



# United States Department of the Interior

NATIONAL PARK SERVICE  
1849 C Street, NW  
Washington, DC 20240

## **Policy Memorandum 24-01**

To: National Park Service Senior Leadership  
Superintendents

From: Director

Subject: Guidance for Implementing 36 CFR 2.6—Plant Gathering by Federally  
Recognized Tribes for Traditional Purposes

### **1. Purpose and Duration**

The National Park Service (NPS) plant gathering regulation at [36 CFR 2.6](#) allows the NPS to negotiate and enter into agreements with federally recognized Tribes for the gathering of plants or plant parts from units of the National Park System (System). This Policy Memorandum (Memorandum) clarifies certain paragraphs of the regulation to help superintendents and other NPS managers effectively and consistently implement the regulation Service-wide. This Memorandum does not amend or update the existing regulation at 36 CFR 2.6, which would require a regulatory update through a separate process.

The intent of the NPS plant gathering regulation is to facilitate Tribal cultural practices on lands within areas of the System where those practices traditionally occurred. While the regulation was intended to support the continuation of Indigenous gathering practices and further the nation-to-nation relationship between the United States and Tribes, the NPS has learned through consultation with Tribes that, as implemented, the regulation's requirements can be problematic and may, in some cases, even be offensive to Tribal practices.

The objective of this Memorandum is to further the intent and provide Service-wide consistency for this aspect of NPS-Tribal relations. As such, this Memorandum supplements existing guidance found in [NPS Management Policies \(2006\)](#), Executive orders, Presidential memoranda, statutes, regulations, judicial decisions, Secretary's orders, and other Department of the Interior guidance, including:<sup>1</sup>

- [Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships \(January 26, 2021\)](#)
- [Memorandum on Uniform Standards for Tribal Consultation \(November 30, 2022\)](#)

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<sup>1</sup> Additional guidance for Federal agencies is available from the [Advisory Council on Historic Preservation \(ACHP\)](#), including: [Early Coordination with Indian Tribes During Pre-Application Processes: A Handbook](#); and [Traditional Knowledge and the Section 106 Process: Information for Federal Agencies and Other Participants](#).

- [Departmental Manual, Part 512, Chapter 4: Department of the Interior Policy on Consultation with Indian Tribes \(512 DM 4\)](#)
- [Memorandum of Understanding Regarding the Interagency Coordination and Collaboration for the Protection of Indigenous Sacred Sites \(2021\)](#)
- [Best Practices Guide for Federal Agencies Regarding Tribal and Native Hawaiian Sacred Sites \(2023\)](#)
- [Memorandum of Understanding Regarding Interagency Coordination and Collaboration for the Protection of Tribal Treaty Rights and Reserved Rights \(2021\)](#)
- [Best Practices for Identifying and Protecting Tribal Treaty Rights, Reserved Rights, and Other Similar Rights in Federal Regulatory Actions and Federal Decision-Making \(2022\)](#)
- [Executive Memorandum: Indigenous Traditional Ecological Knowledge and Federal Decision Making \(2021\)](#)
- [Executive Memorandum: Guidance for Federal Departments and Agencies on Indigenous Knowledge \(2022\)](#)
- [Departmental Manual, Part 301, Chapter 7: Departmental Responsibilities for Consideration and Inclusion of Indigenous Knowledge in Departmental Actions and Scientific Research \(301 DM 7\)](#)
- [Joint Secretarial Order No. 3403 on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters \(2021\)](#)
- [Departmental Manual, Part 502: Collaborative and Cooperative Stewardship with Tribes and the Native Hawaiian Community \(502 DM 1\)](#)
- [NPS Policy Memorandum 22-03: Fulfilling the National Park Service Trust Responsibility to Indian Tribes, Alaska Natives, and Native Hawaiians in the Stewardship of Federal Lands and Waters \(2022\)](#)
- [NPS Director's Order #12: Conservation Planning, Environmental Impact Analysis, and Decision-Making and NPS NEPA Handbook \(2015\)](#)
- [NPS Director's Order #20: Agreements](#)

This Memorandum will remain in effect until (1) NPS regulations in 36 CFR 2.6 are revised; (2) more up-to-date guidance is issued on this topic; or (3) it is amended, superseded, or rescinded by the Director.

