



Environmental Appeal Board

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DECISION NO. 2018-WIL-004(a)

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

BETWEEN:	Brent Giles	APPELLANT
AND:	Director of Wildlife	RESPONDENT
AND:	British Columbia Wildlife Federation	PARTICIPANT
BEFORE:	A Panel of the Environmental Appeal Board: Linda Michaluk, Panel Chair	
DATE:	Conducted by way of written submissions concluding on February 20, 2019	
APPEARING:	For the Appellant: Self represented For the Respondent: Meghan Butler, Counsel For the Participant: Gerry Paille	

APPEAL

[1] The Appellant, Brent Giles, is a licensed guide outfitter holding guide outfitter licence 300715 (the "Licence"). The Licence authorizes the Appellant to guide persons to hunt game within the areas set out in Guiding Territory Certificate ("GTC") 300715 (which he holds), and GTC 500944 held by Terry Frank. GTC 300715 falls within both Region 5 (Cariboo Region) and Region 3 (Thompson Region). GTC 500944 falls wholly within Region 5. This appeal concerns only the Appellant's guide territories in Region 5; specifically, the territories contained in Management Unit ("MU") MU 5-01 and MU 5-02B.

[2] In a decision dated July 27, 2018, the Respondent, Jennifer Psyllakis, the Director, Fish and Wildlife Branch, Ministry of Forests, Lands, Natural Resource Operations and Rural Development (the "Ministry"), revised the Appellant's 2017-2021 notional allocation, and issued the Appellant's quota for the 2018/19 licence year, for harvesting moose in the portions of his guiding territory that are within the Cariboo Region (the "Decision"). The revised allocation for GTC 300715 is two bull moose, and the quota is two bull moose. The revised allocation for GTC 500944 is 17 bull moose, and the quota is five bull moose.

[3] The Environmental Appeal Board has the authority to hear this appeal under section 101.1 of the *Wildlife Act* (the "Act"). Section 101.1(5) provides as follows:

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

[4] The Appellant requests compensation, monetary or otherwise, for the loss of one bull moose from GTC 300715 and three bull moose from GTC 500944, and some form of compensation for the loss in the 2017-2021 allocation period of two bull moose from GTC 300715 and 10 bull moose in GTC 500944, to help him transition his business away from reliance on the lost moose allocation.

[5] The Respondent asks that the appeal be dismissed.

[6] On October 22, 2018, the Board granted the BC Wildlife Federation ("BCWF") Participant status in this appeal. The BCWF represents resident hunters in the Province. The Board limited the BCWF's submissions to addressing the potential impacts of this appeal on the Provincial Wildlife Harvest Allocation Policy and the interests of the members of the BCWF. The BCWF supports the Respondent's position and asks that the appeal be dismissed.

BACKGROUND

Guide Outfitter Licences and Quotas

[7] Every year, guide outfitters apply to the Ministry to renew their guide outfitter licences and to request a hunting quota for specific animal species. The Ministry's quota decisions have been appealed to this Board numerous times.

[8] In its past decisions, the Board has reviewed, in detail, how the Province regulates hunting and guiding, explained the applicable legislation, and set out the policies and procedures that provide guidance to the Ministry when setting annual species quotas under the *Act* (see for example: *Findlay v. Deputy Regional Manager, Recreational Fisheries and Wildlife Program (Thompson/Okanagan Region)*, (Decision No. 2013-WIL-033(a), April 24, 2014); *Robert J. Cutts v. Deputy Regional Manager*, (Decision No. 2013-WIL-024(a), July 17, 2014); *John Parker v. Deputy Regional Manager (Kootenay/Boundary Region)*, (Decision No. 2017-WIL-011(a), September 29, 2017), and *Newberry v. Deputy Regional Manager (Cariboo Regional Operations Division)*, (Decision No. 2017-WIL-005(a), February 1, 2018)).

[9] The Panel, therefore, will not provide a detailed review of all of the legislation, policies and procedures applicable to hunting and guiding in the Province. Instead, the Panel has briefly summarized the legislation and policies relevant to this appeal.

[10] The following sections of the *Act* apply to the Decision made by the Respondent.

