

Discussion Paper: Renewing A Strategic Direction for Hunting in BC

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TABLE OF CONTENTS

INTRODUCTION..... 3
 UBCIC and Hunting..... 3
 Purpose and Outline: UBCIC Webinar 3

1. INDIGENOUS HUNTING RIGHTS AND PROTOCOL IN BC..... 4
 Hunting and Indigenous Nations Title and Rights..... 5
 The Wildlife Act and Intersections with Conservation and Wildlife Policies 6

2. CHALLENGES AND BARRIERS TO HUNTING RIGHTS..... 7
 British Columbia’s Unilateral Management of Hunting: Challenges and Issues..... 7
 What We Heard: Concerns and Priorities 8
 COVID-19..... 8
 Indigenous Nations’ Access to Hunting Rights..... 9
 Ulkatcho First Nation and Caribou Recovery 11
 Solutions: Application of Indigenous Laws and Frameworks 12

3. UBCIC 52ND ANNUAL GENERAL ASSEMBLY 13
 What We Heard: 13

4. CONCLUSION: PATHWAYS FORWARD 16
 Questions to Consider and Principles for Change: Renewing UBCIC’s Strategic Direction for Hunting.. 16

INTRODUCTION

“Hunting and fishing and gathering are part of the lessons I remember – the world changes, but these are always present.” – Chief Harvey McLeod

UBCIC and Hunting

Overview

Indigenous Nations in British Columbia have been stewards of their lands and waters since time immemorial, upholding the sacred responsibility, reflected in Indigenous laws and legal orders, of protecting and managing their territories including the wildlife species that reside within. Despite years of colonization and government action denying Indigenous Title, Rights, laws and legal orders, Indigenous laws, have survived and Indigenous Nations continue their sacred holistic relationship with the environment in order to guide, shape, and empower their Title, Rights, and way of life. Hunting is a powerful expression of this relationship – an inextricable part of Indigenous peoples’ identities, cultures and livelihoods. Hunting laws embed the principles of respect and reciprocity and have allowed Nations to govern and care for their lands and territories, so the lands can take care of the people.

The Province has not consistently treated or regarded hunting as the immensely important aspect of the Nations’ Title, Rights and laws that it is. The Province has instead sought to control Indigenous hunting through prohibitive provincial policy and legislation, prosecuting Indigenous hunters for hunting contrary to Provincial law, denying Aboriginal Title and Rights, disregarding and disrespecting traditions, laws, and protocols.

Over the years, the Union of BC Indian Chiefs (UBCIC) has actively worked to safeguard the constitutionally protected inherent hunting rights of Indigenous Nations, exercised under Indigenous laws, including hunting rights which are protected by Treaty. Since 1974, the UBCIC Chiefs Council has advanced and endorsed a suite of resolutions collectively aimed at providing jurisdictional space for Indigenous Nations to hunt and manage game within their territories under their own laws, without regulation and control by the province. Through these resolutions, UBCIC has built a strong and principled approach to hunting that is premised on recognizing hunting as an integral aspect of Indigenous Title, Rights, and laws

Purpose and Outline: UBCIC Webinar

On June 3, 2020, as directed by the Chiefs Council, UBCIC facilitated a two-hour webinar entitled “Hunting Rights, COVID-19, and the Path Forward.” The webinar arose from discussions held at the February 26-27th 2020 UBCIC Chiefs Council meeting in which UBCIC members expressed the need to treat hunting as a priority issue, and to dedicate attention and discussion on advancing and recuperating hunting rights.

Consequently, the webinar was intended to be the first step towards building a renewed approach for the advancement of Indigenous Nations' hunting rights. Recognizing the additional challenges to Indigenous welfare incurred by the current COVID-19 pandemic, the event brought together panelists who had unique perspectives and experience regulating and managing hunting in their communities. The webinar provided the crucial opportunity for the Chiefs to express and identify common concerns and needs. Topics of discussion included:

- The history and current legal landscape of hunting rights
- Traditional protocols and laws around hunting rights
- Collaboration, agreements, and shared trust as a pathway forward
- Factors affecting hunting rights and advocacy for Indigenous Nations assertion of rights/jurisdiction

The webinar ultimately represented a starting point for a renewed focus on hunting rights and the challenges Indigenous Nations in British Columbia face in accessing those rights.

Consequently, this discussion paper draws upon the perspectives and concerns brought forward in the webinar in order to identify key priorities and themes for further work and attention. The paper intended to outline a framework for collaboratively advancing hunting rights that will inform UBCIC's update of its hunting mandate to better reflect the current hunting landscape and the Province's stance on Indigenous hunting. This mandate will be articulated and endorsed in a forthcoming resolution so that UBCIC membership has clear direction and principles for further action and advocacy.

The first section of the paper will survey the current landscape of Indigenous hunting rights, legislation, and policy in the Province. The second section examines key barriers and challenges to the fulfilment and advancement of Indigenous hunting rights and includes a "What We Heard" segment of concerns and issues that Chiefs identified in the webinar. The final section draws upon the webinar discussion to outline a set of principles and themes around hunting that can be used to update UBCIC's hunting mandate and as a guiding framework for further strategic advocacy and action.

