



Yukon
Ombudsman

APPENDIX to
INVESTIGATION REPORT
Pursuant to section 11 of the
Ombudsman Act

Department of Environment

OMB-INV-2025-07-142

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Appendix

Guidelines

Quota Process Before 2022

[1] The multi-year quota process under the [Guidelines](#) was the product of a three-year collaboration that led to the Fish and Wildlife Board recommending its adoption to Cabinet in 1996.¹ For illustration purposes, this Report will set out the process using moose and caribou as examples.

[2] To obtain, for example, a moose or caribou quota agreement that generally spanned a five-year period, an outfitter would meet with the Authority and a Renewable Resource Council,² after which they would all sign it. The Authority would then calculate the annual quota based on the agreement and the what the outfitter harvested and then indicate it on the outfitter's operating certificate.³ In the final year of the agreement, the outfitter's quotas would be reviewed, the result of which would inform the next multi-year agreement. Any quota disputes that the outfitter had could be appealed to the Outfitter Quota Appeal Committee or the Concession and Compensation Review Board

[3] For illustration purposes, I will use moose as an example.

[4] A moose quota agreement over five years might provide for the harvest of 50 moose, or 10 per year. However, the inclusion of an over-quota in the agreement would allow an outfitter to harvest moose up to an agreed on over-quota or annual maximum (*e.g.*, 12), as long as the total harvest over the entire term did not exceed 50. In their view, this gave them more flexibility. For example, they could consider booking 13 or 14 clients, knowing not all of them would be successful. Without an over-quota and being limited to 10 moose annually, they might only book 11 or 12 clients.

¹ At the time, only four Yukon First Nations had signed their Final Agreements and YG's need to consult with any First Nation when making decisions about wildlife management was not well understood.

² As the case law about YG's consultation obligations developed over the period 1996 to 2022, the Authority became increasingly aware of the need to include in quota discussions all Renewable Resource Councils and First Nations that overlapped with the outfitting area, or the area in which the quota-subject wildlife population was located.

³ In addition, a caribou quota agreement might set out conditions that apply to a particular caribou herd. For example, the outfitter's five-year quota might be divided into four caribou herds A to D with herd C set at zero for conservation reasons.

[5] The over-quotas were an important part of the multi-year quota agreement because it provided the outfitter with the flexibility to adjust their harvests from year-to-year as a means of sustaining their businesses. Having the option of harvesting more moose by using the over-quota was seen by outfitters as necessary because of their unpredictable success rate from year to year.

[6] The following table provides some illustrations.

TABLE 1: Multi-year [Moose] Quota Agreement with Five-year Term

YEAR	OUTFITTER #1		OUTFITTER #2	
	QUOTA	ANNUAL HARVEST	QUOTA	ANNUAL HARVEST
1	10 + 2 [quota + over-quota = 12]	10	10 + 2	7
2 Multi-year quota formula – 50 minus (Year 1 harvest with an over-quota maximum of 12)	10 + 2	12	10 + 2	10
3 50 minus (Year 1 + Year 2 harvests with an over-quota maximum of 12)	10 + 2	9	10 + 2	5
4 50 minus (Year 1 + Year 2 + Year 3 harvests with an over-quota maximum of 12)	10 + 2	12	10 + 2	6
TOTAL YEARS 1-4		43 (7 left in the 5-year term)		28 (22 left in the 5-year term)

<p>5</p> <p>50 minus (Year 1 + Year 2 + Year 3 + Year 4 harvests with an over-quota maximum of 12)</p>	<p>10 + 2</p>	<p>Year 5 quota is 7 maximum</p> <p>$50 - (10 + 12 + 9 + 12) = 7$</p> <p>(7 subsequently harvested)</p>	<p>10 + 2</p>	<p>Year 5 quota is 12 maximum because cannot exceed over-quota of 12 in a given year</p> <p>$50 - (7 + 10 + 5 + 6) = 22$</p> <p>(8 subsequently harvested)</p>
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[7] In example 1, the annual harvest over the first four years of the quota agreement is 43. This is likely based on the number of client bookings and success rate. Since the outfitter can only harvest a total of 50 moose over the entire five-year term, they can only harvest a maximum of seven moose in Year 5, no matter their reasons.

