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PERMANENT ADMINISTRATIVE ORDER

DFW 62-2023

CHAPTER 635
DEPARTMENT OF FISH AND WILDLIFE

FILED
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ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

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

EFFECTIVE DATE: 07/07/2023

AGENCY APPROVED DATE: 06/16/2023

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ADOPT: 635-800-0500

RULE TITLE: Memorandum of Agreement with the Confederated Tribes of Siletz Indians

NOTICE FILED DATE: 04/25/2023

RULE SUMMARY: Agreement sets out the framework for cooperative management of fish and wildlife populations between the Oregon Department of Fish and Wildlife and the Confederated Tribes of Siletz Indians within a defined geographic area. It also establishes a procedure for ceremonial and subsistence harvest of fish and wildlife within the specified geographic area by the Siletz Tribe's members, established in an annual process with ODFW and based upon scientifically established and projected numbers for each resource.

RULE TEXT:

(1) Members of the Confederated Tribes of Siletz Indians are authorized to take species over which the Oregon Fish and Wildlife Commission has management authority under the terms and conditions of the Memorandum of Agreement between the Confederated Tribes of Siletz Indians 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 Siletz Indian Tribe 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, treaty, statutory, equitable, or other rights of the Tribe.

STATUTORY/OTHER AUTHORITY: ORS 190.110, 496.138, 496.162, 496.146

STATUTES/OTHER IMPLEMENTED: 496.138, 496.012, 496.162, 496.146, 506.109

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

RECITALS:

Whereas, the Confederated Tribes of Siletz Indians ("Siletz Tribe") is a federally-recognized Indian tribe located within the geographic borders of the State of Oregon ("State") comprised of numerous historical tribes and bands from throughout western Oregon who were confederated together and removed and resettled on the Siletz Coast Reservation;

Whereas, the Siletz Tribe asserts an interest in wildlife resources, habitat and management reserved in treaties, statutes, Executive Orders or other authority, and desires to cooperate with the State of Oregon in reaching mutual agreement on subsistence and ceremonial hunting, fishing, trapping and gathering of those resources and engaging in cooperative management activities that will preserve, protect and enhance wildlife habitat and wildlife population numbers in the geographic areas of interest to the Siletz Tribe and its members;

Whereas, the Oregon Department of Fish and Wildlife ("ODFW"), pursuant to its statutory authority including but not limited to ORS 496.012, ORS 496.138 and ORS 496.146, has the responsibility and authority to manage the State's wildlife resources for the benefit of Oregon's citizens;

Whereas, consistent with the wildlife policy of the State of Oregon (ORS 496.012), ODFW's duty is to manage wildlife to prevent serious depletion of any indigenous species and to provide the optimum recreational and aesthetic benefits for present and future generations of the citizens of Oregon;

Whereas, consistent with ORS 496.012, ODFW has an interest in working cooperatively with federally-recognized Indian Tribes located in Oregon on wildlife resource issues;

Whereas, the Siletz Confederated Tribe is a confederation of tribes and bands from throughout western Oregon who were removed or relocated to the Siletz Coast Reservation established by Executive Order on November 9, 1855. Tribes and bands that resided in the area where the reservation was established remained where they were;

Whereas, the Siletz Tribe is comprised of tribes and bands that executed treaties with the United States that were formally ratified by the United States Senate, tribes and bands that executed treaties with the United States that were not ratified by the United States Senate, and tribes and bands that never negotiated treaties with the United States;

Whereas, some or all of these tribes and bands, and individual Indians and families from these tribes and bands, were located on the Siletz Coast Reservation and became part of the Siletz Confederation formed by the United States government and recognized by it as one tribal government;

Whereas, the Siletz Tribe and its constituent bands and tribes assert an interest in the harvest, regulation and management of wildlife resources within territory ceded by various ratified and unratified treaties or based upon aboriginal title, within traditional harvest areas used by the tribes and bands outside ceded areas, and within the reservation(s) set aside by the federal government for the use of the Siletz Confederated Tribe or its constituent bands and tribes;

Whereas, the Siletz Tribe's wildlife resource hunting, fishing, trapping and gathering rights ("HFT&G rights") have never been directly litigated, adjudicated or determined by any court in which the Siletz Tribe has been a party;

Whereas, the Siletz Tribe has a public policy of cooperation and coordination with the State on wildlife resource issues;