1. INDIGENOUS HUNTING RIGHTS AND PROTOCOL IN BC

"We want to manage and handle hunts within our territory... We need to make sure we do it right because it's our Rights and our Title, and it's proven that we do have these Rights." – Kukpi7 Fred Robbins

Hunting and Indigenous Nations Title and Rights

Hunting is not merely a recreational activity or a means for subsistence, but a powerful and sacred tradition that gives shape and meaning to life lived in a Nation's territory. Hunting allows members to strengthen their relationship to lands, to exercise jurisdiction and assert sovereignty. Indigenous laws sustainably regulate hunting, manage game, and protect wildlife species. Hunters renew spiritual and cultural connections to the land and ensure the revitalization of cultural traditions by transmitting knowledge and experience between generations.

Indigenous Nations across the Province have their own hunting protocols and laws that are grounded in respect. Through these laws and protocols, Indigenous Nations recognize each others' laws, address matters of mutual concern, and permit hunters from other Nations to hunt for game in a respectful manner, with the permission of the Nation in whose territory the hunting takes place when there are no conservation concerns. Quite often there is an exchange of resources not found in that territory as a recognition of respect and appreciation from the guest hunters. Through the assertion of these hunting protocols and laws, Indigenous Nations not only regulate game and wildlife according to their own systems, but establish positive, healthy relationships with each other and the shared environment.

Many generations of Indigenous hunters fought for their rights through the Courts, making great sacrifices and achieving great successes. The Courts have ruled that Indigenous hunting rights are inherent pre-existing Aboriginal Rights, concluding that Aboriginal hunting rights in BC have not been extinguished, and find expression in Section 35 of the Constitution.

Hunting rights are also treaty rights protected by the terms of pre-Confederation and modern treaties. The Courts have held that pre-Confederation Treaty hunting rights are exercisable and defined by Indigenous laws, and these hunting rights are beyond the power of the Province to regulate. Treaty rights are afforded protection and given constitutional space to operate as inherent rights, and also under Sections 91(24) of the BNA Act, 1867, Section 88 of the Indian Act, and 35 of *the Constitution Act, 1982*.

The Courts have also accepted that interference with harvesting rights can be used to stop projects. Further, if an Indigenous Nation chooses to go to Court for a remedy seeking a declaration of Aboriginal Title, the Nation's hunting practices may be used as evidence to meet the test to prove Title.

In spite of these decisions, the Province continues, in many cases, to disregard or to read down the jurisprudence, continuing to charge Indigenous hunters under Provincial laws, authorizing hunts in Indigenous territories that run contrary to Indigenous law, and failing to protect dwindling wildlife habitat.

Hunting Management and Regulation in British Columbia

In British Columbia, the Ministry of Forestry, Lands, Natural Resource Operations, and Rural Development (FLNRORD) assumes responsibility for the control, management, and regulation of hunting

in the Province. The Ministry of FLNRORD interprets and enforces, among other things, the *Wildlife Act*. The Wildlife and Habitat Branch of FLNRORD is also in charge of conserving and managing wildlife populations and habitat, issuing licenses and permits for fishing, game hunting, and trapping, determining guidelines for safe angling and trapping, and outfitting policies.

BC's current *Wildlife Act* outlines the rules and regulations of hunting, including offences, restrictions on various types of game, inspection and reporting, shooting methods, and hunting hours. According to the *Wildlife Act*, if you are a status Indian and a BC resident, you don't need a licence or permit to hunt, but the harvesting must be:

- for food, social, or ceremonial purposes; and
- within areas hunters can prove their Nation traditionally used.

Indigenous hunters must also follow conservation, public health, and public safety regulations in addition to any Indigenous laws they may have about harvesting.

The provincial government also controls and regulates Limited Entry Hunting (LEH), which affords wildlife managers and conservation officers the ability to more closely control the number of hunters that can hunt a species in a specific area during a specific time, usually for conservation purposes. LEH applies even for Status Indians intending to hunt in their own traditional area – hunters can make an application for a LEH authorization via a LEH draw. LEH has important implications for Indigenous Nations. In the past, Indigenous Nations have had hunters with LEH permits enter into their territories and endanger vulnerable moose populations whose decline is so dire that the Nations' own hunters had chosen not to exercise their Aboriginal rights to hunt. Ultimately the regulation of general hunting and LEH by the Province has had negative impacts on Indigenous Nations' exercise of Title and Rights and has been subject to the systemic mismanagement that will be addressed in Section 3 of this paper.

The Wildlife Act and Intersections with Conservation and Wildlife Policies

The *Wildlife Act* is the primary Crown legislation through which the BC Government carries out wildlife management. BC has regulated wildlife as far back as 1859, when British Columbia was a Crown Colony.

Significantly, in its Policy Intentions Paper: Potential Amendments to the *Wildlife Act* to Support Reconciliation, the Province has stated that the *Wildlife Act* has not been changed to address Indigenous issues since 1966, and that "the static nature" of the Act promotes a lack of recognition of Section 35 rights and the inherent rights of Indigenous people. Consequently, the Ministry of FLNRORD is currently in the process of updating and modernizing the Act to align with Indigenous Title and Rights and current legal norms, land use, and technological and scientific advancements.

To inform this process, UBCIC provided a [submission](#) to the Wildlife and Habitat Branch, as well as submissions about BC's commitment to reconciliation and to the principles reflected in the historic

Declaration on the Rights of Indigenous Peoples Act (DRIPA) which has been passed in the Province. Amendments made to the *Wildlife Act* should ensure that it makes direct reference to *DRIPA* and contains explicit support and commitment to uphold the *UN Declaration*.

