



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
E-mail: eabinfo@gov.bc.ca

DECISION NO. 2013-WIL-030(a)

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

BETWEEN:	Chris Condie	APPELLANT
AND:	Regional Manager, Recreational Fisheries and Wildlife Program (Cariboo 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: Chris Condie For the Respondent: Joseph G. McBride, Counsel For the Participant: Wilf Pfleiderer	

APPEAL

[1] The Appellant, Chris Condie, is a licensed guide outfitter who operates in the Cariboo Region (Region 5) of British Columbia. The guiding territory is in game management zone ("GMZ") 5B.

[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 is moose. In the past, the Appellant has obtained licences with a quota for moose in his guiding territory.

[3] In a decision dated January 16, 2013, Mike Ramsay, Regional Manager, Cariboo Region (the "Regional Manager"), advised the Appellant of his moose quota for the 2013-2014 licence year. He also advised the Appellant of his 2013-2016 allocation (target harvest) in relation to moose.

[4] The Appellant was given a quota of three moose, and an allocation of 11 moose. 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 quota and allocation for moose to a level equal to, or greater than, his pre 2008 levels, "subject only to conservation concerns."

[7] This appeal is one of 28 appeals filed by guide outfitters in three different regions against their 2013-2014 quota and five-year allocations. The appeals were all conducted by way of written submissions, and are the subject of separate decisions.

BACKGROUND

Licences, Quotas and Allocations

[8] The province regulates hunting for big game species, such as moose, through legislation, regulation and policy. It regulates non-resident hunters by requiring that they hunt for big game only with a licensed guide outfitter. Each guide outfitter has exclusive rights to guide non-resident hunters within his or her guiding territory.

[9] Guide outfitters must obtain their licences annually from the Ministry. Regional managers issue annual quotas as conditions of those licences. A quota sets the total number of a particular species, or type of species, that may be harvested by the guide outfitter's clients within the guide's territory(ies), during the period specified in the licence. It is section 60 of the *Wildlife Act* that gives a regional manager the discretion to allocate wildlife to non-resident hunters. That discretion, however, is exercised within a framework that includes applicable provincial policies, population estimates for the particular game species and other considerations, including: species conservation, traditional First Nation uses, and resident hunters' interests.

[10] When issuing quota, regional managers also identify the guide outfitter's five-year allocation, i.e., the maximum number of animals each guide's clients may take over the designated five-year period. These five-year allocations and annual quotas may be derived by the application of administrative guidelines, one of the policies or procedures that a regional manager can apply to arrive at the quota decision. In essence, an administrative guideline is a method of calculating a guide's quota so that the quota is greater than the guide's one-year allocation; i.e., it is more than 1/5 of the 5-year allocation. It allows a guide outfitter to exceed what would otherwise be the annual quota by a set number, but that number then counts towards the total five-year allocation. In other words, the use of

administrative guidelines can increase a guide's quota during the year above what it otherwise would be, but he or she cannot exceed the ultimate five-year allocation. The guidelines give guide outfitters some flexibility in the numbers harvested each year, and are used for harvest planning purposes.

[11] 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. These policies and procedures include:

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

[12] The new harvest allocation policies and procedures make it 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 guided hunters, "this does not imply that resident demand must be fully satisfied before non-residents [guided hunters] 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."¹ For instance, under the Harvest Allocation procedure, category A 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.

¹ December 10, 2012, Ministry "Backgrounder" on harvest allocation.

[13] For GMZ 5B, the Director calculated the split for moose as 77% to resident hunters and 23% to guided hunters.

[14] When the Director sets the resident/non-resident hunter split for each region, regional managers apply that ratio to determine the quotas for each guide, based on further policies and procedures.

[15] When the Ministry adopted the new policies and procedures, it understood that many guide outfitters 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 current 2012-2016 allocation period is the first time that the harvests for all applicable species, in every region, have been set in the context of the new policies and procedures; i.e., "full implementation".

The Decision

[16] In a decision dated January 16, 2013, the Regional Manager issued the Appellant's allocations and quotas for moose. He states, in part, as follows:

I am writing to you to advise you of your quota for the licence year 2013/14 and your allocation for the 2013-2016 allocation period.