[11] The authority to attach quotas to licences is provided in section 60 of the *Act*, which states:

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.

[12] Under section 100 of the *Act*, a director, such as the Respondent in this case, may do an act or a thing that a regional manager is empowered to do under section 60.

[13] "Quota" is defined in section 1 of the *Act* 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 are, or part of it, during a licence year, or part of it, but does not include an angler day quota.

[14] A regional manager has discretion under the *Act* to grant licences to guide outfitters, to set quotas for the harvesting of specific species, and to determine the areas within a guide outfitter's territory within which that harvesting may occur. These decisions are made within a framework based on sustainable harvest and conservation of wildlife species.

[15] In order to allow guide outfitters to plan their commercial operations in advance, allocations for each guide outfitter are set out in five year blocks. The allocation establishes the maximum number of animals the guide's clients may harvest over that period while quota establishes the number of animals that a guide's clients may actually harvest in a given year. Quotas attach to a guide's licence and apply during the licence year, or part of it.

[16] The five-year allocation is determined after certain information is gathered and analyzed by the Ministry. Specifically, the Ministry determines the animal population and the amount of harvest that should be permitted to allow the population to be replenished through natural means (i.e., the sustainable harvest). The anticipated harvest by First Nations for ceremonial and sustenance purposes is then deducted following consultation with First Nations representatives. The remaining available harvest, known as the Annual Allowable Harvest ("AAH"), is then split between resident hunters and non-resident (guided) hunters on a percentage basis.

[17] Prior to 2015, Ministry policy allowed the percentage of the AAH split between the resident and non-resident hunter groups to be adjusted during the five-year allocation period to account for either the over- or under-harvest by the hunter groups, among other things. However, for certain species, including bull moose, this changed on February 6, 2015, when the then Minister of Forests, Lands and Natural Resource Operations released a revised decision on wildlife harvest allocations that created fixed "splits" for bull moose hunts between resident and non-resident hunters (the "Minister's Policy"). In the Appellant's

region (Region 5), resident hunters were allocated 75% of the AAH for bull moose and guided (non-resident) hunters were allocated the remaining 25%.

[18] Once the AAH and the split are determined, the non-resident hunters' portion of the AAH is allocated to individual guide outfitters based upon another set of calculations guided by Ministry policies and procedures.

[19] After establishing the five-year allocation for the guide outfitter, the guide's annual quota is determined.

[20] When the Ministry decides that it is necessary to limit hunters in a certain area, to limit the number of animals that may be taken, or to limit the harvest to a certain class of animals, the Ministry issues a limited entry hunt ("LEH") for resident hunters through legislation. The *Limited Entry Hunting Regulation*, B.C. Reg. 134/93, sets out the specific hunting restrictions for specific game species within specific zones. It also provides the director with authority to determine the number of LEH authorizations to be issued by an annual lottery for each limited entry game species (section 8).

The Appeal

[21] The Appellant received the Decision on August 3, 2018, and appealed it on August 28, 2018. The Appellant appeals the Decision on the following grounds:

1. The Director has violated her fiduciary duty to inform me of this decision in a timely manner.
2. The Director failed to include in the quota letter any calculations from which her decision was derived.
3. The science used to form this decision leaves a margin for error.
4. The Director has not offered any form of mitigation to minimize the impact of this loss of property caused by her decision.

[22] When the appeal was filed, the Appellant was seeking to have the Decision overturned, and his quota and allocation returned to their previous levels. However, on December 18, 2018, the Appellant revised the remedies sought, as he considered it was too late to have the original 2018 moose quotas reinstated. Instead, the Appellant seeks:

1. monetary compensation for the loss of one bull moose from GTC 300715 and three bull moose from GTC 500944; and
2. some form of compensation for the loss in the 2017-2021 allocation period of two bull moose from GTC 300715 and 10 bull moose in GTC 500944, to assist in transitioning his business away from reliance on the lost moose allocation.

[23] In support of his position, the Appellant filed a written submission, which included historical permit information and two documents. Addenda to the written submission were filed on January 28 and 29, 2019, and a reply to the Respondent's submission was filed on February 20, 2019.