Whereas, it is the mission of the Siletz Tribal Natural Resources Department to care for, protect, enhance and provide for the wise use of all of the Tribe's natural

resources in a manner which will ensure that all generations to come will benefit from these resources;

Whereas, it is the mission of the Oregon Department of Fish and Wildlife to protect and enhance Oregon's wildlife resources and their habitats for use and enjoyment by present and future generations;

Whereas, to fulfill these complementary missions, ODFW and the Siletz Tribe ("Parties") have a shared interest in how the wildlife resources, lands and waters of Oregon are managed; and

Whereas, functional, abundant and accessible habitat is the foundation on which wildlife resource populations persist. Challenges to the persistence of native wildlife resources are increasingly complex and intersectional. These challenges primarily influence wildlife resource populations through the quality, quantity, and/or accessibility of available habitat. Wildlife resource habitat will be increasingly impacted by changing land and water use, climate, water quality & quantity, and other anthropogenic issues as Oregon's human population and development needs grow.

NOW THEREFORE, the Parties agree that:

1. Definitions.

a. "Wildlife resources" as used in this Agreement means all animal species over which ODFW exercises management authority, including all mammalian and avian species managed by ODFW, and all finfish, shellfish, crustaceans and other aquatic animals managed by ODFW.

b. "Hunting" and "Trapping" includes take of all mammalian and avian species managed by ODFW, including marine mammals.

c. "Fishing" includes take of all finfish, shellfish, crustaceans, and other aquatic animals managed by ODFW.

d. "Gathering" includes take of any animals such as shellfish, eels, etc., that are managed by ODFW and are gathered rather than hunted or fished.

e. "Commercial harvest" as used in this Agreement means taking wildlife resources in excess of limits permitted for ceremonial, subsistence or personal use, or taking, handling, processing, or otherwise disposing of or dealing in wildlife resources with the intent of disposing of such wildlife resources or parts thereof for profit, or by sale, barter or trade, in commercial channels, except as otherwise permitted under Oregon Revised Statute or Oregon Administrative Rule, including this Agreement.

2. **Authority.** This Agreement is entered into between the Siletz Tribe and the State of Oregon by and through the Oregon Department of Fish and Wildlife ("ODFW"). ODFW has authority to enter into this Agreement pursuant to statutory authority including ORS 190.110, ORS 496.012, ORS 496.138 and ORS 496.146. The Siletz Tribe has authority to enter into this Agreement pursuant to the Siletz Constitution, Article IV, Section 1.

3. **Overview of Agreement.**

a. **Intent of Agreement.** The intent of this Agreement is to set out how the Siletz Tribe and its members will hunt, fish, trap and gather wildlife resources over which ODFW has management authority within the geographic area defined by this Agreement and to set out agreed upon principles for cooperative management of wildlife resources between ODFW and the Siletz Tribe in that area.

b. **General Framework.** This Agreement does not define the specific amount or number of wildlife resources, or the specific seasons that apply to Siletz tribal members' take of wildlife resources. Instead, this Agreement sets out standards and the process for the Tribe to determine tribal harvest limits and areas in cooperation with ODFW, as well as principles of cooperative management of wildlife resources, within a defined geographic area for the purpose of enhancing and perpetuating such wildlife resources. This Agreement also sets out principles for voluntary coordination of enhancement and management of the habitat, watershed, ecosystem and wildlife resources within the defined geographic area.

4. Geographic Scope of Agreement.

a. Geographic Area Included in this Agreement. The geographic area covered by this Agreement shall be the following area:

The original Siletz Coast Reservation established by Executive Order on November 9, 1855. *See* 1 Kappler's Indian Affairs: Laws and Treaties 890-91 (GPO 1906), as modified by the map attached to this Agreement as Appendix A to include cohesive watersheds and other resource features which impact the wildlife resources within the original Reservation area.

This area shall be defined as follows: ODFW Wildlife Management Units 14 (Trask), 17 (Stott Mt), 18 (Alsea), and 20 (Siuslaw).