Your Moose allocation for the 4 remaining years of the 5 year 2012-2016 allocation is eleven animals. This represents your target harvest for Moose for the 2013-2016 allocation period.

Your current allocation is different from your 2007-2011 allocation due to changes of annual allowable harvest (-35% in GMZ's 5C and 5D of the Chilcotin), and implementation of the Harvest Allocation Policy.

Ministry policy direction is to limit any decrease in a guide's allocation which would result solely from fully implementing the Harvest Allocation Policy to 30%.

Your Moose quota for this licence year is 3 animals.

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.

An allocation is a target total 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.

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.

...

If you would like to see the specific details of how I calculated your quotas for this licence year, please contact myself

[Bold in original]

The Appeal

[17] The Appellant appealed the Regional Manager's decision in a letter dated February 20, 2013. The Appellant's grounds for appeal are that the Regional Manager incorrectly applied policy in assigning allocation and quota and has "failed to utilize all means and methods at his disposal to meet his fiduciary responsibilities as defined by Ministry policy."

[18] Although the Appellant filed an appeal with the Board, he advised of his "extreme concern" with participating in the appeal process. He states:

There is ample evidence to support the claim that Guide Outfitter Certificates and any allocation or quota associated with said certificate should be viewed as property and as such any actions between the grantor and holder of these rights should properly be subject to judicial review not an appeals board.

[19] 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.

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

[21] In a 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 this appeal on the 2007 policies and procedures, and the resident hunters' share of the harvest in this region.

[22] In the same letter, the Board also advised, subject to any objections, it was of the view that the hearing could be heard on the basis of written submissions, with the first submission 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, rather, the grounds for appeal focus on the Regional Manager's application of the harvest allocation policies and procedures.

[23] In an email sent on May 8, 2013, the Appellant asked the Board to send all future communications to him by registered mail. [The Board complied with this request, but also sent its correspondence by email.]

[24] In an additional email sent on May 8, 2013, the Appellant objected to a written hearing, objected to the submission timelines, and asked for an oral hearing.

[25] In a letter dated May 10, 2013, the Board denied his request for an oral hearing and advised the Appellant that he could apply to the Board to extend the submission timelines in order to accommodate his schedule. No application was made by the Appellant. However, on May 30, 2013 the Board extended the time for making submissions to correspond with the dates in other Region 5 appeals. The Appellant's initial written submission and documents in support of his appeal were to be provided on July 15, 2013.

[26] In a letter dated July 14, 2013, the Appellant again opposed the written hearing procedure arguing that it is "inadequate and quite likely in violation of several legal statutes". He provided three reasons in support of his position.

[27] The Board responded to each of his points in a letter dated July 17, 2013. In it, the Board confirmed its decision to hold a written hearing. The Board also stated that it would accept the Appellant's July 14, 2013 letter as his initial submission on the appeal. This letter was sent by email and by registered mail; however, the registered mail was returned to the Board as "unclaimed".

[28] Although the Regional Manager provided detailed submissions and documents in support of his decision, the Appellant did not provide any reply submissions.

[29] The BCWF provided submissions to the Board which generally support the 2007 policies and procedures, and support of the Regional Manager's decision.

RELEVANT LEGISLATION

The legislative context: guide outfitting in BC

[30] 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).

[31] Under section 47 of the *Wildlife Act*, it is illegal for a non-resident of British Columbia 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]

[32] 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]

[33] 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.

...

[34] 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.

[35] Regional managers exercise their discretion to attach quota within a "sustainable use" framework. The framework is established by, and described in, various Ministry documents, including wildlife management objectives and Ministry policies and procedures. 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.

ISSUES

1. Did the Regional Manager calculate the five-year allocation and quota for the Appellant in accordance with the Ministry's policies and procedures? Should the allocation and quota be changed?

DISCUSSION AND ANALYSIS

- 1. Did the Regional Manager calculate the five-year allocation and quota for the Appellant in accordance with the Ministry's policies and procedures? Should the allocation and quota be changed?**

Appellant's submissions

[36] The only submissions provided by the Appellant in support of his appeal are found in his Notice of Appeal, and his letter dated July 14, 2013 which, for the most part, objected to the hearing procedure.

