



# YUROK TRIBE

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National Park Service Office of Tribal Relations and American Cultures  
Department of the Interior  
1201 Eye Street NW  
Washington, D.C. 20005

May 22, 2015

Attention: Joe Watkins

Re: RIN 1024-AD84: Proposed Rule for Gathering of Certain Plants or Plant Parts by  
Federally Recognized Indian Tribes for Traditional Purposes

Dear Mr. Watkins,

The Yurok Tribe submits the following comments on the proposed rule authorizing agreements between the National Park Service (NPS) and federally recognized tribes for gathering and removal of plants or plant parts for traditional purposes. The Yurok Tribe is the largest federally recognized Indian tribe in California with over 6,000 members. Our reservation includes 55,890 acres in Northern California straddling the mouth of the Klamath River and up the River forty-four miles in a one mile wide strip on each side of the River. Our reservation represents only a small portion of our ancestral territory, which extends west out to the Pacific Ocean coast and throughout what is now designated as the Redwood National Park (RNP). Our tribe is the only federally recognized tribe that has a valid ancestral territory claim to RNP lands. We submit these comments with the intention of ensuring the National Park Service demonstrates sufficient deference to the Yurok Tribe's ancestral territory claims, and minimizes the burden on us to justify such claims for federal government purposes.

The Yurok Tribe has always been a steward of its ancestral territory, and discussions with RNP and the Yurok Tribe regarding co-management of the parks are ongoing. We anticipate that promulgation of this rule will be consistent with these efforts to recognize the equal interests and roles the federal government and the Tribe have in the protection of the lands that are now designated as RNP lands.

Generally, the Yurok Tribe supports the NPS efforts to facilitate the traditional gathering of culturally significant plants and plant parts by federally recognized tribes. However, as written this proposed rule is overly burdensome on Tribes, allows the Superintendent too much discretion in engaging and terminating gathering agreements, and does not reflect sufficient respect and deference to a Tribe's ancestral territory claims. To that end, below is a list of areas of concern in the proposed rule and suggested amendments.

**Ensure the Proposed Rule Limits Traditional Gathering to Only Those Indian Tribes with Documented Association with Specific Park Lands**

There are a number of federally recognized tribes within the ancestral lands of the Yurok Tribe whose members do not have traditional association with RNP within Yurok ancestral territory. Some members of these tribes may have a right to gather, and we are open to facilitating their access to gathering agreements. However, we are not willing to allow a categorical authorization of traditional gathering by tribes whose members may not have traditional association with the park area. The NPS should be required to notify a tribe upon receipt of a request for traditional gathering agreements from any other tribe for areas known to be within another tribe's ancestral territory. Additionally, the Yurok Tribe should be included in negotiation of any agreements within Yurok ancestral territory to ensure that only those with a valid claim to the park area have authorization to gather.

**Ensure that the Definition of “Plant and Plant Parts” is Inclusive**

The Yurok Tribe is supportive of the absence of a specific definition of the phrase “plants and plant parts” in this proposed rule. However, we would like to confirm that the lack of a specific definition means that NPS will adopt an inclusive interpretation of this phrase, rather than use it as an opportunity to exclude certain plants or plant parts on a case-by case basis.

**Section 2.6 (b) Contains an Inordinate Degree of Superintendent Discretion and No Deadline for Response.**

This section states that the Superintendent of the park “may” negotiate and enter into an agreement with a federally recognized Tribe upon receipt of its request. This provision could be read to allow the superintendent discretion to *not* engage with the tribe at all. Such discretion does not reflect the proper respect to the requesting tribe's ancestral territory claims, and the fact that such requested traditional gathering practices have been occurring since time immemorial. The intent of the request will not be to seek permission from NPS to engage in these practices, it will be a notification to NPS, in consideration of their management obligations, of our Tribe's intent to continue our traditional gathering practices. To that effect, we believe that the NPS should – at a minimum –be *required* to respond to a Tribe's request for a traditional gathering

agreement within a certain timeframe. We recommend the following language be inserted into § 2.6(b):

(b) *How will the Superintendent authorize gathering and removal? Upon **Within 30 days of receipt of** the request of an Indian tribe that has a traditional association with a park area, the Superintendent ~~may~~ **shall respond to the request in writing with a notice of intent to** 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.*

### **Section 2.6(d) Criteria for Entering into Agreements Lacks Sufficient Deference to the Restorative Purpose of Tribal Traditional Gathering Practices**

This section can be interpreted to assume that traditional gathering is likely to have a significant and negative impact on park resources and values. Contrary to this sentiment, the cultural purpose of traditional gathering by the Yurok Tribe in RNSP is for ecosystem renewal and regeneration – a practice that is beneficial to the land and resources. A regulation imposing an excess of scrutiny on the potential adverse impacts of traditional gathering is unnecessary. As written this section does not acknowledge the potentially sustainable and restorative purposes of traditional gathering practices. Assuming the purpose of the traditional gathering is not restorative in nature, the proposed gathering will not be of such a magnitude as to warrant excessive federal government scrutiny under burdensome environmental procedural requirements on a case-by-case basis. Therefore we propose an overarching exemption of the agreements established under this rule from procedural requirements under the National Environmental Policy Act (NEPA) and we suggest the following deletion:

