



4310-EJ

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 2

[NPS-WASO-AILO-15846; PCU00RP14.R50000, PPWOCRADI0]

RIN 1024-AD84

Gathering of Certain Plants or Plant Parts by Federally Recognized Indian Tribes for Traditional Purposes

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service proposes to authorize agreements between the National Park Service and federally recognized Indian tribes to allow the gathering and removal of plants or plant parts by designated tribal members for traditional purposes. The agreements would facilitate continuation of tribal cultural traditions on traditionally associated lands that are now included within units of the National Park System without a significant adverse impact to park resources and values. The proposed rule respects tribal sovereignty and the government-to-government relationship between the United States and the tribes, and would provide system-wide consistency to this aspect of National Park Service-tribal relations. The proposed rule would provide opportunities for tribal youth, the National Park Service, and the public to understand tribal traditions.

DATES: Comments must be received by [INSERT DATE 90 DAYS AFTER DATE OF

PUBLICATION IN FEDERAL REGISTER]. Comments on the information collection requirements must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit your comments, identified by Regulation Identifier Number (RIN) 1024-AD84, by any of the following methods:

- Federal Rulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: National Park Service, Joe Watkins, Office of Tribal Relations and American Cultures, 1201 Eye Street NW, Washington, DC 20005
- All submissions received must include the agency name and RIN. For additional information see **Public Participation** under **SUPPLEMENTARY INFORMATION**.
- Send your comments and suggestions on the information collection requirements to the Desk Officer for the Department of the Interior at OMB-OIRA at (202) 395-5806 (fax) or OIRA_Submission@omb.eop.gov (email). Please provide a copy of your comments to the Information Collection Clearance Officer, National Park Service, 1849 C Street, NW, Washington, DC 20240 (mail); or madonna_baucum@nps.gov (email). Please reference “1024-AD84” in the subject line of your comments. You may review our Information Collection Request online at *http://www.reginfo.gov*. Follow the instructions to review Department of the Interior collections under review by OMB.

FOR FURTHER INFORMATION CONTACT: National Park Service, Joe Watkins, Office of Tribal Relations and American Cultures, 1201 Eye Street NW, Washington, DC 20005, 202-354-2126, joe_watkins@nps.gov.

SUPPLEMENTARY INFORMATION:

Background

The National Park Service (NPS) has a unique relationship with Indian tribes that is strengthened by a shared commitment to stewardship of the land and resources. This relationship is augmented by the historical, cultural, and spiritual relationships that Indian tribes have with the park lands and resources with which they are traditionally associated.

Indian tribes practiced their traditional harvests of plants and plant parts on or from lands that are now included in units of the National Park System long before the arrival of the European settlers. Much of this activity was prohibited upon the promulgation of 36 CFR Part 2 in 1983. The fundamental purpose of the proposed rule is to lift this prohibition and allow for gathering and removal of traditional plants or plant parts while ensuring there is no significant adverse impact to park resources and values. The proposed rule would also provide opportunities for tribal youth, the NPS, and the public to understand tribal traditions.

The NPS is responsible for managing all units of the National Park System in such a manner and by such means as will leave them unimpaired for future generations. Park managers are given the discretion to manage public use within the parks in a manner that ensures that there is no impairment.

Managing the various areas of the National Park System in a manner that helps tribes maintain their cultural traditions and relationships with the land may contribute to the protection and stewardship of such areas. The sustainable uses envisioned by the proposed rule would approximate some part of the pre-existing, pre-European environment of the park and thus would not be considered to be consumptive use. The proposed rule would provide a recognized exception to current regulations by offering resource and location-specific agreements between the NPS and federally recognized Indian tribes to gather and remove plants or plant parts for

traditional purposes.

Cooperation in the continuation of tribal traditions is at the heart of this proposed rule change. The NPS has a long history of encouraging Indian arts and crafts in national parks for the education and enjoyment of the public, and to support the continued practice of cultural traditions. The teaching and sharing of tribal traditions associated with national parks is an important part of the NPS mission. The proposed rule would provide new opportunities for the NPS and tribal governments to work together in support of the continuation of sustainable Indian cultural traditions that make up a unique and irreplaceable part of our national heritage.

Limited gathering by hand of certain renewable natural resources has been allowed by the NPS for more than 50 years. See 36 CFR 1.2(c) (1960) (authorizing hand picking and eating of designated native fruits and berries). In 1966, the NPS expanded this authority for NPS recreation areas, authorizing the gathering and collection of reasonable quantities of natural, renewable products (e.g. seashells, fruits, berries, driftwood, and marine deposits of natural origin) for personal, non-commercial use.(31 FR 16651, December 29, 1966).

