



Environmental Appeal Board

Citation: *Bradley Bowden et al. v. Director of Fish and Wildlife*, 2024 BCEAB 4

Decision No.: EAB-WIL-22-A013(b), A018(b), A019(b), A022(b), A024(b)

Decision Date: 2024-02-02

Method of Hearing: Conducted by way of written submissions concluding on July 31, 2023

Decision Type: Final Decision

Panel: Linda Michaluk, Panel Chair

Appealed Under: *Wildlife Act*, R.S.B.C. 1996, c. 488

Between:

Bradley Bowden, Darren Linnell, Eldon McMann, Allan Tew, Stewart Fraser

Appellants

And:

Director of Fish and Wildlife, Ministry of Forests

Respondent

And:

Kluskoil Adventures Ltd., Itcha Mountain Outfitters Ltd., BC Wildlife Federation

Third Party

Appearing on Behalf of the Parties:

For the Appellants: Kevin Church, Counsel

For the Respondent: Amanda Macdonald, Counsel

For the Participant (BC Wildlife Federation): Gerry Paille, Representative

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THE APPEAL

[1] The Appellants are all guide outfitters in British Columbia's Region 5 (the "Cariboo Region") and are all represented by the same counsel in this grouped appeal.

[2] On July 6 and 7, 2022, Logan Wenham, Director, Wildlife and Habitat, Resource Stewardship Division (the "Director") of the Ministry of Forests, Lands and Natural Resource Operations (the "Ministry"), issued a set of decisions, including several (collectively, the "Decision Letters") appealed to the Environmental Appeal Board (the "Board"). Each Decision Letter sets a moose quota for the licence year from April 1, 2022, until March 31, 2023 (the "Quota"), and their notional allocation of moose for the five-year period of 2022-2026 (the "Allocation"). The Appellants appealed their respective Decision Letters on August 4 and 5, 2022.

[3] The Board has the authority to hear these appeals under section 101.1 of the *Wildlife Act*, RSBC 1996, c. 488 (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 direction,
- (b) confirm, reverse or vary the decision being appealed, or
- (c) make any decision that the person whose decision is being appealed could have made, and that the board considers appropriate in the circumstances.

[4] The Appellants are seeking to have their allocations and quota increased to the same levels as received in earlier allocation decisions during the 2017-21 period. Appellants Linnell, McMann, and Fraser argue in the alternative that the allocations and quotas should be increased to what was recommended by the Regional Biologist.

[5] The Respondent submits that the appeals be dismissed.

[6] The BC Wildlife Federation (the "BCWF") was granted limited Participant status by the Board in order to provide a written statement on the Provincial Allocation Policy and Procedures and on potential impacts of guide outfitter quotas on resident hunters. The BCWF submits that the allocation policy has been administered properly in this instance and that the Appellants' requests for quota increases for a moose season that has already ended are not feasible.

BACKGROUND

[7] Licensed guide outfitters are regulated under the *Act*. A guide outfitter licence (issued under section 51 of the *Act*) together with a guiding territory certificate (issued

under section 59 of the *Act*) provide a guide outfitter the authorization to conduct a guiding business over a specified area of Crown land for the term of the certificate. Each year, guide outfitters may apply to the Ministry to 1) renew their guide outfitter licence; and 2), receive a hunting quota for a specific species of wildlife. A quota sets both the type of species and the total number of that species that the guide outfitter's clients may harvest within the guide's territory during the period specified in the licence.

[8] Section 3 of the Hunting Regulation, B.C. Reg. 190/84, divides the province into nine regions. The Appellants' guiding territories are all included within the Cariboo Region, which is located in the central west of the province. The Cariboo Region overlaps the core traditional territories of the Tsilhqot'n National Government, the Southern Dakelh Nation Alliance, the Ulkatcho First Nation, the Northern Secwepemc te Qelmucw, and the Esk'etemc First Nation, as well as portions of the traditional territories of other First Nations which surround the Region.

[9] Section 1 of the Management Unit Regulation, B.C. Reg. 64/96, divides the province into 225 Management Units ("MUs"), which are designated by prescribed boundaries. The Cariboo Region is comprised of MUs 5-1 to 5-16.

[10] The primary spatial scale for estimating moose populations in BC is population management units known as Game Management Zones ("GMZs") which are comprised of a number of MUs (or sub-units) based on geographical, ecological and access criteria. The Cariboo Region is divided into four GMZs: 5A (Quesnel Highlands); 5B (Cariboo); 5C (North Chilcotin), and 5D (South Chilcotin).

[11] For the purposes of allocating hunting opportunities between resident hunters and guide outfitters who accompany non-resident hunters, the Cariboo Region has been regulated under the Limited Entry Hunting ("LEH") system since 1993. The LEH is a system of allocating a designated number of game to resident hunters and guide outfitters to be hunted over the course of a licence year.

[12] The guide outfitter licence includes a quota, which is informed by an allocation, which sets the guide outfitter's ability to guide hunts within the guiding territory.

[13] An allocation is the maximum number of a particular wildlife species, in this case moose, that the guide's clients may harvest over a five-year period. These allocations are intended to help the guide outfitters to plan their operations in advance. However, these allocations may change over the course of an allocation period because of changes in moose population estimates, changes in harvest rates, or the extent to which the annual quota is fully harvested.

[14] The five-year allocation is determined after certain information is gathered and analyzed by the Ministry. Specifically, the Ministry estimates the population of the species in a given area 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. Only after the sustainable harvest is determined and the First Nations' harvest is deducted is the remaining available harvest, known as the Annual Allowable Harvest (the "AAH"), set and then split between resident hunters and guide outfitters on a percentage basis.

[15] A "quota" is defined in section 1 of the *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;

[16] Section 60 of the *Act* authorizes a regional manager to attach and to vary a quota as a condition of a guide outfitter licence. Section 100 of the *Act* provides that a Director may do an act or a thing that a regional manager is empowered to do.

[17] On July 6 and 7, 2022, the Director gave the Appellants their Decision Letters, which set out their Allocations and Quotas. Appellants Fraser and Tew received their notices on July 6, 2022, while Appellants Bowden, Linnell, and McMann received theirs on July 7, 2022.

