



# 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

Website: [www.eab.gov.bc.ca](http://www.eab.gov.bc.ca)  
E-mail: [eabinfo@gov.bc.ca](mailto:eabinfo@gov.bc.ca)

## DECISION NO. 2013-WIL-021(a)

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

**BETWEEN:** Wilfred Boardman **APPELLANT**

**AND:** Regional Manager (Kootenay Boundary Region) **RESPONDENT**

**AND:** British Columbia Wildlife Federation **PARTICIPANT**

**BEFORE:** A Panel of the Environmental Appeal Board  
Alan Andison, Panel Chair

**DATE:** Conducted by way of written submissions  
concluding on August 19, 2013

**APPEARING:** For the Appellant: Vince Cocciolo  
For the Respondent: Joseph G. McBride, Counsel  
For the Participant: Wilf Pfleiderer

## APPEAL

[1] An appeal was filed by Wilfred (Wilf) Boardman, a licensed guide outfitter in the Kootenay Boundary Region (Region 4) of British Columbia. His guiding territory is within Management Unit 4-05. Management Unit 4-05 is located south of Cranbrook, British Columbia.

[2] Each year, guide outfitters apply to the regional manager of the Recreational Fisheries and Wildlife Program, Ministry of Forests, Lands and Natural Resource Operations (the "Ministry"), to renew their guide outfitter licence and request a hunting quota for specific animal species. The species at issue in this case are bull moose and mountain goat.

[3] In a decision dated January 24, 2013, Paul Rasmussen, Regional Manager, Kootenay Boundary Region (the "Regional Manager"), advised the Appellant of his quotas for the 2013-2014 licence year and his 2012-2016 allocations (target harvest) for guide territory 405G001, as follows:

GUIDE TERRITORY	SPECIES	2012-2016 ALLOCATION	2013-2014 QUOTA
405G001	Bull moose	9	3
	Mountain goat	1	1

[4] The Appellant appealed this decision to the Board.

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

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

[6] The Appellant seeks an order from the Board increasing his quotas and allocations in accordance with the Ministry's policies and procedures. In the alternative, he asks the Board to send the matter back to the Regional Manager with directions to properly follow the Ministry's policies and procedures, and to increase his allocations and quotas accordingly.

[7] This appeal is one of 28 appeals filed by guide outfitters in three different regions against their 2013-2014 quotas and five-year allocations. The appeals were all conducted by way of written submissions, and are the subject of separate decisions. However, the Panel notes that the issues and arguments in each of the appeals have many similarities. For each of the appeals, some of the submissions from the parties are identical. In those appeals where there are similarities, the Panel has adopted some of the findings and language that has been used by this Panel in the reasons given in those other appeals. For example, see *Findlay v. Deputy Regional Manager, Recreational Fisheries and Wildlife Program (Thompson/Okanagan Region)*, (Decision No. 2013-WIL-033(a), April 24, 2014). In spite of any similarities, each appeal is and has been adjudicated on its own merits.

## **BACKGROUND**

### **Guide outfitters - general**

[8] Guide outfitting has a long history in the Province. As stated in the *Findlay* case referenced above, local hunters started guiding services in or around the late 1800s in order to meet the demand for quality big game hunts. Guiding licences were first issued in 1913 and guiding territories were established in the 1940s. In 1961, legislation provided guides with exclusive rights to guide hunters that live outside of BC (non-resident hunters) within his or her guiding territory.

[9] Although a guide's clients are typically non-residents, residents may also hire a guide outfitter. [A guided resident hunter's harvest does not count against the guide's quota if the resident holds a limited entry hunting authorization for the species harvested, or if it is during a general open season: Quota procedure.]

[10] According to a December 10, 2012 Information Bulletin issued by the Ministry, there are approximately 245 licensed guide outfitters in the Province, employing over 2,000 people, and providing services to roughly 5,000 non-residents hunting in the Province each year. There is no dispute that this industry is a source of revenue for the government and for rural communities. In addition,

for many guide outfitters the guide outfitting business is their primary source of income.

