



AGENDA ITEM SUMMARY

BACKGROUND

The State of Oregon and the Confederated Tribes of Siletz Indians (Siletz Tribe) are sovereign entities that desire to continue to advance the government-to-government relationship between the parties. The Siletz Tribe is a federally-recognized Indian tribe located within the geographic borders of Oregon and is comprised of numerous historical tribes and bands from throughout western Oregon who were confederated together and removed and resettled on the Siletz Coast Reservation established by Executive Order on November 9, 1855. The Siletz Tribe asserts an interest in wildlife resources, habitat and management reserved in treaties, statutes, Executive Orders or other authority, but the Siletz Tribe's wildlife resource hunting, fishing, trapping and gathering rights have never been directly litigated, adjudicated or determined by any court in which the Siletz Tribe has been a party. As such, the Oregon Department of Fish and Wildlife (department) and the Siletz Tribe have a shared interest in how fish and wildlife and their habitats are managed in Oregon and seek to proactively and voluntarily cooperate to establish a framework under which the Siletz Tribe's members may participate in hunting, fishing, trapping, and gathering in a culturally relevant way.

The department has worked with the Siletz Tribe to create a Memorandum of Agreement (MOA) to establish a voluntary, cooperative partnership to collaborate, share resources, and work as partners to develop and implement plans to protect, restore, and enhance fish and wildlife populations and their habitat within a specific geography of Oregon. The agreement to establish this partnership also sets up a framework under which Siletz tribal members will participate in subsistence and ceremonial harvest of fish and wildlife resources that is licensed and managed by the tribal government in coordination with the department and the Oregon State Police.

PUBLIC INVOLVEMENT

This agreement has been developed through direct, government-to-government negotiations between the Siletz Tribe and the state of Oregon through the department. The public received notice of the draft MOA and proposed administrative rules by notice in the Secretary of State's Bulletin in October 2022 and April 2023 (Attachment 2). The Tribe, in coordination with the Oregon Governor's Office, has engaged other federally recognized tribes in Oregon in multiple forums to share details of the terms of the MOA. The department offered government-to-government consultation with the eight other federally recognized tribes in Oregon in writing on October 18, 2022. The department engaged in government-to-government consultation with The Confederated Tribes of Grand Ronde on November 17, 2022.

This agenda item was originally scheduled for the Commission’s consideration in December 2022 and public correspondence from that meeting is included for the Commission’s consideration in June 2023. Members of the public may provide written and oral comment for the Commission’s consideration.

ISSUE 1

Memorandum of Agreement to Define Exercise of Hunting, Fishing, Trapping, and Gathering of the Siletz Tribe and its Members and Setting Out Principles of Cooperative Management of Wildlife Resources Between The Confederated Tribes of Siletz Indians and The State of Oregon, by and through the Oregon Department of Fish and Wildlife.

ANALYSIS

The department’s mission to protect and enhance Oregon’s fish and wildlife and their habitats for use and enjoyment by present and future generations closely aligns with the history and culture of the nine federally recognized tribes in Oregon. Members of these tribes and their ancestors have followed cultural practices related to sustainable management of fish and wildlife since time immemorial. Tribes are also unique among the department’s partners because they are sovereign governments, not stakeholders.

The Tribes are critical partners for the department as we seek to address the challenges related to climate change, pressures on water, fire, and many other issues that will affect the resilience of fish and wildlife now and in the future. The proposed MOA between the department and the Siletz Tribe will strengthen the ability of the Tribe to engage in this important fish and wildlife conservation work that will benefit all Oregonians.

The proposed MOA advances the government-to-government relationship between the state and the tribe, enhances tribal sovereignty, enhances the tribe’s ability to contribute to positive outcomes for fish and wildlife, and will increase opportunities for tribal members to harvest fish and wildlife resources consistent with tribal values. By facilitating this reconnection with tribally important resources, cultural practices, and access to the first foods that are managed by the department, the state of Oregon is able to address historic losses of opportunity for the tribes while giving the tribes a stronger voice in protecting and enhancing fish, wildlife, and their habitats for future generations of Oregonians.

The federal government removed the Siletz Tribe’s federal status through the 1954 Western Oregon Termination Act. In 1977, that federal status was restored through the Siletz Indian Tribe Restoration Act. The Siletz Tribe was the second in the nation and the first in Oregon to regain federal recognition. But, the Siletz Indian Tribe Restoration Act explicitly did not restore the

Siletz Tribe's hunting, fishing or trapping rights. As part of restoring the Tribe's federal status, the state and the tribe entered in to an agreement that provided for limited fish and wildlife harvest opportunity ("Siletz Consent Decree"). The Siletz Tribe is one of only two tribes in the United States that have these consent decrees in place. While the Siletz consent decree states that it defines the full extent of tribal hunting and fishing rights and that no other tribal rights except those specifically set forth in the consent decree shall exist, in 2011, while examining a similar consent decree agreement, the Court of Appeals of Oregon determined that the consent decree aimed at defining the "rights" of the Tribe to conduct take of wildlife resources not necessarily otherwise provided for under state law, and that the Commission may authorize the tribe and its members to engage in take of wildlife resources not contemplated by the Siletz consent decree under the broad discretionary authority of the Commission to manage wildlife.