[18] The Appellants¹ in these appeals hold the following guiding territory certificates and are appealing their 2022-2026 allocation and 2022-2023 quota:

- Appellant Bradley Bowden ("Bowden") is a licensed guide outfitter holding guiding territory certificate ("GTC") number 500938, which authorizes him to guide persons to hunt game within Game Management Zone ("GM Zone" or "GMZ") 5B and GMZ 5A and within portions of MUs 5-02 and 5-15. Bowden's Allocation is 47 moose, and his Quota is 14 moose.
- Appellant Stewart Fraser ("Fraser") is a licensed guide outfitter holding GTC number 500394 which authorizes him to guide persons to hunt game in GMZ 5C within portions of MUs 5-12 and 5-13. Specifically, the territory overlaps portions of Moose

¹ Appeals filed by Kluskoil Adventures Ltd and Itcha Mountain Outfitters Ltd. were closed once it was determined that their interests were represented by Linnell and Fraser respectively. Kluskoil Adventures Ltd and Itcha Mountain Outfitters were granted Participant status in these appeals with the ability to make written submissions. No submissions were received from either Participant.

LEH Zones 5-12A, 5-13C and 5-13B. Fraser's Allocation is 37 moose, and his Quota is 11 moose.

- Appellant Darren Linnell ("Linnell") holds GTC number 500948 and is the licenced guide outfitter for GTC 500948, which authorizes him to guide persons to hunt game within GMZ 5C. Specifically, the Cariboo Region portion of the territory overlaps a portion of Moose LEH Zones 5-13C and 5-12A. Linnell's Allocation is 13 moose, and his Quota is 4 moose.
- Appellant Eldon McMann ("McMann") is a licensed guide outfitter holding GTC number 500976, which authorizes him to guide persons to hunt game within GMZ 5D and within MU 5-05. McMann's Allocation is 7 moose, and his Quota is 2 moose.
- Appellant Allan Tew ("Tew") is a licensed guide outfitter holding GTC number 510002, which authorizes him to guide persons to hunt game within GMZ 5C within MU 5012. Specifically, the licence territory overlaps portions of moose LEH Zones 5-12A (90%) and 5-12B (10%). Tew's Allocation is 8 moose, and his Quota is 2 moose.

[19] Appellants Bowden and Tew request that their Allocations and Quotas be increased to the same levels as they had received from 2017 to 2021. Appellants Fraser, Linnell, and McMann also seek that remedy or, in the alternative, that their Allocations and Quotas be set as was recommended by the Regional Biologist in the Guide Allocation & Quota Determination Summary Final: Region 5 Cariboo.

[20] The Appellants' appeal identifies five issues:

1. that the decision letters from the Director notifying them of their Allocations were not in compliance with the Ministry's Harvest Allocation Policy Manual;
2. that the decision letters were not received in a timely manner as required and prescribed by policy;
3. that the Director did not properly consider the Ministry's Commercial Hunting Interests Policy Manual when the allocation and quota decisions were made;
4. that the Director did not base the decisions on scientific considerations balancing other interests and considering the local of expertise of the Cariboo Region staff; and,
5. that Jennifer Psyllakis, Former Director, Wildlife and Habitat, Resource Stewardship Division ("Former Director Psyllakis") unduly influenced the Director's decisions regarding the Appellants Allocations and Quotas.

[21] The Respondent submits that the Quota appeals are moot as the licence year for those quotas under appeal was April 1, 2022, to March 31, 2023, which has now passed. The Respondent further submits that allocations are not appealable decisions. The

Respondent argues that the Appellants have offered no evidence that the Director's allocation and quota decisions were not based on management objectives or biologist recommendations and, therefore, there is no reason for the Board to interfere with the Director's decisions.

ISSUES AND ANALYSIS

Preliminary Issues

[22] There are two preliminary issues:

1. are the Quota appeals moot?
2. are the five-year allocation decisions appealable?

Preliminary Issue 1: Are the Quota appeals moot?

Submissions

Appellants' Submissions

[23] The Appellants did not make any initial submissions specifically on the issue of whether the quota appeals are moot. Their reply submissions on this issue are, however, set out below.

Respondent's Submissions

[24] The Respondent submits that any decision I could make with respect to Quotas would have no practical effect, as the period to which the now-expired Quotas applied was April 1, 2022, to March 31, 2023. As a result, the Respondent contends the Quota appeals are moot.

[25] The Respondent states that even though the Quota appeals are moot, I retain the discretion to decide these appeals if there were policy considerations that would justify the continuation of this appeal. However, the Respondent does not take a position as to whether there are, in fact, any such policy considerations that are present in the matter before me.

[26] The Respondent submits that in the event that I decide the Quota appeals, any changes made to the Quotas could be incorporated by the Director into future quota decisions.

Participant Submissions

[27] The BCWF submits that the Appellants' requests for quota increases for a moose season that has ended are not feasible.

Appellants' Reply

[28] The Appellants, in reply submissions, point out that while the Quota period has lapsed, they, and indeed all guide outfitters and certificate holders in the Cariboo Region, received their 2023-Quota decisions in early July 2023. The Appellant submits that this timing would appear to be the 'new normal'. The Appellants surmise that the late decisions may be designed to make any quota appeal 'moot' in that there is not sufficient time for affected parties to take issue with the matter while it is still a 'live' issue. The Appellants contend that compensatory numbers of moose may need to be provided for the Appellants in subsequent years if more timely quota numbers cannot be provided, just as occurred with the 'uplift' numbers to compensate for adverse effects during COVID. It is clearly possible and can be done without significant harm to populations.

Discussion and Analysis

[29] This is not the first time the Board has been called upon to consider whether Ministry decisions pertaining to guide outfitter licence quotas are moot. In the case of these particular appeals, I note that the Director's Decision letters were delivered to the Appellants on July 6 and July 7 of 2022, for a licence period that expired on March 31, 2023. The appeals were filed within the statutory time frame of 30 days. With the back and forth that occurs in the scheduling of these matters, the appeals were not ready to proceed to hearing until July 31, 2023—4 months after the licence term had expired.

[30] The legal test for mootness is set out in *Borowski v. Canada (Attorney General)*, 1989 CanLII 123 (SCC), [1989] 1 SCR 342, ("*Borowski*"). The BC Supreme Court reaffirmed this expression of the doctrine and the test at paragraph 53 of *Loke v. British Columbia (Minister of Advanced Education)*, 2015 BCSC 413 (CanLII).