(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.~~

### **Section 2.6(e) Should Include an Opportunity for the Tribe to Provide Additional Information and a Required Explanation for Denial of a Request**

This Section merely states the reasons for denial of a request and does not establish a process for denial or opportunity of appeal if the Tribe objects. As such we recommend § 2.6(e) be amended as follows to provide tribes with an expected timeframe and opportunity for response and inclusion in the Superintendent's determination:

*If the Superintendent receives a request that does not meet the minimum requirements outlined in § 2.6(c), within 30 days of receipt of the request, the Superintendent shall respond in writing with either a request for additional information or a notice of denial that includes the justification for denial.*

### **Section 2.6(f)(7) Should Allow for Agreement Criteria to be Developed in a Case-by-case Basis, and Incorporate Options for Internal Tribal Record Keeping and Permitting**

As written this proposed rule requires the Superintendent of parks to collect information from requesting tribes regarding who is authorized to gather, what will be gathered, how much will be gathered, when it will be gathered, how it will be gathered, where it will be gathered, etc. In addition NPS is the entity responsible for issuing permits to individuals after the extensive gathering information is collected from the Tribe. This proposed permitting system administered by NPS does not factor in how difficult it will be for tribal administrators to, not only collect this type of information, which is not readily available, but also to get tribal members to cooperate. In the alternative, the Yurok Tribe suggests that the rule be redesigned to provide tribes the opportunity to manage the permitting system internally, so that no information regarding who, what, where, how much, and when, needs to be collected by NPS. Rather, the Tribe will develop its own information collection and management system. In lieu of NPS issued permits, authorization to gather will be confirmed by NPS through possession of a tribal enrollment card.

We acknowledge that each tribal request and the resources and willingness for co-management of an agreement will vary. Therefore we suggest that § 2.6(f) agreement criteria be eliminated, and replaced with a statement that "an agreement to gather and remove plants or plant parts may be implemented through a permitting system to be developed on a case-by-case basis through negotiation with the requesting tribe." This language would allow for NPS administered permits if necessary. The section could also

include minimum requirements for the agreement, including the name of the tribe the basis for eligibility, and a description of the system used to administer the permits.

### **Proposed Section 2.6(f)(4) - (7) Constitute Unnecessary and Burdensome Information Collection**

The following comment is related to our suggestion above. These subsections of 2.6(f) require tribes to state specifically in their agreement with NPS the identity of members authorized to gather, as well as type, size, quantity, times and locations of plants or plant parts that may be gathered. The Yurok Tribe is not willing to require its authorized gathering members to disclose to outside sources their personal information and the exact locations of gathering sites that are sacred or culturally significant. We do not have sufficient assurances from the federal government that the confidentiality of such information will be protected. Moreover, specific location and time information is not necessary for NPS to adequately monitor the tribe's gathering practices. An agreement acknowledging gathering rights for individuals with a valid enrollment card of the Tribe for which the agreement was authorized, along with assurances of internal tribal monitoring is more than sufficient.

The NPS must respect tribal ownership of this information. As a recent Department of Interior policy statement on the confidentiality of sacred sites has acknowledged, "When consulting with tribes to determine whether culturally sensitive locations may be affected by Federal actions, Federal agencies shall respect tribal desires to keep information about such locations confidential." Imposing a requirement to disclose information regarding gathering sites is contrary to the sentiments of the statement quoted above, and places an undue burden on the Tribe. Therefore the Yurok Tribe suggests these criteria be removed from the proposed rule to eliminate the risk of disclosure of this information by the NPS, and to facilitate tribal member participation in the NPS traditional gathering agreement process.

### **Section 2.6(h) and 2.6(i) Actions Must be Predicated by Consultation with Respective Tribes**

As currently written these sections allows NPS to terminate a negotiated agreement with a Tribe simply by publishing public notice, with the exception of undefined emergency situations in which case no notice is required. Section 2.6(i) doesn't even require notice to the tribe, it simply requires concurrence by the Regional Director. The decision to eliminate authorized access to traditional gathering should not be a unilateral federal action. Instead, the Yurok Tribe suggests the initiation of a consultation to discuss the proposed action in a collaborative manner with the respective tribe. To that effect we suggest that subsections 2 and 3 be deleted from § 2.6(h) and the following added:

*(2) When the Superintendent determines that closure to traditional gathering is warranted, the superintendent will initiate consultation with*

*the affected tribes to determine whether the reasons for the proposed closure may be resolved.*

In addition the Yurok Tribe suggests that subsection 2 of § 2.6(i) be deleted and the following added:

*(2) When the Superintendent determines that violations of an agreement warrant suspension or termination, the superintendent will initiate consultation with the affected tribes to determine whether the reasons for the proposed closure may be resolved.*

Thank you for the opportunity to provide comments on the proposed rule. Should you have any questions regarding our comments please feel free to contact me.

Wok-hlew',

A handwritten signature in black ink, appearing to read 'T. P. O'Rourke, Sr.', with a stylized flourish at the end.

Thomas P. O'Rourke, Sr.  
Tribal Chairman  
Yurok Tribe