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Olympic National Park General Management Plan
National Park Service
Denver Service Center
P.O. Box 25287
Denver, Colorado 80225

Pacific West Region
Jonathan Jarvis
1111 Jackson St. Suite 7000
Oakland, CA 94607

RE: Quinault Indian Nation second comments on Draft Olympic National Park
General Management Plan

In addition to those comments submitted by the Quinault Indian Nation ("Nation") on September 25, 2006, presented in person to Olympic National Park Superintendent, Bill Laitner, we submit the following additional comments on the Draft Olympic National Park General Management Plan for your consideration.

Treaty Rights and the Park's Trust Responsibility to the Nation

We again stress the importance of the Plan's recognition of the Nation's treaty-reserved, federally-guaranteed rights to fish, hunt and gather, as described fully in our letter of September 25, 2006, and the trust responsibility the Department of Interior has to the Nation, a federally-recognized Indian tribe. As an agency within the Department of Interior, the National Park Service is a federal trustee to the Nation, the Nation's treaty rights, and the resources upon which the Nation relies to exercise its treaty rights.

In 2000, President Clinton enacted Executive Order 13175, "Consultation and Coordination With Indian Tribal Governments," which is still in effect. It requires all agencies to adhere to the following criteria when formulating and implementing policies that have tribal implications:

Agencies shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.

Quinault Indian Nation General Management Plan Comments

b. With respect to Federal statutes and regulations administered by Indian tribal governments, the Federal Government shall grant Indian tribal governments the maximum administrative discretion possible.

c. When undertaking to formulate and implement policies that have tribal implications, agencies shall:

1. encourage Indian tribes to develop their own policies to achieve program objectives;
2. where possible, defer to Indian tribes to establish standards; and
3. in determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes.

(See Attached, Section 3.)

Similarly, the Secretary of the Interior issued Secretarial Order #3206 on June 5, 1997, regarding "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act," also still in effect. It states that, "This Order shall be implemented by all agencies, bureaus, and offices of the Departments, as applicable." (See Attached, Section 10). Among other provisions, the Order requires the Park to "work directly with Indian Tribes on a government-to-government basis to promote healthy ecosystems."

The Nation's adjudicated usual and accustomed treaty fishing and shellfishing areas include the Olympic National Park. Therefore, the General Management Plan and subsequent plans, including implementation of this General Management Plan, must protect, and not conflict with, the Nation's treaty rights.

We pointed out in our letter dated September 25, 2006, and during a government-to-government consultation meeting with Superintendent Bill Laitner, that statements in the General Management Plan, on their face, conflict with the Park's fiduciary obligation to the Nation as a trustee. Specifically, explicit and implicit assertions that the Park has co-management responsibilities over fish and shellfish harvest are unacceptable and must be stricken from the Plan. The Nation and the State of Washington, through its Department of Fish and Wildlife ("WDFW"), share these obligations. The Park has no legal role over harvest management. The Nation understands the Park is currently negotiating a second agreement with the WDFW regarding Intertidal Harvest Management of razor clams and other intertidal species within the Park. As a trustee to the Nation, with a fiduciary responsibility to protect the Nation's treaty rights to these resources, **the Park must cease these negotiations immediately and have further government-to-government consultation with the Nation on this specific issue.** The Park's assertion of co-management responsibilities in the Plan harms the Nation's treaty-protected interests and it must engage in further consultation on this issue. The Park cannot fulfill its role as trustee while in the role of co-manager as there is an inherent conflict of interest between

the two roles. To support this position, we attach correspondence from the WDFW to the Park explaining the respective roles of the two agencies.

Mr. Laitner requested specific comments on pages 133-136 relating to Olympic Peninsula Tribes. We recommend adding language that specifically acknowledges that Tribes' treaty shellfishing rights. We also recommend the Plan explain the nature of the Park's trust responsibility to the affected Tribes. **The Park has a heightened duty and fiduciary obligation to not only acknowledge these treaty rights, but to take clear, meaningful steps to protect them throughout the Plan.** The Nation's interests must be elevated above those of the general public and the Plan should explicitly state this. Therefore, the statements by Park representatives that they must balance the need for access by the public with the goal of resource protection are misguided. The balance must weigh in favor of resource protection when treaty rights are implicated.

As we pointed out in our meeting, although the Plan explicitly recognizes and discusses treaty rights between pages 133 and 136, the Plan falls short of adequately protecting the Nation's treaty interests. Acknowledgement of the Nation's treaty rights is not a three-page endeavor. Rather, the Nation's treaty rights, and the Park's trust responsibility to protect them, are fundamental facts that must become philosophically foremost in the Park's activities.

