

Notice of Intent to Prepare an Environmental Assessment Regarding the Interest of the Confederated Salish and Kootenai Tribes to enter into an Annual Funding Agreement with the Department of the Interior, U. S. Fish and Wildlife Service, for the Operation and Management of Programs at the National Bison Range Complex

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent and scoping.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is issuing this notice to advise the public that an Environmental Assessment (EA) will be prepared regarding the interest of the Confederated Salish and Kootenai Tribes (CSKT) to enter into an Annual Funding Agreement (AFA) with the Department of the Interior, U. S. Fish and Wildlife Service, for operations and maintenance of certain programs and activities of the National Bison Range Complex (NBRC) located on the Flathead Indian Reservation. The CSKT submitted their interest pursuant to provisions of the Tribal Self-Government Act of 1994. Under that law, qualified Indian Tribes may request and the Department must negotiate for an AFA for the Tribe to perform activities administered by the Department of the Interior that are of special geographic, historic or cultural significance to the requesting qualified Tribe.¹

The Service is issuing this notice to advise the public that an EA will be prepared to evaluate the impact the proposed action will have on the environment. This analysis will help the Service make an environmentally sound decision. This notice invites the public to participate with the development of the EA. We are asking the public to respond with suggested alternatives and concerns about significant issues regarding the proposed action. Scoping is intended to ensure that problems are identified early and properly addressed. Scoping can reduce the need for changes after the draft EA is finished, because it reduces the chances of overlooking a significant issue or reasonable alternative. This notice describes the proposed action, a draft AFA negotiated pursuant to the CSKT's request, and one alternative.

Submission of written scoping comments and questions will be accepted from May 15 – June 15, 2012 and can be submitted using one of the following methods:

Via Email to: nbrcomments@fws.gov

Or: U.S. Postal Service to either: National Bison Range, 58355 Bison Range Road, Moiese, Montana 59824, or U.S. Fish and Wildlife Service Regional Office, National Wildlife Refuge System--Mountain-Prairie Region, P.O. Box 25486, DFC, Denver, Colorado 80225.

¹ (a) Geographic generally refers to all lands presently "on or near" an Indian reservation, and all other lands within "Indian country," as defined by [18 U.S.C. 1151](#). In addition, "geographic" includes:

- (1) Lands of former reservations;
 - (2) Lands on or near those conveyed or to be conveyed under the Alaska Native Claims Settlement Act (ANCSA);
 - (3) Judicially established aboriginal lands of a Tribe or a Consortium member or as verified by the Secretary; and
 - (4) Lands and waters pertaining to Indian rights in natural resources, hunting, fishing, gathering, and subsistence activities, provided or protected by treaty or other applicable law.
- (b) Historical generally refers to programs or lands having a particular history that is relevant to the Tribe. For example, particular trails, forts, significant sites, or educational activities that relate to the history of a particular Tribe.
- (c) Cultural refers to programs, sites, or activities as defined by individual Tribal traditions and may include, for example:
- (1) Sacred and medicinal sites;
 - (2) Gathering of medicines or materials such as grasses for basket weaving; or
 - (3) Other traditional activities, including, but not limited to, subsistence hunting, fishing, and gathering.

Please note that the comments submitted in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information (PII), may be made publicly available at any time. Your comment may be submitted and will be accepted without PII. Also, you can ask us in your comment to withhold your personal identifying information from public review; however, we cannot guarantee that we will be able to do so.

SUPPLEMENTARY INFORMATION: Located in northwestern Montana, the NBRC consists of the following units of the National Wildlife Refuge System (NWRS): the National Bison Range, Pablo National Wildlife Refuge (NWR), Ninepipe NWR, Lost Trail NWR and the Northwest Montana Wetland Management District (WMD). Pablo NWR and Ninepipe NWR are “overlay” refuges, established by Executive Orders on lands that are owned by the CSKT.

Established in 1908 to conserve the American bison, the National Bison Range and other NWRS units of the NBRC provide important habitat for a variety of big game species, numerous species of migratory birds, and other wildlife and fish.

The Confederated Salish and Kootenai Tribes (CSKT) is a sovereign Indian Nation participating in self-governance and is comprised of the Bitterroot Salish, the Pend d'Oreille, and the Kootenai Tribes. CSKT occupy the 1.3 million acre Flathead Reservation in northwestern Montana. The proposal under consideration is for an AFA that includes programs and activities of those units of NBRC that are located within the exterior boundary of the Flathead Indian Reservation. There is no proposal to include programs or activities at Lost Trail NWR, or at the NW Montana WMD–Flathead County in an AFA with the CSKT.

The Tribal Self-Governance Act of 1994 (codified at 25 U.S.C. 458aa-458hh) was enacted as an amendment to Public Law 93-638 (codified as the Indian Self-Determination Act, 25 U.S.C. 450-450n) and incorporated as Title IV of that law. The Tribal Self-Governance Act allows qualifying Tribes the opportunity to request AFAs with the Bureau of Indian Affairs (BIA) and non-BIA bureaus within the Department of the Interior. When dealing with non-BIA bureaus, including the Service, qualifying Tribes may request to negotiate and enter into AFAs that allow them to conduct certain activities of non-BIA bureau for activities that have a special geographic, historical, or cultural significance to the Indian Tribe requesting an AFA.