The geographic area includes, where applicable, the adjacent territorial sea claimed by Oregon.

b. Future Amendments to Geographic Scope. The Siletz Tribe may request that additional geographic areas be added under this Agreement under the terms of Section 12 of this Agreement. ODFW commits to consider such proposals in good faith.

c. Geographic Areas Excluded from this Agreement. The following areas are excluded from the geographic area described in subsection (a):

i. The original Grand Ronde Reservation established by Executive Order on June 30, 1857, except with permission of the Grand Ronde Tribe. *See* 1 Kappler's Indian Affairs: Laws and Treaties 886 (GPO 1906).

ii. Any property held in trust for another federally-recognized Indian tribe within the geographic areas described in subsection (a) of this Section.

iii. The mainstem Columbia River and the Willamette River from its mouth to the top of Willamette Falls.

d. Nothing within this Agreement allows tribal members to access private lands without the permission of the landowner. Private lands includes, but is not limited to, lands owned by other federally-recognized Indian Tribes in fee.

5. Tribal Harvest of Wildlife Resources.

a. Controlling Principles. This Agreement covers hunting, fishing, trapping and gathering by the Siletz Tribe and tribal members of all wildlife resources managed by ODFW within the geographic scope of the Agreement. Harvest of animals, plants and other resources not regulated by ODFW are outside of the scope of this Agreement. Further, the Parties acknowledge that federal law regulates the take of certain species over which ODFW has management authority, and that nothing in this Agreement authorizes take by the Siletz Tribe or tribal members inconsistent with ODFW's authority under federal law.

b. Ceremonial and Subsistence Harvest.

i. **Commercial Harvest Prohibited.** This Agreement is limited to ceremonial and subsistence harvest of wildlife resources within the geographic area defined in this Agreement. Commercial harvest by the Siletz Tribe or tribal members is not permitted or authorized under this Agreement.

ii. **Permitted Commercial Activity.**

a) Enrolled tribal members may exchange (gift, trade, or barter) wildlife or wildlife parts lawfully harvested for ceremonial or subsistence purposes with enrolled members of the Siletz Tribe or other federally-recognized Indian Tribes.

b) Enrolled tribal members may sell traditional or cultural items created from shells of shellfish, or from hides or otoliths of

finfish that tribal members lawfully harvested for ceremonial or subsistence purposes.

c) All other commercial activity with wildlife or wildlife parts lawfully harvested for ceremonial or subsistence purposes must be consistent with Oregon Revised Statute and Oregon Administrative Rule, including sale of wildlife parts associated with Siletz Members' creation of traditional, cultural or other items.

iii. **Framework for Harvest.** The limits and areas of tribal 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, conservation necessity, and ODFW management goals such as those related to research, disease management or population enhancement.

The Siletz Tribe and ODFW will meet initially after the effective date of this Agreement to discuss species and area concerns within the geographic scope of this Agreement, based on the negotiation principles set out in the previous paragraph and a list of species that are of interest for harvest by tribal members. Once these concerns have been negotiated and agreed to, the Parties shall meet as often as necessary to discuss and negotiate annual and seasonal tribal ceremonial and subsistence harvest and to determine the limits and areas of tribal ceremonial and subsistence harvest for the year or season. These annual or seasonal negotiations will include discussion of any modifications needed to the initial harvest agreement, including the addition of new species of interest to tribal members or proposed limitations on the take of certain species where limitations are needed because of conservation necessity, relevant federal or state regulatory needs, or other ODFW wildlife management issues such as research needs, disease management or population enhancement.

Any disagreement regarding tribal ceremonial or subsistence take will be resolved pursuant to the dispute resolution provisions of this Agreement.

iv. ODFW and the Siletz Tribe will voluntarily and fully share all biological/technical data, analyses, and information of any nature each possesses relevant to evaluate the Tribe's annual or seasonal harvest proposal.

v. Upon reaching agreement on limits and areas for ceremonial and subsistence harvest, ODFW will issue the Tribe an Annual Implementing Permit consistent with the Parties' agreement, which is incorporated by reference into the tribally-issued licenses and tags that authorize tribal harvest of fish and wildlife. The Siletz Tribe believes that tribal authority to issue licenses and tags and regulate tribal wildlife harvesting is a matter of tribal sovereignty and exists independently of any State-issued permit.

c. Special Areas.

