture hair directly from live caribou by doing so is not in dispute. Nor is it disputed that hair attached to live caribou is part of that wildlife.

[52] I agree with the Respondent’s findings in the Determination that, on a balance of probabilities, the Appellant was in fact shooting at, searching for, pursuing, following after, and stalking wildlife with the intention of capturing **parts, (live caribou hair)**, from that wildlife as shown in the November 7, 2024, Video. The question remains as to whether these actions constituted a “hunt” as defined in the *Act*.

[53] The Appellant submits that the definition of “hunt” does not cover his actions on November 7, 2024, as he intended only to capture caribou hair which are “parts” of wildlife, as opposed to having an intention to capture the entire animal, which he submits is a requirement of the definition.

[54] While the Respondent acknowledges that while it is true that the definition of “hunt” does not expressly refer to capturing “parts” of wildlife, he submits that such wording is unnecessary given the broad language of “intention to capture the wildlife.” To capture parts of wildlife directly from a live animal, a person must first capture the entire animal, however briefly. In this situation, for example, the Appellant momentarily captured caribou to allow him to remove hair directly from live bodies. This intention,

argues the Respondent, is sufficient to fall within the broad and inclusive definition of “hunt.”

[55] The Respondent further submits that the Appellant’s narrow interpretation of the definition as only including the intention to capture entire animals would defeat the legislative intent and lead to absurd results. It would allow individuals to shoot at and stalk wildlife so long as their intention was to capture only a specific part from an animal rather than the entire animal.

[56] Therefore, the question to resolve at this point is whether the phrase “with intention to capture the wildlife” as used in the definition of “hunt” includes the intention to capture “parts” of that wildlife.

[57] The *Interpretation Act*, RSBC c. 238 (the “*Interpretation Act*”), applies to the interpretation of Provincial legislation including the *Act* (section 2 of *Interpretation Act*) and has been of assistance in my analysis. Specifically, section 8 of the *Interpretation Act* provides that:

Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

[58] Consistent with section 8 of the *Interpretation Act*, my approach to the interpretation of the definition of “hunt” and specifically whether it includes the intention to capture “parts” of wildlife, is to read the words used in their entire context and in their grammatical and ordinary sense harmoniously with the scheme and object of the *Act*.¹

[59] The scheme and object of the *Act*, the *Permit Regulation*, and the *Closed Areas Regulation* together include the management and protection of wildlife in the province, the ownership of which is vested in the government under section 2(1) of the *Act*.

[60] I find that the narrow interpretation of the definition advanced by the Appellant to be contrary to the scheme and object of the *Act* and relevant regulations, including the management and protection of wildlife.

[61] To read the phrase “with intention to capture the wildlife” to exclude an intention to capture parts of that wildlife would be illogical, and I agree with the Respondent that such an interpretation would defeat the legislative intent and lead to absurd results, such as those suggested by the Respondent. I also agree with the submission of the Respondent that in order to capture parts of wildlife directly from a live animal, a person must first capture or take control of the entire animal, however briefly. I find that this is what the Appellant did in this case.

¹ *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 (CanLII), at paras. 117-118.

[62] I find that the Appellant's intention to capture hair directly from live caribou constituted an "intention to capture the wildlife" for purposes of the definition of "hunt" under the *Act*.

[63] Accordingly, I find, on a balance of probabilities, that the Appellant was hunting caribou at the Kennedy Siding caribou feeding station on November 7, 2024, during a closed hunting season, without being authorized to do so by permit under the *Act*, contrary to section 26(1)(c) of the *Act*.

Did the Appellant have "directions" from the 2021 and 2022 Decisions authorizing him to collect hair directly from live caribou using a cable caster with an alligator clip?

[64] As stated in the Background facts, the Permit did **not** authorize the Appellant to hunt, trap, or kill wildlife during the open or closed season for scientific purposes, under section 2 (c)(i) of the *Permit Regulation* or otherwise. The Permit also did not authorize any methods to collect hair directly from live caribou.

