

# Draft Compatibility Determination for Reburial of Archeological Human Remains, Alaska Maritime National Wildlife Refuge

## Refuge Use Category

Other Uses

## Refuge Use Type(s)

Cemetery. The maintenance or use of a cemetery for the burials of human remains (includes the spreading of ashes).

## Refuge

Alaska Maritime National Wildlife Refuge

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

### Establishing and Acquisition Authorities

A. **ANILCA.** The Alaska Maritime National Wildlife Refuge (Refuge) was established by the Alaska National Interest Lands Conservation Act (ANILCA) (Public Law 96-487 Stat.2371, Sec. 303 (1) dated 2 December 1980).

1. *“The Alaska Maritime National Wildlife Refuge shall consist of eleven existing refuges, including all lands (including submerged lands), waters and interests therein which were a part of such refuges and are hereby designated subunits of the Alaska Maritime National Wildlife Refuge; approximately four hundred thousand and sixty acres of additional public lands on islands islets, rocks, reefs, spires and designated capes and headlands in the coastal areas and adjacent seas of Alaska, and an undetermined quantity of submerged lands, if any, retained in Federal ownership at the time of statehood around Kodiak and Afognak Islands as generally depicted on the map entitled “Alaska Maritime National Wildlife Refuge”, dated October 1979, including the –*

*(i) **Chukchi Sea Unit**—including Cape Lisburne, Cape Thompson, the existing Chamisso National Wildlife Refuge and all other public lands on islands, islets, rocks reefs spires, and designated capes and headlands in the Chukchi Sea, but excluding such other offshore public lands within the Bering Land Bridge National Preserve. That portion of the public lands on Cape Lisburne shall be named and appropriately identified as the “Ann Stevens-Cape Lisburne” subunit of the Chukchi Sea Unit;*

*(ii) Bering Sea Unit*—including the existing Bering Sea and Pribilof (Walrus and Otter Islands) National Wildlife Refuges, Hagemester Island, Fairway Rock, Sledge Island, Bluff Unit, Besboro Island, Punuk Islands, Egg Island, King Island, and all other public lands on islands, islets, rocks, reefs, spires and designated capes and headlands in the Bering Sea;

*(iii) Aleutian Islands Unit*—including the existing Aleutian Islands and Bogoslof National Wildlife Refuges, and all other public lands in the Aleutian Islands;

*(iv) Alaska Peninsula Unit*—including the existing Simeonof and Semidi National Wildlife Refuges, the Shumagin Islands, Sutwik Island, the islands and headlands of Puale Bay, and all other public lands on islands, islets, rocks, reefs, spires and designated capes and headlands south of the Alaska Peninsula from Katmai National Park to False Pass including such offshore lands incorporated in this unit under section 1427: and

*(v) Gulf of Alaska Unit*—including the existing Forrester Island, Hazy Islands, Saint Lazaria and Tuxedni National Wildlife Refuges, the Barren Islands, Latax Rocks, Harbor Island, Pye and Chiswell Islands, Ragged, Natoa, Chat, Chevel, Granite and Middleton Islands, the Trinity Islands, all named and unnamed islands, islets, rocks, reefs, spires, and whatever submerged lands, if any, were retained in Federal ownership at the time of statehood surrounding Kodiak and Afognak Islands and all other such public lands on islands, islets, rocks, reefs, spires and designated capes and headlands within the Gulf of Alaska, but excluding such lands within existing units of the National Park System Nuka Island and lands within the National Forest System except as provided in section 1427 of this Act.”

2. ANILCA section 1417 (b) created the Pribilof Subunit (compromised of St. Paul, St. George, Walrus, and Otter islands) and authorized later land purchase.

**B. Pre-ANILCA Refuges.** Legal authorities for the pre-ANILCA refuges include (See Public Law 96-487 Stat.2371, Sec. 305 dated 2 December 1980):

Bering Sea Reservation (St. Matthew, Hall and Pinnacle islands)

Executive Order 1037 dated 27 February 1909

Tuxedni Reservation (Chisik and Duck (Egg) Island)

Executive Order 1039 dated 27 February 1909

St. Lazaria Reservation

Executive Order 1040 dated 27 February 1909

Pribilof Reservation (Walrus and Otter Islands)

Executive Order 1044 dated 27 February 1909, and later

Pribilof Subunit (St. Paul, St. George, Walrus, Otter islands)

