

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) sets forth the terms of the agreement between the Coquille Indian Tribe (the “Coquille Tribe” or “Tribe”) and the State of Oregon, acting through the Oregon Department of Fish and Wildlife (the “State”). The parties to this MOU are the Coquille Indian Tribe and the State. Acting as a representative of the State, any agreement between the Oregon Department of Fish and Wildlife and the Tribe does not supersede, replace, or alter any public trust responsibilities, requirements or regulations administered by other State of Oregon agencies.

RECITALS

1. The Coquille Tribe and the State share a common interest in management of clams as valuable natural resources, and agree that gathering and sharing of information among the parties will assist the parties to cooperatively manage the resources as described in this MOU.
2. Marine resources are of cultural and historical significance to the Coquille Tribe, and it is important that Tribal Members gather clams for ceremonial, subsistence and non-commercial purposes. The Tribe wishes to continue its traditional stewardship of these resources along the south coast of Oregon.
3. The Coquille Tribe, comprised of peoples including the Athabascan speaking Upper Coquille and the Miluk speaking Lower Coquille, have continuously maintained their tribal identity, existence and subsistence practices in Southern Oregon since time immemorial. On August 11, 1954, the U.S. Congress terminated the Coquille Tribe. On June 28, 1989, the U.S. Congress restored federal recognition to the Coquille Tribe. The Coquille Restoration Act provides that, “[n]othing in this Act shall expand, reduce, or affect in any manner any hunting, fishing, trapping, gathering, or water right of the Tribe and its Members” 25 U.S.C. § 715a(d). This MOU is not intended to create, expand, reduce, or affect in any manner any tribal or treaty hunting, fishing, trapping, gathering, or water right of the Tribe and its Members.
4. The Coquille Tribe has approved the Coquille Indian Tribal Clam Gathering Ordinance, Coquille Indian Tribal Code (CITC) Chapter 260, which identifies the tribal requirements for gathering of clams.
5. The Oregon Fish and Wildlife Commission has adopted regulations applicable to the harvest and protection of clams, including setting of catch limits and harvest seasons.
6. The Coquille Tribe and the State desire to specify the special conditions of Tribal Member clam harvest and how the parties will share information and work together regarding utilization and protection of the clam resource.

NOW, THEREFORE, the Coquille Tribe and the State agree as follows:

AGREEMENT

1. Scope.

a. The terms of this MOU apply only to the gathering of clams (hereafter, “clams” refers to: Razor Clams, Bay Clams (Butter / Martha Washington, Littleneck, Cockle, Gaper / Empire), Softshell and Purple Varnish clams) by Tribal Members.

b. For purposes of this MOU, “Tribal Member” means a person who meets the membership requirements of Article II, Section 1 of the Constitution of the Coquille Indian Tribe; and

c. This MOU does not affect the State’s authority to regulate tribal harvest of clams in areas closed for conservation purposes or management purposes, including marine reserves, marine gardens, research reserves, shellfish preserves, habitat refuges, and other federal or State marine protected areas. Therefore, the harvest authorized by this MOU does not apply to those areas.

2. Season and Location. Within Coos and Curry Counties, Tribal Members may gather clams pursuant to this MOU during any times that State law authorizes non-commercial harvest of that clam species.

3. Gathering. Tribal Members may gather clams so long as:

a. Harvest with No Waste. Tribal Members harvest clams for non-commercial purposes with no waste, pursuant to the Coquille Indian Tribal Clam Gathering Ordinance, Coquille Indian Tribal Code (CITC) Chapter 260, and no harvest of clams occurs for commercial purposes.

b. License. While gathering clams, Tribal Members must have in their possession their Tribal Clam Gathering License and Tribal Member identification. The Tribal Clam Gathering License shall consist of the annual Special Gathering Permit, issued under paragraph 5 of this agreement, and the License issued by the Tribe specifying that the license holder is entitled to harvest clams under this agreement.

c. Gear. Tribal Members will use either their hands or hand tools when gathering clams, and gathering must be consistent with the requirements of the Coquille Indian Tribal Clam Gathering Ordinance, CITC Chapter 260. The Tribe will adopt by reference the Oregon Sport Fishing Regulations applicable to such harvest by non-Tribal Members (except for the daily limit).

