



## **NATIONAL WILDLIFE REFUGE ASSOCIATION POSITION ON APPLICATION OF THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT TO UNITS OF THE NATIONAL WILDLIFE REFUGE SYSTEM**

### Introduction

Under the “Indian Self Determination Act Amendments of 1994,” Public Law 103-413 (also known as the “Tribal Self-Governance Act of 1994”), native tribes can enter into annual funding agreements (AFAs) with agencies within the Department of the Interior (DOI), including the Fish and Wildlife Service (FWS). These AFAs authorize tribes “to plan, conduct, consolidate, and administer programs, services, functions and activities” administered by the DOI that are of special geographic, historical, or cultural significance to the participating Indian tribe requesting a compact. Required by the Act, a list of programs and refuges eligible for AFAs are printed in the Federal Register on an annual basis. A total of 34 eligible refuges are currently included on that list. The Act stipulates that an AFA cannot include programs, functions, services, or activities that are inherently federal. *Id.*, section 403(K).

The National Wildlife Refuge Association (NWRA) is a national membership organization, whose mission is to protect, enhance and expand the National Wildlife Refuge System (NWRS)—lands and waters set aside by the American people to conserve our diverse wildlife heritage.

The NWRA acknowledges the importance of the FWS fostering and maintaining relationships and partnerships with Native Americans in connection with refuges, and commends the FWS for its initiative in developing opportunities to work with Native American tribes and for implementing new and innovative ideas to achieve vital conservation objectives on refuges.

However, the NWRA is highly concerned about the potential adverse impacts on individual refuges and the Refuge System resulting from the inappropriate use of AFAs. As a result, the NWRA has developed a list of guiding principles and encourages the FWS to adopt these principles when developing an annual funding agreement.

In addition, the NWRA believes that the FWS should develop specific guidelines governing the creation of AFAs and, within those guidelines, recommends that reasonable negotiation time limits be instituted to ensure that agency resources are effectively and efficiently utilized. It is our opinion that negotiations concerning the National Bison Range have been needlessly prolonged and have diverted vital staff time and resources from other high-priority program areas.

The following guiding principles reflect specific concerns the NWRA has regarding future use of AFAs on national wildlife refuges.

## Guiding Principles

In evaluating the appropriateness of proposed AFAs involving a unit of the NWRS, the NWRA will be guided by the following principles:

1. The proposed agreement must not include programs, services, functions, or activities which the NWRA believes are “inherently federal” in nature, defined as those that would abrogate or in any way diminish the authority of the FWS to manage a refuge or the Refuge System. The fundamental authority for management of refuges must be retained by the FWS. It is essential that our public lands be managed for the public and this can only be insured through management by the federal government.
2. The proposed agreement must maintain or enhance management of the refuge for the conservation purposes for which it was established, and in accordance with the requirements of the National Wildlife Refuge System Administration Act of 1966, National Wildlife Refuge System Improvement Act of 1997, and other laws governing the Refuge System. Implicit in this principle is the requirement that the federally recognized Tribal partners must have the resources, experience and training to successfully perform the tasks agreed upon.
3. Tribes performing tasks under the proposed agreement must be bound by the environmental laws, regulations and policies of and related to the FWS.
4. Administrative and management decisions must be made by a FWS official that reports to the Director of the FWS. Only the FWS has the unique expertise and the statutory mandate to manage the National Wildlife Refuge System.
5. The proposed AFA must be demonstrably cost-effective and a value added to administration of the refuge and Refuge System. Because AFAs preclude a competitive bidding process for contractual activities on refuges, the public must be assured the agreements are cost-effective and do not constitute an added burden to refuge operational funding.
6. The proposed agreement must have clear and enforceable provisions to ensure performance and accountability. Action under the agreement should be reviewed annually by the refuge manager and a report regarding performance made available to the public.
7. The availability of funds for proposed AFAs or the extension of existing AFAs must be considered within the context of overall budget priorities of the refuge and Refuge System. AFAs should be evaluated on an annual basis and only be renewed if the services and programs remain a priority.
8. The AFA process must provide an adequate opportunity for public review and comment on proposed AFAs. This should include a minimum 90-day public comment period and participatory public hearings in appropriate locations.
9. A public comment period must take place when any proposal is made to substantively modify or expand an existing AFA.