## **2. Background**

### **2.1 Implementation of the Plant Gathering Regulation at 36 CFR 2.6**

The NPS has a special relationship with Indian Tribes, which are sovereign nations. This relationship is strengthened by a shared commitment to stewardship of the land and resources. Indian Tribes have historical, cultural, and spiritual relationships with the park lands and resources with which they are traditionally associated. As original stewards of the land, Indian Tribes have practiced stewardship and traditional harvests of plants or plant parts on or from lands that are now included in areas of the System since time immemorial. This guidance recognizes that history as a foundation for interpreting the NPS plant gathering regulation today.

The NPS issued 36 CFR 2.6 to establish a management framework that provides for designated members of federally recognized Tribes to gather plants or plant parts for traditional purposes

from park lands under an agreement and permit. The regulation went into effect on August 11, 2016 ([81 FR 45024](#)). The regulation does not extend to non-federally recognized Tribes or the Native Hawaiian community. The regulation does not provide an individual benefit and is only available to Tribal members of Tribes who have a plant gathering agreement with the NPS per 36 CFR 2.6.

The process of developing a plant gathering agreement is initiated through a written request from a Tribal government to a park superintendent. The regulation has several requirements including:

- consultation and co-development of the agreement to meet the requirements outlined in 36 CFR 2.6(f);
- completion by the NPS of an Environmental Assessment (EA) and a Finding of No Significant Impact (FONSI); and
- issuance of a permit to the Tribe authorizing plant gathering under the conditions of the signed agreement.

Tribal consultations, held before implementation of the 2016 rule and more recently in June 2023, informed the NPS that Tribes find the process outlined by the regulations difficult to navigate. Understanding and responding to Tribal concerns is paramount to successfully working with Tribes throughout this process. This Memorandum provides guidance to help superintendents and NPS managers understand and address concerns within the parameters of the existing regulation.

## 2.2 Application in Alaska

The plant gathering regulation at 36 CFR 2.6 and the guidance provided in this Memorandum apply differently in Alaska because the Alaska National Interest Lands Conservation Act (ANILCA) and regulations implementing ANILCA at 36 CFR Part 13 separately allow plant gathering for certain purposes in certain areas. The regulation at 36 CFR 2.6 provides an additional and alternative authorization for plant gathering for those areas also subject to 36 CFR Part 13 or for purposes where plant gathering is not possible under ANILCA and regulations at 36 CFR Part 13. Therefore, a Tribal government may utilize 36 CFR 2.6 in areas in Alaska, or for purposes where plant gathering is not authorized by ANILCA and its implementing regulations. Where ANILCA and its implementing regulations do allow for plant gathering, a Tribal government may proceed under those provisions or 36 CFR 2.6, but it does not need to comply with both.

For most System units in Alaska, 36 CFR Part 13 regulates both subsistence and non-subsistence plant gathering in park areas. While the plant gathering regulation at 36 CFR 2.6 does not address or affect subsistence activities like those authorized in Alaska by [36 CFR 13.400-13.495](#), much of the plant gathering in Alaska parks where subsistence uses are authorized occurs under 36 CFR 13.485(b) by eligible local rural residents. However, if Alaska Native Tribes wish to gather and remove plants for purposes that are not authorized in [36 CFR 13.485\(b\)](#), they may request to enter into a plant gathering agreement under 36 CFR 2.6. In that case, the NPS and Alaska Native Tribes must meet the requirements of the plant gathering regulation at 36 CFR 2.6 (consistent with the guidance in this Memorandum).

