Beginning date	Ending date	Under-payments (percent)	Over-payments (percent)	Corporate over-payments (Eff. 1–1–99) (percent)
020178	013180	6	6	
020180	013182	12	12	
020182	123182	20	20	
010183	063083	16	16	
070183	123184	11	11	
010185	063085	13	13	
070185	123185	11	11	
010186	063086	10	10	
070186	123186	9	9	
010187	093087	9	8	
100187	123187	10	9	
010188	033188	11	10	
040188	093088	10	9	
100188	033189	11	10	
040189	093089	12	11	
100189	033191	11	10	
040191	123191	10	9	
010192	033192	9	8	
040192	093092	8	7	
100192	063094	7	6	
070194	093094	8	7	
100194	033195	9	8	
040195	063095	10	9	
070195	033196	9	8	
040196	063096	8	7	
070196	033198	9	8	
040198	123198	8	7	
010199	033199	7	7	6
040199	033100	8	8	7
040100	033101	9	9	8
040101	063001	8	8	7
070101	123101	7	7	6
010102	123102	6	6	5
010103	093003	5	5	4
100103	033104	4	4	3
040104	063004	5	5	4
070104	093004	4	4	3

Dated: July 6, 2004.

Robert C. Bonner,

Commissioner, Customs and Border Protection.

[FR Doc. 04–15681 Filed 7–9–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Fish and Wildlife Service and Council of Athabascan Tribal Governments Sign Annual Funding Agreement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: On April 30, 2004, the U.S. Fish and Wildlife Service (Service or we) signed an annual funding agreement (AFA or Agreement) with the Council of Athabascan Tribal Governments (CATG) under the Tribal Self-Governance Act of 1994. The action was taken at the discretion of the Service. The decision reflects review and consideration of concerns, issues, and comments received during a 60-day public comment period. The Agreement was re-negotiated and slightly re-worded following the public comment period. The Agreement provides for the CATG to perform certain programs, services, functions, and activities (Activities) for the Yukon Flats National Wildlife Refuge (Yukon Flats Refuge) during a one-year period for $59,000. The regional director for the Service in Alaska signed a decision document on this action on Monday, April 26, 2004. The Agreement was endorsed by the Secretary of the Interior on April 30, 2004, and forwarded to the U.S. Congress for a 90-day review period.

DATES: The agreement period is proposed for August 1, 2004, through July 31, 2005.

ADDRESSES: The final agreement and supporting documentation can be obtained at:

1. Fairbanks—Yukon Flats National Wildlife Refuge Headquarters, 101 12th Avenue, Room 264, Fairbanks, Alaska 99701.

2. Anchorage—U.S. Fish and Wildlife Service Regional Office, National Wildlife Refuge System—Alaska, 1011 East Tudor Road, Anchorage, Alaska 99503.

3. Internet—*http://www.r7.fws.gov/media/catg/index.htm*

FOR FURTHER INFORMATION CONTACT: Ted Heuer, Refuge Manager, (907) 456–0407.

SUPPLEMENTARY INFORMATION:

Authority: 16 U.S.C. 668dd *et seq.*, Pub. L. 103–413, Pub. L. 93–638, 25 CFR 1000.

What Is the Yukon Flats National Wildlife Refuge? The Yukon Flats Refuge is the third largest refuge within the National Wildlife Refuge System, administered by the Service in accordance with the National Wildlife Refuge Administration Act, as amended, 16 U.S.C. 668dd. Established by the Alaska National Interest Lands Conservation Act of 1980, the Refuge boundary encompasses 11 million acres. Village corporations and the Doyon, Ltd. regional Native Corporation for the area, established under the Alaska Native Claims Settlement Act (ANCSA, Pub. L.

92–203), own over 2 million acres within the boundary. A 300-mile reach of the Yukon River flows through the heart of the Refuge. There are over 20,000 shallow lakes, ponds, and wetlands in the Refuge, which is internationally recognized as a primary breeding area for North American waterfowl and water birds.

What Is the CATG? The CATG is a qualified tribal consortium composed of Arctic Village, Beaver, Birch Creek, Canyon Village, Chalkyitsik, Circle, Gwichyaa Zhee Gwich'in Tribal Government of Fort Yukon, Rampart, Stevens Village, and Venetie. These are predominantly Athabascan Indian villages within the boundary or very near the Yukon Flats Refuge. The offices of the CATG are located in Fort Yukon, Alaska, within the refuge boundary.

How Did the Service Develop the Agreement? The negotiations between the Service and the CATG were carried out in accordance with regulations in 25 CFR part 1000.

