

Harvesting in the Winslow Goat Winter Range

Complaint Investigation 040617



FPB/IRC/103

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Table of Contents

The Investigation	1
Background	1
Discussion	4
Update	9
Conclusions	9
Commentary	10
Recommendation	10
Appendix A: Excerpt from District Manager’s Rationale	11

The Investigation

On December 1, 2004, the Western Canada Wilderness Committee (WCWC) complained to the Board about the approval of a cutblock north of Stave Lake in the Chilliwack Forest District. WCWC believes that the cutblock is located in prime mountain goat habitat and should not be logged. Additionally, WCWC believes that an agreement was made not to harvest the cutblock and that the agreement was broken.

The Board decided to investigate the following issues:

- Was there an agreement between the Ministry of Water, Land and Air Protection and BC Timber Sales on a permanent ban on harvesting the cutblock?
- Was the proposal of the cutblock consistent with BC Timber Sales' forest development plan?
- Was it reasonable for the district manager to be satisfied that approval of the cutblock would adequately manage and conserve mountain goats?

Background

Mountain goat winter ranges are areas necessary for goats to survive winter. A combination of escape terrain, southerly exposure and mature or old forest provides high quality winter range for coastal goat populations. Escape terrain is steep and broken terrain upon which goats can escape their predators; southerly exposure provides warmth from the sun; and mature or old forest provides forage and intercepts snow to make walking easier.

The *Forest and Range Practices Act* provides the means to establish and manage goat winter range. Section 12 of the *Government Actions Regulation* permits the Minister of Water, Land and Air Protection (WLAP) to establish formal ungulate winter ranges (UWRs). "Ungulates" include deer and goats. The Minister may also establish general wildlife measures for UWRs under section 9(2) of the regulation if he or she is satisfied that the measures are necessary to protect or conserve an UWR. A general wildlife measure could include the prohibition of harvesting, for example.

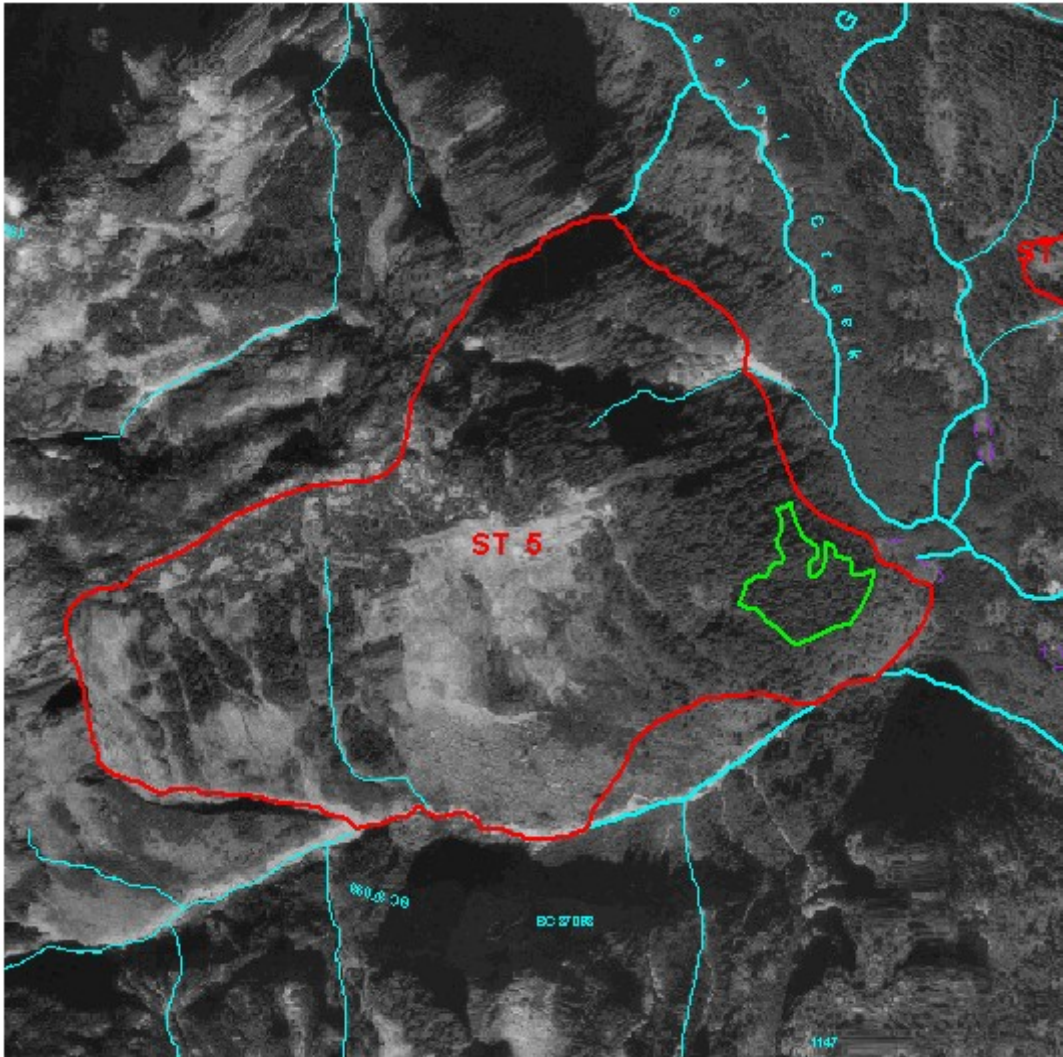
Between 1997 and 2001, WLAP assessed mountain goat winter ranges in the Fraser timber supply area (TSA) in the Chilliwack Forest District. Based on the assessment, WLAP prepared a goat winter range plan for the Fraser TSA in October 2002. The plan provides the basis for the formal establishment of UWRs for mountain goats by WLAP. However, no UWRs for mountain goats in the Fraser TSA have been established, and there is no legal impediment to harvesting in the winter ranges depicted in the winter range plan.

