



Environmental Appeal Board

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DECISION NO. 2017-WIL-009(a)

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

BETWEEN:	Fraser MacDonald	APPELLANT
AND:	Regional Manager, Recreational Fisheries and Wildlife Program, Omineca Region	RESPONDENT
AND:	BC Wildlife Federation	PARTICIPANT
BEFORE:	A Panel of the Environmental Appeal Board David H. Searle, C.M., Q.C., Panel Chair	
DATE:	Conducted by way of written submissions concluding on May 23, 2017	
APPEARING:	For the Appellant: Fraser MacDonald For the Respondent: Stephen E. King, Counsel Geneva Grande-McNeill, Counsel For the Participant: Gerry Paille	

APPEAL

[1] This appeal is an amalgamation of two appeals filed by the Appellant, Fraser MacDonald, pursuant to an order of this Board made April 12, 2017.

[2] The first appeal was against a letter dated February 3, 2017 issued by the Deputy Regional Manager, Ministry of Forests, Lands and Natural Resource Operations (the "Ministry"), setting a "provisional" 2017-2018 grizzly bear quota of two grizzly bears and a "tentative" 2017-2021 allocation of five grizzly bears for the Appellant to harvest while conducting his guide outfitting business in the Omineca Region (Region 7A) of British Columbia (Appeal File 2017-WIL-008).

[3] In his Notice of Appeal dated February 27, 2017, the Appellant challenged the Deputy Regional Manager's method for calculating the grizzly bear population in the Omineca Region, and the conclusions that he reached. The Appellant asked the Board to increase his annual quota to three grizzly bears, and increase his five-year allocation to 14 grizzly bears. The Board decided to hear the appeal by way of written submissions and established a submission schedule concluding on May 15, 2017.

[4] On March 15, 2017, the Deputy Regional Manager challenged the Board's jurisdiction over this appeal. He argued that the appeal was premature, as no final decision respecting quota or allocation had been made. The Board took submissions on this issue.

[5] Before this jurisdictional issue was decided by the Board, the Appellant received a letter dated March 21, 2017 from Normand Bilodeau, Regional Manager, Fisheries and Wildlife Program, Omineca Region (the Respondent), enclosing the annual quota attached to the Appellant's Guide Outfitter Licence. The Respondent set the Appellant's 2017-2018 grizzly bear quota at three grizzly bears and his 2017-2021 allocation at eight grizzly bears. The Appellant advised the Board that he wanted to appeal the decision contained in this letter and wanted the Board to increase his quota to four grizzly bears, rather than the three bears requested in his Notice of Appeal against the provisional quota. His request for an allocation of 14 grizzly bears was unchanged.

[6] In the Board's April 12, 2017 order, the Board addressed how to proceed in light of the appeal of the Deputy Regional Manager's "provisional" quota, the jurisdictional issue, and the Appellant's desire to appeal the new quota decision of the Respondent. The Board states at page 3 of its order as follows:

The Board has now had an opportunity to consider the parties' submissions, and has concluded that there is no reason to address the jurisdictional question. The Ministry raised the jurisdictional argument solely on the basis of its position that the February 3, 2017 letter [from the Deputy Regional Manager] was not a decision, that the appeal was premature, and, accordingly, the Board does not have jurisdiction over that February 3rd letter. Now that the Ministry has issued the 'final' decision on Mr. MacDonald's quota and allocation, and Mr. MacDonald wishes to appeal that decision, the Board no longer needs to address its jurisdiction over the February 3rd letter. The questions now faced by the Board are procedural; i.e., how to deal with Mr. MacDonald's existing appeal and the written hearing schedule in light of Mr. MacDonald's desire to appeal the new, final decision.

[7] Although the Ministry argued that the Board should continue to adjudicate the preliminary matter of jurisdiction and should require the Appellant to file a new Notice of Appeal, the Board declined to do either. Instead, given the timing of the hunting seasons for grizzly bear, the Board decided to close the original appeal file (2017-WIL-008), open a new file for the appeal of the March 21, 2017 quota and allocation decision (2017-WIL-009) and, given that the substance of the appeals was the same, to transfer the original Notice of Appeal into the new file and extend the hearing submission schedule by one week.

