

SEMINOLE TRIBE OF FLORIDA

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July 15, 2015

Office of Tribal Relations and American Culture, National Park Service
Attention: RIN 1024-AD84
1201 Eye Street, NW
Washington, DC 20005

RE: Comments on RIN 1024-AD84; National Park Service proposed rule: *Gathering of Certain Plants or Plant Parts by Federally Recognized Indian Tribes for Traditional Purposes*, 80 Fed. Reg. 21674 (April 20, 2015)

The Seminole Tribe of Florida ("Tribe") appreciates the opportunity to comment on the United States National Park Service's ("NPS") proposed rule: *Gathering of Certain Plants or Plant Parts by Federally Recognized Indian Tribes for Traditional Purposes*. The Tribe is a recognized Dependent Sovereign Indian Nation pursuant to the Indian Reorganization Act of 1934. The unique relationship the Tribe has with the NPS is based on the NPS' fiduciary trust obligation to act in a manner that respects the Tribe's sovereignty and benefits the Tribe.

The Tribe appreciates that the NPS is seeking to provide opportunities for Native Americans to continue their cultural/traditional practices within the lands the NPS manages. The Tribe is encouraged by the good intentions; however, the Tribe is deeply concerned by the procedures outlined in the proposed rule. As written, the proposed rule undermines all the good intentions and is a major step backwards in the trust relationship between the NPS and the Tribe. Pursuant to the Trust Responsibility, the NPS is obligated to seek self-determination opportunities for the Tribe. The term self-determination means more than self-governance, it also means being allowed to continue as a culturally distinct group of people; more precisely, being able to continue living in a manner that makes Seminole tribal members Seminole. The proposed rule is

"BUT I HAVE PROMISES TO KEEP & MILES TO GO BEFORE I SLEEP"



SEMINOLE TRIBE OF FLORIDA

more regulatory in nature and prescribes procedures that are totally foreign to traditional Seminole ways.

The proposed administrative procedures are overly burdensome and would force traditional practitioners to forego their customary ways in order to gain access for traditional plants and to assimilate to a purely non-native bureaucratic process.

The end result will be that traditional Seminole ways of plant gathering will be forfeited in exchange for access. The proposed rule moves away from the federal policy of self-determination back to the mistakes of the assimilation era.

It is with the foregoing in mind that the Tribe offers the following comments.

I. Application to the Big Cypress National Preserve, Addition Lands and Everglades National Park

First and foremost, the proposed rule would not apply to the Big Cypress National Preserve, Big Cypress National Preserve Addition Lands, and the Everglades National Park. The proposed rule provides that it would “have no effect on existing statutory or treaty rights...” The Tribe has existing statutory rights to continue their traditional practices, including plant gathering, within the Big Cypress National Preserve, Big Cypress National Preserve Addition Lands, and the Everglades National Park. Therefore, the proposed rule, if promulgated, would not apply to these three park units. The Big Cypress National Preserve and Big Cypress National Preserve Addition Lands’ (collectively “BCNP”) enabling acts acknowledges the STOF’s traditional association with the BCNP. Further, the enabling acts provide that the STOF is allowed “to continue their usual and customary use and occupancy” of the BCNP area, which includes customary, cultural activities like plant gathering (see P.L 93-440 and P.L. 100-301). The NPS and the STOF are currently developing usual and customary usage regulations per the existing Congressional mandate. **Therefore, the proposed rule would not apply to the BCNP.**

With regard to the ENP, the enabling act (48 Stat 816) provides “[t]hat nothing in this Act, shall be construed to lessen any existing rights of the Seminole Indians which are not in conflict with the purposes for which the Everglades National Park is created...” Therefore, similar to the BCNP, Congress has formally acknowledged the Tribe’s traditional association to the ENP and that the Seminole tribal members enjoy traditional usage of



SEMINOLE TRIBE OF FLORIDA

the park unit. To understand the Tribe's "existing rights" within the ENP, it is important to acknowledge that at the time the ENP was established, the ENP was the Tribe's State Reservation providing access to and usage of the ENP area (see Fla. Stat. 285.01). These reservation lands were held "in trust for the perpetual use and benefit of the Seminole Indians" (see Fla. Stat. 285.011). The term "perpetual use and benefit" included customary, cultural activities such as gathering plants within both the reservation lands and those lands outside the State Reservation that complete the ENP park unit. The Tribe agreed to the lands becoming a National park unit in exchange for their continued usage of the ENP area for uses including customary, cultural activities like plant gathering. **Consequently, the proposed gathering rule would not apply to the ENP.**

Application of the proposed rule to the BCNP and ENP along with any intrusion on the Tribe's existing congressionally acknowledged rights are the Tribe's primary concern. It is clear that the proposed rule would not apply to the BCNP and ENP. Notwithstanding the proposed rule's irrelevance to the BCNP and ENP, the remaining comments set forth below outline the critical flaws of the proposed rule as it concerns park units where the proposed rule may apply.