On February 28, 2002, BCTS and WLAP flew over a goat winter range in the Winslow Lake area that had been identified as 'ST-5' in the goat winter range plan. They noticed numerous tracks in the snow. WLAP identified them as goat tracks because deer do not have winter

range in the vicinity. That summer, BCTS proposed a cutblock near Winslow Lake that lay entirely within goat winter range ST-5. WLAP reviewed the proposal and noted that the block conflicted with the goat winter range. WLAP stated that BCTS had agreed not to harvest the block after the February flight, and asked that the block be deleted from the plan. In response, BCTS changed the status of the block to 'I', which meant that the block appeared on the forest development plan for information only and was no longer being proposed for approval of harvesting.

In the summer of 2003, BCTS re-considered proposing a cutblock in the area, believing that the lower part of goat winter range ST-5 might not actually be used by mountain goats as winter range. BCTS hired a professional biologist to assess the mountain goat habitat value of the cutblock area. The assessment was done on June 3, 2003. The consultant did not see any sign of goat use or any features that would characterize high quality goat winter range. He concluded that the cutblock area did not have the attributes of good goat winter range. That led BCTS to conclude that harvesting the cutblock would have little impact on the winter range suitability of rest of goat winter range ST-5.

As a result of the habitat assessment, BCTS proposed an amendment to its 2001 to 2005 forest development plan. In March 2004, the plan included a cutblock (WN 125) located near Winslow Lake. The cutblock is located entirely within goat winter range polygon ST-5. The polygon is approximately 208 hectares. Twenty eight hectares of ST-5 is mature forest, and that mature forest includes the 6.3 hectare cutblock.



ST- 5 goat winter range is outlined in red. Cutblock WN-125 outlined is outlined in green.

When WLAP reviewed the amendment, it was concerned that the block was being proposed again. It thought that there was an agreement not to harvest the block. In addition, WLAP had concerns about the June 2003 BCTS mountain goat habitat assessment because the results were contrary to WLAP's 2002 observations. WLAP contacted the consultant with its concerns. In May 2004, the consultant made an addendum to his original report acknowledging the MWLAP observations, but maintaining that the cutblock area did not show the attributes of high quality goat winter range.

WLAP remained opposed to harvesting the cutblock and made comments to that effect to BCTS.

The district manager of the Chilliwack Forest District has the authority to decide whether or not to approve BCTS' forest development plan amendment. Cutblock WN 125 contains 5000 cubic metres of timber and is part of a 100,000 cubic metre BCTS timber sale. On August 12,

2004, the district manager approved the amendment, and the timber sale was advertised for an eight-week period beginning on February 3, 2005.

Discussion

1. Was there an agreement between the Ministry of Water, Land and Air Protection and BC Timber Sales on a permanent ban on harvesting the cutblock?

If there was an agreement between WLAP and BCTS not to harvest the cutblock at any time, the Board considers that the cutblock should not have been proposed for harvest. It is a matter of integrity, not legality. The investigation considered whether there was evidence of such an agreement.