The regulation at [36 CFR 13.35](#) governs non-subsistence plant gathering in certain park areas. Consistent with the purposes for which each park area was established, designated or expanded by ANILCA, 36 CFR 13.35 regulates the gathering or collection of natural products<sup>2</sup> and allows for the gathering, by hand and for personal use only, of natural plant food items (excluding threatened or endangered species), driftwood and uninhabited seashells, plant materials and minerals essential to the conduct of traditional ceremonies by Native Americans, and dead wood on the ground for use as fuel for campfires within the park area. However, if Alaska Native Tribes wish to gather and remove plants for traditional purposes not authorized in 36 CFR 13.35, they may request to enter into a plant gathering agreement under 36 CFR 2.6. In that case, the NPS and Alaska Native Tribes must meet the requirements of the plant gathering regulation at 36 CFR 2.6 (consistent with the guidance in this Memorandum).

The regulations in 36 CFR 13.35 do not apply to System units and areas within System units that were not established by ANILCA: Klondike Gold Rush National Historical Park, Sitka National Historical Park, the former Mt. McKinley National Park portion of Denali National Park and Preserve, and the former Katmai National Monument portion of Katmai National Park and Preserve. In these areas, plant gathering for traditional purposes will continue to be governed by the regulation at 36 CFR 2.6 (consistent with the guidance in this Memorandum).

### **3. Policy Implementation**

#### **3.1 Tribal Official Definition**

The regulation defines the term Tribal official in paragraph (a) as “an elected or duly appointed official of the federally recognized government of an Indian [T]ribe authorized to act on behalf of the [T]ribe with respect to the subject matter of this regulation.” The structure of Tribal governments varies. NPS managers will defer to the Tribe’s appointment of a Tribal official.

#### **3.2 Treaty Rights and Other Statutory Provisions for Gathering**

Paragraph (j) of the regulation explains that plant gathering in System units is prohibited except where specifically authorized by: (1) Federal statute, (2) treaty rights, (3) the regulations in 36 CFR chapter 1, or (4) a plant gathering agreement and permit per 36 CFR 2.6. Tribes with treaty rights specifically authorizing plant gathering are exempt from the agreement and permit requirements in 36 CFR 2.6. Tribes that retain rights to gather within System units through other statutory provisions are also exempt from these requirements.<sup>3</sup> If no NPS action is required when Tribes exercise these treaty or statutory rights, then the procedural requirements of NEPA are not triggered. If there are questions regarding treaty or other reserved rights by Tribes for

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<sup>2</sup> Natural products include “living or dead fish and wildlife or parts or products thereof, plants or parts or products thereof, live or dead wood, fungi, seashells, rocks and minerals” as defined in 36 CFR 13.35(b).

<sup>3</sup> For example, enrolled members of the Pueblos of San Ildefonso and Santa Clara may collect plants or plant products in Bandelier National Monument under section 2101 of the Cerro Grande Fire Supplemental, Division C of the Act of July 13, 2000 ([Pub. L. 106-246, 114 Stat. 583, 592](#)).

access, use, or gathering in System units, NPS managers should consult with their Regional Tribal Liaison, the Office of Native American Affairs, and the Office of the Solicitor for advice.<sup>4</sup>

### 3.3 Compliance with the National Environmental Policy Act

Subparagraph (d)(2) notes that the NPS must comply with all applicable Federal laws when entering a plant gathering agreement. The regulation requires that compliance for the National Environmental Policy Act of 1969 (NEPA) consist of an Environmental Assessment (EA), concluding with a Finding of No Significant Impact (FONSI). Completion of the EA and FONSI are the responsibility of the NPS. There is no expected financial burden to Tribes for completion of the environmental review process. NPS managers should refer to Director's Order #12 and the NPS NEPA Handbook when developing an EA for a plant gathering agreement. The plant gathering agreement must have the concurrence of the regional director, and all FONSI must be signed by the regional director.

The NPS and the Tribe should jointly develop content for the EA during consultation to incorporate high-quality information, including Indigenous Knowledge. NPS managers are encouraged to incorporate co-stewardship principles when developing content for the agreement and EA. The EA should consider the benefits of Tribal gathering for traditional purposes, including direct, indirect, and cumulative effects. If multiple Tribes have requested a plant gathering agreement at a park, or to include multiple parks, a single EA may be completed to cover the gathering activities of multiple Tribes. In this case, the NPS must ensure that the EA and FONSI address the entire scope of the gathering requested. The EA should consider all plant species and locations desired for Tribal gathering to minimize the burden to complete additional environmental review later.