i. **Fish and Shellfish Harvest.** Siletz tribal members are authorized to harvest fish and shellfish for subsistence and ceremonial purposes within the geographic scope of this Agreement within areas that are owned or managed by ODFW, excluding marine reserves and marine protected areas except as set forth below, but including marine gardens, research reserves, shellfish preserves, habitat refuges, and similar type areas where ODFW's management authority is not restricted by federal law, State law, or other agreement, provided that the Siletz Tribe will coordinate such reasonable harvest opportunities with ODFW to cause minimal disruption to the purposes or function of the area. Within marine reserves and marine protected areas, Siletz tribal members are authorized to harvest fish and shellfish within the geographic scope of this Agreement for subsistence and ceremonial purposes, provided that Siletz members shall follow the Oregon Sport Fishing Regulations and Oregon statutes which may restrict harvest opportunities in those areas.

ii. **Hunting and Trapping.** Siletz tribal members are authorized to hunt and trap wildlife resources on ODFW owned or managed lands only in accordance with Oregon Administrative Rules applicable to the location, including method of harvest. The Siletz Tribe may request special access and opportunity for their members, or changes to other aspects of the regulations for hunting or trapping activities on any of these lands that deviate from currently applicable regulation through the Siletz 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).

d. **Method.** Method of harvest shall be subject exclusively to tribal decision, except that harvest in special areas listed in section 5(c) above must be consistent with Oregon Administrative Rules for the species and area of harvest.

e. **Licensing and Tagging; Tribal Regulation.** Licensing and tagging for all resource harvest activities authorized and permitted under this Agreement shall be subject to tribal regulation and management. All harvest of wildlife resources by Siletz tribal members shall be consistent with tribal law and regulation and with this Agreement. The Siletz Tribe shall collect and report license, tag, and harvest numbers to ODFW on an annual basis or as otherwise requested by ODFW.

In order to aid the Parties' mutual goal of avoiding enforcement confusion, tribal members hunting, fishing or trapping pursuant to this Agreement will carry tribal identification and tribally-authorized tags showing that the Siletz Tribe has authorized take of that species and will present the same to law enforcement officers, peace officers, and ODFW personnel upon request.

f. **Communication.** In order to aid the Parties' mutual goal of avoiding enforcement confusion, ODFW and the Siletz Tribe will develop and

implement a communication plan that seeks to provide adequate notice to ODFW and OSP staff in the relevant regions about upcoming ceremonial and subsistence hunting, fishing, trapping, or gathering opportunities exercised or implemented under this Agreement.

g. **Enforcement.** ODFW and the Siletz Tribe understand that tribal members engaged in harvest related activities under this Agreement may be cited by either State or Tribal enforcement authorities for the alleged violations of State or tribal law. The goal of the Tribe and ODFW is that members of the Tribe are subject primarily to Tribal prosecution authority. Therefore, ODFW commits to working with the Siletz Tribe to seek to secure: (1) referral agreements with the District Attorneys in the counties within the geographic scope of this Agreement whereby alleged violations in their jurisdiction are referred to the Siletz Tribe for review and potential prosecution; and (2) to 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 of the State or Siletz Tribe are summoned initially to the Siletz Tribal Court.

h. **Tribal Regulation of Harvest Consistent with Oregon Revised Statutes.** The Tribe agrees to adopt harvest regulations consistent with Oregon Revised Statutes, including those identified in Appendix B.

i. **Potential Future Commercial Harvest.** This Agreement does not authorize tribal commercial harvest of any wildlife resource. Any commercial harvest would be subject to a future negotiation and agreement in order to be included herein. If the Siletz 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.

j. **Coordination with Other Tribes.** In the event that ODFW enters into a comparable Hunting, Fishing, Trapping and Gathering Agreement with another Oregon based tribe regarding the taking of fish and wildlife or cooperative management of wildlife resources within all or part of the geographic scope of this Agreement or within the geographic area in an amendment to this Agreement, and such agreement includes obligations substantially identical to this subsection 5(j), the Siletz Tribe will meet annually with such other tribe to discuss issues of mutual concern within such geographic area, including planned harvest areas and limits and proposed cooperative management of natural resources.