Public Law 96-487 Section 1417 (b) 2 December 1980

Bogoslof Reservation  
Executive Order 1049 dated 2 March 1909  
Forrester Island Reservation (Forrester and Lowrie islands and Wolf Rock)  
Executive Order 1458 dated 11 January 1912  
Hazy Islands Reservation  
Executive Order 1459 dated 11 January 1912  
Chamisso Island Reservation  
Executive Order 1658 dated 7 December 1912  
Aleutian Islands Reservation  
Executive Order 1733 dated 3 March 1913, later including Amak Island  
Executive Order 5318 dated 7 April 1930  
Semidi Islands Wildlife Refuge (including lands and submerged lands)  
Executive Order 5858 dated 17 June 1932  
Simeonof National Wildlife Refuge (including lands, tidelands, and adjacent waters)  
Public Land Order 1749 dated 30 October 1958

**C. Pre-ANILCA Lands.** Legal authority for other pre-ANILCA land include:

Yukon Island  
Public Land Order 3275 dated 26 November 1963

**D. Submerged Lands and Waters.** Legal authorities for 3 submerged lands and waters include:

Afognak Forest and Fish Culture Reservation  
Proclamation 39 dated 24 December 1892.  
Public law 96-487, 2 Dec 1980 Sec. 1427(m)  
Karluk Submerged Lands  
Public Land Order 128 dated 19 June 1943  
Womens Bay Submerged Lands  
Executive Order 8278 dated 28 October 1939 as modified by Public Land Order 1182 dated 7 July 1955

**E. National Monument.** Legal authority for small portions of Attu, Kiska and Atka islands to be managed as a National Monument by the Refuge under authority of the Antiquities Act of 8 June 1906 (34 Stat. 225, 16 U.S.C. 431 section 2):

*“...Nothing in this proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation; however, the national monument shall be the dominant reservation.”*

Presidential Proclamation 8327 dated 5 December 2008 (73 Fed. Reg. 75293; 10 December 2008) Establishment of World War II Valor in the Pacific National Monument later redesignated Aleutian Islands World War II National Monument (Public Law 116-9 Sec 2206 (c)(3))

## Refuge Purposes

### A. ANILCA

1. Section 303(1)(B) of ANILCA states the purposes for which Alaska Maritime National Wildlife Refuge was established and shall be managed:

*(i) to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to marine mammals, marine birds and other migratory birds, the marine resources upon which they rely, bears, caribou and other mammals;*

*(ii) to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats;*

*(iii) to provide, in a manner consistent with the purpose set forth in subparagraphs (i) and (ii), the opportunity for continued subsistence uses by local residents;*

*(iv) to provide, in a manner consistent with the purposes set forth in subparagraphs (i) and (ii), a program of national and international scientific research on marine resources; and*

*(v) to ensure, to the maximum extent practicable and in a manner consistent with the purpose set forth in paragraph (i), water quality and necessary water quantity within the refuge.*

2. In addition, Section 1417 (b) of ANILCA authorized the Pribilof Subunit which:

*“...shall be incorporated within, and made a subunit of, the Alaska Maritime National Wildlife Refuge and administered accordingly.”*

- B. Pre-ANILCA.** Alaska refuges established before the passage of ANILCA have additional purposes which remain in force and effect, except to the extent that they may be inconsistent with ANILCA or the Alaska Native Claims Settlement Act, in which case the provisions of those Acts control (ANILCA Section 305, 603 FW 2.8). However, the purposes of pre-ANILCA refuges apply only to those portions of the refuge established by the prior executive order or public land order, and not to those portions of the refuge added by ANILCA. Additional purposes for pre-ANILCA refuges include:

1. *“...as a preserve and breeding ground for native birds.”* (8 refuges/reservations):

Bering Sea Reservation (St. Matthew, Hall and Pinnacle islands)

Executive Order 1037 dated 27 Feb 1909

Tuxedni Reservation (Chisik Island)

Executive Order 1039 dated 27 February 1909

St. Lazaria Reservation

Executive Order 1040 dated 27 February 1909

Bogoslof Reservation

Executive Order 1049 dated 2 March 1909

Forrester Island Reservation (Forrester and Lowrie islands and Wolf Rock)

Executive Order 1458 dated 11 January 1912  
Hazy Islands Reservation  
Executive Order 1459 dated 11 January 1912  
Chamisso Island Reservation  
Executive Order 1658 dated 7 December 1912  
Pribilof Reservation (Walrus and Otter Islands)  
Executive Order 1044 dated 27 February 1909

