



January 9, 2020

Via Email: WildlifeAndHabitat@gov.bc.ca

The Honourable Doug Donaldson
Ministry of Forests, Lands, Natural Resource Operations and Rural Development
PO Box 9391 Stn. Prov. Gov't
Victoria BC V8W 9M8

Dear Minister Donaldson:

**Re: TOGETHER FOR WILDLIFE: A PROPOSED PATHWAY FOR IMPROVING WILDLIFE
MANAGEMENT AND HABITAT CONSERVATION IN BRITISH COLUMBIA**

I am writing on behalf of the Aboriginal Law Section (Vancouver Island) of the Canadian Bar Association (British Columbia Branch)(CBABC) regarding your Ministry's request for submissions regarding your Ministry's proposed [Together for Wildlife strategy](#) (the Strategy).

CBABC

Formed in 1896, the purpose of the CBABC is to:

- Enhance the professional and commercial interests of our members;
- Provide personal and professional development and support for our members;
- Protect the independence of the judiciary and the Bar;
- Promote access to justice;
- Promote fair justice systems and practical and effective law reform; and
- Promote equality in the legal profession and eliminate discrimination.

The CBA nationally represents approximately 35,000 members and the British Columbia Branch itself has over 7,000 members. Our members practice law in many different areas. The CBABC has established 76 different sections to provide a focus for lawyers who practice in similar areas to participate in continuing legal education, research and law reform. The CBABC has also established standing committees and special committees from time to time.

CBABC Aboriginal Law Section (Vancouver Island)

The CBABC Aboriginal Law Section (Vancouver Island) (the Section) provides a forum for the exchange of views and experiences for lawyers who deal with aboriginal issues for First Nations, industry and all levels of government, including self-governments. Self-government, land claims, treaty rights and native business ventures are among the intriguing and sometimes controversial topics tackled by this Section.

The Section was assisted by Stuart Rennie, CBABC Legislation and Law Reform Officer.

The Section's submissions reflect the views of the members of the Section only and do not necessarily reflect the views of the CBABC as a whole.



Section's Submissions

After careful review and consideration of the Strategy, our Section has submissions and recommendations to improve your action plan to improve wildlife and habitat conservation and management in British Columbia.

We provide these submissions based on our understanding that the Crown is providing the Strategy as initial information. We expect that the proposal or implementation of any wildlife strategy will be accompanied by deep consultation as well as supportive funding for Indigenous Nations to engage in the process. Implementation of the Strategy will likely require consent from Indigenous Nations and, indeed, the Crown should endeavor to obtain consent regardless. We also provide these comments through the lens of colonial Aboriginal law with the understanding that our submissions reflects our own views and vantage point on the Strategy, which are not a replacement for the views of Indigenous Peoples or any particular Indigenous Nation.

For ease of reference, we have placed our Section's comments opposite the relevant sections of the Strategy in the chart below:



Reference point in the Strategy	Section's Comments
"Our Principles" (page 7)	In addition to the principles listed, the Section recommends that working towards reconciliation with Canada's Indigenous Peoples should be included as one of any Crown strategy's founding and driving principles.
Goal 1 (pages 8, 9)	<p>The Section also recommends that the Strategy should commit to ensuring there is meaningful Indigenous representation on the Provincial Minister's Wildlife Advisory Council and in the Regional Wildlife Advisory Committees.</p> <p>The Strategy must provide a meaningful commitment to ensuring that Indigenous communities are heard and take part in the wildlife decision-making process, a process that frequently negatively impacts Indigenous Peoples' constitutionally protected rights and title. The Section recommends that ensuring representation on these committees can be partially achieved by reserving space for Indigenous representation within the committee or council and providing funding for attendance as required.</p> <p>We recognize that the Strategy makes reference to the "First Nations – B.C. Wildlife Habitat Conservation Forum" as a conduit in which Indigenous Nations may influence BC wildlife regulation; however, while this forum is a valuable addition to the BC wildlife regime, the Section recommends that the Strategy can be improved by providing Indigenous Peoples a more direct mechanism to participate in decision-making regarding wildlife in BC beyond consultation or stewardship.</p>
Goal 2 (pages 10, 11)	An essential part of expanding and improving upon wildlife stewardship in BC is to support and create space for Indigenous communities and Indigenous researchers' effort to track and collect data related to wildlife, inside and outside of Indigenous traditional territories, including those that study with the view of Indigenous systems of knowing. This is a critical gap within the Strategy as well as conservation approaches, generally. As a result, the Section recommends that the Strategy can help address this gap by committing to facilitating the creation of a network of Indigenous data collection and researchers, and supporting it.