### The legislative context: guide outfitting in BC

[11] According to section 2(1) of the *Wildlife Act*, ownership of all wildlife in the Province is vested in the government. As the owner of wildlife, the government is responsible for the management and protection of the Province's wildlife resource (*Ministry of Environment Act*, R.S.B.C. 1996, c. 299).

[12] Under section 47 of the *Wildlife Act*, it is illegal for a non-resident of BC to hunt big game in the Province without a licensed guide outfitter. Section 47 states:

- 47** A person commits an offence if the person hunts big game unless he or she
- (a) is a resident, or
  - (b) is accompanied by
    - (i) a guide licensed under this Act, ...

[Emphasis added]

[13] Guide outfitter licences are issued by regional managers under section 51 of the *Wildlife Act*, as follows:

- 51** (1) A regional manager
- (a) may issue a guide outfitter licence to a person if all of the following apply:
    - (i) the person is a citizen of Canada or a permanent resident of Canada;
    - (ii) the person has public liability insurance prescribed by regulation;
    - (iii) the person has other qualifications prescribed by regulation, and
  - (b) ...
- (2) A guide outfitter licence authorizes the holder to guide persons to hunt only for those species of game and in the area described in the licence.

...

[Emphasis added]

[14] According to section 60 of the *Wildlife Act*, regional managers may attach a quota as a condition of the licence. Section 60 states:

### Quotas

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

...

[15] Under section 1, "quota" is defined as:

- (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 the 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.

[16] Regional managers exercise their discretion to attach a quota within a "sustainable use" framework. The framework is established by, and described in, various Ministry documents, including wildlife management objectives and Ministry policies. For the purposes of this background, the sustainable use framework takes into account the population estimates for a particular species and the hunter groups that seek an opportunity to hunt that species in the Province. The hunter groups referred to most often in this appeal are resident hunters and guided hunters. Guided hunters are typically non-residents and are generally referred to as "non-resident hunters" in this decision.

[17] The way that the Ministry splits or allocates the harvest between these two groups has been the subject of controversy over the years, and has recently changed.

### **The division (split) of hunting opportunities between guide outfitters (non-resident hunters) and resident hunters**

[18] In BC, the management of hunting is based, in large part, on the size and health of a species' population. For species with healthy populations in a particular area there are "general open seasons". With a general open season, there may be annual limits on the number of animals that a hunter may kill, but there is no limit on the number of hunters that can hunt, or the number of clients that a guide can take hunting.

[19] For other species, there are insufficient animals to allow a general open season. This may be due to low productivity (mountain goats, grizzly bears), high demand (moose) or because a class of animal is critical to the productivity of a herd (female elk). For these species, deciding how many animals can be harvested by resident and non-resident hunters, without jeopardizing population sustainability, requires a careful consideration of different factors. The factors to be considered, and the way that the resident/non-resident split is determined, is established by Ministry policies and procedures. Once the split is determined, the number of these animals that will be available to resident hunters is generally set out in legislation; the number of animals available to non-resident hunters is set out in a guide outfitter's quota. Ministry policies and procedures describe the relevant objectives, considerations and procedures to be used by regional managers when issuing quotas to guide outfitters.

[20] Prior to 2007, the Ministry's policies and procedures gave regional managers significant discretion to make quota and allocation decisions based on the factors and information that he or she considered relevant and significant. While this resulted in decisions that, some may argue, best reflected the local situation, it also

resulted in the inconsistent application of principles across the Province, and inconsistent results. This was a source of concern and frustration for guides and resident hunters alike.

