

GENERAL AGREEMENT

between the

NATIONAL PARK SERVICE

and the

EASTERN BAND OF CHEROKEE INDIANS

SUBJECT: GATHERING PLANTS AND PLANT PARTS IN THE GREAT SMOKY MOUNTAINS NATIONAL PARK BY MEMBERS OF THE EASTERN BAND OF CHEROKEE INDIANS FOR TRADITIONAL PURPOSES AND BY TRADITIONAL MEANS. (36 CFR 2.6)

This general agreement (GA) is entered by and between the National Park Service (NPS) of the U.S. Department of the Interior and the Eastern Band of Cherokee Indians (EBCI), a federally recognized Indian tribe.

1. Purpose

The primary purpose of this GA is to express parameters, consistent with 36 CFR Part 2.6, for the gathering and removing of certain plants and plant parts from the Great Smoky Mountains National Park (Park) by enrolled members of the EBCI, for traditional purposes and using traditional means, when the gathering and removing is authorized by this GA and by an implementing special use permit issued by the NPS. Gathering of any species listed as threatened or endangered under the Endangered Species Act is prohibited.

Additionally, this GA is intended to:

- (a) Create a framework by which the NPS and the EBCI can create and maintain a knowledge base helpful for the management of plant gathering activities so that allowable gathering activities can be maintained for future generations.
- (b) Expand research to improve the understanding of traditional resource management practices by the EBCI and to develop forest management practices that increase traditional plants on EBCI lands.
- (c) Develop collaborative mechanisms for monitoring and permitting plant gathering and removing activities.

(d) Promote the development of training programs for EBCI members and NPS staff pertaining to traditional ecological knowledge and traditional gathering of sochan.

(e) Expand outreach to EBCI members and EBCI/NPS visitors regarding traditional resource use and the modern management role of the EBCI's natural resources programs.

2. Authority

This GA is entered under authority provided in the plant gathering regulation expressed at 36 CFR 2.6. That regulation allows the NPS to negotiate and enter into agreements with federally recognized Indian tribes for the gathering of plants and plant parts from a NPS unit, that is, a national park. The Park at issue in this instance is the Great Smoky Mountains National Park.

The plant gathering regulation at 36 CFR 2.6 authorizes the gathering of plants or plant parts by enrolled tribal members in accordance with a plant gathering agreement and special use permit or where specifically authorized by federal statute or treaty. There is no applicable federal statute or treaty between the United States and the EBCI that allows such gathering. Therefore, this agreement is necessary for EBCI enrolled members to legally gather and remove plants and plant parts in the Park.

3. EBCI Status

The EBCI is a federally recognized Indian tribe. It is identified on the list of Tribes recognized and eligible for funding and services from the Bureau of Indian Affairs (BIA), most recently published in the Federal Register at 84 FR 1200-1205 pursuant to Section 104 of the Act of November 2, 1994 (Pub. L. 103-454; 108 Stat. 4791, 4792), and in exercise of authority delegated to the Assistant Secretary—Indian Affairs under 25 U.S.C. 2 and 9 and 209 DM 8.

4. The EBCI's Traditional Association with the Area Encompassed by the Great Smoky Mountains National Park

The Cherokee people were the aboriginal inhabitants and keepers of a vast geographic landscape covering parts of eight southeastern states, including the area presently encompassed in the Park. That landscape sustained Cherokee culture, lifestyle, and identity. This aboriginal land base was formally documented by C.C. Royce in 1884 in a map known as the "Map of the former territorial limits of the Cherokee Nation of Indians" (also known as the "Royce Map"). This map has been used for generations by scholars and federal agencies to depict the traditional aboriginal territory of the Cherokee people. The land now under management jurisdiction of the Park was contained entirely within the aboriginal land base of

the Cherokee and constitutes a portion of the area from which all Cherokee originated.

President Andrew Jackson signed the Indian Removal Act in 1830, which resulted in the forced removal of all Indian tribes east of the Mississippi River to what is now Oklahoma. The ancestors of the present-day members of the EBCI are the Cherokee individuals who resisted the removal to Oklahoma by the U.S. military in 1838. The removal of the Cherokee people became known as the Trail of Tears. The few Cherokee who were able to resist removal stayed in their aboriginal homelands, including in the area known as the Qualla Boundary and alternatively known as Cherokee, North Carolina. The EBCI's trust lands which make up the Qualla Boundary adjoin the Park on the North Carolina side.

