



Environmental Appeal Board

Fourth Floor 747 Fort Street
Victoria British Columbia
Telephone: (250) 387-3464
Facsimile: (250) 356-9923

Mailing Address:
PO Box 9425 Stn Prov Govt
Victoria BC V8W 9V1

APPEAL NO. 1999-WIL-23

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

BETWEEN:	Karen McLean	APPELLANT
AND:	Regional Wildlife Manager	RESPONDENT
BEFORE:	A Panel of the Environmental Appeal Board Carol Quin, Panel Chair	
DATE OF HEARING:	November 3, 1999	
PLACE OF HEARING:	Williams Lake, B.C.	
APPEARING:	For the Appellant: Karen McLean For the Respondent: Rodger Stewart	

APPEAL

This is an appeal by Karen McLean of the May 28, 1999 decision of Rodger Stewart, acting Regional Manager of Fish, Wildlife, and Habitat Protection for the Ministry of Environment, Lands and Parks, Cariboo Region (the "Regional Manager"), to reject Ms. McLean's request for 960 angling days¹ on the classified waters of the Chilko River. Ms. McLean is a licenced angling guide who operates a fishing lodge on Chilko Lake.

The authority for the Environmental Appeal Board to hear this appeal is found under section 11 of the *Environmental Management Act* and section 101.1 of the *Wildlife Act* (the "Act"). Under section 101.1 of the *Act*, the Board may:

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

¹ Under section 1 of the *Act*, an "angler day" is defined as "a unit representing one person angling during any part of a day and is used to determine the extent to which a stream, lake or area specified under section 53 may be used for angling..."

Ms. McLean requests that her angler days quota on classified waters for the 1999/2000 season be increased from 350 days to 960 days. Ms. McLean also requests that certain conditions in her angling guide licences for classified and unclassified waters be removed.

BACKGROUND

Ms. McLean's family has owned and operated the Ts'yl-os Park Lodge (previously called River Ridge Resort) on Chilko Lake since 1957. Originally, Ms. McLean and her father, Lloyd McLean, both held angler guide licences that allowed them to take clients, many from the United States and Europe, on fly-fishing excursions on the Chilko River. Ms. McLean later took over and expanded both the lodge and the angler guiding business. Currently, the lodge can accommodate 14 guests at a time. In addition to fly-fishing trips, the lodge offers horseback riding, kayaking, hiking and mountain camping excursions for guests.

Angling and angling guiding in the province is regulated under the *Act* and associated regulations, including the *Angling and Scientific Collection Regulation*, B.C. Reg. 125/90 (the "Regulation"). Schedule "A" of the Regulation designates most of the Chilko River as "classified waters", and establishes a maximum of 700 "guided angler days" on the classified portion of the Chilko, divided between eight guides, from June 11 to October 31. Before the start of each fishing season, angling guides must submit to the Regional Manager an Angling Guide Operating Plan ("AGOP") for the waters on which they wish to obtain an angling guide licence. The AGOP serves as a licence application and contains terms or conditions that, once approved, become terms or conditions of the applicant's licence.

In 1990, when the Regulation came into force, the Ministry of Environment, Lands and Parks ("MELP") had to allocate the prescribed 700 angler days among the guides on the Chilko River for the first time. MELP sought to give preference to guides with existing operations on the Chilko River. To fairly allocate the angler days among the existing guides, MELP tried to determine each guide's past level of commercial use of the river. MELP requested that each guide submit records documenting the number of fishers they had guided in each of the three years previous to 1990. Based on the best two of these three years, the Regional Manager granted each guide a proportion of the 700 angler days.

Ms. McLean requested 860 angler days for the 1990 season. However, the Regional Manager initially allocated Ms. McLean and her father 100 guided angler days each, for the 1990 season. Other fly-fishing businesses on the Chilko River each received between 12 and 100 angler days.

Ms. McLean disputed her allocation of 100 guided angler days. As a result, she was allocated 250 angler days for the 1991 season. At that point, 641 of the maximum 700 angler days were allocated among the eight guides. Her father's 100 angler days were also added to her licence, giving her a total quota of 350 guided angler days for the season. Since that time, Ms. McLean's quota has remained at 350 angler days per season, even though she has repeatedly requested that her quota be increased to 960 angler days per season.