[21] In 2007, after years of consultations with various stakeholders, including the Guide Outfitters Association of British Columbia (representing the interests of guide outfitters), and the BC Wildlife Federation (representing the interests of resident hunters) (the "BCWF"), the Ministry adopted a new "harvest allocation policy". This new policy is, in fact, a collection or "suite" of policies and procedures. The policies and procedures were approved by the Ministry's Director of Fish and Wildlife (the "Director") and the Assistant Deputy Minister. The main policies and procedures relevant to this appeal are as follows:

**Wildlife Policies**

**Volume 4, section 7**

- 01.03 - Harvest Allocation
- 01.07 - Game Harvest Management
- 01.10 – Resident Hunter Priority
- 01.11 - Commercial Hunting Interests
- 01.13 – Under-Harvest of Allocated Shares

**Wildlife Procedures**

**Volume 4, section 7**

- 01.03.1 - Harvest Allocation
- 01.05.1 - Quota
- 01.05.2 - Administrative Guidelines

[22] One of the stated objectives of these policies and procedures is to "guide provincial decision makers in determining the split [the percentage of the big game species that will be allocated to each group] between ... residents and non-residents."<sup>1</sup> The Regional Manager explains the split as follows in his submission to the Board:

24. ... The government has planned that the harvest outside guiding areas will go fully to residents and that the harvest within guiding areas will be split in shares set by the government.

[23] The new harvest allocation policies and procedures are clear that resident hunters will have "priority" in the harvest of big game species. However, the Ministry also states that, while resident hunters have higher priority than non-resident hunters, "this does not imply that resident demand must be fully satisfied before non-residents can be granted harvest opportunities. Instead, it means that the share that goes to residents is considerably greater than the share that goes to non-residents."<sup>2</sup> For instance, under the Harvest Allocation procedure, category A

---

<sup>1</sup> December 10, 2012, Ministry "Backgrounder" on harvest allocation.

<sup>2</sup> Ibid, page 1.

species (i.e., big game species for which guided hunters' harvest is limited by quota in any portion of a region), the Director is to begin with an initial split of 75/25; that is, 75% of the allowable harvest of the species to resident hunters, and 25% to guided hunters, in each region. Under the Harvest Allocation procedure, the Director may alter this initial 75/25 split in the region according to the relative importance of that species to each hunter group in the region, among other things.

[24] One of the goals of the new policies and procedures is to provide a consistent method of determining allocations that is transparent, practical, and measurable. The new policies and procedures attempt to standardize the allocation procedures by taking out regional variations, such as the use of success factors.<sup>3</sup>

[25] The allocation or split between resident and non-resident hunters applies for five-year periods (allocation periods), after which they are to be recalculated based on the previous five years of data.

[26] Once the Director sets the resident/non-resident hunter split for each region, regional managers apply that ratio when determining a guide's quota.

### Setting quota

[27] Some of the Ministry's policies and procedures also address the calculation of annual quotas and the application of administrative guidelines by regional managers. Quota decisions involve different considerations than those outlined in determining the resident/non-resident split or share of the harvest. The quota decision-making process is based upon an assessment of the number of animals available for a sustainable harvest over an allocation period.

[28] Wildlife harvest opportunities are managed according to four priorities.<sup>4</sup> The first priority is conservation. If the viability of a population is at risk, the Ministry will reduce or suspend harvest opportunities.

[29] If the government determines that there are animals available for a sustainable harvest over an allocation period, there is first a deduction to satisfy First Nations' needs (the second priority). The remainder is allocated to the third and fourth priorities (resident and non-resident hunters) according to the split determined by the Director.

[30] To implement the allocation to residents, the government creates an "opportunity" for harvest. For higher value species, it is typically created by a Limited Entry Hunt ("L.E.H."). A L.E.H. is created under section 16 of the *Wildlife Act* and allows the minister, by regulation, to "limit hunting for a species of wildlife in an area of British Columbia". It may also be created through the regulation-making powers given to the Lieutenant Governor in Council under section 108 of the *Act*. In general, a L.E.H. is created in an area when the government determines that it is necessary to limit the number of hunters, limit the number of

---

<sup>3</sup> Some regional managers provided higher allocations to guides based on how successful the guide was historically, or on how successful the guides were in a region. It was used to account for the less than 100% harvest success rate of all guided hunters within a region, and was intended to allow guides to achieve their allocated harvest.

<sup>4</sup> Ministry Backgrounder, *supra* note 1.

animals that may be taken, or limit the harvest to a certain "class" of animals. It can be created anywhere in the Province. When species and maps for a L.E.H. are created by regulation, the Ministry accepts applications for this hunt by BC residents. L.E.H. authorizations are currently issued under section 16 of the *Wildlife Act* by means of a lottery.