What Events Led to This Action? On June 16, 2003, the Service received a proposal, dated May 30, 2003, from CATG to assume some Activities at the Yukon Flats Refuge under the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638), as amended by the Tribal Self-Governance Act, Public Law 103–413. The proposal asserted that in accordance with section 403(c) of Public Law 93–638, as amended, the Activities were of geographic, historical, and cultural significance to CATG and its member tribes. The parties first met on August 19, 2003, in a pre-negotiation meeting. Because of that meeting, CATG modified the proposal. The two parties agreed at the August 19 meeting that the federally mandated 10-day Service response time would begin following receipt of the modified proposal. According to the regulations implementing Public Law 93–638, the agency must provide a reply within 10 days of the pre-negotiation meeting, explaining whether an Activity is available for negotiation. The Service received the modified proposal on August 29, 2003. On September 5, 2003, the Service sent a response to CATG indicating that eight listed Activities were available to be included in an AFA because they were not inherently Federal functions, and they were of geographic and cultural significance to the tribes that make up CATG. The parties agreed to begin official negotiations on September 28, 2003. After this first meeting, the two parties continued to negotiate specifics of the AFA and reached this Agreement in late December 2003. The regulations allow for a public consultation process. The public was officially notified of a tentative Agreement in a public notice on February 13, 2004. The Service called the Agreement tentative because it declined to sign the Agreement until after the public consultation process. The notice was published in newspapers and posted on the Service's Alaska Region Web site. The notice stated that we would accept public comments for 45 days. Subsequently, we extended the comment period for an additional 15 days, which placed the last day to postmark comments on April 13, 2004. We extended the comment period for two reasons. First, on March 15, 2004, the Service's Internet and e-mail capabilities were disconnected due to a court order affecting several bureaus within the Department of the Interior (DOI). The public had been invited to submit comments to the Service via e-mail, and to read the tentative Agreement on the Service Web site. Nine days later, on March 24, 2004, our Internet and e-mail capabilities were re-established as allowed by a subsequent court order. The second reason to extend the comment period was based upon requests by numerous members of the public who requested an extension of the public comment period to 90 days.

What Is the Tribal Self-Governance Act? The Tribal Self-Governance Act of 1994 was enacted as an amendment to Public Law 93–638 and incorporated as Title IV of that Act. The Self-Governance Act allows identified self-governance tribes the opportunity to request AFAs with the Bureau of Indian Affairs (BIA) and non-BIA agencies within DOI. When dealing with non-BIA agencies, including the Service, identified tribes may enter into funding agreements that would allow them to conduct certain Activities of such non-BIA agencies. Eligible Activities include Indian programs (programs created for the benefit of Indians because of their status as Indians); Activities otherwise available to Indian tribes (any Activity that a Federal agency might otherwise contract to outside entities); and Activities that have a special geographic, historical, or cultural significance to an Indian tribe.

Public Law 93–638 and the regulations that implement the law (25 CFR part 1000.129) prohibit the inclusion of Activities in an AFA that are inherently Federal functions. The Refuge has no special Indian programs. All Activities of the Service on national wildlife refuges are for the benefit of the fish and wildlife resources, their habitats, and the American public. Activities that may have a special relationship with a tribe are the most promising for inclusion in an AFA. Whether to enter into an agreement with a tribe for these Activities is discretionary on the part of the Service. The Service recognizes that most members of CATG that live within the boundary of the Yukon Flats Refuge or very close to it, have used the lands and resources of the Yukon Flats Refuge for most of their lives, as did their ancestors, and therefore feel very much a part of these lands.

What Happens Now? The Service's regional director for Alaska signed a decision document on April 26, 2004. The Service and CATG signed the Agreement on April 30, 2004. The Secretary of the Interior accepted and endorsed the Agreement the same day. In accordance with 25 CFR 1000.177, the Secretary then forwarded the Agreement to the House Resources Committee, Office of Native American and Insular Affairs, and the Senate Committee on Indian Affairs. If there are no objections to the Agreement, it will go into effect 90 days after it was submitted to Congress.

Summary of Public Involvement

The Service announced the public comment period on February 13, 2004, by placing public notices in the principle daily newspapers in Anchorage, Fairbanks, and Juneau, Alaska. A joint Service-CATG news release was sent to Alaska media offices. The public notice, the news release, the Agreement with project work descriptions, and a series of questions and answers were posted on the Service's Alaska Web site, *http://www.r7.fws.gov/media/catg/index.htm.* When the Service's access to the internet and e-mail was stopped by court order, we placed announcements in the above newspapers and mailed an announcement to 77 parties who had commented earlier or who we knew were interested in the draft Agreement. The announcements stated that we could no longer receive comments by e-mail and requested that comments be sent by mail or facsimile. This announcement also discussed the extension of the public comment period to 60 days. We held public meetings in Fairbanks and Anchorage on March 15 and 18, 2004, respectively. Separate newspaper advertisements announced these meetings.

Nature of Public Comments

We received 147 public comments in a variety of ways. Several individuals submitted more than one comment. We received 63 letters by either mail or facsimile (or both), addressed to

President George W. Bush, Secretary of the Interior Gale A. Norton, Regional Director Rowan W. Gould, Refuge Manager Ted Heuer, Assistant Refuge Manager Jimmy Fox, Refuge Supervisor Jerry Stroebele, or other government officials. We received 66 different e-mail messages (often addressed to several recipients), including over 40 e-mail messages from one individual. At the Fairbanks public meeting, eight people made public statements. Seven people made statements at the Anchorage public meeting. All statements at the public meetings were recorded. Two individuals called Refuge Manager Ted Heuer during the official comment period and made statements over the telephone. One individual visited Refuge Headquarters to discuss the tentative Agreement and convey his concerns. Verbal comments were documented and added to the public record. Some comments were received before the formal notice of a public comment period, and a few were received following the public comment period. All comments were reviewed and placed in the public record. We received one letter of comment from the Alaska State Legislature. We received two comments from the Alaska Department of Fish and Game. We received 18 comments from organizations. We received 11 comments from Indian tribes, tribal entities, or other Native American organizations, groups, or corporations. We received 115 comments from individuals. The preponderance of comments recommended against the Service signing the Agreement; 126 comments did not support the Agreement as written. These comments ranged from outright opposition to support with specific modifications. We received 21 comments supporting the Agreement unconditionally. The section below summarizes and/or characterizes comments and attempts to respond collectively.