Additionally, the Province is engaged in a series of ongoing or in-development initiatives related to conservation and wildlife management that form a holistic framework of principles to draw upon to guide hunting rights and management for Indigenous Nations. These other initiatives include the Old Growth Strategy, Caribou Conservation, Provincial Grizzly Bear Management Plan, Forest and Range Practices Review Action, Modernized Land Use planning, and Forest Sector Revitalization. To develop a unified approach to conserving wildlife habitat and sustainably managing game, it is productive for Indigenous Nations to monitor and engage in the development of these initiatives, considering the impact of Provincial laws and initiatives on hunting Rights and Title and the jurisdictional space required for the operation of Indigenous laws.

2. CHALLENGES AND BARRIERS TO HUNTING RIGHTS

*“Our way of life has been black-marketed... our way of life has been regulated and mismanaged”–
Chief Don Tom*

British Columbia’s Unilateral Management of Hunting: Challenges and Issues

As outlined by UBCIC Resolution 2009-16, “Regulation of Hunting Territory,” the Province continues to unilaterally impose legislation upon Indigenous people without regard to existing hunting rights and Indigenous laws. The Courts and the *United Declaration on the Rights of Indigenous Peoples* have established the legal foundation for legal pluralism, but the central challenge is implementation. . Legal pluralism occurs when different governments operate on the same landscape despite having different titles, laws, and cultural narratives. The task is to create mechanisms of collaboration between Indigenous and Crown governments to share information about wildlife and habitat concerns and activities, and for practical solutions to be achieved in order to solve problems together that neither jurisdiction can do alone. New dispute mechanisms could be developed.

An example of the need for jurisdictional and legal collaboration can be illustrated by the Province disregarding Indigenous Nations’ hunting protocols, including Protocol Hunting and Sheltering agreements. Protocol Hunting and Sheltering is when a host Nation government structure (Host) has a traditional practice of allowing Indigenous individual(s) (Guest) to harvest wildlife within the Host Nation’s traditional territory or treaty harvesting area. Although Nations in BC practice Protocol Hunting as an exercise of their Aboriginal and treaty hunting rights, the Province continues to challenge this in the BC courts. This lack of legal clarity has led to the inconsistent enforcement of Protocol Hunting. Despite having an agreement with the Host Nation to do so, many hunters continue to be prosecuted for Protocol Hunting. In addition, some Indigenous Nations have their own systems of hosting Guests

and issue various forms of documentation, while others do not wish to host Guests at all. Using this example, an Indigenous Nation would occupy the field with its own laws, regulations, and/ or permits for Protocol Hunting and Sheltering in their territories, advise the Province, and ensure Provincial jurisdiction would be compliant. If necessary, dispute resolution mechanisms could be in place.

The present unilateral assumption of Provincial jurisdiction over the area of wildlife and habitat management by the Wildlife Act reveals many deficiencies and creates injustices. For example, the Wildlife Act excludes and discriminates against non-status Indians, as the regulations in BC do not recognize their right to hunt without a licence. Although non-status Indians may have an Aboriginal right to hunt under the laws of their Nation, they may be charged for exercising this right without a licence.

Nor do provincial wildlife regulations in BC acknowledge rights of Indigenous Nations with historic treaties. The Courts have conclusively determined Douglas treaty hunting rights are defined and controlled by Indigenous laws, and beyond the power of the Province to regulate. There is also no official documentation to validate and respect an individual's treaty right that is acceptable to wildlife officers. So, while many Indigenous hunters may bring their status card when they go hunting, it does not actually prove, to the satisfaction of wildlife officers, that they have the right to harvest in that area. Cases are before the Court where a hunter chooses to use their historical treaty right to harvest without getting any required permits or licences, and is charged and made to prove their treaty right to avoid conviction.

What We Heard: Concerns and Priorities

UBCIC's Hunting Webinar brought forth and highlighted key concerns and priorities of Indigenous participants around hunting, including:

COVID-19

The ongoing COVID-19 pandemic introduced new and emergent challenges to hunting that are significantly impacting Indigenous Nations. Throughout the Spring of 2020, many Indigenous Nations across the Province declared states of emergency and were forced to impose and enforce their own travels bans and restrictions, all while dealing with an overwhelming lack of healthcare and infrastructure resources and supports. In late April, the Province confirmed that while Indigenous Nations have the authority to restrict travel on their territory, and that hunting for food remains an essential service, travelling to hunt is not. Consequently, Nations such as the Taku River Tlingit Nation announced that hunting in their territories would be restricted to Nation members and local residents.

However, the BC Wildlife Federation publicly stated that it did not support such restrictions for entire "traditional territories," especially restrictions that target hunters. Nations have consequently reported infractions of their hunting restriction and pointed to inadequate numbers of RCMP and conservation officers enforcing hunting and health guidelines in their areas. After all, there are only 150 conservation officers patrolling nearly a million square kilometres, with 662,000 kilometres of unpaved roads. The Tahltan Nation has reported that hunters are ignoring pandemic restrictions and are continuing to enter into their territory to hunt for big game. Receiving racist and discriminatory threats,

they have taken matters into their own hands and have had Tahltan wildlife guardians set up gates, concrete blocks, and 24/7 surveillance at 40 access points to their traditional territory.

