



AGENDA ITEM SUMMARY

BACKGROUND

The State of Oregon and the Cow Creek Band of Umpqua Tribe of Indians (CCBUTI) are sovereign entities that desire to continue to advance the government-to-government relationship between the parties.

The Cow Creek Band of Umpqua Tribe of Indians is one of nine federally recognized Indian Tribal Governments in the State of Oregon. The Cow Creek Tribal Nation, located in Southwestern Oregon, has over 1,800 members who are governed by an elected eleven-member council known as the Tribal Board of Directors.

The members of the CCBUTI have used the fish, wildlife, and plant resources throughout their traditional territory since time immemorial, and those resources have been essential to and have provided the foundation for their sustenance, commercial livelihood, culture, and spiritual life. The Cow Creek Band of Umpqua Tribe of Indians asserts it has an inherent sovereign interest in the harvest and regulation of harvest of natural resources within territory ceded by treaties it executed, or based upon aboriginal title, and also within traditional harvest areas used by the Tribes beyond said ceded areas. In addition, the Tribe asserts an interest in fish and wildlife management and under its treaties, statutes, Executive Orders, aboriginal rights, and other federal authority.

The Oregon Department of Fish and Wildlife has worked with the Tribe to create a Memorandum of Agreement (MOA) to establish a voluntary, cooperative partnership to collaborate, share resources, and work as partners to develop and implement plans to protect, restore, and enhance fish and wildlife populations and their habitat within a specific geography of Oregon. The agreement to establish this partnership also sets up a framework under which tribal members would participate in subsistence and ceremonial harvest of fish and wildlife resources that is licensed and managed by the tribal government in partnership with the department and the Oregon State Police (OSP).

PUBLIC INVOLVEMENT

This agreement has been developed through direct, government-to-government negotiations between the Tribe and the state of Oregon through the department. The public received notice of the draft MOA and proposed administrative rules by notice in the Secretary of State's Bulletin on October 18 (Attachment 2). The Tribe, in coordination with the Oregon Governor's Office, has engaged other federally recognized tribes in Oregon in multiple forums to share details of the

terms of the MOA. The department offered government-to-government consultation with all of the other eight federally recognized tribes in Oregon. Members of the public may provide written and oral comment for the Commission’s consideration.

ISSUE

Memorandum of Agreement to Define Exercise of Hunting, Fishing, Trapping, and Gathering by the Cow Creek Band of Umpqua Tribe of Indians and its Members and for Cooperative Management of Natural Resources between the Cow Creek Band of Umpqua Tribe of Indians and the State of Oregon, through the Oregon Department of Fish and Wildlife

ANALYSIS

The department’s mission to protect and enhance Oregon's fish and wildlife and their habitats for use and enjoyment by present and future generations closely aligns with the history and culture of the nine federally recognized tribes in Oregon. Members of these tribes and their ancestors have followed cultural practices related to sustainable management of fish and wildlife since time immemorial. Tribes are also unique among the department's partners because they are sovereign governments, not stakeholders.

The Tribes are critical partners for the department as we seek to address the challenges related to climate change, pressures on water, fire, and many other issues that will affect the resilience of fish and wildlife now and in the future. The proposed MOA between the department and the Cow Creek Tribe will strengthen the ability of the tribe to engage in this important fish and wildlife conservation work that will benefit all Oregonians.

The proposed MOA advances the government-to-government relationship between the state and the tribe, enhances tribal sovereignty, enhances the tribe's ability to contribute to positive outcomes for fish and wildlife, and will increase opportunities for tribal members to harvest fish and wildlife resources consistent with tribal values. By facilitating this reconnection with tribally important resources, cultural practices, and access to the first foods that are managed by the department, the state of Oregon is able to address historic losses of opportunity for the tribes while giving the tribes a stronger voice in protecting and enhancing fish, wildlife, and their habitats for future generations of Oregonians.