[8] Thus, it is from the Respondent's March 21, 2017 decision setting the Appellant's annual grizzly bear quota at three bears and his five-year allocation at eight bears that this appeal is taken.

[9] The Environmental Appeal Board has the authority to hear this appeal under section 93 of the *Environment Management Act* and section 101.1(5) of the *Wildlife Act* (the "Act"). Section 101.1(5) of the *Act* provides as follows:

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.

[10] The Appellant asks this Board to vary the Respondent's decision from a five-year allocation of eight grizzly bears to a minimum of 14 grizzly bears, and to vary the annual quota from three to four grizzly bears.

BACKGROUND

General

[11] The Appellant, Fraser MacDonald, resides in Prince George, BC, and is the holder of a five-year Guide Outfitter Licence GOPG16-219463 for the period April 1, 2016 to March 31, 2021, issued pursuant to sections 15 and 51(1) of the *Act*. The Guide Outfitter Licence allows the Appellant to guide in the territory set out in Guiding Territory Certificate 700407, Omineca Region 7A, ID# 738G002. The territory is 5,127.8 square kilometers, in mainly mountainous terrain. The guiding territory is completely within Wildlife Management Unit ("WMU") 7-38, and completely within the Omineca Grizzly Bear Population Unit ("GBPU"). Before the Appellant purchased the territory in or around 2011, it was run by another guide outfitter for over 30 years.

[12] The Appellant has been a guide outfitter since 2012. His guiding operation is Circle M Outfitters, which specializes in backcountry hunting, fishing, horseback trips and winter trapline adventures. The Appellant states that he has a degree in Natural Resource Science and has work experience as a forest technician, conservation officer and wildlife biologist.

The Appeal

[13] The Respondent's March 21, 2017 decision attached annual quotas for bull moose and grizzly bear to the Appellant's Guide Outfitter Licence for the year ending March 31, 2017. The Appellant's appeal only relates to grizzly bear.

[14] In his grounds for appeal, the Appellant notes that the allocation for grizzly bear for this territory has dropped since 2007. Previous allocations were as follows:

2007-2011 = 15 grizzly bears

2012-2016 = 11 grizzly bears

2017-2021 = 8 grizzly bears

[15] The Appellant requests a change in allocation to a minimum of 14 grizzly bears over five years with an annual quota of four bears. He states that this request is in line with the original 2007-2011 allocation, and that there has never been a conservation concern with this allocation.

[16] Further, the Appellant states that, at the WMU level, non-residents are allocated 35.1 grizzlies in WMU 7-38 over a five-year period. However, he states:

1. When redistributed amongst the guides at the GBPU level the guides in WMU 7-38 are left with 18.4 grizzly bears over five years. This is a 48% reduction of what is considered sustainable harvest (35.1 bears) in WMU 7-38 under provincial guidelines.
2. The opposite happens in WMUs 7-27 and 7-29 as guides are allocated a lower number of bears at the WMU level, then when the non resident harvest is redistributed across the GBPU, the guides in those areas receive more bears than originally intended.

[17] The Appellant submits that Guide Territory 700407 represents 40.2% of the grizzly habitat within WMU 7-38. At the WMU level, guides should be receiving 35.1 bears over five years in WMU 7-38. Given that his territory has 40.2% of the grizzly habitat, the Appellant argues that his five-year allocation for the territory should be 14.1 grizzly bears, and his annual quota should be increased accordingly.

[18] The Appellant provided detailed written submissions and numerous documents in support of his appeal. He submits that the determination of the allocation and, therefore, the calculation to determine the grizzly bear quota for his licence, should be:

1. calculated with the best available information and decisions based on defensible science,
2. consistent with other northern Regions, and
3. in adherence with the relevant BC Ministry of Forests Lands and Natural Resource Operations' policies and procedures.