[31] After subtracting the estimated number of animals that will be killed pursuant to L.E.H.s, the remainder are assigned to guides by the issuance of quota, based on further policies and procedures.

[32] As part of the quota assignment, regional managers also advise the guides of their five-year harvest allocation (target harvest) that is the maximum number of animals each guide's clients may take over that period.

[33] A guide's quota may be subject to an administrative guideline. Administrative guidelines allow a guide outfitter to exceed the annual quota by a set number, but that number then counts against the total five-year allocation. The guidelines reflect the Ministry's recognition that the clients of guides rarely have a 100% harvest success rate. They provide guide outfitters with some flexibility in the number of animals harvested in a year, and are intended to be used by the guides for harvest planning purposes.

### **Implementation of the new policies and procedures**

[34] When the Ministry adopted the new policies and procedures, it understood that many guide outfitters' quotas and five-year allocations would be negatively impacted. To minimize the impact, the government adopted a transitional approach. In the 2007-2011 allocation period, the policies and procedures were implemented in a "piecemeal" fashion. The 2012-2016 allocation period was the first time that the harvests for all applicable species, in every region, were set in the context of the new policies and procedures; i.e., "full implementation".

### **The Decision**

[35] In the decision dated January 24, 2013, the Regional Manager advised the Appellant of his five-year allocations and annual quotas for bull moose and mountain goat. The standard information in the Regional Manager's letter to the Appellant is as follows:

I write to advise you of your quotas for the licence year 2013/14 and your allocations for the 2012-2016 allocation period.

An allocation is a target harvest of a species over a period of years that normally informs annual setting of quota. An allocation may change over the course of an allocation period, e.g. because of changes in population estimates or permissible harvest rates.

...

Quota need not be the same as in the previous licence year, but often is. Quota in any licence year is firm (subject to appeal) once I have set it.

I derived your quota for this year by applying an administrative guideline. That quota reflects a permissible harvest rate that will very likely be unsustainable over the allocation period. The benefit to you of having a higher than sustainable quota in any given year is flexibility around when you harvest animals.

My goal is for you to come as close as possible to taking your entire allocation. That goal will be achieved by the annual setting of quota, keeping in mind your harvest to date in the allocation period. Note that if you fully harvest the quota set here, I may need to set your quota lower for later years in the allocation period, so that the [five-year] allocation will not be exceeded. You should keep that in mind when choosing how many animals to harvest this year.

...

[36] The Regional Manager also attached a two-page appendix to the decision explaining how the quotas were calculated for the year (the "Appendix"). The Appendix sets out how administrative guidelines were used in 2013 for all species, how bighorn sheep, grizzly bear, mountain goat and moose allocations were calculated, and how the new calculations differ from the 2007-2011 allocation period calculations.

[37] In his decision letter, the Regional Manager set out the Appellant's five-year allocations and annual quotas for each requested animal, and gave a brief explanation for why the allocation differs from previous allocation period. As shown earlier in this decision, the Regional Manager issued the following five-year allocations and quotas:

<i><b>Species</b></i>	<i><b>5-year allocation</b></i>	<i><b>2013-14 quota</b></i>
Bull moose	9	3
Mountain goat	1	1

[38] For both species, the Regional Manager explains that the Appellant's allocations differ from his previous allocations (2007-2011) because the Ministry's policies and procedures are being fully implemented.

### **The Appeal**

[39] By Notice of Appeal dated February 22, 2013, the Appellant appealed the quotas and five-year allocations issued by the Regional Manager. The Appellant's grounds for appeal are summarized as follows. The Appellant submits that the Regional Manager's decisions are unfair and unreasonable because he:

- failed to follow and apply the harvest allocation policies and procedures of the Ministry, including the Harvest Allocation policy and procedure, the Quota policy and procedure, the Commercial Hunting Interests policy, the Administrative Guidelines procedure, as well as the Limited Entry Hunting Procedure 4-7-01.06.1;



- failed to follow and apply the policies and procedures to correctly determine the Appellant's allocations;
- failed to follow and apply the policies and procedures to correctly determine the Appellant's quotas; and
- failed to take into consideration appropriate factors, including the policies and procedures, and therefore failed to reach a reasonable and supportable decision.