Existing NPS regulations at 36 CFR 2.1(c), promulgated in 1983, allow for the personal consumption of “fruits, berries, nuts, or unoccupied seashells” by the general public, subject to certain conditions. The proposed rule would be an additional form of gathering, but would be limited to only members of federally recognized Indian tribes that have traditional associations with specific park areas and resources and that wish their members to be able to gather and remove plants or plant parts within those park areas for traditional uses.

Existing NPS regulations at 36 CFR 2.1(d) do not allow tribes or tribal members to gather plants or plant parts on parklands for traditional purposes except where specific statutes or treaties grant rights to do so. However, traditional tribal gathering and removal occurred in many

areas that are now part of the National Park System. The proposed rule would provide an orderly and consistent process for such gathering and removal by authorizing agreements between the NPS and federally recognized Indian tribes to gather and remove plants or plant parts for traditional purposes.

In designing the proposed rule, the NPS has applied principles used by Congress when it has addressed the issue of tribal gathering, usually in the context of establishing new units of the National Park System or establishing new management systems within existing units. For instance, the enabling legislation for El Malpais National Monument, New Mexico, states: “In recognition of the past use of portions of the monument and the conservation area by Indian people for traditional cultural and religious purposes, the Secretary shall assure nonexclusive access to the monument...by Indian people for traditional cultural and religious purposes, including the harvesting of pine nuts.” (Pub. L. 100-225, 101 Stat. 1548). In this and other cases, Congress has provided for gathering on parklands by traditionally associated Indian tribes for traditional purposes that predate the establishment of the park. It is, however, impractical to seek specific legislative language for each unit of the National Park System in which there were individual tribal traditional uses.

In the 20 years since Indian tribes brought the issue of gathering to the attention of NPS leadership, studies in the fields of ethnobotany, traditional plant management, and consideration of traditional ecological knowledge in scientific symposia and scholarly gatherings have increased greatly. Research has shown that traditional gathering, when done with traditional methods and in traditionally established quantities, does not impair the ability to conserve plant communities and can help to conserve them, thus supporting the NPS conclusion that cooperation with Indian tribes in the management of plant resources is consistent with the

preservation of national park lands for all American people. This concept is incorporated into *National Park Service Management Policies 2006* at Section 4.2.1, which directs the NPS to inventory, monitor, and research traditional knowledge and authorizes the NPS to support studies designed to “understand the ceremonial and traditional resource management practices of Native Americans...” The NPS and tribal governments can draw on this research and may conduct further research to ensure that traditional tribal gathering and removal does not have a significant adverse impact on park resources and values. To the extent that it is appropriate, park visitors can learn about the cultures associated with traditional tribal gathering practices. The proposed rule would require that environmental reviews and further studies be undertaken, as needed, prior to entering into agreements that would allow gathering and removal in national park units. These environmental reviews would include consulting with other, nearby tribes, especially those tribes that may also have traditional associations with those park units.

Authority

Authority for the proposed rule is the statute commonly known as the NPS Organic Act of 1916, as amended. The NPS Organic Act created the NPS and defined its purpose by stating that the NPS shall promote and regulate the use of the National Park System by means and measures that conform to the fundamental purpose of the System units, which purpose is to conserve the scenery, natural and historic objects, and wild life in the System units and to provide for the enjoyment of the scenery, natural and historic objects, and wild life in such manner and by such means as will leave them unimpaired for the enjoyment of future generations. (54 U.S.C. 100101)

The Organic Act further authorizes the Secretary of the Interior to make “such regulations as the Secretary considers necessary or proper for the use and management of

[National Park] System units.” (54 U.S.C. 100751(a)).

The proposed rule would authorize the NPS to enter into agreements with federally recognized Indian tribes to allow for the gathering and removal of plants or plant parts for traditional purposes. The proposed rule is intended to continue Indian tribal cultural traditions that are rooted in the history of specific parks.

Government-to-Government Relationship with Indian Tribes

In accordance with the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951); Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments,” of November 6, 2000; President Obama’s Executive Memorandum on Tribal Consultation of November 5, 2009; Department of the Interior Secretarial Order No. 3317 of December 1, 2011, and Department of the Interior Departmental Manual Part 512, “American Indian and Alaska Native Programs;” we have evaluated the potential effects on federally recognized Indian tribes and have determined that this proposed rule would have direct tribal implications.