On February 28, 2002, BCTS and WLAP flew over the ST-5 goat winter range and noticed tracks from the top to the bottom of the slope. WLAP identified them as goat tracks. Harvesting was not proposed at that time, but there was discussion about whether the area could be developed based on the signs of goat use. After the flight, an agreement was made but the details of that agreement are disputed.

WLAP's understanding of the agreement

According to WLAP, BCTS agreed to drop the block based on the high amount of goat use observed. In an email to BCTS on March 5, 2002, WLAP confirmed that the area was "very high use goat winter range" and that tracks were observed from valley bottom to 3600 feet. WLAP stated that it would object to any development in the area due to the very high risk to the local goat population.

When BCTS proposed a cutblock in the goat winter range in the summer of 2002, WLAP stated in an email that an agreement had been made to delete the cutblock due to observed goat winter range values. WLAP asked BCTS to delete the cutblock in accordance with that agreement. BCTS changed the status of the block from 'proposed for harvest' to 'information' status. This meant that the block appeared for information purposes and was deemed not to be part of the forest development plan according to legislation in effect at the time (section 19 of the *Operational and Site Planning Regulation*).

WLAP was surprised and disappointed in March 2004 when BCTS again proposed the cutblock in a major amendment to its forest development plan. WLAP commented that it did not understand how the block could be proposed for harvest, citing the 2002 agreement and the fact that the block conflicted with goat winter range.

In summary, WLAP understood that the agreement was to not log within the goat winter range on a permanent basis.

BCTS' understanding of the agreement

BCTS recalls flying over the goat winter range in February 2002 and observing tracks throughout the range. WLAP identified the tracks as goat tracks and recommended that the area shouldn't be logged. BCTS told the Board that it agreed to drop the block. However, upon returning to the office, BCTS realized that only a small portion of the goat winter range was being considered for logging. BCTS thought that perhaps there could be some selective logging done. However WLAP maintained that selective logging would not retain suitable winter habitat. In the end, BCTS decided to change the status of the block to 'information only' and gather additional information. By doing so, BCTS believes it signalled a continuing interest in the block.

In the summer of 2003, BCTS hired a professional biologist to assess the mountain goat habitat value of the proposed cutblock. Based on the outcome of that assessment, BCTS proposed cutblock WN 125 for harvest.

BCTS prepared a rationale for harvesting WN 125 as part of its amendment submission. The rationale states:

BCTS recognizes that there was an agreement to drop the block from a previous amendment due to the perception, via an aerial overview flight, that the area was critical (mountain goat winter) habitat. Since that time an RPBio undertook an on-the-ground field review and the area was found not to be (goat winter range).

In summary, BCTS acknowledged that there was an agreement to drop the block from the 2002 amendment. However, BCTS did not consider the agreement to be permanent. By dropping the block, BCTS gained time to gather additional information, including conducting a mountain goat habitat assessment. Given the results of that assessment, BCTS felt justified proposing the block once again.

The fact that there was an agreement is not in dispute. But was the agreement meant to last indefinitely? The Board is unable to answer that question. The details of the agreement were not put in writing. What is clear is that the two parties had different ideas of the nature of the agreement.

2. Was the proposal of the cutblock consistent with BC Timber Sales' forest development plan?

The investigation considered whether the proposal of cutblock WN 125 was consistent with BCTS' forest development plan commitments regarding the protection of mountain goat winter ranges.

BCTS' 2001-2005 forest development plan includes measures to protect goat winter range. It states: "Mountain goat winter ranges are avoided where there is field verification of moderate to heavy use by goats and no nearby alternatives."

BCTS explained that it relied on the mountain goat habitat assessment to verify whether there was moderate to heavy use of the cutblock by goats. If there had been, BCTS would consider the block to be a critical habitat and would have avoided it. If the block did not show moderate to heavy use, BCTS would not consider it critical habitat, and harvesting could be proposed.

When BCTS hired a professional biologist to conduct the mountain goat habitat assessment in the cutblock in June 2003, he did not see any sign of goat use in the block. WLAP disagreed with the assessment, based on previous observations, and discussed the concerns with the biologist. In May 2004, the biologist provided an addendum to his original habitat assessment. The addendum stated, in part, that WLAP had informed him that goats do winter in the cutblock and that WLAP believed that the harvest of the permit would negatively affect mountain goat winter range values.

