

Draft Compatibility Determination

Title

Draft Compatibility Determination for Cultural Resource Use (Plants, Animal Products, and Other Natural Resources of Tribal Cultural Significance) by Members of Federally-Recognized Tribes (Non-Commercial) on the Mary and Murray Looney Unit, Ozark Plateau National Wildlife Refuge

Refuge Use Category

Natural Resource Collection

Refuge Use Type(s)

Plant Gathering (non-commercial) and Animal Product Gathering (non-commercial)

Refuge

Ozark Plateau National Wildlife Refuge

Refuge Purpose(s) and Establishing and Acquisition Authority(ies)

Ozark Plateau National Wildlife Refuge was established on April 1, 1986, pursuant to the Endangered Species Act of 1973, Migratory Bird Conservation Act of 1929, and the Fish and Wildlife Act of 1956, and as a refuge and breeding ground for migratory birds and other wildlife.

“... to conserve (A) fish or wildlife which are listed as endangered species or threatened species or (B) plants” ... 16 U.S.C. 1534 (Endangered Species Act of 1973).

“... for use as an inviolate sanctuary, or for any other management purpose, for migratory birds.” 16 U.S.C. 715d (Migratory Bird Conservation Act)

“... for the development, advancement, management, conservation, and protection of fish and wildlife resources . . .” 16 U.S.C. 742(a)(4) and “. . . for the benefit of the United States Fish and Wildlife Service, in performing its activities and services. Such acceptance may be subject to the terms of any restrictive or affirmative covenant, or condition of servitude . . .” 16 U.S.C. 742(b)(1) (Fish and Wildlife Act of 1956).

Ozark Plateau National Wildlife Refuge was established to:

- Prevent the extinction and aid in recovery of federal-listed threatened and endangered Ozark cave species;
- Reduce the need for future listing of species of concern in the Ozarks;

- Protect large continuous stands of Ozark forest essential to interior forest nesting migratory birds;
- Provide important environmental educational opportunities identifying the need for protecting fish and wildlife and other karst resources of the Ozarks.

National Wildlife Refuge System Mission

The mission of the National Wildlife Refuge System, otherwise known as Refuge System, is to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans (Pub. L. 105-57; 111 Stat. 1252).

Description of Use

Is this an existing use?

No

What is the use?

The use is the permitted harvest, cataloging, and planting for future harvest and/or maintenance of culturally significant plants and the harvest/collection of other items of tribal cultural significance such as turtle shells, feathers, whitetail deer antler sheds, wildlife bones, fungi, and water by members of federally-recognized tribes for cultural, tribal, and/or educational purposes (non-commercial and non-research). Cultural resource items would be used in traditional uses such as woven baskets, flutes, fishing poles, and/or blowguns; medicine; and food. This use is not open to the general public. Sale of the items collected from the refuge or any products made from these items is considered commercial use and is not allowed. Tribal members wishing to catalogue plants, harvest or plant species of cultural significance or harvest other natural resources would be required to obtain a Special Use Permit (SUP).

The table below provides a list of native plant species suitable for harvest and the parts of each species that can be harvested. Some species already occur on the refuge while others may not currently be available but, due to natural and historical occurrence in the area, are suitable for possible planting as part of cultural resource use and/or future refuge restoration projects. The refuge will be implementing a habitat restoration project on a 15.5-acre portion of the Looney Unit utilizing funds from a Natural Resource Damage and Restoration settlement for injuries to natural resources at the Tar Creek Superfund site in northeastern Oklahoma. As part of the restoration project, a full botanical survey of the area proposed for restoration will be completed. Native plants that would add habitat value and diversity and that also are of tribal cultural significance will be planted as part of the restoration project.

