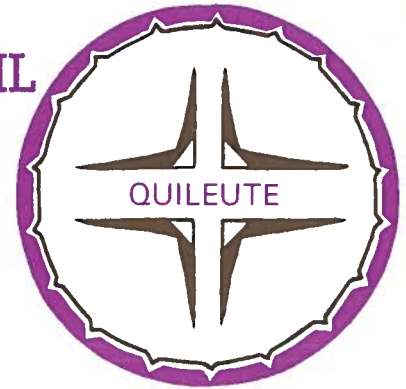




## QUILEUTE TRIBAL COUNCIL

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May 14, 2015

National Park Service  
Attn: Mr. Joe Watkins  
Office of Tribal Relations and American Cultures  
1201 Eye Street NW  
Washington, DC 20005

Re: **RIN 1024-AD84**, Department of Interior, National Park Service, "Gathering of Certain Plants or Plant Parts by Federally Recognized Indian Tribes for Traditional Purposes." Proposed Rule: Fed. Reg. v. 80, No. 75, April 20, 2015, 21674-21681.

Dear Mr. Watkins:

We understand from a telephone call between you and our attorney on May 6, 2015 that a major author of these regulations, Dr. Patricia Parker, is recently deceased and that you have assumed your current position as of December, 2014. We ask you therefore to take a careful look at these comments, because as written, the regulations have serious legal problems.

The proposed regulations treat all Indian tribes as if they were a unified race and this document must follow Title VII Civil Rights concepts. There is no distinction made between the federally recognized tribes that have treaties, executive orders, or some other legal claim to off-reservation gathered materials. This is a serious legal error and cannot be accepted. The tribes of the United States come from vastly different ethnic and geographic places. Further, their legal status off-reservation is entirely different. Some were defeated in war, others forgotten and their status corrected by executive orders, some are corporate villages, and finally, some have negotiated peace-time arms-length treaties, the highest law of the land under Article VI of the Constitution, higher than any regulatory action by an agency, a status only Congress can change. This will be explored further, below.

The Quileute Tribe is a federally recognized Indian Tribe on the west coast of the Olympic Peninsula of Washington. The national park that lies partially within the Treaty of Olympia of January, 1856, to which this tribe is a signatory, is Olympic National Park. This treaty was negotiated at arms-length in peace times.

We are gravely concerned with the subject draft regulations. It appears that in an effort to create equitable access to all national parks' traditionally used plants, by all federally recognized tribes, the *reserved treaty rights of all such tribes who negotiated off-reservation rights with Isaac Stevens have*

*been unlawfully abrogated.* Notwithstanding this treaty, under the draft regulations, in order to gather in our treaty area, where our rights have been reserved, not granted, we are--under the proposed system--required to apply for a Park permit; undergo public scoping through a NEPA process—with a public often living remotely away and unaware of the applicable law for a particular tribe; must prove up our traditional use; and receive approval by both the Park Superintendent and Regionally. This process is simply unlawful, for the Stevens Treaty tribes, with reserved off-reservation rights.

We know that Patricia Parker and others came out here and met with some 20 of these “Stevens Treaty” tribes several years ago (members of the Northwest Indian Fisheries Commission), at the reservation of the Suquamish Tribe in Washington State, and these federal employees were informed of the special rights under these treaties, and that they were negotiated in peace times, not as war settlements. By the 1850s, the Stevens Treaty tribes were well aware of eastern wars, executive orders, and a number of other restrictions imposed on Native American rights, and they negotiated improved conditions for themselves—**reserved** rights to harvest plants and game in all the open and unclaimed lands within their treaty boundaries. *And per Article VI of the U.S. Constitution, a treaty is the highest law of the land and can only be abrogated by Congress, not by an agency, and not by a regulation. Further, the abrogation must be clear and specific, not inferred.*

We really have two legal tiers to this discussion: 1) Reservation of treaty rights off-reservation: The Stevens Treaties reserved rights to fish in Usual and Accustomed Grounds and Stations; and second, they **reserved rights to hunt and gather in Open and Unclaimed land.** We submit that the gathering rights were reserved. 2) Abrogation: **Unless a statute specifically abrogates the treaty right to hunt or gather, then these continue.** More explanation will follow.

Tier One: Basic property law will tell you that when a right is reserved, not granted, the recipient of transferred property, in this case the United States, never got it in the first place. The United States federal court system has long upheld the reserved rights of these treaties executed by Isaac Stevens for the federal government, and first explains this well when dealing with the fishing right in *United States v. Winans*, 198 U.S. 371, 25 S.Ct. 662 at 381 (1905). In fact, the *Winans* court describes this reserved right as a servitude upon the land. *Winans* lives on very well, in *United States v. Washington*, 384 F. Supp. 312, at 331 (W.D. Wash. 1974), which in addition to reciting that earlier case, makes clear the point that treaties are to be construed as understood by the Indians, and not the learned drafters of the United States. That district court case was ultimately upheld by the U.S. Supreme Court in a decision consolidating two 9<sup>th</sup> Circuit Court of Appeals cases, therefore *sub nomen Washington v. Washington State Commercial Passenger Fishing Vessel Association et al.*, 443 U.S. 658, 99 S.Ct. 3055, at 3061, 3072, and 3082 as some examples.

We fully understand that *Winans* and *United States v. Washington* are fishing rights cases and that this fishing right derives from a separate treaty clause. We offer them, however, as excellent discussions of what the reserved treaty right means.