Additionally, on page 48, the Plan states the National Park Service does not manage Indian assets and that the overriding mandate is to manage the park consistent with park laws and regulations. This statement disregards the Park's responsibility to protect Indian assets within the Park—the fish, shellfish, wildlife, and other natural resources upon which the Nation relies to exercise its treaty rights.

Preferred Alternatives

By choosing Preferred Alternative D, the Plan document asserts that a balance of the Park's objectives to allow for public access and protect natural resources has been achieved. Nowhere in the alternatives evaluations does the document state how the Park considered tribal interests in seeking this balance. This omission has caused the Park to choose an alternative approach that is harmful to the interests of the Nation and its treaty-protected resources. For example, selection of Alternative D will perpetuate practices in the Quinault River floodplain that have contributed to disrupted and degraded physical natural habitat forming processes that are causing significant loss of the Nation's salmon resources. Adoption of Alternative D in the General Management Plan will restrict the Park to activities that will not fully protect the natural resources of the Park. We believe the Plan must allow maximum flexibility for the Park to act in its role as Trustee in protecting resources of particular interest to the Nation.

By selecting alternative D, the Park retains the option to maintain and protect infrastructure and access over fish and wildlife habitat. The selection of Preferred Alternative D is therefore inappropriate as it fails to maintain, protect, and restore the most basic natural processes that support healthy forested river valley ecosystems and

critical habitat for fish and wildlife. In addition, Alternative D conflicts with many of the Park's own desirable conditions that were identified in the draft general management plan.

As an acceptable alternative, the Nation will require consultation with the Park to develop as partners, "specific" management plans for the Quinault and Queets River watersheds in lieu of both the General Management Plan and if deemed necessary, subsequent plans such as the Wilderness Management Plan.

Harvest Management

One area the Nation disagrees with the Plan is with regard to the no-harvest restrictions. This approach is justifiable for conservation needs, but may not be the best approach overall. First, the Nation takes issue with the lack of scientific basis for the no-harvest decision. Both the State and Nation, as co-managers, dispute the Park's rationale for such a stringent limitation.

The Nation manages fish and wildlife for harvest of these traditionally harvested species and expect to continue to do so. A basic requirement of any successful species is the presence of surplus reproductive capacity. All successful species must be able to reproduce at levels in excess of replacement (i.e., greater than one progeny per reproducing adult) in order to recover the population following natural reductions in the population (e.g. disease outbreaks). The presence of surplus reproductive capacity provides opportunity for harvest in most years. This same surplus is essential for the support of other fish-eating species such as eagles and bears. Sustainable long term human harvest of salmonid fishes is documented by several thousand years of utilization by the Tribes combined with the documented abundance of these species when settlement by non-Indian people began over 150 years ago. The tendency of the Park to stop all human harvest within the Park is counter to this biological reality. It is inappropriate to address population reductions that are not due to human harvest through restrictions on human harvest. As an example, stopping all human harvest in the Puyallup River Basin will not correct the huge damage done to the river's productive capacity by dikes and other actions to protect human intrusions into the floodplain.

This is probably best illustrated with ungulates (elk and deer) in that the creation of "no harvest" zones alters their behavior. When elk discover an area where they are not subject to predation, they spend too much time in those areas degrading the habitat through overgrazing. The Nation has a tagged herd of elk that spends over 90% of its time in the Park, emerging only in the late winter and early spring when the forage is gone in the Park and they are nearly starving. These elk are gaunt and display reduced reproduction compared to those animals living most of the time outside of the Park. These animals respond to both tribal and non-tribal hunting seasons by migrating into the Park. This over utilization of a small part of their habitat is detrimental to the elk, their habitat, and the ecosystem.

By eliminating non-tribal harvest of various species, the Plan unnecessarily creates the perception by non-Indians that Indian harvest is improper or unfair. The Nation does not want to be put into a position appearing to have "special rights," which often generates more hatred and prejudice. Also, it would be helpful to create an opportunity to educate the public on the Treaty-reserved harvest as well as tribal culture. We encourage the Park to consider limited access for non-tribal harvest. We agree that unlimited access may be an inappropriate approach, but alternatively the Park should consider some form of limited access/limited harvest. The Park could provide a certain number of permits per year for non-Indian harvest activities. These access permits would be available at the ranger stations, and this would allow an opportunity for education on why the permits are required and an explanation of the Tribal culture and harvest management. The permitting process could also be used to provide education on the life history of targeted species and how these coastal resources are managed. These permits could be issued on a first come – first served basis or through an annual application approach with random allocation.