[19] The Appellant states that this has not been done, that the science behind the allocation is being ignored and, because of this, the Respondent's decision on allocation (and therefore quota) is not being made at the most appropriate biological scale. If the allocation is determined properly, the Appellant submits that his annual quota should be increased to four bears.

[20] The Respondent submits that the Appellant's case requires an adjustment to the specific geographic scale to determine his quota. The Respondent submits that the scale of grizzly bear allocations, and the allocations themselves, are not appealable decisions. Further, he submits that the Appellant has not offered any compelling reason for the Board to interfere with the quota decision, or to require a change in the scale of management of grizzly bears at this time. The Respondent submits that the appeal should be dismissed.

[21] The Respondent relies upon his written submissions and three affidavits. The first affidavit is sworn on May 12, 2017 by the Respondent himself, Normand Bilodeau. The Respondent describes, in detail, his decision-making process and responds to the Appellant's submissions.

[22] The second affidavit was sworn on May 15, 2017 by Shelley Marshall, Senior Wildlife Biologist with the Ministry in the Omineca Region. In her affidavit, Ms. Marshall describes, among other things, how grizzly bear populations are estimated

in the Omineca Region and how she used the estimates to calculate, and recommend, quota and limited entry hunting decisions for grizzly bears. Ms. Marshall also describes the spatial scales of wildlife management and for managing hunter access, the resident and non-resident allocation split, the Omineca GBPU, grizzly bear mortality rates, regional inconsistency in management and distribution scales, her communications with the Appellant and, finally, the method used to calculate guide allocations and quotas.

[23] The third affidavit was sworn on May 12, 2017 by Jeff Brown, Resource Manager, Stewardship for the Omineca Region. Mr. Brown's affidavit describes his meetings and communications with the Appellant during 2016 and 2017.

[24] The Board granted participant status to the BC Wildlife Federation in this matter on April 20, 2017. The Participant submits that it is "firstly concerned about conservation." It then turned to the issue raised by the Appellant in respect of WMU 7-38, and indicated support for the Appellant's position.

ISSUES

[25] There is only one issue in this appeal; that is, whether the Board should increase the Appellant's five-year allocation of grizzly bears from eight to a minimum of 14 grizzly bears, and his annual quota from three to four grizzly bears.

RELEVANT LEGISLATION

[26] The following sections of the *Act* are relevant to these proceedings:

Definitions and interpretation

1(1) In this Act:

"quota" means

(a) the total number of a game species, or

(b) the total number of a type of game species

specified by the regional manager that 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;

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.

...

[Emphasis added]

RELEVANT REGULATIONS

[27] The *Wildlife Act Commercial Activities Regulation*, B.C. Reg. 127/2017 states as follows regarding quotas:

Guide outfitter licence with quota

1.04 Where a regional manager issues a guide outfitter licence which attaches a quota as a condition of licence, the regional manager may specify

- (a) species of game and their age, sex, horn or antler classification, and numbers of each class or classification of game that may be harvested,
- (b) the area or areas within which the harvest may occur,
- (c) the time period within which the game may be harvested, or
- (d) the number of hunters or a class of hunters that may hunt a species in a defined time and area.

[Emphasis added]

RELEVANT POLICIES AND PROCEDURES

[28] The policies and procedures that are relevant to this appeal are set out below. Other relevant policies and procedures are included in the text of this decision, as necessary.

A) Policies**4-7-01.07 "Game Harvest Management"**

It is the policy of the Ministry that:

(1) Sustainable harvest of game species is a legitimate use of British Columbia's wildlife resource that provides social and economic benefits to the province.

(2) Harvest opportunities will be well regulated commensurate with conservation ...

...

(7) Harvest management decisions will ensure that the following principles are maintained:

...

(g) game populations will be managed on a spatial scale that is appropriate to the species' biology, ...

...

...