<p>Goal 3 (pages 12, 13)</p>	<p>The Section recommends that the Strategy should include measures to actively support, through funding and recognition, Indigenous communities' efforts to establish conservation areas within their territories in the manner Indigenous Nations deem effective and appropriate.</p> <p>The Section notes with interest this goal's mention of "strengthening ties" with Indigenous Government. The Section recommends that the Strategy would benefit from further elaboration on this point.</p> <p>Integral to Indigenous stewardship is the recognition of Indigenous Peoples' inherent right to control their territories. For this reason, the Section recommends that the Strategy should also include commitment to support the reconciliation with Indigenous Peoples with respect to title. Such an approach would be consistent with true reconciliation, beyond rhetoric, and would also accord with many Indigenous Nations' more systemic or ecological approach to stewardship.</p> <p>A part of Indigenous rights and systems of conservation also includes the right to harvest, often in a preferential manner, which is not mentioned in the Strategy and the Section recommends that this right to harvest be included in the Strategy.</p>
<p>Goal 4 (page 14)</p>	<p>Sending annual progress reports specifically to Indigenous Nations within BC is a step towards the Strategy's goal of transparency and accountability. We are certain this could be accomplished by cost-effective, low-barrier, and efficient means.</p>



Goal 5
(pages 14,
15)

The Section notes with interest that the Strategy states that it will be successful “when Indigenous rights are recognized by society as foundational to how the Province and Indigenous governments steward wildlife” and “when Indigenous peoples can meaningfully practice their traditions and customs”. However, this aspirational statement ignores the fact that the Crown, including the provincial Crown of BC, plays an essential role in recognizing and upholding those rights, and the Section recommends that this do so in this Strategy.

The statement also ignores the fact that many Indigenous Peoples do have a meaningful right to practice their “traditions and customs” despite the Crown’s historic and current efforts to subvert and deny those rights. The Section recommends that the Strategy can be improved by making a commitment to recognize Indigenous rights and title.

The Section acknowledges that some of the action items contained under this goal heading partly address the Section’s comments and recommendations made above regarding improving the Strategy; however, the Section recommends that the Strategy can be improved by both leaving Goal 5 as a separate element and integrating elements of it throughout the Strategy. The Section makes this recommendation because Indigenous Nations are often unique and their legal interests at law are *sui generis*, that is, their legal interests have legal protections beyond general common law and statutory protections. Working towards reconciliation is a vital goal unto itself, integrating some of the elements contained here within the entire Strategy can lend itself to a more meaningful and thoughtful place within the Crown’s wildlife decision-making regime.



The Section believes strongly that our submissions will provide a basis for significantly improving the Strategy's overall goals, particularly with respect to reconciliation and in light of BC's recent enactment of the [Declaration On The Rights Of Indigenous Peoples Act, S.B.C. 2019, c. 44 \(Bill 41\)](#). Bill 41 came into the force of law on Royal Assent, November 28, 2019.

The Section recommends that the Strategy must make a substantive move away from the rights-denial framework of the past and to recognizing Indigenous Peoples' rights, including the "conservation of their vital medicinal plants, animals and minerals" on their own terms, through their own systems, on their land as required by Article 24 of the United Nations Declaration on the Rights of Indigenous Peoples as adopted by Bill 41.

Conclusion

The Section looks forward to engaging with you further on the new version of this Strategy and would happy to discuss further any of our Section's submissions. Please contact:

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