

Ordinance Number 7.001. Amended by Resolution No. 84-79, dated January 15, 1984; Resolution No. 85-10, dated October 20, 1984; Resolution No. 85-19, dated October 21, 1984; Resolution No. 88-196, dated September 17, 1988; Resolution No. 90-117, dated April 21, 1991; and Resolution No. 90-155, dated June 16, 1990; Resolution No. 2005-361, dated September 16, 2005.

Original Date: August 28, 1980
Subject: Hunting, Fishing and Gathering

HUNTING, FISHING AND GATHERING ORDINANCE

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PART I

GENERAL PROVISIONS

§ 7.001 PURPOSE AND AUTHORITY

The purpose of this ordinance is to provide for regulation of the exercise of hunting, fishing and gathering rights of the Confederated Tribes of Siletz Indians of Oregon. Authority for this ordinance is Article IV, Section 1 of the Tribal Constitution, adopted June 2, 1979 and approved by the Secretary of the Interior on June 13, 1979.

§ 7.002 DEFINITIONS

(a) "Agreement" shall mean the "Agreement Among the State of Oregon, the United States of America and the Confederated Tribes of Siletz Indians of Oregon to Define Permanently

Adopted 8/28/80

Amended 1/15/84; 10/20/84; 10/21/84;
9/17/88; 4/21/90; 6/16/90; 9/16/05

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Tribal Hunting, Fishing, Trapping and Gathering Rights of the Siletz Tribe and Its Members" as declared and set forth in the final judgment and decree of the United States District Court for the District of Oregon, in the action entitled Confederated Tribes of Siletz Indians of Oregon v. State of Oregon, entered on May 2, 1980.

(b) "Committee" shall mean the Fish and Wildlife Committee established pursuant to the provisions of this ordinance.

(c) "Cultural fishing" shall mean the exercise of tribal fishing rights as set forth on page 4 of the Agreement.

(d) "Cultural hunting" shall mean the exercise of tribal fishing rights as set forth on page 7 of the Agreement.

(e) "Cultural gathering" shall mean the exercise of tribal gathering rights as set forth on page 7 of the Agreement.

(f) "Subsistence fish supply" shall mean such fish as the Tribe acquires according to the provisions set forth on page 9 of the Agreement.

(g) "Subsistence game supply" shall mean the game that the Tribe acquires according to the provisions set forth on page 9 of the Agreement.

(h) "Siletz Tribe" shall mean the Confederated Tribes of Siletz Indians of Oregon.

(i) "Tribal member" shall mean a duly enrolled member of the Tribe.

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(j) "Tribal Newsletter" shall mean the official publication of the Confederated Tribes of Siletz Indians of Oregon, entitled the Siletz News.

§ 7.003 POLICY

(a) The policy of the Siletz Tribe shall be to regulate the exercise of tribal hunting, fishing and gathering rights and to distribute subsistence fish and game supplies in order to meet the following objectives:

- (1) Preserving the cultural practices of the Siletz Tribe, with particular emphasis on education of the Tribe's young people about traditional fishing, hunting and gathering methods and customs;
- (2) Providing adequate food reserves for tribal pow-wows, meetings, celebrations and for elderly and needy tribal members;
- (3) Ensuring the opportunity for individual tribal members and families to provide for themselves by exercising tribal hunting, fishing and gathering rights.

§ 7.004 FISH AND WILDLIFE COMMITTEE

(a) Establishment and Composition.

Tribal Council hereby establishes a Fish and Wildlife Committee composed of five members. The members of the Committee shall elect from their number a

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chairperson and a secretary. The Committee shall be a standing committee, as defined in the Tribal Council Rules of Procedure.

(b) Term.

Committee members shall serve for a term of one year or until replaced by the appointment of a replacement by the Council.

(c) Duties.

Generally, the Committee shall regulate all exercise of tribal hunting, fishing and gathering rights, and the distribution of all subsistence fish and game supplies in accordance with the provisions of this ordinance. The Committee shall perform all tasks required of it by the specific provisions of this ordinance.

(d) Reports.

The Committee shall make regular written reports directly to the Tribal Council on all of its activities and the chairperson of the Committee shall report in person to the Tribal Council upon its request.

§ 7.005 **LICENSES**

(a) Required for Exercise of Tribal Rights.