[40] The Appellant also submits that, in its policies and procedures, the Ministry committed to supporting the viability of the guide outfitting industry and to providing guide outfitters with a predictable, fair share of the allocation of species in their guide territory areas. He states that the determination of his five-year allocation and quota has not been made in accordance with these commitments and principles, and that the decision, as it stands, will cause significant financial and economic hardship to his guide outfitting business now, and in the future.

[41] After the Appellant filed his appeal, the BCWF applied for participant status in the appeal on the grounds that the appeal could directly impact resident hunters by altering wildlife allocations, and by potentially reducing resident hunting opportunities. The BCWF represents the interests of resident hunters in BC.

[42] In addition, the BCWF submits that the appeal will directly impact the new harvest allocation policies.

[43] By letter dated May 3, 2013, the Board granted the BCWF limited participant status in this appeal. The BCWF was granted the opportunity to make a brief submission limited to addressing the potential impact of the appeal on the 2007 policies and procedures, and the resident hunters' share of the harvest in this region.

[44] In the same letter, the Board also advised that, subject to any objections, it was of the view that the hearing could be conducted by way of written submissions, with the first submissions due by the Appellant on June 5, 2013. Based on the grounds for appeal raised by the Appellant, the Board determined that credibility of witnesses would not be a significant factor; instead, the grounds for appeal focus on the Regional Manager's application of the harvest allocation policies and procedures.

[45] By letter dated May 29, 2013, the Board extended the written submission deadlines. The Appellant's submissions were due on July 15, 2013. The BCWF's submissions were due on July 29th and the Regional Managers were due on August 12, 2013. The Appellant then had an opportunity to provide reply submissions to the BCWF and the Regional Manager by August 19, 2013. No submissions were received from the Appellant in support of his appeals: the Board only has the Appellant's Notice of Appeal on file.

[46] Despite the absence of any submissions in support of the appeals, both the BCWF and the Regional Manager provided detailed submissions. The Regional Manager also submitted documents in support of his decisions.

## ISSUES

1. Whether the Regional Manager's decision is unfair and unreasonable in the circumstances? Should the Appellant's five-year allocations and 2013-2014 quotas be increased?

## DISCUSSION AND ANALYSIS

1. **Whether the Regional Manager's decision is unfair and unreasonable in the circumstances? Should the Appellant's five-year allocations and 2013-2014 quotas be increased?**

### *Appellant's submissions*

[47] As stated earlier, the Appellant did not make any submissions in support of his appeal. The Appellant's Notice of Appeal only identifies his grounds for appeal (the alleged errors in the decision-making process) and the remedies sought. The Appellant identified the seven policies and procedures that he alleges were not followed by the Regional Manager. Some of these policies and procedures are lengthy, containing numerous factors to be considered. Except for his ground for appeal stating why he believes the Commercial Hunting Interests Policy was not followed, the rest of his claims are vague. The Appellant does not explain which particular aspects of the other policies and procedures were not followed, or how the policies and procedures should be interpreted and applied to his guide territory and the animals that he wants to harvest.

### *Regional Manager's submissions*

[48] Despite the lack of information provided by the Appellant, the Regional Manager provided full submissions on his decision-making process. He explained how the policies and procedures were applied, and described his approach to calculating the 2012-2016 allocations and the 2013-14 quotas for the guide outfitters in the Kootenay Region. That process was as follows:

**Step 1:** Calculate the 2012-16 allocation under full implementation of the harvest allocation policy.

- a. Determine the **2013 population estimate** for each species/class (e.g. bull moose) within each guide outfitter territory. These estimates are based on inventory data, anecdotal information, hunter success rates, etc.
- b. Apply a **harvest rate** for each species in each guide outfitter territory. These are typically based on provincial harvest procedures and align with the harvest rates used to determine Annual Allowable Harvest for resident hunters. Variations to these rates may be applied based on local population trends or management objectives. For example, the harvest rate may be reduced to recover a particular population, or if a population is shared with another jurisdiction.

