
DECISION NO. 2010-WIL-005(a)

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

BETWEEN:	Arthur Thompson	APPELLANT
AND:	Regional Wildlife Manager	RESPONDENT
AND:	B.C. Wildlife Federation	PARTICIPANT
BEFORE:	A Panel of the Environmental Appeal Board Gabriella Lang, Panel Chair	
DATE:	Conducted by Way of Written Submissions Concluding on August 9, 2010	
APPEARING:	For the Appellant: Arthur Thompson For the Respondent: Joseph McBride, Counsel For the Participant: Wilf Pfeleiderer	

APPEAL

[1] Arthur Thompson appeals the March 23, 2010 decision of Maurice Lirette, Regional Manager, Recreational Fisheries and Wildlife Programs, Region 7B, Ministry of Environment (the "Ministry"). The Regional Manager issued Mr. Thompson a Guide Outfitter licence valid from April 11, 2010 to March 31, 2011 with a quota of 10 Stone's Sheep.

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

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

[3] The Appellant asks the Board to send the appealed decision back to the Regional Manager with directions to remove his quota for Stone's Sheep and allow

his clients to hunt in a general open season or alternatively to impose limited entry hunting on resident hunters for Stone's Sheep.

BACKGROUND

[4] The province regulates hunting for big game species, such as Stone's Sheep, through legislation, regulation and policy. It regulates non-resident hunters by requiring them to hunt for big game only with a licensed guide outfitter and only within his or her guiding territory. Resident hunters may hunt without a guide.

[5] Guide outfitters must obtain annual guide outfitter licences in which regional managers may specify annual quotas for each big game species as conditions of the licences. Section 60 of the *Act* gives a regional manager the discretion to allocate such quotas to guide outfitters. That discretion, however, is exercised within a framework that includes provincial policies, population estimates for a particular species, and other considerations such as species' conservation, traditional First Nations' interests and resident hunters' interests.

[6] In 2007 the province adopted a new Harvest Allocation Policy to establish a more consistent process for allocating hunting opportunities throughout the province. The policy includes sections on Resident Hunter Priority, Commercial Hunting Interests and Under-Harvest of Allocated Share. The policy also includes a quota procedure. A key element of the policy is a clear statement that resident hunters will receive priority opportunities in the allocation of big game hunts. For big game, such as sheep, the policy also states that the resident hunters' priority will be addressed by providing resident hunters with a minimum share of 60% of the allocated hunt.

[7] Mr. Thompson has been a licensed guide outfitter in Region 7B, the Peace Region of the province, since 1987. He has the exclusive right to guide non-resident hunters within his guide outfitter territory in the Muncho Lake area in the north east portion of the province.

[8] Throughout Mr. Thompson's guiding years he has had a quota for Stone's Sheep, which are a subspecies of thinhorn sheep. In the past, Mr. Thompson, as well as other guide outfitters, had been rewarded for harvesting older rams and penalized for harvesting younger rams, those under 8-years old. For the 2010-11 hunting season Mr. Thompson, as well as other guide outfitters, again received a quota for Stone's Sheep.

[9] In contrast, resident hunters in Region 7B are allowed to hunt Stone's Sheep under a general open season.

[10] Mr. Thompson's position is that it is unfair and discriminatory for him to have his hunts restricted by a quota while resident hunters can hunt under a general open season. He asks the Board to instruct the Regional Manager to put resident hunters on limited entry hunting if guide outfitters are subject to quotas or alternatively to allow both resident and non-resident hunters to hunt under a general open season.

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

ISSUES

[12] This appeal raises the following issue:

Whether the Board should send the decision back to the Regional Manager with directions to remove Mr. Thompson's quota and allow him to guide his non-resident hunters in a general open season or alternatively to impose limited entry hunting on resident hunters.

RELEVANT LEGISLATION

[13] The sections of the *Wildlife Act* relevant to this appeal are:

Definitions and interpretation

1 (1) in this Act:

“**limited entry hunting authorization**” means an authorization issued under section 16;

“quota” means

- (a) the total number of a game species, or
- (b) the total number of a type of game species

specified by the regional manager that 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 licence year, or part of it, but does not include an angler day quota.

Limited entry hunting authorization

16 (1) The minister, by regulation, may

- (a) limit hunting for a species of wildlife in an area of British Columbia,
- (b) provide for limited entry hunting authorizations to be issued by means of a lottery or other method of random selection among applicants,
- (b.1) provide for exceptions that the minister considers appropriate to the random selection among applicants in conducting a lottery or other method of random selection among applicants under paragraph (b), and
- (c) do other things necessary for the purposes of this section.