B) Procedures

[29] The parts of the Ministry's Procedure Manual that are specific to grizzly bears and are relevant to this appeal are the following:

4-7-04.04 "Grizzly Bear Harvest Management"**1. Population Management Units**

1.1 Grizzly bear populations will generally be managed to achieve management objectives at the level of grizzly bear population units (GBPUs). In particular circumstances, approval may be sought from the director to manage populations at another spatial scale (e.g. management unit, limited entry hunting zone).

1.2 In delineating GBPUs, the following guidelines apply:

1.2.1 GBPUs will normally be composed of adjacent management units (MUs) that collectively make up a reasonably distinct population.

Partial MUs should not be used, except if required for an ecologically valid GBPU

Limited entry hunt (LEH) zones should be created if an MU is split between two or more GBPUs and these areas are open to grizzly bear hunting.

...

2. Management Objectives

2.1 Hunted grizzly bear populations will be managed to avoid a decline in that population, unless a formal management objective determined in section 2.2 specifies otherwise.

2.2 Formal management objectives, developed by regional and headquarters staff and recommended to the director, may be set to allow total human-caused mortality in a GBPU to be managed for:

- increases in the grizzly bear population, or
- reductions in the grizzly bear population.

The process of setting formal management objectives for hunted GBPUs should consider:

- the current population estimate;
- habitat capability, habitat suitability, habitat effectiveness, and resulting estimates of current carrying capacity;
- the threats (if any) to the population and to adjacent populations;
- known or perceived trends in the population or habitat supply;
- the history of grizzly bear-human conflicts in the area;
- the degree of certainty in any of these factors;
- other issues of interest to First Nations, stakeholders, and the general public.

3. Harvest Strategy

3.1 Population Assessment

3.1.1 Population estimates will be calculated for each GBPU or sub-GBPU using the best available scientific information. Resulting density estimates will be applied to smaller spatial units (e.g. MUs, LEH zones, guide outfitter territories) as needed to implement harvest management strategies.

3.1.2 If possible, population estimates will be based on an inventory of the GBPU. Otherwise, a multiple regression or similar approach for extrapolating grizzly bear densities from known densities in other areas should be used.

...

...

3.3 Hunting Regulation

Grizzly bear harvests should be regulated using a combination of limited entry hunting (LEH) for residents and quotas for guide outfitters.

The number of LEH authorizations and guide outfitters' quotas should be set in accordance with the Harvest Allocation Procedure (4-7-01.03.1), Quota Procedure (4-7-01.05.1), and Limited Entry Hunting Procedure (4-7-01.06.1).

...

Allocations of the harvest to resident hunters and guided hunters should reflect the size of grizzly bear populations within allocated areas; for instance, where guide outfitters' territories overlap more than one GBPU, quotas should typically be calculated and assigned in accordance with differences between those GBPUs.

...

4-7-01.05.2 "Administrative Guidelines"

Procedure:

The regional manager should attach an administrative guideline to all quotas that are not equal to a whole number each year. The regional manager may attach an administrative guideline to whole number quotas.

The regional manager should apply an administrative guideline to the quota of a guide outfitter as follows:

- a) the annual quota will apply for five years;
- b) up to 30% of the cumulative five year quota (obtained by multiplying the annual quota by 5) may be harvested in any one year;
- c) notwithstanding 2 b) , no more than 5 times the annual quota may be harvested in the five year period.

NOTE: The annual quota is not to be rounded before being multiplied by 5 to obtain the cumulative 5 year quota.

[Emphasis added]

4-7-01.05.1 "Quota"

Procedure:

1. Calculation of quotas

- 1.1 Allocations of harvest opportunities to guided hunters by means of a quota should be based on the calculation of an annual allowable harvest (AAH), and be consistent with the Ministry of Environment's policy and procedure concerning harvest allocations.
- 1.2 Quotas should be calculated by the regional section head, in accordance with the allocation share determined by the director.
- 1.3 Quotas recommended by the regional section head should not exceed the guided hunters' portion of the total allocated harvest for the big game population.
- 1.4 Quotas should be calculated to reflect guided hunters' share of the harvestable portion of the population within each guide outfitter's territory, if available.