- c. Calculate the **Annual Allowable Harvest** (AAH) for each territory. This is the harvest rate multiplied by the population estimate.
- d. Determine the **guide share** within each territory. This was set by headquarters staff using the allocation calculator.
- e. Calculate the **annual guide AAH**, which is the portion of the AAH within the guide territory that should be available to the guide to harvest each year over the 5-year allocation period. This is calculated by multiplying the guide share by the AAH in the territory.
- f. Calculate the **2012-16 allocation under full implementation** of the harvest allocation policy. This is the annual guide AAH multiplied by 5 to derive the 5-year allocation.

**Step 2:** Adjust the 2012-16 allocation to ensure guides are not “substantially impacted”. In accordance with the December 14, 2012 letter sent to guide outfitters from the director of wildlife, guides are “substantially impacted” if their 2012-16 allocation is more than 30% down from their 2007-11 harvest. However, this 30% decrease must exclude any changes in allocation not attributable to the allocation policy (e.g., changes in population size or harvest rate, and hence changes in AAH).<sup>5</sup>

- a. Determine the guide’s **2007-11 harvest** in each guide outfitter territory, using guide declaration and compulsory inspection data.
- b. Determine the number of **years** that the territory was active in the 2007-11 allocation period. If a territory was inactive for one or more years, the number of active years was reduced accordingly.
- c. Calculate the corrected **2007-11 harvest for 5 years** by dividing the number of years by the 2007-11 harvest, and multiplying by 5.
- d. Determine the **2007 AAH in territories**, which is the AAH within the territory from the last allocation period.
- e. Calculate the **change in allocation between 2007 and 2012**. This is the 2012 AAH minus the 2007 AAH, divided by the 2007 AAH, to determine percent change.
- f. Determine the **component of harvest not attributable to a drop in AAH**. If the AAH increased between 2007 and 2012, the 2007-11 harvest was used. If the AAH declined between 2007 and 2012, the 2007-11 harvest was decreased by this amount. For example, if the 2007-11 harvest was 10, and the AAH between 2007 and 2012 declined by 50%, the component of

---

<sup>5</sup> The Director’s letter actually uses the words “substantively impacted” not “substantially impacted”.

harvest not attributable to a drop in AAH would be 5 (50% of 10). This is the 2007-11 harvest that must be compared to the 2012-16 allocation to determine whether guides are “substantially impacted”, in order to exclude changes attributable to a decline in AAH.

- g. Calculate the **30% hardship** impact by multiplying the corrected 2007-11 harvest (i.e., the component of harvest not attributable to a drop in AAH) by 70%. This represents the minimum allocation that should be assigned to each guide outfitter to ensure they are not “substantially impacted”.
- h. Determine whether the **30% hardship should be considered** when setting each guide outfitter allocation for 2012-16. If the 30% hardship impact was greater than the allocation under full implementation, the Regional Manager considered increasing the 2012-16 allocation to ensure guides were not “substantially impacted”.
- i. Establish the **2012-16 allocation considering hardship**. This represents the 2012-16 allocation as stated in quota letters. If there was no hardship consideration, then this is simply the 2012-16 allocation under full implementation. However, if there was hardship consideration, then this is typically the 30% hardship value. If there were no conservation concerns for moose, sheep and goats, the Regional Manager generally rounded the hardship value up (e.g., 6.09 bumped up to 7). However if some of the 2012 harvest did not count towards the guide's allocation (see below), then the true rounded value was used (e.g., 6.09 rounded to 6). The true rounded value was also generally used for grizzly bears because of higher conservation concerns, but not always.

