

**Supporting Statement A for
Paperwork Reduction Act Submission**

**Gathering of Certain Plants or Plant Parts by Federally Recognized
Indian Tribes for Traditional Purposes, 36 CFR 2**

OMB Control No. 1024-0271

Terms of Clearance. None.

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.

The National Park Service (we, NPS) is publishing a final rule to authorize agreements between the NPS and federally recognized Indian tribes to allow the gathering of plants or plant parts by designated tribal members for traditional purposes. These agreements will facilitate continuation of tribal cultural traditions on traditionally associated lands that now are included within units of the National Park System without impairment to park resources and values. The final rule respects tribal sovereignty and the government-to-government relationship between the United States and the tribes and provides systemwide consistency to this aspect of NPS-tribal relations.

The final rule authorizes agreements allowing and regulating tribal gathering of plants or plant parts for traditional purposes in parks where such gathering has not been specifically authorized by Congress. The agreements explicitly recognize the special government-to-government relationship between Indian tribes and the United States, and will be based upon mutually agreed upon terms and conditions subject to the requirements of 36 CFR 2.6(f). The agreements will serve as the documents through which the NPS authorizes tribal gathering and will be implemented by an accompanying permit authorized by 36 CFR 1.6.

Additionally, the NPS Organic Act gives management discretion to the NPS to allow impacts to park resources and values when necessary and appropriate to fulfill the purposes of a park, so long as the impact does not constitute impairment of the affected resources and values. The policies define impairment as an impact that, in the professional judgment of the responsible NPS manager, would harm the integrity of park resources or values, including the opportunities that otherwise would be present for the enjoyment of those resources or values. Whether an impact meets this definition depends on the particular resources and values that would be affected; the severity, duration, and timing of the impact; the direct and indirect effects of the impact; and the cumulative effects of the impact in question and other impacts.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection. Be specific. If this collection is a form or a questionnaire, every question needs to be justified.

Authorizations will be made based solely upon requests voluntarily submitted to specific NPS unit managers by recognized Indian tribes. Information will be collected in the form of a letter, which is the starting point for entering into discussions with the purpose of negotiating and entering into an agreement.

To make determinations based upon these requests, NPS unit managers may need to collect information from those Indian tribes that make requests and from the specific tribal members who are proposed to participate in the authorization. The information will help determine what traditional practices are acceptable according to NPS statutory requirements and policy, what traditional uses are to be accommodated, what materials are specifically needed, and what locations are specifically identified for gathering the requested materials. We will use the information collected to make determinations and to administer any authorization agreements subsequently developed.

Initial Request

What NPS Collects	Why
Explanation of the traditional association that the Indian tribe has to the park area	So that we can determine, based on evidence provided by the tribe, that the Indian tribe has a traditional association with the park area.
Explanation of the traditional purposes to which the gathering activities will relate	So that we can determine that the proposed gathering is a traditional use of the park area by the Indian tribe.
Description of the gathering activities that the Indian tribe is interested in conducting	So that we can analyze any potential impacts of the proposed gathering in accordance with the requirements of the National Environmental Policy Act, the National Historic Preservation Act, and other applicable laws.

Agreement

What NPS Collects	Why
Name Indian tribe that is authorized to gather and the basis for its eligibility to enter into the agreement.	Identifies the tribe that is authorized to gather.
Description of the system to be used to administer gathering, including a means of identifying appropriate tribal members to receive the passes that will identify them as being designated by the Indian tribe to gather.	Provides a description of protocols for gathering as agreed by the park and the tribe, and provides protocols for identifying tribal members that have been designated to gather by the tribe. This serves as a means for the tribal government to keep the NPS regularly informed of which tribal members have been issued such passes by the Indian tribe.
Description of the specific plants or plant parts that may be gathered.	Identifies the plants or plant parts that have been authorized for gathering.
Specification of the size and quantity of the plants or plant parts that may be gathered and removed.	Establishes NPS-tribal protocols for monitoring park resources subject to gathering, and for administering protocols for noncompliance.
Identification of the times and locations at which the plants or plant parts may be gathered and removed.	Establishes NPS-tribal protocols for monitoring park resources subject to gathering, and for administering protocols for noncompliance.
Identification of the methods that may be used for gathering and removal.	Establishes NPS-tribal protocols for monitoring park resources subject to gathering, and for

	administering protocols for noncompliance.
Protocols for monitoring gathering and removal activities.	Establishes NPS-tribal protocols for monitoring park resources subject to gathering.
Operating protocols and remedies for noncompliance with the terms of the agreement.	Establishes NPS-tribal protocols for noncompliance.
Key Officials	Identifies park and tribal leadership for contact purposes relating to the agreement.