Tribal consultation

Six tribal consultation meetings were held in the “Lower 48” to consult with Indian tribes on this proposed rule. Locations in or near units of the National Park System where gathering by tribal members has been discussed over the years were selected in consultation with Indian tribes and NPS regional and park staff. One hundred and fifty representatives from 50 tribes attended meetings held from May through July 2010, in Bar Harbor, Maine; Flagstaff, Arizona; Pipestone, Minnesota; Yurok, California; Suquamish, Washington; and Cherokee, North Carolina. An additional meeting was held at Pipestone, Minnesota, in September 2010. Staff in Alaska contacted more than 70 federally recognized Indian tribes traditionally associated with parks in

Alaska. Consultation then occurred with those tribes that requested it. Additionally, general presentations were given at two statewide conventions: the Alaska Tribal Leaders Summit in Fairbanks during the annual meetings of the Alaska Federation of Natives in October 2010 and at the annual Bureau of Indian Affairs Providers Conference in Anchorage in December 2010. A conference call with traditional elders and tribal people not representing tribal governments was also conducted in June 2010 at the request of Arvol Looking Horse, Keeper of the Sacred White Buffalo Calf Pipe of the Lakota, Dakota, and Nakota Nation of the Sioux. Park managers and staff also attended these consultation meetings and participated in the discussions. The major concerns of representatives of tribal governments and the NPS are summarized and addressed here.

Gathering to be limited to members of federally recognized Indian tribes

Tribal representatives expressed support for the concept that only members of federally recognized Indian tribes be allowed to gather and remove park resources for traditional purposes. The proposed rule limits gathering and removal to members of an Indian tribe or Alaska Native tribe, band, nation, pueblo, village or community that the Secretary of the Interior acknowledges to exist as an Indian tribe under the Federally Recognized Tribe List Act of 1994, 25 U.S.C. 479a. This provision will limit gathering and removal to members of Indian tribes with which the United States has a government-to-government relationship. The proposed rule provides avenues for cooperative NPS-tribal government oversight of member activities on park lands to ensure that traditional gathering and removal remains sustainable with no significant adverse impacts to park resources and values, consistent with NPS Management Policies 2006, 8.2.

Gathering to be limited to those Indian tribes traditionally associated with specific park lands

A central purpose of the proposed rule is to support the continuation of Indian cultural

traditions on lands that are now administered as units of the National Park System. The proposed rule would apply only to those Indian tribes traditionally associated with specific park units. The concept of acknowledging and respecting the special and longstanding connections that Indian tribes have with parklands prior to the establishment of park units is specifically described in NPS Management Policies 2006, 1.11.

Government-to-Government agreements

The NPS and tribal representatives expressed support for agreements between tribal governments and the NPS to establish the conditions for gathering in park units. These agreements would respect both tribal sovereignty and NPS authority to manage park resources. These agreements would authorize traditional tribal gathering in ways that could be administered flexibly to respond to local resource concerns. The participating tribal government would be responsible for designating which tribal members would be allowed to gather in accordance with the terms and conditions set forth in the agreement.

Park resource protection

Tribal representatives expressed deep concern for the long-term health of park ecosystems. Reminding the NPS of their long history of productive and protective relationships with such ecosystems, they expressed willingness to accept limitations on gathering to protect park resources. The NPS and tribal representatives are interested in jointly developing park specific plant gathering management plans to ensure the long-term health of any park resource that may be gathered.

Respect for tribal cultural traditions

Tribal representatives stressed that each Indian tribe is unique, and that tribal agreements entered into under the proposed rule should allow for traditional cultural practices specific to

each tribe.

Traditional gathering needs may be site-specific to national park land

Some national park units contain places where tribal members historically have gathered plant resources. Using a particular gathering site within a national park unit may be vital to the continuation of a cultural tradition that cannot be met at locations outside the park, or even at alternative locations within it. Thus, even though some plant materials may be available outside park lands, tribal members may still reasonably desire to gather at traditionally significant locations inside a park unit. The rationale for in-park gathering of materials available outside park boundaries needs to be documented on a case-by-case basis as outlined in § 2.6(d) of the proposed rule. The information used to make this determination may be subject to peer review by qualified specialists from both the tribal and academic communities.