EAs for Tribal plant gathering should incorporate appropriate elements of Indigenous Knowledge and traditional practices, reflecting only information that Tribes have agreed may be shared within the public document. If provided in writing, Indigenous Knowledge and other information provided by the Tribe may be subject to Freedom of Information Act requests and public review. In most cases an EA will be made available for public review and comment during the NEPA process; a public meeting is not required. At the conclusion of the NEPA process, the EA and FONSI must be made available to the public. The EA and FONSI should be used to support permitting decisions.

### 3.4 Description of Traditional Practices to which the Plant Gathering Relates

Paragraph (c) requires a Tribal official to submit to the superintendent a written request to enter into a plant gathering agreement. Subparagraph (1)(ii) requires the Tribe to describe the traditional purposes<sup>5</sup> to which the plant gathering relates. Tribes may have prohibitions on sharing Indigenous Knowledge or information regarding traditional practices outside of the Tribe. NPS managers should be sensitive to Tribal privacy interests, and Tribes may use general

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<sup>4</sup> For additional guidance, see [Guidance for Federal Regional and Field Staff: Best Practices for Identifying and Protecting Tribal Treaty Rights, Reserved Rights, and Other Similar Rights in Federal Regulatory Actions and Federal Decision-Making](#); and the [Tribal Treaty Rights Consultation Best Practices Flowchart](#).

<sup>5</sup> 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” as defined in 36 CFR 2.6 (a).

terms for this requirement, for example, simply stating that the plant gathering relates to a traditional ceremony. Further details about traditional practices to which the plant gathering relates are not required.

### 3.5 Description of the Traditional Gathering and Removal Activity

Subparagraph (1)(iii) of paragraph (c) requires the Tribe to include in its written request to enter into an agreement a description of the traditional gathering and removal activities the Tribe is interested in conducting. This provision requires a list of plants or plant parts that Tribal members wish to gather and the methods by which those plants or plant parts will be gathered. However, details about the types of plants gathered or the harvesting methods may be a confidential matter for the Tribe in some instances. NPS managers should be sensitive to Tribal concerns if revealing details of the plant gathering would compromise Tribal interests. NPS managers may accept the Tribe's use of general terms for the method of gathering, as appropriate. Tribes, through long interaction and experience with the environment and Indigenous Knowledge systems, understand that plant gathering techniques can have positive, neutral, or negative effects on individual plants or the local stand of a plant species. Consequently, the Tribe may offer general terms for the traditional method of gathering which in most cases should provide sufficient information for the NPS to assess the degree of impact to the plant or the local stand of a plant species. Superintendents may consider, under the terms of the agreement and provided in the EA, an extensive list of non-sensitive plants, even ones that might not be gathered, as a means of protecting culturally sensitive information about which specific plants or plant parts may be harvested. The agreement may not authorize the gathering of any species listed as threatened or endangered under the Endangered Species Act.

Subparagraph (f)(1)(vi) requires the agreement to specify quantity of the plant or plant parts that may be gathered. If a Tribe prefers not to disclose the precise number of plants or plant parts they would like to gather under the agreement, NPS managers may prepare a NEPA analysis that considers a percentage of a given stand or plant population, or specifies a quantity greater than the amount requested by the Tribe. In such cases, these decisions should be based on information gathered through Tribal consultation.

### 3.6 Initiation of Consultation and Expected Time to Completion

Paragraph (c)(2) of the regulation requires the superintendent to initiate consultation within 90 days after receiving a Tribal request to enter into a plant gathering agreement. Superintendents should prioritize requests for plant gathering from Tribes to the maximum extent practicable. Superintendents are encouraged to initiate consultations within 14 days after receiving the request absent extenuating circumstances.