Tier Two: Now let us move on to the discussion of abrogation of a reserved treaty right and when, if ever, that might legally occur. We have long observed that neither the Organic Act of 1916 that established the National Park System (16 U.S.C. §§1-4), nor the statute that specifically created Olympic National Park (16 U.S.C. §§251-255) in 1938 specifically abrogates the treaty rights to hunt or gather. In fact, 16 U.S.C. §255 reads:

Nothing contained herein shall affect any valid existing claim, location, or entry made under the land laws of the United States, whether for homestead, mineral, right-of-way, or any other purpose whatsoever, or shall affect the right of any such claimant, locator, or entryman to the full use and enjoyment of his land, *nor the rights reserved by treaty to the Indians of any tribes*. The boundaries of Olympic National Park may be revised only by Act of Congress. (*Emphasis added.*)

We are advising the National Park Service of the following law on treaty abrogation, which appears not to have entered into consideration when creating the subject draft regulation:

1. United States Constitution, Article VI, Section 2: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."
2. *Antoine v Washington*, 420 U.S. 194, 95 S.Ct. 944 (1975). The Act of Mar. 3, 1871, 16 Stat. 544, 566, now codified as 25 U.S.C. §71, provides at p. 202:

'No Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty; but no obligation of any treaty lawfully made and ratified with any such Indian nation or tribe prior to March 3, 1871, shall be invalidated or impaired.'

Congress did not want to enact new treaties and (at p. 203): "This meant no more, however, that that [sic] *after 1871* relations with Indians would be governed by Acts of Congress and not by treaty." The plenary power of *Congress* to legislate regarding Indians still exists, at 25 U.S.C. §71.

3. *U.S. v Dion*, 476 U.S. 734, 106 S.Ct. 2216 (1986). This case discusses the conditions for abrogation. In it, the Bald Eagle Protection Act is at issue. This statute is a good example of specific and clear abrogation and so was upheld as requiring permitting for cultural use. (16 U.S.C. §§ 668 et seq.) We don't think we can do a better job than this court in explaining the principles of abrogation, so will quote it at length, as follows, and *we ask the National Park Service to take in all of the detailed explanation, as it is core to this letter from us (Dion, at pages 738-740, emphasis added)*:

It is long settled that "the provisions of an act of Congress, passed in the exercise of its constitutional authority, ... if clear and explicit, must be upheld by the courts, even in contravention of express stipulations in an earlier treaty" with a foreign power. *Fong Yue Ting v. United States*, 149 U.S. 698, 720, 13 S.Ct. 1016, 1025, 37 L.Ed. 905 (1893); cf. *Goldwater v. Carter*, 444 U.S. 996, 100 S.Ct. 533, 62 L.Ed.2d 428 (1979). This Court applied that rule to congressional **abrogation of Indian treaties** in *Lone Wolf v. Hitchcock*, 187 U.S. 553, 566, 23 S.Ct. 216, 221, 47 L.Ed. 299 (1903). Congress, the Court concluded, has the power "to **abrogate** the provisions of an **Indian treaty**, though presumably such power will be exercised only when circumstances arise which will not only justify the government in disregarding the stipulations of the **treaty**, but may

demand, in the interest of the country and the **Indians** themselves, that it should do so." *Ibid.*

We have required that Congress' intention to **abrogate Indian treaty rights** be clear and plain. Cohen 223; see also \*739 *United States v. Santa Fe Pacific R. Co.*, 314 U.S. 339, 353, 62 S.Ct. 248, 255, 86 L.Ed. 260 (1941). "Absent explicit statutory language, we have been extremely reluctant to find congressional **abrogation of treaty rights....**" *Washington v. Washington Commercial Passenger Fishing Vessel Assn.*, 443 U.S. 658, 690, 99 S.Ct. 3055, 3077, 61 L.Ed.2d 823 (1979). We do not construe statutes as **abrogating treaty rights** in "a backhanded way," *Menominee Tribe v. United States*, 391 U.S., at 412, 88 S.Ct., at 1711; in the absence of explicit statement, " 'the intention to **abrogate** or modify a **treaty** is not to be lightly imputed to the Congress.' " *Id.*, at 413, 88 S.Ct., at 1711, quoting *Pigeon River Co. v. Cox Ltd.*, 291 U.S. 138, 160, 54 S.Ct. 361, 367, 78 L.Ed. 695 (1934). **Indian treaty rights** are too fundamental to be easily cast aside.<sup>6</sup>

<sup>[2]</sup> We have enunciated, however, different standards over the years for determining how such a clear and plain intent must be demonstrated. In some cases, we have required that Congress make "express declaration" of its intent to **abrogate treaty rights**. See *Leavenworth, L., & G. R. Co. v. United States*, 92 U.S. 733, 741-742, 2 Otto 733, 741-742, 23 L.Ed. 634 (1876); see also Wilkinson & Volkman 627-630, 645-659. In other cases, we have looked to the statute's " 'legislative history' " and " 'surrounding circumstances' " as well as to " 'the face of the Act.' " *Rosebud Sioux Tribe v. Kneip*, 430 U.S. 584, 587, 97 S.Ct. 1361, 1363, 51 L.Ed.2d 660 (1977), quoting *Mattz v. Arnett*, 412 U.S. 481, 505, 93 S.Ct. 2245, 2258, 37 L.Ed.2d 92 (1973). Explicit statement by Congress is preferable for the purpose of ensuring legislative accountability for the **abrogation of treaty rights**, cf. *Seminole Nation v. United States*, 316 U.S. 286, 296-297, 62 S.Ct. 1049, 1054-1055, 86 L.Ed. 1480 (1942). We have not rigidly interpreted that preference, however, as a *per se* rule; where the evidence of congressional intent to **abrogate** is sufficiently compelling, "the weight of authority indicates that such an intent can also be found by a reviewing court from clear and reliable evidence in the legislative history of a statute." Cohen 223. What is \*740 essential is clear evidence that Congress actually considered the conflict between its intended action on the one hand and **Indian treaty rights** on the other, and chose to resolve that conflict by **abrogating the treaty**.

Summarizing the above: a statute needs to be explicit when abrogating a treaty right, or in the absence of that, must leave clear evidence of such intent in the legislative history of the statute. Both the Organic Act and the statute establishing Olympic National Park fail to reference Indian tribes or treaties.