[8] In example 2, the annual harvest over the first four years of the quota agreement is 28, possibly based on low client bookings, a low success rate, or a quota that may be somewhat high.⁴ Even if an outfitter can harvest a total of 50 moose over the entire five-year term, they cannot harvest the difference between 50 and 28 (*i.e.*, 22) in Year 5 because their annual over-quota restricts their harvest to a maximum (*i.e.*, over-quota) of 12 moose.

Interim Process

Quota Process After 2022

[9] For reasons previously stated in this Report, including *Wildlife Act* conformity and the Authority’s First Nations consultation obligations, the Authority transitioned from a multi-year quota system to an annual one in 2022. It called this transition the Interim Process because, in having decided to modernize the *Guidelines* over the next few years, it needed to put something in place until that initiative had been completed. The need was an immediate one because, in learning that the *Wildlife Act* did not allow for multi-year quotas, it had no other legal choice at the time. However, in making this change, the Authority honoured the very few multi-year quota agreements that had not expired in 2022 by leaving them intact until they did expire.

[10] For illustration purposes, I will set out the Interim Process using moose as an example.

⁴ Although quotas were set after considering several factors, the resulting quota might have been quite high. This could make it challenging to harvest the full quota either annually or over the full term.

[11] To impose or modify a moose quota after 2022, the Authority, to the extent possible, would use the [Guidelines](#) process established in 1996 in that an outfitter and the affected Renewable Resource Council(s) would meet to discuss the quota and make a recommendation based on the input of all parties. However, the Authority then had to proceed to a new step, that of direct consultation with affected First Nations when contemplating wildlife management decisions in their Traditional Territories that could have an impact on subsistence hunting.

[12] As such, the Authority would send the quota recommendation and its rationale to those First Nations for consultations in whose tradition territory the outfitting concession was located. Once that process concluded, the Authority would finalize the quota and place it as a condition on the outfitter's annual operating certificate.

[13] This process did not include any discussion of over-quotas because the [Wildlife Act](#) did not allow for them. If the outfitter disputed the quota, then they could appeal it to the Outfitter Quota Appeal Committee or the Concession and Compensation Review Board, noting the Authority took the view that the latter was the more appropriate entity having been established under the [Wildlife Act](#). However, outfitters typically preferred the Outfitter Quota Appeal Committee because the Yukon Outfitters Association had input in the selection of its membership and the dispute process was somewhat quicker than that of the Concession and Compensation Review Board.

[14] For those outfitters who had never had previous multi-year quota agreements, the Authority would establish their annual quota for 2022, as described above. They would not have access to over-quotas. Future annual quotas would be based on the one already set.

[15] The Authority initially advised outfitters who had expired multi-year quota agreements that their quotas would now be based on their last signed quota agreement but with no access to their over-quota. According to the Authority, certain outfitters disagreed with this approach because they wanted more flexibility. In trying to accommodate this need to the extent possible, the Authority had to find a way to establish a system that not only conformed with the [Wildlife Act](#) but could start in 2022.

[16] This meant calculating and assigning quotas based on a rearward-looking multi-year approach for outfitters who previously had had access to over-quotas, noting that it never envisaged over-quotas as annual maximums but rather as a way to provide outfitters with some degree of flexibility. If there was no room for an over-quota in any given year and providing there was remaining room to harvest the over-quota under the maximum-allowed harvest over five years, then the Authority would adjust the over-quota for the following year.

[17] Put another way, the Authority would calculate quotas as if the outfitter was in the final year of their five-year term. Using moose as an example, their quota would be the number of moose allocated for the full term, minus their total harvest from the previous four years with a maximum equal to the over-quota stated in their multi-year agreement. This would start in 2022.⁵

[18] In doing so, the Authority knew that annual quotas would potentially fluctuate from year to year, as was the case with the multi-year quota system, because of the different harvest numbers over successive four years. However, it was of the view that they were predictable and also allowed outfitters to access unused quotas up to a maximum value in a way similar to the multi-year quota system established in the [Guidelines](#) back in 1996. In addition, there would be no change to the quota allocation unless a conservation issue arose. Any quota that had to be created or changed after 2022 became an annual quota since over-quotas were not in compliance with the [Wildlife Act](#), having derived from the [Guidelines](#).

