

OFFICE OF THE SECRETARY OF STATE

SHEMIA FAGAN
SECRETARY OF STATECHERYL MYERS
DEPUTY SECRETARY OF STATE

ARCHIVES DIVISION

STEPHANIE CLARK
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SALEM, OR 97310
503-373-0701**NOTICE OF PROPOSED RULEMAKING**
INCLUDING STATEMENT OF NEED & FISCAL IMPACTCHAPTER 635
DEPARTMENT OF FISH AND WILDLIFE**FILED**04/25/2023 12:49 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Cooperative Management Agreement for hunting, fishing, trapping, and gathering by Confederated Tribes of Grand Ronde

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 06/16/2023 5:00 PM

*The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.*CONTACT: Roxann Borisch
503-947-6314
roxann.b.borisch@odfw.oregon.gov4034 Fairview Industrial Drive SE
Salem, OR 97302Filed By:
Roxann Borisch
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 06/16/2023

TIME: 8:00 AM - 5:00 PM

OFFICER: ODFW Commission

HEARING LOCATION

ADDRESS: Best Western Plus Agate Beach, 3019 N Coast Hwy, Newport, OR 97365

SPECIAL INSTRUCTIONS:

Special Instructions:

This hearing will be conducted as a hybrid meeting, providing an opportunity to give testimony either in person or virtually. Additional information regarding participation will be posted on our website at www.dfw.state.or.us/agency/commission/minutes/. The meeting can be viewed at www.youtube.com/user/IEODFW. Any changes to the meeting format (to virtual only if emergency arises) will be posted to our website as soon as possible.

NEED FOR THE RULE(S)

The new rules are needed to advance the government-to-government relationship between the state of Oregon and the Confederated Tribes of the Grand Ronde Community of Oregon. The Agreement describes how the Confederated Tribes and its members hunt, fish, trap, and gather species over which ODFW has management authority within a defined geographic area.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

1. Staff report prepared for the Oregon Fish and Wildlife Commission hearing on 6/16/2023.

A copy of the rules and the other documents relied upon for this rulemaking [the above document(s)] are available from the Oregon Department of Fish and Wildlife, Wildlife Division, 4034 Fairview Industrial Drive SE, Salem, Oregon

97302-1142. Contact Roxie Borisch at 503-947-6314 or Roxann.b.borisch@odfw.oregon.gov to view by appointment between the hours of 8:00 a.m. and 4:00 p.m., on normal working days, Monday through Friday.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The Department has solicited input from representatives of underrepresented communities likely to be affected on whether the proposed rule will have a fiscal impact on the community, the extent of the fiscal impact, and whether the rules will have significant impact on underrepresented communities. <https://www.dfw.state.or.us/OARs/index.asp>

FISCAL AND ECONOMIC IMPACT:

The fiscal and economic impact of amending rules on hunting agreement with the Confederated Tribes of Siletz Indians is expected to be positive in nature for Tribal members, while adhering to the State of Oregon's Wildlife policy ORS 496.012.

Fiscal and economic impacts discussed below pertain to the proposed rules at the time of the writing of this FIS.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s).

The proposed rules will affect state agencies, units of local government, and the public, respectively, as discussed below:

A. The state agencies that could be affected by these rules are the Oregon Department of Fish and Wildlife (ODFW) and Oregon State Police (OSP). Under this rule, OSP will need to understand licensing issued by the Tribe consistent with this agreement and evaluate tribal licenses when encountering tribal members while in the field in the specified area. This process would be conducted in a manner similar to that already used for current tribal license requirements, including an existing arrangement between ODFW and the Grand Ronde Tribe related to the take of shellfish. Otherwise, there would be no change in enforcement conducted by OSP. Given that the agreement will functionally eliminate fees from tribal members choosing to hunt, fish, trap, or gather wildlife resources under the Agreement, there may be small reduction in sales of licenses, to the extent that members of the Confederated Tribes of the Grand Ronde Community of Oregon who currently purchase a license from ODFW would no longer do so. While it is not possible to fully assess how much reduction in license sales may occur as a result of this agreement, the effects are believed to be very minimal relative to overall annual license revenues. Tribal members utilizing licenses issued by the Grand Ronde Tribe under this Agreement will only be allowed to harvest within specific geographic areas and would still be required to purchase a license to conduct any harvest in the remainder of the state. No significant changes from the current levels of the agency's staffing, expenditures, or revenues are expected as a result of this rule, but existing ODFW staff time will be affected by the increased level of coordination between ODFW staff and the Tribe's natural resources staff. The agreement specifies that both parties will voluntarily share information each possesses relevant to evaluate the Tribe's annual or seasonal harvest proposal, as well as coordination of funding activities through third party grants. There will also be an annual meeting to discuss fish and wildlife habitat management activities within the geographic area established under this Agreement for the upcoming calendar year or years.