[24] The Respondent maintains that the Decision was made after consideration of the material facts, including current composition surveys of the bull/cow ratios in the relevant MUs. The Respondent submits that the Decision does not contain any appealable error in judgement or in law, and that the Appellant has not identified any alternative approach that would meet the Ministry's prime conservation objectives in policy and law. The Respondent requests that the appeal be dismissed.

[25] In support of her written submission on the appeal, the Respondent filed a number of documents and two affidavits:

- an affidavit sworn on January 29, 2019, by the Respondent, Jennifer Psyllakis (the "Psyllakis affidavit"); and
- an affidavit sworn on January 28, 2019, by Daniel Lirette, Senior Wildlife Biologist, Fish and Wildlife Section, Cariboo Region of the Ministry (the "Lirette affidavit").

[26] The BCWF submits that the Respondent relied on the best science available when estimating the bull to cow moose ratio in MUs 5-01 and 5-02B, and correctly applied the allowable harvest rate, the resident/non-resident allocation split, and the Administrative Guidelines provisions. The BCWF recognizes that reducing allocations to both resident hunters and guided hunters is a tool that can be used to help when there is an immediate conservation concern backed by science. The BCWF takes no position regarding the Appellant's request for compensation for the loss of quota/allocation.

ISSUES

[27] In deciding this appeal, the Panel has considered the following issues:

1. Whether the Respondent complied with the *Act* and any other applicable legal requirements in the process of making the Decision and notifying the Appellant of the Decision.
2. Whether the Appellant is entitled to compensation for the reduction in his quota/allocation.

[28] The Respondent raised a further issue, by arguing that allocations are not appealable decisions under the *Act*. However, the Panel notes the Board has previously considered that issue, and concluded that allocations are appealable decisions under the *Act*: *Kevin Newberry v. Deputy Regional Manager* (Decision No. 2017-WIL-005(1), February 1, 2018), at paras. 89 - 93. Consequently, the Panel need not discuss that issue any further.

DISCUSSION AND ANALYSIS**1. Whether the Respondent complied with the Act and any other applicable legal requirements in the process of making the Decision and notifying the Appellant of the Decision.***Appellant's Submissions*

[29] The Appellant submits that quota decisions have historically been delivered to guide outfitters in January or February, which is prior to the end of the licence year (March 31). This allows the guide outfitter a reasonable amount of time to make adjustments, given that clients are booked well in advance of the season. However, the Decision was not delivered until July 27, 2018. Further, the Appellant contends that the decision to reduce both the 2018 moose quota and remainder of the 2017-2021 moose allocation for GTC 500944 has, to date, not been officially delivered to him via registered mail.

[30] The Appellant submits that the Decision reduced his moose quotas by approximately 40% and was delivered a "mere 6 weeks" before the season opened for moose hunting in Region 5. This resulted in him having to cancel previously booked clients, and suffering a loss of annual income. The Appellant further submits that it is not reasonably possible, between July 27 and September 10, to review the Decision, gather information, apply for an appeal, make the required submissions, wait for submissions from the Respondent and the BCWF, and receive a decision from the Board. The Appellant argues that being informed of the quota changes at such a late date was clearly prejudicial to his interests, and the principles of administrative fairness were not considered by the Director. The Appellant submits that, as regards the 2018 quota, it would have been fair for the Director to leave the quota unchanged for this year, and proceed with changes beginning in 2019 to allow him to make adjustments to his business activities.

[31] In addition, the Appellant submits that the Respondent failed to include in the Decision any calculations that show the basis for her decision. Further, the Appellant submits that Mr. Lirette's affidavit evidence and the documents attached to it (particularly, a Ministry report titled "Cariboo Region 2018 Composition Surveys Report", prepared by Carla Grimson, August 2018) (the "Composition Surveys")) shows that the science used to form the Decision leaves a margin for error.

[32] Regarding the Composition Surveys, the Appellant submits that the surveys for MUs 5-01 and 5-02B were conducted February 8 and March 5, 2018, respectively, and therefore, there was ample time for a decision on his quota to have been made by April. He maintains that it should not have taken until nearly August 2018 to go through the decision-making process, especially when someone's livelihood potentially hangs in the balance.