[19] The following table provides illustrations based initially on a five-year quota agreement that transitions to annual quotas based on calculations using the Interim Process.

TABLE 2: Multi-year Quota Agreement with Five-year Term Transitioning to Interim Process Annual Quotas in 2022

Year	Outfitter #1		Outfitter #2	
	Quota	Annual Harvest	Quota	Annual Harvest
2018	10 + 2 [quota + over-quota = 12]	12	10 + 2	12
2019 Multi-year quota formula – 50 minus (2018 harvest with an over-quota maximum of 12)	10 + 2	10	10 + 2	7
2020	10 + 2	8	10 + 2	10

⁵ One outfitter’s multi-year quota agreement ended in 2022. The Authority decided to honour this agreement until it expired, after which the outfitter would switch to the Interim Process in 2023.

50 minus (2018 + 2019 harvests with an over-quota maximum of 12)				
2021 50 minus (2018 + 2019 + 2020 harvests with an over-quota maximum of 12)	10 + 2	12	10 + 2	8
TOTAL YEARS 2018-2021		42 (8 left in the 5-year term)		37 (13 left in the 5-year term)
2022 50 minus (2018 + 2019 + 2020 + 2021 harvests with an over-quota maximum of 12) [expiry of 2018-2022 quota agreement]	10 + 2	2022 quota is 8 maximum [50-(12+10+8+12)=8 (8 subsequently harvested)]	10 + 2	2022 quota is 12 maximum because cannot exceed over-quota of 12 in a given year [50-(12+7+10+8)=13 (12 subsequently harvested)]
2023 50 minus (2019 + 2020 + 2021 + 2022 harvests with a quota maximum of 12)	12	2023 quota is 12 maximum [50-(10+8+12+8)=12 (12 subsequently harvested)]	12	2023 quota is 12 maximum [50-(7+10+8+12)=13 (11 subsequently harvested)]
2024 50 minus (2020 + 2021 + 2022 + 2023 harvests with a quota maximum of 12)	12	2024 quota is 10 maximum [50-(8+12+8+12)=10 (9 subsequently harvested)]	12	2024 quota is 8 maximum [50-(10+8+12+11)=9 (8 subsequently harvested)]
2025	12	2025 quota is 9 maximum	12	2025 quota is 10 maximum

50 minus (2021 + 2022 + 2023 + 2024 harvests with a quota maximum of 12)		[50-(12+8+12+9)=41 (X subsequently harvested ⁶)		[50-(8+12+11+8)=11 (X subsequently harvested)
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[20] Example 1 Above

[21] *2018-2022*

[22] The annual harvest over the first four years of the quota agreement (*i.e.*, 2018-2021) is 42. Since the outfitter can only harvest a total of 50 moose over the entire five-year term, they would only be able to harvest 8 moose in the final year (*i.e.*, 2022). The total moose harvested over their agreement would be at their 50 moose limit.

[23] *2023*

[24] Having implemented the Interim Process in 2022, the Authority continued to calculate annual quotas using its Interim Process method since almost all multi-year quota agreements had expired in 2022. For the one outfitter whose agreement expired in 2023, the Authority allowed for over-quotas but still used the above method each year until it expired.⁷

[25] Based on the total harvest over the previous four years (*i.e.*, 38 moose between 2019-2022), the Authority set the quota at 12. The outfitter then harvested 12 moose.

[26] *2024*

[27] Based on the total harvest over the previous four years (*i.e.*, 40 moose between 2020-2023), the Authority set the quota at 10. The outfitter then harvested 9 moose.

[28] *2025*

[29] Based on the total harvest over the previous four years (*i.e.*, 42 moose between 2021-2024), the Authority set the quota at 9. When the 2025 moose season closes and the outfitter reports their final harvest tally, the Authority cannot calculate the 2026 quota based, as mentioned, on the Interim Process formula (*i.e.*, this year's quota = term allocation minus previous four years' harvest).