6. **Cooperative Management of Natural Resources between ODFW and Siletz Tribe.**

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 cooperative 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 shall be dependent upon the resources committed by each Party.

b. **Annual meeting.** ODFW and Siletz Tribe natural resource managers shall meet on an annual basis to discuss fish and wildlife habitat management activities within the geographic area established under this Agreement for the upcoming calendar year or years.

c. **Coordination of fish and wildlife habitat management.** ODFW and the Siletz Tribe will coordinate the use of their respective authorities, expertise, and influence as regulatory or voluntary opportunities are presented to protect and restore fish and wildlife habitat within the geographic scope of this Agreement.

d. **Funding.** ODFW and the Siletz Tribe will coordinate applying for, seeking, and obtaining third party funding through grants, appropriations, or other means to enhance financial resources available to carry out

wildlife resource management activities. This provision does not prohibit each Party from also applying for such funding on its own.

e. **Data sharing.** ODFW and the Siletz Tribe will annually share data and information related to wildlife resource management, population health, and habitat conditions.

f. **Coordination of other management activities.** ODFW and the Siletz Tribe will coordinate on other management activities jointly determined to be necessary or appropriate to ensure the long-term sustainability of Oregon's fish and wildlife species within the geographic scope of this agreement. This coordination may include non-lethal deterrence and/or lethal removal of individuals of one species that are preying on or otherwise impacting another species.

7. **Dispute Resolution; Effect on Other Indian Tribes; Limitation on Effect of Agreement.**

a. **Principles.** The Parties intend to implement this Agreement in a cooperative and positive manner. The State and the Siletz Tribe seek to avoid judicial litigation about the nature and extent of the Siletz Tribe's treaty rights or other legal rights to hunt, fish, trap or gather wildlife resources within the geographic areas covered under this Agreement. Any disputes that arise under this Agreement regarding cooperative management, the Siletz Tribe's exercise of hunting, fishing, trapping or gathering of wildlife resources within the included geographic areas, the extent of the Siletz Tribe's subsistence or ceremonial harvest in general or in any particular year or area shall be resolved pursuant to this section.

b. **Rights of the Siletz Tribe or Other Federally-Recognized Tribes to Independently Raise Claims.** Nothing in this Agreement shall affect, impair or constrain the right of the Siletz Tribe or any other federally-recognized Indian Tribe not a party to this Agreement to raise claims in any geographic area to hunt, fish, trap or gather pursuant to treaty, statute or other legal authority in any appropriate forum that has jurisdiction, unconstrained completely by any terms of this Agreement. Any right or interest of the Siletz Tribe to initiate a separate proceeding or to

participate in any other pending legal proceeding must be independently established under applicable law and procedure.

c. **Mediation.** Where possible, disputes under this Agreement shall be resolved pursuant to mediation, with the mediator or mediators selected jointly by the Siletz Tribe and ODFW. If possible, the Siletz Tribe and ODFW will agree to a mediator or mediation firm ahead of time, so any mediation under this Agreement can be initiated in 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 of Oregon. Any such mediation shall seek to reach conclusion within 180 days.

d. **Governing Law.** The laws of the State of Oregon (without giving effect to its conflicts of law principles), including this Agreement once adopted by administrative rule, govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

e. **Designation of Forum and Consent to Jurisdiction for Disputes under this Agreement.** Any party to this Agreement bringing a legal action or proceeding against any other party to this Agreement 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, to exhaustion of tribal remedies, 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 of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This Section is also not a waiver by the State of 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.

f. **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. No part of this Agreement is a waiver by the State of 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.

ii. **Limited Tribal Waiver of Sovereign Immunity.** THIS WAIVER OF THE SOVEREIGN IMMUNITY OF THE SILETZ TRIBE FROM SUIT OR ACTION IS ADOPTED PURSUANT TO AND IN CONFORMANCE WITH THE CONFEDERATED TRIBES OF SILETZ INDIANS TRIBAL CODE LIMITED WAIVER OF SOVEREIGN IMMUNITY ORDINANCE, STC §2.250 et seq.) AND SHALL BE STRICTLY CONSTRUED AND LIMITED TO ITS SPECIFIC TERMS AND THE SPECIFIC WAIVER GRANTED. The Siletz Tribe hereby waives its immunity to suit in State court for the limited purpose of enforcing or interpreting this Agreement. The Siletz Tribe's limited waiver of sovereign immunity is limited to declaratory or injunctive relief to resolve disputes or ensure compliance with the Agreement. This waiver shall not include monetary damages, including but not limited to indirect, economic or punitive damages. The Siletz Tribe's limited waiver of sovereign immunity is limited to the Parties to this Agreement and does not confer or afford any rights or benefits to any other party or person. The Siletz Tribe's limited waiver of sovereign immunity does not apply to any other action, contract or agreement. A copy of the resolution approving the waiver of sovereign immunity in this Agreement by the Confederated Tribes of Siletz Indians Tribal Council shall be provided to ODFW within 30 days of execution of this Agreement by the Siletz Tribe.