The regulatory background in the NPS plant gathering regulation<sup>6</sup> notes that the time needed to enter into an agreement will not be subject to a deadline and will vary based on the consultation process and other circumstances. While there is no deadline, the NPS has estimated and verified through consultation with Tribes and parks with completed agreements that the total burden of hours to complete the process is equivalent to about 10 to 15 weeks of dedicated work. NPS

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<sup>6</sup> See the NPS plant gathering regulation's supplemental information section regarding the Summary of and Responses to Public Comments, Process for Authorizing Gathering Activities, [Comment \(8\)](#).



managers should establish clear expectations up front on the duration of the process and move to complete the requirements as expeditiously as possible. The NPS may support Tribal participation in consultation activities or compensate Tribal subject matter experts under various authorities. See Director's Order #71C: Consultation with Indian and Alaska Native Tribes.

### 3.7 Means for the Tribal Government to Keep the NPS Regularly Informed About Which Enrolled Tribal Members are Designated by the Tribe to Gather and Remove Plants

Subparagraph (f)(1)(iii) requires the agreement to include a description of the system to be used to administer traditional gathering, including a clear means of identifying the enrolled Tribal members who, under the permit, are designated by the Tribe to gather and remove plants. Subparagraph (iv) requires that agreements articulate a means for the Tribal government to keep the NPS regularly informed of which enrolled Tribal members the Tribe has designated to gather and remove plants. The means themselves are not specifically described in the regulation. If the Tribe determines that disclosure of the names of Tribal members authorized to gather compromises Tribal interests, then NPS managers will work with the Tribe to develop a means of communication to protect that interest. The Tribe may identify their method for identifying authorized gatherers. The Tribe may choose to list the title, or a description of the positions authorized to harvest under the agreement and subsequent permit. Superintendents may issue the permit in the name of the Tribal leader who retains discretion to authorize individual enrolled Tribal members, societies, and clans to collect plants and plant parts within the park.<sup>7</sup> The NPS and the Tribe may decide an oral communication process is best to meet Tribal privacy concerns while relaying appropriate information under the agreement.

### 3.8 Times and Locations at Which Plants may be Gathered and Removed

Pursuant to subparagraph (f)(1)(vii), agreements must identify the times and locations at which the plants or plant parts may be gathered and removed. Because Tribes may consider this information to be confidential, NPS managers may work with Tribes to provide reference to broad times and locations for gathering and removal of plants while respecting the confidentiality of Indigenous Knowledge. For example, under certain circumstances superintendents may even consider an agreement that authorizes plant gathering park-wide, at any time of the year.

### 3.9 Terms and Conditions of Agreements with Tribes and Permits to Authorize the Traditional Gathering and Removal of Plants or Plant Parts for Traditional Purposes

The regulation at paragraph (b) provides that superintendents may enter into agreements with Tribes to authorize the gathering and removal of plants or plant parts for traditional purposes. The agreements will serve as the framework under which the NPS will provide for Tribal gathering, and will be implemented by an accompanying special use permit issued under [36 CFR 1.6](#). The agreements may be authorized for up to 10 years and may be modified or canceled by either party with notification in writing. Before canceling a gathering agreement or implementing permit, the superintendent must obtain the written concurrence of the regional

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<sup>7</sup> In certain circumstances members of American Indian Tribes and other traditionally associated groups are exempt from paying entrance fees and expanded amenity fees collected under the Federal Lands Recreation Enhancement Act. Refer to the Memorandum from the Associate Director, Business Services to Regional Directors, Associate and Assistant Directors: [Fee Exemptions – Access by American Indian Tribes and Indigenous People](#) (10/31/2022).

director. (See [36 CFR 2.6 \(i\)](#).) Agreements may include an option to renew for up to another 10 years, subject to the same terms and requirements as the original term. Before incorporating such a renewal option into the agreement, the NPS must ensure that its EA and FONSI address the entire potential agreement term (for example, up to 20 years). Before later exercising the renewal option, the NPS will need to perform a review that must confirm there are no new environmental impacts and reaffirm that the agreement remains within the scope of the actions and impacts analyzed in the EA. As appropriate, this should be documented in a memo to file, as discussed in the NPS NEPA Handbook.