B. No units of local government would be affected by the proposed rule.

C. The public is likely to be minimally affected by the proposed rule. The Confederated Tribes of the Grand Ronde Community of Oregon will benefit by being able to authorize aspects of hunting, fishing, trapping, and gathering consistent with tribal values within annual harvest limits and areas set by mutual consent between the Grand Ronde Tribe and ODFW staff. These resources are of great subsistence, cultural, and ceremonial significance to the Confederated Tribes of the Grand Ronde Community of Oregon. The Agreement does allow for some exchange (gift, trade, or barter) of wildlife or wildlife parts lawfully harvested for ceremonial or subsistence purposes with Grand Ronde and other enrolled federally recognized Indian tribes. While commercial harvest is not included in the Agreement, future proposals to ODFW would be considered in accordance with state and federal laws. It is not anticipated that overall fishing and hunting activities by tribal members will increase as a result of this rule, but it is possible that small reductions in opportunities for the general public to take species with limited population sizes may be created to accommodate tribal activities. Businesses that provide goods and services to hunters and anglers in the specified area are not expected to be impacted by the rule.

(2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s);
The proposed rule does not authorize commercial harvest by members of the Confederated Tribes of the Grand Ronde Community of Oregon. Additional compliance costs to small businesses are not expected. The impact to the small businesses is expected to be insignificant, it is unlikely that businesses catering to sportspeople would experience any significant revenue losses resulting from this rule.

(b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s);
No additional costs anticipated.

(c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).
No additional costs anticipated.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):
Not applicable to this notice.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?
An Administrative Rules Advisory Committee was not consulted. The rules are believed to be fully compatible with legislative direction on the goals of wildlife management in Oregon.

ADOPT: 635-800-0300

RULE SUMMARY: Agreement modifies the cooperative management of fish and wildlife populations between the Oregon Department of Fish and Wildlife and the Confederated Tribes of the Grand Ronde Community of Oregon. It updates procedures for ceremonial and subsistence harvest of fish and wildlife within the specified geographic area by the Grand Ronde's members and establishes in an annual process with ODFW and based upon scientifically established and projected numbers for each resource.

CHANGES TO RULE:

635-800-0300

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

(1) Members of the Confederated Tribes of the Grand Ronde Community of Oregon (Grand Ronde) are authorized to take species over which the Oregon Fish and Wildlife Commission has management authority on off-reservation and non-trust lands under the terms and conditions of the Memorandum of Agreement between the Grand Ronde and the State of Oregon, by and through the Department of Fish and Wildlife (Department) and within the geographic scope of that Agreement, entered into by both parties in 2023, incorporated herein by reference.

(2) The Grand Ronde and the Department will coordinate the use of their respective authorities, expertise and influence as regulatory or voluntary opportunities are presented to protect, enhance and restore fish and wildlife habitat under the terms and conditions of the above referenced Memorandum of Agreement and within the geographic scope of that Agreement.

(3) No additional tribal legal or treaty entitlement is created, conveyed, implied or diminished, nor is any existing agreement, treaty or court decree modified by the adoption of these rules or the above referenced Memorandum of Agreement.

(4) Nothing in the above referenced Memorandum of Agreement shall be construed as:

(a) affirming, recognizing or limiting the rights or claims of any other tribe within the geographic scope of that Agreement;

(b) limiting the Department from entering into separate agreements with other tribes addressing the authority to take species within the geographic scope of that Agreement; or

(c) establishing, expanding, adjudicating, waiving, limiting or otherwise affecting the ancestral, aboriginal, treat, statutory, equitable, or other rights of the Tribe.

Statutory/Other Authority: ORS 190.110, 496.138, 496.146, 496.162

Statutes/Other Implemented: 496.012, 496.138, 496.146, 496.162, 506.109

RULE ATTACHMENTS DO NOT SHOW CHANGES. PLEASE CONTACT AGENCY REGARDING CHANGES.

**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

RECITALS

WHEREAS, the Confederated Tribes of the Grand Ronde Community of Oregon (“Grand Ronde” or “Tribe”) is a federally recognized Indian tribe that has a superior record of managing wildlife on the Grand Ronde Reservation and other Tribal lands; and

WHEREAS, the Oregon Department of Fish and Wildlife (“ODFW”), pursuant to Oregon Revised Statute (“ORS”) 496.012 and ORS 496.146, has the obligation and authority to manage fish and wildlife for the benefit of Oregon’s citizens; and

WHEREAS, the Oregon Fish and Wildlife Commission, by adopting Oregon Administrative Rule (“OAR”) 635-043-0130, delegated the management of fish and wildlife resources on the Grand Ronde Reservation and Tribal trust lands to the Tribe for the purposes of accomplishing the goals of the “Confederated Tribes of Grand Ronde Wildlife Management Plan” (“Grand Ronde Management Plan”) dated September 5, 2014; and

WHEREAS, the ancestors of today’s Tribal members hunted, fished, trapped, and gathered throughout western Oregon; and

WHEREAS, the Tribe and State of Oregon (“State”) desire to provide for regulation of off-reservation and non-trust land (“State regulated lands”) hunting, fishing, trapping, and gathering in western Oregon for the benefit of both the Tribe and State (which may be referred to in this agreement individually as a “Party” and collectively as the “Parties”) in accordance with sound wildlife management principles.

