



Issue Date: April 27, 2023

Citation: *Ocean Fish and Seafood Inc. v. Canada (Environment and Climate Change)*, 2023 EPTC 5

EPTC Case No.: 0021-2022

Case Name: Ocean Fish and Seafood Inc. v. Canada (Environment and Climate Change)

Applicant: Ocean Fish and Seafood Inc.

Respondent: Minister of Environment and Climate Change Canada

Subject of proceeding: Review commenced under section 15 of the *Environmental Violations Administrative Penalties Act*, S.C. 2009, c. 14, s. 126 of an Administrative Monetary Penalty issued under section 10 of that Act for a violation of paragraph 6(2) of the *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*, S.C.1992, c. 52.

Heard: In writing

Appearances:

Parties

Ocean Fish and Seafood Inc.

Minister of Environment and
Climate Change Canada

Counsel/Representative

Peter Silver, Representative

Raphaëlle Jacques, Counsel

DECISION DELIVERED BY:

HEATHER GIBBS

Introduction

[1] Ocean Fish and Seafood Inc. (the Applicant) imported a shipment of 4500 pounds of frozen *Strombus gigas* (queen conch) from Haiti, which arrived via the Mediterranean Shipping Company (MSC) at the port of Montreal on October 14, 2021.

[2] Queen conch is a protected species, listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). A permit is required to import or export it under paragraph 6(2) of the [Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act](#), S.C.1992, c. 52 (WAPPRITA).

[3] The Applicant had an export permit, number 00000-801857686, which was valid until September 30, 2021. The permit expired two weeks prior to the shipment's arrival in Canada.

[4] The import was reported on arrival by a Canadian Border Services Agency (CBSA) officer, who forwarded the information to the Wildlife Enforcement Directorate of Environment and Climate Change Canada (ECCC). The shipment was ordered detained to allow for an ECCC inspection for compliance with WAPPRITA. The shipment was sent to a bonded warehouse.

[5] After inspecting the shipment on October 22, 2021, ECCC Wildlife Officer Emilie Roberge-Pelletier issued Notice of Violation (NOV) #9200-1053 to the Applicant for an administrative monetary penalty (AMP) of \$2,000 under the [Environmental Violations Administrative Monetary Penalties Regulations](#), SOR/2017- 109 (the EVAMP Regulations), made under the [Environmental Violations Administrative Monetary Penalties Act](#), S.C. 2009, c. 14, s. 126 (EVAMPA). The shipment was released the same day.

[6] The Applicant is seeking a review of the AMP on the basis that it had a valid CITES permit for the shipment at the time of departure, but due to the Covid-19 pandemic and through no fault of the Applicant, the shipment was delayed. In addition the Applicant argues that, although it could easily have obtained an extension to the permit from the port of departure in Haiti, a CBSA agent the Applicant's representative to believe that CITES permit requirements were being relaxed at the time due to the pandemic.

[7] For the reasons that follow, the Environmental Protection Tribunal of Canada (EPTC or Tribunal) finds that the Minister has established that the violation underlying the notice of violation was committed, and there was no error in the amount of the penalty. The notice of violation is therefore upheld.

Issues

[8] The issues are:

1. Whether the Applicant committed a violation of paragraph 6(2) of *WAPPRITA*, and
2. Whether the penalty amount is correct.

Discussion

Legislative Framework

[9] In her submissions, counsel for the Minister clearly lays out the applicable legislative framework. Given that the description of the legislative framework is not contested, and it assists in understanding the facts of this case, the Tribunal reproduces the relevant excerpt from the submissions:

Canada is a Party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which aims to ensure that the international trade in wild animal and plant species does not threaten the survival of these species.

Appendix II to CITES lists fauna and flora species which may become threatened unless trade is controlled. *Strombus gigas*, their parts and any derived products are included in Appendix II.

Pursuant to paragraph IV of CITES, “[t]he import of any specimen of a species included in Appendix II shall require the prior presentation of either an export permit or a re-export certificate.”

Permits and certificates regulating trade with States party to the Convention must be in accordance with the provisions of Article VI of CITES.

When trade involves States not party to CITES, pursuant to Article X, “comparable documentation issued by the competent authorities in that State which substantially conforms with the requirements of the present Convention for permits and certificates may be accepted in lieu thereof by any Party.”