Plant gathering agreements do not need to be standalone documents. If all requirements outlined in 36 CFR 2.6 have been met, plant gathering may be authorized in other appropriate agreements that parks and Tribes are negotiating (for example, a co-stewardship arrangement). Agreements may also authorize plant gathering requested by a single Tribe to gather in multiple parks, or plant gathering requested by multiple Tribes to gather in multiple parks under a single agreement. In both cases, the agreement must be signed by the relevant superintendent(s) and Tribal chairmen or governor(s) with the concurrence of the regional director(s).

Agreements will be implemented through a special use permit issued in accordance with 36 CFR 1.6. Activities allowed by the special use permit must fall within the scope of activities agreed upon by the Tribe and the NPS in the agreement. Permits do not require NPS managers to chronicle details of culturally sensitive information. Therefore, Tribes may wish to restrict sharing culturally sensitive information regarding plant gathering, including descriptions of where and how specific plants or plant parts might be gathered, traditional methods, or the names of Tribal members designated for harvesting plants or plant parts. NPS managers, in consultation with the Tribe, will include only the minimal information required in plant gathering agreements and implementing permits. NPS managers should be sensitive and accommodating to Tribal interests when describing the terms and conditions of the plant gathering activity.

NPS managers may issue a permit for the duration of five years, based on the requirements outlined in the plant gathering agreement. A permit application is not required if the agreement identifies who the permit will be issued to (typically the Tribal leader) and contains sufficient information to issue the permit. If a single agreement includes the plant gathering activities of more than one Tribe, the NPS must issue a separate permit to each Tribe for their activities. NPS managers and the Tribe(s) will engage in periodic collaborative reviews of the status of harvesting activities under the agreement and adjust the permit(s), as necessary. Annual meetings are encouraged throughout the life of the agreement to facilitate continued communication and cooperation.

### 3.10 Protocols for Monitoring Traditional Gathering and Removal Activities

Subparagraph (f)(1)(x) of the regulation requires that the NPS and the Tribe develop protocols for monitoring traditional gathering and removal activities. The regulation encourages collaborative research and administration of the agreement and monitoring protocols. NPS managers working in a knowledge co-production framework must navigate sharing decision-making authority with collaborating Tribes and be transparent about any limitations on their ability to share such authority. When developing methods and data collection protocols regarding Tribal plant gathering for traditional purposes, the NPS should consider using



Indigenous methodologies and incorporating Indigenous metrics and indicators in order to incorporate Indigenous Knowledge more meaningfully into the research and monitoring results.<sup>8</sup>

Joint monitoring work will be agreed upon in the gathering agreement and should be informed by Indigenous Knowledge. The results of monitoring may identify beneficial effects on individual plants or plant communities supporting traditional practices and provide early warning for emerging concerns. Monitoring provides an opportunity to collaborate on actions and activities that enhance conditions and parameters for the Tribal gatherers as intended in the regulation. There is no requirement for detailed or burdensome monitoring reports generated by the NPS or the Tribe; monitoring results could be shared as simple data sets and summaries via in-person meetings. NPS managers should be mindful of database protections and Indigenous data sovereignty. Tribal members have expressed the desire to work with the NPS to create and maintain the knowledge base needed to manage gathering and removal activities. This work may include joint research and monitoring, training programs for Tribal members or park staff, and ongoing consultation about park resources.

#### **4. Further Information**

Technical resources for developing plant gathering agreements may be found in the Plant Gathering section of the [NPS Native American Affairs SharePoint site](#). The [Office of Native American Affairs \(ONAA\)](#) serves as the lead NPS office for guidance on implementation of the plant gathering regulation at 36 CFR 2.6.

Resources for issuing special use permits can be found on the [Special Park Uses SharePoint site](#).

The current list of federally recognized Tribes may be found on the [Bureau of Indian Affairs website](#).

#### **5. Third Party Enforceability**

This Memorandum is intended only to improve the internal management of the NPS and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person.

-----*End of Policy Memorandum*-----

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<sup>8</sup> See section IV(7), “Pursue Co-Production of Knowledge” in the [Guidance for Federal Departments and Agencies on Indigenous Knowledge](#) (11/30/2022).