NOW THEREFORE, the Parties agree that:

AGREEMENT

1. Authority

This agreement for hunting, fishing, trapping and gathering to be exercised by Grand Ronde and its members, and for cooperative management of natural resources between the Tribe and the State of Oregon, is entered into between the Tribe and the

State of Oregon by and through ODFW.

- a. ODFW has authority to enter into this Agreement pursuant to ORS 190.110 and ORS 496.146(11).
- b. Grand Ronde has authority to enter into this Agreement pursuant to the Grand Ronde Constitution, Article III, Section 1.

2. Overview

The intent of this Agreement is to describe how the Tribe and its members will hunt, fish, trap, and gather species over which ODFW has management authority in areas not governed by the Grand Ronde Management Plan.

This Agreement sets out the framework for cooperative management of fish and wildlife populations between the Parties within the geographic scope of this Agreement. It also establishes a procedure for harvesting fish and wildlife within specified geographic areas by the Tribe's members, established in a process agreed to by ODFW and the Tribe, and based upon scientifically established and projected numbers for each resource.

This Agreement does not define the specific rights possessed by Grand Ronde, nor the specific amount or number of fish and wildlife resources that may be harvested by the Tribe's members at any particular time. Instead, this Agreement provides agreed-upon standards for the Tribe to exercise such harvest and to determine Tribal harvest levels in cooperation with ODFW.

This Agreement also sets out a framework for coordination of enhancement and management of the habitat, watershed, ecosystem and other resources that influence fish and wildlife populations.

3. Tribal Harvest of Natural Resources

- a. Wildlife Covered by Agreement. The Tribe's hunting, fishing, trapping and gathering exercised under this Agreement covers all animal species managed and regulated by ODFW. "Hunting" and "Trapping" covers all mammalian and avian species managed by ODFW. "Fishing" includes all finfish, lamprey, shellfish, crustaceans, and other aquatic animals managed by ODFW. The Parties understand that harvest of animals, plants and other resources not managed by ODFW may be harvested or gathered for ceremonial or subsistence use by the Tribe pursuant to its own ordinances, regulations, and policies and under the authority of any relevant regulatory entity.
- b. Developing Annual or Seasonal Harvest Areas and Limits. The limits and areas of the Tribe's ceremonial and subsistence harvest will be set annually or seasonally by mutual agreement of the Parties based on the best available scientific data of

estimated availability, escapement goals, Tribal needs, and conservation necessity. The Tribe will initiate annual or seasonal harvest agreement negotiations by providing ODFW with a written proposal for species, areas, and numbers it desires to harvest for ceremonial and subsistence purposes. The Parties will voluntarily and fully share all biological or technical data, analyses, and information of any nature each possesses relevant to evaluate the Tribe's annual or seasonal harvest proposal. The Parties shall meet as often as necessary to discuss and negotiate such annual or seasonal Tribal harvest numbers.

Any disagreement regarding Tribal ceremonial or subsistence requests will be resolved pursuant to the dispute resolution provisions of this Agreement. Upon reaching agreement on the limits and areas of the Tribe's ceremonial and subsistence harvest pursuant to this section, ODFW will issue the Tribe an annual implementing permit consistent with this Agreement, which is incorporated into the Tribally issued licenses and tags that authorize Tribal harvest of fish and wildlife.

- c. Tribal Regulation of Agreed Harvests. After mutual agreement on harvest numbers, the method and time of such ceremonial or subsistence harvest shall be subject to the exclusive decision and regulation of the Tribe, subject to any documented conservation necessity concerns. Any such ceremonial and subsistence harvest shall be authorized by Tribal permit or license. All harvest shall be consistent with tribal law and regulation and with this Agreement.
- d. Tribal Regulation of Harvest Consistent with Oregon Revised Statutes. The Tribe agrees to adopt harvest regulations consistent with Oregon Revised Statutes, including the Oregon Revised Statutes identified in **Attachment A.**
- e. Ceremonial and Subsistence Harvest Only. This Agreement is limited to ceremonial and subsistence harvest of fish and wildlife by enrolled members of Grand Ronde within the geographic area identified in this Agreement. Commercial harvest by the Tribe or Tribal members is not permitted or authorized under this Agreement. Enrolled Tribal members may exchange (gift, trade, or barter) wildlife or wildlife parts lawfully harvested for ceremonial or subsistence purposes with other enrolled members of Grand Ronde or other federally recognized Indian tribes. All other commercial activity must be consistent with the Oregon Revised Statute and Oregon Administrative Rule.
- f. Potential Future Commercial Harvest. The Parties agree to limit this Agreement to ceremonial and subsistence harvest. If the Tribe presents ODFW with a proposal for harvesting wildlife resources primarily for commercial use, ODFW will consider the proposal for consistency with applicable state and federal law, the ability of the fish or wildlife resource to sustain the proposed commercial harvest consistent with its biological requirements and conservation necessity, and the factors of the Wildlife Policy in ORS 496.012. This Agreement may be amended in the future to incorporate such a proposal if it is accepted by ODFW.