[33] The Appellant submits that, during a conference call which he and others had with the Director, he suggested that he be allowed to operate with the previously issued quota for the season, but the Director stated she was not willing to change any part of her decision.

Respondent's Submissions

[34] In her affidavit, the Respondent states that on or about January 2017, the Ministry's executive decided that, starting in the 2018/19 licence year, all quota decisions under the *Act* would rest with the Director rather than with Regional Managers, in order to enhance wildlife management controls by way of a single decision-maker adhering to a consistent process across all nine administrative regions in the province. Region 5 guide outfitters were advised of this change by email on December 19, 2017, and were provided with a spreadsheet of tentative quotas for 2018/19.

[35] The Respondent's affidavit also states that she was directly involved with the government-to-government negotiations with the Tsilhqot'in National Government ("TNG") respecting Region 5. The Ministry made a commitment to the TNG that no decisions on moose allocations for 2018/19 would be made without the full benefit of the composition surveys completed in February and March 2018. Negotiations with the TNG began shortly after the close of moose hunting season in November 2017, and concluded in about June 2018. According to the affidavit, the TNG were particularly concerned about the moose population, impacts from wildfires, and bull moose density and distribution being below the provincial target in different portions of Region 5. The TNG were advocating for complete closures in the affected MUs until the moose population recovers, as the Ministry had done in 2017 for MUs 5-13A and 5-13C immediately following the 2017 wildfire events.

[36] The affidavit further states that, while the Respondent was consulting with the TNG, consultation was ongoing with other First Nations groups at the regional level, including with the Northern Secwepemc te Qelmuw ("NStQ"), Esk'etemc First Nations, and members of the Southern Dakelh Nation Alliance. The NStQ had asserted claims over lands falling within MU 5-01 and MU 5-02, and supported a 50% reduction in licensed bull moose harvest in MUs 5-01, 5-02B and 5-02C.

[37] The Respondent's evidence package shows that, concurrent with the First Nations consultations, moose population surveys were undertaken in February and March 2018, in Region 5 areas including MUs 5-01 and 5-02B.

[38] The Lirette affidavit explains that the primary spatial scale for estimating moose populations in BC are population management units known as Game Management Zones ("GMZs"), which are comprised of a number of MUs. MUs are the spatial scale at which Stratified Random Block ("SRB") moose surveys are completed. The Appellant's guide territories in this appeal, found predominantly in MUs 5-01 and 5-02B, fall within GMZ 5B.

[39] According to Mr. Lirette's affidavit, while SRB surveys are an effective population estimate method on their own, the Ministry compliments its SRB surveys with aerial compositional surveys (observed numbers of males, females and juveniles), and hunter harvest surveys, which help to inform reliable population estimates. Further, his affidavit states that it is appropriate to conduct moose surveys in January, February and early March in the Cariboo Region, provided the environmental conditions are satisfactory. Mr. Lirette attests that, as the lead biologist on the 2018 moose composition survey in MU 5-01, he is

satisfied that when the survey was conducted, the conditions were considered "good".

[40] Mr. Lirette attests that his moose harvest recommendations were based on a 2016 moose density report, as well as two reports from the 2018 surveys which included significant portions of the Appellant's guide territories. He notes that while the 2018 reports were not finalized until August 2018, the analysis of the data summarized in both reports was available to him in draft form when he was making his quota recommendations in June 2018, and the data analysis did not change when the reports were finalized over the summer months. In his affidavit, Mr. Lirette further states:

36. In 2018, the moose population estimate for GMZ 5B was unchanged from 2016 at 6,645. However, the bull/cow ratio for all three management units surveyed fell well below the provincial minimum target: in MU 5-01, the ratio was 18 bulls per 100 cows, and in MU 5-02B, the ratio was 20 bulls per 100 cows, and in MU-02C, the ratio was 15 bulls per 100 cows. In other words, results of the 2018 moose surveys indicated widespread issues with bull/cow ratios in the Cariboo Region.

...