Table of Native Plants Suitable for Harvest and/or Planting for Cultural Resource Purposes

Common Name	Scientific Name	Parts Harvested	Season, Method of Harvest, Stewardship Practices
Native oaks such as white, red, black, Shumard, and post oaks	<i>Quercus spp. (e.g., Q. alba, rubra, velutina, shumardii, and stellata)</i>	Acorns	Acorns that can be gathered from the ground between October 1 – December 31.
Native hickories/pecan such as pignut, mockernut, shagbark, black, butternut hickories.	<i>Carya spp (e.g., C. glabra, tomentosa, texana, cordiformis, ovata, and illinoensis)</i>	Hickory nuts	Nuts that can be gathered from the ground between October 1 – December 31.
Walnut	<i>Juglans nigra</i>	Walnuts	Walnuts that can be gathered from the ground between October 1 – December 31.
Ozark chinquapin	<i>Castanea ozarkensis</i>	Nuts	Nuts that can be gathered from the ground between October 1 – December 31.
Black gum	<i>Nyssa sylvatica</i>	Twigs and bark	Year round.
Persimmon	<i>Diospyros virginiana</i>	Fruit	Fall and early winter after the first frost and while available.
Pawpaw	<i>Asimina triloba</i>	Berries	Whenever fruit is present throughout summer and fall.
Wild plums, Black cherry, choke cherry	<i>Prunus spp. (P. seratina,. virginiana,. americana, and angustifolia)</i>	Fruit	Whenever fruit is present throughout summer and fall.

Spicebush	<i>Lindera benzoin</i>	Leaves, twigs, and berries	Berries: August 1 – October 31. Leaves and twigs: Spring, summer and fall.
Prairie crabapple	<i>Malus ioensis</i>	Fruit	Late summer and early fall (August – October).
Sassafras	<i>Sassafras albidum</i>	Leaves, bark, roots	Leaves and bark: Spring and summer. Roots: Winter and spring.
Winged sumac	<i>Rhus copallinum</i>	Leaves, bark, and fruit	Fruit: Whenever fruit is present and ripe, typically June 1 – October 15. Leaves and bark: Spring, summer and fall.
Smooth sumac	<i>Rhus glabra</i>	Leaves, bark, and fruit	Fruit: Whenever fruit is present and ripe, typically June 1 – October 15. Leaves and bark: Spring, summer and fall.
Shortleaf pine	<i>Pinus echinata</i>	Pine cones	Year round from forest floor.
American water willow	<i>Justicia americana</i>	Leaves	Spring, summer, and fall.
American pokeweed	<i>Phytolacca americana</i>	Roots, berries, and young shoots	Spring, summer, and fall.
Jimsonweed	<i>Datura stramonium</i>	Leaves and seeds	Collected for ceremonial purposes, only by knowledgeable gatherers as the plant is known to be toxic.
Yarrow	<i>Achillea millefolium</i>	Whole plant, flowers, leaves, and/or roots	Whole plant, flowers and leaves: spring, summer, and fall. Roots: Fall.

Cutleaf coneflower	<i>Rudbeckia laciniata</i>	Flowers, leaves, stems, and seeds	Spring, summer and fall.
Purple coneflower	<i>Echinacea purpurea</i>	Flowers and leaves, and seeds	Spring, summer, and fall.
Sunchoke	<i>Helianthus tuberosus</i>	Tubers	Fall and early winter.
Giant Cane/River Cane	<i>Arundinaria gigantea</i>	Sprouts and early spring leaves, mature stalks, seeds for conservation.	April 1 – June 1.
Native wild honeysuckle	<i>Lonicera flava</i>	Flowers, leaves, and vines.	Spring, summer, and fall.
Native wild onions, ramps, leeks, garlic	<i>Allium spp.</i>	Whole plant, bulbs, or leaves	April 1 – May 15.
Native mushrooms	Various species (Examples include <i>Cantherellus</i> spp., <i>Morchella</i> spp., <i>Pleurotus</i> spp., <i>Hericium</i> spp., <i>Trametes</i> spp., <i>Laetiporus</i> spp., <i>Grifola auricularia</i>)	Mushroom/fruit	Whenever present, typically from early spring through late fall. For any mushrooms growing on trees, only those that can be reached from the ground can be collected.
American ginseng	<i>Panax quinquefolius</i>	Roots	August 15 – November 31. Only from mature plants that are at least 5 years old. Mature plants will have 3 leaves (each leaf has 3-5 leaflets). Harvested plants also must have ripe (red) fruit, and seeds of the harvested plants must be planted at the digging site