- g. Tribal Licensing and Tagging. Licensing and tagging for all harvest activities authorized and permitted under this Agreement shall be subject to Tribal regulation and management. In order to aid the Parties' mutual goal of avoiding enforcement confusion, Tribal members harvesting pursuant to this Agreement will carry Tribal identification and Tribally authorized licenses, tags, or other permits showing that the Tribe has authorized harvesting of that species and will present the same to law enforcement officers, peace officers, and ODFW personnel upon request.
- h. Coordination with Other Tribes. In the event that ODFW enters into a comparable cooperative management agreement with another tribe regarding the taking of fish and wildlife within all or part of the geographic scope of this Agreement, and such agreement includes obligations substantially identical to this Section 3(h), Grand Ronde will meet annually with that tribe to discuss issues of mutual concern, including harvest areas, limits, and cooperative management of natural resources.

4. Cooperative Management of Natural Resources

- a. Definition of Cooperative Management of Natural Resources. "Cooperative management of natural resources" is defined as a collaborative effort established through a voluntary agreement in which two or more sovereigns mutually negotiate, define, and allocate amongst themselves management functions and responsibilities for a given territory, area, or set of natural resources. This cooperative management authority may be non-exclusive between the Parties and relative management responsibilities shall take into account the resources that will be committed by each Party.

The Parties will coordinate the use of their respective authorities, expertise, and influence as regulatory or voluntary opportunities are presented to protect, enhance, and restore fish and wildlife habitat in the geographic scope of this Agreement.

- b. Annual State and Tribal Cooperative Management Meetings. ODFW and Tribal natural resource managers shall meet on an annual basis to discuss management activities within the geographic area established under this Agreement for the upcoming calendar year or years. "Management activities" includes harvest management as well as watershed and habitat protection, restoration, enhancement actions, non-lethal and lethal removal of species preying upon species of management concern, and other management activities that the Parties will seek across the geographic area.

Nothing in this Agreement shall alter or modify ODFW's responsibility and authority to manage the State's resources pursuant to Oregon law. The sole effect of this Section 4 is that ODFW agrees to coordinate with the Tribe and accept cooperative Tribal management of defined activities and resources within the defined area that will enhance and add to ODFW's management activities involving fish and wildlife resources.

The Parties agree to coordinate their management activities within the defined area to achieve the best results for fish and wildlife resources in that area.

If the annual cooperative management meeting is not held, for any reason, the rights, and obligations of the Parties under this Agreement are unaffected.

- c. Coordination of Funding. The Parties will coordinate applying for, seeking, and obtaining third party funding through grants, appropriations, or other means to enhance financial resources available to carry out resource management activities, including but not limited to applying for funding as an intergovernmental partnership. This provision does not prohibit each Party from also applying for such funding on its own.
- d. Mutual Commitment to Affirmative Support and Implementation. The Parties intend to implement this Agreement in a cooperative and positive manner. The Parties intend to assist each other affirmatively and proactively in the implementation of this Agreement and to exchange all necessary and relevant information and documentation needed to fully carry out and implement this Agreement at any and all times that this Agreement remains in force. The Parties will annually share data and information related to the harvest of natural resources under this agreement, as well as data and information regarding management, population health, and habitat conditions.

5. **Geographic Scope of Agreement**

- a. Geographic Area. The geographic area covered by this Agreement shall be as follows:
 - i. 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.
 - ii. All lands in Oregon owned in fee by Grand Ronde.
 - iii. Where applicable, the Marine Zone adjacent to the aforementioned geographic area.
- b. Private Lands. The Tribe agrees that harvest activities on privately owned lands within the geographic scope described in Section 5(a) above is permitted only with permission of the owner of those private lands.
- c. Publicly Owned and Managed Lands or Waters. The Parties understand that there are lands and waters within the geographic scope of Section 5(a) that are owned or managed by ODFW, or by other state or federal agencies or local governments, and that are closed to harvest or subject to other regulatory constraints on harvest related activities. The Tribe agrees that it will adopt Tribal regulations consistent with these harvest closures and other regulatory constraints on harvest related activities, unless the land owning or managing entity specifically agrees to the inconsistency.