39. ... the 90% confidence interval for the 2018 5-02B *MOOSEPOP*¹ bull/cow ratio estimate ranges from 14 to 26 bulls per 100 cows. This means, even at the highest extent of the 90% confidence interval, the bull/cow ratio is still below the provincial minimum target of 30 bulls per 100 cows. ...

...

42. ... In the case of MU 5-01, the average days it takes a hunter to kill a bull moose has increased substantially from ~25 days per kill in 2007-2010 to ~70 days per kill in 2016 and 2017. As stewards of wildlife conservation, the Ministry generally prefers to see the average hunter days per kill below 30 because averages above 30 begin to negatively affect hunt quality, and can be an indication of low bull moose numbers.

...

49. Feedback received during First Nations consultation was an important consideration in my recommendations to the Director. I am aware that consultation with NStQ First Nations continued until about May 2018; therefore, I was not in a position to finalize any recommendations to the Director until those consultations concluded.

[41] According to the Respondent's evidence, government-to-government negotiations with First Nations took longer than expected, and therefore, all moose quota decisions in Region 5 were further delayed. As a result, an email was sent

¹ *MOOSEPOP* is a software program in use by the Ministry since 1994 to analyze data from SRB moose surveys

on April 11, 2018, to all Region 5 guide outfitters, explaining the delay and the status of the discussion, as well as, among other information, the results of the Cariboo Region moose SRB and composition surveys.

[42] The Respondent's affidavit states:

25. I considered that I had the option to either recalculate the AAH for the entire Region 5 based on this data and other data available, or to take an alternative action that was consistent with meeting the overriding policy considerations, such as sustainable harvest of moose as a game species (*Game Harvest Management* policy, RBOD Tab 23); and providing resident and non-resident hunters with fair shares of the allocations of bull moose (*Commercial Hunting Interests* policy, RBOD Tab 24).
26. I consulted with Daniel Lirette about remedial actions; he indicated that he was aware of instances in the mid-1990s where low bull/cow ratios in Region 5 were recovered in a short number of years through significantly reduced licensed harvests.

[43] According to Mr. Lirette's affidavit, reducing the licensed moose harvest in 1995 by about 50% for three years in MU 5-13A resulted in a recovery of the bull/cow ratio, from 15 bull per 100 cows to 29 bulls per 100 cows. Also, in 1996 the bull/cow ratio in MU 5-02A recovered from 19 bulls per 100 cows to 40 bulls per 100 cows following a 50% reduction in licensed harvest over two years. Mr. Lirette attests that, in his professional opinion, a significant reduction in the licensed harvest was required to expeditiously recover the bull/cow ratios in MUs 5-01, 5-02B and 5-02C to the provincial minimum target of 30 bulls to 100 cows. Mr. Lirette was aware that the reduction in guide outfitter quotas and allocations would impact the affected guides. However, in his opinion, the seriousness of the low bull/cow ratios in these MUs necessitated a substantial reduction in licensed bull moose harvest to ensure a future sustainable harvest.

[44] In late May 2018, Mr. Lirette forwarded his calculations and recommendations to Mr. Dave Reedman, Fish and Wildlife Section Head, Region 5, for review prior to presenting them to the Director for decision. Mr. Lirette attests that he and Mr. Redman were in discussion with the Director throughout the spring of 2018 after the moose survey results were completed and analyzed. As a result, the Director was aware that dramatic reductions to the licensed bull moose harvest would be proposed for certain MUs.

[45] After considering all of the relevant information and Ministry policies and procedures, the Director accepted Mr. Lirette's recommendation. In that regard, the Respondent's affidavit states:

27. Having considered (a) the *Administrative Guidelines* in their appropriate place in the regulatory scheme; (b) the overriding policy objectives, and the resources required to calculate the AAH for the entire Region 5 (because AAH is not calculated on a MU basis); and (c) Daniel Lirette's proposed short-term solution tailored to the specific MUs of concern; as well as weighing the significant date inflection against the time and resources required to recalculate the

AAH, I exercised my discretion to not recalculate the AAH. Rather, I chose to curtail resident LEH authorizations and non-resident quotas for the 2018/19 licence year, and indicate reduced LEH authorizations and quotas would be likely for the next few years, or until new survey data shows the bull/cow compositions have recovered.