2. *“...as a preserve and breeding ground for native birds, for the propagation of reindeer and furbearing animals, and for the encouragement and development of the fisheries. The establishment of this reservation shall not interfere with the use of the islands for lighthouse, military, or naval purposes, or with the extension of the work of the Bureau of Education on Unalaska and Atka Islands.”*

Aleutian Islands Reservation

Executive Order 1733 dated 3 March 1913, and later including Amak Island

3. *“...as a preserve and breeding ground for birds and wild animals, subject to valid existing rights. These islands and rocks are hereby added to and made part of the Aleutian Islands Reservation, Alaska subject to all provisions of law, regulations, and orders governing said reservation.”*

Aleutian Islands Reservation Enlarged (Amak)

Executive Order 5318 dated 7 April 1930

4. *“It is hereby ordered that Aghiyuk Island, Chowiet Island, Kateekuk Island, Anowik Island, , Kiliktagik Island, Suklik Island, Aghik Island, Aliksemit Island and South Island together with all unnamed islands, rocks, and reefs, and all lands under water appurtenant thereto, lying between parallels 55° 57' and 56° 15' north latitude and meridians 156° 30' and 157° 00' longitude west of Greenwich, in the North Pacific Ocean southeast of the Alaska Peninsula, Alaska, and shown on United States Coast and Geodetic Survey Chart No. 8881, published in Washington, D.C., April, 1919, as within the Semidi Island Group, be, and the same are hereby, reserved from all forms of appropriation under the public land laws and set apart for the use of the Department of Agriculture as a refuge and breeding ground for wild birds and game and fur animals.”*

Semidi Islands Wildlife Refuge, Alaska Peninsula Unit

Executive Order 5858 dated 17 June 1932

5. *“Subject to valid existing rights, the following-described public lands, tidelands, and adjacent waters in Alaska are hereby withdrawn from all forms of appropriation under the public land laws, including the mining and mineral lease laws, but not the act of July 31, 1947 (61 Stat. 631; 30 U.S.C. 601-604), nor the act of March 4, 1927 (22 Stat. 1452; 48 U.S.C. 471a-471o), and reserved and set apart for the use of the United States Fish and Wildlife Service, Department of the Interior, as a refuge for the preservation and propagation of the sea otter and other wildlife thereon... The lands shall be administered for grazing purposes by the Bureau of Land Management, but such grazing will be limited to one lease at any one time. Violations of game regulations or undue interference with the sea otter herd by the*

*grazing lessee, his agents or employees, will constitute valid reason for cancellation of such lease.”*

Simeonof National Wildlife Refuge, Alaska Peninsula Unit  
Public Land Order 1749 dated 30 October 1958

6. *“And whereas, the public lands of the Territory of Alaska, known as Afognak Island, are in part covered with timber, and are required for public purposes, in order that salmon fisheries in the waters of the Island, and salmon and other fish and sea animals, and other animals and birds, and the timber, undergrowth, grass, moss and other growth in, on, and about said Island may be protected and unimpaired and it appears the public good would be promoted by setting apart and reserving said lands as a public reservation.”*

Afognak Forest and Fish Culture Reservation, Gulf of Alaska Unit  
Presidential Proclamation 39 dated 24 December 1892

7. *“...hereby designated as an Indian reservation for the use and benefit of the native inhabitants of the village of Karluk, Alaska and vicinity...”*

Karluk Submerged Lands, Gulf of Alaska Unit  
Public Land Order 128 dated 19 June 1943

8. *“...for use of the Department of the Navy for naval purposes.”*

Womens Bay Submerged Lands  
Outer Womens Bay from Gibson Cove south to Broad Point and southwest as defined by USS 2539 excluding Inner Womens Bay listed below.  
Executive Order 8278 dated 28 October 1939 as modified by  
Public Land Order 1182 dated 7 July 1955

9. *“...for protection and preservation of their archaeological and historical values.”*

Yukon Island, Gulf of Alaska Unit  
Public Land Order 3275 dated 26 November 1963

**C. Specific Lands.** Additional purposes for specific refuge lands include:

1. *“...purpose of protecting the objects [Attu battlefield objects, Kiska occupation site, Atka B-24]...purposes of preserving, interpreting, and enhancing public understanding and appreciation of the national monument and the broader story of WWII in the Pacific.”*