Response to Public Comments

Issue 1: Length of the public comment period and number of public meetings. Twenty-one responses urged that we extend the public comment period to 90 days and/or also hold public meetings in Juneau, Washington DC, and Missoula, Montana.

Response: The Service initially planned a 30-day public comment period, consistent with most other Service public comment periods for actions on national wildlife refuges in Alaska. However, we decided to provide for a 45-day public comment period because we were aware of the public interest in and controversy over, negotiations between the Service and the Confederated Salish-Kootenai Tribes in Montana. After we announced the 45-day public comment period, we later extended the public comment period to 60 days, based on:

(1) Public comments that recommended an extension of the public comment period; and (2) a court-ordered shutdown of DOI internet access which lasted for nine days, disrupting the Service's ability to receive comments by e-mail, and the ability of the public to review the Agreement on the Service's Web site. If it had not been for the interruption of our e-mail and internet, we would have waited longer in the 45-day comment period to decide whether to extend the comment period, and if so, for how long.

We placed public notices in newspapers in Anchorage, Fairbanks, and Juneau announcing the extension of the public comment period, and providing information on where, when, and how additional information could be obtained and public comments could be submitted. As we neared the end of the 60-day public comment period, we had received comments from all of the conservation groups and other organizations that had expressed interest in this issue or had previously contacted us with questions. Given the brevity of the Agreement and supporting documents, the limited funding amount involved, the small number of public comments received, and the relatively low turnout for the public meetings in Fairbanks and Anchorage, the Service did not believe that another extension of the public comment period and additional public meetings were necessary or would be beneficial.

Many of the comments we received addressed both the Agreement with CATG and the current negotiations between the Service and the Confederated Salish-Kootenai Tribes, concerning Activities at the National Bison Range in Montana. The National Bison Range is also a unit of the National Wildlife Refuge System, administered by the Service's Region 6 Headquarters in Denver, Colorado. We provided copies of all of these comments to Service officials in Montana and Denver. We decided that a public meeting to discuss the Agreement for Activities at the Yukon Flats Refuge in Alaska, if held in Missoula, Montana, would generate public interest and questions more specifically applicable to the National Bison Range, but of little applicability to the Yukon Flats Refuge Agreement.

Issue 2: Preparation of an environmental impact statement. Twenty-six responses requested that the Service prepare an environmental impact statement (EIS) on the Agreement.

Response: In response to these comments, we once more reviewed DOI policy on compliance with the National Environmental Policy Act. The determination to proceed or not to proceed with this Agreement is an administrative decision. The Service does not believe the Agreement is a major federal action that will result in significant environmental impacts. The Service considers the work that is identified in the Agreement to be part of the routine operations, maintenance, and management of the Yukon Flats Refuge (whether done by Service employees, CATG employees, or another contractor). The Service has found that routine operation, maintenance, and management activities do not (individually or cumulatively) have a significant effect on the human environment and are, therefore, categorically excluded from National Environmental Policy Act compliance (part 516 of the Departmental Manual, chapter 6).

The Service did complete a comprehensive conservation plan/environmental impact statement/wilderness review of the Yukon Flats National Wildlife Refuge in October 1987. This CCP and EIS provide overall management direction and guidance for the Refuge. The Activities identified in the Agreement with CATG are not different from the management activities addressed in the Refuge CCP. Management of 17(b) easements, environmental education, data collection and research, wildlife management, and subsistence management and monitoring are all addressed in the 1987 CCP/EIS. Departmental Policy, 516 DM 2, does require NEPA documentation if the proposed action:

> * * * establishes a precedent for future action or represents a decision in principle about future actions with potentially significant environmental effects.

Because the Service is retaining all responsibility and authority for managing the Refuge, and the refuge manager is responsible for following existing laws, regulations, Service policies, and plans for management of the Refuge, we do not envision any adverse environmental impacts will result from this proposed action.

Issue 3: Support more cooperation with local residents. A number of responses supported the Service's efforts to work more cooperatively with Yukon Flats residents. Several people

stated that local residents would have a better understanding and appreciation for the work of the Service if they were involved in the day-to-day activities of the Refuge.

Response: The Agreement is the result of months of discussions with one main goal in mind: Adhere to our responsibilities as mandated in various laws, regulations, and policies. For instance, Public Law 93–638 obligates a Department of the Interior agency to recognize a tribe's right to negotiate for an annual funding agreement. The Compact of Self-Governance between CATG and the United States of America (Compact) and the Service's Native American Policy dictate that the Service is to cooperate in a government-to-government relationship with Indian tribes. We are also legally bound by the purposes of the Yukon Flats Refuge and other management requirements set forth in the Alaska National Interest Lands Conservation Act (Pub. L. 96–487), which established the Refuge. We administer and manage the Refuge for all Americans in accordance with the National Wildlife Refuge System Administration Act (16 U.S.C. 668dd *et seq.*), as amended, and the implementing regulations and policies of that Act.