⁶ The 2026 quota cannot be calculated until both outfitters report their final 2025 harvest tallies, *i.e.*, [50-(8+12+9+X)=?] and [50-(12+11+8+X)=?] respectively.

⁷ Authority data indicates that outfitters did not generally access their over-quotas.

However, this is no different than when an outfitter was in the final year of their multi-year quota agreement.

[30] Example 2 Above

[31] 2018-2022

[32] The annual harvest over the first four years of the quota agreement (*i.e.*, 2018-2021) is 37. Since the outfitter can only harvest a total of 50 moose over the entire five-year term, they would theoretically be able to harvest 13 moose in the final year (*i.e.*, 2022) but for their over-quota maximum of 12. As such, 13 is unavailable to them since that would put their total harvest at one over their 50 moose limit.

[33] 2023

[34] Based on the total harvest over the previous four years (*i.e.*, 37 moose between 2019-2022), the Authority set the quota at 12. The outfitter then harvested 11 moose.

[35] 2024

[36] Based on the total harvest over the previous four years (*i.e.*, 41 moose between 2020-2023), the Authority set the quota at 9. The outfitter then harvested 8 moose.

[37] 2025

[38] Based on the total harvest over the previous four years (*i.e.*, 39 moose between 2021-2024), the Authority set the quota at 11. Since the season is not yet closed, the final harvest is unknown but, when reported, it will affect the 2026 quota, as per the same calculation method.

[39] I now turn to the effect this transition had on the Complainant when the Authority established an annual quota on their operating certificate for the 2022-23 transition season.

Effect of Quota System Transition on Complainant

[40] The Complainant had several concerns about the Interim Process. I will use caribou to illustrate.

[41] One involved the Authority, in their view, penalizing them for attempting to use their full 2018 to 2022 quota rather than taking the average of each of their 2018 to 2022 harvests. Since they only harvested 19 caribou against a total quota of 25, in the Complainant's view the fair way to reflect this was to average that harvest in the new system over the five years (*i.e.*, 4.8 caribou per

year) rather than using the skewed and slightly higher final year harvest while ignoring their low harvest at the beginning of the term.

[42] Another involved a fluctuating cycle, caused by the Interim Process, of permitting high harvest levels followed by low levels. This cycle limited the outfitter’s ability to manage their quotas in an effective manner. According to the Complainant, the only way to break the cycle was to underharvest their quota on a consistent basis, a decision that has adverse business consequences.

[43] The Complainant proposed various options to address these issues, but the Authority asserted that they failed to find better efficiencies than what it had already built into the Interim Process.

[44] Because the Complaint was not species specific, I will use caribou to illustrate the effect of the transition.

[45] According to the Complainant, a key component of the [Guidelines](#) were forward-looking multi-year quota agreements that allowed outfitters to plan for clients three to five years in advance. This gave them reasonable business certainty.

[46] The Complainant had a five-year quota agreement for harvesting a total of 25 Aishihik herd caribou over the same period at a rate not to exceed eight per year. This allowed the Complainant theoretically to harvest any combination of caribou over the five-year term as long as they did not exceed eight caribou per year and 25 over the full term.

[47] The following table provides an illustration. It shows the Complainant’s actual harvest with two hypothetical examples alongside.

TABLE 3: Complainant’s Aishihik Caribou Multi-Year Quota Agreement with Five-year Term Actual Harvests and Hypothetical Harvests

Year	Actual Harvest	Hypothetical Harvest #1	Hypothetical Harvest #2
2018	3	8	0
2019	3	8	1
2020	3	8	8
2021	4	1	8
2022	6	0	8

[48] The Complainant stated that their harvest was low for the years 2018 to 2021 so, having been advised by the Authority in late 2021 of the transition to the Interim Process, they harvested six caribou in 2022 in an effort to use their full quota of eight. This brought their full term harvest to 19, six below the maximum of 25. In their view, but for the Interim Process, they would have been able to harvest up to eight caribou in 2023 without penalty.