We are not unmindful of *United States v. Hicks*, in which the court found that a Quinalt Indian Nation member should not hunt Roosevelt elk in Olympic National Park. (See 587 F. Supp. 1162 (W.D. Wash. 1984)). We strongly distinguish that case from these proposed regulations. First, the case did not bind any Indian Tribe. It only governed the party to it, a Mr. Hicks. Second, interestingly, the statute creating Olympic National Park is attached to the end of the decision, and you will note that there is no specific abrogation of treaty rights in that statute. It does say that the Park was established to protect Roosevelt elk, and so arguably a non-treaty person cannot harvest these elk. There is no mention of gathering.

The Quileute Tribe is willing to work with the National Park System to protect the nation's valuable resources, *within the confines of law*. To this end, we have signed an MOU with the National Park Service, regarding Olympic National Park. This MOU was signed by Jonathan Jarvis on behalf of NPS and Karen Gustin as Superintendent of Olympic National Park, on July 10, 2008; eight tribes, including Quileute, with treaty boundaries inside ONP, also signed. This MOU is attached for your edification. It is important to note that the signatories recognized this document was among sovereigns and did not



supersede the treaty rights. It did express a willingness of all eight tribes and the federal government to work together to protect resources and share science, and to give fair notice when on one another's property. That we are willing to do and have always done.

*However, when a regulation purports to diminish our treaty right to access reserved resources, and requires us to seek a permit to do so from an agency superintendent, and moreover, to get the public to agree to this—a public that so often misunderstands or resents treaty rights of Native Americans—and we refer here to the NEPA requirement before permitting, we hereby formally object. This regulation cannot go forward as written.*

Equally troublesome is a new requirement for us to have to document each place where we collect a certain species, and how much is proposed for gathering. Presumably, this is so the Park can estimate exact impact for NEPA and what language to put on a permit. Those requirements, as explained above, are not acceptable for treaty tribes with reserved rights, but with respect to the need to itemize what, where, and how much: First of all, these collection sites are often confidential, for either cultural reasons, or to simply protect a spot from being “overgathered” by others. Second of all, the tribes are the ones who have known how to gather sustainably, since time immemorial. They don't have to prove this up to the Park. Thirdly, we have not seen the need in most cases to document exactly where a species appears, to be gathered. In fact, some of these, being seeded in the wild, are different from year to year and one must forage about to find the source. This is a requirement that also violates in our opinion, treaty rights, as these species are ours to gather, not the Park's to regulate.

There is also a statement that we cannot use these plants for any commercial purpose. While most locations for basket materials lie outside the Park boundaries, the marketing of baskets is a traditional use, and well documented as such. Federal courts have upheld that customary trade may be a valid subsistence use, even where treaties are not involved. See *U.S. v. Alexander*, 938 F. 2d 942 (9<sup>th</sup> Cir. 1991). The treaty right to hunt, fish and gather indigenous plants has been characterized as an attribute of inherent sovereignty of the tribes in *White Earth v. Alexander*, 638 F.2d 1129 (8<sup>th</sup> Cir. 1982). The Park may wish to develop an agreement with a sovereign Indian Tribe about how or when to gather, but may not determine the appropriate use of that material by the tribe. *If a tribe wants to eat the plant, weave it, sell it, make medicine from it, or have a religious ceremony, such decision is totally up to the tribe.*

Originally, federal discussion around a gathering regulation included the suggestion to have each Park write an MOU with affected Indian Tribes. This seemed to reflect the legal differences so necessary to acknowledge. We can function under those provisions but NOT under the proposed rule.

Respectfully,



Naomi Jacobson, Chairwoman  
Quileute Tribal Council

cc: Senator Maria Cantwell  
Senator Patty Murray  
Congressman Derek Kilmer  
NPS Director Jonathan B. Jarvis  
Olympic National Park Superintendent: Sarah Creachbaum  
Chairpersons of all Stevens Treaty Tribes (WA, OR, ID)  
Executive Director of Northwest Indian Fisheries Commission: Mike Grayum  
Executive Director of Columbia River Intertribal Fish Commission: Paul Lumley  
Bureau of Indian Affairs Portland Regional Director: Stan Speaks  
Olympic National Park Superintendent: Sarah Creachbaum  
Olympic National Park Archeologist: Dave Conca