Issue 4: Support for the Agreement. Twenty-one comments expressed unconditional support for the Agreement. An additional 12 comments were supportive of the Agreement in concept, but believed the language should be modified to clarify certain issues.

Response: We negotiated an agreement that follows three key documents: Public Law 93–638, the Compact, and the National Wildlife Refuge System Administration Act (as amended). This is the first AFA in the history of the Service, and we had no Service examples to follow; however, we did utilize the framework of an existing AFA that we obtained from the National Park Service. After careful review of public comments, we re-negotiated with CATG and modified the Agreement to clarify several issues. This document notes those changes.

Issue 5: This Agreement will set a bad precedent for national wildlife refuges and national parks. Thirty-seven comments, while sometimes applauding the Service and CATG for their efforts to work together more cooperatively, were very concerned about the precedent this Agreement would set for other national wildlife refuges, national parks, national monuments, national historic sites, Federal water projects, etc. (Several comments were unconditionally opposed to the Agreement because of this precedent.)

Response: We are very aware that this Agreement will set an example for the National Wildlife Refuge System. We believe this Agreement, as currently amended to address some of the concerns raised by the public, sets a good standard for the National Wildlife Refuge System and is consistent with all applicable laws and regulations regarding Tribal Self-Governance and the National Wildlife Refuge System. It should also be noted that this is not the first non-BIA annual funding agreement for DOI programs of special geographic, historical, or cultural significance to participating Tribes (*see* 25 CFR subpart F). The National Park Service has had an annual funding agreement with the Grand Portage Band of Lake Superior Chippewa, for maintenance work at the Grand Portage National Monument in Minnesota, for several years. We recognize that, particularly in Alaska where Native Americans are still largely dependent on fish, wildlife, and plants on national wildlife refuges, a strong and continuing cooperative effort must be nurtured and maintained between Service employees and tribal members. This Agreement is one of many tools available to us to further cooperation. We very carefully exercised our discretion in entering this Agreement and would be equally careful in negotiating any future agreements with tribes.

Issue 6: Competitive contracting would be better. Many comments suggested that competitive contracts would make more efficient use of limited refuge budgets and would be a more equitable way of doing business.

Response: The Service has, and will continue to use, competitive contracts where appropriate. However, the law and DOI regulations (25 CFR 1000.122–126) implementing Tribal Self-Governance, allow tribes to formally request negotiations for AFAs for programs, functions, services, and activities of special geographic, historical, or cultural significance to the tribe. The ten tribes which compose CATG have a special geographical and cultural relationship to the lands and resources within the refuge boundaries. The law and regulations provide a preference for these types of programs, and provide the agency discretion to award the AFAs on a non-competitive basis. It would not have been appropriate for the Service to enter good faith negotiations with CATG (as was required by the regulations), reach this Agreement, and then decide to award the same work through a competitive process.

We believe that the dollar amounts awarded to CATG through this annual funding agreement are fair and reasonable for the work being performed, whether being done by CATG or another contractor. Because: (1) CATG's office and employees are located within the boundaries of the refuge; and (2) logistical costs would be very high for any individual or business outside of the Yukon Flats, it is unlikely that another contractor could do this same work as cost effectively as CATG.

Federal conservation agency budgets, including the Service's budget, are forecast to decline in the next several years. For this reason, successor AFAs with CATG in future years, and any agreements requested by other tribes for national wildlife refuges, will continue to be subject to a high bar test for efficiency and cost-effectiveness.

Issue 7: Request that we not use Public Law 93–638 authority to contract. One comment emphasized that the Service has the discretion to enter an AFA and urged us to enter a different contracting arrangement.

Response: We agree that the Service has complete discretion to enter into this Agreement. We have received requests and formal proposals from CATG and other tribes, for several years, to negotiate agreements under provisions of Public Law 93–638. Until 2003, we declined to enter AFAs for several reasons. During this same period, however, the Service has contracted with CATG for work under other contract authorities. We have seen CATG build their capacity for this type of work and increase their expertise. Because CATG has agreed to perform the Activities under the terms that were mutually agreed upon, we choose to enter this Public Law 93–638 AFA with the hope and expectation that increased cooperation and coordination with the tribes will follow.

Issue 8: Question about the Service's authority to enter this Agreement. One comment questioned whether the Service has the authority to enter into this Agreement and cited Section 5 of the National Wildlife Refuge System Improvement Act of 1997.

Response: Section 5 of the Act does provide for the Service:

> * * * to enter into cooperative agreements with State fish and wildlife agencies for the management of programs on a refuge.

However, the Act does not limit the authority of the Service to enter into other contracts or agreements for work on national wildlife refuges, as allowed by other Federal laws. It is also important to note that we did not enter into a cooperative agreement (or AFA)

for CATG to manage programs of the Refuge. We retained all of our refuge management responsibilities and authorities.

Issue 9: Concerns about tribes' sovereign immunity. Ten comments expressed concern that if CATG has sovereign immunity there would be no way for the government to get money back if the work is not completed satisfactorily. Two comments were concerning legal recourse should a member of the public be accidentally injured by a CATG employee working under this Agreement.