...

2. Recommendation and approval of quotas

- 2.1 Once calculated, quotas should be recommended by the regional section head to the regional manager.
- 2.2 The regional manager should provide final approval of quotas in a timely manner and in accordance with regulation setting policy and procedure.
- 2.3 The regional manager should enter approved quotas onto the guide outfitter's licence as a condition of the licence.

[Emphasis added]

DISCUSSION AND ANALYSIS

Legislative scheme and role of Ministry policies and procedures

[30] The scheme of the *Act* and the Ministry's policies and procedures were extensively discussed in this Board's decision in *Darren DeLuca v. Regional Manager of Fish and Wildlife*, (Decision Nos. 2013-WIL-46(a) and 2013-WIL-047(a), October 31, 2013) (the "First DeLuca Decision").

[31] There was a second appeal from Mr. DeLuca to this Board in 2016, which drew on the First DeLuca Decision's discussion of the scheme of the *Act* (*Darren DeLuca v. Deputy Regional Manager* (Decision No. 2016-WIL-003(b), September 21, 2016) (the "Second DeLuca Decision"). Dealing with the scheme of the

legislation and the role of the Ministry's policies and procedures in the decision-maker's exercise of discretion under the legislation, the Board said the following in the Second DeLuca Decision:

78. The wide scope of discretion that the Regional Manager may exercise [under the legislation] was recognized by the Board in its decision on the Appellant's 2013 appeal of his quotas ... [the First DeLuca Decision]. In that decision, the Board considered the role of the Ministry's policies and procedures in the context of that discretion and found at paragraph 36:

By way of conclusion to this discussion, the scheme of the *Act* grants wide discretion to officials: the procedures constitute non-binding advice/guidance for officials only, to assist them in the exercise of that discretion.

[32] One distinction that must be made between the DeLuca decisions and this appeal is that the DeLuca appeals involved Roosevelt elk, whereas the present appeal involves grizzly bear. As some of the policies and procedures are species specific, care must be exercised to apply the applicable policies and procedures.

[33] Nonetheless, the scheme of the *Act* remains the same, with wide discretion being granted to administrators and the exercise of that discretion being guided via the policies and procedures by the use of words such as "should" or "may", which are permissive in nature. Where the words "will" or "shall" are found, they indicate an intent for mandatory action to be taken. However, the Panel notes that, even when the words "will" or "shall" are used, because they are found in policies and procedures, they are not binding; discretion must not be fettered.

The Appellant's position

[34] The Appellant notes that the 2012 population estimate for grizzly bears in BC is 15,000.

[35] The grizzly bear population estimate for the GBPU in the Omineca Region made in 2012 is 402. However, the Omineca Region GBPU contains four WMUs: 7-38, 7-27, 7-28 and 7-29, with a current population estimate, respectively, of 308, 37, 39 and 18 grizzly bears. Importantly, the above four WMUs are contiguous to each other. For wildlife management purposes, they together form a single GBPU.

[36] In the "Grizzly Bear Harvest Management" Procedure Manual set out above, section 1.1 provides as follows:

1.1 Grizzly bear populations will generally be managed to achieve management objectives at the level of grizzly bear population units (GBPUs). In particular circumstances, approval may be sought from the director to manage populations at another spatial scale (e.g. management unit, limited entry hunting zone).

[Emphasis added]

[37] The Appellant's position is that grizzly bears should be managed at the level of the WMU, not at the level of the GBPU. He submits that, if that were done, the

effect would be that his allocation and quota for WMU 7-38 would substantially increase. This is because WMU 7-38 contains, by far, the most grizzly bears in the GBPU. WMU 7-38 has 308 grizzly bears out of the 402 for the GBPU, or 77% of the total in the GBPU. The Appellant also argues that his "share" has been diluted through averaging across the GBPU.