[65] While the Appellant acknowledges that the Permit was silent regarding the specific sampling technique to be employed, he submits that in November 2024, he was acting in compliance with directions that he received in the 2021 and 2022 Decisions. He submits that the directions he received were to use methods to collect hair samples that were "less invasive" than:

- a. A dart gun or pole technique that were rejected in the 2021 Decision, or
- b. A poke stick, dart gun, or toy crossbow that were rejected in the 2022 Decision.

He submits that using the cable caster with an alligator clip is less invasive than the direct sampling methods which were previously rejected. The Appellant argues that, in result, he had complied with the directions.

[66] The Respondent submits that the Permit only authorized possession and export of wildlife, not hunting that is otherwise prohibited under the *Act*. The Respondent argues both the 2021 and 2022 Decisions confirmed to the Appellant, given the narrow scope of the terms of the Permit, caribou hair should only be collected "opportunistically." The Permit did not authorize collection methods that would otherwise be contrary to the *Act*, such as hunting during a closed season.

[67] In order to consider whether acting on "directions" in the 2021 and 2022 Decisions could constitute an answer to the Appellant's breach of section 26(1)(c) of the *Act* in the circumstances of this case, there would need to be a proper evidentiary foundation for the Appellant's characterization of any "directions" given to him in the 2021 and 2022 Decisions. On my reading of those Decisions, as well as all other evidence before me on this appeal, I find the Appellant's characterization of statements made in those Decisions to be incomplete and therefore inaccurate.

[68] The Permit was described in the 2021 Decision as permitting the collection and disposition of samples for research purposes, mainly pellets, but also hair if it could be collected opportunistically. The decision maker recommended using other, less invasive, techniques to obtain samples and reduce possible disturbance to caribou “i.e. pellet collection will still achieve some of the project objectives.”

[69] After rejecting the Appellant’s application to sample the Kennedy Siding caribou herd for research purposes using either a poke stick, a dart gun, or a toy crossbow, the 2022 Decision recommended the Appellant use other less invasive techniques to obtain samples and reduce possible disturbance to caribou: “For instance, pellet collection and opportunistic collection of hair would still achieve most of the project objectives.”

[70] The Appellant is correct in saying that both the 2021 and 2022 Decisions suggested “less invasive” techniques to obtain samples than those proposed by the Appellant be used in order to reduce possible disturbance to caribou. However, the Appellant fails to acknowledge the fact that in both Decisions the suggested method for hair collection was that it could be collected “opportunistically.”

[71] Evidence introduced by the Respondent on this appeal indicates that “opportunistic” hair sampling would normally entail collecting hair samples from trees or other structures an animal has rubbed against. I find this to be a reasonable and logical description of “opportunistic” caribou hair sampling. I also find that “opportunistic” hair sampling would not include obtaining hair samples directly from live caribou in the manner employed by the Appellant on November 7, 2024.

[72] I find that neither of the 2021 or 2022 Decisions directed or authorized the Appellant’s use of a cable caster with an alligator clip to obtain hair samples directly from live caribou. I find the Appellant’s submission to that effect non-persuasive.

[73] Having found that the Appellant hunted without permit authorization contrary to section 26(1)(c) of the *Act*, it follows that he breached the Permit requirement that he must comply with all laws applicable to the activities carried out under the Permit. I so find. I agree with the Determination and find that this constitutes an offence under section 8 of the *Permit Regulation* and that the Appellant breached section 33(2) of the *Act* by being in possession without permit authorization of any hair samples collected from Kennedy Siding during the September 1 – March 31 closed season.

What is the appropriate prohibition under section 25 of the *Act*?

Submissions of the parties

[74] In support of his request that the Board reinstate the Permit and rescind the ineligibility order, the Appellant submits that the approach taken in the Determination was unreasonable. He submits that a reasonable approach would have been to support his research, foster and value innovation, and remove impediments to ensure success, rather

than focusing on obstructing his work with the Kennedy Siding herd. He submits a reasonable approach would have been to engage in dialogue with him and not to undertake a section 25 procedure.