On March 29, 1999, Ms. McLean submitted her angling guide licence application for the 1999/2000 season. In her AGOP for unclassified waters, she requested over 3000 guided angler days. In her AGOP for classified waters, she again requested 960 guided angler days.

By letter dated May 28, 1999, the Regional Manager approved Ms. McLean's 1999/2000 AGOP for classified waters, but again only 350 guided angler days were granted. Her AGOP for classified waters shows an amendment dated May 27, 1999, whereby the original figure of 960 days is crossed out and replaced with 350 days. Accordingly, her proposed seasonal distribution of angler days was reduced to 30 days in June, 135 days in each of July and August, 30 days in September, and 20 days in October. In his letter of May 28, 1999, the Regional Manager also approved Ms. McLean's AGOP for unclassified waters without amendment.

Thus, on June 2, 1999, the Regional Manager issued Angling Guide Licence #AG 204892 (the "Licence") to Ms. McLean, by which she is granted 350 and over 3000 guided angler days for classified and unclassified waters, respectively.

Ms. McLean appealed her quotas for the 1999/2000 season because she believes that her family's "grandfathered" right to carry on their business as they did before the Regulation came into effect, was *recognized* but not *respected*. As well, she contends that she was told in 1990, by the then Regional Manager, that her angler day allocation for 1991 would be reviewed and changed in the following years. Ms. McLean argues that this has never been done. Furthermore, Ms. McLean would like to be able to take all of her guests fly fishing on each of the 143 days in the season, as her guided angler day quota for the Chilko River allows a maximum of 25 guided guests per day, even though she is allowed only 350 angler days during the season.

Therefore, Ms. McLean requests that the Board increase her quota to 960 guided angler days per season, so that she may take each of her 14 guests fly-fishing on the Chilko River every day of the fishing season, should they wish to do so.

GROUND'S FOR APPEAL

Ms. McLean's grounds for appeal include the following:

- the "grandfathered rights" of her family business should be respected by increasing the quota in her Licence from 350 to 960 angler guide days for the classified portions of the Chilko River;
- the seasonal distribution of her angler days on the Chilko River, a condition of her AGOP and, therefore, her Licence, should be removed;
- her guided angler day quota for unclassified waters should be removed;
- the Chilko River, as a trout fishing river, should be exempted from certain fee increases; and

- the Regional Manager should apologize to her in writing for his actions during consideration of her applications, which she believes were unprofessional, prejudiced, disrespectful and carried out in bad faith.

ISSUES

This appeal raises several issues:

1. Whether the Regional Manager properly exercised his discretion in refusing to grant Ms. McLean’s request for 960 guided angler days on classified waters for the 1999/2000 season.
2. Whether the Regional Manager may require that a seasonal distribution of angler days be part of an AGOP or an angling guide licence for classified waters.
3. Whether the Regional Manager may impose angler day quotas when approving an AGOP and an angling guide licence for unclassified waters.
4. Whether the Regional Manager has acted in bad faith toward Ms. McLean.

It should be noted that Ms. McLean also requested that the Chilko River be exempted from licence fee increases. However, this matter does not relate to the Regional Manager’s May 28, 1999 decision, and, as such, is not within the jurisdiction of the Board on this appeal. Therefore, the Panel will consider only those issues listed above.

RELEVANT LEGISLATION

Wildlife Act, R.S.B.C. 1996, c. 488

Compulsory angling guide licence

49 (1) A person commits an offence if the person acts as a guide for fish, or offers to act as a guide for fish, unless the person

(a) holds an angling guide licence

...

(5) A person who guides for fish elsewhere than on the waters or in the area authorized by an angling guide’s licence commits an offence.

Issue of angling guide licences

52 (1) A regional manager may issue an angling guide licence to a person who

...

(c) has submitted an angling guide operation plan that has been approved by the regional manager.

- (2) If a holder of an angling guide licence does not observe the undertakings given by the holder in an angling guide operating plan, the regional manager may take action under section 61.

Restrictions on guiding for fish and angling

- 53** (1) The Lieutenant Governor in Council, by regulation, may do one or more of the following:

...

- (b) limit the number of angler days on which members of a class of persons may be guided for fish on a stream or lake or in an area of British Columbia during a specified period;

...