[46] The Respondent attests that she was satisfied that reducing the licensed harvest by 50% had, in previous years, resulted in returning moose composition to the provincial objective in a relatively short time period. In considering the potential impact of this decision on the Appellant's interest, she reviewed his past harvest records. The Respondent noted that the Appellant had not "achieved" his quota in 2017, and decided that the potential impact of the reductions on his business interests could be mitigated with the flexibility provided by the Administrative Guidelines. Further, the Respondent attests that the Ministry has no record in its guide declaration database of any moose hunts or harvests reported by the Appellant in GTC 300715 for the 2017/2018 moose hunting season.

[47] According to the Respondent's affidavit, once the consultations concluded and the quotas were finalized, all Region 5 guide outfitters were notified of their final quota decisions by email on June 14, 2018. A further letter was sent by registered mail on July 27, 2018 to the Appellant respecting GTC 500944. The Respondent notes that the Appellant did not receive a registered letter regarding GTC 300715, and received only the June 14, 2018 email in this regard.

[48] The Respondent attests that during a conference call on July 26, 2018, attended by the Appellant and others for the purpose of discussing the 2018/19 quotas, the potential impact of the Decision on the Appellant's (and other guide outfitters') business interest was explored. However, as the Appellant did not indicate what his historic harvest had been or how many clients had been booked to date, the specific impact of the Decision on his interests was difficult to assess.

BCWF's Submissions

[49] The BCWF submits that the findings of the survey work done during the winter of 2017/2018 indicated that the bull/cow ratio in MUs 5-01 and 5-02B were below the provincial minimum of 30 bulls per 100 cows for moose populations with densities greater than 0.2 moose per square km. On April 22, 2018, the findings were distributed to the Cariboo Region Wildlife Advisory Committee, which includes guide outfitters. As a result, the BCWF contends that the Appellant should have been aware of these findings, and the possible impact on quotas and LEH authorizations, by that date.

[50] The BCWF notes that the delayed decisions for both guided hunter quotas and the resident hunter LEH authorization numbers created uncertainty for resident hunters as well as for guide outfitters. The BCWF maintains that the Respondent relied on the best science available when estimating the bull to cow moose ratio in MUs 5-01 and 5-02B, and correctly applied the allowable harvest rate, the resident/non-resident allocation split, and the Administrative Guidelines provisions.

[51] The BCWF notes that while they would prefer to see landscape level actions that promote moose recovery, they recognize that reducing allocations to both resident and guided hunters is a tool that can be used to help when there is an immediate conservation concern backed by science.

Appellant's Reply Submissions

[52] The Appellant contends that the December 19, 2017 email referenced by the Respondent is not relevant to this appeal, in that it addresses concerns relative to the North Chilcotin (GMZ 5C), and does not suggest any quota reduction in GMZ 5B in general or GTCs 300715 or 500944 in particular. The Appellant also contends that the Respondent's statements regarding the negotiations with and commitments to the TNG are irrelevant to this appeal, as GMZ 5B is not in the Chilcotin.

[53] The Appellant submits that the April 11, 2018 email does not indicate a reduction to his quotas. He further submits that while the email comments on actions being taken in the Chilcotin, there is no information provided on measures being taken in the fire-affected areas of GMZ 5B.

[54] Regarding the Respondent's consideration of his prior years' hunt records, the Appellant submits that: he was not aware that quota was issued on a "use it or lose it" basis; he was not the licensed Guide Outfitter for GTC 500044 during the 2017 moose hunting season; and, the MU 5-01 portion of 300715 was not accessible or safe to access during the majority of the 2017 moose season due to the Elephant Hill wildfire. The Appellant contends that if the Respondent considered previous harvest records to be relevant, the harvest records of the past decade should have been reviewed, rather than a single year which fell under several extenuating circumstances.

[55] In response to Mr. Lirette's affidavit, the Appellant contends that the recommendation and subsequent decision to reduce the bull moose harvest by 50% was based on a method that Mr. Lirette learned 22 years ago, rather than what is recommended in the Ministry's Provincial Framework for Moose Management in BC. The Appellant further submits that as the moose survey results were not available until moose hunting season was "just around the corner", it should have been sufficient to maintain his quota and give him adequate notice that a quota reduction would be implemented in 2019.