The geographic scope of the proposed MOA is based on the original boundary of the Siletz Coast Reservation, as described by the Tribe. In seeking to establish a biologically relevant geographic scope for the Agreement, the Parties expanded beyond this political boundary to include four ODFW Wildlife Management Units: 14 (Trask), 17 (Stott Mt), 18 (Alsea), and 20 (Siuslaw). The geographic scope includes the associated nearshore marine areas to these Wildlife Management Units.

Within this geography, enrolled members of the Siletz Tribe will be able to participate in hunting, fishing, trapping, and gathering licensed by the Tribe. The department and the Tribe will also coordinate on proactive fish, wildlife, and habitat conservation activities in this area. The geographic scope of the proposed Agreement explicitly excludes the original Grand Ronde Reservation, any property held in trust for another federally-recognized tribe within the four Wildlife Management Units, and the mainstem Columbia River and the Willamette River from its mouth to the top of Willamette Falls.

The proposed MOA includes a framework for tribal members to participate in subsistence and ceremonial harvest of fish and wildlife resources within the defined geography. Harvest of fish and wildlife by tribal members would be regulated, licensed and enforced by the tribal government in partnership with the department and the Oregon State Police (OSP). Annual harvest limits and areas will be set by mutual consent between the Tribe and department staff.

The proposed MOA is limited to subsistence and ceremonial harvest. The Tribe would not be implementing any commercial harvest opportunities. "Subsistence harvest" is harvest consistent with tribal cultural practices for acquiring traditional foods and other resources for personal or familial use, or community sharing. Subsistence harvest is likely to occur during generally similar times and in similar locations to the state's usual recreational harvest opportunities, but some differences should be anticipated. "Ceremonial harvest" provides traditional foods for tribe or community-wide events that acknowledge and perpetuate religious, cultural, and other traditions. It may also include other traditional family group ceremonies. Ceremonial harvest may occur throughout the year. The overarching intent is that the Tribe and the department will seek to provide tribal members harvest opportunities and experiences afield that are consistent with the Tribe's cultural norms while being consistent with conservation needs of Oregon's fish and wildlife.

The proposed agreement authorizes the Siletz Tribe to permit harvest of fish and shellfish in certain areas managed by ODFW, including marine gardens and research reserves. Siletz tribal members would be required to follow existing administrative rules for the take of wildlife resources in marine reserves and marine protected areas.

As a result of this new framework, many Siletz tribal members who already participate in hunting, fishing, trapping or gathering are likely to shift to obtaining tribal licenses and tags instead of state licenses and tags, at least for activities within the geographic range of this agreement. Even if there is an increase in tribal member participation and tribal harvest as a result of this MOA, it would be a very small fraction of the hunting and fishing along the north coast of Oregon. The department expects this to result in a negligible reduction in revenue and a negligible change in the impact of hunting and fishing to existing fish and wildlife populations.

Upon adoption of this MOA, the Tribe will develop hunting, fishing, and trapping regulations overseeing take of fish and wildlife by their tribal members that parallel the department's regulations, related Oregon Revised Statutes, and federal laws that oversee take of fish and wildlife by the general public. The Tribe has committed to abiding to Oregon Revised Statutes related to hunting, including but not limited to those statutes documented in Appendix A of the MOA. The department, OSP and the Tribe will work together to ensure relevant regulations are enforced for tribal and non-tribal members.

This proposed MOA is intended to shape the government-to-government relationship between the department and the Tribe for many years. Implementation of the agreement would commence immediately upon adoption by both the Tribal Council and the Fish and Wildlife Commission. The Siletz Tribal Council approved the draft MOA on August 19, 2022.

Implementation of the subsistence and ceremonial harvest portion of the agreement will occur through annual meetings at which the Tribe will propose a list of species that tribal members plan to harvest and description of the limits and areas of that harvest. The Tribe and department staff will work together to reach consensus on the limits and areas for each species every year. The Tribe and department staff will interact frequently in the course of performing their fish and wildlife management responsibilities and will also meet annually to share information and discuss the proactive fish, wildlife, and habitat management planning and actions that each organization would like to pursue each year. As a result of these meetings, opportunities to share resources and work together on specific issues will be identified and implemented collaboratively each year.

OPTIONS

1. Adopt OAR 635-800-0500 (Attachment 4) to implement the Memorandum of Agreement between the Confederated Tribes of Siletz Indians and the state of Oregon, through the Oregon Department of Fish and Wildlife (Attachment 3).

2. Status quo (no action).

STAFF RECOMMENDATION

Option 1.

DRAFT MOTION:

I move to approve the draft Memorandum of Agreement in Attachment 3 and adopt new OAR 635-800-0500 as proposed by staff and shown in Attachment 4.

Effective Date: *Upon Filing*