Collaborative research and administration

Tribal representatives expressed the desire to work with the NPS to create and maintain the knowledge base needed to manage gathering and removal and to leave park resources unimpaired for future generations. This would include joint research and monitoring, training programs for tribal members and park staff, and ongoing consultation regarding park resources.

Relationship of the Proposed Rule to Existing Regulations

Existing NPS regulations, promulgated in 1983, prohibit “possessing, destroying, injuring, defacing, removing, digging, or disturbing from its natural state” living or dead wildlife or fish, plants, paleontological specimens, or mineral resources, or the parts or products of any of these items, except as otherwise provided in NPS regulations. The proposed rule, to be codified at 36 CFR 2.6, would be consistent with this general prohibition. It would provide a recognized exception to current regulations by authorizing resource- and location-specific agreements

between the NPS and federally recognized Indian tribes to gather and remove plants or plant parts for traditional purposes.

Gathered plants or plant parts, as envisioned under this proposed rule, are not meant to be used for “benefits sharing,” which allows for commercial use of the results of research on material collected in a park area under a specimen collection permit under 36 CFR 2.5. See NPS Management Policies 2006, 4.2.4.

The proposed rule would leave in place 36 CFR 2.1(c)(1), which allows a park Superintendent to authorize gathering of designated fruits, berries, nuts, or unoccupied seashells by all park visitors, subject to certain conditions. The proposed rule would amend section 2.1(d), which currently states that 36 CFR 2.1 “shall not be construed as authorizing the taking, use or possession of fish, wildlife, or plants for ceremonial or religious purposes, except where specifically authorized by Federal statutory law, treaty rights or in accordance with § 2.2 (wildlife protection) or § 2.3 (fishing).” The proposed rule would permit the gathering and removal of plants or plant parts for traditional purposes under specific tribal agreements, but would not alter the prohibition on taking fish or wildlife for such purposes.

NPS units in Alaska

Title 36 CFR 13.35 regulates the gathering and collection of natural products in many of the National Park System units in Alaska, and allows for the limited gathering of a wider range of natural products than are included in the proposed rule. Except for the park areas listed in § 13.35(a), § 13.35(c) permits gathering, by hand and for personal use only, of renewable resources such as natural plant food items (e.g. fruits, berries, and mushrooms) that are not threatened or endangered species; driftwood and uninhabited seashells; and plant materials and minerals that are essential to the conduct of traditional ceremonies by Native Americans.

Therefore, the proposed rule would have no discernable effect upon National Park System units in Alaska where § 13.35(c) applies. The proposed rule would apply to the park units in Alaska listed in § 13.35(a) and to parks in the contiguous United States. The proposed rule would not address subsistence issues authorized in Alaska by 36 CFR 13.400-13.495.

Section-by-Section Analysis

§ 2.1(d) Authorization of agreements

The proposed rule would remove the existing prohibition on the taking, use, or possession of plants or plant parts, provided such taking, use or possession was done under an agreement described in this rule. The proposed rule would have no effect on existing statutory or treaty rights, or on the taking of wildlife or fish.

§ 2.6(a) Definitions

The rule proposes to define the following terms for use in this section: Indian tribe, Traditional association, Traditional purpose, and Tribal official.

§ 2.6(b) Agreements between the NPS and Indian tribes

The proposed rule would authorize agreements allowing and regulating tribal gathering and removal of plants or plant parts for traditional purposes in park units where such gathering and removal have not been specifically authorized by Congress. The agreements would explicitly recognize the special government-to-government relationship between Indian tribes and the United States, and would be based upon mutually agreed upon terms and conditions subject to the requirements of § 2.6(d). The agreements would serve as the framework under which the NPS would allow tribal gathering and removal and would be implemented by an accompanying permit under § 1.6, which would authorize the gathering and removal activities.

§ 2.6(c) Tribal request

The NPS would respond to a request from the appropriate tribal official expressing interest in entering into an agreement for gathering and removal based on tribal traditional association with the park unit, and on the continuation of tribal cultural traditions on park land. The tribal request would include a description of the traditional association that the Indian tribe has to the park area, a brief explanation of the traditional purposes to which the gathering and removal activities will relate, and a description of the gathering and removal activities that the Indian tribe is interested in conducting.

The NPS believes that under existing law it can protect sensitive or confidential information submitted by tribes (see e.g., 54 U.S.C. 307103).