Att.: MOU with Olympic National Park and 8 treaty tribes  
Proposed regulations



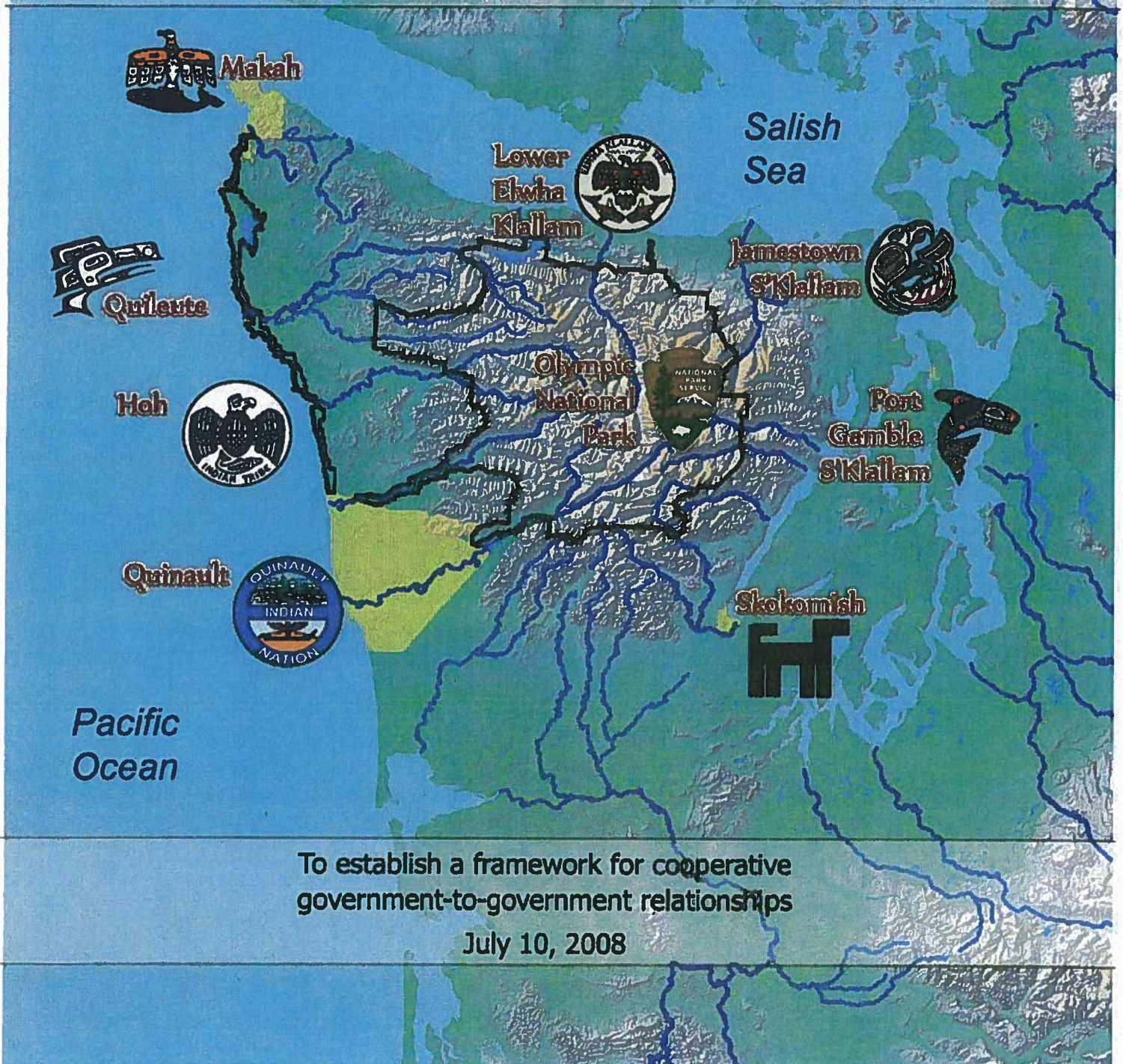
# MEMORANDUM OF UNDERSTANDING

*between*

National Park Service

*and*

Hoh Indian Tribe	Jamestown S'Klallam Tribe
Lower Elwha Klallam Tribe	Makah Indian Tribe
Quilleute Nation	Quinault Indian Nation
Port Gamble S'Klallam Tribe	Skokomish Indian Tribe



To establish a framework for cooperative  
government-to-government relationships

July 10, 2008



**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**National Park Service**

**and**

**Hoh Indian Tribe  
Jamestown S’Klallam Tribe  
Lower Elwha Klallam Tribe  
Makah Indian Tribe  
Quileute Indian Tribe  
Quinault Indian Nation  
Port Gamble S’Klallam Tribe  
Skokomish Indian Tribe**

**To establish a framework for cooperative  
government-to-government relationships**

**July 10, 2008**



## **PREAMBLE**

This Memorandum of Understanding (MOU) between governments and governmental agencies with shared interests over the lands and waters, activities or resources within the boundaries of the Olympic National Park (ONP) is intended to facilitate government-to-government relations, effective coordination, open and timely communication, and meaningful consideration of the interests and priorities between the Parties on issues of concern. The Parties to this MOU are the Hoh Tribe, Makah Indian Tribe, Quileute Tribe, Quinault Indian Nation, Lower Elwha Klallam Tribe, Jamestown S'Klallam Tribe, Port Gamble S'Klallam Tribe, and Skokomish Tribe, (collectively, the "Tribes"), and the National Park Service (NPS).

The Olympic Peninsula (Peninsula) in the State of Washington provides habitat for a wide variety of marine and terrestrial birds, fish, mammals, and plants. As stewards of the lands and waters, the Parties wish to work together. Through treaties with the United States, the Tribes reserved hunting, fishing, and gathering rights to utilize the plants, animals, fish, and other resources of the Peninsula. Tribes view the continued availability and use of water, plants, fish, and animal resources within the ONP and on the Peninsula as being critical to the protection of their treaty rights and the continuity of their distinct societies. These resources form an economic and cultural base for many tribal communities, helping to meet community needs for food, medicine, subsistence, trade and commerce, and ceremony.

The Tribes are federally recognized tribal governments with rights secured by treaties with the United States. Under Article VI of the U.S. Constitution these treaties are the supreme law of the land. The Tribes exercise their inherent sovereignty to regulate activities of their members throughout the territories ceded to the United States, as well as in other areas where they have treaty rights to natural resources.

In 1938, the ONP was designated by Congress as a unit of the National Park system. The ONP is administered under the provisions of its enabling legislation and the National Park Service Organic Act of 1916. The 1916 NPS Organic Act, as amended, established the role and responsibilities of the NPS, as well as its "fundamental purpose... to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations" (16 USC §1). However, the NPS mandate to protect resources within the ONP on an ecosystem-wide basis must be administered so that "nothing... shall affect...the rights reserved by treaty to the Indians of any tribes." (Olympic National Park enabling act of June 29, 1938, 52 Stat.1241, 16 USC §255).

Administration of the ONP by the NPS can affect natural and cultural resources that affect tribal rights or interests. ONP is part of the NPS, within the Department of Interior, and as such, has a solemn trust responsibility pursuant to the treaty obligations of the United States. As part of that trust responsibility to the Tribes, the United States must operate in accordance with fiduciary standards of due care with respect to Indian lands, tribal trust resources, and the exercise of tribal rights. The government-to-government relationship between the NPS and the Tribes is founded in, and supported by, law and policy, as set forth in the Section 2.0 of this MOU "Authorities."

The NPS generally regulates activities of persons within the boundaries of ONP while the Tribes regulate activities of their members throughout the territories ceded through treaties with the United States, including the lands within ONP. The Parties wish to cooperate and harmonize the application of their respective authorities to advance their common interests in protecting and conserving the resources and environment of the ONP and to ensure that the Tribes' treaty rights to natural and cultural resources are respected.

### **1.0 PURPOSE**

The Tribes, and the NPS, each sharing an interest in regulation of activities and management of the resources within and around the boundaries of ONP, enter into this MOU to clarify responsibilities and expectations.