Another consequence of the pandemic has been a sudden uptick in hunting license sales and what people are calling “panic hunting.” Since the start of the provincial bear hunting season on April 1, the Province has sold at least [4,803 species licences](#) for black bears, compared to 1,886 in 2019. Indigenous Nations have expressed worries regarding the numbers of trophy fishermen, resident hunters, and researchers coming into their isolated communities and endangering the health of their members and Elders – something that is particularly dire given that some communities have little to no access to ventilators and limited medical supplies.

Other key concerns regarding the pandemic raised by the webinar participants include:

- Effects on culture and traditions; curtails on community fishing, hunting, large gatherings, and accessing community traditions
- Food security and access to traditional foods
- Delayed hunting season and smaller hunting units
- Over-harvesting
- The ability of conservation officers to interfere and access Indigenous Nations’ territory
- Tensions and hostility between Indigenous and non-Indigenous hunters
- Emergency Management BC’s unilateral approach to aiding Indigenous Nations
- BC’s encouragement of LEH travel
- Following Phase 2 of BC’s COVID-19 Recovery Plan, the sudden influx of campers, fishers, hunters, and tourists in their territory, endangering their health.

Despite the numerous challenges and setbacks to hunting introduced by COVID-19, webinar participants repeatedly emphasized how the pandemic allowed “us to think back to 40-50 years ago when Nations were self sufficient.” Participants noted how the pandemic has allowed communities to come together to support one another and has educated people on how to become self-sufficient and turn back to the land for solutions.

Indigenous Nations’ Access to Hunting Rights

Chiefs pointed to incidents where individuals were unfairly prosecuted and had their hunting rights violated. They identified other challenges that impede Indigenous Nations’ access to their hunting rights and the exercise of their jurisdiction, including:

- **Climate change and forest fires:** participants pointed to the 2018 wildfires in BC; after the fires they noticed a huge influx of people coming into their territories, showing little respect

for the people that lived there. The wildfires not only led to the crucial loss of wildlife habitat; one participant described how 210 km of new road was built to help access the wildfires, which led to people using these roads for unauthorized hunting. A chief noted how Alberta firefighters came back in the fall to hunt and crossed into his reserve without consideration, taking half of their moose. There is a strong need to reclaim and deactivate these roads in order to stop “truck hunters” and others from infringing upon Indigenous territories and hunting rights.

- **Industrial development and habitat degradation:** resource extraction projects and development, including old-growth logging, continues to endanger the biodiversity and survival of wildlife species; participants noted that COVID-19 has also led to increased concessions around these projects, and that Canada has delayed or suspended certain environmental protections.
- **Lack of recognition and understanding for Indigenous protocols and agreements:** a participant noted how there is history in every Indigenous community about how to survive and laws to protect the animals, habitat, and hunting. Agreements have been reached, including through handshake with people in the surrounding areas. These informal agreements and protocols extend to conservation officers, local communities, and companies allowing Indigenous practices, without going through legal hoops or changing the laws of the land. A participant noted how people need to better understand, recognize, and support these agreements and protocols so that Nations can better control who is coming into their lands and what’s going out, and ensure hunting is being conducted safely and responsibly.
- **Mismanagement and lack of consultation:** the provincial government’s regulation and management is beset by a lack of consultation with Indigenous Nations and inconsistent recognition of Indigenous Title, Rights, and jurisdiction. Participants highlighted how the Province failed to prioritize sustainability and give effect to Indigenous jurisdiction, issuing more licenses than necessary to make more money, and allowing hunters to come into their territories to hunt certain species, such as moose or caribou, that are in a serious decline. For instance, one chief noted how BC is acting unilaterally and irrationally to kill moose; they are rationalizing the killing of moose by asserting it will reduce the number of predators and thus save mountain caribou. In addition, traplines, which the province defined as any area in which an individual or group of individuals has the right to trap fur-bearing animals, form an integral part of First Nations’ culture. Many families have owned and exerted their jurisdiction over traplines that go back generations, yet provincial regulation has now stripped these traplines from them, forcing them to give up their licenses if they don’t trap a minimum dollar value. Ultimately, the general mismanagement is sparked by a lack of on the ground experience and understanding of Indigenous Nations’ traditional knowledge, hunting and its ties to their land and way of life.
- **Indigenous authority and values not heeded:** Indigenous Nations need to have the authority and power recognized by the Province, to issue and regulate permits on their territories, and

hunting practices need to incorporate Indigenous laws and values. For instance, one participant noted that there is a fundamental difference between how Indigenous hunters and non-Indigenous hunters regard life: he was taught to shoot game between 50-100 yards, but hunters are now using high power rifles with high power scopes to shoot from 600-700 yards away, making it easier and quicker to kill and disregard life.

- **General public's lack of respect for Indigenous Nations' rights:** Participants expressed how difficult it is to prevent non-Indigenous hunters from outside their territories coming in and demolishing the family herd they are trying to protect. A chief noted how 60 mushroom pickers came into his Nation's territory and picked thousands of pounds of mushroom for 2 weeks, leaving none for his community. Others note the backlash and growing hostility from the public as Indigenous Nations close their territory to hunting as a result of COVID-19. These actions display a lack of respect for Indigenous Nations' rights, protocols, and conservation plans. Participants emphasized collaboration and cooperation with others not to exert control, but to ensure people have an understanding and respect for the people that live on the lands.
- **Lack of a government agency that prioritizes sustainability:** A participant referenced Justice Vickers' decision on *Chilcotin Nations v. BC* (2007) that found that the protection and preservation of wildlife for the wellbeing of Indigenous Nations is low on the list of government priorities, and that there is no single government agency that views sustainability through a broad lens. BC continues to support a model of sustainability that is driven by an economic engine; financial profit is being prioritized over conservation and Indigenous Nations' rights.