Select portions of Attu, Kiska and Atka islands, Aleutian Islands Unit  
Presidential Proclamation 8327 dated 5 December 2008  
Establishment of World War II Valor in the Pacific National Monument Monument later redesignated Aleutian Islands World War II National Monument (Public Law 116-9 Sec 2206 (c)(3)) dated 12 March 2019

2. *“...the Joint venture provided for in subsection (c) of this section shall be entitled to and there shall be conveyed to the joint venture in the conveyance provided for in subsection (c) hereof, the right to timber resources on such islands: Provided, That*

*management and harvest of such timber resources shall be only in accordance with management plans jointly developed by the joint venture and the Secretary of the Interior.”*

Delphin and Discover islands, Gulf of Alaska Unit  
Public Law 96-487 dated 2 Dec 1980, Sec 1427 (m)

3. *“National Historic Trails shall have as their purpose the identification and protection of the historic route and its historic remnants and artifacts for public use and enjoyment.*

Portions of the Iditarod National Historic trail designated under 16 U.S.C. 1244 (a) (7) running through Safety Sound and Topkok Head, Bering Sea Unit  
Public Law 95-625 Section 3 (3)

**D. Withdrawals.** ANILCA Sec. 305 incorporated many existing public lands from earlier proclamations, Executive orders, public land orders and administrative actions for other federal agencies within the refuge boundary. Some of these lands incorporated within the Refuge were withdrawn for air and water navigation aids and national defense purposes. Under Sec. 304 these lands are to be administered in accordance with laws governing refuge administration subject to valid existing rights. The original withdrawal purposes for these lands hold a special status which can influence refuge authority to administer uses. Under Sec. 1310(a) the other federal agency retains reasonable access to, and responsibility for operation and maintenance of these air and water navigation and national defense sites for the primary purpose the land was withdrawn. The Department of the Interior Solicitor’s office has determined the Refuge retains secondary jurisdiction on these withdrawals within the refuge boundary for all other public purposes that do not infringe on or impact the other federal agency’s use of its facility. If the proposed public use or administrative action would preclude or unreasonably interfere with the other agency’s access, operation, and maintenance the use or action cannot be undertaken without the other agency’s consent.

1. *“...for lighthouse purposes.”*

Ugamak Is., and 2 tracts on Unimak Is., U.S. Coast Guard  
Executive Order 19010104 dated 4 January 1901

Unimak Is., U.S. Coast Guard  
Executive Order 19010827 dated 27 August 1901

Unimak Is., U.S. Coast Guard  
Executive Order dated 9 Jan 1902

Seal Rocks, Rugged Is., Chisik Is., E. Amatuli Is., Elizabeth Is., Nagai Is., Golo Is., C. Pankof, Barwell Is., Sutwik Is., Seal cape, Castle Rock, U.S. Coast Guard  
Executive Order 3406 dated 13 February 1921

Rugged Island, U.S. Coast Guard  
Executive Order 4223 dated 11 May 1925

Sledge Is., Puffin Is – Chiniak Bay, U.S. Coast Guard  
Executive Order 4257 dated 27 June 1925