The Parties intend that the MOU will contribute to the management of the resources of concern to ONP and/or the tribes through integrated management activities and collaborative relationships.

The purposes of the MOU are to: (a) support effective, efficient, timely, and respectful consultation, communication and discourse between and among the Parties; (b) improve coordination and collaboration of policies and programs affecting the resources within the boundaries of the ONP; (c) facilitate the sharing of information and expertise; and (d) promote collaboration in the protection, use, and conservation of natural and cultural resources for the benefit of the present and future generations.

## **2.0 AUTHORITIES**

The Parties enter into this MOU under the authorities of their respective sovereign powers, including, but not limited to, the United States Constitution, including Article VI; the National Park Organic Act, 16 USC §1 et seq.; the Olympic National Park Enabling Act, 16 USC §§ 251-256; the Treaties of Point No Point, 12 Stat. 933; Neah Bay, 12 Stat. 939; and Olympia, 12 Stat. 971; and under the authority of their respective Tribal constitutions; the Federal trust and consultation responsibilities as articulated in such documents as The National Historic Preservation Act (NHPA), 16 USC §§470 et seq. as amended; the Archaeological Resources Preservation Act (ARPA), 16 USC §§470aa et seq. as amended; the Native American Graves Protection and Repatriation Act (NAGPRA) 25 USC §§3000 et seq., as amended; the American Indian Religious Freedom Act (AIRFA) 42 USC §§1996 et seq., as amended; Executive Order (EO) 13007 ("Indian Sacred Sites, May 24, 1996), the EO on Consultation and Coordination with Indian Governments 13175 (November 6, 2000); EO 12898 "Federal Actions to Address Environmental Justice in Low Income and Minority Populations (Feb 11, 1994); Departmental Responsibilities for Indian Trust Resources (512 DM 2); the EO on Federalism 13132 (August 4, 1999); Secretarial Order 3206 on American Indian Tribal Rights; Federal Trust Responsibilities; the Presidential Memorandum on Government-to-Government Relations with Native American Tribal Governments (April 29, 1994); the National Environmental Policy Act (NEPA) 42 USC §§4371 et seq., as amended; the Clean Water Act, 33.U.S.C §§1251 et seq., as amended; the Endangered Species Act (ESA), 16 USC §§1531 et. seq., as amended; and, the Coastal Zone Management Act (16 USC §§ 1451 et. seq.

## **3.0 GOALS AND OBJECTIVES**

**3.1** Establish and implement a framework for cooperative government-to-government relationships between the Parties to build a relationship of mutual understanding and collaboration by facilitating consistent and timely communication at appropriate levels of government.

**3.2** Clarify obligations for consultation and consideration of proposed actions that potentially affect treaty rights or interests within the ONP with the objective of providing opportunities for substantive Tribal input to NPS on the management of resources to facilitate the exercise of the Tribes' reserved rights and ensure the protection and conservation of natural and cultural resources of significance to the Tribes.

**3.3** Promote open dialogue between the Parties on restoring and sustaining resources and ecosystem health, facilitating the identification of common goals, improving cooperation and collaboration to protect and manage natural and cultural resources, promoting educational opportunities and scientific research, and developing integrated funding proposals.

**3.4** Promote collaboration on projects and activities to protect and restore natural and cultural resources on the ONP lands since all Parties share the goal of conservation of common resources. Pursue and integrate projects with mutual benefits, and share technical expertise and information to enhance the effectiveness of conservation activities, and of all Parties. At the discretion of the tribes, utilize traditional knowledge in NPS research, and build upon the tribes' capacity to contribute to the NPS management of the ONP and resources of tribal concern.

**3.5 Facilitate the creation of inter-agency teams of NPS, ONP, and tribal policy, legal, and technical representatives to address issues of mutual concern.**

**3.6 The Parties will strive to reach consensus on issues of mutual concern and interest and will prioritize action items for the continued growth of the relationships between the Parties. An initial list of action items identified at the time of entry into this MOU follows:**

- (a) support effective, efficient, timely, and respectful consultation, communication and discourse between and among the Parties;
- (b) improve coordination of policies and programs affecting the resources within the boundaries of the ONP;
- (c) facilitate the sharing of information and expertise; and
- (d) promote collaboration in the protection, use, and conservation of natural and cultural resources for the benefit of the present and future generations.

#### **4.0 DEFINITIONS**

**4.1 *Affect tribal rights or interests*** means any action or policy that may potentially impact tribal self-government, trust resources, treaty or other tribal reserved rights.

**4.2 *Cultural Resource*** means an aspect of a cultural system that is valued by or significantly representative of a culture or that contains significant information about a culture. "A cultural resource may be a tangible entity or a cultural practice. Tangible cultural resources may include archeological sites, cultural landscapes, historic structures, or traditional cultural properties eligible for or listed on the National Register of Historic Places, as well as museum objects and ethnographic resources for NPS management purposes" (National Historic Preservation Act; NPS Management Policies 2006). Cultural practices include but are not limited to tribal use of natural resources in ceremonies and for subsistence. Tribes value the living fish, wildlife, and plants as inherently a part of the Tribes' cultures. These would fall within the NPS definition for Ethnographic Resource.

*(a) Archeological Resource* means "any material remains or physical evidence of past human life or activities which are of archeological interest, including the record of the effects of human activities on the environment. An archeological resource is capable of revealing scientific or humanistic information through archeological research" (NPS Management Policies 2006).

*(b) Ethnographic Resources* mean "objects and places, including sites, structures, landscapes, and natural resources, with traditional cultural meaning and value to associated peoples. Research and consultation with associated people identify and explain the places and things they find culturally meaningful. This would include the living fish, wildlife, and plants inherently a part of the Tribes' cultures. Species that live entirely within the ONP and those that migrate or reseed across its boundaries, as well as their habitat, are all of tribal cultural concern. Ethnographic resources eligible for the National Register of Historic Places are called traditional cultural properties" (NPS Management Policies 2006).