Ulkatcho First Nation and Caribou Recovery

Chief Lynda Price spoke on the T̓silhqot'in and Ulkatcho Nation's emergency hunting ban on Mountain Caribou, and how the drastic caribou population decline has led to the need for urgent intervention and collaboration. The Ulkatcho First Nation's (UFN) efforts to recover caribou not only illustrates the systemic mismanagement of hunting by the provincial government, but also demonstrates the UFN's approach to recovery and management that other Nations can learn from and draw upon.

The UFN has four caribou herds in their territory and in 2002 the Province came up with a plan to transplant some of the Itcha-Ilgachuz caribou herd to another herd that had been depleted in the Purcell Mountains. However, the UFN opposed this transfer as they were not properly consulted or invited to the planning table to address the decline of the caribou herd in the Itcha-Ilgachuz, nor did the transfer address issues in the Kootenays with predators, tourism, and extraction of timber resources. Chief Price noted that in 2009 they had more than 3,000 caribou, but when she came back in 2019, this number had been vastly and alarmingly reduced to around 300. Furthermore, after setting up a natural resource

working group to identify priority issues in UFN territory, they superimposed a map of their traditional territory upon all other land use maps (corporate, stakeholder, BC Parks, and government maps) and discovered that only 5% of resources were left for their Nation.

Consequently, the UFN invited FLNRORD, BC Parks, the RCMP, MLAs, and MPs to a local roundtable and prioritized input from their Elders. The UFN plans to work with BC Parks to implement cameras to monitor wildlife, put together overview flights for caribou counting, address the problem of feral horses, and set up a park management monitoring program and a student range program. Significantly, Chief Price highlighted the importance of giving Indigenous youth land-based training and re-introducing them to parenting skills Indigenous Nations have lost over the years, including the awareness that moose and other animals are life. There is a great need to address the lack of knowledge and awareness of the importance of hunting by introducing and utilizing cultural practices, educating the youth on land-based protocols, and creating protocols with each other to work together.

Solutions: Application of Indigenous Laws and Frameworks

Louise Mandell noted that the challenges around hunting are linked to the Province's failure to make systemic changes, which the law recognizes, to create space for the operation of Indigenous laws and rights where these laws and rights have historically been denied. What is currently occurring is the resurfacing of old issues around Indigenous Title and jurisdiction that Nations had won in the Courts. Despite Indigenous Nations fighting and winning hard legal battles, including the 50-year fight against Provincial regulation of pre-Confederation Treaty hunting rights, the Province is still not respecting Indigenous laws and jurisdiction. Louise is currently assisting in a defence of a treaty Tsartlip hunter who killed two animals to feed his family and elders of the community. In a trial that is scheduled to run for two further weeks, the Crown is putting the hunters to strict proof of his Treaty rights and Saanich laws. In this case, the Province seeks to overturn decisions where the SCC has held that the Province has no power to regulate a treaty hunting right, rather than to accept co-jurisdictions and to negotiate how these jurisdictions can function together, respectfully, and in the interests of conservation. This adversarial approach is the antithesis of reconciliation.

Crucially, there still is no single government agency that holistically deals with sustainability and wildlife management, despite the principle "all is one and everything effects everything" being entrenched in Indigenous law. When hunting is perceived through a lens of sustainability and managed in accordance with Indigenous laws, hunting rights can be used to safeguard the earth, protecting it against environmental destruction through resource extraction and development projects. Nations may strategically work to use their inherent and constitutionally protected hunting rights as a legal basis to resist such projects.

Consequently, to address the hunting challenges and concerns outline above, participants expressed the overarching need for Indigenous laws and protocols to guide the management of hunting. For instance, one Chief noted how his Nation is in the process of incorporating the seven laws of his Nation into protocols for anyone coming into their territories to harvest. His Nation is looking to instill these

protocols into laws to ensure compliance and respect through the provincial government. This presents a significant opportunity for the government to formalize the recognition of the jurisdictional space for the operation of Indigenous laws and to re-shape hunting management.

Other solutions and actions identified by participants include:

- A group, such as UBCIC or the First Nations Leadership Council (FNLC), or a high-level representative, needs to advance Indigenous Nations' hunting interests with Crown governments, and to question the ethics, assumed Provincial jurisdiction and guidelines of how BC regulates hunting
- A renewed mandate for UBCIC to start focusing on hunting that is based on Indigenous Nations' laws and interests, not those of the Province
- FNLC needs to approach the Province and make a loud statement regarding increased funding for guardian programs in hunting and fishing
- Ensure provincial discussion and decision-making around hunting is conducted from an Indigenous laws and Rights perspective
- Ensure implementation of UNDRIP and alignment of provincial hunting regulations and policies with it

3. UBCIC 52ND ANNUAL GENERAL ASSEMBLY

"What we're talking about here is the extinguishment of a right by an extinguishment of an animal or species." – Chief Wayne Christian

What We Heard:

UBCIC held its 52nd AGA virtually on September 29-30th, 2020, and dedicated a session entitled "Advancing a UBCIC Position on Hunting" to presenting and discussing the draft UBCIC Hunting Discussion Paper. Presenter Chief Keith Crow went over the key points of the paper, Louise Mandell provided an overview of the legal landscape of hunting, and the UBCIC Chiefs-in-Assembly shared their feedback, thoughts, and concerns. Key points of the feedback and discussion raised by participants include:

Data and Consultation

- **Concerns around the provincial government's control of data and code of management.** The Province has complete authority over hunting regulations and proceedings, i.e., how they issue licensing, whether it's to resident hunters, non-resident hunters, who qualifies for limited entry permits, etc.
- Chiefs had questions around: **What does the data the government collect really mean?** Are they taking thousands of animals? And how many families is that actually feeding in terms of the non-indigenous families?