The ODFW owned or managed lands and waters that are closed to harvest or subject to other regulatory constraints on harvest related activities, and references to statutory or administrative regulations for each, are identified in **Attachment B**. The Parties agree that the Tribe may request access and opportunity for Tribal members, or changes to other aspects of the regulations, for hunting, fishing, trapping or gathering activities on any of these lands and waters that deviate from currently applicable regulation through the Tribe's annual harvest proposal. ODFW commits to consider such proposals with the goal of providing the requested access and opportunity while preserving the conservation, management and safety objectives of the regulations applicable to the area(s).

6. Dispute Resolution

- a. Dispute Resolution Principles. The Parties enter into this Agreement to enhance government-to-government relations, to increase and coordinate resources for the benefit of all citizens of Oregon and enrolled members of Grand Ronde, and to avoid litigation about the nature and extent of the Tribe's treaty rights or other inherent or sovereign legal rights to hunt, fish, trap or gather specified natural resources within the geographic areas covered under this Agreement. Any disputes that arise under this Agreement regarding (i) cooperative management, (ii) the Tribe's exercise of agreed upon hunting, fishing, trapping or gathering rights within any specific geographic area, (iii) the agreed upon extent of the Tribe's subsistence or ceremonial harvest in general or in any particular year or area, shall be resolved pursuant to this Section 6.
- b. Mediation. Where possible, disputes under this Agreement shall be resolved pursuant to mediation, with the mediator or mediators selected jointly by the Parties. If possible, the Parties will agree to a mediator or mediation firm in advance, so any mediation under this Agreement can be initiated in a timely fashion.

Any such agreement can be revisited by the Parties at any appropriate time, and a replacement mediator appointed. Any such mediation shall be governed by mediation standards followed by or acceptable to the State. Any such mediation shall seek to reach a conclusion within 90 days.
- c. Governing Law. The laws of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.
- d. Designation of Forum and Consent to Jurisdiction. Any Party bringing a legal action or proceeding against any other Party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for

Marion County. Each Party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum. Notwithstanding the foregoing, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This section applies to a claim brought against the State only to the extent Congress has appropriately abrogated Oregon's sovereign immunity. This section is not consent by Oregon to be sued in federal court. This section is also not a waiver by Oregon of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

- e. Limited Waiver of Sovereign Immunity. The Parties agree to a limited waiver of sovereign immunity only for purposes of this Agreement, and only for the benefit of the other Party. This limited waiver of sovereign immunity confers no rights or benefits on any third party. This waiver is limited to nonmonetary declaratory and nonmonetary injunctive relief and does not authorize any award for punitive or indirect or any other form of damages.
 - i. *State Waiver of Sovereign Immunity.* The Oregon legislature has waived the State's sovereign immunity to suit in State court as provided in ORS 30.320. The Parties agree that this Agreement is a contract within the scope of ORS 30.320.
 - ii. *Limited Tribal Waiver of Sovereign Immunity.* The Tribe hereby waives its immunity to suit in State court for the sole purpose of enforcing this Agreement according to the terms of Section 6 of this Agreement. A copy of the resolution approving the waiver of sovereign immunity in this Agreement by the Grand Ronde Tribal Council shall be provided to ODFW within 30 days of execution of this Agreement by the Tribe.
- f. Exclusion. Nothing in this Agreement shall be construed to establish, expand, adjudicate, diminish, waive, limit or otherwise affect ancestral, aboriginal, treaty, statutory, equitable or other rights of the Tribe. Nothing in this Agreement shall prohibit the Tribe from litigating or determining its legal rights under any treaty, executive order, federal statute or any other source of legal authority in any appropriate independent legal action, in an appropriate forum, at any time. If such litigation or determination takes place, the final results of any such litigation or determination shall be incorporated into this Agreement.

7. Notices

Notices shall be sent to the following contact offices and persons under this Agreement:

For the State:

Curt Melcher, Director
Oregon Department of Fish and Wildlife

For the Tribe:

Cheryle Kennedy, Chairwoman
Confederated Tribes of Grand Ronde

4034 Fairview Industrial Drive SE
Salem, Oregon 97302

9615 Grand Ronde Road
Grand Ronde, Oregon 97347

With a copy to:

Rob Greene, Tribal Attorney
Confederated Tribes of Grand Ronde
9615 Grand Ronde Road
Grand Ronde, Oregon 97347

8. Miscellaneous

The United States of America is not a party to this Agreement, and its interests or rights are not involved or affected by this Agreement.

9. Tribal Member Harvest Rights under State Law Not Affected

Nothing herein shall waive or otherwise limit the rights of any Tribal member to engage in wildlife harvest activities pursuant to State, Tribal or other applicable law, including any current agreements between the Parties.

Nothing in this Agreement shall affect the Tribe's rights under other state authorizations, including any OARs, agreements, registrations or permits related to hunting, fishing, trapping, or gathering by Grand Ronde and its members.