			under $\frac{3}{4}$ to 1 inch of soil.
Wild ginger	<i>Asarum canadense</i>	Leaves and roots	Spring and fall, after plant has reproduced.
Mullein	<i>Verbascum thapsus</i>	Leaves, whole plant	Leaves: March 1 – November 31. Roots: August 15 – November 31. From mature plants only with a flower stalk.
Native watercress	<i>Rorippa nasturtium-aquaticum</i>	Leaves, flowers, and seeds	Spring, summer, and fall.
Native grapes	<i>Vitis spp. (e.g., V. rotundifolia, vulpina, and riparia)</i>	Grapes	Whenever grapes are present and ripe throughout summer and fall.
Wild strawberry	<i>Fragaria virginiana</i>	Berries	Whenever berries are present and ripe throughout summer and fall.
Blackberry	<i>Rubus fruticosus</i>	Berries, leaves, and stems	Fruit: Whenever berries are present and ripe throughout summer and fall. Leaves: When available. Stems: Year round.
Mulberry	<i>Morus rubra</i>	Berries	Whenever berries are present and ripe throughout summer and fall.
Huckleberry	<i>Vaccinium pallidum</i>	Berries	Whenever berries are present and ripe throughout summer and fall.

Elderberry	<i>Sambuchus canadensis</i>	Berries	Whenever berries are present and ripe throughout summer and fall.
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Only plants native to the area may be planted, and the plantings would occur only in areas with appropriate sun exposure and soil conditions. The Table also provides example restrictions for certain species. Restrictions on quantity and timing of harvest are anticipated to vary from year to year based on current and recent climatic conditions and will depend on current availability. These restrictions, therefore, will be further developed, as necessary, and addressed in individual SUPs based on current conditions and availability.

Is the use a priority public use?

No

Where would the use be conducted?

This use would be permitted on the Mary and Murray Looney Unit of Ozark Plateau NWR (470 acres; Looney Unit). Special Use Permits would determine specifically where these activities would occur on the refuge unit. The refuge will issue SUPs to harvest and/or plant renewable resources where this activity will not significantly impact either wildlife or wildlife habitat, which may vary from year to year depending on current and recent climatic conditions. The planting of species of cultural significance and the collection of natural resources would only be allowed in areas specified in the SUP where the activity would not significantly affect other special events, programs, federally-listed species, or species of special concern. For example, the use would not be allowed inside refuge caves due to the presence of federally-listed cave species; in areas being used as part of active research or monitoring projects; or in areas next to refuge buildings where existing plants serve to increase aesthetics or to provide educational opportunities for visiting public. The persons engaged in these activities will use existing access points, parking lots, signage, and refuge roads as well as public right-of-ways to access collection sites.

When would the use be conducted?

This use is permitted during normal refuge hours of operation, when refuge staff could be available and on-site, which typically would be Monday through Friday from about 8 am – 4 pm. The presence of refuge staff during this use is not anticipated to be a requirement, but may be beneficial and/or necessary in some instances. For example, refuge staff may help direct participants to sources of a plant of interest, or may need to discuss areas that should be avoided at certain times. There are occasions when the use would not be permitted in certain areas such as during active research and monitoring activities, when on-the-ground management is being

implemented or planned (e.g., prescribed fire, tree thinning, etc.), and during refuge special events. Seasonality of harvest is provided in the preceding Table as a reference, but also will be guided by both scientific and tribal knowledge, and current availability of particular plants, which is likely to vary from year to year. Timeframe and other restrictions may vary from year to year and will be addressed in the individual SUPs.

How would the use be conducted?

When an individual, family, or group requests to conduct tribal cultural resource collection or planting on the refuge, the applicant must formally request such use from the Refuge Manager. The Refuge Manager then issues the applicant a SUP with specific restrictions on timing, duration, seasonality, and location of the use, as well as plants and items that can be collected/planted and the amount of collection permissible that the gatherer(s) must follow relative to activity, to ensure continued compatibility. The SUP must be carried on person by the individual or a member of the family/group during cultural resource use. Permits will only be issued when the proposed cultural resource use is associated with tribal, cultural, or educational, non-commercial purposes. All refuge rules and regulations must be followed unless otherwise provided in writing by refuge management.