Paragraph 5(g) of CITES Resolution Conf.12.3 (Rev CoP18) on Permits and certificates indicates that an export permit or re-export certificate shall be valid for a period of no more than 6 months from the date on which it was granted, and that it may not be accepted to authorize export, re-export or import except during the period of validity. Paragraph 5(h) reinforces this by also stating that after the expiry, the export permit or re-export certificate is considered void and of no legal value.

Paragraph VIII (1) of CITES commands Parties to take appropriate measures to enforce the provisions of the Convention and to prohibit trade in specimens in violation thereof. On this matter, paragraph 1 of CITES Resolution Conf. 11.3 (Rev CoP18) on Compliance and enforcement emphasizes on verifying the validity of CITES documents as per the required information set out in Resolution Conf. 12.3 (RevCoP18).

[10] Canada has incorporated its international obligations under CITES into Canadian law through *WAPPRIITA* and its regulations, the *Wild Animal and Plant Trade Regulations*, SOR/96-263 (*WAPTR*). *WAPPRIITA* and *WAPTR* seek to protect wild animals and plants, and to regulate their international and interprovincial trade.

[11] The three schedules to *WAPTR* list animal and plant species, including their parts and any derived products, whose trade to and from Canada is controlled. Schedule I includes animals listed as fauna and plants listed as flora in the three Appendices to CITES. *Strombus gigas* is listed in Schedule I to *WAPTR* as it is listed in Appendix II to CITES.

Minister's Argument

[12] The Minister argues that, in order to legally cross Canadian borders, *Strombus gigas* and their parts and derived products must be accompanied by a valid permit obtained from the competent authority in the country of export before import, and the permit must satisfy the requirements of CITES, including that the permit is valid on the date of import.

[13] The Minister argues that the responsibility for export permits or re-export certificates lies within the authorities of the exporting country, as well as the exporter. If there is concern with permits being lost, damaged or expiring before arrival in the destination country, the authorities of the exporting country can engage with the CITES authorities of the importing country to find a solution. ECCC is the designated Canadian Management Authority for the administration and enforcement of CITES in Canada. This solution must be negotiated prior to entry into the destination country.

[14] The Minister argues that on October 14, 2021, there were no special provisions allowing the extension of permits validity date in the context of Covid-19 for the purpose of CITES and *WAPPRIITA*.

[15] In the Minister's view, the Applicant's alleged belief that special provisions to extend permit validity dates were set out by CBSA during Covid-19 is not an acceptable defense due to paragraph 11(1) of *EVAMPA*. The Minister further argues that in any case, it is not relevant since ECCC is the Canadian Management Authority responsible for implementing CITES into Canada, not CBSA, and ECCC Wildlife Officers are designated to enforce *WAPPRIITA* and *WAPTR*, pursuant to paragraph 12(1) of the Act.

[16] The Minister points out that pursuant to section 22 of *WAPPRIITA*, a contravention of any provision of the Act or its regulations is an offence and the Wildlife Officer may proceed to enforcement either by indictment through the criminal regime, or alternatively via the administrative regime set up to promote compliance through *EVAMPA* and its regulations.

[17] The Minister argues that in this case, the Wildlife Officer had reasonable grounds to believe an infraction was committed and could therefore impose an AMP pursuant to section 7 of *EVAMPA*.

Applicant's Argument

[18] Peter Silver, Administrator for Ocean Fish and Seafood Inc., submits on behalf of the Applicant that there was no violation. While he recognizes that the CITES permit was two weeks out of date on entry, he argues that Ocean Fish and Seafood Inc. was not at fault. Rather, the MSC vessel was late picking up the cargo in Haiti, and further delayed due to a "covid blockage in Freeport, Bahamas". He also argues that the CBSA officers at the Port of Montreal accepted the CITES permit. He states that CBSA had "knowledge of this particular vessel having delivery problems" and had assured him no replacement was necessary for the CITES permit.

[19] The Applicant does not dispute the calculation of the AMP amount. However, Mr. Silver also outlined the additional expense incurred by the Applicant to get the shipment released from the bonded warehouse, which was located 40 km away.