- (3) A regulation made under this section may

- (a) provide for the attachment of an angler day quota to, or for the reduction or cancellation of an angler day quota attached to, an angling guide licence issued before or after this section or the regulation comes into force, and

- (b) impose limitations, restrictions and requirements relating to guiding for fish on an angling guide, even though the angling guide's licence was issued before this section or the regulation comes into effect.

Angling and Scientific Collection Regulation, B.C. Reg. 125/90

Qualifications for an angling guide licence

- 9** (3) An applicant for an angling guide licence...is required to satisfy the regional manager that, with respect to angling in the region where the applicant intends to guide, he or she has a working knowledge of the Act and regulations ...

Application for an angling guide licence

- 10** (1) For each region of the Province in which an applicant for an angling guide licence proposes to guide for fish, the applicant must complete and submit an application in a manner satisfactory to the regional manager ...

Allocation of angler day quotas

- 11** (1) For each water specified in Schedule A for which a regional manager is responsible, the regional manager shall not allocate

...

(b) guided angler days in the period set out in column 4 in Schedule A in excess of the number set out in column 3 in Schedule A next to that water.

...

(3) Despite subsection (1), if a water is added to Schedule A as a classified water, the regional manager ... must allocate angler days for the first licence year based on

(a) a way that is considered fair and reasonable by the regional manager having regard to the number of days guided by the angling guides that operated on that water in any 2 of the 3 licence years immediately before the inclusion of the water in Schedule A...

The relevant portions of Schedule A are reproduced below:

SCHEDULE A CLASSIFIED WATERS						
Column 1	Column 2	Column 3	Column 4		Column 5 STEELHEAD LICENCE MANDATORY	
STREAM (includes unspecified tributaries unless indicated by an * before the name)	NO. OF GUIDES	GUIDED ANGLER DAYS	FROM	TO	FROM	TO
Class II Waters Chilko River from Chilko Lake to Brittany Creek	8	700	June 11	Oct. 31	Exempt	

Conditions of licence

13 (1) The conditions of an angling guide licence are that the holder

...

(b) report to the regional manager on or before the date specified in his licence,

(i) the number of resident, non-resident and non-resident alien angler days guided,

(ii) the species, number and location of fish caught by each class of person the holder or the holder's assistant guides have guided for fish,

...

(3) If a regional manager issues an angling guide licence to an angling guide who has been allocated an angling guide quota for classified waters, the regional manager may attach conditions to the licence in respect of the classified waters that

(a) limit the period of time and the area in which the angling guide may guide...

DISCUSSION AND ANALYSIS

1. Whether the Regional Manager properly exercised his discretion in refusing to grant Ms. McLean's request for 960 guided angler days on classified waters for the 1999/2000 season.

Ms. McLean raises several arguments to support her request that she be allocated 960 guided angler days on the classified waters of the Chilko River. First, she submits that the Regional Manager and MELP failed to recognize her grandfathered right to continue operating her family's guiding business in the same manner as before the Regulation was introduced. She asserts that her business requires a quota of 960 angler days per season on the classified waters of the Chilko River in order to maintain its historic (pre-1990) level of guiding activity, and that her current quota fails to reflect her business' actual historic use of the river.

Ms. McLean submits that before 1990, 12 clients per day were guided on fly-fishing excursions from her family's lodge during the fishing season. She asserts that she has provided MELP with "creel" reports, which provide information about the number and types of fish caught, as well as records of the number of assistant guides she hired for the period from 1985 to 1989, which verify her family's historic use of the river. She also notes that she is currently licenced to guide a maximum of 25 anglers per day, but her ability to do this is restricted by her quota of angler days. She submits that her current allocation of 350 guided angling days on classified waters is not enough to take 12 to 14 clients fly-fishing on the Chilko River every day of the season. Since the river is the only place where clients can fish for trout when it is too windy to fish on Chilko Lake, she maintains that her livelihood has been adversely affected by the ongoing refusal to grant her request for 960 angler days on the Chilko River.

