



THE STATE  
of **ALASKA**  
GOVERNOR MIKE DUNLEAVY

Department of Natural Resources  
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July 5, 2023

Steve Delehanty  
Refuge Manager  
Alaska Maritime National Wildlife Refuge  
95 Sterling Highway, Suite 1  
Homer, AK 9903-7472

Submitted electronically to [alaskamaritime@fws.gov](mailto:alaskamaritime@fws.gov)

Re: Alaska Maritime National Refuge draft Compatibility Determination for the reburial of archeological human remains

Dear Mr. Delehanty,

The State of Alaska (State) reviewed the draft Compatibility Determination (CD) for the reburial of archeological human remains in the Alaska Maritime National Wildlife Refuge (Refuge). The following represents the consolidated views of the State resource agencies.

The State supports the Refuge's proposal to consider these reburials as compatible. We offer the following clarifications to enhance the CD.

**Alaska National Interest Lands Conservation Act (ANILCA) Section 810 Analysis**

Please clarify which Section 810 Analysis the Refuge relies on in this context. The Refuge states, "The ANILCA Section 810 analysis evaluated the impact to subsistence and concluded that there are negligible effects to subsistence resources" (CD, p. 17). It is unclear if the Refuge is referring to the 1988 Comprehensive Conservation Plan Section 810 Analysis or a separate analysis.

**Page 9, E. Wilderness.** Final sentence: The Wilderness Act was amended by ANILCA; therefore, the State suggests the following alteration.

Change "Designated wilderness areas are to be managed" to "Designated wilderness areas are to be administered in accordance with the Wilderness Act, except as expressly provided for in ANILCA (Section 707)."

**Minimum Requirements Analysis (MRAs)**

The CD states on page 12 that reburial requests, "will likely be in Wilderness areas which require a separate minimum requirement analysis." Certain aspects of reburial activities may not require MRAs; however, it is important to note that the MRA may still apply to other aspects of reburial activities, such as the use of machinery. An MRA does not apply to activities that are generally allowed by the public under Sections 811, 1110, or 1316 of ANILCA. ANILCA amended the Wilderness Act so MRAs may not be required. This means that reburial activities that are not prohibited by the Wilderness Act or allowed under ANILCA do not require an MRA. We also question the estimated number of staff hours to process a reburial permit requiring an

MRA to be only 3-4 hours. The FWS might consider an exemption from cost recovery, so cost is not a deterrent for applicants.

**Stipulations, pages 14-16.** The Alaska Department of Fish and Game (ADF&G) has a policy of requiring notification when any wildlife are taken in defense of life or property. This includes any wildlife taken during reburial activities. This common notification requirement found in CDs in the Alaska region is intended to ensure that any animals taken are salvaged in accordance with State regulations. Another common stipulation for CDs is the proper storage and disposal of food or wildlife attractants. The State recommends the addition of the following fish and game related stipulations.

- Any problems with wildlife and/or animals taken in defense-of-life-or-property must be reported immediately to the Refuge Manager, the Alaska Department of Fish and Game, and the Alaska State Troopers. Animals taken must be salvaged in accordance with State regulations.
- Food or garbage attractive to bears or other wildlife will be immediately disposed of. No attractive nuisance for bears or other wildlife shall be created by food storage, improper disposal of garbage (includes of burying of garbage), fish smoking, salting, drying, or other uses.

### **Helicopter access**

While they are not referenced in this CD, we note that helicopters are a potential means of access to the Refuge. Helicopters are not prohibited; helicopters just need a separate compatibility determination. This has previously been recognized in response to comments during the revision of the 2008 Kanuti CCP<sup>1</sup>. The use of helicopters is also not prohibited in wilderness areas, but it is subject to an MRA and a separate compatibility determination. This means that the use of helicopters must be the minimum tool and compatible with the Refuge purposes. For example, in the Kanuti National Wildlife Refuge, the use of helicopters for reburial activities has been determined to be compatible. This could lead the public to understand that helicopter access is prohibited when they are allowed by special use permit under 43 CFR 36.11(f)(4). We request the access discussion on page 11 be reworded to reflect this regulatory allowance. Suggested language follows:

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. The use of helicopters may be authorized, provided that landing is prohibited except for the direct support of the activity covered by this permit and emergencies (no recreational use of helicopters is permitted), and no clearing of vegetation for landing/takeoff is permitted.

### **Memorial Markers in Designated Wilderness**

Memorials are allowed, including in designated wilderness areas, under the Native American Graves Protection and Repatriation Act. The Wilderness Act prohibits the construction of roads,

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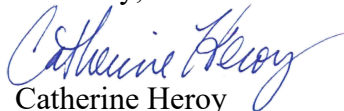
<sup>1</sup> 2008 Kanuti CCP, Appendix N, p. N-42.

permanent structures, or other permanent installations in designated wilderness, but we are unaware of a provision in the Wilderness Act that prohibits the placement of memorial markers in designated wilderness. Stipulation 9 on page 16 states, “No memorials are permitted in Congressionally designated Wilderness” due to a 2012 regional policy. This could lead the reader to inappropriately conclude memorial markers are not allowed in designated wilderness per the Wilderness Act. Policy cannot supersede statute. We request that the FWS remove Stipulation 9. Alternatively, the FWS should clarify that the Wilderness Act does not impose any restriction on memorial markers by citing the policy or regulation that implements such prohibition for Native American graves.

**Closing**

Thank you for the opportunity to comment. Please contact me at (907) 269-0880 or by email at [Catherine.heroy@alaska.gov](mailto:Catherine.heroy@alaska.gov) to coordinate any follow up discussions.

Sincerely,



Catherine Heroy

Acting State ANILCA Program Coordinator

Cc: Shane Walker, Branch Chief of Conservation Planning & Policy  
Lauren Flynn, Wildlife Refuge Specialist