Analysis and Findings

[20] As an administrative tribunal, the EPTC only has the powers that are given to it under statute. Under section 20 of *EVAMPA*, after receiving the relevant information and representations, the Tribunal must determine whether the Applicant committed the alleged violation and whether the penalty amount was calculated correctly. The burden of proof is on the Minister, who has to discharge it on a balance of probabilities.

[21] Section 20 of *EVAMPA* provides as follows:

Decision	Décision
20 (1) After giving the person, ship or vessel that requested the review and the Minister reasonable notice orally or in writing of a hearing and allowing a reasonable opportunity in the circumstances for the person, ship or vessel and the Minister to make oral representations, the review officer or panel	20 (1) Après avoir donné au demandeur et au ministre un préavis écrit ou oral suffisant de la tenue d'une audience et leur avoir accordé la possibilité de présenter oralement leurs observations, le réviseur ou le comité décide de la responsabilité du demandeur.

<p>conducting the review shall determine whether the person, ship or vessel committed a violation.</p> <p>Burden</p> <p>(2) The Minister has the burden of establishing, on a balance of probabilities, that the person, ship or vessel committed the violation.</p> <p>Correction of penalty</p> <p>(3) If the review officer or panel determines that the penalty for the violation was not determined in accordance with the regulations, the review officer or panel shall correct the amount of the penalty.</p>	<p>Fardeau de la preuve</p> <p>(2) Il appartient au ministre d'établir, selon la prépondérance des probabilités, que le demandeur a perpétré la violation.</p> <p>Correction du montant de la pénalité</p> <p>(3) Le réviseur ou le comité modifie le montant de la pénalité s'il estime qu'il n'a pas été établi conformément aux règlements.</p>
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[22] As pointed out by the Minister in this case, this Tribunal has consistently found that it does not have the power to review the enforcement officer's discretion in deciding to issue an AMP (see for example [Hoang v. Canada \(Environment and Climate Change\)](#), 2019 EPTC 2 and [Sirois v. Canada \(Environment and Climate Change\)](#), 2023 EPTC 6). I agree with this analysis. The Tribunal is limited to considering whether the Minister has established a violation of the Act or Regulation, and whether the AMP amount is correct.

Did the Minister establish that a violation was committed?

[23] Paragraph 6(2) of *WAPPRIITA* provides that it is an offence to import or export listed plants or animals without a permit, subject to the regulations:

<p>Importation and exportation</p> <p>6 (2) Subject to the regulations, no person shall, except under and in accordance with a permit issued pursuant to subsection 10(1), import into Canada or export from Canada any animal or plant, or any part or derivative of an animal or plant.</p>	<p>Importation et exportation</p> <p>6 (2) Sous réserve des règlements, il est interdit d'importer au Canada ou d'exporter hors du Canada, sans licence ou contrairement à celle-ci, tout ou partie d'un animal, d'un végétal ou d'un produit qui en provient.</p>
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[24] Paragraph 6(1) of the regulations provides a permit exemption where the person obtained an equivalent written authorization from the country of export, also referred to as a "CITES" permit:

<p>6 (1) A person who imports into Canada an animal or plant that is listed as “fauna” or “flora” in Appendix II to the Convention but is not listed in Schedule II, or any part or derivative of any such animal or plant, is exempted from holding a permit issued under subsection 10(1) of the Act where the person has obtained, before import, a permit, certificate or written authorization that satisfies the requirements of the Convention and is granted by a competent authority in the country of export.</p>	<p>6 (1) Quiconque importe au Canada tout ou partie d'un animal ou d'un végétal qui est mentionné sous les rubriques « fauna » ou « flora » de l'annexe II de la Convention, mais qui n'est pas mentionné à l'annexe II du présent règlement, ou tout ou partie d'un produit qui en provient, est dispensé d'avoir la licence visée au paragraphe 10(1) de la Loi s'il a obtenu, avant l'importation, un permis, un certificat ou une autorisation écrite qui satisfait aux exigences de la Convention et qui est délivré par une autorité compétente dans le pays d'exportation.</p>
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[25] Both parties acknowledge that export permit 00000-801857686 was 2 weeks out of date at the time the shipment of frozen queen conch arrived in Canada. The permit expired on September 30, 2021, and the shipment arrived at the port of Montreal on October 14, 2021. On its face, the permit was not valid at the time of entry and this is a violation of paragraph 6(2) of *WAPPRITA* by importing into Canada, in the absence of a valid permit, an animal, or any part or derivative of an animal, for which trade is regulated.