BCTS had WLAP's comments on the proposed block. Those comments included a statement that a WLAP biologist had surveyed the goat winter range three times from the air and saw signs of goats using the forested area where the cutblock was proposed.

BCTS considered all of the information available. On one hand, a biologist conducted a survey on the ground and found no signs of goat use. On the other hand, WLAP said it had observed goats wintering in the area during overview flights and surveys, and that BCTS had been co-observers on one flight. BCTS asked WLAP for photos of goats in the block but WLAP did not have any.

BCTS decided that it had been diligent in attempting to determine whether or not there was moderate to heavy use by goats of the cutblock area. When the biologist found no evidence of goat use and concluded that the area did not exhibit features of high quality goat winter range, BCTS considered that it was consistent with the forest development plan to propose the cutblock. It had found no field verification of moderate to heavy use by goats. However, in light of the controversy surrounding the use of the block by goats, BCTS provided all documentation in support of each view to the district manager for decision.

In the Board's view, the proposal of the cutblock was consistent with the forest development plan because BCTS did not have field-verified evidence of moderate to heavy use of the cutblock by goats.

3. Was it reasonable for the district manager to be satisfied that approval of the cutblock would adequately manage and conserve mountain goats?

Before he could approve the amendment to BCTS' forest development plan, section 41(1)(b) of the *Forest Practices Code of British Columbia Act* required the district manager to satisfy himself that the amendment would adequately manage and conserve the forest resources of the area, such as mountain goats.

The District Manager's Rationale

The district manager gave careful consideration to this issue before he made a decision. He prepared a written rationale, including a section on cutblock WN 125 and the goat winter range. The relevant part of the district manager's rationale appears in Appendix 1.

The district manager considered the following information in his decision:

- Comments from WLAP, including the comment that the area is important goat habitat
- BCTS rationale for proposing cutblock WN 125
- Mountain goat habitat assessment and addendum prepared by professional biologist for BCTS

In addition, the district manager considered that goats are not endangered species, that there are no approved UWRs in the Chilliwack district (including goat winter ranges) and that WLAP's goat winter range plan is a draft and not approved.

The district manager acknowledged WLAP's concern that an agreement was made with BCTS to not harvest the cutblock. He explained in an interview that he had no evidence of that agreement.

The district manager was aware that there was disagreement about whether or not the forested part of the ST-5 winter range polygon was critical goat habitat, and whether or not goats used the area. He decided to be conservative and assume that goats may use the area. His rationale states: "Based on the information before me it is possible that goats use this area and that there is a risk that logging this block may negatively affect winter habitat quality for goats."

The district manager noted that if the 6.3 hectare cutblock was harvested, there would still be mature forested habitat left in the ST-5 goat winter range. He also considered that there were other goat winter ranges identified in the general vicinity and considered those areas to be alternative habitat if needed.

The district manager also noted that 22 percent of the land base in the forest district is park which provides habitat for many species, including goats. In addition, the general biodiversity provisions of the *Forest Practices Code of British Columbia Act* would provide some habitat elsewhere, through such features as the protection of riparian areas and old growth management areas and the retention of wildlife trees.

When he considered whether or not the goat resource would be adequately managed and conserved, the district manager noted that 'adequate' is not a very high test, one that allows for some degree of risk. In the end, he accepted that goats that use the ST-5 winter range may be impacted but he was satisfied that, at the district level, the goat resource would be adequately managed and conserved.

WLAP's evaluation of the rationale

WLAP reviewed the district manager's rationale and does not agree with his reasoning. It notes that the cutblock is the heart of the forested area of ST-5. The remaining portion of the stand will be of reduced value to goats in extreme winter conditions because wind and snow will penetrate it. In other words, the interior forest conditions needed in heavy snow or freezing conditions will be altered.

WLAP considers the presence of other goat winter range in the area to be irrelevant because goats that are born in one goat winter range tend to stay there. To avoid predators, goat herds will not generally move through poor escape terrain to a different goat winter range, although individual sub-adults and adult males may do so. Similarly, the presence of parks in the district is irrelevant because the goats in ST-5 will not move to those parks. In any event, the suitable habitats in parks are likely to be already occupied by other goats.

WLAP acknowledged that the loss of forest habitat provided by the cutblock would not have a big impact on the regional goat population, but feels it will have a large impact on the specific herd that uses the ST-5 goat winter range. WLAP reasons that those goats won't have the thermal and snow-shedding protection of an intact forest canopy. WLAP estimates that 10-20 goats use the ST-5 goat winter range, and that the herd may be extirpated in two to three generations, or approximately 30 years, especially if severe winters occur frequently. Goat herds lose the majority of the vulnerable kids and yearlings if consecutive harsh winters occur.