[37] In his Notice of Appeal, the Appellant advises that the Regional Manager "has incorrectly applied policy in assigning allocation and quota and has failed to utilize all means and methods at his disposal to meet his fiduciary responsibilities as defined by ministry policy", and asks the Board to give him an allocation and quota level equal or greater to "pre-2008 levels, subject to conservation concerns." There is no information in his Notice of Appeal that identifies which policies were breached or misapplied by the Regional Manager, or what "means or methods" should have been used by the Regional Manager to assign his allocation and quota. Nor did he provide any background information or evidence about his past quotas and allocations, or the number of moose that he is requesting when he refers to pre-2008 levels.

[38] The Appellant's July 14th letter was focused on the Board's procedure, and does not provide any of this information.

Regional Manager's submissions

[39] Despite the lack of information provided by the Appellant, the Regional Manager provided full submissions on his decision-making process. The Regional Manager notes that the allocation to guides during the allocation period was, in many cases, lower than in previous periods. This was because of the change in the split between hunter groups. However, guides with historical quotas that were disproportionately high compared to the size of their areas were particularly hard hit. To mitigate this impact, the Regional Manger applied a 30% individual change limit for this allocation period as a transitional measure. It involved determining the number of animals the guide had, in fact, harvested during the previous allocation period, grossing up that number to account for years the guide did not operate, and reducing the number for reductions caused by a reduced AAH, as distinguished from reductions caused by a change in the policy. He then explains:

36. In other regions, regional managers adopted a policy of not counting against the 5 year allocation animals that the guide harvested during the first year of the allocation that were in excess of the 1/5 of the 5 year allocation. This was because quotas were set in year 1 of the allocation period (they are now in year 2) without allocations first being set. So the guides were hunting to quotas without knowing

what their ultimate 5 year allocation would be and therefore should not be penalized for fully taking that quota.

37. The respondent [the Regional Manager] took a slightly different approach to accomplish the same goal. The respondent ignored harvest from the 2012-2013 season, what would have been the first year of a 5 year allocation period. The respondent then determined an allocation for 4 years rather than 5. So the 2012-13 harvest had no effect on this year's quota or allocations.

[40] The Regional Manager states that the method he used to determine quotas was similar to the method ruled upon by the Board in *Hoessl et al. v. Regional Wildlife Manager*, (Decision Nos. 2009-WIL-003(a) to 017(a), 019(a) and 020(a), August 3, 2010) [*Hoessl*]. *Hoessl* also involved quota appeals in the Cariboo Region.

[41] He described his specific approach to calculating the 2013-16 moose allocations and 2013 moose quotas for guide outfitters in the Cariboo Region was as follows:

Step 1: Calculate the 2013-16 allocation under full implementation of the harvest allocation policy.

- a. Determine the 2013 population estimate for each of 4 game management zones: GMZ A, B, C, D.² These estimates are based on inventory data, anecdotal information, hunter success rates, etc.
- b. Determine expected First Nations Harvest and deduct from population to determine number of moose available for harvest by residents and non-residents (the annual allowable harvest – AAH).
- c. Determine the number of bulls available for harvest by modeling the population to identify sustainable harvest.
- d. Calculate the **Annual Allowable Harvest** (AAH) for each GMZ.
....
- e. Determine what proportion of moose habitat in what GMZ the guiding area covers compared to the whole GMZ. This yields a figure that can be used to derive the AAH in the guiding area. Calculate the AAH in the guiding area.
- f. Determine the **guide share** within each guiding area. This was set by headquarters staff using the allocation calculator. For caribou moose it was 23%.

² In *Hoessl* (page 12), a GMZ was described as a geographic area that combines several wildlife management units sharing similar ecological characteristics and hunter harvest patterns. GMZs are used as the underlying areas for assessments of moose populations in the Cariboo Region.

- g. 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 guiding area.
- h. 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”.³ 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).

- a. Determine the guide’s **2007-11 harvest** in each guiding area, using guide declaration and compulsory inspection data.
- b. Determine the number of **years** that the guiding area 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 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.

³ The Director’s letter actually uses the words “substantively impacted” not “substantially impacted”.

- 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**. If there was no hardship consideration, then this is simply the 2012-16 allocation under full implementation. Since there are only 4 years left, 4/5 of this number was used to establish a 4 year allocation for 2013-16.