Any tribal member who wishes to exercise tribal hunting, fishing or gathering rights must apply for a tribal license. The tribal member must have the license in his or her

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possession when exercising the right, as well as any tag required by other Sections of this ordinance. The license must be shown to any member of the committee, tribal staff person or State law enforcement officer upon reasonable demand if the licensee is engaged or appears to be engaged in exercise of tribal rights.

(b) Issuance.

Any tribal member may apply for a tribal license provided that he or she signs an application form stating that he or she agrees to comply fully with all provisions of this ordinance in the exercise of tribal rights, and such member is not currently suspended as provided in §7.036.

(c) Contents.

The license shall contain the member's name, photograph and enrollment number, as well as any other information required by the Committee. The license shall be a tribal identification card with an appropriate sticker indicating that the member is an approved licensee for tribal hunting, fishing, and gathering purposes.

(d) Annual Sticker.

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The Committee shall affix an annual sticker to each tribal identification card showing that the tribal member continues to be licensed in that year. Such stickers shall be provided each year to all licensees in good standing. No license shall be valid without the appropriate annual sticker.

§ 7.006 **RULES AND REGULATIONS**

The Fish and Wildlife Committee shall have the authority to set forth any rules and regulations necessary to fulfill its duties under this ordinance and see that the terms of this ordinance are properly implemented. Any rules or regulations adopted by the Committee under this Section shall be published in the Tribal Newsletter and shall not become effective for 30 days after the date of such publication.

Any action of the Committee under this Section is subject to review and modification by the Tribal Council at any time but, until such review, the Committee's action shall be controlling.

§ 7.007 **STATE RIGHTS UNAFFECTED**

Nothing in this ordinance shall be interpreted to affect or limit in any way the exercise by tribal members of hunting, fishing and gathering rights or privileges afforded to all citizens and licensees of the State of Oregon.

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PART II

CULTURAL FISHING

§ 7.008 GENERALLY

Pursuant to the Agreement, each year the Oregon Department of Fish & Wildlife shall issue 200 salmon tags to the Tribe for the cultural fishery. The purpose of this Section is to provide for the issuance of these tags by the Tribe to tribal members and the regulation of their use in accordance with the Agreement.

§ 7.009 WHO MAY ENGAGE IN CULTURAL FISHING

No person shall engage in cultural fishing except a tribal member who possesses a current tribal license and a tag issued pursuant to §7.014(b) below.

§ 7.010 SEASON

The season for cultural fishing shall be set each year by the Oregon Department of Fish & Wildlife after consultation with the Tribe. The season shall be in the fall and will last up to sixty days. The Fish and Wildlife Committee shall make a recommendation to the Tribal Council on when the season should be set. The Committee shall consult with the State. As soon as the season is set, it shall be posted in all tribal offices and made known to tribal members by appropriate means, including publication in the Tribal Newsletter.

§ 7.011 HOURS

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All cultural fishing shall take place during those regular hours set for salmon angling by the State.

§ 7.012 GEAR

- (a) All cultural fishing shall be done with the following gear only:
 - (1) "Dip net," meaning a net with a mesh size no larger than five inches (measured from the inside of one vertical knot to the outside of the opposite vertical knot) attached to a hoop no larger than four feet in diameter and attached directly to a handle (dip nets shall be attended at all times);
 - (2) "Spear," meaning a hand-propelled barbed single point device attached directly to a long shaft.
 - (3) "Gaffhook," meaning a large, strong single point hook attached directly to a handle.

§ 7.013 SITES

- (a) All cultural fishing shall take place at the following sites only:
 - (1) Euchre Creek Falls, as described in the Agreement and agreed upon with the owner of the property:
 - (2) Dewey Creek Falls, as described in the Agreement and agreed upon with the owner of the property;

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(3) Rock Creek Site, meaning that property purchased by the Tribe along Rock Creek above the City of Logsdon and commonly described as the Hatchery Property, as agreed to with the State of Oregon and described from time to time in State administrative regulation.

(b) Any use of the sites for cultural fishing by tribal members shall be during the season only and shall be subject to all provisions of any agreement between the Tribe and the owners of the site property.

§ 7.014 **TAGS**

(a) Generally.

The tribal Fish and Wildlife Committee shall distribute the tags in accordance with the provisions of this Section. The Committee may devise any application forms, information sheets, records system or other documents necessary for the implementation of this Section.

(b) Issuance.

The tags shall be issued as follows:

(1) 25 of the 200 tags shall be offered to cultural and educational classes sponsored or approved by the Tribal Council. The emphasis in these classes shall be to teach traditional methods of catching, preparing and preserving

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the catch to tribal members. All fish caught under this Section shall be reported to the Committee and shall be prepared or preserved as appropriate and distributed to elderly and needy members of the Tribe or used for tribal gatherings at the discretion of the Committee.