Response: The CATG does not have sovereign immunity. While the member tribes of CATG are federally recognized Indian tribes with sovereign immunity, CATG has no governmental status. The CATG is a nonprofit tribal organization as defined in Public Law 93–638, but it is not immune to legal action. Members of the public who might be injured because of actions by a CATG employee have legal recourse against CATG, and to the U.S. Government under the Federal Tort Claims Act.

Issue 10: The Service should not pay CATG at the beginning of the contract. Several comments stated it was a bad business practice to give a contractor all of the money up-front.

Response: The Compact of Self-Governance entered into by the Secretary of the Interior and the Council of Athabascan Tribal Governments on October 1, 1999, specifically states:

> For each fiscal year covered by an AFA negotiated under this Compact, the Secretary shall pay the funds specified for that fiscal year under the AFA by paying the total amount provided for in the AFA in one advance lump sum payment to the extent applicable.

The Service is working with the member tribes of CATG in a government-to-government relationship under Public Law 93–638. Normal government contracting regulations do not apply to that Act. If the Federal government ''reassumes'' programs from a tribe (or consortium like CATG), based on a finding of imminent jeopardy to a physical trust asset, a natural resource, or public health and safety, then under 25 CFR 100.315:

> * * * the Tribe/Consortium must repay funds to the Department as soon as practical after the effective date of the reassumption.

Issue 11: Concerns that the Agreement could limit visitor access. A few comments expressed concern about the potential of this Agreement to have an adverse impact on their ability to access or use Refuge lands.

Response: This Agreement will not affect whom, when, or where the public can use the Refuge for hunting, fishing, wildlife observation and photography, environmental education and interpretation, or other uses. It will not affect the management direction for the Refuge, which was defined with substantial public input through the refuge comprehensive conservation planning process. The Refuge CCP was approved and adopted in 1987.

We do hope that the Agreement will improve the public's ability to access Refuge lands through the identification and marking of public access easements across Native corporation lands within the Refuge boundary. It is a federal responsibility to mark these easements. Similar programs have been underway on other national wildlife refuges in Alaska for several years.

Issue 12: Waiver of regulations. Several comments objected to provisions in the Compact [Section 14 (b)] and the Agreement [Section 8. C.] that allow CATG to request a waiver of any DOI regulation that CATG believes will present an obstacle to carrying out the Agreement. There was also concern expressed about the wording in the Compact, which states that a request for a waiver of regulations can be denied:

> * * * only upon a specific finding by the Secretary that identified language in the regulation may not be waived because such waiver is prohibited by federal law.

Response: The regulation waiver provision in the Compact [Section 14(b) (ii)] is qualified with the clause:

> * * * Until such time as regulations are promulgated * * *

The Compact was signed on October 19, 1999. The regulations currently in effect at 25 CFR part 1000 became effective on January 16, 2001, and codified the waiver provisions, which are now different and more comprehensive than in the Compact. In 25 CFR 1000.225, for a non-Title I eligible Activity (such as those covered by this Agreement) the Secretary may deny a waiver request if it is:

> (b) (1) Prohibited by Federal law; or (b) (2) Inconsistent with the express provisions of the AFA.

In 25 CFR 1000.222, the tribe must submit a written request for a waiver from the appropriate bureau director for non-BIA programs. Therefore, the tribe would have to address the request to the Director of the Service. The Director would consult with the Alaska Region in reviewing this request. The request could not be granted if it is prohibited by Federal law or is inconsistent with the Agreement.

Issue 13: Federal management responsibility. Many comments were concerned about the Service turning over management responsibilities to a tribe. One comment said the Agreement is suggestive of co-management. Another said the Agreement would let CATG set priorities on the Refuge. They suggested that Sections 7(B) and 8(B) be revised. Some said all programs, functions, services, and activities of the National Wildlife Refuge System are inherently Federal.

Response: The National Wildlife Refuge System Administration Act, as amended, is quite clear that the responsibility and authority for the administration and management of the National Wildlife Refuge System lies with the Service. We thought this was clear in the Agreement, but in response to this concern, and after re-negotiation with CATG, we changed the wording under Section 7A. (FWS Direction and Control) as follows: (Italics are added to the sentences below in this document to highlight the change.)

From:

> *A. Refuge Manager.* Under this AFA, the Refuge Manager will retain ultimate responsibility and authority for directing and controlling the *operation* at the Yukon Flats NWR.

To:

> *A. Refuge Manager.* Under this AFA, the Refuge Manager will retain all responsibility and authority for directing and controlling the *administration, management, and operations* at the Yukon Flats NWR.

The Service did not give away any management responsibilities or authorities under this Agreement. We are aware of our public and resource management responsibilities. In this Agreement, we have included only Activities that we believe will benefit the Refuge, the public, and CATG. We agree that there are inherently Federal functions involved in managing a national wildlife refuge. However, we do not claim that all work that takes place on a national wildlife refuge is inherently federal and needs to be performed by Service employees. We often rely on contractors, universities, other agencies, and volunteers to provide some of our aircraft and/or logistical support, data collection (including harvest data) and analysis, education and outreach, maintenance of equipment, printing, fire suppression, *etc.*

This Agreement does not establish co-management. The negotiation process set the priorities and the standards of the work to be done under the Agreement. If we decide that priorities or standards must be revised during the execution of the Agreement, we will re-

negotiate for those revisions, in order to include them in a cost-effective manner.