10. Prosecution Referral Agreement

The Parties understand that Tribal members engaged in harvest related activities under this Agreement may be cited by either State or Tribal enforcement authorities for alleged violations of State or Tribal law. The goal of the Parties is that members of the Tribe be subject primarily to Tribal prosecution authority. Therefore, ODFW commits to working with the Tribe to (1) seek to secure referral agreements with the District Attorneys in the counties within the geographic scope of the Agreement whereby alleged violations in their jurisdiction are referred to the Tribe for review and potential prosecution, and (2) work with State and Tribal enforcement authorities, including the Oregon State Police, to attempt to establish an enforcement coordination mechanism whereby Tribal members allegedly violating State or Tribal wildlife laws are summoned initially to Grand Ronde Tribal Court.

11. Equity in Cooperative Management Agreements

The Parties understand that ODFW may enter into cooperative management agreements with other federally recognized tribes that address issues or matters similar to those addressed herein. In the event that any other such ODFW/tribal cooperative management agreement includes terms that the Tribe believes are more favorable than those initially agreed to herein, the Parties agree that this Agreement may be renegotiated at the request of the Tribe to include any such terms.

12. Term

The Parties' intention upon entering into this Agreement is that it is perpetual. So long as this Agreement remains effective, the Parties agree to review it on every fifth anniversary after its execution.

13. Effective Date

This Agreement shall become effective when both the Oregon Fish and Wildlife Commission and Grand Ronde have adopted the necessary implementing rules and resolutions and all Parties have executed the Agreement, and shall remain so as long as both the implementing rules and resolutions remain effective. At least 90 days prior to any Party repealing their respective implementing rules or resolutions, that Party shall serve written notice to the other Party's contact listed in Section 7 above.

14. Amendments/Termination

- a. This Agreement can be amended or terminated in writing by mutual consent of the Parties.
- b. Either party may unilaterally terminate this Agreement for any reason by using the procedures of this Section 14. A Party proposing unilateral termination must first serve written notice to the other Party's contact. The Parties shall thereafter initiate meetings within 60 days in an effort to identify and resolve the issue(s). The Parties shall make good faith and diligent efforts to resolve the issue(s). Depending on the complexity and significance of the issue(s), the Parties acknowledge that resolution could take substantial time and multiple meetings. In the event the issue(s) is/are not resolved after such mutual good faith and diligent efforts, either Party may terminate this Agreement by both (i) providing 90 days advance written notice to the other Party of its intent to rescind the implementing rule or resolutions; and (ii) rescinding the implementing rule or resolution.

15. Available Funding and Continued Authority

ODFW's obligation to perform its duties under this Agreement is conditioned upon the continuation of ODFW's authority to enter and maintain this Agreement, and upon ODFW receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow ODFW, in the exercise of its reasonable administrative discretion, to meet its obligations under this Agreement. Nothing in this Agreement may be construed as permitting any violation of Article XI, Section 7 of the Oregon Constitution or any law limiting the activities, liabilities, or monetary obligations of ODFW. The scope of cooperative management activities under this Agreement shall conform to any expansion of ODFW authority.

This Agreement is entered into as of this ____ day of _____, 2023.

**State of Oregon, by and through its
Oregon Department of Fish and Wildlife:**

Confederated Tribes of Grand Ronde:

Curt Melcher
Director

Cheryle A. Kennedy
Tribal Council Chairwoman

DRAFT

Attachment A - Statutory Hunting and Trapping Restrictions

497.350 Hunting restriction; generally. (1) No person younger than 12 years of age shall hunt antelope, black bear, cougar, deer, elk, mountain goat, mountain sheep or moose.

(2) No person younger than 14 years of age shall hunt with a firearm or bow and arrow unless the person is accompanied by an adult, or is hunting on land owned by the parent or legal guardian of the person.

497.360 Hunter safety certificate; training program; youth hunter mentoring program;

rules. (1) No person younger than 18 years of age shall hunt wildlife, except on the person's own land or land owned by the parent or legal guardian of the person, unless the person:

(a) Has in possession a certificate, issued by the State Fish and Wildlife Commission or by an agency of another state, stating that the person has satisfactorily completed a course prescribed or approved by the commission in the safe handling of lawful hunting weapons; or

(b) Is participating in a supervised hunt as provided in subsection (3) of this section.

(2) The commission, by rule, shall prescribe and administer a hunter safety training program to provide instruction in the safe handling of lawful hunting weapons. The program may also include instruction on wildlife and natural resource conservation, first aid and survival and such other subjects as the commission considers desirable to promote good outdoor conduct and respect for the rights and property of others. The commission may cooperate and enter into agreements with other public or private agencies and individuals in carrying out the provisions of this subsection. The Department of State Police and the Department of Education are directed to cooperate with the commission in carrying out the provisions of this section.

