



Tribal Leaders Guide to the National Park Service Plant Gathering Regulation

The plant gathering regulation at [36 CFR 2.6](#) allows the National Park Service (NPS) to negotiate and enter into agreements with federally recognized tribes for the gathering of plants or plant parts from a NPS unit (park). The regulation authorizes the gathering of plants or plant parts by enrolled tribal members in accordance with a plant gathering agreement and permit or where specifically authorized by federal statute or treaty. The plant gathering regulation does not diminish or regulate treaty rights or rights under federal statutes held by federally recognized Indian tribes. The regulation has limited applicability in Alaska given the unique relationship and existing legislation regarding subsistence use by Alaska Natives. The regulation does not apply to Native Hawaiians, state-recognized tribes, or members of non-federally recognized tribal groups. This Guide provides tribal leaders information on the steps to initiate a plant gathering agreement, the requirements of a plant gathering agreement, and the appeals process if a request is denied.

Step 1: Initiating a Plant Gathering Agreement

Plant gathering by authorized enrolled tribal members will be managed through the use of negotiated agreements and a permit system. The process of creating a plant gathering agreement begins with a **written request from the tribal government** to a NPS park superintendent that provides information on three topics (*see Definitions):

- 1) an explanation of how the tribe is traditionally associated with the park area and how that association predates the park's establishment;
- 2) an explanation of the traditional purposes to which the gathering activity will relate; and
- 3) a description of the gathering and removal activity that the tribe wants to conduct, including a list of the plants or plant parts that tribal members wish to gather and the methods by which those plants or plant parts will be gathered

Any written request for a plant gathering agreement received from a tribal government will be reviewed by the NPS. The park superintendent will initiate consultation within 90 days in order to develop an agreement. There is no set time limit or deadline by which a requested gathering agreement must be completed.



Step 2: Establishing a Plant Gathering Agreement

Once the park and the tribal leadership agree to develop a plant gathering agreement, discussion should begin to develop the **required sections of the agreement**. This information will also be needed for the NPS Environmental Assessment.

Plant gathering agreements must, at a minimum, include the following:

- The name of the federally recognized Indian tribe authorized to collect plants and plant parts.
- A brief description of how the tribe is traditionally associated with the park area and how that association predates the park's establishment.
- A brief description of the traditional purposes to which the gathering activity will relate.
- Identification by the tribal government of tribal members that are designated to gather and remove plants and how these individuals will be identified.
- A description of the specific plants or plant parts that may be gathered and removed.
- Limits on the size, quantities, seasons, or locations where the gathering and removal may take place.

The NPS will authorize the tribe to manage gathering and removal of plants by tribal members, subject to the conditions of the agreement. Plant gathering agreements will establish NPS-tribal protocols for monitoring plant gathering activities to include:

- Operating protocols for monitoring park resources subject to gathering and removal, and thresholds above which NPS and tribal management intervention will occur.
- Remedies for noncompliance in addition to those set out in the regulation.
- Special conditions unique to the park area or tribal tradition.
- Identification of the methods that may be used for gathering.
- A description of the NPS permit system to be used to administer the gathering.
- A statement that the sale or commercial use within the park of plants or plant parts gathered under an agreement and permit is prohibited.
- A list of key officials.

The park superintendent must insure that a tribe's request to enter into a plant gathering agreement meets the applicable requirements described in Step 1. In addition, the park superintendent must comply with all applicable federal laws, including the National Environmental Policy Act of 1969, the National Historic Preservation Act, and the Endangered Species Act. If the tribe has not provided information as required in Step 1, or if the plant gathering activity as proposed by the tribe would have a significant adverse impact on park resources or values, the park superintendent may not enter into a plant gathering agreement until the request has been modified. If the request is not modified, then the park superintendent must deny the request to enter into a plant gathering agreement. The NPS will provide the reason for the denial in writing to the tribe.