Further historical information about the Cherokee people and the legal evolution of the EBCI in its aboriginal area near the Park is available from many sources, including federal court decisions such as *Eastern Band of Cherokee Indians, et al v. State of North Carolina, et al*, 632 F.2d 373 (4th Cir. 1980).

The Park contains a rich abundance of consumable botanicals and fungi that continue to be an important component of Cherokee traditional diet and culture. An integral part of maintaining Cherokee livelihood and identity is to sustain traditional relationships with fish, wildlife and plants. The Cherokee have a well-defined history of sustainably harvesting edible plants through the application of traditional ecological knowledge.

5. The EBCI Predates the Great Smoky Mountains National Park

The U.S. Congress authorized creation of the Park in 1926. It was not formally established, however, until 1934. The Cherokee people, and their presence and use of the area now encompassed by the Park, predates the Park by thousands of years. The EBCI believes that the term “Eastern Band of Cherokee,” or some variation of that term, was first used in common parlance in or about 1875.

6. Traditional Purposes to which the Gathering Activity Relate

Gathering activity may be performed in relation to the following traditional purposes:

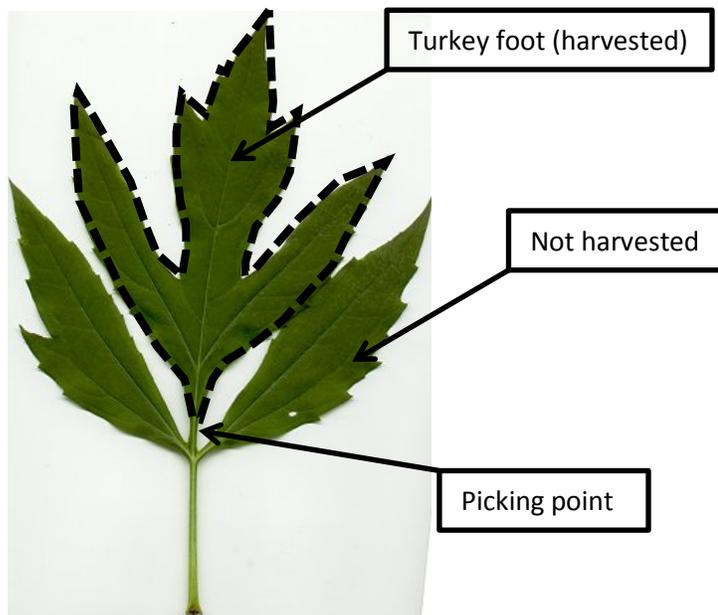
- (a) Personal consumption as food.
- (b) Cultural events and celebrations.
- (c) Religious ceremonies.
- (d) Medicinal purposes.

7. Identification by the EBCI of Tribal Members Who May Gather and Remove Plants

Only enrolled members of the EBCI shall be allowed to gather plants and plant parts under this GA. Such members shall be identified by the Tribe by issuance of an EBCI Gathering Permit authorizing the enrolled member to participate in the activities encompassed in this GA and the associated special use permit (SUP) issued by the Park Superintendent.

8. Specific Plants or Plant Parts that May be Gathered and Removed

(a) Sochan (*Rudbeckia laciniata*) (alternative common names: green-headed coneflower; cutleaf coneflower). Cultural significance: This early spring green is an important traditional food source. Following traditional practices, permittees are authorized to gather what is referred to by the Cherokee as the “turkey foot” from sochan leaves that are between 3 to 5 inches long. The turkey foot consists of the three terminal lobes of a sochan leaf as the plant begins to grow from the rhizome in the spring (Photograph 1).



Photograph 1

Gathering shall focus on sochan clumps in ideal harvest condition and on the turkey foot from leaves that are between 3 to 5 inches long. The availability of harvestable leaves progresses with season and elevation. Sochan leaves in their very early stages of growth are too small for harvesting and later in the season larger leaves are too bitter for consumption. Preferred sochan clumps have a range of harvestable and unharvestable leaf sizes, resulting in about 50 percent of the above ground biomass being harvested from the clump. A sochan clump remains in

preferred harvest condition for approximately 10 days each spring, depending on habitat conditions and elevation. Traditional gatherers begin harvesting at lower elevations and gradually move to higher elevations to find sochan in preferred harvest condition as spring progresses. Using these traditional methods avoids repeated harvesting from individual sochan clumps in the same season.