8. **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
4034 Fairview Industrial Dr. SE
Salem, OR 97304
Curt.Melcher@odfw.oregon.gov
503-947-6000

For the Tribe:
Mike Kennedy
Natural Resources Manager
Confederated Tribes
of Siletz Indians
P.O. Box 549
Siletz, OR 97380
MikeK@ctsi.nsn.us

With a Copy To:
Dorsay & Easton LLP
1737 NE Alberta St., Suite 208
Portland, OR 97212
craig@dorsayindianlaw.com

9. **Miscellaneous.**

a. 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.

b. The Siletz Tribe shall continue to have the right to receive a minimum of 4,000 pounds annually of surplus salmon carcasses from a source to be determined by ODFW. These fish shall be fit for human consumption and grade one fish shall be supplied if available. After ODFW has sorted the surplus salmon and has determined which fish are available for consumption, the Siletz Tribe may at its option participate in the final selection of these fish. An authorized agent of the Siletz Tribe shall be responsible for pickup of salmon carcasses at an appropriate location or locations designated by ODFW and reasonably convenient to the Siletz Tribe. The Siletz Tribe shall make all arrangements for the consumption of such fish, but such fish shall not be used for commercial purposes.

c. In addition to the Siletz Tribe's right to harvest wildlife resources as set forth in this Agreement, ODFW in coordination with OSP shall make

available to the Tribe, at the Tribe's option, a substantial portion of the deer, bear and elk carcasses received by ODFW in coordination with OSP within the geographic area under this Agreement. ODFW, in coordination with OSP, shall promptly advise the Tribe of available carcasses. The Tribe shall be responsible for pickup and any costs for processing.

10. **Effect on Other Agreements.** This Agreement shall acknowledge and incorporate any other Agreement entered into and effective between ODFW and the Siletz Tribe involving wildlife resources in existence on the effective date of this Agreement, except for the 'Agreement Among the State of Oregon, United States of America and the Confederated Tribes of Siletz Indians of Oregon to Permanently Define Tribal Hunting, Fishing, Trapping, and Gathering Rights of the Siletz Tribe and its Members', signed by the Parties and dated April 22, 1980. The Parties acknowledge that this Memorandum of Agreement does not in any way, replace, amend or otherwise modify the 'Agreement Among the State of Oregon, the United States of America and the Confederated Tribes of the Siletz Indians of Oregon to Permanently Define Tribal Hunting, Fishing, Trapping, and Gathering Rights of the Siletz Tribe and its Members' signed by the Parties and dated April 22, 1980.

    In addition, ODFW and the Siletz Tribe may voluntarily enter into subsequent agreements addressing subjects outside the scope of this Agreement. Nothing precludes negotiation of additional agreements between ODFW and the Siletz Tribe on subjects not covered by this Agreement. Nothing in this Agreement precludes ODFW from entering into hunting, fishing trapping and gathering agreements with other federally-recognized Indian Tribes located within Oregon's geographic borders.

11. **Effective Date**. This Agreement shall become effective when the Oregon Fish and Wildlife Commission and the Siletz Tribe have adopted the necessary rules and resolutions, and both parties have executed this Agreement.

12. **Amendments/Termination.**

a. This Agreement can be amended in writing by mutual consent of the Siletz Tribe and ODFW.

b. This Agreement can be terminated in writing by mutual consent the Siletz Tribe and ODFW.

c. Either party may terminate this Agreement for any reason. If the Parties do not agree to jointly terminate the Agreement, the party that is initiating the termination shall serve written notice to the other party's contact listed in paragraph 8 above. The State and the Tribe shall thereafter meet within 60-days in an effort to resolve the dispute. In the event the dispute is not resolved after meeting, either party may terminate this Agreement by sending written notice to the other party.

13. **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 Siletz Tribe believes are more favorable than those initially agreed to herein, the Parties agree to renegotiate the relevant terms.

14. **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.

