



AGENDA ITEM SUMMARY

BACKGROUND

OAR 635-800-0300 implements the “Memorandum of Agreement for Off-Reservation and Non-Trust Land Hunting, Fishing, Trapping, and Gathering with the Confederated Tribes of the Grand Ronde Community of Oregon” (Grand Ronde MOA). The Grand Ronde MOA and associated rules were adopted by the Commission on August 4, 2023 (Attachment 2).

The Oregon Department of Fish and Wildlife (department) received four separate petitions to repeal or, alternatively, amend OAR 635-800-0300:

- On May 7, 2024 from the Confederated Tribes of the Warm Springs Reservation of Oregon (Attachment 4);
- On May 13, 2024 from the Confederated Tribes and Bands of the Yakama Nation (Attachment 5);
- On May 16, 2024 from the Nez Perce Tribe (Attachment 6); and
- On June 11, 2024 from the Confederated Tribes of the Umatilla Indian Reservation (Attachment 7).

For brevity and clarity throughout this document, the above four tribal nations will be referred to as the Petitioners.

These requests are “petitions for rulemaking” under the Administrative Procedures Act (APA ORS 183.390). APA petitions are used to put a rulemaking concept (e.g., a proposed new rule, an amendment of an existing rule, or a repeal of an existing rule) in front of the Oregon Fish and Wildlife Commission (Commission). The July 11 meeting of the Commission will only consider whether or not the Commission is interested in beginning a rulemaking process in response to the petitions. The Commission will not be taking action on July 11 to repeal or amend the Grand Ronde MOA.

- If the Commission accepts the petition, the department will initiate a rulemaking process, culminating in a future decision to repeal, amend, or maintain the Agreement.
- If the Commission denies the petition, it is not precluded from future rulemaking associated with these rules.

Per ORS 183.390(1) and OAR 137-001-0070, the agency shall, in writing, within 90 days after receipt of an APA petition, either deny the petition or initiate rulemaking proceedings. In coordination with the Petitioners, the Commission’s response has been delayed to allow for the respective leadership of the Petitioners and the Confederated Tribes of the Grand Ronde Community of Oregon (Grand Ronde) to discuss the Grand Ronde MOA. The parties met but were unable to reach an agreement.

PUBLIC INVOLVEMENT

Per ORS 183.390(2), the public is invited to provide written comment upon OAR 635-800-0300, and requests comment on whether options exist for achieving the rule's substantive goals in a way that reduces the negative economic impact on businesses. No oral public comment will be taken during the Commission meeting. The Petitioners and the Grand Ronde will have the opportunity to provide oral presentations to the Commission.

ISSUE

Consider Petitions to Repeal or, Alternatively, Amend OAR 635-800-0300.

ANALYSIS

Criteria for a Valid Petition

OAR 137-001-00070(1) contains requirements for a valid APA petition (for example: name, address, legible and signed on behalf of petitioner). All four petitions meet these requirements.

Analysis Specific to Content of the Petitions

The Petitioners seek repeal of the MOA because they believe there was a legal error in the Commission's vote to approve the Grand Ronde MOA since the terms of two Commission members had already expired at the time of the vote. Under Oregon law, the maximum length of a commissioner's term is four years, but commissioners are authorized to hold their office until their successor is elected and qualified. Action by a commission with holdover members is not invalid.

The Petitioners also assert that the Grand Ronde MOA creates conflict with their sovereign interests, jurisdiction, and treaty-reserved rights. If not repeal, the Petitioners request that the Commission consider amending the Grand Ronde MOA to remove the Santiam and Willamette Wildlife Management Units (see Attachment 3 for maps of adopted geographic scope shown in Map #1 and Petitioner's requested amendment shown in Map #2).

The Grand Ronde MOA is an administrative agreement between the state and Grand Ronde to create hunting and fishing opportunities for members of the Grand Ronde under the state's authority. It does not create, establish, expand, or recognize any rights for the Grand Ronde. In contrast, a treaty right is the supreme law of the land. The Commission does not have the authority to determine, affirm, recognize or limit the rights or claims of any tribe – that authority exists exclusively with the federal government.

Required Analysis Under the APA

In accordance with ORS 183.390(3), the following points must be considered during review of an APA petition.

- **The continued need for the rule.** Maintaining the rule advances the government-to-government relationship between the State of Oregon and the Confederated Tribes of the
Agenda Item Summary – Petition to Repeal or, Alternatively, Amend OAR 635-800-0300 – July 11, 2025

Grand Ronde Community of Oregon. The Petitioners assert that maintaining the rule creates conflict with their sovereign interests, jurisdiction and treaty-reserved rights.

- **The nature of complaints or comments received concerning the rule from the public.** The comments received in advance of the August 4, 2023 decision to adopt these rules are substantially similar to the complaints raised by the petitions related to potential impact to federally-reserved treaty rights to fish and hunt in areas within the geographic scope of the Grand Ronde MOA. These include proposals to amend the geographic scope as suggested by the Petitioners.
- **The complexity of the rule.** The complexity of the rule does not appear to be an issue.
- **The extent to which the rule overlaps, duplicates or conflicts with other state or federal regulations and, to the extent feasible, with local government regulations.** The Petitioners assert that the rule conflicts with federally-reserved treaty rights.
- **The degree to which technology, economic conditions or other factors have changed in the subject area affected by the rule.** There has been no change in the subject area affected by the rule.
- **The statutory citation or legal basis for the rule.** The Commission has authority pursuant to ORS 496.012, 496.138 and 496.146 to authorize the issuance of opportunities to take wildlife in Oregon, and it has authority pursuant to ORS 190.110 to enter into agreements with the Grand Ronde, and other American Indian tribes. OAR 635-800-0300 is consistent with the Commission’s authority.

OPTIONS

1. Accept the petitions and direct the department to initiate rulemaking to repeal or amend OAR 635-800-0300.
2. Deny the petitions.

STAFF RECOMMENDATION

Staff recommend the Commission either accept the petitions and direct the department to initiate rulemaking to repeal or amend OAR 635-800-0300 or deny the petitions.

DRAFT MOTION:

I move to accept the petitions and direct the department to initiate rulemaking to repeal or amend OAR 635-800-0300.

OR

I move to deny the petitions.

Effective Date: July 11, 2025