9. Physical Specifics for Gathering

The physical specifics expressed in this section are intended to promote sustainable gathering of sochan leaves. Gathering shall only be performed using traditional gathering methods (hand picking).

(a) Sochan. Gathering and removing of sochan shall meet the following requirements:

(1) Permittees –

The EBCI will select up to 36 individual EBCI enrolled members (permittees) annually to participate in sochan gathering under this GA and subsequently issued special use permit. In accordance with the process outlined in Section 16 of this GA, the Park Superintendent and EBCI may mutually agree in writing to increase the number of participants if population monitoring indicates that additional sochan gathering is sustainable. Permittees will be selected through their respective EBCI “community clubs” on an annual basis. Permittees may be accompanied by family members or other EBCI members during gathering. Group sizes shall not exceed 6 people per permit to minimize resource damage from trampling. Quantity gathered shall not exceed the bag limits specified in Section 9(a)(3), regardless of group size.

All individuals selected to participate in sochan gathering on NPS lands will complete an annual mandatory training class provided by the EBCI that will include: a) an overview of the regulations outlined within this GA and implementing special use permit, b) instruction on sochan identification and acceptable harvesting methods, c) how to address interactions with other visitors while gathering, d) how to identify and avoid areas designated as off-limits to gathering, e) “leave no trace” principles, f) background on the EBCI’s historic relationship with native plants, and g) information pertaining to nutritional value and preparation of sochan for consumption. Individuals selected to participate in sochan gathering will be issued an EBCI Gathering Permit annually upon successful completion of the training. The EBCI Gathering Permit must be signed and dated by the permittee to be valid and must be in possession while gathering sochan in the Park. The EBCI Gathering Permit shall include the following statement above the signature line: “I have read the National Park Service special use permit for gathering sochan in Great Smoky Mountains National Park by permitted members of the Eastern Band of Cherokee Indians. I will comply with all

conditions of the special use permit and understand that noncompliance could be a violation of the Code of Federal Regulations, Title 36 Parks, Forests, and Public Property, Chapter 1 National Park Service, Department of Interior.” A copy of the EBCI Gathering Permit template will be provided to GRSM for review and approval prior to issuing permits to individual EBCI members.

The EBCI Natural Resources Department will develop training materials, and schedule and conduct training. Training materials will be provided to the NPS point of contact at least 14-days prior to a training event for review and input. At least one NPS staff member will assist in conducting the training. Other NPS staff may be invited to attend training.

In accordance with 36 CFR 2.6, the NPS-issued special use permit implementing this GA must include a list of EBCI members who are designated by the EBCI to gather sochan. This list will be submitted to NPS by EBCI at least 30-days prior to the gathering season and will include the following information: a) full name, b) EBCI permit number, c) training completion date, and d) make, model, color, and license plate number of primary and secondary vehicle.

(2) Size that may be gathered –

Permittees are authorized to gather the “turkey foot” from sochan leaves that are between 3 to 5 inches long. See Photograph 1 above.

(3) Quantity that may be gathered –

A permittee may gather a maximum of 1 bushel (2,150 cubic inches) per week of sochan leaves. Permittees shall use only official collection bags issued by the EBCI Natural Resources Department to collect and transport sochan within the Park. The official collection bag shall hold approximately 0.6 bushels (1,300 cubic inches). Permittees are authorized to gather up to 50 percent of the aboveground biomass (leaves) from individual sochan clumps. Repeated harvesting from individual sochan clumps in the same season shall be avoided.

(4) Times and locations at which sochan may be gathered –

Sochan may be gathered during daylight hours from March 1st through May 31st of each calendar year. Harvesting activities may be conducted in areas within 328 feet (100 meters) of any official park road, trail, or along the border of the Park and the Qualla Boundary. All gathering activities must remain out of sight of areas such as visitor centers, major roads, parking lots, trailheads, campgrounds, and picnic areas when visitors are present. In addition, the following areas are off-limits to gathering: a) areas with saturated/mucky soils or standing water on the ground surface, b) research areas at Purchase Knob that contain sochan, c) and non-harvest zones identified under Section 9(6)(c). Furthermore, the Superintendent may close a

park area to gathering and removal when necessary to maintain public health and safety, protect environmental or scenic values, protect park resources, aid scientific research, implement management responsibilities, equitably allocate the use of facilities, or avoid conflict among visitor use activities.