(3)(a) The commission, by rule, shall prescribe and administer a youth hunter mentoring program that allows a person who is between nine and 16 years of age to hunt while in the presence of a supervisory hunter who is 21 years of age or older and who holds the appropriate licenses, tags and permits issued pursuant to the wildlife laws. Only one lawful hunting weapon may be carried during a supervised hunt under this subsection. A person participating in a supervised hunt under this subsection may hunt wildlife under the same conditions applicable to the supervisory hunter's licenses, tags and permits.

(b) The commission, by rule, may prescribe any relevant safety and ethical standards for participation in a supervised hunt under this subsection.

498.056 Aiming rifle from moving motor vehicle prohibited. No person who is the occupant of a motor vehicle that is moving on a road open to the public shall aim a rifle or other firearm from the motor vehicle at a time when the hunting of wildlife is lawful.

498.102 Use of dogs to hunt or track game mammals or birds. (1) Any dog that is not wearing a collar with a license number thereon in compliance with ORS 609.100 that is found unlawfully hunting, running or tracking any game mammal or game bird may be killed at such time by any person authorized to enforce the wildlife laws.

(2) If a dog that is found unlawfully hunting, running or tracking any game mammal or game bird is wearing a collar with a license number thereon in compliance with ORS 609.100, the owner of the dog shall be notified by any person authorized to enforce the wildlife laws. If the owner or reputed owner of the dog disclaims ownership of the dog, the dog may be killed at such time by a person authorized to enforce the wildlife laws.

(3) If the owner of a dog has been notified that the dog has been found unlawfully hunting, running or tracking game mammals or game birds and thereafter fails to prevent the dog from unlawfully hunting, running or tracking game mammals or game birds, such dog may be killed by any person authorized to enforce the wildlife laws.

(4) No person shall permit any dog the person owns to unlawfully hunt, run or track any game mammal or game bird.

498.126 Hunting or assisting others to hunt or locate game animals or birds by aircraft prohibited; exemption; rules. (1) A person may not:

(a) Hunt game mammals or game birds from or with the aid of an aircraft.

(b) Transmit from an aircraft to a person not in the aircraft information regarding the location of any game mammals or game birds.

(c) Otherwise use an aircraft to assist another person in hunting or locating game mammals or game birds for the purpose of hunting.

(2) A person may not hunt any game mammal within eight hours after having been transported by aircraft to or from any place other than a recognized airport that the Oregon Department of Aviation has licensed as a public use airport, registered as a personal use airport or specifically exempted from licensing or registration.

(3) Every pilot shall maintain a log book that shows the names and addresses of record of the persons transported, point of departure, point of destination, time and date of each flight that the pilot makes in an aircraft within this state to transport a person to or from any place to hunt. The log book is subject to inspection by any person authorized to enforce the wildlife laws.

(4)(a) Notwithstanding subsections (1) to (3) of this section, and except as provided in subsection (5) of this section, the State Department of Fish and Wildlife, or its agents, may conduct wildlife management activities necessary for scientific research or, in emergency situations, to protect human safety, wildlife species or property by:

(A) Hunting game mammals or game birds from or with the aid of an aircraft; or

(B) Transmitting from an aircraft information regarding the location of any game mammal or game bird.

(b) The State Fish and Wildlife Commission shall define by rule the terms “emergency situations” and “necessary” for purposes of implementation of this section.

(5) If the definition of “game mammal” in ORS 496.004 is modified to include wolves, then the department may conduct wolf management activities under this section only under a statewide wolf management plan adopted by the commission. [1973 c.723 §87; 1987 c.277 §1; 1989 c.448 §1; 1999 c.935 §30; 2003 c.566 §1; 2003 c.762 §1]

498.128 Use of drones for pursuit of wildlife prohibited; rules. (1) The State Fish and Wildlife Commission shall adopt rules prohibiting the use of drones for the following purposes related to the pursuit of wildlife:

(a) Angling;

(b) Hunting;

(c) Trapping;

(d) Aiding angling, hunting or trapping through the use of drones to harass, track, locate or scout wildlife; and

(e) Interfering in the acts of a person who is lawfully angling, hunting or trapping.

(2) Rules adopted to carry out the prohibitions provided for in this section may include

exemptions for:

(a) Subject to ORS 837.360, the State Department of Fish and Wildlife and the department's agents and contractors for the use of drones in carrying out the duties of the department; or

(b) The use of drones in a manner otherwise prohibited under this section if the purpose of the use is to benefit wildlife management or habitat or for the protection of property.

(3) Nothing in this section is meant to limit the use of drones by a person who is lawfully engaging in activities authorized under the commercial fishing laws.

(4) As used in this section, "drone" means:

(a) An unmanned flying machine;

(b) An unmanned water-based vehicle; or

(c) Any other vehicle that is able to operate in the air, in or under the water or on land, either remotely or autonomously, and without a human occupant.

498.136 Hunting from motor-propelled vehicle restricted; rules. (1) Except as provided in subsection (2) of this section, a person may not hunt wildlife from a motor-propelled vehicle.