The Board's evaluation of the district manager's decision

The Board's view is that the district manager must weigh the information available to determine relevance and importance. The district manager's caution and deliberation before being satisfied should match the importance of each forest resource and the potential risk created by the proposed forest practice. If a decision involves resources that are managed by other agencies, the Board believes that a district manager should give careful consideration to the recommendations of those agencies. However, whether or not to approve the amendment to the forest development plan is the district manager's decision to make. When the Board looks at a district manager's exercise of discretion, it considers whether the decision falls within a range of reasonable alternatives. If so, the Board accepts the decision as reasonable.

In this case, there is no evidence that the district manager failed to consider relevant information. When faced with conflicting views on the presence or absence of goats in the ST-5 goat winter range, the district manager took the conservative view that goats may use the area and accepted that there would be a risk to them if the block was harvested. The district manager considered that there would still be forested cover available to goats within the ST-5 goat winter range. He accepted that the quality of that cover would be diminished by harvesting. When he considered the goat resource at the district level and the availability of other goat winter ranges, the district manager said he could not see how harvesting the cutblock would lead to inadequate management and conservation of mountain goats in the general area.

In the Board's view, the district manager made a reasonable decision. He considered relevant information, including the advice of WLAP, and acted conservatively when he accepted that goat habitat would be impacted by harvesting.

Update

On February 9, 2005, WLAP flew over the ST-5 goat winter range. Despite very little snow and mild winter conditions, WLAP observed seven mountain goats, six of which were in the forested portion of the goat winter range. WLAP provided photos of six of the goats to the Board, BCTS and the Ministry of Forests. WLAP believes that its observations confirm the high habitat value of the forested portion.

On February 10, 2005, BCTS flew over ST-5 goat winter range and landed in the WN 125 cutblock. BCTS did not see any evidence of goats in the cutblock. There was no snow on the ground, so no tracks would be expected. However, they did observe three goats at higher elevation, well above cutblock WN 125. BCTS does not dispute that the ST-5 goat winter range polygon may provide high value goat habitat but maintains that there is no evidence to suggest that WN 125 cutblock provides high value goat habitat. BCTS believes that the forested area upslope of the cutblock provides high value habitat but that its observations confirm the low habitat value of the cutblock portion.

Conclusions

BCTS and WLAP had an agreement about cutblock WN 125. However, the details of the agreement were not put in writing. The two parties had differing ideas of what the agreement meant, especially whether or not the block would ever be proposed for harvesting.

The proposal of cutblock WN 125 was consistent with BCTS' forest development plan.

The district manager's decision that the amendment to BCTS' forest development plan would adequately manage and conserve the goat resource was reasonable.

Commentary

The *Forest and Range Practices Act* provides a potentially effective mechanism for the management and protection of goat winter ranges. The Minister of Water Land and Air Protection has the statutory authority to establish ungulate winter ranges (UWR). Once established, general wildlife measures may be implemented to manage and protect mountain goats and the winter habitat attributes on which they rely. The UWR designation and the associated measures are critical inputs to operational planning by forest licensees and become part of the criteria for approval of plans by the Ministry of Forests.

In this complaint, a draft goat winter range plan was prepared and submitted to senior WLAP staff in October 2002. By March 2005, the process to establish UWR's in the Fraser TSA remains incomplete. In the meantime the timber supply in the area has been reallocated to a different mix of licensees and WLAP indicated that it needs to update its past consultations. They elected to do a further round of consultations with First Nations, the MOF and the new licensees. While it is understandable that WLAP would consider it necessary to extend the consultation period, it is also understandable that BCTS must carry out its mandate to proceed with timber sales. Until WLAP decides if this area warrants protection as goat winter range and completes its formal designation, there is nothing to prevent BCTS from proceeding with the sale of this cutblock.

On the other hand, should WLAP decide that the area warrants designation as UWR it will to some degree be compromised by the harvesting. A more timely decision by WLAP would have provided all parties with the necessary direction on balancing goat habitat conservation with the requirements of industry.

For this reason the Board believes that the most appropriate conclusion is for an early completion of the UWR designation and general wildlife measures in the Fraser TSA. It may be too late for cutblock WN 125, but it will prevent similar issues from arising in the future by giving clear direction to the industry, MOF and BCTS for future harvesting proposals.