Issue 14: Reference to laws affecting national wildlife refuges. One comment noted that the Agreement did not refer to the National Wildlife Refuge System Improvement Act or the Alaska National Interest Lands Conservation Act.

Response: The Agreement does refer to the Alaska National Interest Lands Conservation Act in Section 4 under the definition of the Yukon Flats National Wildlife Refuge. We agree that there should be a reference to the National Wildlife Refuge System Improvement Act in the Agreement, and have included it and the National Wildlife Refuge Administration Act in Section 4. (**Note**—the Improvement Act of 1997 amended the Administration Act of 1966.)

Issue 15: Replacing qualified Service personnel. Several comments expressed concern that this Agreement, and others that may follow, will replace our current dedicated, well-trained refuge staff with less qualified individuals.

Response: This Agreement will not lead to the loss of existing Service employees. Employees will neither be replaced nor will their duties be diminished under this Agreement. We view this Agreement as an expansion of the Refuge's existing programs and services to the public. However, we have said during negotiations with CATG that whenever there is a vacancy in an existing Refuge position in Fairbanks (due to retirement, voluntary reassignment, or merit promotion), we will look at the duties performed by that position to see if some of the work could be efficiently performed by CATG. If feasible and cost efficient, we may then restructure the duties of the vacant position. This would likely be complex, because other personnel management issues are often at play in position management, and because in Fairbanks the headquarters of the Yukon Flats, Kanuti, and Arctic National Wildlife Refuges share some staff for some duties. While we have encouraged CATG to build natural resource management capacity, we have also made it clear that we will not reassign existing Refuge employees to free up new work for CATG.

The Service also maintains a Student Career Experience Program where graduating student employees are reassigned to vacant refuge positions. These students have career-conditional employment status and have priority for placement. Most of them have advanced degrees in biology or natural resource management. The Service in Alaska has successfully used this program to recruit, train, and permanently hire several Alaska Natives and will continue to place a priority on this training program.

Issue 16: The CATG personnel should meet certified wildlife biologist standards. One comment stated that CATG personnel performing biological investigations should be certified wildlife biologists under a program established by The Wildlife Society.

Response: The Office of Personnel Management (OPM) sets standards of required college or other training coursework for specialized professional job series. The OPM does not require applicants to meet the standards set by The Wildlife Society for an individual to meet their Certified Wildlife Biologist classification. The CATG Liaison for the project, Eastern Yukon Flats Moose Population Estimation Survey, included in the Agreement, is a wildlife biologist and former employee of the Alaska Department of Fish and Game. Work to be performed under this project requires knowledge of wildlife management practices in general and of moose management specifically. The CATG Liaison has that knowledge and experience. Some of the work requires exceptional low-level piloting skills and a good safety record. There are some charter pilots available in Alaska that meet these requirements who are also routinely contracted by the Service and the Alaska Department of Fish and Game.

Some of this work only requires the skill to spot moose out of an airplane, to determine individual characteristics of the moose observed from a turning airplane, and to keep good records. This particular project grew out of earlier programs where local residents with good game spotting skills were employed as volunteer aerial observers to: (1) Utilize their skills, and (2) provide credibility with local people for the results of the agencies' moose surveys and census.

Issue 17: The Service should hire Alaska Natives. One comment suggested we use the local hire authority granted under provisions of Section 1308 of the Alaska National Interest Lands Conservation Act. The Act provides for hiring of any individual, who because of having lived or worked in or near a conservation system unit, has special knowledge or expertise concerning the natural or cultural resources of such unit. The law provides that individuals with these attributes shall be considered for any position within the unit, without regard to any provision of the civil service laws or regulations that require minimum periods of formal training or experience (and other provisions).

Response: The Service routinely reviews new or vacant positions on refuges in Alaska for consideration of recruitment under the local hire provisions of ANILCA. However, recruiting Alaska Natives under other hiring authorities can often be more advantageous to the individual by allowing better career mobility options. Currently the Refuge employs two Alaska Natives hired under the ANILCA local hire program, and one other Alaska Native hired through the Student Career Experience Program. The Service aggressively seeks to diversify its workforce through recruitment outreach efforts and the use of all available hiring regulations and programs. The Activities included in this Agreement require various skills that any one individual may not have. Under the Agreement, the CATG can assign the work to the appropriate existing employee.

Issue 18: Concern about a conflict of interest. Two comments expressed concern that the Agreement creates an appearance of, or the potential for, conflict of interest because CATG members have actively pursued wildlife harvest allocation decisions that benefit their interests.

Response: The wildlife harvest information will be collected according to protocols developed by the Federal Office of Subsistence Management, the Service's Migratory Bird Management Office, and by the Subsistence Division of the Alaska Department of Fish and Game. These offices have found that engaging local people to collect this information leads to better information than can be obtained by agency personnel. The harvest reporting is done by household, rather than by individual hunters and is more accurate. The information reported can not be traced back to the individual hunter. This encourages honest reporting.