[38] As early as March 2015, the Appellant communicated his concerns to the Respondent. He also attended a meeting on April 13, 2015 with representatives of the Ministry and the Respondent. The Appellant says that his understanding of that meeting was that "the allocation issues with the Omineca GBPU had been identified and considered important" and that "it would be resolved by the 2017-2021 allocation period."

[39] Progress updates were sought by the Appellant throughout 2015 and 2016, but no real progress was made to the Appellant's satisfaction. The Appellant states that it was not until a telephone call with the Deputy Regional Manager on February 1, 2017, that the Appellant was informed of his provisional quota of two grizzly bears, and a tentative allocation of eight grizzly bears. Put simply, the Appellant believes that there has been much "foot dragging" by the Ministry. The Appellant outlines the impact to him as follows:

Because the Respondent continues to manage Residents at the WMU level and Guide Outfitters at the GBPU level the Appellant and ALL Guide Outfitters whose territories are in WMUs with high densities of grizzly bears and are adjacent to low density areas are not receiving a fair share of the predicable allocation split. (page 13)

The Participant's position

[40] As noted earlier in this decision, the Participant supports the Appellant's position. It submits that the Appellant has provided a "sound argument". Based upon the Ministry's data, the Participant further submits that there is no conservation issue with the current harvest level in WMU 7-38, and that the Appellant's request to the Board does not raise a conservation concern. The Participant also agrees that with the Appellant's assertion "that it has taken too long for regional wildlife managers to review how guide outfitter quotas are determined in the Omineca GBPU."

The Respondent's position

[41] The Respondent submits that the scale at which grizzly bears are managed in the Province is set by default at the GBPU level under the Grizzly Bear Harvest Management procedure, and that there is room under this policy to change the scale of management, or to change GBPU boundaries, if so required. However, he explains that it is ultimately the Director's decision to make such a change, not a regional manager's. While a regional manager, such as the Respondent, can recommend a change in the scale of management to the Director of Fish and Wildlife Branch, the Respondent submits that such a change would "ultimately be a policy decision of the Director." Thus, he submits that the scale applied to

determine the Appellant's quota and allocations is not appealable as a "discrete statutory decision." The Respondent argues that "[t]he Board doesn't have jurisdiction to revamp administrative policies put in place with respect to determining quotas."

[42] In view of what this Board has said about administrative policies and procedures in this, and the two DeLuca decisions quoted herein, a decision on this "lack of jurisdiction" argument is unnecessary, particularly in view of the disposition of this appeal that this Panel has decided to make. However, given that the Respondent did consider this matter, and that it is an important piece of the Appellant's case, the Respondent's evidence at paragraphs 40 and 41 of his affidavit are worth repeating. The Respondent considered the appropriate "scale of management" (i.e., whether to use the WMU scale or the GBPU scale), and says the following:

40. I requested the Senior Wildlife Biologist to document the pros and cons of both scales of management for my review and consideration. I then asked staff to advise me as to whether they anticipated a conservation concern as a result of not moving to WMU management in the short term. Ms. Marshall advised me that there was no short-term concern. Key points from the scale comparison are detailed at p. 8 of my description of the AAH for grizzly bears for 2017-2018, [attached as an exhibit to the affidavit]

41. I also considered the fact that there have been no recent empirical grizzly bear population estimates in Region 7A, based on field population assessments rather than model-derived estimates of population. Grizzly bears in the north of the Province have very few barriers to movement. Coupled with metapopulation dynamics of these populations, whereby one population may be stable over time and act as a source group for another, smaller, less stable population, it was unclear to me what the real effect of these higher density source GB [grizzly bear] populations provide to harvest opportunity more broadly (that is, it is anticipated that bears from the higher density areas in a GBPU may move to lower density areas at certain times of the year). Thus, without any current field-based population data, I am challenged to determine the best scale of management with any real precision.