[31] In *Borowski*, Sopinka J. described the 'doctrine of mootness' as follows:

15. The doctrine of mootness is an aspect of a general policy or practice that a court may decline to decide a case which raises merely a hypothetical or abstract question. The general principle applies when the decision of the court will not have the effect of resolving some controversy which affects or may affect the rights of the parties. If the decision of the court will have no practical effect on such rights, the court will decline to decide the case. This essential ingredient must be present not only when the action or proceeding is commenced but at the time when the court is called upon to reach a decision. Accordingly if, subsequent to the initiation of the action or proceeding, events occur which affect the relationship of the parties so that no present or live controversy exists which affects the rights of the parties, the case is said to be moot. The general policy or practice is enforced in moot cases unless the court exercises its discretion to depart from its policy or

practice. The relevant factors relating to the exercise of the court's discretion are discussed hereinafter.

16. The approach in recent cases involves a two-step analysis. First it is necessary to determine whether the required tangible and concrete dispute has disappeared, and the issues have become academic. Second, if the response to the first question is affirmative, it is necessary to decide if the court should exercise its discretion to hear the case. The cases do not always make it clear whether the term 'moot' applies to cases that do not present a concrete controversy or whether the term applies only to such of those cases as the court declines to hear. In the interest of clarity, I consider that a case is moot if it fails to meet the 'live controversy' test. A court may nonetheless elect to address a moot issue if the circumstances warrant.

(Emphasis added)

[32] There is no disagreement between the parties that the 2022-2023 licences and attached Quotas have expired. As a result, even if I considered the matter of the Quotas and decided they should be varied in some way, the decision would have no practical effect, as this remedy can not go back in time. I note that the Respondent has advised that if the Quotas are varied, that decision could be taken into consideration when the future quotas were determined. I further note, however, that the decisions pertaining to the 2023-2024 quotas have already been made.

[33] It is clear to me from the language of the *Act* and the Quotas themselves that that the effective period of the Quotas was as set out in the attachment to the guide outfitter licence: April 1, 2022, to March 31, 2023. The Appellants were permitted to exercise the authority of their licences, to the extent permitted by their Quotas, only during this time. For the Appellants to lawfully act as guide outfitters after this time, they would need to obtain a subsequent authorization outlining which species of game they may hunt, and how many of this species. As stated previously, the Appellants have sought, and received, this subsequent authorization in the form of new quotas.

[34] While it may be true that there is a disagreement between the Appellants and the Respondent over these subsequent quotas, the parties have not argued this before me, nor provided evidence on this point. As the arguments of the parties in this matter make clear that quotas are set after the evaluation of then-current information available to the Ministry, the evidence presently before me is of little assistance in determining the appropriateness of future quota numbers. While rights of appeal of future quotas may exist and any disagreements over these quotas be brought before the Board at a later date, those arguments would require evaluation of a separate set of facts that are not, and cannot be, before me now. I therefore consider that the question of the Quotas does

not meet the 'live controversy' test as set out in Borowski. I find that the appeals of the Quotas are moot.

[35] Given that the Appellants have appealed both their Quotas and their five-year Allocations, I will address whether I ought to exercise my discretion to nevertheless decide these moot appeals in the context of determining whether the five-year allocations decisions are appealable.

Preliminary Issue 2: Are the five-year allocation decisions appealable?

[36] The determination of if the five-year allocations are appealable takes on a greater significance as I have determined that the Quota appeals are moot. If an independent right to appeal the five-year allocations is available to the Appellants, the appeal will proceed to be decided on its merits regardless of the fact that the Quota appeals are moot. If the Appellants do not have an independent right to appeal allocations, I must then turn my mind to if the Quota appeals should still be decided, despite being moot.

[37] In assessing if the five-year Allocations are appealable, the relevant statutory scheme must be examined.

Relevant Legislation

Wildlife Act

Reasons for and notice of decisions

101 (1) The regional manager or the director, as applicable, must give written reasons for a decision that affects

(a) a licence, permit, registration of a trapline or guiding territory certificate held by a person, or...

(2) Notice of a decision referred to in subsection (1) or (1.1) must be given to the affected person. ...

Appeals to Environmental Appeal Board

101.1 (1) The affected person referred to in section 101 (2) may appeal the decision to the Environmental Appeal Board continued under the *Environmental Management Act*.

(2) The time limit for commencing an appeal is 30 days after notice is given

(a) to the affected person under section 101 (2), or

(b) in accordance with the regulations.

(3) Subject to this *Act*, Division 1 of Part 8 of the *Environmental Management Act* applies to an appeal under this *Act*.

- (4) The appeal board may conduct an appeal by way of a new hearing.
- (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.

Appellants' Submissions

[38] The Appellants did not make any initial submissions specifically on the issue of whether the five-year allocation decisions are appealable, but did address this issue in reply as set out below.

Respondent Submissions

[39] The Respondent submits that a five-year notional allocation itself is not appealable. The Respondent argues that these allocations are not statutory decisions made by the Respondent under the *Act* and that the Board therefore has no jurisdiction to order that they be changed. The Respondent submits that the principles of statutory interpretation require the word 'decision', as it is used in sections 101 and 101.1(5)(b) and (c) of the *Act* to be read harmoniously with the *Act's* subject matter. Read purposively, the Respondent submits the word 'decision' in these sections of the *Act* is limited to statutory decisions. Statutory decisions, as argued by the Respondent, are decisions made under the authority of a section of the *Act* which affects a person's licence and that the *Act* empowers a regional manager to make.

[40] The Respondent submits that *Kevin Newberry v. Deputy Regional Manager, Cariboo Regional Operations Division*, 2018 BCEAB 1 (CanLII) ("*Newberry*"), involved the appeal of a 2017/18 quota decision as well as the 2017-2021 notional allocation for a guide in the Cariboo Region. The Respondent submits that on the basis of the evidence presented in that appeal, the Board found that notional allocations were not tentative and that they were only subject to change if there was a change in the Annual Allowable Hunt.

[41] The Respondent submits that this reasoning should not be followed in the present circumstances, especially where pressing conservation concerns require an immediate and temporally limited containment of licenced harvesting to recover animal populations. Furthermore, since the *Newberry* decision, changes to policy have been made and the language in quota decisions letters has been revised to better communicate and clarify that the five-year allocation is notional only.

Participant Submissions

[42] The BCWF submits that five-year allocations are not appealable.