II. Unnecessary Administrative and Regulatory Burdens

Historically ancestors of current Seminole tribal members have utilized the areas that now make up the park units within the State of Florida for approximately 15,000 years and sought refuge from European encroachment in these areas over 300 years ago. These lands hold more than historical value to the Tribe; they embody the Tribe's cultural identity. Continued usage of these lands in the traditional manner significantly contributes to ensuring that Seminole ways and beliefs are passed to future generations and that the Tribe continues to exist as a distinct group of people. These traditional ways and beliefs are threatened by the proposed rule because, while the rule would afford access, the non-native administrative/regulatory procedures that must be followed assimilate what has been a traditional practice into a non-native bureaucratic process. Essentially, the procedures prescribed would require traditional Seminole practitioners to act more like the NPS, a federal agency, rather than like Seminoles in order to gain access. This is culturally offensive and a major step back towards the era of assimilation.

The Tribe's concern is that the bureaucratic protocols/restrictions that NPS are proposing are so burdensome and non-native in nature that the result will be that no traditional, cultural practitioner will be able to meet the



SEMINOLE TRIBE OF FLORIDA

necessary requirements and remain true to their Seminole traditions/beliefs. Unlike western medicine, it is culturally inappropriate to predict which medicinal plants will be required for future events/needs. Gathering such plants must therefore be undertaken in reaction to particular circumstances and is typically completed by cultural practitioners with very limited exposure to the types of biological record keeping/management practices being required by the NPS. The Tribe fears the net result will be that the Seminole tribal members will not be able to practically utilize traditional cultural resources within park units in a traditional manner. Consequently, if the traditional manner in which these plants are gathered is supplanted by the bureaucratic process being required by the NPS, then the traditional value of these plants is lost along with the Seminole traditional ways and beliefs (i.e., the traditional values are not just in the plant itself but the way in which the practitioner prepares to collect the plants). In essence the proposed rule inadvertently defines the process by which traditional gathering can incur and thus redefines what is a traditional practice to resemble the NPS' administrative process rather than Seminole customs.

Further, the proposed rule prescribes administrative requirements for the agreements that in essence would reduce the Seminole tribal government to administrative arms of the NPS by significantly imposing unnecessary administrative obligations on the Tribe in exchange for being able to continue traditional practices. These unnecessary administrative burdens include:

- Development of specific plant gathering management/protection plans (joint plans between NPS and tribes);
- Collaborative research and administration (environmental and cultural studies);
- Designation of individuals who may gather and remove plants or plant parts (including development of system by which to inform NPS who is authorized);
- Limitations on size, quantities, time, seasons, or location for gathering and removal;
- Description of the specific plants or plant parts that may be gathered or removed;
- Methods that may be used for gathering and removal;
- Protocols for monitoring;
- Procedures and remedies for non-compliance;
- Protocols for tribal governments to manage gathering and removal activities by tribal members;
- Procedures and/or protocols for issuance of permits for gathering and removal activities;
- Procedures for closure and restrictions on gathering and removal activities (for protection of park resources and/or public health and safety); and



SEMINOLE TRIBE OF FLORIDA

- Statement that commercial use of natural resources is prohibited.

None of the above listed administrative requirements resemble traditional Seminole practices or the Tribe's governance of its tribal members. To require the Tribe to facilitate such a regulatory scheme is akin to requiring the Seminole tribal government to facilitate becoming more like the NPS and abandoning being Seminole. Further, the NPS ignores the logistical and cultural difficulties the tribal administrator will face trying to collect this type of information, which is not readily available or collectable. The NPS is also ignoring the difficulties in getting traditional tribal practitioners to cooperate in a process that is contrary to the traditional customs they are seeking to conduct.

III. Confidentiality of Information

The proposed rule provides that information regarding the types of plants, plant locations, and methods for gathering and removal would be required before the Superintendent could enter into an agreement with the Tribe concerning the gathering of plants. It is important that the NPS acknowledge that the sharing of these cultural details and practices is highly sensitive and counter to the Tribe's customary practices. The NPS has not demonstrated a need for such information as a basis for protecting plant communities (the NPS has noted that research has shown traditional gathering practices does not impair the ability to conserve plant communities and can help conserve them).

Further, the NPS has not provided sufficient assurances that the confidentiality of the information required from the Tribe will be protected. This is especially problematic considering that the information being required by the proposed rule is not necessary for the NPS to adequately monitor the Tribe's gathering practices or adequately manage plant communities. Moreover, requiring information regarding specific plants, locations, and times invites the general public to show up to watch and interfere with Seminole tribal members partaking in traditional plant gathering and ceremonies. Finally, requiring such information, which would be available to the general public, risks encouraging/facilitating the general public to harvest traditional plants based on the assumption that the plants have medicinal and/or spiritual values. This poses a greater risk to the management of the plant communities than that posed by Native Americans.