Roads Management

The Park has acknowledged that roads can be detrimental to ecological processes, but does not plan any measures to reduce or eliminate those detrimental effects. The road systems within floodplains are the most damaging through their effects on riverine processes, but roads on unstable landforms can be very damaging as well. To a certain extent, some type of road system is necessary to access the Park, but given the known ecological risk of roads, the GMP must include actions to move the road systems outside of the floodplains. The Plan should describe the use of a cooperative strategy with the State, Counties, and Tribes to accomplish this task while protecting the treaty right interests of the Nation.

Public Education

The Nation is very interested to work with the Park to display our tribal culture in the Park so Park visitors can learn about the cultural and spiritual significance of the incredible lands we traditionally lived on and used within the Park's boundaries. We recommend creating a longhouse to be used explain traditional ceremonies and customs. We offer to work with the Park to this end and to bring tribal members to the Park to assist with interactive education.

Additionally, we recommend the Park begin the education process now by putting up informational signs around the lodge describing the unstable slopes and the ocean erosion would lay the ground work for the relocation. In addition, this educational system needs to provide information on the detrimental effects any actions to retain the existing sites would cause. It needs to be explained that hard surfaces along the ocean will degrade the sand beach to the detriment of the razor clams and other sea life dependant on the current sand beach.

Collaboration Between the Nation and Park

The Nation is interested to form a long-term working relationship to address our ongoing concerns over the Plan, its implementation, and other issues affecting the Nation as a neighbor to the Park. We want to establish a meaningful consultation process that will result in meeting both the Park's goals and the Nation's goals. From the Nation's perspective, consultation means respectful, effective communication in a cooperative process that works toward a consensus, before a decision is made or an action is taken. Consultation can be contrasted with two other forms of communication: notification and obtaining consent. Notification focuses on providing information, so potentially affected parties have the chance to respond to a pending action. In our experience, the Nation is often notified after basic decisions have already been made and there is generally no formal follow-up. The Navajo Nation made the distinction very clear in a 1993 memorandum: "The majority of agencies with which we are familiar do not distinguish between 'notification' and 'consultation,' and consider the former as adequate to meet their mandates for the latter. This neither meets the letter or spirit of the consultation requirements of the laws mandating consultation." We agree and hope this explanation is useful in structuring our future consultation discussions.

To that end, we propose setting up a process for regular, ongoing government-to-government consultation that includes bi-monthly meetings that include technical staff and appropriate policy representatives from each government. The Nation proposes to work together with the Park to prioritize issues to discuss and actions to pursue using the following framework for our government-to-government consultation discussions:

1. The Park and Nation meet on the basis of political equality to discuss, negotiate, and mutually agree on:
 - A. Principles and procedures for dealing with one another,
 - B. An agenda of issues and concerns which each party believes requires intergovernmental cooperation and action,
 - C. The idea that both parties accept the basic notion of mutual respect, cooperation and compromise, sovereign equality and reciprocity.
2. The definition of government-to-government relations requires that each party accept the sovereignty of the other, unconditionally.
3. Internal interference is strictly prohibited by either party.
4. Good faith may serve as the foundation for agreement, but a third party observer or arbitrator may be necessary to ensure agreement compliance.

5. Government-to-government relations between Indian Governments and the U.S. government or agencies thereof are, by definition, bilateral unless multi-lateral relations or negotiations are first formalized.

Finally, the Nation requests additional government-to-government consultation regarding the next iteration of the General Management Plan. Specifically, we request to review and provide comments on, and discuss through government-to-government consultation, the final draft Plan **prior to** its becoming formally Final.

The Nation looks forward to establishing a clear path of communication with the Park and regular government-to-government consultations on these and other Park issues of concern to the Nation rather than invoking other legal remedies. As a starting point, we believe it is imperative that the concerns we have raised are addressed through additional discussions and action by the Park. Of utmost importance is addressing the Park's assertion of harvest management responsibilities. We look forward to the Park's written response to our comments and concerns and further discussions on this matter.

Sincerely,



Fawn R. Sharp
President

cc: Richard Laitner, ONP Superintendent
Senator Patty Murray
Senator Maria Cantwell
Congressman Norm Dicks
Governor Christine Gregoire
State Senator James Hargrove
State Rep. Lynn Kessler
State Rep. Jim Buck
Bureau of Indian Affairs, Portland
Quileute Nation Council
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Hoh Tribal Council/NRD
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Jamestown S'Klallam Tribal Council/NRD
Lower Elwah Klallam Tribal Council/NRD
Port Gamble S'Klallam Tribal Council/NRD
Skokomish Tribal Council/NRD
Point No Point Treaty Council
Northwest Indian Fisheries Commission
Cmr. Mike Doherty, Clallam County
Mayor of Forks, Nedra Reid