- (2) The remainder of the tags shall be issued upon proper application to individual, licensed tribal members on a first come first served basis beginning on a specified date which will be advertised well in advance in the tribal newsletter. Each tag so issued shall be returned at the end of the season if no fish are caught. All lost or damaged tags must be reported.

(c) Transferability.

A tag may be transferred by the tribal member to whom it was issued only to another licensed tribal member; however, the first tribal member is still responsible for returning the tag or reporting the catch within the time limits set out in this Part. Any unused tag may be turned back to the Committee for re-issuance to another licensee.

(d) Reporting catch.

Whenever a fish is caught under this ordinance, the tag shall be promptly affixed to the fish. The person's catch shall be reported to the Committee within 72 hours.

(e) Records.

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The Committee shall see that accurate records are kept of all tags issued and their return as well as the reported take.

§ 7.015 TAKING OF STEELHEAD PROHIBITED

There shall be no steelhead taken as part of the cultural fishery.

§ 7.016 NO COMMERCIAL USE

None of the fish taken under this Part shall be used for commercial purposes.

PART III

CULTURAL HUNTING

§ 7.017 GENERALLY

Pursuant to the Agreement, each year the State of Oregon shall issue 375 deer and 25 elk tags to the Tribe for cultural hunting. The purpose of this Section is to provide for the issuance of these tags by the Tribe and regulation of their use in accordance with the Agreement.

§ 7.018 WHO MAY ENGAGE IN CULTURAL HUNTING

No person shall engage in cultural hunting except a tribal member who possesses a current tribal license and a tag issued pursuant to §7.023(b) below.

§ 7.019 SEASON

The seasons for cultural deer and elk hunting shall be those prescribed by the State of Oregon for all citizens in the cultural hunting area described in §7.020 below.

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§ 7.020 CULTURAL HUNTING AREA

All cultural hunting shall take place within the State of Oregon's Stott Mountain Management Unit and that portion of the Alsea Management Unit which lies north of Oregon Highway 34 and west of Oregon Highway 223. All hunting pursuant to this ordinance shall be subject to all of the rights of private landowners and tenants under applicable state trespass laws.

§ 7.021 CONTROLLED HUNTS

If in a given year, the State prescribes a controlled deer or elk season within the cultural hunting area whereby participants must draw permits, the State shall provide permits to the Tribe, at the Tribe's option, for the controlled hunt, of up to 10% of the total controlled tags authorized for all citizens. The Fish and Wildlife Committee shall make a recommendation to the Tribal Council on how many of such permits should be requested from the State. The Committee shall distribute any tags acquired pursuant to this Section in accordance with the provisions of §7.023 below.

§ 7.022 STATE REGULATIONS TO APPLY

Weapons, antler regulations, methods of taking and other State regulations about taking shall apply to cultural hunting by tribal members, except as otherwise stated in this ordinance.

§ 7.023 TAGS

- (a) Generally.

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The Fish and Wildlife Committee shall distribute the tags in accordance with the provisions of this Section. The Committee may devise any application forms, information sheets, records systems or other documents necessary for implementation of this Section.

(b) Issuance.

The tags shall be issued as follows:

- (1) Twenty-five (25) of the deer tags shall be offered to cultural or educational classes approved by the Tribal Council. The emphasis of such classes shall be to foster traditional tribal methods of taking, preparing and preserving the game. All game taken under this Section shall be reported to the Committee as required below.
- (2) Fifteen (15) of the deer tags shall be offered to groups approved by the Tribal Council; such groups shall hunt for the Tribe and shall return all game taken to the Tribe for tribal purposes. All game taken under this Section shall be reported to the Committee as required below.
- (3) The remainder of the deer tags shall be issued upon proper application to individual tribal members on a first come first served basis beginning on a

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specified date which must be advertised in advance through the Tribal Newsletter.

- (4) The twenty-five (25) elk tags shall be issued as follows: Interested, licensed, tribal members shall register for a drawing to be conducted by the Committee. The tags shall be issued to the first 25 names drawn for use in the State's first established season; unused tags shall be issued to up to the next 25 persons drawn for use in the State's second established season.

(c) Transferability.

A tag may be transferred by the tribal member to whom it was issued only to another licensed, tribal member; however, the first tribal member is still responsible for returning the tag or reporting the game taken within the time limits set out in this Part. Any unused tag may be turned back to the Committee for re-issuance to another licensee.