[75] The Appellant submits that the ultimate aim of the Determination was to curtail or halt his research activities. The Determination reveals a clear bias to terminate the Permit rather than address the substantive scientific and management issues at stake. Contrary to findings in the Determination, he submits that his sampling methods align with scientific standards and actively supports sound wildlife management principles.

[76] The Appellant submits the Video evidence shows that the alligator clip method caused negligible disturbance to the caribou. This demonstrates how unreasonable it is to categorize the cable caster technique as a serious disturbance risk.

[77] The submissions of the Appellant include the letter from the MLIB affirming their strong support for the research that the Appellant has been conducting on the Kennedy Siding caribou herd. The letter emphasizes the importance of the collection of DNA from caribou hair for research into the long-term conservation of the herd. The MLIB asks the Board to recognize the importance of the Appellant's research and its contribution to caribou recovery in their territory.

[78] The Respondent submits he carefully and thoroughly reviewed all relevant factors before cancelling the Permit and imposing a one-year ineligibility period on the Appellant.

[79] The Respondent makes the following submissions in support of the aggravating factors considered in the Determination:

- a. The issuance of an Advisory Letter for the unauthorized use of a crossbow in December 2020 at the same location is a relevant factor that is not disputed by the Appellant.
- b. From the rejection of his proposed hair collection techniques on Kennedy Siding caribou in the 2021 and 2022 Decisions, the Appellant was aware that he was not permitted to use invasive collection techniques and that he should only collect hair opportunistically.
- c. From his rejected requests for approval of direct collection methods, the Appellant would be familiar with the permit application process, but never sought approval to use the cable caster and alligator clip method under the *Act*.
- d. With respect to disturbances to the Kennedy Siding caribou herd from the Appellant's actions, the Ministry has been working for many years to minimize disturbances to the herd. While the cable caster and alligator clip may be less invasive than other possible techniques, the Video nevertheless shows that the animals shot by the Appellant are startled and react by quickly moving away from the feeding station when shot. This causes unnecessary disturbance to this red-listed species. Further, the Appellant

has not provided any expert evidence to support his claims that the use of a cable caster and alligator clip is “consistent with both scientific standards and effective wildlife management.”

[80] The Respondent makes the following submissions in relation to the mitigating factors considered in the Determination:

- a. The Respondent reasonably considered that the Appellant has provided regional and provincial contributions to wildlife and specifically caribou recovery efforts, and that these have been significant in nature and are commendable. However, there is no basis in the record to support the Appellant’s claims that the Respondent’s “ultimate aim was to curtail or to halt [his] research activities” or that the Respondent acted in a biased manner when terminating the Permit.
- b. While the Respondent acknowledged the Appellant may have been confused as to the definition of hunting, the fact is that the Appellant failed to seek clarification of the meaning of “hunt” from the Ministry or to submit a permit application for his cable caster and alligator clip collection method.

[81] The Respondent concludes by submitting that the short period for cancellation and ineligibility appropriately balances the importance of the Appellant’s research against the seriousness of the Appellant’s conduct in light of his history with, and knowledge of, the *Act*. The reduction sought by the Appellant is not warranted on the facts and would significantly undermine the goal of deterring non-compliance under the *Act*.

Analysis

[82] Section 25(1) of the *Act* states:

25 (1) A regional manager, for any cause he or she considers sufficient, and after providing an opportunity for the person to be heard, may suspend or cancel a permit held by a person, may order that the person is ineligible to obtain or renew a permit for a period and, if he or she does make an order, must inform the person of the period of ineligibility.

[83] Given the evidence and submissions he had received from Ministry staff of unauthorized Permit activities, including the Video recordings of the Appellant on November 7, 2024, the Respondent decided to initiate a section 25 process to assess the relevant evidence through the OTBH process to determine whether the Appellant should continue to hold the Permit. Acting under section 25 (1) of the *Act*, the Respondent was given the discretionary power “for any cause he or she considers sufficient” to suspend or cancel a permit and to order that the person is ineligible to obtain or renew a permit during a period.