(2) The State Fish and Wildlife Commission, by rule, may authorize hunting from a motor-propelled vehicle by a person with a disability or for the purpose of alleviating damage by wildlife to other resources.

(3)(a) Nothing in the wildlife laws, or rules adopted pursuant thereto, is intended to prohibit the companion of a person with a disability who is lawfully hunting from a motor-propelled vehicle from killing an animal wounded by the person and applying to the animal the tag issued to the person for the taking of the animal, even if the companion has already validated any tag required for the taking of such an animal.

(b) For purposes of this subsection, "companion" means a person who does not have a disability.

498.142 Hunting with artificial light restricted; rules. (1) Except as provided in subsection (2) of this section, no person shall hunt wildlife with the aid of any artificial light.

(2) The State Fish and Wildlife Commission, by rule, may authorize hunting with the aid of an artificial light for the purpose of taking raccoon, opossum or bobcat or to alleviate damage by wildlife to other resources.

498.146 Shining artificial light on game mammal, predatory animal or livestock while in or near motor vehicle and while in possession of weapon restricted. (1) No person shall cast from a motor vehicle or from within 500 feet of a motor vehicle an artificial light upon any game mammal, predatory animal or livestock while there is in the possession or in the immediate physical presence of the person a weapon with which the game mammal, predatory animal or livestock could be killed.

(2) Subsection (1) of this section does not apply to a person who casts artificial light upon a game mammal, predatory animal or livestock:

(a) From the headlights of a motor vehicle that is being operated on a road in the usual manner, if that person makes no attempt to kill the game mammal or livestock; or

(b) When the weapon that person has in the possession or immediate physical presence of the person is disassembled or stored, or in the trunk or storage compartment of a motor vehicle; or

(c) On land owned or lawfully occupied by that person; or

(d) On publicly owned land when that person has an agreement with the public body to use

that property.

(3) As used in this section, “predatory animal” has the meaning for that term provided in ORS 610.002.

498.158 Hunting or trapping wildlife in certain governmental districts restricted. (1) Except as provided in ORS 448.305 and in subsection (2) of this section, no person shall hunt or trap any wildlife within the boundaries of any city, public park, cemetery or on any school lands.

(2) No hunting or trapping shall be allowed on any lands within the boundaries of any city, public park or on any school lands unless:

(a) The governing body or other agency that administers the affairs of the city, public park or school, after notice and hearing, authorizes such hunting or trapping by ordinance or resolution; and

(b) The State Fish and Wildlife Commission, after notice and hearing, determines that such hunting or trapping would not adversely affect public safety or unreasonably interfere with other authorized uses of such lands.

498.164 Use of dogs or bait to hunt black bears or cougars; prohibitions; exemptions; penalties. (1) Except as provided in subsections (2) and (3) of this section, a person may not use bait to attract or take black bears or use one or more dogs to hunt or pursue black bears or cougars.

(2) Nothing in subsection (1) of this section prohibits the use of bait or one or more dogs by employees or agents of county, state or federal agencies while acting in their official capacities.

(3) Nothing in subsection (1) of this section prohibits the use of bait or dogs by persons for the taking of black bears or cougars in accordance with the provisions of ORS 498.012 relating to taking wildlife that is causing damage.

(4) Any person who violates subsection (1) of this section commits a Class A misdemeanor and, upon conviction, shall in addition to appropriate criminal penalties have the person’s privilege to apply for any hunting license suspended for a period of five years for a first offense and permanently suspended for any subsequent offense.

(5) For the purposes of this section, “bait” means any material placed for the purpose of attracting or attempting to attract bears.

498.172 Trap check requirements. (1) A person holding a license issued under ORS 497.142 may not set a trap for fur-bearing mammals without checking the trap at least once during each 48-hour period.

(2) A person may not set a trap for a predatory animal, as defined in ORS 610.002, without checking the trap on a regular basis.

498.208 Use of electricity or foreign substances to take game fish prohibited; rules. (1) Except as the State Fish and Wildlife Commission by rule may provide otherwise, no person shall:

(a) Use in any body of water any electric current that may attract, frighten, retard, stun, kill or obstruct the movement of any game fish.

(b) Place in any body of water any foreign substance such as blood or fish offal or any gas, chemical, drug or powder that may attract, frighten, retard, stun, kill or obstruct the movement of any game fish.

(c) Use in any body of water any explosive device for the purpose of taking game fish.

(2) No person shall possess any game fish that the person knows or has reason to know was taken in violation of subsection (1) of this section.

498.216 Angling from fishways restricted; rules. Except as the State Fish and Wildlife Commission by rule may provide otherwise, no person shall trespass upon or angle from any fishway or angle within an area of a body of water bounded by a line extending across the body of water 200 feet above the upper end of a fishway and a line across the body of water 200 feet below the lower end of a fishway.

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