In addition, Ms. McLean submits that a binding agreement or commitment to increase her angler day quota was made in 1990 by a former regional manager, and that this requires the present Regional Manager to raise her quota of 350 angler days. Ms. McLean states that, in 1990, she was told by the regional manager that her quota would be reviewed and increased in subsequent years. Ms. McLean referred to a handwritten notation in her first (1990) AGOP which stated: "Acknowledgment that quota is for 1990 season only & is subject to satisfactory utilization & performance. Quota will be reviewed & possibly adjusted for 1991, and periodically thereafter." Ms. McLean explained that she agreed to her initial quota based on the understanding that this notation represented a binding promise to

increase her quota in 1991, but this promise has never been fulfilled. Thus, in her AGOP for the 1999/2000 season, Ms. McLean again asked for an increase in her quota, writing that she was "applying for additional days as per agreement with Jack Leggett & Tom Woods. Original application – Feb. 15, 1990".

Ms. McLean further submits that this agreement allows the Regional Manager to allocate 960 angler days to her, even though this would exceed the maximum of 700 guided angler days prescribed in Schedule A of the Regulation. She submits that the maximum of 700 angler days was established arbitrarily, without adequate research and consultation, and that angler day quotas have been unfairly assigned to people with no historic guiding use on the Chilko River.

Finally, Ms. McLean submits that the 59 angler days for the Chilko River that remain unallocated can legally be allocated to her.

The Regional Manager submits that Schedule A of the Regulation was developed after consultation with those who would be affected by the quotas, and that although MELP's policy in allocating angler day quotas was to give priority to existing licenced guides, there was no guarantee that historic levels of use would be maintained after the Regulation came into force. The Regional Manager described how the Regulation was developed, and how MELP sought to "grandfather" the rights of existing licenced angling guides. He stated that, before the Regulation came into force, there were no angler day quotas for fishing guides on the Chilko River, or on any other river in the province. As fly-fishing became popular, MELP became concerned that some rivers would become overcrowded and overused. Thus, in 1989, MELP began to develop the Regulation, in order to protect the most fished rivers from excessive use, and to retain a quality environment for both the fish and fishers.

The Regional Manager states that in developing the Regulation, MELP consulted with existing licenced angler guides, as well as those who provided fishers with transportation or accommodation. Discussion papers outlining the proposed regulation were circulated to the affected users for review and comment. In early 1990, after completing these consultations and reviewing any catch records that were provided, MELP proposed that most of the Chilko River be designated as a classified river, and that a maximum of 700 guided angler days be available for allocation between all of the Chilko River angling guides. These recommendations were incorporated into the Regulation.

The Regional Manager states that in order to recognize historic use by existing guides on the Chilko River, those with an interest in angling guiding were asked to provide documentation verifying their guiding activity for the three years prior to 1990. This documentation would be used to support the guides' requested allocations of angler days. However, the Regional Manager states that "there were no assurances that all apparent angling guide activity would be accommodated." In addition, the Regional Manager stresses that the documentation provided to support Ms. McLean's request for 860 angler days was "weak." The Regional Manager submits that Ms. McLean based her request on having had "lots" of angling activity in 1986 and 1987, and 34 days of guiding in 1989. The Regional Manager further

asserts that Ms. McLean has had ample opportunity to more specifically document her historic levels of guiding on the river, but has failed to provide this information. He notes that the "creel" reports submitted annually by guides record only the number and type of fish caught, and not the number of fly-fishers guided. He therefore submits that these reports have not been useful in allocating angler day quotas.

Regarding the alleged 1990 agreement/commitment to "increase" Ms. McLean's quota, the Regional Manager submits that he has no legal capacity to retroactively address Ms. McLean's request, unless an existing guide's angler days become available for reallocation to other guides, and this has not occurred. Although angling guide licences, and the angler days attached to them, may be returned to the Crown, and transferred or sold subject to the Regional Manager's approval, he does not expect that any guide's quota for the Chilko River will be returned to the Crown or become available for transfer in the near future. He also explained that the remaining unallocated 59 angler days on the Chilko River cannot legally be assigned to Ms. McLean without first consulting all persons who may be affected, including First Nations.

Furthermore, the Regional Manager notes that Ms. McLean's original allocation of 100 angler days was raised to 250 days after her initial complaint, and was later raised to 350 days when her father's 100 days were added to her quota. By comparison, other licenced guides with documented use on the Chilko River were only granted between 12 and 100 angler days. He submits that Ms. McLean's present allocation of 50 percent of the angler days for the Chilko River is proof that her grandfathered rights have been considered.