§2.6(d) Criteria for entering into agreement

The proposed rule would require the Superintendent to determine that the proposed gathering is a traditional use of the park area by the Indian tribe, analyze any potential impacts of the proposed gathering in accordance with the National Environmental Policy Act and other applicable laws, and document a determination that the proposed gathering and removal will not result in a significant adverse impact (i.e., make a Finding of No Significant Impact (FONSI)), and is consistent with the requirements of other applicable laws and regulations.

§ 2.6(e) Denial of request to enter into agreement

The proposed rule would require the NPS to deny a request to enter into an agreement if sufficient information does not exist to demonstrate the Indian tribe's traditional association or the traditional purposes for which the park resource would be gathered and removed, or if the analyses required by § 2.6(d) indicate significant adverse impacts to park resources or values.

§ 2.6(f) Contents of agreements

The proposed rule outlines the required contents of agreements in detail. According to the

terms of the agreement, the NPS would authorize the tribal government to manage gathering and removal by tribal members subject to the conditions of the agreement. The agreement could operate in a variety of ways, but, at a minimum, it would require that the tribal government identify who within the tribe is designated to gather and remove; how such individuals will be identified; what plants or plant parts may be gathered and removed; and limits on size, quantities, seasons, or locations where the gathering and removal may take place.

Agreements would also establish NPS-tribal protocols for monitoring park resources subject to gathering and removal operating protocols, and remedies for noncompliance in addition to those set out in the proposed rule. In the case of noncompliance by members of the tribe, the NPS would initially apply these agreed-upon remedies and, if warranted, seek prosecution of specific violators, prior to terminating the agreement. This section also provides for any special conditions unique to the park unit or tribal tradition that may be included within the scope of existing law.

§ 2.6(g) Regional office concurrence

The proposed rule would require the Regional Director to approve an agreement entered into under the proposed rule.

§2.6(h) Closure

The proposed rule would provide for closures and restrictions on gathering and removal when necessary to provide for public health and safety or protect park resources and values, after providing appropriate public notice under §1.7 (Public notice).

§2.6(i) Termination or suspension

The proposed rule would provide for suspension or termination of an agreement where terms or conditions are violated or unanticipated or significant impacts occur. The

Superintendent would be required to prepare a written determination justifying the action. A termination would be subject to the concurrence of the Regional Director. Termination of an agreement would be based on factors such as careful analysis of impacts on park resources and the effectiveness of NPS-tribal agreement administration.

§2.6(j) Prohibitions

Gathering and removal are prohibited, except as authorized under this regulation, or as otherwise authorized by Federal statute, treaty, or another NPS regulation. Any gathering and removal done under this regulation must be done according to the provisions of the applicable agreement and permit.

Relationship of the Proposed Rule to Proposed U.S. Forest Service Regulations

On July 31, 2014, the United States Forest Service (USFS) published a proposed rule in the Federal Register (79 FR 44327) to implement section 8105 of the Food, Conservation, and Energy Act of 2008 (Farm Bill). The USFS proposed rule would authorize Regional Foresters or designated Forest Officers to provide trees, portions of trees, or forest products to Indian tribes free of charge for noncommercial traditional and cultural purposes. The rule would require federally-recognized Indian tribes seeking products under the Farm Bill authority to submit a written request to the USFS for free use. The rule encourages tribal officials making the requests to explain their requests to the Regional Forester or designated Forest Officer, and, if necessary, how the requests fit a noncommercial traditional and cultural purpose. The comment period for the USFS rule closed on September 29, 2014.

The NPS recognizes that a federally-recognized tribe may have a traditional association with an NPS unit that is adjacent to USFS lands. This tribe may seek to gather and remove natural products from the NPS and adjacent USFS lands for the same traditional or cultural

purpose. In these circumstances, tribal officials would need to enter into an agreement with the NPS and obtain an NPS permit to gather and remove plants or plant parts from the NPS lands; and submit a written request to the USFS to remove trees, portions of trees, or forest products from the adjacent USFS lands.

The NPS and USFS have distinct statutory mandates and authorities that result in separate regulations and policies that govern the resources they manage. As a result, the process for removing plants and plant parts from NPS lands will be governed by regulations that are separate from the regulations that will govern the removal of trees, portions of trees, or forest products from USFS lands. The NPS seeks comment about how the NPS and the USFS can coordinate their separate processes for requesting approval to remove natural products from the respective lands they administer, in the circumstances described above. In particular, the NPS seeks comment on ways the NPS proposed rule can better align with the USFS proposed rule – for example, how a joint or coordinated permitting process between the two agencies would impact paperwork burden and regulatory compliance.

