

**FISH AND WILDLIFE SERVICE
HABITAT MANAGEMENT**

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OVERVIEW

2.1 What is the purpose of this chapter? This chapter describes the U.S. Fish and Wildlife Service (Service) policy for use of cooperative agriculture on National Wildlife Refuge System (NWRS) lands.

2.2 What is the scope of this chapter?

A. This chapter applies to cooperative agriculture on all NWRS lands, as defined in 50 CFR 25.12, except for coordination areas.

B. If conflict exists between this chapter and laws mandating NWRS lands for agriculture purposes, including, but not limited to, Tule Lake, Upper and Lower Klamath NWRS subject to Public Law 88-567 (i.e., Kuchel Act 1964) and Crab Orchard National Wildlife Refuge (NWR) subject to Public Law 80-361, those laws will continue to govern.

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Supersedes all other policies related to cooperative agricultural use on refuges, including 6 RM 4, "Cropland Management," and 6 RM 9, "Grazing and Haying Management," and applicable parts of 5 RM 17, "Administration of Special Uses," including, but not limited to, section 17.11.

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C. The Service will respect the terms and conditions articulated in purchase agreements, deeds, or other legally binding agreements at the time of sale.

D. The Service will respect any existing Cooperative Agriculture Agreements (CAA) until the term of those agreements have ended or up to 5 years from when this policy was enacted, whichever comes first.

E. A CAA is not a financial assistance award and is not subject to the regulations at 2 CFR 200 or policy in parts 515 and 516 of the Fish and Wildlife Service Manual.

2.3 What are the authorities for this chapter?

A. Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301–08).

B. Fish and Wildlife Coordination Act (16 U.S.C. 661–667e).

C. Migratory Bird Conservation Act (16 U.S.C. 715).

D. National Wildlife Refuge System Administration Act, as amended by the National Wildlife Refuge System Improvement Act (16 U.S.C. 668dd).

E. National Wildlife Refuge System Regulations, Economic Uses and Cooperative Land Management (50 CFR 29.1-2 (1960)).

F. Refuge Revenue Sharing Act (16 U.S.C. 715s).

G. 505 Departmental Manual (DM) 2, Procurement Contracts, Grant and Cooperative Agreements.

2.4 What terms do you need to know to understand this chapter?

A. Agricultural practices. Agricultural practices are defined as crop cultivation, haying, grazing, or the harvest of vegetative products, including plant life, growing with or without cultivation on NWRS lands.

B. Cooperative agreements. We use cooperative agreements as legal instruments when the relationship between the Service and a state, local government, or other recipient has the principal purpose of transferring a thing of value (use of NWRS property) from the Service to the other party to carry out a public purpose of support or stimulation authorized by U.S. law (wildlife conservation and refuge management), and we expect substantial involvement between the Service and the other party when carrying out the activity the agreement describes (cooperative agriculture). For cooperative agriculture in the NWRS, we use cooperative agreements, known as CAAs (see section 2.4D below) as the legal instruments to formalize the cooperative agreement between the Service and the cooperator.

C. Cooperative agriculture. Cooperative agriculture is when a person or entity uses agricultural practices on NWRS lands in support of objectives for target species or their associated habitats that represent the biological outcomes the Service desires, and there is

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substantial involvement between the Service and the person or entity (see section 2.9). Agricultural practices on NWRS lands that do not require substantial involvement (i.e., when the Service expects the person or entity to conduct agricultural practices without collaboration, participation, or intervention by the Service) are not considered cooperative agriculture and not subject to this chapter.

D. Cooperative Agriculture Agreement (CAA). A CAA is a cooperative agreement between the Service and a cooperator that describes the objectives, roles, responsibilities, terms, conditions of cooperative agriculture on NWRS land. They must be documented on [FWS Form 3-1383-C](#).

E. Cooperator. A cooperator is any person or entity who the Service awards a CAA and who carries out cooperative agriculture on NWRS land under that agreement.

F. Cost-sharing. Cost-sharing is the portion of the costs for cooperative agriculture on NWRS lands that are borne by the cooperator. Cost-sharing can vary depending on the needs and objectives of the particular NWRS land. For example, the Service may provide the cooperator with the right to perform agricultural practices on NWRS land and a percentage of any resulting crop yield, as well as the ability to use Service water, equipment, or refuge staff. In exchange, the cooperator may provide the Service with labor, equipment, and materials; a percentage of any resulting crop yield; or maintenance, rehabilitation, or reestablishment of specific habitat conditions on NWRS lands.

POLICY

2.5 What is the overall policy for entering into a CAA on NWRS lands? Our policy is to use cooperative agriculture as a habitat management tool only in situations where we cannot meet our resource management objectives through maintenance, management or mimicking of natural ecosystem processes or functions. We implement cooperative agriculture on refuge lands through an open, competitive process, using a CAA between the Service and a cooperator.