**4.3 *Natural resources*** include physical resources such as water, air, soils, topographic features, geologic features, paleontological resources, and natural soundscapes and clear skies, both during the day and at night; physical processes such as weather, erosion, cave formation, and wildland fire; biological resources such as plants, animals, and communities; biological processes such as photosynthesis, succession, and evolution; ecosystems; highly valued associated characteristics such as scenic views.

**4.4 *Government-to-Government Consultation*** means an accountable process that ensures substantive, meaningful, and timely input by Tribal officials on NPS policies or actions that may affect the Tribes' rights or interests prior to a decision; and substantative, meaningful, and timely consideration by ONP



of Tribal input prior to decision making, and to be informed on how their input was considered and addressed in the decision.

- 4.5** *Policies or actions that may affect Tribal interests or reserved treaty rights* means regulations, legislative comments or proposed legislation, policy, plans, projects or actions having effects on one or more Indian Tribes, on the relationship between the NPS and Indian Tribes, or on tribal rights or interests. Such actions can include but are not limited to, NPS construction of roads, rip rap, stream bank or other watershed restoration, or any other change in the landscape that may affect the fish, wildlife or plants within the affected Tribes' treaty ceded areas.
- 4.6** *Tribal officials* means elected officials or representatives who are appointed by, and are authorized to act on behalf of, tribal governments.

## **5.0 OBLIGATIONS OF THE PARTIES**

### **5.1 MUTUAL OBLIGATIONS.**

**5.1.1** Each Party shall officially designate its principal contact for matters pertaining to this MOU and ensure that the other Parties are provided with current contact information. The responsibilities of the principal contacts will include, but not be limited to:

- Coordinating activities, ensuring that commitments are fulfilled, and sharing information as provided in this MOU or implementation agreements;
- Facilitating government-to-government communication;
- Facilitating emergency consultation;
- Receiving and routing correspondence to appropriate entities within their respective agencies;
- Initiating requests for consultation or dispute resolution;
- Facilitating mutual training;
- Arranging for access to appropriate policy, technical, and legal resources and information when seeking to collaboratively resolve issues to the mutual satisfaction of relevant Parties;
- Providing names, telephone numbers, and mailing and email addresses for legal, policy, and technical persons that may be contacted in regard to work on common issues. Workgroups will meet on a regular basis to resolve issues identified as important under other provisions of this document.

**5.1.2** The Parties agree to identify and pursue opportunities for collaboration on projects lending themselves to partnership, such as salmon habitat restoration. In particular, the Parties will strive to support the implementation of mutually beneficial projects and look for ways to fund integrated projects that improve the management of cultural and natural resources within ONP, on the reservations, or on lands where common resources are being affected.

**5.1.3** The Parties agree to share survey, research, and other types of data regarding natural, cultural, and archaeological resource management, and to protect, to the maximum extent permitted by law, information that the Tribes or the NPS deem to be confidential or sensitive. Nothing in this agreement mandates the sharing of data.

**5.1.4** The Parties will collaboratively develop general protocols to ensure consistent, early, timely, and frequent communication between the Parties, including:

- (a) Identification of activities, events, processes, or conditions that require notification of the Parties according to agreed protocols (e.g., initiated by responsible Party via email, phone call, FAX, letter, etc.);
- (b) Identification of activities, events, processes, or conditions that would initiate review/consultation by the Parties (specify staff responsible for consultation). The Parties will

determine what activities, events, processes, or conditions are of concern for review/consultation and request participation in decision-making processes or consultation;

- (c) Sharing metrics, considerations, and criteria employed when evaluating alternative actions or monitoring impacts of proposed ongoing, or implemented actions;
- (d) Sharing and protecting sensitive, confidential information insofar as the Freedom of Information Act and the National Parks Omnibus Management Act (16 USC 5937) and policies and regulations thereunder provide;
- (e) Document sharing to achieve clarification of the respective roles and governmental responsibilities of the Parties regarding environmental, habitat, cultural, archaeological resource review processes and surveys, and natural resource management (fish, wildlife, plants and water), and enforcement; and to promote collaborative opportunities to conserve natural and cultural resources within the ONP, including:
  - i. Identification of responsibilities for distribution and retention of documents;
  - ii. Descriptions of avenues for each to access the other's data and information, including but not limited to, resource management information, GIS, and pertinent databases.
- (f) Mutual training programs for ONP and tribal personnel, to ensure that ONP employees are familiar with the rights of the Tribes, as defined by the Constitution, treaties, statutes, Executive Orders, and judicial rulings; and that tribal personnel are familiar with NPS statutes, regulations, policies, guidance, and ONP internal operations;
- (g) Cross-deputization for enforcement, investigation, and prosecution of violations of ONP or tribal laws or regulations;
- (h) Securing full faith and credit for tribal or federal court judgments.

5.1.5 The Parties will meet at least once each calendar year to discuss and deliberate on the effectiveness of the MOU, policies or projects of mutual interest, management initiatives, and direction regarding resources within and around the ONP. At the annual meeting the Parties will develop a work plan including issues to be addressed, formation of workgroups, and a calendar for future meetings, to address an initial list of issues developed in the attached Appendix, made a part hereof for all purposes. The meeting will be convened at a time and place to be determined by the hosting Party. The Tribes shall host the meeting in even years and NPS in odd years. Any Party may request additional meetings at any time.

5.1.6 Each Party is accountable for its implementation of this MOU and will strive to ensure that all communication among the Parties is conducted using the protocols developed pursuant to this MOU.

## **5.2 OBLIGATIONS OF NPS**

5.2.1 The NPS shall accommodate and facilitate the exercise of reserved treaty rights and ensure protection of such rights and the natural and cultural resources upon which they depend. The NPS will work collaboratively with tribes on matters of mutual interest and activities and policies that may affect or relate to reserved treaty rights or tribal interests in resources within ONP and on the peninsula.