Compliance with Other Laws, Executive Orders, and Department Policy.

Regulatory Planning and Review (Executive Orders 12866 and 13563).

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that

reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (RFA).

This rule will not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). This certification is based on information contained in the report titled, “Cost-Benefit and Regulatory Flexibility Analyses” available for review at http://www.nps.gov/tribes/proposed_rule.htm.

Small Business Regulatory Enforcement Fairness Act (SBREFA).

This rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. This rule:

- (a) Does not have an annual effect on the economy of \$100 million or more.
- (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This determination is based on information from “Cost-Benefit and Regulatory Flexibility Analyses” available for review at http://www.nps.gov/tribes/proposed_rule.htm.

Unfunded Mandates Reform Act (UMRA).

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or

unique effect on State, local or tribal governments or the private sector. It addresses use of NPS lands only. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630).

This rule does not effect a taking of private property or otherwise have taking implications under Executive Order 12630. A takings implication assessment is not required.

Federalism (Executive Order 13132).

Under the criteria in Executive Order 13132, the rule does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement. This proposed rule only affects use of NPS administered lands. It has no outside effects on other areas. A Federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988).

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all proposed rules be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all proposed rules be written in clear language and contain clear legal standards.

Consultation with Indian tribes (Executive Order 13175 and Department policy).

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175, and have identified direct tribal implications.

Accordingly, we have consulted with tribes on a government-to-government basis as detailed previously in this preamble.

Paperwork Reduction Act (PRA).

This proposed rule contains a collection of information that we have submitted to the Office of Management and Budget (OMB) for review and approval under the PRA of 1995 (44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

An Indian tribe that has a traditional association with a park area may request that we enter into an agreement with the tribe for gathering and removal from the park area of plants or plant parts for traditional purposes. The agreement will define the terms under which the Indian tribe may be issued permits that will designate the tribal members who may gather and remove plants or plant parts within the park area in accordance with the terms and conditions of the agreement and the permit. We collect the following information:

Initial Written Request from an Indian Tribal Official

The request must include:

- (1) An explanation of the traditional association that the Indian tribe has to the park area;
- (2) An explanation of the traditional purposes to which the gathering activities will relate;

and

- (3) A description of the gathering and removal activities that the Indian tribe is interested in conducting.

Agreement with Indian Tribes

To make determinations based upon these requests or to enter into agreements, we may need to collect information from those Indian tribes who make requests and from the specific

tribal members, who are proposed to participate in the authorization, including:

(1) A description of the system to be used to administer gathering and removal, including a clear means of identifying appropriate tribal members who, under the permit, are designated by the Indian tribe to gather and remove and a means for the tribal government to keep the NPS regularly informed of which tribal members are the current gathering and removal designees of the Indian tribe;

(2) A description of the specific plants or plant parts that may be gathered and removed;

(3) Specification of the size and quantity of the plants or plant parts that may be gathered and removed;

(4) Identification of the times and locations at which the plants or plant parts may be gathered and removed;

(5) Identification of the methods that may be used for gathering and removal;

(6) Protocols for monitoring gathering and removal activities;

(7) Operating protocols and additional remedies for noncompliance with the terms of the agreement; and

(8) Key officials.

Title: Gathering of Certain Plants or Plant Parts by Federally Recognized Indian Tribes for Traditional Purposes, 36 CFR 2.

OMB Control Number: 1024-XXXX.

Service Form Number: None.

Type of Request: Request for a new OMB Control Number.

Description of Respondents: Indian tribes.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Estimated Number of Respondents: 20.

ACTIVITY	ESTIMATED NO. OF ANNUAL RESPONSES	COMPLETION TIME PER RESPONSE (hours)	ESTIMATED TOTAL ANNUAL BURDEN HOURS
Initial written request from an Indian tribal official	20	4	80
Agreement with Indian Tribes	5	20	100
Total	25		180

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of this information collection, including:

- (1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- (2) The accuracy of our estimate of the burden for this collection of information;
- (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and
- (4) Ways to minimize the burden of the collection of information on respondents.

Send your comments and suggestions on this information collection by the date indicated in the DATES section to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or OIRA_Submission@omb.eop.gov (e-mail). Please provide a copy of your comments to the Information Collection Clearance Officer, National Park Service, 1849 C Street, NW, Washington, DC 20240 (mail); or madonna_baucum@nps.gov (email). Please reference “1024-AD84” in the subject line of your comments.