[49] In 2023, the Authority allocated these six 'unharvested' caribou to the Complainant, the only year they were allowed to keep their over-quota. The Complainant disagreed with this allocation, asserting that not only did their otherwise long-standing conditions under the previous quota agreement appear to remain the same,⁸ but had they harvested eight caribou in 2022 rather than six, then they would have had four less than allotted over the full term.

[50] When the Authority issued the Complainant's quota for 2024, the Complainant stated that the Authority had now deducted the Complainant's 2022 harvest result of six caribou from their future harvest, amounting to what the Complainant perceived to be a retroactive rule change from the one applied in 2022. In their view, it the Authority unfairly took the six caribou that the Complainant harvested in 2022 off their future quotas.

[51] The Complainant objected to this situation, asserting that the Authority quota assignment for 2024 should have started afresh in 2023 since the Complainant's five-year multi-year quota agreement expired in 2022. They did not expect that their 2022 harvest would adversely affect 2024 quota.

[52] The following table provides an illustration.

⁸ This was in keeping with the Authority's November 3rd, 2021 letter to the Complainant and other outfitters that "quota terms that have not yet expired will remain in place for the 2020-23 hunting season."

TABLE 4: Complainant’s Aishihik Caribou Multi-Year Quota Agreement with Five-year Term transitioning to Interim Process Annual Quotas in 2022

Year	Quota	Annual Harvest
2018	6 + 2 [quota + over-quota = 8]	(3 subsequently harvested)
2019 25 minus (2018 harvest of 3) = 22 with an over-quota maximum of 8	6 + 2	(3 subsequently harvested)
2020 25 minus (2018 + 2019) =19 with an over-quota maximum of 8	6 + 2	(3 subsequently harvested)
2021 25 minus (2018 + 2019 + 2020) = 16 with an over-quota maximum of 8	6 + 2	(4 subsequently harvested)
TOTAL YEARS 2018-2021		13 (12 left in the 5-year term)
2022 25 minus (2018 + 2019 + 2020 + 2021) = 12 with an over-quota maximum of 8 [expiry of 2018-2022 quota agreement]	6 + 2	(6 subsequently harvested for a total full term harvest of 19)
2023 25 minus (2019 + 2020 + 2021 + 2022) = 9 with an over-quota maximum of 8	8 (based on actual harvest of 6 in 2022)	(7 subsequently harvested)
2024	5	(5 subsequently harvested)

25 minus (2020 + 2021 + 2022 + 2023) = 5 (with an over-quota maximum of 8...)		
2025 25 minus (2021 + 2022 + 2023 + 2024) = 2 (with an over-quota maximum of 8...)	2	
2023 Hypothetical⁹ 25 minus (2019 + 2020 + 2021 + 2022) = 7 (with an over-quota maximum of 8...)	7	(if 8 hypothetically harvested in 2022)
2024 Hypothetical 25 minus (2020 + 2021 + 2022 + 2023) = 4 (with an over quota-maximum of 8...)	4	(if 6 hypothetically harvested in 2023)
2025 Hypothetical 25 minus (2021 + 2022 + 2023 + 2024) = 2 (with an over-quota maximum of 8...)	2	(if 5 hypothetically harvested in 2024)

[53] From the above table, it can be seen that the Complainant had a caribou multi-year quota agreement for the five-year period 2018 to 2022, after which it naturally expired. As such, they always had had access to their over-quota during that term well after 2022, the year the Authority implemented the Interim Process.¹⁰

[54] In particular, the Complainant still had eight caribou on his 2023 operating certificate. However, this changed in in 2024. Since their harvest over the previous four years (*i.e.*, 2020-2023) was relatively high, the Complainant only had six caribou left.¹¹

⁹ The hypothetical scenarios (*i.e.*, 2023-2025) lead to overharvest.

¹⁰ Before 2022, the Authority extended expired multi-year quota agreements one year at a time with over-quotas because it was trying to set quota meetings with the outfitters and other parties for purposes of signing successive multi-year agreements. It took this approach due to the incapacity to get all parties at the table in a timely way.

¹¹ This quota of six still included a partial over-quota of one because the Complainant had had a total of 25 caribou over five years in their multi-year quota agreement for an average of five caribou each year.