RESPONSIBILITIES

2.6 Who in the Service is responsible for developing and managing CAAs on NWRS lands? See Table 2-1.

Table 2-1: Responsibilities for Developing and Managing CAAs	
These employees...	Are responsible for...
A. The Director	Approving or declining to approve national policy on procedures governing all uses of NWRS lands, including cooperative agriculture activity through CAAs.

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Table 2-1: Responsibilities for Developing and Managing CAAs	
These employees...	Are responsible for...
B. Regional Directors	Reviewing any appeals that are filed in accordance with 50 CFR 25.45 .
C. Chief – NWRS	<p>(1) Overseeing the CAA program in the NWRS, and</p> <p>(2) Ensuring the NWRS complies with pertinent laws and policies applicable to cooperative agriculture activity.</p>
D. Regional Chiefs – NWRS	<p>(1) Overseeing the CAA program in the Regions, and</p> <p>(2) Ensuring that all Refuge Supervisors are aware of pertinent laws and policies applicable to cooperative agriculture activity through CAAs.</p>
E. Refuge Supervisors	<p>(1) Ensuring that all Project Leaders are aware of pertinent laws and policies applicable to cooperative agriculture activity through CAAs, and</p> <p>(2) Working with Regional Chiefs and Project Leaders as needed to implement CAA policy.</p>
F. Project Leaders	<p>(1) Identifying when cooperative agriculture on NWRS lands is appropriate, compatible, and necessary as outlined in the comprehensive conservation plan, habitat management plan or other appropriate plan to sustain desired levels of species populations;</p> <p>(2) Developing the objective criteria under which the Service will evaluate applications;</p> <p>(3) Publishing notice of cooperative agricultural opportunities in accordance with Service policy;</p> <p>(4) Awarding CAAs in accordance with Service policy;</p> <p>(5) Documenting CAAs in accordance with Service policy, which includes a signed CAA (FWS Form 3-1383-C);</p> <p>(6) Monitoring cooperator performance under the CAA and preparing addenda (FWS Form 3-1383-C) when needed; and</p> <p>(7) Administering CAAs on the NWRS lands for which they are responsible in compliance with pertinent laws and policies.</p>

OBJECTIVES & PROCESS

2.7 What are the objectives of cooperative agriculture in the NWRS? The objectives for the

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use of cooperative agriculture in the NWRS are:

- A.** Production or modification of specific cover types or growing methods that meet the life history requirements of species for which we have established objectives (e.g., waterfowl production);
- B.** Production of foods for wildlife species for which we have established objectives; or
- C.** Maintenance, rehabilitation, or reestablishment of natural habitat.

2.8 When does the Service enter into a CAA on NWRS lands? The Service may enter into a CAA on NWRS lands when:

- A.** It is found to be an appropriate and compatible use of the NWRS lands, in accordance with Service procedures described in 603 FW 1 and 603 FW 2, respectively;
- B.** It is described as a management action in an approved plan, complies with the National Environmental Policy Act (NEPA) and other applicable laws and regulations, and sets explicit objectives for target species or their associated habitats that represent the biological outcomes the Service desires and to meet wildlife or habitat management objectives; and
- C.** Only when we cannot meet our resource management objectives through maintenance, management, or mimicking of natural ecosystem processes or functions of the particular NWRS land area in compliance with 601 FW 3.

2.9 What is the anticipated level of involvement by the Service in a CAA? A CAA, by its nature, requires substantial Service involvement. The Service and the cooperator will collaborate on developing a plan of operations with continued direction and monitoring by the Service; communicate on a regular basis (e.g., daily communications, monthly status updates, annual reviews) to ensure that the cooperative agricultural program is successful in assisting the NWRS lands to meet objectives for target species or their associated habitats and ensuring that the cooperator is attaining the agreed-upon incentives for engaging in cooperative agriculture on the NWRS lands; and coordinate to ensure the agricultural practices on NWRS lands are conducted in compliance with other Federal laws and policies.

2.10 How does the Service award a CAA on NWRS lands? The Service awards a CAA on NWRS lands through a competitive process based on objective criteria in compliance with applicable laws, regulations, and policy. See section 2.11 below.

