



AGENDA ITEM SUMMARY

BACKGROUND

The Confederated Tribes of Siletz Indians (Siletz Tribe) is a federally-recognized Indian tribe located within the geographic borders of Oregon and is comprised of numerous historical tribes and bands from throughout western Oregon who were confederated together and removed and resettled on the Siletz Coast Reservation established by Executive Order on November 9, 1855. The Siletz Tribe asserts an interest in wildlife resources, habitat and management reserved in treaties, statutes, Executive Orders or other authority, but the Siletz Tribe’s wildlife resource hunting, fishing, trapping and gathering rights have never been directly litigated, adjudicated or determined by any court in which the Siletz Tribe has been a party.

In 1954, the federal government removed the Siletz Tribe’s federal status and the tribe successfully regained recognition in 1977. A few historical notes provide important background for this agenda item:

- The Siletz Indian Tribe Restoration Act explicitly did not restore hunting, fishing or trapping rights, at the request of the state of Oregon.
- The state and the tribe entered in to an agreement with the United States that provided for limited fish and wildlife harvest opportunity (1980 Agreement).
- The 1980 Agreement was entered as a consent decree in federal court (consent decree) as the final determination of “tribal hunting, fishing, trapping, and gathering rights of the Siletz Tribe and its members”.
- The Siletz Reservation Act stated that the consent decree would “constitute the exclusive and final determination of all tribal rights to hunt, fish, or trap that the Siletz Tribe and its members possess.”
- The Siletz Tribe is one of only two tribes in the United States to have had this kind of consent decree in place.

The Governor of Oregon and Oregon’s congressional representatives have since acknowledged that the 1980 Agreement and consent decree were a product of their times and represented a biased and distorted position on tribal sovereignty, tribal traditions, and the Siletz Tribe’s ability and authority to manage and sustain wildlife populations it traditionally used for tribal ceremonial and subsistence purposes. The state and tribe now believe they are capable of and committed to management of fish and wildlife in a cooperative manner.

The Siletz Tribe has worked for many years to undo the historic injustice of the consent decree. There has been recent progress on that work:

- December 2023: With support from the Governor and Oregon’s congressional delegation, Congress passed House Resolution 2839 (Public Law 118-33, 118th Congress).
 - The law rescinded reference to the consent decree from the Siletz Reservation Act and replaced it with language allowing the Tribe and the State to enter into a new agreement under state law.
- October 2024: The state and tribe requested that the federal court remove themselves from enforcement and management of the Siletz Tribe’s hunting, fishing, trapping, and gathering rights by vacating the consent decree.

- October 2024: The court signed an order to vacate the 1980 Agreement. The 1980 Agreement is no longer the final settlement of any or all of the Siletz Tribe’s legal claims to hunting, fishing, trapping or gathering rights under federal law.
 - The court also stated, “The Oregon Fish and Wildlife Commission shall take separate action under Oregon state law to rescind the 1980 Agreement as a state regulation.”

The regulations implementing the 1980 Agreement are OAR 635-041-0500, OAR 635-041-0510, OAR 635-041-0515, and OAR 635-041-0520.

PUBLIC INVOLVEMENT

This is a government-to-government action between the State of Oregon and the Confederated Tribes of Siletz Indians under the direction of Congress and a federal court. The public received notice of the proposed rule repeal and amendments on January 24, 2025. Members of the public may submit written comment and may provide testimony on March 14, 2025.

ISSUE 1

Rescind 1980 Agreement between Confederated Tribes of the Siletz Indians, State of Oregon, and United States of America

ANALYSIS

The proposed rule changes are in response to Case No. 3:80-cv-00433-AB, United States District Court, District of Oregon: Order Vacating Final Decree and Order dated October 30, 2024, which states that, “The Oregon Fish and Wildlife Commission shall take separate action under Oregon state law to rescind the 1980 Agreement as a state regulation.”

While the Siletz consent decree states that it defines the full extent of tribal hunting and fishing rights and that no other tribal rights shall exist except those specifically set forth in the consent decree--in 2011, the Court of Appeals of Oregon determined that the consent decree defined the rights of a Tribe to conduct take of wildlife resources not necessarily otherwise provided for under state law, but that the Commission may authorize a tribe and its members to engage in take of wildlife resources not contemplated by the consent decree under the broad discretionary authority of the Commission to manage wildlife.

Using the Commission’s broad discretionary authority, in June of 2023 the department and the Siletz Tribe established 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 via a Memorandum of Agreement (2023 Agreement). The 2023 Agreement also set up a framework under which Siletz tribal members participate in subsistence and ceremonial harvest of fish and wildlife resources that is licensed and managed by the Siletz Tribe. The department and the Siletz Tribe’s relationship has been voluntarily governed by this 2023 Agreement (implemented via OAR 635-800-0500) since its adoption.

The proposal would repeal the 1980 Agreement between the State of Oregon, Siletz Tribe, and the United States that was implemented via OARs 635-041-0500, 635-041-0510, 635-041-0515, and 635-041-0520, leaving the voluntary 2023 Agreement to guide the relationship between the state and the Siletz Tribe. This action is consistent with the federal court’s order vacating the 1980 Agreement as the final settlement of any or all of the Siletz Tribe’s legal claims to hunting, fishing, trapping, or gathering rights under federal law and instructing the Commission to rescind the 1980 Agreement as a state regulation.

Repeal of the 1980 Agreement is also an affirmative statement from the state that the 1980 Agreement no longer represents the modern relationship between Oregon and the Siletz Tribe.

The proposal would also amend OAR 635-800-0500 to conform to federal Public Law 118-33, (enrolled H.R. 2839 of the 118th Congress). The proposal would add a fifth rule in OAR 635-800-0500 that seeks to fulfill the congressional intent that the state and tribe would enter into a new agreement under state law and confirms the voluntary nature of the 2023 Agreement for both parties.

(5) The parties to the Siletz-ODFW 2023 Agreement intend for that Agreement to describe the Confederated Tribes of Siletz Indians’ hunting, fishing, trapping and animal gathering opportunities in Oregon, and for the Siletz-ODFW 2023 Agreement to be a voluntary successor to 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” entered into by the United States on April 22, 1980.

The effect of the new rule is to confirm, consistent with the process in Public Law 118-33, that the state and Siletz Tribe intend for the 2023 Agreement to be the successor agreement to the 1980 Agreement. The rule does not modify anything in the 2023 Agreement. Members of the public interested in learning more about the 2023 Agreement may refer to the June 2023 Agenda Item Summary for more information.

OPTIONS

1. Adopt staff recommendations to repeal OARs 635-041-0500, 635-041-0510, 635-041-0515, and 635-041-0520 and amend OAR 635-800-0500 as proposed by staff.
2. Status quo

STAFF RECOMMENDATION:

Option 1.

DRAFT MOTION

I move to repeal OARs 635-041-0500, 635-041-0510, 635-041-0515 and 635-041-0520 and amend OAR 635-800-0500 as proposed by staff.

EFFECTIVE DATE: Upon Filing.