Finally, the Regional Manager submits that even if he had the ability to address Ms. McLean's claims regarding grandfathered rights, he is bound by the limitations of the Regulation. He asserts that the law does not allow him to grant an *individual* quota of 960 angler days, because it would exceed the maximum of 700 angler days for *all* guides on the Chilko, as prescribed in Schedule A of the Regulation.

Section 11(3) the Regulation sets out the manner in which a Regional Manager must consider a guide's level of historic use, and hence that guide's grandfathered rights, after a water is designated as a classified water. The Panel agrees with the Regional Manager that creel reports show the number and type of fish caught, but do not reflect the number of fishers guided. Similarly, any records concerning how many assistant guides the McLeans hired before 1990 do not clearly indicate how many fishers were guided. These records may be, at best, a basis for making a rough estimate of how many fishers were actually guided. Therefore, the Panel finds that there is insufficient evidence to conclude that the McLeans' historic use of the Chilko was not adequately considered based on the information that they had provided. The Panel also finds that there is insufficient evidence to conclude that the McLeans' original allocation of angler days was not "fair and reasonable", as required by section 11(3)(a) of the Regulation. The Panel notes that when Ms. McLean protested her initial allocation, the Regional Manager did increase her allocation to 250 angler days.

Thus, the Panel finds, on a balance of probabilities, that the Regional Manager carried out the requirements of section 11(3)(a), as best he could, given the information that the McLeans provided.

The Panel also disagrees with Ms. McLean's assertion that the Regional Manager's notation in her 1990 AGOP represents an agreement or commitment to *increase* her angler day allocation for classified waters. The then regional manager clearly states that her allocation would be subject to "...satisfactory utilization & performance..." and would "...be reviewed and *possibly* be adjusted..." in future years. The Panel interprets this statement as merely an acknowledgment that the Regional Manager *may* exercise his discretion to *adjust* her allocation in the future, subject to certain conditions. No other evidence was presented to show that the regional manager made a promise to increase Ms. McLean's allocation. Therefore, the Panel rejects Ms. McLean's assertion that a binding agreement was made in 1990 which requires the present Regional Manager to increase Ms. McLean's allocation of angler days.

Regardless of the findings above, this issue is ultimately determined by the question of whether the Regional Manager has discretion to exceed the maximum of 700 angler days for the Chilko River, as prescribed in Schedule A of the Regulation. Section 11(1)(b) of the Regulation expressly prohibits the Regional Manager from allocating more than the maximum number of guided angler days set out in column 3 of Schedule A. Under section 11(1)(b), a regional manager "shall not" allocate more than 700 angler days. Clearly, the Regional Manager has no authority to grant Ms. McLean's request for 960 angler days. This would exceed the maximum set out in Schedule A by more than 200 angler days. Consequently, the Panel finds that the Regional Manager was correct in refusing Ms. McLean's request for 960 guided angler days, regardless of whether her grandfathered rights support such an allocation, or whether a commitment was made in 1990 to increase her allocation.

Although Ms. McLean also expressed disagreement with how the maximum of 700 angler days was determined, the Board has no jurisdiction to determine whether Schedule A of the Regulation was the product of adequate consultation and research.

Regarding Ms. McLean's assertion that the 59 angler days which remain unallocated can be allocated to her, the Panel accepts that any increase in Ms. McLean's quota would require either transferring some angler days from other guides, or allocating unallocated days to her. The Panel also accepts the Regional Manager's submission that another guide's quota is not likely to be available for transfer or reallocation in the near future, and that the unallocated angler days can not be allocated without first consulting other persons who may be affected, including First Nations. However, the Regional Manager has not explained why these 59 days still remain unallocated, or why he has not undertaken consultations so that they may be allocated. Therefore, the Panel recommends that the Regional Manager explore the feasibility of allocating the remaining 59 angler days and, if the remaining days are to be allocated, the feasibility of undertaking the appropriate public consultations.

In conclusion, the Panel finds that the Regional Manager's decision to allocate 350 angler days to Ms. McLean, rather than the 960 days she requested, was a reasonable exercise of his discretion.

2. Whether the Regional Manager may require that a seasonal distribution of angler days be part of an AGOP or an angling guide licence for classified waters.