Appellants' Reply Submissions

[43] The Appellant replies that the Respondent seems to consider the *Newberry* decision to be 'in error' or 'not the case' due to the Respondent's use of 'tentative' and 'notional' when describing essentially all decisions surrounding allocation and quota numbers. The Appellant submits that adding qualifying words in an attempt to circumvent a decision is not a change in policy.

Discussion and Analysis

[44] There is no *stare decisis* in administrative law appeals before the Board.

[45] *Stare decisis* is the legal principle that a court, or other decision-making body which hears appeals, is bound to follow previous decisions of that court, or a higher one, where the applicable law is the same and where the relevant facts are not markedly different from the then-present case. While the Board can, and often does, take guidance from previous Board decisions to assist in consistency in decision making, it is not bound to follow them. Rather, the Board is guided by the relevant provisions of the *Act*, specifically section 101.1(5), where the Board 'stands in the shoes of the decision-maker,' and can "make any decision that the person whose decision is appealed could have made, and that the [B]oard considers appropriate in the circumstances" (*Act*, section 101.1(5)(c)).

[46] While the Board is bound to follow decisions of superior courts in British Columbia, namely the BC Supreme Court, the BC Court of Appeal, and the Supreme Court of Canada, the parties have not presented me with, nor am I aware of, any decisions from these courts which would be binding on me in this matter. As such, it is incumbent on the parties before me to make reasoned arguments, with or without the assistance of previous guiding decisions of the Board, as to if the Allocations can be independently appealed under the *Act*. This is of significant importance, as the jurisdiction of the Board over the matters before it must be correctly understood in order to allow for all parties to receive a fair hearing.

[47] The Board had previously found that allocation decisions are appealable. As submitted by the Respondent, the Board in *Newberry* found that a change in the Annual Allowable Hunt could result in a change in the allocation. The parties have not referred me to any Board decisions that have followed the reasoning in *Newberry* or addressed the question of whether allocations are independently appealable, and I am aware of no such cases.

[48] The Respondent submits that its internal policies and communication have changed so as to clarify that the five-year allocation is notional only. However, it is not clear to me what policy the Respondent was referring to when he submitted that policy

changes had been made to clarify that allocations are notional. I do note that the Administrative Guideline Policy submitted in the Respondent's Book of Documents is dated March 29, 2007, which, given the dates, appears to have been the policy in place at the time of *Newberry*. That said, a change in policy does not necessarily change the rationale presented in *Newberry*.

[49] Unfortunately, neither the Appellants nor the Respondent provided persuasive submissions as to whether, and how, allocations are appealable before the Board. While it is clear to me that a quota is tied directly to the five-year allocation, be it notional or not, the impact of a change in allocation on a particular quota is not sufficiently defined to allow me to render a decision on this matter. While the Respondent turned his mind to this issue, he constrained his analysis to only reviewing, in a cursory manner, the *Newberry* decision and the Board's powers to make decisions under the *Act*. Little analysis is applied to the question of whether an allocation is appealable, and therefore little can be taken from these arguments.

[50] The Appellants, similarly, do not forward an argument that allocations are independently appealable. The Appellants' argument, in full on this issue, reads:

At paragraphs 88 and 89, the Respondent seems to consider the decision in *Newberry* as cited to be 'in error' or "not the case" and resulted in the common use of the words "tentative" and "notional" when describing essentially all decisions surrounding allocation and quota. It is not a "policy" change to avoid a finding to simply add the noted qualifying words in an attempt to circumvent the decision. Whether the allocation numbers are subject to change in the face of "pressing conservation concerns" (the Appellants would agree that they are) is not the issue. The issue is the necessity of Appellants and their colleagues being able to operate businesses by having some reliance on timely provision of quota and allocation that they can rely on over the 5-year cycle of their business.

[51] I do not find the Appellants' submissions on this point to be of assistance in determining the independent appealability of allocations.

[52] Both parties make assertions in their submissions on this issue. However, assertions are insufficient in assisting the Board in determining its jurisdiction in this matter. A decision on the independent appealability of allocations under the *Act* will have to wait until the matter is again before the Board and fulsome arguments are presented to assist the Board in determining its jurisdiction.

[53] However, because of the lack of reasoned arguments on this point, and to preserve the administrative fairness of the process before the Board, I will, for the purposes of this decision, assume that the Allocations were capable of being independently appealed. In truth, the outcome of the appeals will be the same in either event.

[54] While it would be procedurally fair for me to decide if the Allocations are appealable to the Board, as all parties had the opportunity to present argument on this point, I decline to do so. Making such a determination on the strength of the arguments before me would be of little assistance to the parties or to future panels of the Board which may look to this decision for guidance.

[55] I note that because of the manner in which quota and allocations are tied, it will be necessary from time to time to refer to quotas; but to be clear, this is for ease of reading only and does not imply that the Quotas are being considered outside the context of the allocations.

Issues

[56] There are four issues:

1. Were the Decisions in compliance with the Ministry's Harvest Allocation Policy and the Commercial Hunting Interests Policy?
2. Were the Decisions issued in a timely manner?
3. Did the Director base the allocation decisions on scientific considerations?
4. Was the Director unduly influenced by Former Director Psyllakis in making the Decisions?

Issue 1: Were the Decisions in compliance with the Ministry's Harvest Allocation Policy and the Commercial Hunting Interests Policy?

Appellants' Submissions

[57] The Appellants submit that the Decision Letters received on July 6 and 7, 2022, purported to be the final and official notice of their Allocations and Quotas, despite the wording of the letters indicating that their final quotas were not attached. The Appellants assert that the letters were difficult to follow and confusing, especially considering that the Appendix attached to the Decision Letters was referenced as setting out the Quotas and Allocations. The Appellants submit that, at the least, the Director should be required to be clear and unambiguous in all communications with the Appellants and all guide outfitters.

[58] The Appellants submit that the Director should dispense with the word "notional" in the context of allocations and, especially, quota. If, as the Harvest Allocation Policy (Ministry Policy Manual, Vol. 4, section 7, subsection 01.03) states, decisions are to be made with respect to allocations and quotas in such a way that planning and certainty can be achieved regarding guide business decisions, the Director should be required to provide allocation and quota numbers in a direct manner and without equivocation. The

alternative, as was argued, is to assume that the Appellants never received final and certain allocation and quota numbers which is a clear contravention of the relevant policy manuals.