[43] The Respondent concludes in his written submissions as follows at paragraph 72:

72. Simply giving the Appellant his requested increases in allocation and quota, without first taking the steps outlined above to conduct a population assessment and to use that information to determine the most appropriate scale of management, will require either taking away grizzly bears allocated to other harvesters, or exceeding the allowable mortality that has been set so as to ensure grizzly bear conservation and a sustainable harvest.

[44] In the Respondent's "Reasons for decision: Annual Allowable Harvest (AAH) for Category A wildlife species in the Omineca Region, 2017-2021", dated January 25, 2017¹ ("Reasons for Decision"), he addresses a number of issues related to the AAH for moose and grizzly bear in the Omineca Region. Regarding grizzly bear, he specifically considered and addressed the concern about using the GBPU scale as opposed to the WMU scale. The Respondent states that, historically, the GBPU scale has been used, but went on to say how his staff, after completing an analysis, suggest that the WMU is likely the best biological assessment scale in respect of grizzly bears.

[45] The Respondent further says that "[t]he move to WMU would see a change to a significant number of guides both in terms of going up and down in allocation even in GBPUs where there is not a significant concern with the GBPU/WMU densities. In several cases the changes were substantial"

[46] The Respondent also said in the Reasons for Decision that:

I recognize it is well understood that GBs [grizzly bears] do not recognize administrative boundaries and that GBs from higher density WMUs, and especially males, travel great distances and thus could be expected to spend portions of their life cycle in apparently low density adjacent WMUs. (page 9)

[47] At the conclusion of these Reasons for Decision, the Respondent states that, as a transitional determination, he instructed staff to apply Annual Allowable Mortality ("AAM") allocations to guide outfitters at the GBPU level, but also decided to take other actions designed to bring this matter of which management scale should be applied to guide outfitters, to a head at the earliest opportunity. Specifically:

1. In the short term, begin conducting field based GB [grizzly bear] population estimates to be used in the determination of the need for the change, cognizant that this data may result in changes to move to WMU scale or even consideration for changes to GBPU boundaries if more suitable.
2. As we acquire GB population data, establish an engagement strategy with FN [First nations] and stakeholders to transparently demonstrate the need for change, the options to consider, and the ramifications of those changes.
3. Based on the above, determine if a GB conservation based mid-cycle allocation change is an imperative.
4. Based on the above, at the earliest opportunity, to develop a report and briefing materials for senior management on our process for determination, and the results of engagement and issues to be considered and addressed.

¹ Exhibit "R" to his affidavit.

The Panel's findings

[48] While this Panel sympathizes with the Appellant's position, having encouraged and engaged Omineca Region Ministry staff since 2015 to reconsider the management scale to apply to grizzly bear populations in 2017/2018, it seems that the Appellant must be patient awhile longer, assuming the review proposed above by the Respondent proceeds at the earliest opportunity. This Panel strongly recommends that such occur.

[49] Bearing in mind the scheme of the *Act*, the Ministry's policies and procedures, which are to allow officials wide discretion in the setting of allocations and quotas, with the policies and procedures offering guidance to managers as to the processes that they "might" employ, and having considered the Respondent's detailed explanation of how the Appellant's quota for grizzly bear and harvest allocation were set, the Panel finds that there is no compelling reason to interfere with his exercise of discretion. Indeed, to the contrary, there are very compelling reasons to delay such changes such as those suggested by the Appellant, as they may dramatically affect other guide outfitters.

[50] Further, because grizzly bears from high density WMUs tend to travel into low density adjacent WMUs, it is in the interest of conservation and regeneration of the gene pool for this to be encouraged, rather than to encourage a higher AAM of the more densely populated WMU.

DECISION

[51] 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 herein.

[52] For the reasons stated above, the Respondent's March 21, 2017 decision is confirmed.

[53] The appeal is dismissed.

"David H. Searle"

David H. Searle, C.M., Q.C., Panel Chair
Environmental Appeal Board

July 4, 2017