- Chiefs concluded that a **key priority must be making hunting data and statistics accessible and relevant for First Nations**: Data collected by FLONRORD that is publicly available on provincial websites is not presented in such a way that is layperson-friendly and easily understood, and is not collated and synthesized in such a way that is reflective of all the relevant issues at play in the wildlife and hunting landscape. A participant suggested that part of the work UBCIC advances in relation to hunting should include demanding that the province provide hunting related information and data to Nations, region by region, so Nations can see what's going on in their communities, including how many hunters they are issuing permits to.
- Chiefs want to know: **How are they calculating Indigenous needs accurately? How many animals do we actually consume per year? Nations need a strategy that ensures the government gives accurate “food social assessments.”** Participants emphasized that the government needs to help monitor this information and be cognizant of the number of animals needed to sustain the different population needs of Indigenous Nations, including their social, ceremonial, and food needs. Participants noted that this is fundamentally a Title and Rights issue as Nations, not the government, should be the ones determining and deciding the numbers and logistics based upon their own needs. Questions put forward that we need to ask are: What do we need for carrying us through the winter? How many deer, how many elk? How many moose, how many sheep or mountain goats, or mountain caribou, for that matter? How many fish, how many resident stocks?

Funding

- There were eight bands within the Nlka’pamux Nation that applied for guardianship program funding; however, as soon as they started out the funding got cut
- Participants expressed the need for the First Nations Leadership Council to ensure the federal and the provincial governments provide **funding for the guardianship program** that meets each of Nation needs in their respective jurisdictions

Relationships and Respect

- Participants pointed to the need to **focus on and prioritize relationships with one other**— the need to follow and honor certain protocols when hunting in another’s territory
- As one participant commented: “When I started as a nine-year-old hunter, Chief, the first thing we did was drop frozen fish off to the chief or elder who is in Nlka’pamux; whoever's backyard we were in there is a protocol there that we respect”

Indigenous Laws

- Hunting issues are linked to **challenges around the access and use of territories and land and resource management**; there is a need for Indigenous communities and Nations to have the capacity to manage their land, resources, technicians, information management systems, and sharing agreements.

- A major problem identified is that the legal system is centered around **the Common Law System** and protecting the rights of non-Indigenous people in terms of their legal orders, instead of looking after and respecting Indigenous power, rights, processes, and jurisdiction
- Indigenous Nations began legal initiatives to keep the province out of regulating hunting rights, because **Indigenous laws should control hunting rights**. Participants highlighted how Nations should not have to ask the Province for the jurisdictional space they have won previously in courts. There is a need for legislation that enables **the incorporation of Indigenous Laws into the regulation of hunting rights**.

Legal Pluralism and Jurisdiction

- Louise Mandell outlined how one of the major issues subverting Indigenous hunting rights is related to **legal pluralism. Legal pluralism requires that the Province vacates the jurisdictional space it illegally assumed over hunting rights, thereby creating jurisdictional space for the operation of indigenous hunting laws and practices, the implementation of Court decisions, and the promised framework provided by the UN Declaration and the Declaration Act**
- **The Province 's approach to hunting, has not systemically shifted the colonial paradigm based on doctrine of discovery and Crown domination.**
- The UBCIC has supported Nations and contributed to Court cases, resulting in Court decisions holding that Aboriginal hunting rights have not been extinguished in BC. These rights are inherent; this means that neither Crown nor Court recognition is required to possess animals and exercise law making authority over hunting. Canadian law is only one system of authority – another source is found in Indigenous legal systems. Indigenous sovereignty which encompasses hunting laws existed before colonial contact and this order of government stands on its own. These rights and powers do not derive from the Constitution; the Constitution serves to protect these rights from unjustified and dishonorable Crown interference.
- In the context of the Douglas Treaties, the Courts have recognized that Treaty hunting rights are controlled by the Nations' laws and cannot be derogated from by the Province through the application of provincial hunting laws.
- The *UN Declaration* recognized that the right of self-determination and free prior and informed consent is an inextricable part of a human rights framework which Canada and BC have endorsed. Indigenous peoples implementing their laws are the conditions for bringing about reconciliation. Section 35 cannot revitalize Indigenous laws until self-determination informs the approach.
- Canada's mode of government is federalism, and is comprised of three, not two orders of government: federal, provincial and Indigenous. Jurisdiction is not exhaustively divided between Crown governments.
- It is necessary that Nations are able to form equal partnerships with the Province on all wildlife, hunting, and management matters and decisions affecting their respective territories, based on

the province's recognition of jurisdictional space for Indigenous laws including the exercise of hunting rights. Negotiation about how legal pluralism will operate in relation to hunting rights, rather than prosecutorial litigation, can lead to the respectful functioning of Crown and indigenous jurisdictions on the same landscape, and successful stewardship.