[56] The Appellant submits that although the Respondent and Mr. Lirette refer to consultations with the TNG, NStQ, and Esk'etemc First Nations, Mr. Frank, who is a member of the Canim Lake Band (which is part of the NStQ) and a holder of GTC 500944, was never consulted about the potential reduction in quota.

Panel's Findings

[57] While there are several points on which the parties disagree, there is no question that the decision pertaining to the Appellant's 2018/19 moose quotas was made significantly later than usual – roughly seven months later than usual.

[58] The Panel finds that the two main reasons for the lateness of the Decision were the First Nations consultations, and the timing of the moose population

surveys. The Panel also notes that the two reasons are interrelated. The lateness was due to the requirement for First Nations consultation, which is a legal duty of the Crown, and the need to obtain scientific information about the moose population to ensure wildlife conservation, which is a fundamental objective of the *Act*.

[59] The evidence shows government-to-government and regional First Nations consultations were ongoing between November 2017 and June 2018. Further, evidence was provided to show that the Ministry had made a commitment, as part of the First Nations consultation process, not to make any decisions on moose quotas until the moose surveys had been conducted. The moose surveys were undertaken in February and March, and the reports were finalized and published in August. Mr. Lirette had access to the data in June, and used the draft analysis of the data as the basis for his quota recommendations to the Director. The Director accepted the recommendations and notified the Appellant by email of her quota decisions on June 14, 2018.

[60] In assessing the timeline, the Panel accepts that the Respondent needed to stand by the Ministry's commitment to not assign quota without the moose survey information. Further, the Panel notes that those waiting for the quota decisions were kept informed as the process proceeded. Everyone involved was aware that the quotas were going to be assigned significantly later than usual, and knew the reasons why.

[61] The Panel understands that the Appellant is of the view that because his guiding territories do not fall within the TNG consultation area, decisions on his quotas should not have been delayed because of that consultation. The Panel notes, however, that the TNG consultation concerned Region 5, and that the Ministry commitment to the TNG was that moose quota decisions would not be made until the moose population survey data were available.

[62] In terms of the Appellant's contention that Mr. Frank should have been consulted because he is a member of one of the First Nations that was part of the consultations, the Panel notes that the consultations underway were conducted at a government-to-government level with the TNG, and at a regional level with the NStQ. Each First Nation decides who will represent them in the consultation process. Consequently, representatives are selected, as opposed to each and every interested individual taking a direct role in the consultation process. No evidence was presented to show that Mr. Frank had been selected as a representative of the NStQ for purposes of these consultations, such that he should have been included in the consultation sessions.

[63] The Appellant contends that given the lateness of the Decision, the Respondent should have awarded him the same quota that he had in the previous year, and provided him with notice that the quota would be reduced for the 2019 hunting season.

[64] The Panel notes that one of the prime purposes of the *Act* is the conservation of wildlife in BC, and that hunting regulations address the consumptive use of wildlife in a sustainable manner. Based on Mr. Lirette's evidence, the Panel finds that his recommendations pertaining to the Appellant's

quotas were based on conservation and sustainability of the moose population in particular MUs. Mr. Lirette drew on his knowledge of Ministry policies and procedures, as well as on the Ministry's past practices for addressing a low bull/cow ratio in the Region. The Appellant contends that Mr. Lirette's substitution of methodology used 22 years ago for the present Provincial Framework for Moose Management is inappropriate, and he questions why "there was a reduction of 50% instead of the recommended 20%".

[65] The Panel finds that the Provincial Framework for Moose Management pertains to AAH, while the numbers provided by the Appellant refer to his notional allocation. In fact, the Respondent's evidence is that she specifically decided not to recalculate the AAH, opting instead to take an action "consistent with meeting the overriding policy considerations, such as sustainable harvest of moose".

[66] Mr. Lirette's analysis of the moose populations indicated to him that prompt action was necessary to facilitate the expeditious recovery of the bull/cow ratios in MUs 5-01 and 5-02B, and the Director accepted his recommendation. The Appellant has provided no evidence to refute Mr. Lirette's analysis or the resulting recommendations. The Panel accepts that maintaining hunting opportunities at their earlier higher level, in light of the moose population numbers, could well have been contrary to the expeditious recovery of bull/cow ratios in the MUs of concern.