Point Petrof off Sanak Is.  
Executive Order 7032 dated 1 May 1935

2. *“...for lighthouse purposes in connection with the construction of a light and fog signal station at, or near, Cape St. Elias, Alaska.”*  
Southeast Rock off Kayak Island  
Executive Order 2041 dated 5 September 1914
3. *“...for use of the Department of the Navy for military purposes...The reservation made by this order shall be the dominant reservation except for purposes of wildlife conservation and management as to which Executive Order No. 1733 of March 3, 1931[sic] shall be the dominant one.”* PLO 1949 later modified by PLO 5464 ... *“as an aid to navigation facility for the U.S. Coast Guard.”*  
Attu Island, Massacre Bay, U.S. Coast Guard  
Adak Island, Lake Andy, U.S. Navy  
Public Land Order 1949 dated 19 August 1959 later partially revoked by Public Land Order 4564 dated 16 January 1969 and Public Law 107-239 dated 11 Oct 2002.
4. *“...to the Coast Guard, Department of Transportation for defense purposes.”*  
Inner Womens Bay from Buskin River southeast and shoreward to Broad Point.  
Public Land Order 5550 dated 4 December 1975
5. *“...for use of the U.S. Coast Guard for a radio aid to navigation facility. The jurisdiction and use granted by this order shall be limited to those activities which are related directly to the construction, operation, and maintenance of radio aids to navigation facilities. (PLO 2887)”* and *“...in aid of contemplated legislation” (PLO 664)*  
Sitkinak Island, two parcels, U.S. Coast Guard  
Public Land Order 2887 dated 18 January 1963  
Public Land Order 664 dated 28 August 1950
6. *“...for military purposes.”*  
Point Lay, U.S. Air Force  
Public Land Order 1571 dated 26 December 1957, as amended by  
Public Land Order 1851 dated 14 May 1959  
Cape Lisburne, U.S. Air Force  
Public Land Order 2034 dated 16 December 1959  
Unalaska, Driftwood Bay, U.S. Air Force  
Public Land Order 2374 dated 11 May 1961, and 44 L.D. 513 road corridor between 2 parcels Umnak Island, Nikolski Village  
Public Land Order 2374 dated 11 May 1961
7. *“In exercising such primary jurisdiction, custody, and control, the Secretary of the Air Force may utilize and apply such authorities as are generally applicable to a military installation, base, camp, post, or station. Shemya Island and its appurtenant waters (including submerged lands) shall continue to be included within the Alaska Maritime National Wildlife Refuge and the National Wildlife*

*Refuge System and the Secretary of the Interior shall have jurisdiction secondary to that of the Department of the Air Force.”*

Shemya Island, U.S. Air Force

Public Law 106-554 Section 302 dated 21 December 2000

8. “*...for use of the Alaska National Guard.”*

Sarichef Is, village of Shishmaref, U.S. Army

Public Land Order 2020 dated 17 November 1959

9. “*...as an administrative site for the maintenance of a Federal Aviation Administration air navigation facility. The withdrawal made by this order does not alter the applicability of the public land laws under lease, license, or permit, or governing the disposal of mineral or vegetative resources other than those under the mining law. However, leases, licenses, or permits will be issued only if the Federal Aviation Administration finds that the proposed use of the lands will not interfere with the proper use of its facilities on the land”*

Middleton Island, Federal Aviation Administration

Public Land Order 4721 dated 24 October 1969

10. “*...under the jurisdiction of the Federal Aviation Administration.”*

Woody Island, Federal Aviation Administration

Public Land Order 5564 dated 16 December 1975

**E. Wilderness.** The Wilderness Act of 1964 (Public Law 88-577, section 3(b)) created additional purposes for the Alaska Maritime National Wildlife Refuge. Designated wilderness areas are to be managed:

*“Except as otherwise provided in this chapter, each agency administering any area designated as wilderness shall be responsible for preserving the wilderness character of the area and shall so administer such area for such other purposes for which it may have been established as also to preserve its wilderness character. Except as otherwise provided in this chapter, wilderness areas shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use.”*

Designated wilderness areas include:

Bering Sea Wilderness

Bogoslof Wilderness

Tuxedni Wilderness

St. Lazaria Wilderness

Hazy Island Wilderness

Forrester Island Wilderness

Public law 91-504, 23 Oct 1970

Chamisso Wilderness

Public law 93-632, 3 Jan 1975

Simeonof Wilderness  
Public law 94-557, 19 Oct 1976

Aleutian Islands Wilderness  
Amak Wilderness  
Unimak Wilderness  
Semidi Wilderness  
Public law 96-487, 2 Dec 1980, Sec 702 (1), (11), (13); Sec 707

*Supporting Documents:*

**U.S. Fish and Wildlife Service. 1988. Alaska Maritime National Wildlife Refuge Final Comprehensive Conservation Plan, Wilderness Review and Environmental impact Statement. U.S. Fish and Wildlife Service, August 1988. Anchorage, Alaska, USA.**

### **National Wildlife Refuge System Mission**

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

### **Description of Use**

Is this an existing use?

Yes.

What is the use?

This compatibility determination evaluates requests for reburials of human remains and associated funerary and sacred objects on refuge lands. We distinguish between the terms reburial and new burial. This compatibility determination does not evaluate the request for new burials of Alaska Natives on refuge-administered lands.

Is the use a priority public use?

No

Where would the use be conducted?

Reburial of repatriated human remains would take place near the place of discovery

of such remains or near their original burial place, if known. Many of these original burial sites are within Congressionally-designated Wilderness.

