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SHEMIA FAGAN
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CHERYL MYERS
DEPUTY SECRETARY OF STATE



Attachment 2

ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 635
DEPARTMENT OF FISH AND WILDLIFE

FILED

12/20/2021 2:04 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Agreement for Shellfish Licenses for the Grand Ronde Community (Tribe)

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 02/18/2022 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: Lisa Kingsley
503-947-6233
Lisa.M.Kingsley@odfw.oregon.gov

4034 Fairview Industrial Dr SE
Salem, OR 97302

Filed By:
Lisa Kingsley
Rules Coordinator

HEARING(S)

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

DATE: 02/18/2022

TIME: 8:00 AM - 5:00 PM

OFFICER: Oregon Fish and Wildlife Commission

ADDRESS: Oregon Department of Fish and Wildlife
4034 Fairview Industrial Dr SE
Salem, OR 97302

SPECIAL INSTRUCTIONS:

Because of the rapidly changing situation with COVID-19, this hearing will be conducted virtually. Information will be posted on our website at <https://www.dfw.state.or.us/agency/commission/minutes/>

NEED FOR THE RULE(S)

This new rule is needed to authorize ODFW to issue an annual Special Gathering Permit to the Confederated Tribes of the Grand Ronde (Tribe) for tribal members to harvest shellfish in a specified area. Regulations for harvest of shellfish in this area will remain governed by those set forth in annual Oregon Sport Fishing Regulations, including species allowed, bag limits, season dates, methods of take, and other applicable rules.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Staff report prepared for the Oregon Fish and Wildlife Commission hearing on 2/18/2022.

Draft Memorandum-of-Understanding between OFWC and Confederated Tribes of Grand Ronde.

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, Fish Division, 4034 Fairview Industrial Drive SE, Salem, Oregon 97302-1142, between the hours of 8:00 a.m. and 4:00 p.m., on normal working days, Monday through Friday.

FISCAL AND ECONOMIC IMPACT:

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 evaluate licensing issued by the Tribe to tribal members while in the field in the specified area, consistent with this agreement. This process would be conducted in a manner similar to that already used for current license requirements. Otherwise, there would be no change in enforcement conducted by OSP. Given that the agreement will functionally eliminate fees for licenses issued under the agreement, there may be some reduction in sales of shellfish licenses, to the extent that members of the Tribe who currently purchase a shellfish license would no longer do so. While it is not possible to fully assess how much reduction in shellfish license sales may occur as a result of this agreement, the effects are believed to be very minimal relative to overall annual shellfish license revenues. Tribal members utilizing licenses issued under this agreement will only be allowed to harvest shellfish within a specific area and would still be required to purchase a license to conduct any shellfish harvest in the remainder of the state. Further, the ODFW shellfish fund continues to have a surplus ending balance. No significant changes from the current levels of the agency's staffing, expenditures, or revenues are expected as a result of this rule.

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

C. The public is unlikely to be affected by the proposed rule. Members of the Confederated Tribes of the Grande Ronde will benefit by not purchasing a shellfish license for activities conducted within the specified area. It is not anticipated that overall shellfishing activities by tribal members will increase as a result of this rule, therefore no net change in overall harvest of shellfish species is anticipated because all harvest will remain subject to take regulations specified in Oregon Sport Fishing Regulations. Similarly, no reduction in opportunities to the general public are anticipated, and businesses that provide goods and services to shellfish harvesters 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);

No additional costs anticipated.

(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

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The 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: 635-041-0620

RULE SUMMARY: Allows ODFW to provide an annual Special Gathering Permit to the Confederated Tribes of the Grand Ronde (Tribe) for tribal members to harvest shellfish in a specified area.