4. Inspection. Tribal Members will allow Oregon Department of Fish and Wildlife representatives and Tribal or State peace officers the opportunity to inspect their Tribal Clam Gathering License (which includes the Special Gathering Permit, as described under paragraph 3.b.) and Tribal Member identification, as well as gear and catch, upon request.

5. Permit. Upon entering this MOU, the State will annually issue the Coquille Tribe a Special Gathering Permit consistent with the terms of this agreement, for clams. If either party terminates this MOU, the current Special Gathering Permit for clams will terminate.
6. Research, Data Gathering and Sharing.
 - a. Research. The Coquille Tribe and the State will jointly seek and pursue opportunities to conduct scientific research related to management of clam populations, including their health and habitat.
 - b. Harvest and Other Data Sharing. Annually, the Coquille Tribe will provide to the State its records concerning clam harvest activities (including any tribal-observed violations by tribal harvesters) within Coos and Curry Counties, and the State will provide to the Coquille Tribe its records regarding clam harvest activities (including state-observed violations by tribal harvesters) within Coos and Curry Counties. Information regarding clam management, research, health and habitat may also be shared.
 - c. Protection and Enhancement. The Coquille Tribe and the State will cooperatively develop research projects and opportunities to better understand and protect the clam resource from degradation and to improve and enhance the resource. The parties may use the annual meeting pursuant to paragraph 7 of this MOU to evaluate and prioritize projects for this purpose, and share resources available to facilitate such research.
7. Annual Meeting.
 - a. The Coquille Tribe and the State will meet annually to discuss issues related to harvest and protection of clams. Unless the parties agree otherwise, this meeting will take place prior to April 30 of each year. The State will take into account the Tribe's input when it periodically sets the clam harvest seasons, size limits and daily limits;
 - b. The Coquille Tribe and the State will also periodically review, discuss and potentially modify the terms of this MOU. All modifications must be in writing and signed by both parties to this MOU. In considering whether modifications are appropriate, both parties will prioritize the goal of sustainable harvest of clams;
 - c. The Coquille Tribe will annually provide the State a copy of any changes in the Coquille Indian Tribe's Clam Gathering Ordinance or other tribal rules or regulations affecting harvest of clams, and the State will notify the Coquille Tribe of any changes to rules affecting management of clams in Coos or Curry Counties.
8. Third Party Rights. This MOU is exclusively for the benefit of, and governs only the prospective authorities and relations between, the Coquille Tribe and the State, and does not create, grant, confer, diminish, or alter any rights whatsoever as to any third party, person or entity.

9. Effective Date. This MOU shall become effective when the State and the Coquille Tribe have adopted the necessary rules and resolutions, and both parties have executed the MOU.

10. Tribal and State Contacts.

Director,
Oregon Department of Fish and Wildlife
4034 Fairview Industrial Drive S.E.
Salem, OR 97302
(503) 947-6000

Chairperson,
Coquille Indian Tribe
3050 Tremont Street
North Bend, OR 97459
(541) 756-0904

11. Termination.

- a. Either party may terminate this MOU for any reason, including but not limited to an amendment to the Coquille Indian Tribe Clam Gathering Ordinance that would significantly expand the scope of gathering addressed in this MOU. If the parties do not agree to jointly terminate the MOU, the party that is initiating the termination shall serve written notice to the other party as listed in paragraph 9 above. The State and the Coquille Tribe will meet within 60 days of receipt of such notice in an effort to resolve the dispute. In the event the dispute is not resolved after the meeting, either party may then immediately terminate this MOU by sending written notice to the other party.

Michael Finley, Chair
Oregon Fish and Wildlife Commission

____/____/____
Date

Brenda Meade, Chairperson
Coquille Indian Tribe

____/____/____
Date