



AGENDA ITEM SUMMARY

BACKGROUND

The State of Oregon and the Confederated Tribes of the Grand Ronde Community of Oregon (Grand Ronde) are sovereign entities that desire to continue to advance the government-to-government relationship between them. Grand Ronde is a federally recognized Indian tribe located within the geographic borders of Oregon.

As such, the Oregon Department of Fish and Wildlife (department) and Grand Ronde 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 Grand Ronde's members may participate in hunting, fishing, trapping, and gathering off-reservation in a culturally relevant way.

The department has worked with Grand Ronde 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 Tribal members will participate in subsistence and ceremonial harvest of fish and wildlife resources off the Grand Ronde Reservation 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 Grand Ronde 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 on April 25, 2023 (Attachment 2). The Tribe hosted two online forums to share details of the terms of the MOA with any interested parties. The department offered government-to-government consultation with the eight other federally recognized tribes in Oregon in writing on May 4, 2023. Members of the public may provide written and oral comment for the Commission's consideration.

ISSUE 1

Memorandum of Agreement for Off-Reservation and Non-Trust Land Hunting, Fishing, Trapping and Gathering between the Confederated Tribes of the Grand Ronde Community of Oregon and the State of Oregon, 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 Grand Ronde 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.

In 1954, the federal government terminated Grand Ronde's federal recognition, along with the recognition of other tribes in western Oregon. In 1983, congress legislatively restored the Tribe in the Grand Ronde Restoration Act – reinstating the treaty relationship between the Tribe and the federal government and reapplying the Indian Reorganization Act to the Tribe. After the Tribe developed a Reservation Plan with local and state input, Congress passed the Grand Ronde Reservation Act in 1988. At the time Congress was considering the Reservation Act, the state of Oregon demanded the Tribe sign an agreement with restrictions on its hunting and fishing rights, otherwise the state would not support Congress returning any part of the Grand Ronde Reservation to the Tribe. The Tribe signed the Grand Ronde Hunting and Fishing Agreement in December 1986. This agreement was approved by a federal court shortly thereafter and a consent decree was issued by the court in January 1987.

While the Grand Ronde 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, 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 consent decree under the broad discretionary authority of the Commission to manage wildlife.

The department and Grand Ronde have already implemented a variety of cooperative opportunities for Grand Ronde members including a shellfishing agreement that the Commission approved in early 2022. The Grand Ronde also manages take of fish and wildlife by their members on reservation and trust lands under an agreement with ODFW, and the Commission has authorized ceremonial harvest of up to 15 hatchery salmon and steelhead at Willamette Falls every year and annual ceremonial permits for deer and elk.

The geographic scope of the proposed MOA includes the non-reservation and non-trust lands and waters in ODFW Wildlife Management Units 12 (Wilson), 14 (Trask), 15 (Willamette) excluding state-owned lands at Willamette Falls, 17 (Stott Mountain), and 16 (Santiam), excluding any area on the Columbia River upriver of Bonneville Dam. It also includes all lands in Oregon owned in fee by Grand Ronde. The geographic scope includes the associated nearshore marine areas to these Wildlife Management Unites.

Within this geography, enrolled members of the Grand Ronde 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 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 coordination with the department and the Oregon State Police (OSP). Annual harvest limits and areas will be set by mutual consent between Grand Ronde 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.

As a result of this new framework, many 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 Grand Ronde for many years. Implementation of the agreement would commence immediately upon adoption by both the Tribal Council and the Fish and Wildlife Commission. The Tribal Council approved the draft MOA on May 17, 2023.

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 635-800-0300 (Attachment 4) to implement the Memorandum of Agreement between the Confederated Tribes of the Grand Ronde Community of Oregon 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 635-800-0300 as proposed by staff and shown in Attachment 4.

Effective Date: *Upon Filing*