(5) Allowed gathering methods –

Sochan turkey foot leaves may be gathered by hand picking. Gatherers should take care to avoid disturbing or damaging belowground plant parts or uprooting plants.

(6) Protocols for monitoring gathering and removal of sochan –

- a. In 36 CFR 2.6, it is required that plant gathering agreements contain protocols for monitoring traditional gathering and removal activities and thresholds above which NPS and tribal management intervention will occur. The NPS and EBCI will jointly administer a monitoring program for traditional gathering that would consist of three main components: program participation, sochan gathering quantity, and resource impacts. In addition, NPS law enforcement personnel will enforce EBCI gathering permit conditions.
- b. Program participation and harvest monitoring will be administered by EBCI Natural Resources. All permittees will be required to submit weekly Sochan Gathering Reports to EBCI Natural Resources throughout the gathering season and EBCI will forward the reports to NPS weekly. Report templates will be developed and approved by both parties and contain dates of harvest; location of harvest; number of participants (permittees and guests); number of gathering trips; and quantity (volume) of sochan leaves harvested.
- c. Monitoring of potential impacts to Park resources will be conducted by the NPS Resource Management and Science Division personnel throughout the growing season (spring and summer). Monitoring will follow the Carolina Vegetation Survey (<http://cvs.bio.unc.edu/methods.htm>) protocol with minor changes as needed. Plots will be distributed in harvest zones and non-harvest zones to assess sochan abundance, potential harvest-related sochan mortality, and incidental impacts of harvesting such as trampling.
- d. NPS law enforcement personnel will enforce EBCI gathering permit conditions in the field. All permittees will be required to use official EBCI-issued collection bags, and carry an EBCI gathering permit and an EBCI tribal identification card at all times while gathering sochan in the Park. NPS law enforcement personnel will maintain updated lists of all permittees and may request and inspect EBCI gathering permit documentation at their discretion.

(7) Thresholds above which NPS and EBCI will intervene and actions to be taken.

- a. A 20 percent or greater decline of sochan within a gathering unit, as indicated by mortality of individual sochan clumps or rosettes (circular arrangement of leaves originating from the plant's rhizome), will be the threshold above which NPS and/or EBCI management intervention will occur. A gathering unit is defined as any single area where EBCI permittees gather sochan in a single gathering event (i.e., one day). A 20 percent decline was selected as an early indicator of potential concern. Corrective action will then be implemented so that impacts would not reach unacceptable levels. Sochan gathering within the affected gathering unit will be suspended if NPS monitoring indicates a 20 percent or greater decline of sochan within the unit. Area restrictions will be enforced until the sochan recovers to 95 percent of its original abundance in the gathering unit. In addition to suspending gathering in the affected area, NPS and EBCI will investigate possible causes of the unexpected mortality (e.g., improper gathering methods), determine if the problem is localized or widespread, and implement corrective action through education or other appropriate means.
- b. If monitoring data indicate that plant trampling is a concern, NPS and EBCI will take actions such as limiting the number of permittees, reducing the size of gathering groups, or curtailing gathering in identified areas. In accordance with 36 CFR 2.6, the Superintendent may close areas to gathering at any time to protect Park resources and values.

10. Sale and Commercial Use Prohibited

The sale or commercial use of sochan leaves gathered under this GA, its implementing special use permit, and under any individual EBCI Gathering Permit issued to an enrolled member of the EBCI, is prohibited. Permittees may use sochan gathered in the Park for personal consumption or may share it with other EBCI members.

11. Environmental Assessment by NPS Required

The Park Superintendent's signature on this GA verifies that an Environmental Assessment has been completed by the NPS, pursuant to NEPA statutory requirements, and that a Finding of No Significant Impact (FONSI) has been determined. (36 CFR § 2.6(d))

12. NPS May Close Certain Park Areas

The NPS may close areas of the Park to gathering that is otherwise authorized under this GA, to protect environmental or scenic values or to protect natural

resources or for any of the other reasons described at 36 CFR § 2.6(h). The NPS shall provide written notification of any such closure to the EBCI.