[59] The Appellants submit that the Director is obligated to adhere to policies the Ministry has created, including in this instance, the Commercial Hunting Interests Policy (Ministry Policy Manual, Vol. 4, section 7, subsection 01.11). Although Former Director Psyllakis, in her Draft Reasons for Decision: Annual allowable Harvest 2026 Cariboo Region (the "Draft Decision Document"), recognized that the obligation to certainty, timeliness, and fairness underwrites the approach that the Director is obliged to follow in making quota and allocation decision, that did not occur. The Appellants assert this makes the fact that the policy was not followed even more egregious.

Respondent Submissions

[60] The Respondent submits that section 60(1) of the *Act* provides that a regional manager (or director) may attach a quota as a condition of a guide outfitter licence and may vary the quota for a subsequent licence year, and that the Decision Letters are notification of the quota decision with a summary of the quota and allocation attached in an appendix.

[61] The Respondent submits that the Decision Letters advised that the Appellants' Quotas were available to view on their Fish and Wildlife ID ("FWID") profile in the Wildlife Information and Licensing Data system ("WILD"), and that the Appellants also received an email that their WILD profile had been updated. The Ministry's Guide Outfitter Licence Issuance, Amendment and Renewal Policy (Ministry Policy Manual, Vol. 4, section 1, subsection 01.06) provides that it is the policy of the Ministry that issuance, applications, renewals, and amendments of guide outfitter licences be processed in WILD. Therefore, the Respondent argues, the Quotas were issued in accordance with the Ministry's policy.

[62] The Respondent submits that the Appellants' WILD accounts contain their amended licence with the 2022/23 quota, and provided copies of printouts from the Appellants' WILD accounts showing that information.

[63] The Respondent submits that it is clear that the Decision Letters notified the Appellants that their Quotas had been uploaded to their WILD account, and as the notional allocations are not a condition of their guide outfitter licences, the allocation was provided in an Appendix attached to each of the Appellants' Decision Letters.

[64] The Respondent submits that the word 'notional' is used only with respect to the Allocation and not Quota. The Decision Letters state: "quotas in any licence year are firm (subject to appeal) once they have been finalized". The Respondent asserts that what is subject to change is the five-year notional Allocation which is described in the letter as "a notional harvest of species over a period of years that normally informs annual setting of quota. A notional allocation calculation may change over the course of an allocation

period as a result of a number of factors such as changes in population estimates or changes in harvest rates.” The Respondent argues the Decision Letters are clear that the Allocations are not the Quotas.

[65] The Respondent submits that its Commercial Interests Policy speaks to larger policy goals of the Ministry and is not relevant to this appeal. The Respondent submits that the Board has previously held in *Christine Franke v. Regional Manager, Recreational Fisheries and Wildlife Program (Cariboo Region)*, 2014 BCEAB 14 (CanLII) (“*Franke*”), that if this policy was intended to be used in determining quota, it would have explicitly said that.

Participant Submissions

[66] The BCWF did not make any submissions on this issue.

Appellants’ Reply

[67] The Appellants reply that the communication of ‘notional’ allocation and quota is confusing for laypersons, as they are unsure on what they can and cannot rely upon given use of the terms “tentative” and “notional” to modify each term.

Discussion and Analysis

[68] The body of each Decision Letter was the same for each of the Appellants. The letter contained 3 Appendices, and Appendices 1 and 2 were the same for each of the Appellants. Appendix 3 was unique to each Appellant and contained, among other things, the Appellant’s “Allocation” and “Maximum Quota”. What the Appendix does not contain is a date, although I accept that given it is attached to and referenced in the July 2022 Decision Letter, it pertains to the time frame set out in that letter.

[69] The third and fourth paragraphs of the Decision Letter are relevant and are set out, in part, below:

Your quota for any licence year is informed by different factors, including the current notional allocation calculation for the allocation period and any animals harvested in previous licence years during this allocation period. An allocation is a notional harvest of a species over a period of years that normally informs annual setting of quota. A notional allocation calculation may change over the course of an allocation period as a result of a number of factors such as changes in population estimates or changes in harvest rates.

This notional allocation is not your 2022/23 quota. It is provided only to assist in your planning through the 5-year allocation cycle. The quota and current 5-year notional allocation for each certificate associated to your licence are included in the appendix for your ease of reference (Appendix 3). ...

(emphasis in original)

[70] The Appellants submit that the first sentence of the fourth paragraph (the second paragraph as set out above) is confusing. While I accept this is their opinion, when viewed in context of the other information contained in the letter, it is clear to me that the underlined portion of the sentence applies to the Allocation and not to the Quota. While the body of the Decision Letters appears to be generic, Appendix 3 of each letter is unique to each of the Appellants and clearly sets out the numbers associated with the Allocation and with the Quota. What could be more helpful would be if the Appendix 3 was dated so it was clear on its face as to the time frame to which it applied.

[71] I accept that the Appellants believe that the language in the Decision letters could be clearer. While I agree that clarity in communications on statutory decision documents is important, I find that the Appellants have not provided sufficient evidence to show that the Decision Letters did not comply with the Ministry's Harvest Allocation Policy.

[72] As regards the application or not of the Commercial Interests Policy, I note that the Appellant did not provide any submissions as to why the Board's findings in *Franke*, as referenced by the Respondent, should not apply. I find the reasons set out in *Franke* to be useful and relevant to my decision on this issue, and I adopt them here. I find that if this policy was intended to be used in determining quota, the Commercial Interests Policy would have explicitly stated this.

[73] The Appellants have the obligation of establishing, on a balance of probabilities, that the Director failed to comply with the policies as alleged, as they are the party who seeks to introduce this issue into the appeal. I find that they have failed to do so. As a result, there is insufficient reason to grant a remedy in favour of the Appellants based on this issue, including use of the Board's authority to make any decision that the decision-maker could have made and that the Board considers appropriate in the circumstances.

Issue 2: Were the Decisions issued in a timely manner as required and prescribed by Policy?

Appellants' Submissions

[74] The Appellants submit that the Decision Letters are not in strict compliance with the Ministry's Procedure Manual Vol. 4, section 1.01.05.1 titled "quota". The procedure requires that decisions occur in a timely manner (2.2) and that the quota then be entered onto and attached as an approved condition to the guide outfitters license (2.3). The Appellants further submit that the Decision letters are not in compliance with, at least the spirit of if not the exact wording of, the Commercial Hunting Interests Policy (Ministry's Policy Manual Vol. 4, section 7.01.11).