Quotas

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

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

DISCUSSION AND ANALYSIS

[14] Before addressing the submissions of the parties, the Panel feels it is necessary to review how the Regional Manager made his decision affecting Mr. Thompson's licence. The Panel finds that there is no dispute between the parties about the underlying information the Regional Manager used to determine the quota.

[15] Under section 60 of the *Act* the Regional Manager has the discretion to attach a quota for Stone's Sheep to guide outfitter licences, such as the one he issued to Mr. Thompson. However, that discretion is constrained by several factors and involves the following process.

[16] To allocate harvest numbers between resident and non-resident hunters, the Ministry first establishes population estimates for big game by region. Then it allocates a certain number for conservation and then for First Nations' interests. The remainder is split between resident and non-resident hunters and the ratio for that split is determined by the Ministry's Director of Fish and Wildlife (the "Director"). The portion available to non-resident hunters is then allocated by the Regional Manager among the licenced guide outfitters in the region through quotas attached to their annual licences.

[17] In 2007 the Regional Manager issued 5-year allocations for Stone's Sheep harvests to Region 7B guide outfitters together with projected annual quotas for that period. Although the Act states that quotas can be conditions of annual guide outfitter licences, the Regional Manager used his discretion to allocate annual quotas over 5 years, but guide outfitter licences were also still issued annually with specified annual quotas.

[18] For the years 2007-2011 the annual allowable harvest for full curl Stone's Sheep in Region 7B was set by the Ministry at 181 animals or a total of 905 for the five years. In 2007, to implement the new allocation policy, the Regional Manager reduced the sheep allocation by 19% among all guide outfitters from 137 to 112. This reduction was to help achieve the provincial policy objective to increase over time the resident hunter portion of the annual allowable harvest to 60% of the total harvest.

[19] The harvest objective for resident hunters was 109 animals per year up from an average of 85 sheep over the 2000-2006 period. To get to this number resident hunters were able to continue to hunt under a general open season.

[20] In Mr. Thompson's case, the Regional Manager, in a letter dated March 2, 2007, advised Mr. Thompson that his expected 2007-2011 allocation for Stone's Sheep would be 53 sheep. In that letter, the Regional Manager wrote that this allocation was based on current knowledge about the sheep population based on

inventory and harvest. The Regional Manager also committed to reviewing the harvest management of thornhorn sheep in Region 7B to include the interests of stakeholders and to be informed by the best available science. He also referenced the new allocation policy and procedure.

[21] In February 2010 a harvest review of the 2007 through 2009 hunting seasons was completed by the Regional Manager. This review was consistent with the provincial allocation policy's direction to review and report to the Director if after 3 consecutive years either hunter group had under-harvested the number of sheep allocated to it.

[22] This review demonstrated that on average, resident hunters harvested 111 sheep or 2% over their objective number; guided hunters harvested 84 sheep or 15% over their objective number. None of the groups were under-harvesting and the combined harvest of 195 was within 10% of the annual allowable harvest of 181. The resident share of this harvest was 57% and the non-resident share was 43%. The Regional Manager decided that these results were reasonable being within 10% of the objectives, and therefore recommended no changes to the allocation numbers or allocation procedures to the Director.

[23] As for Mr. Thompson, he has an allocation of 20 sheep for the next two years as set out in a letter dated April 13, 2010 from the Regional Manager. The letter repeated the total allocation set out in March 2007; that is, the maximum cumulative quota allocated over the five year period (2007-2011) is 53. The 2010 letter noted that the allocated quota is not always equally divisible into five years. After reviewing sheep harvest numbers the Regional Manager saw no reason to alter Mr. Thompson's five year allocation of 53, but would consider altering the 2010-2011 quota to 11 if Mr. Thompson could demonstrate bookings for 11 sheep and then Mr. Thompson would need to plan for a sheep quota of 9 in 2011.

[24] Mr. Thompson submits that the Regional Manager should remove the Stone's Sheep quota as a condition of his guide outfitter licence, as well as the quotas of other guide outfitters because there is no conservation concern for Stone's Sheep and therefore he and other guide outfitters should be allowed to hunt under a general open season. He also submits that he has been treated unfairly and discriminated against because resident hunters are allowed to hunt under a general open season. Alternatively Mr. Thompson submits that if guide outfitters are subject to a quota, then the Regional Manager should impose limited entry hunting on resident hunters.