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

2013 moose quotas were calculated using a 30% administrative guideline: moose quota was provisionally calculated as 30% of the 4 year allocation. That figure was then adjusted in accordance with the Ministry's response to the Trumpy report: guides allocated 3 or fewer moose over 4 years received their full allocation in 2013; guides allocation 4 or 5 moose received a quota of 3 in 2013.

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). 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 have high resident hunter demand and were generally not considered for QVP in the Cariboo Region.
- 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 multi-year allocation.

[Emphasis in original]

[42] Within step 1, the AAH is calculated for each GMZ. The Regional Manager provided a document describing how the 2012-2016, five- year AAH for moose in Region 5 has been determined. For the populations east of the Fraser River in GMZ 5A and 5B, the author states:

The last moose population information for Zones east of the Fraser was collected in MU 5-02 in 2010. It is predicted that both GMZ's 5A and 5B have undergone less significant moose population declines than those GMZ's west of the Fraser River. Differing forest types and free to grow rates appear to provide more security cover and thus make moose less susceptible on the east side of the Fraser River. Predators and unregulated hunting facilitated through access and clear-cuts continue to be an issue but to a lesser extent than in the Chilcotin. The risk around further population decline was accounted for in a reduction of the AAH over the last allocation period. Bull to cow ratios are meeting objectives in both GMZ's. Any recovery of the population will require decreasing cow/calf mortality which is attributed to both predation and largely unregulated harvest. There will be no changes in the AAH calculation for resident/guide outfitter bull harvest from the last allocation. The opportunity for resident cow moose along the mountain caribou recovery corridor (currently LEH) will be discontinued as predation and unregulated harvest appear to have reduced the moose population below management objectives.

An independent expert has been tasked with reviewing the current status of the moose population within GMZ's 5A and 5B. The AAH may be adjusted in 2014, pending the results of that evaluation. (tab 4, page 1)

[Emphasis added]

[43] Applying the four step process to the Appellant's area, the Regional Manager calculated the Appellant's allocation and quota as follows:

Moose

The [Appellant's] area is in GMZ 5B only.

The area comprises 3.2% of the moose habitat in GMZ 5B. The AAH for GMZ 5B is 396. 3.2% of 396 is 12.55 moose annually to split between residents and non-residents in the area.

Applying the target guide share of 23% of 12.55 yields 2.89 moose annually for non-residents.

The 2012-16 allocation (5 times the annual figure) under full implementation in the licenced area is $5 \times 2.89 = 14.44$ bull moose, rounded to 14.

The guide's 2007-11 harvest not attributable to a drop in the AAH from the last allocation period was 13.95. 70% of that is less than 14, so the 30% hardship rule does not apply.

4/5 of that tentative 5 year allocation yields a rounded 4 year tentative allocation of 11.

The 2013-16 allocation in the licenced area is 11 bull moose.

Applying an administrative guideline of 30% to the 2013-16 allocation of 11 yields a rounded figure of 3.

Quota on the 2013-14 licence was set at 3 bull moose.

[Emphasis in original]

[44] In response to the Appellant's claim that the Regional Manager "incorrectly applied policy", the Regional Manager points out that no rationale was provided to support the Appellant's appeal.

[45] In any event, the Regional Manager submits that policies and procedures are not binding upon him. He submits that a regional manager can decide when to follow or apply policies and procedures. He states that he considered policies and procedures and largely, but not always, applied them.

[46] Finally, the Regional Manager also submits that increasing quota risks alternately overharvest, infringement of aboriginal hunting rights, and unfairness to guides who have not appealed.

BCWF's submissions

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

The Panel's Findings

[48] 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.

[49] 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]

[50] In the present case, the Appellant has not met the burden of proof. As a bare minimum, there should have been some evidence of the pre-2008 moose level being sought. 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 decision 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. Instead, it appears that the Appellant was loathe to recognize the Board's jurisdiction over his appeal, was unhappy with a written hearing process and, as a result, put minimal effort into his case.

[51] 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 quota and five-year allocation. 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 another decision, or that the Panel should make another decision.

[52] Rather, 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 in 2008.

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

DECISION

[54] 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.

[55] For the reasons stated above, the Panel finds that the January 16, 2013 decision should be upheld.

[56] The appeal is dismissed.

“Alan Andison”

Alan Andison, Panel Chair
Environmental Appeal Board

April 22, 2014