**Step 3:** Determine the 2013 quota based on 2012-16 allocation.

- a. Determine the **2012 harvest** from guide declaration data and regional Compulsory Inspection data.
- b. Calculate **1/5th of 2012-16 allocation**. This is simply the 2012-16 allocation considering hardship divided by 5.
- c. Determine the **corrected 2012 harvest**. According to the Director's December 14, 2012 letter sent to guide outfitters, the portion of a guide's 2012 harvest that was greater than 1/5th of the new 2012-16 allocation should not count against the allocation available for 2013-16. For example, if a guide's new allocation is 10 moose over 5 years, a maximum of 2 moose ( $10 \div 5$ ) should count against the remaining allocation. If the guide harvested 3 moose in 2012, only 2 of these animals would count against the remaining allocation. Therefore, the minimum of either the 2012 harvest or 1/5th of the 2012-16 allocation was generally used for the corrected 2012 harvest.

However, if there were potential conservation concerns or substantial impacts on resident hunting opportunity, the Regional Manager chose not to correct the 2012 harvest for sheep or grizzly bears. The corrected harvest was always applied for moose and goats.

- d. Indicate whether the **corrected harvest applies**. In this column, "Yes" indicates that a corrected harvest was applied in calculating remaining allocation. Blank cells indicate that the actual 2012 harvest was used.
- e. Determine **remaining allocation** for 2013-16. This is simply the 2012-16 allocation considering hardship minus the corrected 2012 harvest.
- f. Calculate the **2013 quota**.

For moose, 2013 quotas were calculated in accordance with the Ministry's response to the Trumpy report: guides allocated 3 or fewer moose over 5 years received their full allocation in 2013; guides allocated 4 or 5 moose received a quota of 3 in 2013 (less any moose harvested in 2012).<sup>6</sup>

For goats and sheep, 2013 quotas were calculated using region-specific administrative guidelines (0.41 for sheep and 0.31 for goats – ...).

For grizzly bears, 2013 quotas were calculated using an administrative guideline of 0.3 since higher guide success is anticipated with a longer season in 2013. Similar conservative measures were used to establish Limited Entry Hunt permits for grizzly bears in 2013, since resident hunter success will likely increase as well.

**Step 4:** Consider other tools to reduce the impact of the allocation policy on guide outfitters.

- a. The Regional Manager considered applying the **Quota Variance Principle** (QVP) for each species and each guide outfitter territory in the region. This principle allows for variance from established quota procedures to meet exceptional conditions (e.g., guiding in remote or inaccessible areas), and must not impact resident hunter priority. Moose, grizzly bears and sheep have high resident hunter demand and were generally not considered for QVP in the Kootenay Region. However goat Limited Entry Hunt permits are undersubscribed by resident hunters in some inaccessible areas. These areas were considered for QVP application.

---

<sup>6</sup> The "Trumpy report" is a March 31, 2011 "Harvest Allocation Policy Review" by Chris Trumpy. Mr. Trumpy assessed the effects of the 2007 harvest allocation policies and procedures on the operation and viability of the guide outfitting industry and made recommendations to government. The Ministry responded to Mr. Trumpy's recommendations on December 5, 2011.

- b. In future years, the flexible quota system will also be considered when calculating quotas. This allows an increase in quotas later in the allocation period to allow guides to more fully harvest their 5-year allocation.

[Emphasis in original]

[49] In separate submissions, the Regional Manager explained how he applied these policies and steps to determine the Appellant's five-year allocations and quotas for each animal. He set out the population estimates that he used for each animal, identified the specific harvest rates and the non-resident split (share) of the harvest for each animal as determined by the Director, and described any additional factors, policies and administrative guidelines that he applied to calculate the Appellant's five-year allocations and quotas for each animal.

[50] In relation to mountain goats, the Regional Manager reduced the applicable harvest rate from 3% down to 2% "because this is a small peripheral population [20 goats in the licensed area] in poor habitat. The mountain goat management plan recommends lower harvest rates in this situation. The goat quota for this area was 0 before 2008."

#### *BCWF's submissions*

[51] The BCWF made detailed submissions on the new policies and procedures and the importance of upholding them.

#### ***The Panel's Findings***

[52] In an appeal to the Board, an appellant has the ultimate burden of proving his or her case on a balance of probabilities; that is, an appellant has the burden of establishing that it is more probable than not that his or her claim is true. Unless the issue in the appeal is a pure question of law, an appellant will need to provide evidence to meet this burden.