The geographic scope of the proposed MOA is all of Douglas, Lane, Jackson, Josephine and Coos counties, including the associated nearshore marine areas. This is a portion of CCBUTI’s federal service area which both the state and federal government recognize as the area in which the tribe administers certain federal programs under tribal self determination.

Within this geography, enrolled members of the Cow Creek Tribe would be able to participate in hunting, fishing, trapping, and gathering licensed by the Tribe. The department and the Tribe will also coordinate on proactive fish, wildlife, and habitat conservation activities in this area.

The proposed MOA includes a framework for tribal members to participate in subsistence and ceremonial harvest of fish and wildlife resources within the defined geography. Harvest of fish and wildlife by tribal members would be regulated, licensed and enforced by the tribal government in partnership with the department and OSP. Annual harvest limits and areas will be set by mutual consent between the Tribe and department staff.

The proposed MOA is limited to subsistence and ceremonial harvest. The Tribe will not be implementing any commercial harvest opportunities. “Subsistence harvest” is harvest consistent with tribal cultural practices for acquiring traditional foods and other resources for personal, familial or community sharing. Subsistence harvest is likely to occur during generally similar times and in similar locations to the state’s usual harvest opportunities, but some differences should be anticipated. “Ceremonial harvest” provides traditional foods for tribe or community-wide events that acknowledge and perpetuate religious, cultural, and other traditions. It may also include other traditional family group ceremonies. Ceremonial harvest may occur throughout the year. The overarching intent is that the Tribe and the department will seek to provide tribal members harvest opportunities and experiences afield that are consistent with the Tribe’s cultural norms while being consistent with conservation needs of the fish and wildlife.

As a result of this new framework, many CCBUTI members who already participate in hunting, fishing, trapping or gathering are likely to shift to obtaining tribal licenses and tags instead of state licenses and tags, at least for activities in the geographic range of this agreement. Even if there is an increase in tribal member participation and tribal harvest as a result of this MOA, it would be a very small fraction of the hunting and fishing in southwest Oregon. The department expects this to result in a negligible reduction in revenue and a negligible change in the impact of hunting and fishing to existing fish and wildlife populations.

Upon adoption of this MOA, the Tribe will develop hunting, fishing, and trapping regulations overseeing take of fish and wildlife by their tribal members that parallel the department’s regulations, related Oregon Revised Statutes, and federal laws that oversee take of fish and wildlife by the general public. The Tribe has committed to adopt regulations consistent with state statutes, including those that ensure public safety related to hunting as documented in the MOA. The department, OSP and the Tribe will work together to ensure relevant regulations are enforced for tribal and non-tribal members.

This proposed MOA is intended to shape the government-to-government relationship between the department and the Tribe for many years. Implementation of the agreement would commence immediately upon adoption by both the Tribal Board of Directors and the Fish and Wildlife Commission. The Tribal Board of Directors approved the draft MOA at their November meeting.

Implementation of the subsistence and ceremonial harvest portion of the agreement will occur through annual meetings at which the Tribe will propose a list of species that tribal members plan to harvest and a description of the limits and areas of that harvest. The Tribe and department staff will work together to reach consensus on the limits and areas for each species every year. The Tribe and department staff will interact frequently in the course of performing their fish and wildlife management responsibilities and will also meet annually to share information and discuss the proactive fish, wildlife, and habitat management planning and actions that each

organization would like to pursue each year. As a result of these meetings, opportunities to share resources and work together on specific issues will be identified and implemented collaboratively each year.

OPTIONS

1. Adopt OAR 635-800-0200 (Attachment 4) to implement the Memorandum of Agreement between the Cow Creek Band of Umpqua Tribe of Indians and the state of Oregon, through the Oregon Department of Fish and Wildlife (Attachment 3).
2. Status quo (no action).

STAFF RECOMMENDATION

Option 1.

DRAFT MOTION:

I move to approve the draft Memorandum of Agreement in Attachment 3 and adopt new OAR 635-800-0200 as proposed by staff and shown in Attachment 4.

Effective Date: Date here or *Upon Filing*