If the NPS determines that it is not sustainable to allow gathering under an agreement **and** under a treaty, **the rights to gather under treaty will take precedence** over gathering under an agreement.



Step 3: Environmental Assessment

The NPS must complete an Environmental Assessment (EA), and make a Finding of No Significant Impact (FONSI) for the plant gathering activity. The EA and FONSI must also document the tribe's traditional association with the park area and the traditional purpose for which the tribe is proposing to gather and remove plants or plant parts. Gathering of any species listed as threatened or endangered under the Endangered Species Act is prohibited. If the proposed gathering would have a significant adverse impact on the park's resource or values, then the NPS may not authorize it. **Following completion of the EA and FONSI, the gathering agreement can be completed and signed by the head of the tribal government and the park superintendent.** All plant gathering agreements must have the concurrence of the NPS Regional Director.

Step 4: Implementation of the Plant Gathering Agreement

Once the plant gathering agreement is signed, **the NPS will issue a special use permit to the tribe for all gathering activities outlined in the agreement.** The permit will list the names of tribal members that the tribe has authorized to collect plants or plant parts and any other conditions outlined in the agreement. All activities allowed by the permit must be within the scope of activities contained in the plant gathering agreement. The permit will be reviewed annually by the park and the tribe to update the names of authorized gatherers or any other conditions outlined in the agreement.

The plant gathering activity detailed in the agreement must be conducted in a sustainable manner and not significantly adversely impact either the resource or values of the park. The sale or commercial use within the park of plants or plant parts gathered under an agreement and permit is prohibited by regulation (36 CFR 2.1(c)(3)(v)). Plants gathered within a park can be used for commercial activities that occur outside of the park, such as the making and sale of traditional handicrafts. The NPS will not regulate out-of-park activities in the gathering agreement or the permit. The NPS will monitor the impact of plant gathering on park resources and values and will adjust, through the permitting process, the quantity of plants or plant parts that may be gathered in the park.

The plant gathering agreement will be reviewed and renewed jointly by the park and the tribe on a periodic schedule stipulated in the agreement. Adjustments to gathering activities that are consistent with an existing agreement will not require a new agreement and may be included in the terms and conditions of the special use permit. **Agreements have a maximum duration of five years before they must be reviewed and renewed.** Any significant changes in plant gathering activity, species, or locations will require a new EA and FONSI.



Appeals Process

If a tribal request to enter into a plant gathering agreement is denied, the tribe may appeal as follows.

- **The tribe may submit a written appeal of the decision to the NPS Regional Director within 60 days.** A tribe's appeal should provide the substantive legal or factual basis for the tribe's disagreement with the superintendent's decision, along with any other information the tribe wishes the Regional Director to consider.
- Within 45 days of receiving a tribe's written appeal, the Regional Director will issue and send to the tribe a written decision that affirms, reverses, or modifies the superintendent's decision.
- The Regional Director's decision will constitute the final agency action on the matter. Appeals of a plant gathering agreement decision constitute an administrative review and are not conducted as an adjudicative proceeding.

For More Information

- Read the NPS Plant Gathering Regulation online at: <https://federalregister.gov/a/2016-16434>
- Visit the NPS Plant Gathering Regulation page on the NPS website: <https://www.nps.gov/tribes>

**Definitions:*

1) Traditional Association

Traditional association means a longstanding relationship of historical or cultural significance between an Indian tribe and a NPS unit predating the establishment of the park area. Traditional association can be determined through a combination of consultation with tribal authorities and scholarly research. A tribe must be traditionally associated with a park area in order to request a plant gathering agreement.

2) Traditional purpose

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. Any plant gathering activity requested for a gathering agreement must meet a traditional purpose for the tribal members conducting the gathering.

3) Gathering activity

For the purposes of the plant gathering regulation, gathering activity means the method of gathering plants or plant parts that is to be done by hand or through the use of hand tools only. Gathering activity is not meant to include the use of tools or machinery powered by electricity, fossil fuels, or any other source of power except human power.