[26] Section 11 of *EVAMPA* establishes an absolute liability regime which excludes the defences of due diligence and errors of fact.

[27] Section 11 provides as follows:

<p>Certain defences not available</p> <p>11 (1) A person, ship or vessel named in a notice of violation does not have a defence by reason that the person or, in the case of a ship or vessel, its owner, operator, master or chief engineer</p> <p>(a) exercised due diligence to prevent the violation; or</p> <p>(b) reasonably and honestly believed in the existence of facts that, if true, would exonerate the person, ship or vessel.</p>	<p>Exclusion de certains moyens de défense</p> <p>11 (1) L'auteur présumé de la violation — dans le cas d'un navire ou d'un bâtiment, son propriétaire, son exploitant, son capitaine ou son mécanicien en chef — ne peut invoquer en défense le fait qu'il a pris les mesures nécessaires pour empêcher la violation ou qu'il croyait raisonnablement et en toute honnêteté à l'existence de faits qui, avérés, l'exonéreraient.</p>
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[28] ECCC is the enforcement agency dealing with the importation of animals listed under *WAPPRIITA* and related CITES permits. While the Applicant argues that CBSA officers appeared ready to waive the permit requirements, it was ECCC Enforcement Officers who had the jurisdiction to inspect such shipments and decide on enforcement action. The evidence before the Tribunal is that there were no special provisions allowing the extension of permits validity date in the context of Covid-19 for the purpose of CITES and *WAPPRIITA*.

[29] Given that the permit was out of date when the shipment arrived in Montreal, it was no longer valid on October 14, 2021. The Tribunal therefore finds that the Minister has established a violation.

Was the penalty amount correct?

[30] Although the Applicant does not dispute the penalty amount imposed, the Tribunal still has the burden of verifying that the amount is correct.

[31] In this case, the relevant provision is paragraph 4(1) of the *EVAMP Regulations*:

<p>4 (1) The amount of the penalty for each Type A, B or C violation is to be determined by the formula</p> <p>W + X + Y + Z</p> <p>where</p> <p>W is the baseline penalty amount determined under section 5;</p> <p>X is the history of non-compliance amount, if any, as determined under section 6;</p> <p>Y is the environmental harm amount, if any, as determined under section 7; and</p> <p>Z is the economic gain amount, if any, as determined under section 8.</p>	<p>4 (1) Le montant de la pénalité applicable à une violation de type A, B, ou C est calculé selon la formule suivante :</p> <p>W + X + Y + Z</p> <p>où :</p> <p>W représente le montant de la pénalité de base prévu à l'article 5;</p> <p>X le cas échéant, le montant pour antécédents prévu à l'article 6;</p> <p>Y le cas échéant, le montant pour dommages environnementaux prévu à l'article 7;</p> <p>Z le cas échéant, le montant pour avantage économique prévu à l'article 8.</p>
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[32] Schedule 1 (Part 3, division 1) to *EVAMP Regulations* establishes that a violation of paragraph 6(2) of *WAPPRIITA* is of Type B which, according to Schedule 4, has a baseline penalty amount of \$2,000.00 when committed by entities, other than individuals.

[33] Wildlife Officer Roberge-Pelletier issued an AMP of \$2,000.00, which represents the baseline amount for a violation of paragraph 6(2) of *WAPPRITA* committed by an entity other than an individual according to Schedule 4 to *EVAMP Regulations*.

[34] The Tribunal finds the penalty amount was calculated in accordance with the formula to paragraph 4(1) *EVAMP Regulations*. Given that the Applicant is a corporation which contravened paragraph 6(2), the baseline amount of \$2000 is correct.

Conclusion

[35] The Applicant imported *Strombus gigas* into Canada without a valid permit at the time of entry, in contravention of paragraph 6(2) of *WAPPRITA*. The penalty amount was calculated correctly.

Decision

[36] The request for review is dismissed. Notice of Violation no. 9200-1053 is therefore upheld.

Review Dismissed

"Heather Gibbs"

HEATHER GIBBS
CHIEF REVIEW OFFICER