15. **Effect of Agreement.** No additional tribal legal or treaty entitlement is created, conveyed, established, expanded, adjudicated or implied, nor is any existing agreement, treaty or court decree modified by the adoption of this Agreement.

Signatures

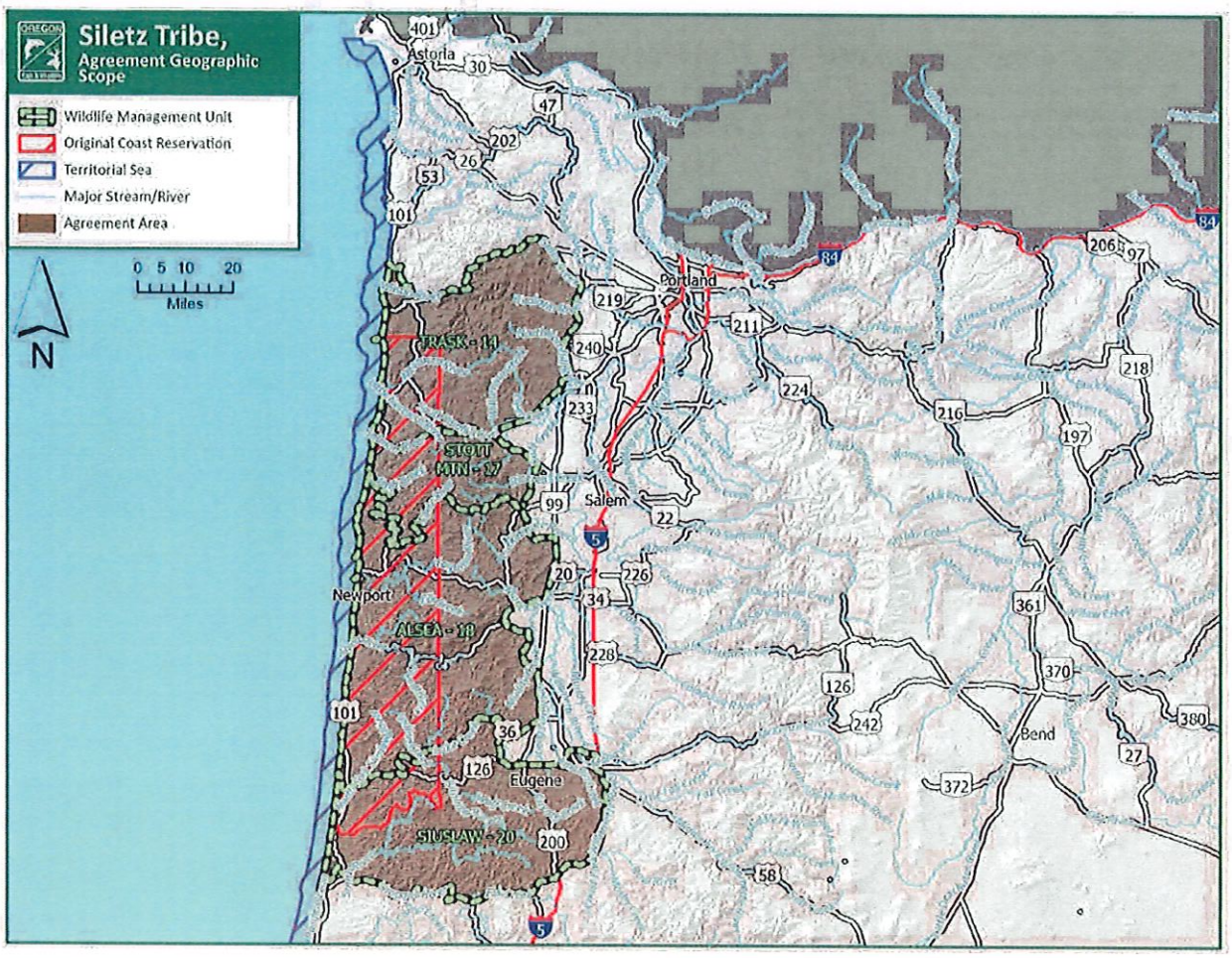
Delores Pigsley — 6/22/23

Delores Pigsley — Date
Chairman
The Confederated Tribes of Siletz Indians

Curt Melcher — 7/5/23

Curt Melcher — Date
Director
Oregon Department of Fish and Wildlife

Appendix A. Geographic Scope



Appendix B. 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.