[84] Contrary to the submissions of the Appellant, I find the Respondent was acting in accord with his statutory authority in initiating that process rather than engaging in

dialogue with the Appellant. The Appellant was afforded an opportunity to make his case at the OTBH, as he has had on this appeal.

[85] The Appellant's submission that the ultimate aim of the Determination was to curtail or halt his research activities or that the Respondent showed bias to terminate the Permit rather than address the substantive scientific and management issues at stake, lacks evidentiary support. The Respondent's reasoning set out in his Determination is logical, transparent, and supported by the evidence. I find no bias in the Determination. In any case, this appeal has been conducted as a new hearing, and as such, any concerns about alleged bias by the Respondent in making the Determination are fully answered by the fact that this appeal is based solely on the evidence and submissions before the Board.

[86] When considering the impact of the Appellant's use of the cable caster and alligator clip sampling method on the Kennedy Siding herd, the Determination states: "Given the small size of this herd and that this herd has been at risk of extirpation, I do not consider unauthorized invasive sampling techniques constituting hunting causing unnecessary disturbance to animals, consistent with the proper management of wildlife resources."

[87] The Respondent did not characterize the Appellant's actions as "a serious disturbance risk" as submitted by the Appellant. The Video shows the animals shot by the Appellant are startled, flinch, and react by quickly moving away when shot. Contrary to the submission of the Appellant, I find the Video shows that the Appellant's actions caused more than "negligible" disturbance to these animals.

[88] No expert evidence was introduced by the Appellant to support his contention that the use of a cable caster and alligator clip is "consistent with both scientific standards and effective wildlife management." Based on the evidence on this appeal I cannot make such a finding.

[89] The Determination set out both the aggravating and mitigating factors considered in determining the appropriate remedy under section 25 of the *Act*.

[90] The Appellant, having been advised in the 2021 and 2022 Decisions that hair could be collected where the opportunity existed if it could be collected opportunistically, should have been aware that he was not permitted to use invasive collection techniques. That he proceeded to collect hair samples directly from caribou using the cable caster and alligator clip method, without first seeking approval under the *Act* for doing so, are aggravating factors properly considered by the Respondent.

[91] A person's compliance history is a critical aspect of decisions concerning permits under the *Act*. The Advisory Letter for the Appellant's unauthorized use of a crossbow in December 2020 to obtain hair samples from caribou at the same location is an aggravating factor properly considered by the Respondent.

[92] The finding of disturbance to the animals subject to the Appellant's hair sampling method referred to above, is also an aggravating factor properly considered in the Determination.

[93] In the Determination, significant weight was given to the Appellant's commendable efforts contributing to the recovery of the Kennedy Siding caribou herd as a mitigating factor. On this appeal, I have benefitted from the confirmation of that sentiment in the letter from the MLIB. Based on the letter from the MLIB, I recognize the importance of the Appellant's research and its contribution to caribou recovery in their territory. I have taken these facts into account as a significant mitigating factor.

[94] In making his Determination to cancel the Permit and to impose on the Appellant a one-year ineligibility period for a new permit under the *Act*, I find the Respondent carefully and thoroughly considered all relevant factors in the proper exercise of his discretion.

[95] Having considered all the evidence and submissions in the record on this appeal, I find the prohibition imposed in the Determination on the Appellant under section 25 to be appropriate in the circumstances. The Permit cancellation and one-year period of ineligibility imposed appropriately balances the importance of the Appellant's research against the seriousness of the Appellant's conduct in light of his history with, and knowledge of, the *Act*.

DECISION

[96] In making this decision, I considered all of the relevant evidence and submissions of the parties, whether or not specifically reiterated in this decision.

[97] For the reasons set out above, I confirm the findings of contravention and the prohibition imposed against the Appellant in the Determination. The appeal is dismissed.

"Michael Tourigny"

Michael Tourigny, Panel Chair
Environmental Appeal Board