Cultural resource collection will occur by hand. Plants and plant parts will be collected by either picking or cutting parts from the plant that can be reached from the ground, or gathering what has fallen to the ground. Small, hand help cutting tools are allowed such as pruners and scissors, but powers tools are prohibited. Digging for root material is allowed for certain plants (see Table for examples), and will be detailed in each SUP. For any mushrooms growing on trees, only those that can be reached from the ground can be collected. Typically, this use will entail the removal of aboveground portions of the plant (e.g., the stem of a grass or similar plant, leaves, berries, nuts, bark, mushroom, etc.) in a manner that does not adversely impact the existing plant. In some instances, the entire plant will be harvested for the purpose of gathering roots, for example mullein, American ginseng, and wild onions. In such cases, the proportion of individual plants collected will be kept to a minimal proportion of the total present to avoid adverse effects to the plant population. For most plants, restrictions on quantity and timing of harvest is anticipated to vary from year to year based on current and recent climatic conditions, and will depend on current availability. Additional plantings also will be allowed when necessary to allow for maintenance of the plant and future harvest. Small tools such as shovels would be allowed to assist with plantings. These restrictions will be addressed in individual SUPs, as necessary, based on current conditions and availability.

Collecting will not involve any live animals. Only empty turtle shells from dead turtles and bones from dead wildlife can be collected. A state hunting license would be required of anyone collecting turtle shells to comply with state regulations. No live animals may be taken, nor can an animal be harmed, harassed, or killed for an animal

part (turtle shell, bones). Deer antlers must have been shed naturally and not be attached to the skull.

Only feathers of birds, including federally-protected birds, naturally molted or fallen to the ground would be collected, in accordance with the “Morton Policy”, (i.e., Federal policy regarding the possession or use of federally-protected birds, bird feathers, or other bird parts for cultural and religious purposes of federally-recognized Indian tribes). Feathers would not be collected from live birds or nests.

Water would be collected in small, handheld portable containers from creeks, and from springs at the point where water flows naturally to the earth’s surface. Water cannot be collected from inside caves or at the mouth of caves. There is no intent to utilize boreholes that tap into the underground water source, and such measures would not be allowed. Since the water has not been treated, SUPs would state that the collected water may not be suitable for human consumption or direct contact without appropriate treatment.

We anticipate 30 – 50 people participating in this use annually, with a limit of no more than 60 people per year. Existing refuge roads and parking lots are sufficient to accommodate these activities.

Why is this use being proposed or reevaluated?

Federally-recognized tribes in eastern Oklahoma suffered damages to natural resources due to lead and zinc mining in what is now the Tar Creek Superfund site of northeastern Oklahoma. Some of the injured resources at the site include tribal lost use of numerous plant and animal species. Damages to plants used for food, medicinal, and cultural purposes by tribal members are of special concern. The Looney Unit already provides plants and animals products of cultural significance for the tribes. The tribes involved with the assessment of damages to natural resources at the Tar Creek Superfund site requested use of the Looney Unit for the purpose of collecting plants and certain animal products of tribal cultural significance. The Refuge also is implementing a habitat restoration project on the Looney Unit utilizing funds from a Natural Resource Damage and Restoration settlement for injuries to natural resources at the Tar Creek site in coordination with the tribes. Planting additional species of cultural significance will be part of the restoration project. The tribes would utilize the cultural resources on the Looney Unit at the project site and the refuge unit in general to replace the lost use of cultural resources at the Tar Creek site. This activity also is a traditional tribal use within the area, and facilitates appreciation and understanding of refuge resources by tribal partner(s). This use also will help maintain positive relations with tribal governments and afford the Service an opportunity to form new relationships and enter into productive partnerships with Tribes, while also assuring that Tribes have knowledge of and access to Service programs.