The moose population survey in this Agreement is a continuation of an existing program that has been, and will continue to be, well coordinated with the Service and the Alaska Department of Fish and Game. Usually these agencies are conducting similar surveys in adjacent areas at the same time. Information obtained from these surveys will be used in making management decisions—that is the purpose of the surveys. The CATG, or members of CATG, will likely comment on proposals affecting seasons, bag limits, and harvest allocations for the moose population of the surveyed area. However, due to the open, collaborative public processes used by the Federal Subsistence Board and the Alaska Board of Game in making management

decisions, and the collaborative and cooperative manner in which the moose surveys are conducted, we are not concerned that CATG's participation in surveys would result in either inaccurate information before the Boards or in undue influence on their decisions. We do not believe the issue would constitute a conflict of interest. Moreover, a positive result will be providing more credibility to agency information and the Boards' actions to the local residents.

Issue 19: Concern about study design and approval. This comment from the Alaska Department of Fish and Game expressed concern that the survey designs lack sufficient detail and the proper involvement of the Department in management of resident wildlife in Alaska.

Response: Upon receipt of this letter from the Alaska Department of Fish and Game, we discussed this issue with the Department and believe we resolved their concerns. The Service acknowledges that both the Alaska Department of Fish and Game and the Service share a mutual concern for fish and wildlife resources and their habitats, and both are engaged in extensive fish and wildlife conservation, management, and protection programs in Alaska. We desire to develop and maintain a cooperative relationship that will be in the best interests of both agencies, the concerned fish and wildlife resources and their habitats, and produce the best public benefits.

We would not enter this Agreement with CATG, or negotiate future agreements, where specific wildlife management work was not accomplished by qualified individuals or according to recognized wildlife management techniques and procedures acceptable to both the Service and the Alaska Department of Fish and Game. The work to be performed in the projects, Eastern Yukon Flats Moose Population Estimation Survey and Wildlife Harvest Data Collection, has been, and will continue to be, extensively coordinated with the Alaska Department of Fish and Game. These projects are designed and will be conducted according to established and acceptable procedures. The results of Activities performed by CATG must be acceptable to, and useable in, management and allocation decisions by the Service, the Alaska Department of Fish and Game, the State Board of Game, and the Federal Subsistence Board. Because the information obtained from these projects will be subject to close scrutiny by these entities and by the general public, both the Service and CATG are aware that unacceptable results could jeopardize inclusion of this work in future agreements.

Issue 20: Public review of amendments to the Agreement. A number of comments expressed belief that the public should be able to review all proposed changes to an active agreement.

Response: We are strongly encouraged by the National Wildlife Refuge System Administration Act, as amended, to notify the public of our refuge management actions. The regulations implementing Pub. L. 93–638 provide for an optional public consultation process in the negotiation of an AFA. (*See* 25 CFR subpart I—Public Consultation Process, part 1000.210–.214.) Because of our commitment to public involvement, the Service's Alaska region will be guided by the following operational standards for public notice when negotiating amendments or successor agreements. If during the course of this Agreement, the Service and CATG negotiate an amendment to the 2004–2005 Agreement which does not materially change the type of work to be done, or does not increase the funding level by more than 25 percent, we will not notify the public until after the fact. If we propose to amend the 2004–2005 Agreement by more than 25 percent of the funding level or materially change the work, we will first notify the public with a minimum 15-day public comment period. If we negotiate a successor agreement for 2005–2006 that materially changes the work to be done and/or exceeds the 2004–2005 Agreement amount by more than 25 percent, we will notify the public and have a minimum 30-day public comment period. If, over time or through negotiation, we have substantially increased the cost of successor agreements, we would consider changing the percentages discussed here. We are hopeful of a long-term, successful relationship with CATG and fully expect to negotiate successor agreements.

Issue 21: Moose harvest information should be reported monthly. One comment suggested that the specifications for the Wildlife Harvest Data Collection include a requirement for monthly reporting of moose harvests in the deliverables section.

Response: Originally, this was addressed in the timeline section of the proposal. We have moved the requirement to the deliverables section, and it now reads:

> A monthly report will be prepared that summarizes the moose harvested in each village. In addition, a summary will be prepared annually for all species on which harvest data has been collected. The summary will be reported to the FWS Liaison via phone, fax, or e-mail. The February 28th report will also include a summary of the moose harvested from August 25, 2004, to February 28, 2005. The report formats will follow CATG Technical Document 03–02.

Issue 22: Random surveys may be required. One comment also suggested that random sampling of a subset of larger communities should be considered as a cost savings measure to ensure success of the survey.

Response: To address this comment we have inserted the following two sentences in the second paragraph of the procedures section:

> If budget constraints limit the ability to survey 100% of Yukon Flats village households, for the Village of Fort Yukon only, a subset of households may be sampled. In this instance, 50–75% of the households would be randomly selected for survey and the results will be extrapolated to represent the Fort Yukon harvest.

Issue 23: Concern that the Refuge would be managed for Native Americans. Three comments expressed their concern that the Agreement would subordinate the purposes of refuge management to the benefit of the tribes.

Response: The Yukon Flats National Wildlife Refuge and other national wildlife refuges have always been, and will continue to be, managed for all Americans—present and future generations. The Agreement would allow some of the work of the Service on the Refuge to be accomplished by CATG. However, the refuge manager will retain all responsibility and authority for management and decision-making. The rights of the American public to use the Refuge will not be diminished in any manner.

Issue 24: Section 403(k) precludes this Agreement. One comment suggested that the Service and the Department have downplayed Section 403(k) of the Tribal Self-Governance Act.