Under the Tribal Self-Governance Act of 1994, when a qualified Indian Tribe requests an AFA with a non-BIA bureau, for activities to which the Tribe has geographical, historical, or cultural connections, that Bureau is required to conduct good-faith negotiations with the requesting Tribe.

The NBR and other units of the NBRC have a very high level of cultural, historic and geographic significance to the CSKT. All units of NBRC under consideration for an AFA are located within the Flathead Reservation. Pablo and Ninepipe NWRs are owned by CSKT. There are significant cultural sites located on NWRS lands. The land comprising the NBR was acquired directly from tribal trust status in 1908, before the reservation was opened to non-Indian

homesteaders. The bison that reside on the NBR are descendants from a herd originally saved by Tribal members in the late 19th century, and which originated on the reservation.

The National Wildlife Refuge System Administration Act (NWRSA) requires that NWRS units can be administered only by the Secretary of the Interior, through the Director of the Service. Accordingly, the Service will continue to manage all units of the NBRC according to applicable laws and policies. The Service will retain all existing real property ownership interests held by the United States in the NBRC. All NWRS units will continue to be managed to achieve the wildlife purposes for which they were established and the mission of the NWRS, as established by Congress.

BACKGROUND: On December 14, 2004, the Service and the CSKT (collectively the Parties) signed an AFA under the Tribal Self-Governance Act of 1994.

<https://www.federalregister.gov/articles/2005/02/01/05-1785/fish-and-wildlife-service-and-confederated-salish-and-kootenai-tribal-governments-sign-annual>

Under that AFA, the CSKT were directly involved with performing a variety of activities at the NBRC including biology, maintenance, visitor services, and fire management.

The Service extended the AFA on September 5, 2006, pending negotiation of a successor Fiscal Year 2007 AFA (2007 AFA). On December 11, 2006, negotiations with the CSKT for 2007 AFA ended and the extended AFA was canceled. The AFA for the National Bison Range was one of the first AFAs entered into by the Service. Understandably, there were some concerns from portions of the public about the propriety of the AFA. Nevertheless, an effort was made by Service and the CSKT under the AFA to manage refuge resources to the standards set by the Service under its management and oversight responsibilities. Allegations were raised regarding unfavorable working conditions, CSKT performance, the Service made a decision to cancel negotiations. The CSKT also raised allegations of lack cooperation by the Service. The Service's termination of the AFA did not follow contractual procedure. The Tribe was not afforded a reasonable opportunity to correct those noted deficiencies or demonstrate that no deficiency existed.

On June 19, 2008, the Service and the CSKT signed another AFA (2008 AFA). The term of the AFA was October 1, 2008, through September 30, 2011. <http://www.fws.gov/mountain-prairie/cskt-fws-negotiation/> The 2008 AFA was implemented with satisfactory results and performance; however the Service was sued, with plaintiffs alleging that the AFA violated several statutes. On September 28, 2010 a U.S. District Court decided that the Service had not complied with the National Environmental Policy Act of 1969 (NEPA) and rescinded the 2008 AFA.

On November 10, 2011, the CSKT submitted a request to negotiate with the Service, for a new AFA that would include certain operations and maintenance programs at the National Bison Range and other NBRC units located on the Flathead Reservation. As required by law, the Service entered into government-to-government negotiations, and has developed a draft AFA with the CSKT.

CURRENT ALTERNATIVES:

A. Continue Current Management. No-Action, the Service would continue to administer and manage the NBRC as at present, with no type of formal partnership or contract with CSKT or any other entity.

B. Proposed Action. Formalize a partnership between the Service and the CSKT through a new self-governance AFA that would contract with the CSKT to operate eligible refuge programs and perform specific day-to-day activities of the NBRC consistent with the National Wildlife Refuge System Administration Act (“NWRSA”). The CSKT would perform the following activities, subject to the Refuge Manager’s approval:

- a. Oversight of Contracted Activities. .
- b. Biological Program (including Habitat Management);
- c. Fire Program;
- d. Maintenance Program; and
- e. Visitor Services Program, including all activities except: environmental education, cooperating association oversight, and volunteer coordination activities.

To see a copy of the draft AFA go to http://www.fws.gov/bisonrange/AFA/FY_13-16_AFA_Draft_4-12-12_tech_corrections_draft.pdf

The Refuge Manager would retain final responsibility and authority for managing, directing, controlling and administering the operations of the NBRC. A Refuge Leadership Team (Team) comprised of the Refuge Manager, Manager of the CSKT Division of Fish, Wildlife, Recreation & Conservation, Natural Resources Department, Deputy Refuge Manager and a CSKT Wildlife Refuge Specialist would collaborate and develop work plans, set work priorities, and prepare a periodic status reports, all subject to the final approval of the Refuge Manager.