Availability of Resources

Existing refuge infrastructure such as roads, parking lots, signage, and other facilities serve to accommodate these activities. Duties conducted by staff in support of the activities include issuing Special Use Permits, monitoring activities, planning, enforcement, signs, , and road maintenance. Administering this use can be done with existing resources for on-going operations, maintenance, and public information. No additional funding is anticipated to be needed.

Anticipated Impacts of the Use

The effects and impacts of the proposed use to refuge resources, whether adverse or beneficial, are those that are reasonably foreseeable and have a reasonably close causal relationship to the proposed use. This CD includes the written analyses of the environmental consequences on a resource only when the impacts on that resource could be more than negligible and therefore considered an “affected resource.” Air quality, water quality, floodplains, and geology will not be more than negligibly impacted by the action and have been dismissed from further analyses.

Potential impacts of a proposed use on the refuge's purpose(s) and the Refuge System mission

The refuge believes that with proper management, cultural resource use will not result in any short or long-term impacts that will adversely affect the purpose of the refuge or the mission of the National Wildlife Refuge System. Anticipated beneficial impacts include helping to maintain a connection with and appreciation for the outdoors and nature among tribal members; and fostering new connections and appreciation among individuals that might not otherwise engage in other outdoor activities. Disturbance to wildlife, including federally-listed species and songbirds, and habitat and other physical impacts are anticipated to be minor or to an extent that is not measurable, as discussed below. The use will not be allowed in caves or at the mouths of caves. Collecting and planting activity would occur during the day when federally-listed bats are roosting inside refuge caves. The plants to be harvested are not used for food or cover for federally-listed species that occur on the refuge. Overall, there are no anticipated effects on threatened and endangered species.

No conflict of user groups is anticipated since the Looney Unit is otherwise closed to the public except for events authorized by permits. Refuge staff can manage use of the refuge by time and location through the issuance of SUPs such that this use in combination with other uses (e.g., research, monitoring, environmental education, photography) would not be expected to have a cumulative impact to wildlife or wildlife habitat on the refuge. This activity will add to the diversity of public use opportunities on the refuge, resulting in beneficial cumulative impacts on the human environment.

Short-term impacts

There are few minor short-term impacts associated with Cultural Resource Use (Plants, Animal Products, and Other Natural Resources of Tribal Cultural Significance) by members of Federally-Recognized Tribes. The presence of vehicles and foot traffic to collection sites will cause a minor disturbance to wildlife located in habitats adjacent to the sites. A very minor amount of vegetation trampling also would likely occur. Some soil disturbance would occur at times during plant collecting (e.g., when a whole plant or plant roots are collected), and from maintenance plantings. However, we anticipate only small numbers of people participating in the use at a time (no more than 2-5 people at a time), for short periods of time (a matter of hours) and the frequency of use to be small and spread throughout the year. These disturbances should only be minor and short term. Vegetation is expected to naturally recover from minor trampling. Wildlife is expected to move to ample adjacent habitat during the activity with opportunity to return after the activity is over.

A minor amount of food and water for wildlife would be removed from the environment by harvest of natural resources. The small proportion (relative to availability) of each plant species allowed for collection is not anticipated to ever reach a level resulting in a significant loss of habitat availability or diversity or an overall adverse impact to the forested habitat on the refuge. Maintenance plantings of harvested plants, as necessary, also will help ensure the future availability of each plant species. SUPs issued by refuge staff will further ensure impacts never exceed a minor level by, if necessary, restricting access to only certain portions of the unit if certain areas have recently experienced a high level of collection activity. Similarly, water is an abundant resource on the Looney Unit. The refuge has several natural springs and creeks that flow year round including Spavinaw Creek and the spring that flows from the mouth of the cave down to Spavinaw Creek. The minimal amount of water refuge staff will permit to be collected from springs and creeks will vary from year to year, depending on recent rainfall events and availability, but is anticipated to be a very small fraction of the water that is available. The collection of water is not anticipated to ever reach a level that would reduce water availability for wildlife. Collecting of plants and/or water will not reduce the available food or water resources for neotropical migratory birds, federally-listed species, and other wildlife on the refuge. Ensuring that this use results in only minor impacts will be further safeguarded by the issuance of SUPs by refuge staff that contain appropriate and necessary restrictions on the where, when, and how the use is to be conducted which will vary in accordance with current refuge research projects, monitoring activities, habitat management practices, availability and health of the resource, and other refuge special events.