IV. Gathering by Medicine Men and Gathering for Tribal Use



SEMINOLE TRIBE OF FLORIDA

It is unclear whether the proposed rule limits the gathering of plants for personal use and precludes benefit sharing amongst tribal members. Specifically, it is unclear whether the proposed rule would preclude the gathering of plants by Seminole medicine men. Since time immemorial, Seminole medicine men have gathered plants for both medicinal and ceremonial purposes that benefit the Tribe as a whole. This is the medicine man's traditional role in the Seminole community. It is also traditional practice for the medicine men to be rewarded for their efforts in some form of compensation or bartering.

In addition to medicine men, it is also traditional practice for the Seminole tribal members to gather plants for the benefit of the whole Tribe or their family. Such gathering has been traditionally done to support tribal ceremonies and to provide for their family members (not just for personal consumption). It is also common for tribal members to trade plants with other tribal members. This is a traditional community practice that is critical to the community's identity and unity.

While it appears the proposed rule would not authorize gathering of plants for commercial purposes, the proposed rule should be clarified so as to allow the traditional practices of medicine men and the gathering by tribal members for the benefit of other tribal members or the Tribe as a whole.

V. NPS Turnover

The proposed rule appears to address the fact that each tribe is different by allowing the Superintendents of the park units to enter into agreements with individual tribes implementing the proposed rule. The Tribe is concerned that the proposed rule provides that the Superintendents "may" negotiate such agreements with the requesting tribes and does not require the Superintendent to do so. This leaves tribes, such as the Tribe, at the mercy of the Superintendent at any given time. It also leaves the door open for future Superintendents, with the approval of the Regional Director, to terminate any formalized agreement(s). Simply stated, the proposed rule should be revised to provide tribes with more assurances that traditional practices will be allowed to continue regardless of the positions held by the given Superintendent and that these traditional practices will endure personnel changes by the NPS.

VI. Seminole People as Stewards of the Park Units

As noted earlier, the ancestors of the Seminole tribal members have utilized the park unit areas within Florida for thousands of years; long before European colonization and establishment of the park units. The



SEMINOLE TRIBE OF FLORIDA

landscapes, wildlife, and plant communities are integral components of the Seminole way of life embodying their cultural identity. The variety of resource types found within Florida (and subsequently NPS park units) has been imbued with value by the Seminole tribal members, consistent with their ancestors, as an expression of the Tribe's beliefs, traditions, and cultural practices. Consequently, the Seminole tribal members are motivated to be good stewards of traditional plant communities. In fact, their traditional practices include measures to ensure sustainability and restoration of the plant communities. The proposed rule does not appear to acknowledge this stewardship and sets up a burdensome regulatory program that imposes unnecessary federal scrutiny on Seminole traditional practices.

The NPS states in the background section of the proposed rule that NPS will not be treating traditional gathering practices as a consumptive use. However, the NPS is requiring a permitting system and formal agreements akin to consumptive use regulatory programs for activities that have not been shown to adversely impact the natural resources. The Tribe's stewardship of the environment is paramount to our survival as culturally distinct people. Our continued existence as Seminole should not be further suppressed by unnecessary regulatory programs that will have no foreseeable benefit to the management of the natural resources and interfere with the Tribe's responsible management of traditional plant communities.

It is equally important to note that the gathering of traditional plants does not occur in the systematic approach the NPS seems to assume. The gathering of plants is often opportunistic; while tribal members are searching for one plant they happen to come across another plant that would also be of traditional value. However, it is the Tribe's traditional belief to take only what is needed and no more. As the NPS acknowledges in the background to the proposed rule, traditional gathering practices "do[es] not impair the ability to conserve plant communities and can help conserve them." Therefore, the NPS should not treat the Tribe's traditional practices as a potential adverse impact to the natural resources and should not require such a robust regulatory process to continue our traditional practices.

In conclusion, the Tribe appreciates the opportunity to comment on the proposed rule. While the proposed rule would not apply to the BCNP or ENP, the Tribe is extremely concerned by the regulatory process proposed. The Seminole tribal members should not be forced to act in a manner



SEMINOLE TRIBE OF FLORIDA

contrary to their traditions and beliefs in exchange for the ability to access park units that were historically their lands for purposes of conducting traditions that allow them to continue as a culturally distinct people. It is also inappropriate to require the Tribe or its tribal members to divulge sensitive information in order to continue the Seminole ways. The Tribe therefore respectfully request the NPS respect the fact that the proposed rule would not apply to the BCNP and ENP. We further request the NPS withdraw the proposed rule and seek development of a process that is not culturally offensive.

Sho Na Bish,



James E. Billie

Chairman, Seminole Tribe of Florida

cc: Jim Shore – Seminole Tribe of Florida
Pedro Ramos – Everglades National Park
JD Lee – Big Cypress National Preserve

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