[67] In terms of the Respondent's use of the Appellant's past years' hunt records, the Panel agrees that examination of one year's records may not provide a complete picture of a guide outfitter business. However, the Panel also finds that this was only a minor factor, among many other factors, that were considered by the Respondent in making her Decision.

[68] In terms of notification, there is evidence that the Appellant received the Director's June 14, 2018 email which included his revised 2018 quota and 2017-21 notional allocations for GTC areas 300715 and 500944, but he did not receive notification by registered mail for his Region 5 portion of GTC 300715. The Panel finds that section 101 of the *Act* requires that written reasons for decisions such as this must be given to the affected person, but giving notice by registered mail is not mandatory. Section 101(3) states that notice "may" be by registered mail; it does not state that notice "must" be by registered mail. The Panel finds that written reasons were provided to the Appellant in the June 14, 2018 email, in compliance with section 101 of the *Act*. The Panel also notes that both the Appellant and Respondent refer to a teleconference call on July 27, 2018 regarding the Decision, and there is no suggestion that the Appellant was unaware of the final disposition of his quota and notional allocation respecting GTC 300715.

[69] In terms of the Appellant's reference to Director's failure to include in the Decision any calculations pertaining to his revised 2018 quotas, the Panel notes that the Decision provided the contact information (both email and telephone) for an individual who would, on request, provide specific details as to how the quotas were calculated. Thus, the Decision conveyed that the calculation information was available, and how the Appellant could obtain the information. The Panel also notes that the language pertaining to how to obtain specifics regarding the quota

calculations was very similar to that used in previous years' decision letters (2013 and 2016) that the Appellant provided in his evidence.

Conclusion

[70] The Panel finds that the quota decisions for the 2018/19 moose hunting season were made significantly later than in past years, and that the lateness made it impractical for the Appellant to obtain a decision from the Board on his appeal before the hunting season commenced. That does not mean, however, that the timing of the decisions was unjustified or resulted in administrative unfairness.

[71] Based on the evidence, the Panel finds that there were pressing conservation concerns that required immediate attention, and the Director made her Decision as quickly as the situation allowed. Throughout the time leading up to the Decision, the Director kept guide outfitters, including the Appellant, informed of the process and the reasons for the delays. The Panel finds that the Ministry's communications made it clear there were going to be changes made to moose quotas in Region 5. There is no evidence that the Director acted in an arbitrary or capricious manner. There was no evidence that the Director did not *Act* in accordance with the relevant law, policies or procedure.

[72] Accordingly, the appeal is dismissed. However, the Panel hopes that in future years, the lateness of this Decision will prove to be the exception.

2. Whether the Appellant is entitled to compensation for the reduction in his quota/allocation.

[73] Given that the Panel has dismissed the appeal, the Panel need not consider any remedies sought by the Appellant. However, the Panel will comment on the Appellant's request for compensation for the loss of the moose quota and to assist in transitioning his business away from reliance on moose allocation. It should be noted that section 67 of the *Act* provides:

67 A guiding territory certificate or angling guide's licence does not

(a) give the holder any proprietary rights in wildlife or fish, ...

[74] The *Act*, therefore, does not confer property interest in wildlife by virtue of a guide territory certificate. Thus, the Appellant had no proprietary rights over the moose that were previously part of his five-year allocation or past quotas. It is unclear how the Appellant could be entitled to compensation for the "loss" of moose over which he held no proprietary rights.

[75] Moreover, the Board's powers in deciding an appeal under section 101.1(5) of the *Act* do not include the awarding of compensation for a reduction in wildlife quota or allocation. Consequently, it is not within the authority of this Board to award the requested compensation.

DECISION

[76] 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.

[77] For the reasons stated above, the Panel finds that the Respondent's Decision should be confirmed.

[78] The appeal is dismissed.

"Linda Michaluk"

Linda Michaluk, Panel Chair
Environmental Appeal Board

April 26, 2019