Long-term impacts

We do not anticipate negative long-term impacts. Maintenance plantings of

harvested plants, as necessary, will help ensure the future availability of each plant species. Only native plants would be planted. Plantings would occur only in appropriate locations considering sun exposure, water, and soil conditions. These plants will provide food and cover for native wildlife and will therefore add to the habitat value and diversity of the refuge over time.

Public Review and Comment

This draft compatibility determination (CD) is being made available for a 30-day public comment period. Comments on this use are invited and due by May xx, 2022. You can submit comments via email to richard_stark@fws.gov or mail in comments to Ozark Plateau National Wildlife Refuge at 9014 East 21st Street, Tulsa, OK 74129. In the subject line, please add—Ozark Plateau NWR Tribal Cultural Resource Use CD comments. Concerns expressed during the public comment period will be addressed in the final.

Determination

Is the use compatible?

Yes

Stipulations Necessary to Ensure Compatibility

1. All individuals requesting to collect cultural resources are required to comply with refuge regulations and the conditions of their permit (SUP).
2. All collection will be for cultural, tribal, and/or educational use.
3. Refuge staff will continue to monitor activity to ensure adverse effects are of no significance.
4. Sale of the items collected from the refuge or any products made from these items is considered commercial use and is not allowed.
5. The use would not be allowed inside refuge caves due to the presence of federally-listed cave species; in areas being used as part of active research or monitoring projects; or in areas next to refuge buildings where existing plants serve to increase aesthetics or to provide educational opportunities for visiting public.
6. Availability of certain plant cultural resources and water is anticipated to vary due to current and recent climatic conditions (drought, storms, etc.). Restrictions on quantity and timing of harvest is anticipated, therefore, also to vary from year to year based on current and recent climatic conditions, and will depend on current availability. These restrictions will be addressed in individual SUPs, as necessary, based on current conditions and availability.

7. Cutting down trees is prohibited.
8. The use of power tools is prohibited.
9. Water can be collected from springs and streams only. Boreholes that tap into the underground water sources are not allowed. Water cannot be collected from inside caves or at the mouth of caves. Only small, portable containers can be used to collect water.
10. Antlers must be natural sheds, not attached to the skull, and are limited to two antlers per person per year.
11. No live animals may be taken, nor can an animal be killed for an animal part (turtle shell, bones), nor can an animal part be removed from a live animal.
12. Climbing trees to collect tree parts, parts of other plants, or mushrooms is prohibited

Justification

The stipulations outlined above would help ensure that Cultural Resource Use by members of federally-recognized tribes is a compatible use at Ozark Plateau NWR. Cultural Resource Use by members of federally-recognized tribes, as outlined in this compatibility determination, would not conflict with the national policy to maintain the biological diversity, integrity, and environmental health of the refuge. This activity will not adversely affect biological resources or conflict with any of the other priority public uses. The Service has determined that this use at Ozark Plateau NWR, in accordance with the stipulations provided here, would not materially interfere with or detract from the fulfillment of the National Wildlife Refuge System mission or the purpose of Ozark Plateau NWR. Rather, people engaged in cultural resource use will have the chance to appreciate the outdoors and view wildlife, which would further the mission of the Service. Therefore, through the compatibility determination process, based on best available science and best professional judgement, we have determined that Cultural Resource Use by members of federally-recognized tribes, in accordance with the stipulations provided above, will not materially interfere with or detract from the fulfillment of the Refuge System mission or the purposes of Ozark Plateau NWR.

Signature of Determination

Refuge Manager Signature and Date

Signature of Concurrence

Regional Chief, NWRS Signature and Date

Mandatory Reevaluation Date

2032