Response: We reviewed the applicable sections of the law and consulted with our attorney to ensure that our actions were correct. Here are the applicable sections of the law:

> Section 403(k): Disclaimer.—Nothing in this section is intended or shall be construed to expand or alter existing statutory authorities in the Secretary so as to authorize the Secretary to enter into any agreement under sections 403(b)(2) and 405(c)(1) with respect to functions that are inherently Federal or where the statute establishing the existing program does not authorize the type of participation sought by the tribe: *Provided*, however an Indian tribe or tribes need not be identified in the authorizing statute in order for a program or element of a program to be

included in a compact under section 403(b)(2).

Section 403(b)(2) states: (b) Contents.—Each funding agreement shall—(2) subject to such terms as may be negotiated, authorize the tribe to plan, conduct, consolidate, and administer programs, services, functions, and activities, or portions thereof, administered by the Department of the Interior, other than through the Bureau of Indian Affairs, that are otherwise available to Indian tribes or Indians, as identified in section 405(c), except that nothing in this subsection may be construed to provide any tribe with a preference with respect to the opportunity of the tribe to administer programs, services, functions, and activities, or portions thereof, unless such preference is otherwise provided for by law.

Section 405(c) states: Report on Non-BIA Programs.—(1) In order to optimize opportunities for including non-Bureau of Indian Affairs programs, services, functions, and activities, or portions thereof, in agreement with tribes participating in Self-Governance under this title, the Secretary shall—

(A) Review all programs, services, functions, and activities, or portions thereof, administered by the Department of the Interior, other than through the Bureau of Indian Affairs, without regard to the agency or offense concerned; and

(B) Not later than 90 days after the date of enactment of this title, provide to the appropriate committees of Congress a list of all such programs, services, functions, and activities, or portions thereof, that the Secretary determines, with concurrence of tribes participating in Self-Governance under this title, are eligible for inclusion in such agreements at the request of a participating Indian tribe.

The list of eligible programs, services, functions, and activities required by Section 405(c) was last published in the **Federal Register**, Volume 67, No. 66, Friday, April 5, 2002, page 16434:

Some elements of the following programs may be eligible for inclusion in a self-governance annual funding agreement. * * * This listing is not all-inclusive but is representative of the types of programs, which may be eligible for tribal participation through an annual funding agreement.

For purposes of this review, we list below only those programs or elements listed in the **Federal Register** which are similar to those included in this Agreement.

1. Subsistence Programs within Alaska
2. Fish & Wildlife Technical Assistance, Restoration, & Conservation:
   a. Fish & wildlife population surveys
   b. Habitat surveys
   e. Fish & wildlife program planning
4. Education Programs:
   a. Interpretation
   b. Outdoor classrooms
9. National Wildlife Refuge Operations & Maintenance
   a. Construction
   d. Maintenance
   f. Biological program efforts

The Agreement covers the following Activities only: (1) Wildlife harvest data collection; (2) moose surveys; (3) environmental education and outreach; (4) maintenance of equipment and facilities at Fort Yukon; and (5) locating and marking trails on private lands within the refuge boundary where the government retained an easement under provisions of section 17(b) of the Alaska Native Claims Settlement Act of 1971. [The lands on which these easements are located are privately owned by Native village corporations and Native regional corporations. The easements provide for legal access by the public across (and limited camping on) the private lands in order to access public lands beyond.] The Agreement does not give up any inherently federal responsibilities for budget allocation, planning, decisionmaking, assignment of priorities, or any other over-arching government responsibility for these Activities. The Service has retained the management responsibility for these Activities.

Dated: May 18, 2004.

Rowan W. Gould,

Regional Director, Alaska Region, Fish and Wildlife Service.

[FR Doc. 04–15704 Filed 7–9–04; 8:45 am]

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INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: The United States International Trade Commission (USITC) has submitted a request for emergency processing to the Office of Management and Budget for review and clearance of questionnaires, in accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). The USITC has requested OMB approval of this submission by COB July 14, 2004.

Purpose of Information Collection: The forms are for use by the Commission in connection with investigation No. 332–460, Foundry Products: Competitive Conditions in the U.S. Market, instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). This investigation was requested by the House Committee on Ways and Means. The Commission expects to deliver the results of its investigation to the Committee by May 4, 2005.

Summary of Proposal:

(1) Number of forms submitted: One.

(2) Title of forms: Producer Questionnaire, Foundry Products.

(3) Type of request: New.

(4) Frequency of use: Single data gathering, scheduled for 2004.

(5) Description of respondents: U.S. firms which produce foundry products.

(6) Estimated number of respondents: 400.

(7) Estimated total number of hours to complete the forms: 16,000.

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

ADDITIONAL INFORMATION OR COMMENT: Copies of the forms and supporting documents may be obtained from Judith-Anne Webster (project leader) (USITC, telephone No. (202) 205–3489) or Deborah McNay (deputy project leader) (USITC, telephone No. (202) 205–3425). Comments about the proposal should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 10102 (Docket Library), Washington, DC 20503, Attention: Docket Librarian. All comments should be specific, indicating which part of the questionnaire is objectionable, describing the concern in detail, and including specific suggested revisions or language changes. Copies of any comments should be provided to Robert Rogowsky, Director, Office of Operations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TTD terminal (telephone No. 202–205–1810). General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

Issued: July 6, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–15674 Filed 7–9–04; 8:45 am]

BILLING CODE 7020–02–P