4. CONCLUSION: PATHWAYS FORWARD

"Hunting crosses many departments, FLNRO, Fisheries, Health, Title and Rights... it's not just the right to harvest, it's a spiritual connection to the land." – Kukpi7 Judy Wilson

Questions to Consider and Principles for Change: Renewing UBCIC's Strategic Direction for Hunting

UBCIC's Hunting Webinar was a vital step needed to generate discussion, identify significant areas of concern, and to begin considering and developing new avenues of hunting advocacy and work. Participants expressed great appreciation for everyone's contributions, experiences, perspectives, and ideas that will inform discussion and advocacy on hunting topics moving forward and will be used to guide and renew UBCIC's mandate and strategic direction for hunting. Consequently, the following questions and principles gleaned from the discussion from the webinar and UBCIC's AGA can be used to develop topics, proposals, and resolutions for future discussion and sessions, and will form the framework for UBCIC's renewed hunting mandate:

- 1. The provincial government has failed to provide jurisdictional space for the operation of Indigenous laws and legal orders to prioritize sustainability and the preservation and operation of Indigenous Title and Rights, customs, and traditions in their management of hunting.**

Systems of colonial governance are still very much in play when it comes to the management and regulation of hunting. These systems have resulted in a systemic lack of respect, understanding, and recognition of Indigenous Nations' laws and jurisdictions, Title and Rights, livelihoods, ways of life, cultures, and traditions. Lack of consultation with Indigenous Nations has led to over-harvesting, a decline and mismanagement of wildlife species such as caribou, and traditional food insecurity and shortages.

- 2. Once legal pluralism is addressed, and the Province exits from the jurisdictional space that they've illegally assumed, mechanisms need to be built so that provincial and Indigenous jurisdictions can co-exist and function together over matters of mutual concern.**

Once the province vacates the jurisdictional space and allows Indigenous jurisdiction to take root and govern the land, mechanisms for getting proper data and allowing the promulgation of Indigenous laws and permit regulations can be built so that different jurisdictions can live compatibly together

3. Indigenous Nations need to shift the legal paradigm in BC that discounts Aboriginal Title and hunting rights and use their own laws to incur and guide this shift to a new model of self-sufficiency and cooperation

Hunting rights are constantly evolving and changing with the peoples and times, and we have now reached a point where Indigenous Nations can exercise their power and knowledge to shift to a new paradigm of hunting in which Indigenous Title is recognized and Indigenous laws and protocols are used to restore balance. Chiefs and their Nations will need to use their knowledge of what they're seeing happen firsthand on their lands, as well as their concerns for what the government is not seeing, to inform the new paradigm.

4. Hunting rights should be wielded not only as an inherent right, but as a critical instrument in securing and exercising other rights and protecting Indigenous territories and resources from the government's influence.

Many resource projects have impacts on wildlife and therefore hunting. As there isn't an entity in government that deals with wildlife with a holistic lens – addressing resource extraction, conservation, and hunting management – Nations must continue to use their hunting rights, and the traditional knowledge gained by hunting, to resist environmentally harmful projects like the Trans Mountain Expansion.

5. The government needs to rethink its systems of governance and apply a broad, holistic lens to sustainability that supports the precautionary principle and is not driven by economic windfall.

The Province needs to create an agency or body dedicated to addressing and advancing sustainability through a broad lens that reflects Indigenous values of interconnectedness and holistic being, and considers the impacts of resource extraction, harvesting, and land development on the lives and rights of Indigenous Nations. Furthermore, they need to ensure that hunting management incorporates the precautionary principle and prioritizes measures for preventing environmental degradation, especially as extreme weather events such as wildfires are becoming more frequent, and First Nations are struggling to protect what ever resources are left intact.

6. The provincial government must provide transparent, accessible hunting related information and data to Indigenous Nations, region by region, so they can see what is going on in their communities. Part of this data needs to be supported by food and social assessments that accurately determine the numbers and types of animals per year that Nations consume/use for food, social, and ceremonial purposes.

Indigenous Nations need regional data to get a clearer idea of what the hunting landscape looks like in their territories, and to ascertain where the government is following short, including where it is limiting hunting in certain areas and allowing certain things to go ahead in others. Indigenous Nations need to develop a strategy for monitoring and disclosing the number of animals they rely upon each year to fulfill their food, social, and ceremonial purposes.

7. As Indigenous communities continue to develop, write and formalize their hunting protocols, the Province must respect and support them.

The authority and power of Indigenous Nations hunting protocols must be acknowledged and respected. The bottom-line is that if a Nation has a protocol to not hunt moose because there is a dire decline in their numbers, this protocol needs to be respected and upheld by BC. In addition, the Province can learn from these hunting protocols and draw upon them to guide their amendments to the Wildlife Act and any other policies and legislation that concern Indigenous Nations, conservation, and hunting. This could result from the development of new collaborative and communicative institutions between Crown and Indigenous governments.

8. Collaboration, coexistence, and communication between Nations and between the public is critical; we need protocols with each other to work together and protect traditional sustenance.

Strength is in numbers and unity – the divisions caused by the *Indian Act* between communities can be healed. Webinar participants have common experiences of BC's hunting mismanagement and expressed their need for more cooperation and understanding between Nations, companies, local communities, and the general public. Moving forward, Nations will continue to learn from one another and work strategically, via agreements and protocols, to further their hunting agendas and goals, and maximize partnerships with others.