(d) Reporting.

Whenever a deer or elk is taken under any provision of this ordinance, the tag shall be promptly affixed to the animal. The information listed on the tag shall be reported to the Committee within 72 hours. All unfilled tags must be returned to the

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Committee within a specified time. If the tag has been lost or damaged, the Committee must be notified.

(e) Records.

The Committee shall see that accurate records are kept of all tags issued and those returned as well as the reported take.

(f) Eligibility of Young Persons.

No hunting tag shall be issued to any young person between 12 and 18 years of age unless that person possesses a safety certificate approved by the Tribal Council. A Hunter Education Certificate issued by the State of Oregon shall meet this requirement. The person must have the certificate in his possession while hunting on property other than that owned or leased by his parents or guardians.

§ 7.024 **NO COMMERCIAL USE**

No game taken under this Party shall be used for commercial purposes.

PART IV

SUBSISTENCE SUPPLY

§ 7.025 **SUBSISTENCE SUPPLY**

(a) Generally.

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Pursuant to the Agreement, the Tribe has the right to receive up to 4,000 pounds annually of surplus salmon carcasses from the State of Oregon.

(b) Selection.

The Fish and Wildlife Committee shall, at its option, participate in the final selection of the fish, after the State has determined which are available for the Tribe.

(c) Pickup.

The Committee shall be responsible for pickup of salmon carcasses at the locations designated by the State pursuant to the Agreement.

(d) Storage and Preservation.

The Committee shall arrange for storage and preservation of the fish and shall make every effort to utilize tribal resources and assistance of tribal members in the latter.

(e) Distribution.

The Committee shall distribute the subsistence fish for tribal purposes as determined by the Tribal Council.

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§ 7.026 SUBSISTENCE GAME SUPPLY

(a) Generally.

Pursuant to the Agreement, the State of Oregon shall make available to the Tribe, at the Tribe's option, a substantial portion of the deer and elk carcasses received by State agencies in Lincoln County. The State shall promptly advise the Tribe of available carcasses.

(b) Pickup.

The Fish and Wildlife Committee shall be responsible for deciding whether available carcasses are acceptable, and for pickup if so decided.

(c) Storage and Preservation.

The Committee shall arrange for storage and preservation of the game and shall make every effort to utilize tribal resources and assistance of tribal members in the latter.

(d) Distribution.

The Committee shall distribute subsistence game for tribal purposes as determined by the Tribal Council.

(e) No Commercial Use.

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None of the fish or game acquired pursuant to this Part shall be used for commercial purposes.

PART V

GATHERING

§ 7.027 GENERALLY

The Tribe and its members have the right to gather eels (lampreys), seaweed and fresh water mussels within Lincoln County for non-commercial uses subject to the State's right to regulate for conservation purposes. In addition, the Tribe may request the State to issue special gathering permits to the Tribe for sea anemones, rock oysters, and saltwater mussels within Lincoln County. It is traditional and customary for gathering by tribal members to take place at night as well as during the day and nothing in this ordinance shall be construed to limit gathering hours in any way.

§ 7.028 EELS, SEAWEED AND FRESH WATER MUSSELS

No tags shall be required for the gathering of eels, seaweed or fresh water mussels within Lincoln County. However, a tribal member exercising the tribal right to gather these must have a current, valid tribal license in his or her possession. The Tribe reserves the right to regulate gathering under this Section for conservation purposes. Any such regulations shall be published in the Tribal Newsletter before becoming effective.

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§ 7.029 SEA ANEMONES, ROCK OYSTERS AND SALTWATER MUSSELS

(a) Special Gathering Permits.

The Fish and Wildlife Committee shall make recommendations to the Tribal Council regarding the special gathering permits to be requested from the State, including the number of permits, quantity of animals to be harvested, size limits, gear, degree of allowable removal and area of harvest.

(b) Information.

Upon issuance of the permits by the State, the Committee shall announce and make known to tribal members the provisions of the permits.

(c) Tags and Licenses.

A tribal tag shall be required for gathering under a special gathering permit. Tags shall be issued by the Committee according to the needs of the Tribe and individual members. A tribal member exercising the tribal right to gather under the permit must have a current, valid tribal license in his or her possession.

(d) Reporting.

Tribal members gathering under special gathering permits must report catch to the Committee within 72 hours on a form to be provided by the Committee.

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(e) Records.