[25] Regarding the quotas of other guide outfitters, this Panel finds that the Board only has jurisdiction to deal with Mr. Thompson's quota as a condition of his 2010-2011 guide outfitting licence. That is the only decision by the Regional Manager that is appealed by Mr. Thompson and that is the only matter properly before this Board under section 101.1 of the *Act*. Therefore this Panel can make no decisions regarding other guide outfitters' quotas in Region 7B, only Mr. Thompson's.

[26] As to Mr. Thompson's request to impose limited entry hunting on resident hunters, the Respondent submits that such authorization can only be done by regulation. The Regional Manager does not have the authority to impose that form of hunting management on resident hunters.

[27] Mr. Thompson submits that no regulation change is needed, only a change to the harvest management tools used by the Regional Manager.

[28] The Panel finds that section 16 of the *Act* clearly provides that the Lieutenant Governor in Council by regulation may limit hunting and may provide for limited entry hunting authorizations to be issued. The Panel, therefore, finds that the Regional Manager has no authority in this regard.

[29] Mr. Thompson further submits that the Regional Manger should remove his Stone's Sheep quota and allow his non-resident clients to hunt under a general open season because there is no conservation concern for Stone's Sheep so there is no need for quotas. The hunt is closely controlled by a full-curl horn or an 8-year age restriction. Mr. Thompson states that these measures are sufficient to sustain future generations of rams. Therefore, there should be no reason for guided non-resident hunters to be subject to quotas.

[30] The Respondent agrees that with a full curl ram and age restrictions conservation of Stone's Sheep is not currently a concern. However, the Respondent noted that in any given year there are a limited number of legal rams available to be harvested. Conserving the quality of rams available and providing quality hunting opportunities is a consideration in trophy hunting. Therefore the quota should be maintained.

[31] Mr. Thompson also believes that the current allocation of Stone's Sheep in Region 7B is not fair and he (and other guide outfitters) is being discriminated against by being kept to a quota while resident hunters enjoy a general open season hunt. He asks to be treated fairly on the basis of what is in the harvest allocation policy and he does not feel that the Regional Manager has dealt with Region 7B Stone Sheep through a fair process. Mr. Thompson further submits that imposing quotas on guided hunters and allowing resident hunters to hunt under a general open season is inconsistent because it restricts his harvest and family-run business.

[32] Mr. Thompson's position is that the quota system is a framework for ensuring wildlife stewardship, not a tool to restrict guided hunts so that resident hunters can be more successful. He submits that the guiding principles of the provincial allocation policy state that the wildlife management policies and procedures will be applied to "provide quality hunting opportunities for all hunters" and "be fair to all parties involved".

[33] In addition, Mr. Thompson submits that Stone's Sheep should not be a category A species. He referred to the provincial policy definition of a category A species; that is, "a big game species, population, or class for which guided hunters' harvest is limited by quota in any portion of a region". His position is that the Regional Manager should remove Stone's Sheep as a category A species and thereby remove the need for a quota.

[34] Mr. Thompson noted that he has worked with different regional managers and biologists in the region to try to build a strong, sustainable population of Stone's Sheep. He and other hunters have a deep interest in the sustainability of sheep hunting in the province. In the early years he was rewarded for his selective

harvest, but in the last years he has been systematically reduced by 40% even though his harvest shows that he still only takes the older rams.

[35] Mr. Thompson also asserts that the province's aim is to reduce the guides' share of the harvest and this is not in keeping with its policy to support the commercial viability of the guide outfitting industry as set out in the Harvest Allocation Policy. He supports creating and maintaining a regulatory framework that maximizes guided hunters' success, enjoyment and participation, and also increases the residents' share, while ensuring the sustainability of Stone's Sheep.

[36] In response the Respondent first points out that the Regional Manager does not determine the resident/non-resident split of the harvest; that is done by Director. After the Director determines this split and how resident hunters will be regulated, the Regional Manager allocates the guide outfitters' share among the licensed guides in his region, together with their respective quotas.

[37] The Respondent also submits that provincial policy states that resident hunters are given higher priority for harvest than non-resident hunters, and this is achieved by enabling resident hunters to harvest a certain number or share of big game. The policy states that resident hunters' priority in the harvest of big game species will be addressed by: providing the majority of harvestable big game species to resident hunters; and providing resident hunters with a minimum share of 60% of sheep, goat and grizzly bear hunts.

[38] The Respondent noted that based on the Regional Manager's review in February 2010, resident hunters had not achieved the 60% minimum, although they had harvested above their target number. Therefore the Regional Manager advised the Director that no change in harvest management was needed. The resident hunters continued to be regulated under a general open season to assist them in reaching their share of the sheep hunt allocation.