**When would the use be conducted?**

The activity could take place during any month of the year, but would most commonly be done from May to September when the ground is not frozen.

**How would the use be conducted?**

Reburial activities will be managed through a General Special Use permit. Persons interested in a reburial effort should contact the Refuge Manager to begin the permitting process.

Access to the Refuge would be primarily by motorized boat onto remote beaches. Infrequently, aircraft would land on gravel bars, cinder blows, pre-existing landing strips and lakes. Each reburial would usually involve a small excavation with hand tools. In certain locations where allowable, a request for use of small mechanical equipment might be made due to the extensive numbers of remains to be reburied. In addition to human remains, this use might include a request to rebury funerary or sacred objects associated with the original burials. Lineal descendants or culturally affiliated tribal representatives would also likely be present and might request to conduct ceremonies at reburial(s). Requests might include some form of above ground marker or memorial to assist with future access to these reburial sites for cultural and spiritual purposes.

**Why is this use being proposed or reevaluated?**

The refuge anticipates requests to rebury human remains eroding from recorded and unrecorded cultural sites and remains that have been removed from cultural sites on the refuge. The inadvertent discovery section of the Native American Graves Protection and Repatriation Act of 1990 NAGPRA ([Public Law 101-601](#)) requires that the land-management agency identify and notify the closest native group, and—if requested—provide for the repatriation of the remains. In addition, many human remains were collected on the Refuge without permits in the 1800s-1950s and placed at the Smithsonian Museum and will be repatriated to culturally affiliated tribes under the National Museum of the American Indian Act NMAIA [20 U.S.C. Section 80q](#). Requests for reburial of ancestral human remains and cultural items are closely tied to repatriations of those remains under NAGPRA and NMAIA and are considered a form of disposition when in accordance with the wishes of a culturally affiliated Tribe(s). These two actions (repatriation and reburial) are treated as separate, although often related, processes.

## **Availability of Resources**

Refuge personnel and resources are adequate at existing levels to administer any

reburial permits. Requests for reburial can vary depending on methods of reburial, need for archaeological review, and land status. The availability of cost recovery reimbursement is part of the availability of resources evaluation.

The Refuge annually anticipates approximately 1 reburial special use permit request a year. This request will likely be in Wilderness areas which requires a separate minimum requirements analysis. The estimated number of staff hours to process a reburial permit depends on the complexity and geographic extent of the application and whether it occurs in or out of designated Wilderness:

	Non-Wilderness	Wilderness
Normal	3 hr	6 hr
Complex	6 hr	10 hr

Normal applications would usually involve a single staff person. Actions involve phone conversations, written correspondence, and time needed to evaluate the proposal under refuge policies and regulations. Currently this is a GS-12 position so average recovery costs would average \$135-\$450 per permit. These amounts are estimates only and the Refuge would seek cost recovery only for the hours actually needed to write and monitor the permit.

### **Anticipated Impacts of the Use**

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

Access and reburial would generally have no discernable effect on subsistence, international treaty obligations, programs of scientific research on marine resources, or water quality and quantity on the Refuge. The proposed use should also have no discernable effect on the Refuge System mission. Effects to the natural diversity of fish, wildlife, their habitats, or other resources within the Refuge are generally anticipated to be minimal, transitory, and controlled by permit conditions appropriate to unique locations.

## Marine birds and migratory birds.

A purpose of the refuge is to conserve marine and migratory birds and the resources upon which they rely. Reburial within colonial seabird colonies could cause destruction, disturbance, or abandonment of nests. In particular, burrow-nesting seabird habitat is especially fragile and susceptible to burrow collapse by humans (Carney and Sydeman 1999, Byrd et al. 1983). Access points and entry into these sensitive habitats could possibly need to be controlled to avoid burrow collapse from reburial activities.

## *Marine Mammals*

A purpose of the refuge is to conserve marine mammals and the resources upon which they rely. Reburial may temporarily disturb marine mammal haulouts and rookeries. Marine mammals can exhibit various responses to human disturbance when hauled out on Refuge lands. Harbor seals can react strongly to human and boat presence at great distances (average 310 m to 750 m, respectively; Andersen et al 2012). In contrast, Steller sea lions in Alaska failed to show any population level responses to substantial research disturbance on the rookery (Wilson et al 2012). All marine mammals are protected under the Marine Mammal Protection Act (MMPA, Public Law 92-522) and certain species are protected under the Endangered Species Act (ESA, Public Law 93-205). The MMPA prohibits, with certain exceptions, the "take" of marine mammals. Jurisdiction for MMPA is shared by U.S. Fish and Wildlife Service and the National Marine Fisheries Service. Any reburial within access-regulated sea lion rookeries or haulouts would require additional permitting from the National Marine Fisheries Service to ensure compliance with the MMPA and ESA.