5.2.2 The NPS will provide timely notice to affected Tribes of any proposed NPS permit, or action that requires notice per 5.1.4 that potentially affects reserved treaty rights or tribal interests in resources within the ONP and on the Peninsula. The NPS will ensure that Tribes have an opportunity for consultation and consideration in addition to any public notice and comment provided for under federal law including, (i)

NEPA processes, including pre-scoping notification of tribes and monitoring; (ii) NHPA Section 106 Consultation; (iii) Revision of ONP Management Plans; (iv) Rule making, permitting or actions, including, but not limited to, stream restoration, road and culvert maintenance, fire management, wildlife management, fisheries management, hazard tree reduction, cultural resource protection and research; (v) NPS policies or guidelines that may affect or relate to reserved treaty rights or tribal interests in resources within ONP and on the Peninsula.

**5.2.3** The NPS will manage resources in a manner that accommodates tribal conservation and management plans for Indian resources and tribal activities to the maximum extent practicable within the limits of applicable law. The NPS Organic Act, the ONP Enabling Act, and other authorities provide the basis for NPS management of resources within ONP. These authorities must be administered in accordance with trust responsibilities of the United States towards the Tribes. The Tribes often prepare management plans to memorialize their governmental responsibilities for management of their respective treaty-protected resources, and regulations governing the exercise of tribal treaty rights by tribal members. Collaboration between the NPS and the Tribes will be necessary to minimize conflicts and coordinate management plans and actions.

**5.2.4** The NPS will manage and administer programs and activities in a manner sensitive to traditional Tribal beliefs and practices and assist in protecting and securing access to medicines, plants, animals, and specific places of special cultural significance, consistent with Federal law and policy, including but not limited to NAGPRA, AIRFA and EO 13007 on Indian Sacred Sites, May 24, 1996, and any amendments to these.

**5.2.5** The NPS will provide timely notice to Tribes of actions that may potentially disturb land, water, or other natural or cultural resources. For cultural resources of tribal concern such as burial sites, archaeological sites, or ethnographic sites any work will cease until the appropriate tribe(s) are notified and consulted. The ONP will work with the Tribe(s) to identify all resources of concern and of the need to protect confidentiality.

**5.2.6** The NPS will work with other federal departments and agencies (e.g., NOAA and USFWS) to more effectively coordinate activities, programs, and policies to assist Tribes and accomplish goals of common interest, such as, shared stewardship approaches.

**5.2.7** The NPS will encourage and assist state and local governments to coordinate with the Tribes and ONP on matters of mutual concern, particularly when federal funds and other assistance are provided through state programs or agencies.

**5.2.8** The NPS will provide affected Tribes with copies of agreements with other entities pertaining to matters that may affect tribal rights or interests.

### **5.3. OBLIGATIONS OF THE TRIBE(S)**

**5.3.1** The Tribes will provide timely notice to NPS of opportunities to comment on any proposed Tribal actions and plans that require notice per 5.1.4 that potentially affect NPS management of resources, and will respond in a timely manner to NPS. Tribal activities within ONP boundaries that may affect resources, include, but are not limited to:

- i. Research or monitoring activities;
- ii. Fisheries activities such as collection of broodstock, release of progeny, placement of carcasses, or habitat modification;
- iii. Watershed and habitat restoration activities, including measures to control exotic plant or invasive species;
- iv. Regulations and results of data gathered pursuant to regulations of tribal treaty-right related activities; and



v. Plans for motorized use in wilderness or use of aviation equipment which affect ONP operations.

5.3.2 The Tribes will work collaboratively with NPS on matters of mutual interest and on activities and policies that may affect or relate to reserved treaty rights or tribal interests in resources within the ONP, to strengthen government-to-government relations, and to reconcile conflicts that may arise between NPS and Tribal resource management plans.

5.3.3 The Tribes will provide the NPS with information identifying Usual and Accustomed Fishing Grounds as set forth in the U.S. v Washington proceedings and sub proceedings.

5.3.4 The Tribes will provide advance notice and a timely opportunity for consultation to the NPS on actions that may potentially disturb land, water, or other natural, or cultural resources of tribal concern within ONP and, upon request by ONP, identify resources of concern and advise the NPS of the need to protect confidentiality.

5.3.5 The Tribes will provide the NPS with copies of agreements with other entities pertaining to matters that may affect the resources of the ONP and the Tribe(s).

## **6.0 DISPUTE RESOLUTION**

The Parties commit to working in good faith to seek consensus agreements. In the event that bona fide disputes arise from this MOU, the disputing Parties will first strive to resolve matters informally through government-to-government discourse at the appropriate level. Any disputant may raise any matter not resolved to a higher official. In the event that the matter is not resolved, the Parties may agree to utilize neutral third party mediation.

## **7.0 GENERAL PROVISIONS**

### **7.1 AMENDMENT, REVIEW AND TERMINATION**

7.1.1 **TERM OF MOU.** This MOU shall become effective on the date of signature and will remain in effect unless terminated in whole, or in part, by mutual agreement. Any Party may withdraw from the MOU by providing thirty days written notice to each of the other Parties. Withdrawal by any Party from this MOU does not alter or affect the application of this MOU to remaining Parties. No Party shall incur any new obligations for the terminated portion of the MOU after the effective date.

7.1.2 **MODIFICATIONS** to the MOU may be made at any time by mutual consent of the Parties. A written amendment, signed and dated by the relevant Parties, shall be executed prior to any changes becoming effective.

7.1.3 **PARTICIPATION IN SIMILAR ACTIVITIES.** This MOU in no way restricts the NPS or the Tribes from participating in similar activities with other public or private agencies, organizations, individuals, or governments.

7.1.4 **FREEDOM OF INFORMATION ACT.** Any information furnished to the NPS under this MOU that becomes a part of the system of Federal records is subject to the Freedom of Information Act (FOIA). Notwithstanding the foregoing, information identified by a Tribe as being of a privileged or confidential nature shall be exempt from disclosure under FOIA to the extent allowed by law.

## **8.0 DISCLAIMERS**

8.1 Nothing in this MOU is intended to conflict with any current directive from the Department of the Interior or any applicable federal, state, or tribal law or regulation. If any of the terms of this MOU are

determined by any of the Parties to be inconsistent with applicable law or directives then those terms of the MOU shall be invalid, but the remaining terms and provisions of the MOU not affected by the inconsistency will remain in full force and effect.