National Environmental Policy Act (NEPA).

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the NEPA 1969 is not required because the rule is covered by a categorical exclusion. The Department of the Interior Regulations for implementing NEPA at 43 CFR 46.210(i) allow for the following to be categorically excluded: policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.”

The NPS has determined that the environmental effects of this rule are too broad, speculative, or conjectural for a meaningful analysis. In order to enter into an agreement for gathering of natural products under the rule, the NPS would first need to receive a request from an appropriate tribal official. While there are a number of Indian tribes that may qualify for an agreement under the rule, the NPS can only speculate at this point as to which Indian tribes will request an agreement, which park units will be affected, and what specific resources specific Indian tribes will request to collect. Because of this, the NPS has explicitly required that each agreement will undergo its own NEPA analysis, on a case-by-case basis. No collection of plants or plant parts would occur under this rule until after a site-specific NEPA analysis is completed.

The NPS has also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

Effects on the Energy Supply (Executive Order 13211).

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

Clarity of this rule.

The NPS is required by Executive Orders 12866 (section 1(b)(12) and 12988 section 3(b)(1)(B)) and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the proposed rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Drafting Information.

The primary authors of this proposed rule were Patricia L. Parker, Chief, American Indian Liaison Office; Frederick F. York, Regional Anthropologist, Pacific West Region; and Philip Selleck, Associate Regional Director for Operations, National Capital Region.

Public Participation.

All submissions received must include the agency name and docket number or Regulation Identifier Number (RIN), 1024-AD84, for this rulemaking. All comments received will be posted without change to *www.regulations.gov*.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment –

including your personal identifying information – may be made publically available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

For access to the docket to read background documents or comments received, go to www.regulations.gov and enter 1024-AD84 in the search box.

List of subjects in part 2

National parks, Native Americans, Natural resources

For the reasons given in the preamble, the National Park Service proposes to amend 36 CFR Part 2 as follows:

PART 2 – RESOURCE PROTECTION, PUBLIC USE AND RECREATION

1. The authority citation for Part 2 continues to read as follows:

Authority: 54 U.S.C. 100101, 100751, 320102.

2. In § 2.1, revise paragraph (d) to read as follows:

§ 2.1 Preservation of natural, cultural and archeological resources.

* * * * *

(d) This section shall not be construed as authorizing the taking, use, or possession of fish, wildlife, or plants, except for the gathering and removal for traditional purposes of plants or plant parts by members of an Indian tribe under an agreement in accordance with § 2.6, or where specifically authorized by Federal statutory law, treaty rights, or in accordance with § 2.2 or § 2.3.

* * * * *

3. Add § 2.6 to read as follows:

§ 2.6 Gathering of plants or plant parts by federally recognized Indian tribes.

(a) *What terms do I need to know?* The following definitions apply only to this section.

Indian tribe means an American Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe under the Federally Recognized Tribe List Act of 1994, 25 U.S.C. 479a.

Traditional association means a longstanding relationship of historical or cultural significance between an Indian tribe and a park area predating the establishment of the park area.

Traditional purpose means a customary activity or practice that is rooted in the history of an Indian tribe and is important to the continuation of that tribe's distinct culture.

Tribal official means an elected or duly appointed official of the federally recognized government of an Indian tribe authorized to act on behalf of the tribe with respect to the subject matter of this regulation.

(b) *How will the Superintendent authorize gathering and removal?* Upon the request of an Indian tribe that has a traditional association with a park area, the Superintendent may negotiate and enter into an agreement with the tribe to authorize the gathering and removal from the park area of plants or plant parts for traditional purposes. This agreement will define the terms and conditions under which the tribe may be issued permits that designate members who may gather and remove plants or plant parts within the park. The agreement will be implemented through permits, which the Superintendent will issue under § 1.6 of this chapter.

(c) *How can a tribe request to enter into an agreement?* An Indian tribe's request to enter into an agreement under this section must be submitted to the Superintendent by a tribal official and must contain:

- (1) An explanation of the Indian tribe's traditional association to the park area;
- (2) An explanation of the traditional purposes to which the gathering activities will relate;

and

(3) A description of the gathering and removal activities that the tribe is interested in conducting.

(d) *What are the criteria for entering into agreements?* Before entering into an agreement to allow gathering and removal, the Superintendent must do all of the following:

(1) Determine and document, based on information provided by the Indian tribe or others, and other available information, that:

(i) The Indian tribe has a traditional association with the park area; and

(ii) The proposed gathering and removal is a traditional use of the park area by the Indian tribe.