NPS park units will issue a NPS Form 10-114, "Special Use Permit" to the tribe upon completion of an agreement.

Appeals

What NPS Collects	Why
Information from the tribes supporting traditional association	Allows the tribes to provide additional information on historical relationship of the tribe with the specific park area in the event agreement is denied on this issue
Information from the tribes on traditional use of plants to be gathered	Allows the tribes to provide additional information on traditional uses of plants to be gathered in the event agreement is denied on this issue
Information from the tribes on environmental issues	Allows the tribes to provide additional information on the impact of gathering on the resource of concern in the event agreement is denied on this issue

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden and specifically how this collection meets GPEA requirements.

The initial request letters and appeals may be submitted electronically to the parks via email. This is a new collection, and as such, we do not have a verifiable basis for accurately predicting how many will be submitted electronically. Our best estimate is approximately 90% will be submitted electronically.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

No other Federal government entity collects similar information. Each agreement describes the particular traditional association that an Indian tribe has to the park area, the traditional purposes to which the gathering activities will relate, and a description of the gathering activities that the Indian tribe is interested in conducting. Thus, each agreement is unique and the information is specific to each agreement between the requesting Indian tribe and the park.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

This information collection does not affect small businesses or other small entities. We collect only the minimum information necessary.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

If the information collection were not conducted, it would affect our ability to manage units of the National Park System in such a manner and by such means that will leave them unimpaired for future generations. We are requiring that each agreement undergo its own National Environmental Policy Act (NEPA) analysis. The information collection is required for us to carry out our regulatory responsibilities under NEPA. The information cannot be collected less frequently.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- * **requiring respondents to report information to the agency more often than quarterly;**
- * **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- * **requiring respondents to submit more than an original and two copies of any document;**
- * **requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;**
- * **in connection with a statistical survey that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- * **requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
- * **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- * **requiring respondents to submit proprietary trade secrets, or other confidential information, unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

There are no special circumstances that would cause us to collect the information in a manner that is inconsistent with OMB guidelines. During the process of consulting with tribes in order to enter into gathering agreements and to issue permits for gathering activities, the NPS may obtain information that the tribes consider sensitive or confidential, including the identity of tribal members who are authorized to gather plants or plant parts. As part of these consultations, the NPS will discuss ways to limit the scope of such information to the extent possible and to avoid releasing such information to the extent permitted by applicable laws. For example, in some circumstances NPS may be able to use identifiers other than personal names to designate tribal members who are authorized to gather plants or plant parts. To the extent permitted by applicable law, including 54 U.S.C. 100707, the Archaeological Resources Protection Act, and the NHPA, the NPS will withhold from public disclosure information about the specific location, character, and nature of resources on park lands.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and in response to the PRA statement associated with the collection over the past three years, and describe actions taken by the agency in response to these comments. Specifically address

comments received on cost and hour burden.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every three years — even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

Tribal Consultation

Six tribal consultation meetings were held in the “Lower 48” to consult with Indian tribes on this proposed rule. Locations in or near units of the National Park System where gathering by tribal members has been discussed over the years were selected in consultation with Indian tribes and NPS regional and park staff. One hundred and fifty representatives from 50 tribes attended meetings held from May through July 2010, in Bar Harbor, Maine; Flagstaff, Arizona; Pipestone, Minnesota; Yurok, California; Suquamish, Washington; and Cherokee, North Carolina. An additional meeting was held at Pipestone, Minnesota, in September 2010. Staff in Alaska contacted more than 70 federally recognized Indian tribes traditionally associated with parks in Alaska. Consultation occurred with those tribes that requested it. Additionally, general presentations were given at two Statewide conventions: the Alaska Tribal Leaders Summit in Fairbanks during the annual meetings of the Alaska Federation of Natives in October 2010 and at the annual Bureau of Indian Affairs Providers Conference in Anchorage in December 2010. A conference call with traditional elders and tribal peoples not associated with tribal governments was also conducted in June 2010 at the request of Arvol Looking Horse, Keeper of the Sacred White Buffalo Calf Pipe of the Lakota, Dakota, and Nakota Nation of the Sioux. Park managers and staff also attended these consultation meetings and participated in the discussions.