[53] In order to satisfy the burden of proof, this Panel agrees with the reasoning of a different panel of the Board in the case of *Avren et al. v. Regional Water Manager*, [2007] B.C.E.A. No. 9 (Q.L.), where, in the context of a no evidence motion, the panel stated at page 10 that:

... the Appellants bear the burden of evidence in an appeal. It is not open to an appellant to simply state its objection to an order, sit down and require the respondent to justify the order as though no order had ever been made.

... the Panel expected her [the appellant] to describe the basis of her appeal and make reference to any documents in support of her position. The Panel takes the view that an appellant's obligation in proceedings such as these is to lead some evidence that either the order made was wrong in law or fact, or that the process leading to the order was flawed in some way. The Board does not necessarily require the appellant to always demonstrate that the decision was wrong in law or fact, but if the appellant is not going to assert that there is some legal flaw in the decision or lead evidence that the Board

could consider as sufficient to conclude that the Regional Water Manager should have made another decision based on the facts, then the appellant must at least lead some evidence that the process which lead to the decision was flawed in some way.

Were it otherwise, respondents could be subjected to frivolous appeals and put to the expense and bother of defending an appeal without any indication that there was a flaw in the process or in the decision itself. Simply put, it is not enough to come to this Board with the mere complaint that the appellant does not like the decision that was made.

The Panel takes the view that an appellant's obligation in proceedings such as these is to lead some evidence that either the order made was wrong in law or fact, or that the process leading to the order was flawed in some way. [Emphasis added]

[54] In the present case, the Appellant has not met the burden of proof. In relation to the errors alleged, the Appellant needed to describe which policies and/or procedures should have been applied but were not, and why they apply to his situation. At this time the Panel, quite simply, has nothing to go on – it cannot determine whether the Appellant has a legitimate concern with the decisions or not. The Appellant provided no information, let alone evidence, to support his claim that the Regional Manager erred and/or to justify the remedy he sought.

[55] Although the Board could dismiss the Appellant's case on the basis of no evidence, the Panel has considered the Regional Manager's decision-making process in this case. The Panel can find no clear error in his calculations, or find any improper consideration that warrants a change in the Appellant's quotas and five-year allocations. Nor can the Panel find, on its face, any legal flaw in the decision or in his decision-making process that is sufficient to conclude that the Regional Manager should have made a different decision, or that the Panel should make a different decision. There is nothing to suggest that the Regional Manager's decision was unfair or unreasonable in the circumstances.

[56] Rather, based upon the information before the Panel, the Regional Manager's decision is based upon the application of policies and procedures which reflect an intentional shift in the way that hunting opportunities are allocated to residents and guided hunters in the Province. It is clear that hunting opportunities are now determined in a different way than they were previously determined. Further, although the Appellant did not support his claim that the Regional Manager's decision failed to comply with the Commercial Hunting Interests policy, the Panel has addressed, and rejected, similar arguments in a number of 2014 decisions relating to the 2012-2016 allocations and 2012-2014 quotas in other regions (e.g., *Findlay v. Deputy Regional Manager, Recreational Fisheries and Wildlife Program (Thompson/Okanagan Region)*, (Decision No. 2013-WIL-033(a), April 24, 2014) at pages 36-38; and *Fraser v. Regional Manager, Recreational Fisheries and Wildlife Program (Cariboo Region)*, (Decision No. 2013-WIL-026(a), May 23, 2014) at pages 47-50)

[57] In the circumstances, the Panel finds that there is no basis in law or fact to vary the Appellant's quotas and allocations.

**DECISION**

[58] In making this decision, the Panel of the Environmental Appeal Board has carefully considered all relevant documents and evidence before it, whether or not specifically reiterated here.

[59] For the reasons stated above, the Panel finds that the January 24, 2013 decision should be upheld.

[60] The appeal is dismissed.

"Alan Andison"

Alan Andison, Panel Chair  
Environmental Appeal Board

September 9, 2014