[39] As to Mr. Thompson's submission that he has been treated unfairly and discriminated against, the Respondent submits that the Regional Manager's authority is limited to applying big game quotas to a guide outfitter's licence. Mr. Thompson received his share of Stone's Sheep quota based on the overall allocation to guide outfitters in the region.

[40] The Panel finds that the provincial Harvest Allocation Policy states that resident hunters are given priority and even sets a minimum percentage for their harvest target. This minimum is not something the Regional Manger has any authority over. The Panel further finds that any regulation of resident hunters is also not within the Regional Manager's authority. All he can do is take the allocation for guide outfitters assigned by the Director and distribute it among the guides.

[41] Also, the Panel finds that whether or not Stone's Sheep is a category A species was not the determining factor for the Regional Manager when he set the Stone's Sheep quotas such as the one in Mr. Thompson's licence. The quota condition was part of the Regional Manager's annual distribution of the guides' portion of the Stone's Sheep hunt.

[42] The Panel acknowledges that Mr. Thompson feels it is unfair that he is subject to a quota while resident hunters are not. However, the Panel finds there is no evidence that Mr. Thompson was treated unfairly or discriminated against by the Regional Manager. Mr. Thompson was treated in the same way as all the other guide outfitters in Region 7B; he was allocated a portion of the harvest assigned to the guide outfitter group.

[43] The Panel also notes that in the Harvest Allocation Policy the province has set out distinctly different goals for resident and non-resident hunters, with resident hunters getting priority. Further, in the Under-Harvest of Allocated Share section, the policy recommends that the first step in a case of under-harvest is to take measures to enable the harvest to be attained by the user group rather than changing the shares.

[44] Mr. Thompson may feel that allowing resident hunters to hunt under a general open season to help them achieve the 60% minimum harvest is an unfair allocation and discriminatory hunting management policy, but the Panel finds that the Regional Manager has no authority to change the provincial policy goal or method of achieving that goal.

[45] Regarding Mr. Thompson's request to have his Stone's Sheep quota removed from his 2010-2011 licence, the Respondent submits that this would result in the risk of a higher harvest of sheep by Mr. Thompson's non-resident clients and also would be inconsistent with his 5 year Stone's Sheep allocation through to 2011. Furthermore, removing the quota would give Mr. Thompson an unfair allocation over other guides.

[46] The Respondent also submits that if the Regional Manager removes Mr. Thompson's quota, he also has to remove the quotas of other guide outfitters. That could then result in a higher overall harvest of Stone's Sheep and a higher proportion of the harvest being taken by guides, contrary to the established resident/non-resident split and the established harvest allocation numbers. The longer term risk could also mean a shift to younger aged rams and fewer legal rams in the population for resident hunters.

[47] The Respondent points out that all guides' quotas are part of 5 year allocations, so removing the quota for this year has the potential to undermine all guide outfitters' 5 year allocations, resulting in a major harvest management change. The Respondent submits that this would not be a reasonable outcome and also lacks adequate consultation with First Nations and resident hunters.

[48] The Panel finds that the Regional Manager determined Mr. Thompson's quota based on the overall harvest numbers for Stone's Sheep, and the quotas and the allocations assigned to all Region 7B guide outfitters. The Panel also finds that removing Mr. Thompson's quota of Stone's Sheep for this year and allowing him to hunt under a general open season could not only potentially disrupt his overall 5 year allocation, but could also disrupt the quotas and allocations assigned to all guide outfitters in the region.

[49] The Panel further finds that such a change in harvest management could result in very different harvest totals and ratios for non-resident hunters than the numbers set by the Director. The Panel therefore finds that the change that Mr.

Thompson seeks could have consequences for Stone's Sheep harvests in Region 7B far beyond his own circumstances and that such changes are beyond the Regional Manager's authority.

[50] The Panel notes that the Regional Manager did an interim harvest success review in February 2010 that demonstrated to the Regional Manager that there was no need to change course in the region's Stone Sheep hunts, and he so advised the Director. Guide outfitters, including Mr. Thompson, were achieving their targeted harvest numbers.

[51] Therefore, after considering all the evidence and submissions of the parties, particularly the factors considered by the Regional Manager as well as the framework in which he exercised his discretion, the Panel finds that the Regional Manager's decision to issue a quota as a condition of Mr. Thompson's licence was reasonable in the circumstances. The Panel further finds there is no need to send this decision back to the Regional Manager.

DECISION

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

[53] For the foregoing reasons, the appeal is dismissed.

"Gabriella Lang"

Gabriella Lang, Panel Chair
Environmental Appeal Board

August 30, 2010