2.11 What is the competitive process by which the Service awards a CAA on NWRS lands?

A. Notice of Cooperative Agricultural Opportunities. To inform the public of potential cooperative agricultural opportunities on NWRS lands and to maintain transparency consistent with the customer service mandates prescribed in P.L. 106-107 and Department of the Interior's

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policy, the Service must publish an annual Notice of Funding Opportunity (NOFO) on [Grants.gov](https://www.grants.gov). In addition to the NOFO on Grants.gov, we will publish a Notice of Cooperative Agricultural Opportunity (Notice) for any individual CAA on NWRS lands, as that opportunity becomes available, on the appropriate NWRS website (referenced in the NOFO), and we will publish notice through other channels of outreach locally, regionally, or nationally, as we may deem useful and appropriate for a particular opportunity. The Notice will include the following:

(1) A general description of the CAA, which may vary depending on the circumstances, and may include:

- (a) A description of the purposes of the NWRS lands and resource management objectives in conformance with objectives in the NWRS land's comprehensive conservation plan, habitat management plan, or other appropriate plan;
- (b) Descriptions of the proposed area for cooperative agriculture;
- (c) Availability of water for cooperative agriculture;
- (d) Proposed type(s) of cooperative agriculture;
- (e) Any restrictions on cooperative agriculture; and
- (f) Proposed cost-sharing information or bids for payment in compliance with the Refuge Revenue Sharing Act;

(2) The objective criteria under which the Service will evaluate applications (see section 2.12);

(3) The date by which the Service must receive applications; and

(4) The details on how to apply for the CAA.

B. Applications. The applicant will use applicable sections of [FWS Form 3-1383-C](#) to apply for the individual CAA. The Service will accept applications at the local refuge or complex office listed in the Notice in compliance with the terms and conditions in the Notice.

C. Review of Applications. The Service must score and rank each application based on objective criteria (see section 2.12), and select the most qualified applicant.

D. Notification of Award. The Service will notify all applicants individually and in a timely manner about to whom we awarded the CAA. We must also notify unsuccessful applicants about why they were unsuccessful and of their right to appeal any adverse decision in accordance with [50 CFR 25.45](#).

2.12 What are the objective criteria by which the Service evaluates applications for CAAs on NWRS lands?

A. Objective criteria may vary depending on the needs and objectives of the NWRS lands. We will post the objective criteria by which we will evaluate an application as part of the Notice (see section 2.11A).

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B. Objective criteria may include:

- (1)** Experience in the type of agricultural opportunity posted, especially personal experience on NWRS lands or comparable land;
- (2)** Experience and ability to successfully cultivate crops or produce specific cover types or growing methods that meet the life history requirements of species for which we have established objectives under Service or similar restrictions;
- (3)** Having the proper equipment, materials, labor, or other resources to participate in the cost-sharing nature of a CAA; and
- (4)** Other objective criteria necessary to ensure the cooperative agriculture meets the resource management objectives of the NWRS lands.

2.13 Can a decision regarding an award of a CAA be appealed? Yes. The decision regarding an award of a CAA may be appealed in compliance with 50 CFR 25.45.

2.14 What happens once a CAA is awarded? Once a CAA has been awarded, the Service and the cooperator will work together to finalize the terms and conditions of the CAA (see section 2.15).

2.15 What must be included in a CAA? A CAA must be documented on [FWS Form 3-1383-C](#), and must include the following:

- A.** The statutory authority under which the CAA has been entered into, including U.S. Code citation(s);
- B.** The Program Code (e.g., Catalog of Federal Domestic Assistance (CFDA) number) and a brief summary of the purpose of the cooperative agriculture opportunity;
- C.** Objectives and acreage for cooperative agriculture based on conformance with explicit objectives in the NWRS land's comprehensive conservation plan, habitat management plan, or other appropriate plan;
- D.** Agreed upon cost-sharing between the parties or payment required to the Service;
- E.** Plan of Operations outlining the terms and conditions of the cooperator's access on and use of NWRS lands and property;
- F.** The degree of involvement of the parties, including the frequency of communications and meetings between the parties, as well as the frequency of review and revision of the Plan of Operations;

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G. The respective responsibilities, obligations, rights, and accountability, as appropriate to the particular project;

H. The respective rights and obligations of the parties in such areas as project performance and management, partial or total termination of the work, changes in the scope of work, period of performance, application of funding and resources, title to property, records maintenance and access, liability, etc.; and

I. The duration of the CAA, including any terms of termination.

2.16 How long does a CAA last? A CAA may last up to 5 years.

2.17 Can a CAA be amended? Yes, the Service or the cooperator may initiate an amendment to a CAA to ensure the NWRS lands meet their resource management objectives or to ensure that the cooperator is attaining his/her/its incentives for engaging in cooperative agriculture on NWRS lands. These amendments must be mutually agreeable to both parties and within the scope of the existing CAA.

2.18 When can a CAA be terminated? The Service or the cooperator may terminate a CAA with 45 days' notice if either party is not carrying out their roles and responsibilities under the CAA. Additionally, the Service may terminate the CAA immediately if necessary to protect human or wildlife health or safety.

2.19 Can a CAA be renewed? After the term of the CAA has ended, the Service may review the cooperative agricultural opportunity for renewal. If the Service plans to renew it, we must publish a notice and award the CAA again using the competitive process we describe in section 2.11. We encourage the previous cooperator to apply for the CAA again, but we evaluate all applications based on the objective criteria, as we describe in section 2.12.

/sgd/ James W. Kurth
DEPUTY DIRECTOR

Date: August 3, 2017