Ms. McLean objects to the Regional Manager's distribution of her 350 angler guide days on the Chilko River for each month of the fishing season, as found in her 1999/2000 AGOP for classified waters. Ms. McLean states that a pre-determined seasonal distribution of her angler day allocation was not a condition of her original guiding licence, and that it became a condition only after her original quota was combined with her father's quota. She argues that the addition of a requirement concerning how many of her angler days may be used in each month creates a hardship on the operation and management of her business, as weather and business conditions may affect her ability to use the number of angler days allocated in each month. She requests that the seasonal distribution be removed from her Licence.

The Regional Manager states that no specific section of the *Act* or Regulation expressly describes what a licence application or an AGOP must contain, although section 10(1) of the Regulation states that an applicant must submit an application "in a manner satisfactory to the regional manager." The Regional Manager states that the current AGOP form was developed concurrently with the new Regulation, and that it requests information "...that a regional manager might reasonably require in the exercise of statutory authority regarding angling guide licences and AGOP's", including seasonal distribution information. He is satisfied that the AGOP is an appropriate form of application, and states that setting out a distribution of a guide's angler days across the season helps MELP better manage the resource and prevent monopolization of the best waters at key times.

The Regional Manager notes that Ms. McLean herself filled in the section of her AGOP that deals with the distribution of her quota, when she applied for her 1999/2000 Licence. When he reviewed Ms. McLean's proposed AGOP for classified waters, he reduced her proposed allocations for each month in accordance with his reduction of her proposed quota of 960 angler days. He cites section 13(3)(a) of the Regulation as granting him the authority to "limit the period of time... in which an angling guide may guide". He further states that he believes that the purpose of the Regulation is to provide regulatory measures for managing the use of classified waters, to preserve the quality of fishing opportunities. This includes preservation of a fair percentage of fishing opportunities for B.C. residents and First Nations people, as well as for visitors from other countries. He argues that setting out a seasonal distribution for the use of the Chilko River prevents overuse, allows for planning by angling guides, and assists with the collection of information to help in managing the river, all of which is consistent with the purpose of the legislation.

The Panel agrees that section 13(3)(a) of the Regulation provides a regional manager with the authority to distribute the quota across the months that angling is

permitted by Schedule A. It states that, when a regional manager issues a licence to a guide who has been allocated an angling guide quota for classified waters, the regional manager may attach conditions to the licence in respect of the classified waters that "limit the period of time" in which the angling guide may guide. In this case, the Panel finds that the Regional Manager could limit the periods of time in which Ms. McLean's quota days could be used between the dates June 11 and October 31.

The Board recently considered this issue in *Ron Thompson v. Regional Manager* (Appeal No. 99-WIL-17, February 21, 2000) (unreported). In that case, the Panel ordered that the conditions with respect to seasonal distribution be deleted from Mr. Thompson's AGOP for the Chilcotin River and the West Road River. However, that decision was based upon the regional manager's submissions that there was no legislation that specifically dealt with seasonal distribution. It was also based upon the regional manager's testimony that it would not be reasonable to rigidly enforce undertakings on seasonal distribution because of the variable conditions that may affect the conduct and effectiveness of angling efforts. The Board concluded that it was "unreasonable to include terms and conditions that are not expected to be complied with."

However, this Panel has found that there *is* authority for a regional manager to address seasonal distribution. The Panel finds that section 13(3)(a) is a tool that may be used to prevent overuse of classified waters, and to assist with the collection of information to help in fisheries management, all of which is consistent with the overall purpose of the legislation. That purpose is to manage the wildlife and to carry out programs to preserve, protect, and increase the health of the wildlife (see *Diversified Holdings Ltd. v. Her Majesty the Queen in right of the Province of British Columbia* [1983], 2 W.W.R. 289 (B.C.C.A.)).

While Ms. McLean, like Mr. Thompson, argued that seasonal distribution of angling days creates a hardship on her business, the Panel notes that the AGOP form provides an applicant with an opportunity for input in relation to the distribution. This reduces the potential for unfairness and allows the applicant to make plans for the season. The evidence before the Panel is that Ms. McLean filled in the applicable section of the AGOP, and that the Regional Manager reduced her proposed monthly allocations in accordance with the reduced quota days. Conversely, in *Thompson*, the Panel notes that part of the perceived unfairness was that Mr. Thompson had not filled in the "seasonal distribution box" on his AGOP; the regional manager added the distribution when he approved the licence.