CHANGES TO RULE:

635-041-0620

Grand Ronde Tribal Shellfish Licensing, Trask Unit

(1) Scope. ¶

(a) The terms of this MOU apply only to the gathering of Shellfish (hereafter, "Shellfish" refers to the definition used by the Oregon Sport Fishing regulations) by Tribal Members. ¶

(b) For purposes of this MOU, "Tribal Member" means any individual enrolled by the Confederated Tribes of the Grand Ronde Community of Oregon. ¶

(2) Season and Species. Tribal Members may harvest any Shellfish species pursuant to this MOU during any times that State law authorizes non-commercial Shellfish harvest of that Shellfish species in the Location set forth in Section 3. Harvest limits shall be as specified in annual Oregon Sport Fishing Regulations. ¶

(3) Location. The area included in this MOU is within, or in the ocean adjacent to, the following boundary: Beginning at McMinnville; southwest on State Highway 18 to Salmon River; west on Salmon River to Pacific Ocean.; north on Pacific Ocean coastline to north shoreline at mouth of Tillamook Bay, defined here as the visible tip of the Tillamook North (Barview) Jetty; east on north shoreline of Tillamook Bay and the north shoreline of the Wilson River to State Highway 6 at Mills Bridge; northeast on Highway 6 to State Highway 8 near Gales Creek; southeast on Highway 8 to State Highway 47 at Forest Grove; south on Highway 47 to State Highway 99W; southwest on Highway 99W to McMinnville, point of beginning. The ocean adjacent to this area is defined as that area of the Marine Zone north of latitude 45.0434 N (an east/west line drawn through the southernmost rock in the area known as Three Rocks at the mouth of the Salmon River) and south of latitude 45.5705 N (an east/west line drawn through the visible tip of the Tillamook North Jetty). ¶

(4) Gathering. Tribal Members may harvest Shellfish so long as: ¶

(a) Harvest with No Waste/Non-commercial purpose. Tribal Members harvest Shellfish for non-commercial purposes with no waste, and no harvest for commercial purposes occurs. ¶

(b) Permit. Upon entering this MOU, the State will annually issue a Special Gathering Permit (Permit) to Grand Ronde for Shellfish species. The annual State Special Gathering Permit will authorize the Tribe to issue permits or other documentation to eligible Tribal members that authorize Tribal members to gather Shellfish. The Tribe may attach additional conditions provided that any such conditions are consistent with Oregon Sport Fishing Regulations. ¶

(c) Gear. Tribal Members will use methods of take as outlined in the Oregon Sport Fishing Regulations when gathering Shellfish, and gathering must be consistent with the requirements of the Oregon Sport Fishing Regulations. ¶

(d) Inspection. Tribal Members will allow Oregon Department of Fish and Wildlife representatives and law enforcement officers the opportunity to inspect the applicable Tribal enrollment card or license and Tribal-issued permit or other documentation; gear and catch, upon request. ¶

(5) License. The Permit conveys a State recreational shellfish license upon appropriately documented Tribal members consistent with Section 4. ¶

(6) Existing Rights. This MOU does not create, convey or imply any additional tribal legal or treaty entitlement, nor does it modify any existing agreement, treaty, or court decree. ¶

(7) Third Party Rights. This MOU is exclusively for the benefit of and governs only the respective authorities and relationships between Grand Ronde and the State, and does not create, grant, confer or diminish any rights whatsoever as to any third party, person, or entity. ¶

(8) Effective Date. This MOU shall become effective when the State and Grand Ronde have adopted the necessary rules and resolutions, and both parties have executed the MOU. ¶

(9) Termination. ¶

(a) This MOU can be terminated in writing by mutual consent of Grand Ronde and the State. ¶

(b) Either party may terminate this MOU for any reason. If the parties do not agree to jointly terminate the MOU, the party desiring termination shall deliver written notice of its intent to terminate to the contact listed above. The parties shall thereafter meet within 60 days of the date on the notice of intent to terminate in an effort to resolve the dispute. In the event the dispute is not resolved after the meeting, or the parties fail to meet within 60 days of the date on the notice of intent to terminate and do not jointly agree to a later meeting, either party may terminate this MOU by sending written notice of termination to the other party. ¶

(c) If either party terminates this MOU, the current Permit will terminate 30 days after the effective date of termination.

Statutory/Other Authority: ORS 497.075

Statutes/Other Implemented: ORS 497.075