## Cultural Resources

The reburial of human remains and associated funerary and sacred objects on refuge lands could have long-term impacts to refuge cultural resources. While the initial action of reburial is brief in duration, the resulting burial is a permanent action on refuge lands. In particular, digging within or proximate to known cultural sites could have the effect of disturbing or damaging the intact archaeological or historical context of these sites. Reburial within these known sites could also provide confusion and incorrect assumptions or interpretations on use of the area if the site was later investigated by archaeologists or anthropologists. Additionally, the placement of above ground markers could have the unintended reaction of drawing attention of vandals or encourage the unauthorized excavation within an unmonitored area.

## Fish, Wildlife and their Habitats

A purpose of the refuge is to conserve fish and wildlife populations and habitats in their natural diversity. The introduction of non-native invasive species to Refuge lands or waters is a serious concern, prohibited by presidential Executive Orders 13112 and 13751, and could have long term impacts on Refuge biological integrity, diversity, and environmental health. Invasive species that can be transported to remote and pristine islands of the refuge include: rodents, aquatic invasive species, and plants. These species are transported in footwear, luggage, watercraft, aircraft, cargo, and equipment. Rodents, specifically rats, are responsible for diseases that can adversely affect wildlife and, potentially, consumers of those wildlife species (Fritts 2007). Rats have caused 40-60% of all recorded seabird and reptile extinctions since 1600 (Island Conservation 2006). Indirectly, rats disrupt ecological balance (Kurle et al. 2021) and fish behavior (Gunn et al. 2023) in the intertidal and marine environments adjacent to invaded islands. In addition to rats, recent inventories have revealed new, rapidly expanding populations of invasive plant species throughout the state. Direct impacts of invasive plants include competition for space, soil, light, or water with native plants, which can lead to reductions in populations of native species or even elimination of entire populations of rare or endangered species. Displacement of native plant communities can lead to loss of food sources and habitat for wildlife. Invasive plants can also induce drastic changes in ecosystem function by affecting critical elements like soil chemistry, groundwater tables, or the frequency and intensity of wildfires (AKEPIC 2005). Use of unclean footwear and excavation equipment could increase the likelihood of an introduction of invasive plant species.

## Public Review and Comment

To be completed after public review.

This compatibility determination was posted online for public comment on the Alaska Maritime National Wildlife Refuge website for 30 days (June 08-July 07 2023). Hard copies of the draft CD were also available for comment at the Homer and Adak Refuge offices.

## Determination

Is the use compatible?

Yes

## Stipulations Necessary to Ensure Compatibility

In addition to the standard regional and Refuge conditions, a special use permit with the following stipulations is required for reburial of archaeological human remains.

These stipulations are intended to minimize effects and ensure compatibility. Refuge permits may also include other special conditions as necessary or appropriate for the specific operations or activities that are proposed. These stipulations will be updated periodically to reflect management needs or policy changes.

1. In accordance with the Archaeological Resources Protection Act (16 U.S.C. 470 ee), no person may excavate, remove, damage or otherwise alter or deface, or attempt to excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands or Indian lands unless permitted or exempted (see 16 U.S.C 470cc for permit or exception guidance). No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange any archaeological resource if such resource was excavated or removed from public lands.
2. Reburial of repatriated human remains will take place near the place of discovery of such remains or near the place of their original burial, if known. To avoid the possibility of disturbing additional human remains, reburials should not take place within the original burial location or a known archaeological site.
3. Each proposed burial and its proposed reburial location would need to be approved by the Regional Historic Preservation Officer, who will ensure compliance with the National Historic Preservation Act, Section 106, prior to issuance of a permit for this activity.
4. At the discretion of the Regional Historic Preservation Officer and refuge manager, an archaeologist may or may not need to be present at the site before excavation.
5. The permittee or permittees' representatives will make the smallest possible excavation, using only hand tools unless authorized differently by the refuge manager.
6. The site coordinates and a list of the contents of the burial site will be filed at Refuge headquarters, the Regional Historic Preservation Officer, and State Historic Preservation Officer within 30 days of burial. The reburial location will be plotted on a site map, referenced by distance and direction from permanent reference points, and located by GPS. This information will be curated with the restriction that it may not be published or provided to anyone other than an authorized Service or State official without the permission of the culturally affiliated Tribe, as consistent with the Archaeological Resources Protection Act, 16 U.S.C. 470 hh, and The National Historic Preservation Act, Section 304 (16 U.S.C. 470 w-3).
7. Remains shall be buried with a modern object (e.g., coin with date) to indicate that this site is a historical reburial.
8. Equipment must arrive and leave the project clean without visible soil clumps,