[75] The Appellants submit that the Board, in *Allan Tew v. Director of Wildlife and Habitat*, 2020 BCEAB 16 (CanLII) ("*Tew et al*"), commented at paragraph 73 that it was incumbent on the Director to ensure there was a flexible enough process in place to adjust to environmental or other stressors while still ensuring timely decision-making as regards providing five-year notional allocation decisions to guide outfitters.

[76] The Appellants assert that in the decision cycle under consideration in these appeals, despite the fact that the biologist and local Cariboo Region staff appeared to have been diligent, the Decision Letters were still not provided to them until alternate planning was too late to achieve. The Appellants submit that there was no further information gathering undertaken, nor was an explanation provided for the time delay between when Former Director Psyllakis received the written recommendation packages regarding AAH on November 24, 2021, and the Director's acceptance of the recommendations on June 30, 2022. The Appellants assert that Former Director Psyllakis was experienced and knew or should have known that the delay would cause adverse consequences for the Appellants. The Appellants submit that the remedy is either a restoration of the original quota from the previous allocation cycle, or the implementation of the recommendations of the Cariboo Region staff.

Respondent Submissions

[77] The Respondent submits that while the final Decisions were made on July 6 and 7, 2022, the affidavit evidence of Daniel Lirette, Wildlife Section Head, Cariboo Region (the "Lirette Affidavit") states that interim notional allocations and quotas were provided to guide outfitters on April 20, 2022, and that discussion then ensued with individual guides. The Respondent submits that this was to allow guide outfitters time to plan for the upcoming hunting season, prior to the issuance of the final Quota.

[78] The Respondent asserts it is inaccurate to say there was no information gathering in the period immediately prior to the Decision. Between the issuance of the tentative quota in April 2022 and the final Quota in July 2022, the Ministry carried out consultation with First Nations as is required prior to making any determination relating to allocation and quota. The Crown's duty to consult with First Nations is clearly outlined in *Gamlaxyetxw v. British Columbia (Minister of Forests, Lands & Natural Resource Operations)*, 2018 BCSC 440 (CanLII) (paragraphs 125-128). The Respondent submits that the Director proceeded with his duty to consult in reliance on the Province's commitment to the United Nations Declaration on the Rights of Indigenous Peoples and on various Memoranda of Understanding and agreements between First Nations groups. Further, the Lirette Affidavit shows there were multiple meetings with First Nations between April 2022 and June 2022.

[79] The Respondent submits the Lirette Affidavit shows that the Cariboo Region staff who made the recommendations contained in "The Cariboo Region Recommendation:

Annual Allowable Harvest for the 2022-2026 Allocation Period” (the “Recommendation Report”) expected that the decision maker was going to consider Indigenous Knowledge and First Nations feedback in the Annual Allowable Hunt determination and the Quota/LEH decision. The Lirette Affidavit at paragraph 76 provides:

... The 2022/23 quota decision required balancing biological, social and other considerations and more heavily weighted First Nations feedback than previous decisions given the Province’s commitments to full implementation of the United Nations Declaration on the Rights of Indigenous Peoples (“UNDRIP”), TNG Nenqay Deni Accord, and concepts of Reconciliation and co-management of wildlife. The Cariboo Region fully expected that First Nations feedback would be integrated into quota decisions and that the final 2022/23 decision would not necessarily align with the biological recommendations.

[80] As regards the Appellants’ assertions that the Director is obliged to adhere to policy, the Respondent submits that the purpose of policy and procedure is to guide decision makers and that policy is not binding. The Director has been given discretionary power to issue quota under section 61 of the *Act*, and requiring strict adherence to the Ministry’s policy and procedures would fetter the Director’s discretion.

[81] The Respondent submits that the remedy sought by the Appellants is inappropriate as 2022 is the first year of a new five-year allocation cycle, whereas the previous year’s quotas arose from a different allocation cycle. Further, the Respondent submits that should the Board adjust the Appellants’ quota and/or allocation, the hunting opportunities of others would have to be adjusted which could result in potential impacts to the moose population, as well as Food, Social, and Cultural hunts (“FSC Hunts”) and infringement of Aboriginal rights.

[82] As regards the Appellants’ alternative remedy, i.e. the implementation of the Cariboo Region staff recommendation as originally provided in the interim quota, the Respondent submits that these numbers were not, in fact, regional recommendations. As set out in the Lirette Affidavit, these were tentative calculations based on the draft AAH decision that, following additional engagement and consultation with First nations and Cariboo Region staff, was reduced by 10% in GMZ 5C and 5D.

Participant Submissions

[83] The BCWS agree that the Decisions were not timely, and submits that the same applies to LEH authorizations. BCWS submits that these decisions should be completed early in the new year so that guide outfitters and resident hunters know where they stand long before the moose season begins. This provides certainty for the outfitters as they book hunts early in the new year and allows for the LEH draw to be run earlier in the spring, which would allow for successful resident hunters to better plan for their hunts.

[84] The BCWS submits that it supports reconciliation, First Nations' rights and title and the *Declaration on the Rights of Indigenous Peoples Act*, and the involvement of First Nations in wildlife management decisions. However, it asserts that to leave discussions with First Nations until April through June 2022, for whatever reason, does not seem timely. If more funding and capacity are needed to finalize quotas and allocations in a timely manner, the government should address these requirements.

Appellants' Reply

[85] The Appellants assert that the Respondent's submissions do not address the core issue as it relates to the timeliness of decision making. The Appellants argue that they do not seek to avoid or reduce consultation and information gathering but that it must occur in a much timelier manner. Failure to do so does not accord with the Director's obligations and serves to make a mockery of the process, especially the appeal process.

[86] The Appellants state that the "specter of consequences" as raised by the Respondent should the Appellants be successful in their appeal should never be a consideration in making a decision based on the facts and law.