If, however, a licensee is unable to comply with the approved distribution, the Regional Manager advises the Panel that the distribution set out in an AGOP may be adjusted, with his permission. He states that setting a seasonal distribution as part of an AGOP is intended to ensure that guides "stay within a reasoned variance of the indicated seasonal distributions." He says that throughout the season, he is willing to consider requests for variations in the seasonal distribution set out in an AGOP.

The Panel notes that the regional manager in *Thompson* also indicated a willingness to adjust the seasonal distributions approved in the AGOP to account for variations in weather and business conditions. The Panel trusts that such changes can be made in a relatively informal and expeditious fashion given that the consequences for failing to comply with an AGOP can be serious.

Thus, the Panel is satisfied that the Regional Manager can require that a seasonal distribution of angler days be part of an AGOP or an angling guide licence for classified waters, and that the seasonal distribution is a reasonable component of Ms. McLean's AGOP for the Chilko River.

3. Whether the Regional Manager may impose angler day quotas when approving an AGOP and an angling guide licence for unclassified waters.

Ms. McLean argues that, as a requirement for approval of her annual AGOP for unclassified waters, the Regional Manager had been assigning angler day quotas for waters which are not listed as "classified" in Schedule A of the Regulation, and that he has no mandate to do so. She says that she was told she would not receive a licence unless she provided the number of angler days she needed for unclassified waters. She requests that the angler day quota for unclassified waters be removed as a condition of her Licence.

In response, the Regional Manager submits that this is not a valid ground for appeal, as he has always approved the angler day quotas requested in Ms. McLean's AGOP's for unclassified waters. In addition, he submits that section 53(1)(b) of the *Act* provides for limitations on the number of guided angler days permitted "on a stream or lake or in an area of British Columbia", and that this includes unclassified waters.

The Regional Manager also argues that the Regulation authorizes him to collect useful information regarding fish stocks, numbers and types taken, and the condition of their habitat, etc., to assist in the management of the fisheries. He says that, at law, he is responsible and accountable for the conservation and management of fish and fish habitat in his region. He notes that streams and lakes in the Cariboo Region offer some of the best angling opportunities in the province, and are becoming known worldwide for the quality of fishing experiences they offer. He emphasizes that in order for this to continue, he must be able to consider the level of use proposed by commercial angling guides on unclassified and classified waters. Consequently, it is very important that information concerning the proposed number of angler days on unclassified waters be included in an annual AGOP, as part of a licence application which must be submitted in accordance with section 10 of the Regulation.

The Regional Manager emphasizes that AGOP's are an especially important source of information given the limited resources available to MELP for estimating angler effort. He states that, without such information on the proposed use of waters in his region, classified or not, he would not have the information to understand the impact of angling guide operations on the conservation of fish stocks, the quality of

fishing experiences, or wilderness aesthetics. Using this information, decisions can also be made about the amount of angling activity to permit in the future.

Although there are no provisions in the legislation which expressly address the licensing of guides on unclassified waters, it is implicit that a licence is required. For example, under section 49(1)(a) of the *Act*, it is an offence to act as an angling guide unless a person holds an angling guide licence. In addition, under section 49(5), it is an offence to act as an angling guide on waters other than those specified in the guide's licence. The Panel finds that these sections support a conclusion that a person cannot guide for fish on any waters, classified or unclassified, unless that person holds an angling guide licence for those waters.

The Panel accepts that the Regional Manager has broad discretion in approving licence applications under section 10 of the Regulation, and that it is important for the Regional Manager to collect information that may assist in the management of unclassified waters. If the application form for unclassified waters simply asked for an "estimate" of the number of angling guide days on those waters, and the Licence was clear that the days specified were just an estimate, there would be no issue.

However, unlike classified waters, there does not appear to be any authority for a regional manager to allocate angler day quotas for unclassified waters. The Panel disagrees with the Regional Manager's submission that section 53(1)(b) of the *Act* provides the requisite authority. Section 53(1)(b) is simply a regulation making power. The section states: "The Lieutenant Governor in Council, *by regulation*, may do one or more of the following: ... (b) limit the number of angler days ... a class of persons may be guided for fish on a stream or lake or in an area of British Columbia during a specified period" [emphasis added]. While the Lieutenant Governor in Council (Cabinet) has created sections in the Regulation to limit the number of angling days on *classified* waters (e.g., section 11) – there are no similar sections dealing with *unclassified* waters.