(2) Analyze potential impacts of the proposed gathering and removal in accordance with the requirements of the National Environmental Policy Act, the National Historic Preservation Act, and other applicable laws.

(3) Document a determination that the proposed gathering and removal activities will not result in a significant adverse impact on park resources or values.

(4) Determine that the agreement for the proposed gathering and removal meets the requirements for issuing a permit under § 1.6(a) of this chapter.

(e) *When will the Superintendent deny a request to enter into an agreement?* The Superintendent must deny the request to enter into an agreement to gather if any of the determinations required by paragraph (d) of this section cannot be made.

(f) *How will agreements be implemented?* An agreement to gather and remove plants or plant parts must be implemented through a permit issued in accordance with § 1.6 of this chapter. The agreement must contain the following:

- (1) The name of the Indian tribe authorized to gather and remove plants and plant parts;
 - (2) The basis for the tribe's eligibility under paragraphs (c)(1) and (c)(2) of this section to enter into the agreement;
 - (3) A description of the system to be used to administer gathering and removal including a clear means of identifying appropriate tribal members who, under the permit, are designated by the Indian tribe to gather and remove;
 - (4) A means for the tribal government to keep the NPS regularly informed of which tribal members are the current gathering and removal designees of the Indian tribe;
 - (5) A description of the specific plants or plant parts that may be gathered and removed;
 - (6) Specification of the size and quantity of the plants or plant parts that may be gathered and removed;
 - (7) Identification of the times and locations at which the plants or plant parts may be gathered and removed;
 - (8) Identification of the methods that may be used for gathering and removal;
 - (9) A statement that commercial use of natural resources is prohibited under § 2.1(c)(3)(v);
 - (10) Protocols for monitoring gathering and removal activities and thresholds above which NPS and tribal management intervention will occur;
 - (11) Operating protocols and additional remedies for non-compliance with the terms of the agreement beyond those provided in this section;
 - (12) Any additional terms or conditions that the parties may agree to; and,
 - (13) A list of key officials.
- (g) *What concurrence must the Superintendent obtain?* The superintendent must obtain

the written concurrence of the Regional Director to any agreement before it can go into effect, and before any permit may be issued.

(h) *When will the Superintendent close areas to gathering and removal?* Notwithstanding the terms of any agreement executed under this section, the Superintendent may close park areas, or portions thereof, to gathering and removal for any of the following reasons:

- (i) Maintenance of public health and safety;
- (ii) Protection of environmental or scenic values;
- (iii) Protection of natural or cultural resources;
- (iv) Aid to scientific research;
- (v) Implementation of management responsibilities;
- (vi) Equitable allocation and use of facilities; or
- (vii) Avoidance of conflict among visitor use activities.

(2) Closed areas may not be reopened to traditional gathering and removal until the reasons for the closure have been resolved.

(3) Except in emergency situations, the Superintendent will provide public notice of any closure or reopening under this section in accordance with § 1.7 of this chapter.

(i) *When will the agreement and permit be suspended or terminated?*

(1) Notwithstanding any remedy provisions of an agreement, violation of the terms or conditions of an agreement or permit issued under this section may result in suspension or termination of the agreement and permit, and loss of authorization to gather and remove.

(2) A Superintendent may suspend an agreement and implementing permit if terms or conditions are violated or if unanticipated or significant impacts occur. The Superintendent shall prepare a written determination justifying the action.

(3) The Superintendent must have the written concurrence of the Regional Director before terminating an agreement or implementing permit.

(j) *When is gathering prohibited?* Gathering, possession, or removal from a park area of plants or plant parts (including for traditional purposes), is prohibited except where specifically authorized by;

- (1) Federal statutory law;
- (2) Treaty rights;
- (3) Other regulations of this chapter; or
- (4) The terms and conditions of an agreement and permit issued under this section.

(k) *Have the information collection requirements been approved?* The Office of Management and Budget has reviewed and approved the information collection requirements in this section and assigned OMB Control No. 1024-XXXX. We will use this information to determine whether a traditional association and purpose can be documented in order to authorize gathering. We may not conduct or sponsor and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. You may send comments on any aspect of this information collection to the Information Collection Clearance Officer, National Park Service, 1849 C Street NW, Washington, DC 20240.

* * * * *

Dated: April 2, 2105.

Michael Bean,
Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

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