[87] As regards the Respondent's submission that policy and procedure are guidelines, and adherence to those policies is not required by the Director, the Appellants point to numerous instances in the Lirette Affidavit and the Director's Affidavit (the "Wenham Affidavit") where policy is cited as justification for decisions made. The Appellants submit that the Director, in exercising his discretion making decisions as authorized by the Act, is subject to procedural fairness where the Appellants can establish a legitimate expectation that a certain procedure would be followed (*Moreau-Bérubé v. New Brunswick (Judicial Council)*, 2002 SCC 11 (CanLII), at paragraph 78). The Appellants argue they have established that they had, for many years, a reasonable expectation of the delivery of allocation and quota numbers in a timely manner that would allow them to market hunting opportunities during the "hunting show" windows in January and February each year—the time they primarily book hunts and thereby keep their businesses operational.

Discussion and Analysis

[88] One of the preliminary issues I decided in these appeals was whether, because of the passage of time, the appeals against the Quotas were moot. I found that they were.

[89] That said, the fact that the Decision letters were issued when they were does not mean that the Ministry policy and/or procedures were not followed. In fact, while there was affidavit evidence presented to show which, and how, policies and procedures were applied, there was insufficient evidence to show that these documents were improperly applied. The evidence was clear that while recommendations for the AAH for the 2022-2026 allocation period were made in November 2021, the consultation processes required by policy and law were not completed until June 2022. During the consultation period, a number of parties participated in consultation, including guide outfitters, resident

hunters, and First Nations. There was no evidence presented to show that any of these parties wilfully “dragged out” or stalled the consultation process, or that the Director should have applied his discretion to end the process more quickly.

[90] The Appellants have the obligation of establishing, on a balance of probabilities, that they are correct that the Director failed to comply with legal requirements or otherwise acted in an arbitrary or capricious manner when the Decision Letters were sent out relatively late in the 2022-2026 allocation (Quota) period. I find that they have failed to do so. As a result, I decline to implement any remedy responsive to this issue—including my ability to make any decision the Director could have made and that I consider appropriate in the circumstances.

[91] That does not mean, however, that the Ministry should be satisfied with this process and not seek to improve it. In the appeals that are the subject of this hearing, the guide outfitters were provided with “interim” quota and allocation numbers in April 2022. While I accept that these numbers could have been of some assistance to the guide outfitters, I note that they were not final numbers and could not be relied upon in terms of final bookings for clients. I further note that these numbers were provided in April, which is still late in the historical annual business planning cycle for guide outfitters. As the Board noted in *Tew et al*, if the Ministry is committed to continuing to provide a five-year notional allocation to guide outfitters for their meaningful use in planning their hunts, then that information must be provided in a timely fashion.

Issue 3: Did the Director base the allocation decisions on scientific considerations?

Appellants' Submissions

[92] The Appellants submit that the Ministry's Procedure Manual on Quota is clear that quota should be based on the Annual Allowable Hunt and calculated in accordance with the allocation share determined for each Region. However, Former Director Psyllakis was clear that she did not accept the Cariboo Region Section Head's view on biological considerations as presented in the Recommendation Report and instead substituted her own opinions and conclusions. In fact, the Draft Decision Document is heavily redacted and does not provide a complete rationale for the “rejection” of the recommendations. According to the Appellants, Former Director Psyllakis confounds this issue by seeming to disregard the very real economic and business effect of the reduction of even one bull moose to Appellants Fraser, Linnell, McMann, and Tew when the resource management as determined by the local Ministry biologists who are out in the field and consulting with First Nations have determined that a sustainable AAH would mean a larger harvest.

Respondent's Submissions

[93] The Respondent submits the Recommendation Report, with its associated quota and five-year allocation numbers, was intended to support the review of the information

considered by the Director in making decisions on AAH, quotas and five-year allocations. The Director has the discretion under the *Act* to set quota, and while the Director relies on the expertise of the regional biologists to provide information regarding moose populations, the recommendations of the regional staff are not binding on him.

[94] The Respondent submits that the Director followed the Ministry's policy and procedure in setting the AAH and the First nations FSC harvest, and in making the LEH/Quota decisions.

[95] The Respondent submits that, as set out in the Lirette Affidavit, the Recommendation Report assumed that planned surveys in particular areas of the Cariboo Region would be completed in the winter of 2021/22 to confirm the status of the Chilcotin moose populations. Unfortunately, the surveys were cancelled due to snow/weather conditions. During follow-up discussions between branch and regional staff in spring of 2022, the decision to reduce AAH in GMZ 5C and 5D was partially based on residual uncertainty around the impacts of the 2017 wildfires in the North Chilcotin as well as inventory age in the South Chilcotin.

[96] The Respondent submits that although regional biologists recognize that there is a relatively stable moose population, this is only one factor in setting the quota. The Draft Decision Document explains the reduction in GMZ 5C was due to the region's significant wildfire impacts and past harvest reductions, and notes that moose populations in this zone are at half the established objective.

[97] As regards the Appellants' submission that Former Director Psyllakis was not live to the economic and business impacts of the reduction of bull moose for the Appellants, the Respondent asserts that Former Director Psyllakis and the Director are very much aware of the economic importance of each moose to the guide outfitting business. The Director meets regularly with guide outfitters and other stakeholders and understands business realities. The Director is required to balance a number of factors when making decisions.

Participant's Submissions

[98] The BCWS submits that while it agrees the allocation policy has been administered properly, there is a need for better population data. The BCWS is satisfied with the information packages, rationale for decisions, and engagement opportunities afforded by Cariboo Region staff around the allocation of hunting opportunities. However, the BCWS does not agree with the decision regarding moose allocation for 2022-2026 in the Cariboo Region as it seems the evidence does not always support the overly conservative licensed harvest. Furthermore, as noted in *Tew et al*, the BCWF has concerns about the level of redaction related to discussions with First Nations in the Draft Decision Document, while respecting the commitment to keep certain information in confidence.

Appellants' Reply

[99] The Appellants argue that the Lirette Affidavit and the Wenham Affidavit support the fact that Cariboo Region moose harvest is presently below the maximum sustainable level, and that there are no conservation concerns to preclude licensed hunting. And yet, in GMZ 5C for example, the AAH was reduced by more than 30% even before Former Director Psyllakis imposed an additional 10% reduction in the Draft Decision Document. The Appellants submit that they can only conclude that the reductions in allocations are not based in science and do not accord with the recommendations from the Cariboo Region biologists.

Discussion and Analysis

[100] The evidence before me shows that the setting of five-year Allocations (and Quotas) is done within a framework of legislation, policy, and procedure. An important part of that framework is the science as regards the determination of moose populations and the impact on that population of different harvesting opportunities.