8.2 Nothing in this MOU will be construed to grant, expand, create or diminish any legally enforceable rights, benefits or responsibilities, substantive or procedural, not otherwise granted or created by existing law. Nothing in this MOU will be construed to alter, amend, repeal, interpret or modify tribal sovereignty, any treaty right, or other rights of any Indian tribe or preempt, modify, or limit the exercise of any such right.

8.3 Nothing in this MOU is intended to waive or diminish the right of any Party to challenge or appeal another Party's decision or action in accordance with applicable law.

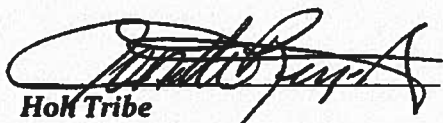
8.4 Each Party reserves all rights, powers, and remedies now or hereafter existing at law or in equity, or by statute, treaty, or otherwise. A Party's joinder to this MOU shall not constitute a waiver of sovereign immunity. The MOU is intended solely to facilitate coordination among the Parties, and nothing herein creates any rights in third parties or gives rise to any right of judicial review.

8.5 This MOU commits the Parties to work cooperatively and respectfully toward resolution of issues of mutual interest and concern. Nothing in this MOU is intended to substitute for additional government-to-government consultation that may be required by the federal trust responsibility, or the executive orders and policy statements, set forth in "Authorities" above.

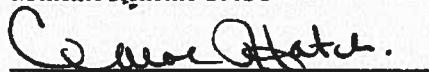
8.6 This MOU is not intended to obligate the funds of any Party.

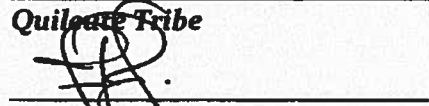
Adopted this 10 day of July, 2008, at  
Quinault Beach Resort, Ocean Shores, WA.

**Signatures:**

  
Hoki Tribe

  
Makah Indian Tribe

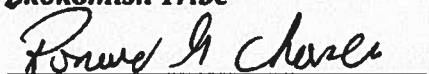
  
Quileute Tribe

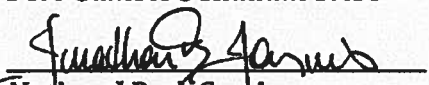
  
Quinault Indian Nation

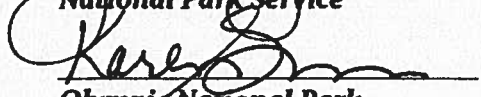
  
Lower Elwha Klallam Tribe

  
Jamestown S'Klallam Tribe

  
Skokomish Tribe

  
Port Gamble S'Klallam Tribe

  
National Park Service

  
Olympic National Park



## **APPENDIX OF INITIAL ISSUES FOR WORKGROUPS**

- 1. Identification of areas of importance for the ability of Tribes to exercise spiritual and cultural activities and the measures to be taken to ensure their integrity and preservation.**
- 2. Development of an inventory of cultural and natural resources utilized by the Tribes for cultural purposes.**
- 3. Identification of areas where cultural and natural resources are to be preserved, measures to ensure their conservation (e.g., regulating or prohibiting commercial harvest or competition for use, limitation of total harvest, application of herbicides/pesticides), and opportunities to provide or enhance Tribal access and use.**
- 4. Identification of areas of importance for the exercise of Tribally reserved rights; measures to protect, restore, and conserve wildlife and fish habitat and population productivity; and elimination of obstacles to the exercise of those rights.**
- 5. Restoration of landscapes and ecological functions that have historically supported cultural resources.**
- 6. Development of mechanisms to identify places of importance to sustain cultural, natural, and archeological resources.**
- 7. For resources within ONP that are utilized or affected by Tribal activities, development of mechanisms to assist NPS with information to report on status and condition of these resources as required by NPS policies.**
- 8. Provision of access by all Parties to appropriate policy, technical, and legal resources and of information when seeking to collaboratively resolve issues to their mutual satisfaction.**
- 9. Development of specific guidelines for consultation on a government-to-government basis.**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### 36 CFR Part 2

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

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 July 20, 2015. Comments on the information collection requirements must be received by May 20, 2015.

**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](mailto: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](mailto: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](mailto: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**

*Sec. 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.

*Sec. 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.

*Sec. 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.

*Sec. 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).

*Sec. 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.

*Sec. 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.

*Sec. 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.

*Sec. 2.6(g) Regional Office Concurrence*

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

*Sec. 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).

*Sec. 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.

*Sec. 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](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](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 number 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
<b>Total .....</b>	<b>25</b>	<b>.....</b>	<b>180</b>

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* (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.

*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](http://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](http://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.

[FR Doc. 2015-08852 Filed 4-17-15; 8:45 am]

BILLING CODE 4310-EJ-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R05-OAR-2014-0705; FRL-9926-27-Region 5]

### Approval and Promulgation of Air Quality Implementation Plans; Illinois; Illinois Power Holdings and AmerenEnergy Medina Valley Cogen Variance

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve into the Illinois Regional Haze State Implementation Plan (SIP) a variance for the electrical generating units (EGUs) included in the Ameren multi-pollutant standard group (Ameren MPS Group). The Ameren MPS Group consists of five facilities owned by Illinois Power Holdings, LLC (IPH) and two facilities owned by AmerenEnergy Medina Valley Cogen, LLC (Medina Valley). The Illinois Environmental Protection Agency (IEPA) submitted the variance to EPA for approval on September 3, 2014.

**DATES:** Comments must be received on or before May 20, 2015.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-

OAR-2014-0705, by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.

2. *Email*: [aburano.douglas@epa.gov](mailto:aburano.douglas@epa.gov).

3. *Fax*: (312) 408-2279.

4. *Mail*: Doug Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery*: Doug Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**Instructions:** Direct your comments to Docket ID No. EPA-R05-OAR-2014-0705. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of