plant, or animal material. Best management practices shall be taken so that no invasive plants, insects, other invertebrates, or animals are introduced to Refuge habitats. Detailed best management practices are described in the refuge biosecurity plan.

9. Any above ground monuments or markers would be permitted only if they are fully compliant with the 2012 regional policy on commemorative memorials on National Wildlife Refuges in Alaska. No memorials are permitted in Congressionally designated Wilderness.

## **Justification**

I find that reburial of Alaska Native human remains to be compatible with Refuge purposes and the NWRS mission. The proposed use does not adversely affect the Refuge's ability to fulfill its role in the ecosystem or the mission of the National Wildlife Refuge System in any substantial manner.

This proposed use is necessary to accommodate tribal requests for the disposition of human remains and cultural items that have been formally repatriated under the Native American Graves Protection and Repatriation Act of 1990 ([Public Law 101-601](#)) and the National Museum of the American Indian Act [20 U.S.C. Section 80q](#). The initial reburial action use is limited and short-term, but the result is permanent.

This action comports with intent and direction of U.S. Fish and Wildlife Service Native American Policy [510 FW 1.5](#) which states "*The Service should provide Native Americans access to Service lands and waters for exercising cultural, ceremonial, medicinal, and traditional activities recognized by tribal governments to the extent practicable, permitted by law, and not inconsistent with essential Service functions.*". In addition, Secretarial Order 3206 states in Principal 4 "the Departments shall be sensitive to Indian culture, religion, and spirituality".

If reburials are not permitted in sensitive wildlife areas, the proposed use would not materially interfere with or detract from the Alaska Maritime NWR's purpose to conserve fish and wildlife populations and habitats in their natural diversity including but not limited to marine mammals, marine birds and other migratory birds, the resources upon which they rely, bears, caribou and other mammals. Although there could be minimal, short-term disturbance and/or displacement of wildlife, the effects to fish and wildlife populations do not rise to the level of incompatibility.

The proposed use does not materially interfere with or detract from the Alaska Maritime NWR's purpose to fulfill international treaty obligations of the United States

with respect to fish and wildlife and their habitats. There would be no known loss of migratory bird, terrestrial or marine mammal habitat from this activity.

The proposed use does not materially interfere with or detract from the Alaska Maritime NWR's purpose to provide the opportunity for continued subsistence uses by local residents. The ANILCA Section 810 analysis evaluated the impact to subsistence and concluded that there are negligible effects to subsistence resources.

The proposed use does not materially interfere with or detract from the Alaska Maritime NWR's purpose to provide a program of national and international scientific research on marine resources.

The proposed use does not materially interfere with or detract from the Alaska Maritime NWR's purpose to ensure water quality and necessary water quantity within the refuge. There are no anticipated effects to either the quality or quantity of water on the refuge.

Effects to Wilderness would also be negligible and reburial would be within the intent of historical use of the Wilderness Act Section 4 3b "...wilderness areas shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, *and historical use.*" New interments in wilderness are prohibited by policy ([610 FW 2.29](#)), but reburials would return unique and non-renewable components of the wilderness to their original site.

In addition, the proposed use does not materially interfere with or detract from the Alaska Maritime NWR's additional purposes from the pre-ANILCA refuges.

After fully considering the impacts of these activities, as described previously in the "Anticipated Impacts of the Use" section of this document, it is my determination that reburial of human remains in the Refuge does not materially interfere with or detract from the purposes of the Refuge or the mission of the Refuge System. These activities will remain compatible with the implementation of the listed stipulations.

## Signature of Determination

Refuge Manager Signature and Date

## Signature of Concurrence

Assistant Regional Director Signature and Date

## Mandatory Reevaluation Date

2033

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