NPS and tribal representatives expressed support for agreements between tribal governments and the NPS to establish the conditions for gathering in parks. These agreements would respect both tribal sovereignty and NPS authority to manage park resources. These agreements would function as jointly agreed upon documents through which the NPS would authorize tribal gathering in ways that could be administered flexibly to respond to tribal traditions and local resource concerns. The participating tribal government would be responsible for designating which tribal members would be allowed to gather in accordance with the terms and conditions set forth in the agreement.

Tribal representatives and the NPS expressed the desire to work together to create and maintain the knowledge base needed to manage gathering and to protect park resources unimpaired for future generations. This would include joint research and monitoring, training programs for tribal members and park staff, and ongoing consultation regarding park resources.

Proposed Rule

On April 20, 2015 (80 FR 21674), we published a proposed rule to authorize agreements between the National Park Service and federally recognized Indian tribes to allow the gathering and removal of plants or plant parts by designated tribal members for traditional purposes. We solicited public comments for 30 days on the information collection requirements, ending on May 20, 2015. The rule was open for public comment for 90 days, until July 20, 2015. The NPS invited comments through the mail and the

Federal eRulemaking Portal at <http://www.regulations.gov>.

We reopened the comment period for the rule on August 12, 2015 (80 FR 48280), and comments were accepted through September 28, 2015. In addition to the Federal Register notice, we contacted all federally recognized American Indian tribes via a direct mailing of an informational postcard announcing the reopening of the comment period on the proposed rule, as well as an electronic communication to all federally recognized American Indian tribes with a valid email address.

A number of commenters addressed the issue of the information requested under this rule. These comments fell within three broad categories:

(1) Is there a basic need for the information? Some commenters questioned why we need to collect the information specified in the gathering rule, suggesting instead that the individual tribes are better suited to identify the people, plants, places, and methods by which plant gathering would take place.

NPS response: Under the rule, tribes identify the specific details of their proposed plant gathering and provide that information to the Superintendent for consideration. This information is necessary to meet our legislated and regulatory responsibilities to conserve park resources, particularly plants. Because parks have different biological conditions and plants as well as different enabling legislation, the information we collect under this rule is required to develop NEPA environmental documents and to determine whether specific communities of plants or plant parts are healthy enough to be included in a plant gathering agreement.

(2) Why is there a need for a tribe to provide specific details about the plant gathering? Some commenters called the level of detail required for the agreements “overly burdensome” and raised the question as to whether or not we need to collect: specific lists of tribal members who would be allowed to collect plants and plant parts, specific lists of the plants targeted for gathering by the tribal members, specific locations from which the plants would be gathered, specific times where the plant gathering would take place, and specific descriptions of the traditional methods to be used to gather the plants.

NPS response: We believe the information is necessary to minimize impacts to park resources and values, allow for efficient implementation of agreements, and prevent unauthorized gathering. We believe that this rule is broad enough to allow latitude in the specificity required to create workable agreements between the NPS and traditionally associated tribes. Permits issued under the agreements must list tribal members who will gather plants or plant parts during the time period covered by the permit. Tribal members who are authorized to gather plants are encouraged to have tribal identification cards in their possession during gathering activities. In addition to the permitted tribal members, tribes will need to provide a list of plants or plant parts to be gathered under the agreements, general time frames when the gathering of plants or plant parts would take place, and a general description of the proposed method of gathering so that the NPS can continue to ensure that there will be no significant adverse impacts to park resources. We believe that the categories of information that we will collect are necessary to develop the environmental assessment and finding of no significant impact under NEPA and to determine whether or not the communities of plants or plant parts desired are healthy enough to be included within a plant gathering agreement.

(3) Can the NPS protect the sensitive information tribes provide about traditional methods of gathering, traditional uses of plants and plant parts, and so forth? Many tribal respondents questioned our ability to protect confidential information about who does the gathering and plant gathering

locations.

NPS response: We believe that under existing law we can protect personally identifiable, sensitive, or confidential information submitted by tribes (e.g., see 54 U.S.C. 307103). Tribes may provide general information on the location and traditional purpose in their permit. We also believe that the information requested can be provided in generalities that can protect information deemed too sensitive for non-tribal use. During the process of consulting with tribes in order to enter into gathering agreements and to issue permits for gathering activities, the NPS may obtain information that the tribes consider sensitive or confidential, including the identity of tribal members who are authorized to gather plants or plant parts. As part of these consultations, the NPS will discuss ways to limit the scope of such information to the extent possible and to avoid releasing such information to the extent permitted by applicable laws. For example, in some circumstances NPS may be able to use identifiers other than personal names to designate tribal members who are authorized to gather plants or plant parts. To the extent permitted by applicable law, including 54 U.S.C. 100707, the Archaeological Resources Protection Act, and the NHPA, the NPS will withhold from public disclosure information about the specific location, character, and nature of resources on park lands.