As neither the form nor Ms. McLean's Licence uses the word "estimate", and the final documents show a specific number of angler days beside each unclassified water, these days would arguably become an undertaking in the AGOP, enforceable under section 52(2) of the *Act*. The Panel finds that there is no legislative authority for requiring that this information become an enforceable part of an AGOP, or that quota days for unclassified waters form a term or condition of a licence. Therefore, the Panel finds that it is not reasonable for the Regional Manager to require that applications for angling guide licences on unclassified waters include a number of angler days, which then becomes part of the licence.

The Panel notes, however, that the Ministry is not without the appropriate tools to collect the information it needs to manage these waters. In addition to requesting an estimate of the days in an AGOP, there is also section 13(1)(b) of the Regulation. That section makes it a condition of an angling guide licence that the holder "report to the regional manager on or before the date specified in his licence", the number of angler days guided, and the species, number and location of fish caught by the persons guided. This section applies to the holder of *any* type of angling guide licence, which includes licences for unclassified waters. As a result,

this section requires holders of angling guide licences for unclassified waters to report essentially the same information that the Regional Manager has sought to collect via AGOP's for unclassified waters. However, the information is to be provided *after* the licence has been issued, rather than as a *pre-condition* to issuing the licence.

Consequently, the Panel finds that the specified angler guide days for unclassified waters in Ms. McLean's AGOP and Licence should be removed.

4. Whether the Regional Manager acted in bad faith toward Ms. McLean.

Ms. McLean submits that statements made by the Regional Manager in his May 28, 1999 decision were accusatory, showed bad faith, and were prejudicial to her. She asserts that she has found his attitude and manner toward her to be unprofessional and disrespectful. She submits that the Regional Manager should be required to write a letter of apology to her.

The Regional Manager submits that Ms. McLean's concerns revolve around statements in his decision that are factual. He says that he made these statements because Ms. McLean has repeatedly asked for an individual angler day quota that exceeds the total quota prescribed in the Regulation, and that, therefore, she shows a lack of professionalism and knowledge of the law.

The Regional Manager's May 28, 1999 decision states, in part, as follows:

I have examined your proposed classified waters angling use plan for the Chilko River. I cannot approve your request for 960 days. This proposal is a significant concern to me. You have, as a licenced angling guide, been determined to possess a working knowledge of the Wildlife Act and Regulations. Despite that, you have submitted a proposal that clearly exceeds (by 260 days) the limits... as set out in [the Regulation]. Further, your proposal does not respect the angler days allocated to other guides in this classified water. This does not seem like the actions of a prudent professional angling guide... and does not convey respect for management and conservation of fish resources and angling opportunity.

The Panel is aware that Ms. McLean and the Regional Manager share a history of disagreement over what Ms. McLean sees as an inadequate angler day quota. However, the Panel finds that Ms. McLean has provided insufficient evidence to conclude that the Regional Manager has exhibited bad faith or bias toward her. The Regional Manager's decision is based on the requirements of the Regulation and the *Act*. In any event, the Panel has no jurisdiction under section 101.1 of the *Act* to order that the Regional Manager write a letter of apology to Ms. McLean.

DECISION

The Panel has carefully considered all of the evidence presented to it during the hearing of this appeal, whether or not specifically reiterated here.

This Panel finds that the Regional Manager's May 28, 1999 decision was reasonable in the circumstances, with the exception of the angler day quota in Ms. McLean's AGOP for unclassified waters. The Panel further finds that the Regional Manager did not exhibit bad faith towards Ms. McLean. Therefore, the Panel orders that the conditions with respect to angler day quotas be removed from Ms. McLean's angling guide licence for unclassified waters.

However, the Panel notes that this remedy pertains to Ms. McLean's 1999/2000 angling guide licence, which expired on March 31, 2000, these remedies will have no practical effect in relation to the 1999/2000 season. Therefore, the Panel directs the Regional Manager to consider the Panel's decision if Ms. McLean applies for, or has applied for, an angling guide licences on unclassified waters for the upcoming season (2000/2001).

The appeal is dismissed, with the exception noted above.

Carol Quin, Panel Chair
Environmental Appeal Board

April 13, 2000