The Committee shall keep accurate, current records concerning the number of animals taken under this Section.

§ 7.030 **NO COMMERCIAL USE**

None of the animals or plants gathered under this Part shall be used for commercial purposes.

§ 7.031 **RELATIONSHIP TO STATE LAW**

A valid tribal license issued pursuant to the Agreement may be used in lieu of any personal use state license that may be required for such gathering of the above listed species and clams.

PART VI

VIOLATIONS AND ENFORCEMENT

§ 7.032 **RELATIONSHIP TO STATE LAW**

Any tribal member shall be subject to state regulation under state law if (1) the tribal member does not have a valid tribal license and a valid applicable tag in his or her possession, (2) a tribal member has not properly filled out a tag and affixed it to the animal, or (3) a tribal member has not complied with all other state tagging, possession and transportation regulations not inconsistent with the Agreement.

§ 7.033 **VIOLATIONS**

(a) Any failure to meet any requirements of this ordinance shall be a violation.

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(b) Any tribal member aware of a violation shall report it to the Fish and Wildlife Committee. Failure to report such violation shall, itself, be deemed a violation.

§ 7.034 NOTICE OF VIOLATIONS

The Committee shall notify the tribal member that a violation has been reported regarding him or her. The notice shall include a statement of the facts constituting the violation and the possible penalties. The notice shall also include the date, time and place of the Committee's next meeting and shall inform the tribal member that he or she has the right to have a hearing before the Committee and may submit any statement or evidence, including witnesses, on his or her behalf at that meeting, either in writing or in person. The notice shall also inform the member of the right to be represented by counsel at his or her own expense at the meeting.

§ 7.035 CONSIDERATION BY COMMITTEE

The Fish and Wildlife Committee shall consider the facts and nature of the alleged violation and shall consider all reliable evidence regarding it. The Committee shall make its finding regarding the violation in writing with supporting reasons.

§ 7.036 PENALTIES

(a) If the Committee finds that the tribal member has committed a violation of this Ordinance, it shall impose the following penalties:

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- (1) For a first violation, forfeiture of the fish or game wrongfully taken and suspension of license privileges from thirty (30) days up to (6) months;
- (2) For a second violation, forfeiture of the fish or game wrongfully taken and suspension of license privileges from six (6) months up to one (1) year;
- (3) For a third violation, forfeiture of the fish or game wrongfully taken and mandatory suspension of license privileges for one (1) year.
- (4) After the expiration of the mandatory suspension period, a tribal member may petition the Committee for issuance of a new license pursuant to §7.005 of this Ordinance.
- (5) Upon receipt of a petition for issuance of a new license pursuant to subsection (4), the Committee shall conduct a hearing to decide whether to grant the license. Information the Committee may consider in reaching its decision shall include, but is not limited to: the seriousness of the previous violations; any subsequent violations, whether tribal, state, or federal; compliance with other conditions and penalties imposed previously by the Committee; changed attitude of the tribal member towards his or her hunting and fishing responsibilities.

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(6) If, after consideration of the petition for issuance of a new license, the Committee decides to deny the petition, the mandatory suspension of license privileges shall continue for an additional one (1) year period. A new petition for issuance of a tribal license under this section may be submitted after the end of any additional revocation period.

(b) The Committee may, in its discretion and after consideration of the evidence, impose additional conditions and penalties for any violation of this Ordinance. Such conditions include, but are not limited to: attendance at a certified hunter education class; community service obligation connected to the violation such as habitat improvement or presentation and preparation of illegally taken fish or game; or attendance in an alcohol or drug treatment program.

(c) The tribal member who has violated this Ordinance and upon whom additional conditions under this subsection have been imposed shall submit written documentation to the Committee evidencing compliance with the conditions. This documentation shall be submitted before the end of the license suspension or revocation period.

(d) If the conditions imposed under this subsection have not been complied with, the Committee shall have authority to extend the original license suspension or revocation for a time period not to exceed the original suspension or revocation penalty.

(e) If the Committee makes a finding that the tribal member has committed three (3) or

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more violations of this ordinance in the ten year time period preceding the member's most recent violation, the Committee shall permanently revoke the member's tribal hunting, fishing and gathering privileges under this ordinance in the absence of a showing of special circumstances why such permanent revocation should not occur.

§ 7.037 APPEAL

A decision of the Fish and Wildlife Committee may be appealed to the Tribal Court under the Rules of Appellate Procedure. The decision of the Tribal Court shall be final.

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