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New Rule Would Allow Tribes to Gather Plants, Minerals From National Parks

By PHIL TAYLOR of

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The National Park Service is proposing a rule that would allow American Indian tribes to remove plants and minerals from national parks for traditional uses, a break from a Reagan-era policy that barred such activities, according to a draft obtained by *Greenwire*.

The [document](#) (pdf), dated March 25 and stamped "confidential," states that NPS intends to authorize agreements with federally recognized Indian tribes to allow plants, plant parts or minerals such as salts or clay to be used for traditional purposes.

The agreements would allow the continuation of cultural traditions on ancestral lands that are now part of the Park Service estate, but would not impair park resources, according to the draft. The rule would also provide opportunities for tribal youth, the agency and the public to learn about tribal traditions without compromising park values or management, it said.

NPS spokesman Jeffrey Olson this morning confirmed that the agency is developing a new rule to address tribal use of park resources. He said the draft rule has changed since March and may continue to change as it is reviewed. The public will have 60 days to comment on the rule once it is published in the *Federal Register*.

Olson said the rule follows several consultation meetings with tribal leaders in past years, but that the proposal is in its early stages and has not been reviewed by the Interior Department or the White House.

"It began with [NPS Director] Jon [Jarvis] talking with tribal folks and making a commitment to listen and see if there can't be a compromise reached," he said, noting that there is not a timeline for releasing an official draft. "A lot of the legwork has been done."

But the proposal has riled Park Service employees who maintain the agency is violating its founding 1916 Organic Act in the name of political correctness, said Jeff Ruch, executive director of Public Employees for Environmental Responsibility.

The draft proposal would overturn the rule adopted in 1983, which prohibits "the taking, use or possession of fish, wildlife or plants for ceremonial or religious purposes, except where specifically authorized," according to an agency [presentation](#) (pdf) to tribes, at a consultation meeting last October.

While park superintendents are currently allowed to authorize removal of nuts, berries, fruits or unoccupied seashells for personal use, it does not allow Indians to collect plants and minerals for handicrafts or other cultural uses, despite several requests by tribes.

Ruch said the agency's proposal raises an emotional issue, but that overturning the current rule should

require the consent of Congress, which has expressly allowed tribal plant gathering in at least eight park units.

"In essence, it's going to be up to the tribes to decide what they consider a traditional use," Ruch said, adding that commercial harvests of plants or trees could be allowed if it's connected with handicrafts. "There appears to be a lot of internal [agency] opposition and concern. It is legally unsupportable for a variety of reasons."

Current regs 'just wrong' -- Jarvis

Ruch pointed to notes from a July 2010 meeting with Cherokee leaders in North Carolina, obtained through a Freedom of Information Act request, that indicate Jarvis felt the current regulations were "just wrong."

Indian gathering is allowed on Forest Service lands, but that rule is backed by congressional statute, and the agency itself was founded in part to manage extractive uses, Ruch noted.

He also argued that the proposed rule, if finalized, would violate the agency's founding statute, which states that parks should be maintained for "the common benefit of all the people of the United States."

But the draft proposal argues that such a rule would honor the agency's mandate.

The draft notes that parks have a unique relationship with tribes that is grounded in a shared dedication to protecting the land. The proposed rule would allow tribes to continue their cultural traditions and connections to the land, safeguarding such areas' original values and purposes, it says.

"Much research has been done that demonstrates that traditional gathering, when done with traditional methods and in traditionally established quantities, helps to conserve plant communities, and supports the NPS conclusion that cooperation with Indian tribes in the management of plants and mineral resources is consistent with the preservation of national park lands for all American people," the draft says.

The draft notes that the agency has long encouraged Indian arts and crafts in national parks to educate the public and support continued tribal traditions. Current regulations prevent the agency from responding to tribal requests to gather plants, plant parts and mineral for traditional use, allowing such uses only where expressly allowed in treaties or federal statutes, it says.

The proposal would not affect the agency's regulations on the removal of fish and wildlife, it says.

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