[101] The opening paragraph in the Recommendation Report provides:

Annual Allowable Harvest (AAH) is the number of animals of a species in a specific area of land that may be harvested in a year by licensed hunters. Determination of AAH is informed by the population assessments that first considers conservation and sustainability of the species and secondly the needs of Aboriginal rights and title for food, social and ceremonial purposes. Only after these two assessments have been applied is there consideration to the AAH for resident and non-resident hunters.

[102] These sentences make it clear that a scientific approach, i.e. population assessment, is the cornerstone assessment in determining the AAH, with other needs being considered secondarily. It stands to reason then, that while science may inform the decision-making process, it influences as opposed to dictates the decision.

[103] The Recommendation Report was issued in November 2021. Following the release of the Recommendation Report, consultation with guide outfitters, resident hunters and First Nations occurred. The submissions show that as a result of that consultation, the Decision Letters differed from the recommendations as provided in the Recommendation Report. I note that the Recommendation Report is just that—a report of recommendations respecting the AAH for the Cariboo Region for 2022-2026. It does not purport to be the final statement of what the AAH will be for that time period. The Wenham Affidavit shows that the Recommendation Report was used as a factor that informed the decision-making process – it was not, itself, the decision-making process.

[104] On the issue of redactions, I note that the Appellants had ample time to request additional information by way of an application to the Board if they had questions arising from the Draft Recommendations Report, and that they failed to do so.

[105] The Appellants have the obligation of establishing, on a balance of probabilities, that the Director failed to comply with legal requirements or otherwise acted in an arbitrary or capricious manner when the Director considered certain information in making the Quota and Allocation decisions. I find that they have failed to do so. As such, the Appellants have not established that they should benefit from any of the remedies available to the Board in this case.

Issue 4: Was the Director unduly influenced by Former Director Psyllakis in making the Decisions?

Appellants' Submissions

[106] The Appellants submit that the Director did not comply with their policies in that Former Director Psyllakis is the individual named in the signature block of the Draft Decision Document. The Appellants submit that Former Director Psyllakis is not a person in a position contemplated by the Ministry's Harvest Allocation Policy and therefore should not have had any input into the Director's decision. As a result, the input from Former Director Psyllakis should be expunged and the Decision sent back to the Director to consider anew, and that he should adopt the recommendations of the regional biologists in making that decision.

Respondent's Submissions

[107] The Respondent submits that Ms. Psyllakis was the former Director before the current one assumed the role on April 4, 2022. Former Director Psyllakis is now the Executive Director of Wildlife, Habitat and Species Recovery, Ministry of Land, Water and Resource Stewardship. In her then-role as director, Former Director Psyllakis completed the earlier work on AAH calculations and quota decisions. When the Director assumed his current role, he was provided the same information as was Former Director Psyllakis and made the final Quota decisions. The Wenham Affidavit sets out that it is neither inappropriate nor unusual for government employees to move positions and hand off files during the transition. The Wenham affidavit, at paragraph 16, sets out that the Director he was provided with the Draft Decision document which he discussed with Former Director Psyllakis following additional consultation with First Nations, and that he supported the 10% adjustment to the AAH. He asserts that he was not influenced through the process of working collaboratively with his predecessor at a time of transition.

Participant's Submissions

[108] The BCWS did not provide submissions on this issue.

Appellants' Reply

[109] The Appellants argue that the allocation and quota decisions were made by a person who is no longer answerable for the decisions and who did not provide reasons for the “draconian” additional 10% reduction in quota that has impacted the Appellants.

Discussion and Analysis

[110] It is not unusual for government employees to move positions, and it stands to reason that when one person leaves a position and it is assumed by another that there will be some tasks that are initiated by one individual and completed by the other. Indeed, it is nonsensical to assume, in circumstances such as arise in these appeals, that once an individual leaves a role that the incoming individual would have to begin afresh on the matters that the person vacating the role had begun. This approach is not logical, nor does it comply with the *Act*. The affidavit evidence shows that while Former Director Psyllakis began the process of determining the Appellants' quotas and allocation while in the role of director, the current Director completed the process once he assumed the role.

[111] The Wenham Affidavit evidence sets out the numerical considerations that he applied in coming to the decision reflected in the Decision Letters, demonstrating that the Director was not unduly influenced Former Director Psyllakis and that he exercised his discretion in making the Quota and Allocation decisions. There was insufficient evidence presented before me to counter the Director's Affidavit evidence on this point.

[112] The Appellants have the obligation of establishing, on a balance of probabilities, that the Director was inappropriately influenced in making decisions regarding the Quota and Allocation decisions. I find that they have failed to do so and, as a result, will not benefit from any remedies that I might otherwise grant, including to make any decision that the Director could have made and that I believe is appropriate in the circumstances.

DECISION

[113] As discussed above, I have concluded that the Quota appeals are moot. While I do not have sufficient information before me to decide if the Allocations are independently appealable, I have undertaken an analysis of the Director's decision to set the Allocations. For the reasons set out above, I find that the Allocations were set in accordance with the *Act* and with the relevant Ministry policies and procedures. Consequently, I decline to exercise any remedy that I am empowered to make under the *Act*.

[114] As a result, I find it is unnecessary to determine, for the purposes of this appeal, whether or not allocations are independently appealable before the Board. If they are not, then the Appellants are not entitled to a remedy based on those grounds of appeal. If allocations are appealable, in the alternative, then I have found that the Appellants have failed to discharge their onus of establishing that the Director did not set the Allocations in

a manner consistent with the *Act* and with Ministry policy and procedure. In either scenario, the outcome is the same: the Appellants are not entitled to a remedy under the *Act*.

[115] In making this decision, I have carefully considered all the submissions and arguments made by the parties, whether or not they have been specifically referenced in this decision.

[116] The Appellants have the obligation of establishing, on a balance of probabilities, that the Director failed to comply with legal requirements or otherwise acted in an arbitrary or capricious manner when the Director made the Quota and Allocation decisions. I find that they have failed to do so. This does not amount to deference to the Director, but rather the fulfillment of the appropriate burden of proof on appeal.

[117] For the reasons provided in this decision, I find that the appeals ought to be dismissed, and that the Director's 2022 Decisions should be confirmed.

"Linda Michaluk"

Linda Michaluk, Panel Chair
Environmental Appeal Board