Final Rule

We have attached a copy of the final rule as a supplementary document. The NPS received 31 comments related to the information collection component of the rule which are addressed in the preamble of the final rule.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

We will not make payments or gifts to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

The confidentiality of the information provided to NPS by the requesting Indian tribes is statutorily protected by the provisions of both the National Historic Preservation Act (54 USC 307103) and the Archaeological Resources Protection Act (16 U.S.C. 470hh).

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

We do not ask questions of a sensitive nature.

12. Provide estimates of the hour burden of the collection of information. The statement should:

- * Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or**

complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.

* If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens.

* Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here.

We estimate that 20 respondents will submit 30 responses annually totaling 230 annual burden hours. We estimate that the dollar value of the annual burden hours will be \$10,403 (rounded). We used the below listed rates in accordance with Bureau of Labor Statistics news release USDL-16-1150, June 9, 2016, Employer Costs for Employee Compensation—March 2016, (<http://www.bls.gov/news.release/pdf/eccec.pdf>) to calculate the total dollar value of annual burden hours. Table 3 of the bulletin lists the hourly wage plus benefits for State, local and tribal government workers as \$45.23.

Activity	Number of Annual Responses	Average Time Required per Response (hours)	Total Annual Burden Hours	Total \$ Value of Annual Burden Hours (\$45.23/hr)
Initial Request	20	4	80	\$3,618.40
Agreements	5	20	100	4,523.00
Appeals	5	10	50	2,261.5
Total	30		230	\$10,402.90

13. Provide an estimate of the total annual nonhour cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected in item 12.)

* The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information (including filing fees paid for form processing). Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.

* If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.

* Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 2005, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

We have not identified any nonhour cost burdens to respondents.

14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information.

We estimate that the total annual cost to the Federal Government to administer this information collection will be \$62,962 (rounded).

To respond to any single request by a recognized Indian tribe, we estimate that 2 hours of qualified staff time will be needed to review the request and prepare a background summary with recommendations for the NPS unit manager. Approximately 170 hours of personnel time will be needed for qualified staff and the NPS unit manager to consult with the requesting Indian tribe, prepare a full background report and administrative record, draft an agreement, and finalize the agreement. In the event of tribal appeals, approximately 30 hours of personnel time will be needed for qualified staff and the NPS unit manager to review the materials provided by the tribe, consult with the Indian tribe, prepare a report and administrative record, and prepare a decision document. We estimate that a GS-12/step 5 is the average grade level of Federal staff reviewing and processing the initial requests and agreements and providing materials in response to appeals for the Regional Director's action.

To determine average hourly rates, we used Office of Personnel Management Salary Table 2016-RUS (https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2016/RUS_h.pdf) as an average nationwide rate. We used Bureau of Labor Statistics news release USDL-16-1150, June 9, 2016, Employer Costs for Employee Compensation—March 2016, (<http://www.bls.gov/news.release/pdf/ecec.pdf>) to calculate the most current benefits rates for government employees. We multiplied the hourly rate for a GS-12/5 (\$38.56) by 1.57 to obtain the fully burdened rate of \$60.54 (rounded).

Requirement	Number of Responses	Staff Time per Response	Total Annual Hours	Total Annual Federal Cost (\$60.54/hr)
Initial Tribal Request	20	2	40	\$ 2,421.60
Agreement	5	170	850	51,459.00
Appeals	5	30	150	9,081.00
Totals	30	202	1,040	\$62,961.60

15. Explain the reasons for any program changes or adjustments in hour or cost burden.

This is a new collection.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

We will not publish this information.

17. If seeking approval to not display the expiration date for OMB approval of the information

collection, explain the reasons that display would be inappropriate.

These are regulatory requirements. We will display the OMB control number and expiration date on appropriate materials (correspondence, etc.). Additionally, the OMB Control Number is listed in section 2.6(l) of the final rule.

18. Explain each exception to the topics of the certification statement identified in "Certification for Paperwork Elimination Act Submissions."

There are no exceptions to the certification statement.