Recommendation

The Board recommends that the Ministry of Water, Land and Air Protection establish ungulate winter ranges and general wildlife measures in the Fraser timber supply area.

In accordance with section 132 of the *Forest and Range Practices Act*, the Board requests that the ministry report on the steps to be taken and the timetable for implementation of this recommendation by March 31, 2005.

Appendix A: Excerpt from District Manager's Rationale

Block WI25 (Map7 - Winslow Creek) - MWLAP's comment that this block is located in goat winter range and that there was an agreement to drop WN125 (old Block A58022 Blk G) with the proponent's representative based on an aerial flight. I note that prior to this amendment this block was a Category I block.

Since then, the proponent hired a biologist to field assess the area for wildlife use. His report notes the following...:

- The block is 6.3 ha and is located between 300 and 450 m elevation.
- No sign of mountain goat use (tracks, trails, hair or pellet groups) was noted in or around the block although deer pellet groups and tracks were seen.
- The report concludes that given the small size of the block, the high value security and thermal habitat surrounding the block, the generally low habitat potential of forests in the block, that the expected impact of harvesting this block on mountain goat habitat is low. The report also states that harvesting will not disconnect the high quality habitat above the proposed block from the valley floor forests.

I have considered MWLAP's May 12, 2004 email indicating that no photos were taken of goats in Block WN125 or the goat polygon ST #5 because of the extra helicopter time and noise might have stressed the animals. I also have reference MWLAP's May 7, 2004 and April 28, 2004 email to the proponent of the determination that the area is important goat winter range habitat confirmed (high use of the stand by goats observed via tracks).

I have considered the addendum... to the above report and the further analysis of information provided by the MWLAP staff. The addendum report states that the 6.3 ha block is about 25% of the mature operable forest in the immediate areas at the base of steep rocky cliffs. Thus the author states that "given that the mountain goats in the Winslow Lake area use this area during winter, it is possible that harvest of these stands will negatively affect winter habitat quality for goats."

I also have considered the proponent's rationale concerning development for harvesting this block.

To summarize this subsection, I have considered the information from MWLAP that based on aerial flights that they feel the area is important goat habitat. I have also considered the consultant's field review of the area which showed no on the ground evidence of goat use in or around this block (tracks, trails, hair, or pellet groups) other than deer sign. I note the discrepancy between the information cited in the consultants report about there being evidence that the MWLAP office has photographs from the aircraft of goat use in the area

(records on file), yet this information could not be forwarded to the proponent citing that no photographs were taken due to the safety of the animals. Based on the information before me it is possible that goats use this area and that there is a risk that logging this block may negatively affect winter habitat quality for goats.

Protective Measures for WN 125

Having stated the above, I have considered that some mature habitat will still be left and that the upper timbered area near the ridge and higher elevation area is going to remain intact. I also have considered that there is some alternate mature timber in the goat polygon and surrounding forest types. As well, I taken into account that the draft goat plan identifies that in the Stave River and Winslow Creek area, there is alternative habitat. In the Winslow area, there is alternate habitat with the balance of goat polygon ST 5, and polygon's ST4, ST3, ST17, ST9, ST12, and ST14. As well, in the Stave River drainage, there is additional goat habitat as depicted by polygons ST1, ST2, ST6, ST7, ST8, ST10, ST11, ST13, and ST16. Furthermore, I have noted the proponent's commitment to follow the goat timing window procedures for blocks within 500m of goat winter range.

Third, I have considered that specific to the Chilliwack Forest District, ten new parks and protected areas were created resulting in 80,500 hectares added to the park and protected area system. The district is approximate 1.3 million hectares in size and of that about 290,000 hectares are in protected areas (approximately 22 percent of the land base) that will not be subject to commercial harvesting. This amount exceeds the entire current timber harvesting land base and will contribute to maintain habitat for many species, including deer and goat. On a final point, along with the parks and protected areas in the Chilliwack Forest District, I cite that with the general biodiversity provisions with the FPC (e.g. riparian protection, old growth management areas, protected areas, and wildlife tree retention) will help maintain habitat. As well, the other management strategies, such as, visual management, ungulate winter range, Identified Wildlife Management and Special Resource Management Zones (spotted owl areas) will contribute to maintaining habitat for many of plants and animals. These strategies applicable in or near the block proposed will help to maintain habitat for many species, including deer and goat.