



NATIONAL ASSOCIATION OF TRIBAL HISTORIC PRESERVATION OFFICERS
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September 28, 2015

Joe Watkins
Office of Tribal Relations and American Cultures
National Park Service
1201 I Street NW
Washington, DC 20005
Email: Joe_Watkins@nps.gov

Re: Docket RIN 1024-AD84

Dear Mr. Watkins:

The National Association of Tribal Historic Preservation Officers (NATHPO) is a not-for-profit membership association of federally-recognized tribal government officials who are committed to preserving tribal cultures and practices. Tribal Historic Preservation Officers (THPOs) perform a variety of duties for their respective tribal governments in the field of cultural preservation. NATHPO submits the following comments to the National Park Service (NPS) on RIN No. 1024-AD84, Proposed Rule, “Gathering of Certain Plants or Plant Parts by Federally Recognized Indian Tribes for Traditional Purposes.”

Our comments include a wide range of tribal perspectives that were raised and discussed during individual and collective meetings and reflect a collective voice. In addition to discussing this proposed rule during NATHPO’s annual meeting and conference in August, NATHPO also invited all THPOs and other tribal representatives serving as their tribe’s cultural resource point of contact to participate in two conference calls earlier this month.

NATHPO supports the NPS efforts to facilitate the traditional gathering of culturally significant plants and plant parts by federally recognized tribes on lands now managed by the NPS. NATHPO agrees with the NPS that federally recognized Indian tribes’ rights to gather and remove park resources for traditional purposes should be recognized. NATHPO echoes similar comments and recommendations on how to improve the process outlined in the proposed rule as follows:

1. That this proposed rule does not waive, alter, or otherwise diminish the sovereign rights of any Indian tribe.

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NATHPO is a not-for-profit membership association of tribal governments that are committed to preserving, rejuvenating, and improving the status of tribal cultures and cultural practices by supporting Native languages, arts, dances, music, oral traditions, cultural properties, tribal museums, tribal cultural centers, and tribal libraries.

2. That this proposed rule clarifies and affirms no effect on existing statutory or treaty rights. Certain sections of the proposed rule contain language that conflates treaty-based, statute-based, and agreement-based rights. The proposed rule should clearly and consistently recognize these important distinctions with the treaty-based and statutory-rights having paramount authority.
3. That the NPS consult with Indian tribes that have treaty rights in park areas to ensure that NPS does not grant agreements that are in conflict with these treaty rights.
4. That that NPS include a 90-day time limit on how long a park superintendent may consider and respond to a tribal request (reference Sec. 2.6(c) Tribal Request).
5. That the NPS include a dispute resolution process that addresses the instance of a park superintendent denying a tribal request, which would outline the steps to follow, including appealing first to the Director of the NPS and then to the Secretary of Interior. As proposed in the rulemaking, the regional director would be required to concur with the superintendent's decision and thus a tribal appeal would be to the NPS director (reference Sec. 2.6(c) Denial of Request to Enter Into Agreement).
6. That the NPS recognize the significance and importance of the places from which tribal members have gathered plants and plant parts – in some cases for hundreds, if not thousands of years – including officially identifying these places as Traditional Cultural Properties, and affording these special places the rights and responsibilities offered by the National Historic Preservation Act.
7. Language is included in the proposed rule for non-compliance with the agreement by tribal members, but no reference to NPS representatives. Language should be included that failure by the NPS to abide by the agreement constitutes a final agency action under the Administrative Procedures Act [5 USC 704] (reference Sec. 2.6(f) Contents of Agreements).
8. That the NPS and Indian tribes engage in co-stewardship of the places where plants and plant parts are gathered and that funds be made available for monitoring of these resources.

Please feel free to contact me if you have any questions regarding these recommendations.

Sincerely yours,



D. Bambi Kraus
NATHPO President