9. Hunting management and regulation should be driven by the Elders and the youth – we need the wisdom and cultural practices of our Elders to instill land-based values and protocols in our youth, and to re-teach them skills that have been lost over the generations.

COVID-19, although challenging, has reminded communities of the importance of self-sufficiency and turning back to the land. The provincial and federal governments need to help Elders and Knowledge Keepers restore and pass on cultural traditions and land-based skills to younger generations that are essential for self-sufficiency and self-determination but have been eroded by residential schooling and other colonial, oppressive practices.

10. The *Wildlife Act* remains an outdated and colonial piece of legislation that regulates hunting of Indigenous Nations in the Province; as the Province begins to amend and modernize it, Indigenous Nations need to continue to engage with the Province and ensure the Act reflects their needs and interests.

In amending the Wildlife Act, BC needs to align the legislation with DRIPA, ensuring the right to self-determination, and living up to its commitment to enter into agreements with Indigenous governance structures regarding Protocol Hunting and Sheltering.

11. More funding is needed to help Indigenous Nations in all areas of conservation and hunting.

BC and Canada need to implement conservation financing and provide dedicated funding for Indigenous Nations Indigenous Protected and Conserved Areas (IPCAs), guardian programs around hunting and fishing, and Indigenous Nations land use plans. As well, they will need to provide a clear inventory of what types of guardian programs there are in the province, as well as what criteria they are using to recognize guardian programs. They will also need to ensure there is financial support for Indigenous Nations governments, for such matters as to sustainably hunt, manage and steward IPCAs, and purchase and protect private lands with vulnerable habitat and wildlife species.

12. Further webinars or in-person gatherings (pending the state of the COVID-19 pandemic and public health orders) are needed to continue dialogue and to get a sense of what UBCIC's membership want to advance and how they want to be involved in hunting advocacy.

Webinar participants expressed appreciation for the opportunity to share and learn from one another's experiences and ideas. Continued dialogue and engagement with one another is essential to determining and developing goals and objectives for hunting advocacy and work.

13. Other questions raised by participants, to be consider moving forward, include:

- a. How can we best use hunting rights to protect lands and resources from the impacts of development projects?
- b. How and in what ways can we work together and help Nations return to our ways of life?
- c. What incentives can be used to bring youth into areas around hunting, conservation and land management?
- d. How do we address and fix the ways the government views our territories?
- e. How should traditional food security be advanced during emergencies, and how can jurisdiction or authority be leveraged in doing so?

Implementing UBCIC’s Hunting Mandate:
 Actions from Discussion Paper Endorsed through Resolution 2021-05

Theme: First Nations Decision Making **ACTIONS**

Objective 1 Ensure that First Nations are directly involved in all areas of decision making related to hunting and provide space for Elders and Youth to drive and guide action.

Objective 1.2 Revitalize First Nations Laws related to hunting.

Objective 1.3 Support capacity development of First Nations to manage wildlife according to their laws, traditions, and protocols

- a) Advocate for the Province to advance section 6 and 7 decision making agreements with Nations specifically on wildlife management and hunting.
- b) Plan an All Chiefs and Knowledge Holders Forum on Indigenous Laws and Protocols related to hunting and wildlife management practices - discuss and generate ideas for how First Nations can shift the legal paradigm and create jurisdictional space, and how they can develop and formalize their hunting protocols.
- c) Work with the First Nations data governance centre to advance First Nations capacity to access, collect, manage, and share transparent wildlife and hunting data.
- d) Advocate that the Province provide adequate capacity funding to support and implement First Nations decision making, governance capacity, passing of knowledge between youth and elders, and management of wildlife and hunting.

Theme: Leveraging Provincial Government Initiatives **ACTIONS**

Objective 1 Collaborate with Provincial government policy and legislation initiatives where necessary to ensure government progress on First Nations’ hunting priorities

- a) Invite the Provincial Together for Wildlife Forum to a UBCIC Chiefs Council or other meeting to update Chiefs on the work of the forum and obtain input from Chiefs.
- b) Advocate for Indigenous priority and non-derogation clauses in Provincial *Wildlife Act* amendments.

Theme: Conservation, Sustainability, and Traditional Knowledge **ACTIONS**

Objective 1 Ensure that the Province advances sustainable approaches to hunting and wildlife management that, per Article 29, *UNDRIP*, supports Indigenous peoples’ right to the conservation and protection of the environment and the productive capacity of their lands or territories.

Objective 1.1 Ensure that any decisions regarding hunting consider and uphold the wisdom and cultural practices of Elders, land-based values and protocols, and the impacts of resource extraction, harvesting, and land development on the lives and rights of Indigenous Nations

- a) See Theme 1, Objective b; hold an All Chiefs and Knowledge Keepers Forum on Indigenous Laws and Protocol regarding hunting. At the forum, dedicate a strategic panel/discussion to the impacts resource projects have on wildlife and hunting and how Nations can use their hunting rights, and the traditional knowledge gained by hunting, to resist environmentally harmful projects.
- b) Find resources to produce a discussion paper that examines the relationship between resource extraction, conservation, and hunting management to inform Statutory Decision Makers how they can best consider and uphold the wisdom and cultural practices of Elders and their land-based values and protocols.
- c) Advocate for wildlife management and harvesting that respects Indigenous values of interconnectedness and stewardship; continue advocating and participating in discussions with stakeholders and Province regarding ending fur farms in BC and other issues concerning First Nations hunting and wildlife management rights.