

July 20, 2015

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

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

Dear Mr. Watkins,

This letter is in response to a Federal Register Vol. 80, No. 75 regarding a National Park Service (NPS) Proposed Rule dated April 20, 2015, regarding Gathering of Certain Plants or Plant Parts by Federally Recognized Indian Tribes for Traditional Purposes.

The Hopi Tribe claims cultural affiliation to earlier identifiable cultural groups in the American Southwest. The Hopi Cultural Preservation Office supports the identification and avoidance of our ancestral archaeological sites, and we consider the archaeological sites of our ancestors to be Traditional Cultural Properties. Therefore, representatives of the Hopi Tribe attended the July 2010 consultation meeting in Flagstaff Arizona and we appreciate the NPS's continuing solicitation of our input and your efforts to address our concerns.

The Background, Authority, and Government-to-Government Relationship sections of the Proposed Rule cite a "unique relationship" between the NPS and tribes "that is strengthened by a shared commitment to stewardship of the land and resources," and "cooperation in the continuation of tribal traditions." The Proposed Rule states that it "is intended to continue Indian tribal cultural traditions that are rooted in the history of specific parks."

The Proposed Rule also acknowledges that much of this activity has been specifically prohibited by promulgation of federal regulations. Therefore, in our experience, the NPS has previously imposed a discontinuation "of Indian cultural traditions on lands that are now administered as units of the NPS system," and continues the "prohibition on taking fish or wildlife for such purposes." And therefore, we do not perceive this Proposed Rule to be a "continuation of sustainable Indian cultural traditions that make up a unique and irreplaceable part of our national heritage."

The Hopi Tribe appreciates that the purpose of the Proposed Rule is to lift this prohibition on the gathering of certain plants. You are quoted as saying, "The rule itself is going to put little more onus on the tribes." The previous prohibition banned tribal gathering entirely. This Proposed Rule puts more onus on the tribes through the proposed regulations, contradicting the NPS's cited "shared commitment to stewardship."

The Proposed Rule requires the Hopi Tribe to identify specific tribal members who, under the permit, are designated to gather and remove plants. The Hopi tribal government never did and does not now designate which tribal members are traditionally allowed to make pilgrimages and offerings for gathering. This is traditionally the responsibility of the autonomous Hopi Villages and the clans in them.

In addition, we do not believe the NPS can protect sensitive or confidential information submitted by the tribes through academic peer review or public review and comment on environmental assessments. The Proposed Rule states under Public Participation that "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." Therefore, we do not support the tribes being required to provide an explanation to the NPS of the traditional purposes to which the gathering activities will relate.

The Proposed Rule cites the United States Forest Service's (USFS) policy for free forest products to Native Americans effective April 1, 2012. The USFS policy is less onerous in that it requires tribes seeking products under the Farm Bill authority to submit a written request for free use. That the NPS, USFS and other federal agencies have distinct statutory mandates and authorities that result in separate regulations and policies that govern the resources they manage undermines the tribal government to federal government relationship, and requires tribes to consult with the federal government on a tribal government-to-federal agency basis.

The Proposed Rule states that "the NPS seeks comment on ways the NPS proposed rule can better align with the USFS rule." Therefore, we support the NPS adoption of the less onerous USFS rule, and request the NPS continue consultations on which it is seeking comment prior to finalizing the Proposed Rule in its present form.

If you have any questions or need additional information, please contact me at the Hopi Cultural Preservation Office at 928-734-3611 or lkuwanwisiwma@hopi.nsn.us. Thank you for your consideration.

Respectfully,

Leigh J. Kuwanwisiwma, Director
Hopi Cultural Preservation Office