13. Remedies for Violation

(a) Discussion and resolution. When confronted with a violation of this GA or any special use permit or EBCI Gathering Permit issued hereunder, the NPS and EBCI shall first attempt to address the violation by discussion and mutually-agreed resolution.

(b) Suspension and Termination. This GA and its implementing special use permit may be suspended or terminated by mutual agreement of the parties; provided, however, nothing herein shall be construed to limit the authority of the NPS to unilaterally suspend or terminate this GA and its implementing special use permit as authorized under section 36 CFR § 2.6(i) of the Gathering Rule.

(c) Individual EBCI Gathering Permit Compliance. If a permittee has been found to be out of compliance with required protocols outlined in this GA or a subsequently issued special use permit, the following steps will be taken:

1st offense: Permittee may be issued a written warning of violation or a citation by the NPS. The NPS will then report the name of the permittee to the EBCI Natural Resources Department via email. EBCI Natural Resources will then revoke the EBCI Gathering Permit for the present gathering season. This individual will be allowed to participate in the EBCI selection and permitting process the following year, unless otherwise dictated by a court-ordered restriction.

2nd offense: Permittee may be issued a citation by the NPS. The NPS will then report the name of the permittee to EBCI Natural Resources via email. EBCI Natural Resources will then revoke the EBCI Gathering Permit for the present gathering season and the next 5-years. This individual will be allowed to participate in the EBCI selection and permitting process after the 5-year probationary period, unless otherwise dictated by a court-ordered restriction.

If a permittee fails to meet the required reporting requirements outlined in this GA, the following steps will be taken:

1st offense: Permittee will be issued a written warning by the EBCI and will be suspended from participating in the program until proper reporting documents are filed with EBCI Natural Resources.

2nd offense: EBCI Natural Resources will revoke the EBCI Gathering Permit for the present gathering season and the next 5-years.

14. Key Officials

To promote the regular and informative exchange of information regarding this GA and the activities authorized herein, the parties hereby identify their key officials.

- (a) For the NPS: Cassius M. Cash, Superintendent
Tom Remaley, Inventory and Monitoring Program
Manager
Great Smoky Mountains National Park
107 Park Headquarters Road
Gatlinburg, TN 37738
Phone: (865) 436-1200
- (b) For the EBCI: Principal Chief Richard G. Sneed
Joseph Owle, Secretary of Agriculture and Natural
Resources
Eastern Band of Cherokee Indians
P.O. Box 455
88 Council House Loop
Cherokee, NC 28719
Phone: (828) 359-7200

15. Amendment

This GA and its implementing special use permit may be amended at any time by mutual agreement of the NPS and the EBCI. All amendments shall be in a writing signed by an authorized representative of each respective party hereto.

16. Implementing this GA

The NPS shall implement this GA by issuing to the EBCI a special use permit annually for the purposes stated herein. Implementation is subject to the written concurrence of the Regional Director of the NPS (36 CFR § 2.6(i)). The EBCI Department of Agriculture and Natural Resources shall issue EBCI Gathering Permits to tribal members as stated in Section 9(a)(1) of this GA.

During the gathering season (March through May), NPS and EBCI staff will hold weekly conference calls to discuss ongoing gathering activities, monitoring results, and any identified concerns. In addition, NPS and EBCI will engage in annual reviews of the status of traditional gathering activities under the GA, at which time consultation and revisions to the GA could be proposed based on monitoring results or other information. Revisions to the GA would require an appropriate level of additional National Environmental Policy Act review, approval by the Park Superintendent, and modification of the special use permit, as appropriate.

17. Duration

This GA is effective and shall govern the parties from the date of its full execution for a period of 5 years, unless it is terminated as provided herein before the expiration date. This GA may be renewed by mutual agreement of the parties.

We agree:

For the National Park Service:



Cassius M. Cash

Title: Superintendent

Date signed: 3/25/19

For the Eastern Band of Cherokee Indians:



Richard G. Sneed

Title: Principal Chief

Date signed: 3/25/19