The CSKT would be responsible operating eligible refuge programs and activities, subject to plans approved by the Refuge Manager, and in accordance with laws and policy guidance applicable to the NWRSA. The AFA would be established between the CSKT and the Service to clarify the administrative and procedural details necessary to fulfill the partnership agreement.

The NBR would continue to receive annual funding appropriation from Congress to manage and operate the refuge.

The benefits of an AFA for the Service include:

- a. Promotes the mission to “work with others to conserve, protect, and enhance fish, wildlife, plants and their habitat for the continuing benefit of the American people”;
- b. Facilitates the mission of the NWRSA and the intent of Congress in the National Wildlife Refuge System Improvement Act of 1997, which states, “In administering the System, the Secretary shall - ensure effective coordination, interaction, and cooperation with owners of land adjoining refuges and the fish and wildlife agency of the States in which units of the System are located”;
- c. Fulfills Executive Order 12996 (“Management and General Public Use of the National Wildlife Refuge System”), the Guiding Principles for management of the System, including:

“Partnerships - America’s sportsmen and women were the first partners who insisted on protecting valuable wildlife habitat within wildlife refuges. Conservation partnerships with other Federal agencies, State agencies, Tribes, organizations, industry and the general public can make significant contributions to the growth and management of the Refuge System.”

d. Improves the ability of the NBRC to discharge its responsibilities to protect the cultural resources of the NBRC, through close collaboration with the Native people in whose homeland the NBRC is located;

e. Provides the Service with closer cooperation with its professional peers employed by the CSKT Division of Fish, Wildlife, Conservation and Recreation, who have extensive scientific knowledge, significant traditional ecological knowledge, and a long and successful history of conserving, managing, and restoring the fish, wildlife, and habitat resources of the Flathead Reservation; and

f. Furthers and supports the Department’s statutory responsibility under the Tribal Self-Governance Act, and the policy of the United States regarding Tribal Self-Governance. This participation fulfills Congressional and Departmental objectives as set forth in 25 C.F.R. §§ 1000.4(b) and (c).

Federal law applicable to the NWR, including the National Wildlife Refuge System Administration Act (“NWRSA”), 16 U.S.C. §§ 668dd and 668ee, as amended; NWRSA regulations found at 50 C.F.R. Chapter 1, Subchapter C; the policies of the Service as found in the Service Manual and Refuge Manual; and the Operational Standards provided by Service line officers responsible for administration of the NWR within the Mountain-Prairie Region (Region 6) of the Service, and federal environmental and historic preservation laws including the *Endangered Species Act*, the *National Environmental Policy Act* of 1969, and the *National Historic Preservation Act* of 1966, will continue to apply and will apply to the actions of the CSKT in performing Activities of the NBR.

ISSUE RESOLUTION AND ENVIRONMENTAL REVIEW:

The primary need to be addressed during the scoping and planning process for the EA is to identify issues that will help the Service assess potential effects of the proposed federal action on various components of the human environment. A tentative list of issues, concerns and opportunities open to address include:

1. Could the action threaten a violation of Federal, State, Indian Tribal or local law or requirements imposed for protection of the environment (e.g., State air quality standards, EPA’s solid waste management guidelines, OSHA noise standards, local historic preservation ordinances)?

2. Could the action alter or affect an area that is being considered or has been identified for protection by Federal, State, regional, or local government agencies or Indian Tribes? Examples include, but are not limited to, Wilderness, Wild and Scenic River, Historic Landmark, open space or conservation areas.

3. Could the action result in the use, storage, release and/or disposal of any toxic, hazardous, or radioactive materials?

4. Could the action adversely affect an endangered or threatened species, a species under official Federal, State, or Indian Tribal consideration for such status, or the critical habitat of such a species?
5. Could the action cause changes in the ways members of the surrounding community, neighborhood, or rural area live, work, play, relate to one another, organize to meet their needs, or otherwise function as members of society, or in their social, cultural, or religious values and beliefs?
6. Could the action have environmental impacts on a minority or low-income group that are out of proportion with its impacts on other groups?
7. Could the action affect properties included in or eligible for the National Register of Historic Places, or other culturally valued properties such as traditional neighborhoods or communities, cemeteries, culturally significant rural areas, archeological sites, or places of religious importance to Indian Tribes, Native Alaskans or Native Hawaiian groups?
8. Could the action generate controversy on environmental grounds? The controversy must be related to potential impacts on some aspect of the environment; mere unpopularity of an action (without an environmental nexus) is not sufficient to trigger this indicator.
9. Does the action have effects on the human environment that are highly uncertain or involve unique or unknown risks? "Human environment" shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment.
10. Is the action related to other actions with individually insignificant but cumulatively significant impacts? For example, is the action part of an ongoing pattern of development that could collectively change the quality of the human environment such as suburbanization, "gentrification," or urban renewal?
11. May the action establish a precedent or represent a decision in principle that could lead to future actions with significant environmental effects?
12. Could the action affect public health and safety in any other ways not specifically listed above?
13. Could the action have any direct or indirect effects on any other environmental media or resources not specifically listed above?

FOR FURTHER INFORMATION CONTACT:

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