

COMPATIBILITY DETERMINATION

Use: Reburial of Archaeological Human Remains per State and Federal Guidelines

Supporting Uses: Boating (motorized), camping, hiking and backpacking, photography, video, filming, audio recording (nonwildlife-dependent, recreational—other), fixed-wing aircraft, cemetery

Refuge Name: Togiak National Wildlife Refuge including the Hagemeister Island portion of Alaska Maritime Refuge (Refuge).

Establishing and Acquisition Authority(ies)

Togiak National Wildlife Refuge encompassing approximately 4,899,000 acres, was established on December 2, 1980 when Congress passed the Alaska National Interest Lands Conservation Act (ANILCA). Former Cape Newenham Refuge, established January, 1969 was incorporated into the present Togiak National Wildlife Refuge in 1980.

Section 702(10) of ANILCA designated approximately 2,373,000 of Togiak Refuge as the Togiak Wilderness under the Wilderness Act, as amended (16 U.S.C. 1131-1136). The purposes for these lands as wilderness are supplemental to the other purposes of Togiak Refuge.

As part of the Togiak Refuge Comprehensive Conservation Plan revision, the administration of Hagemeister Island was transferred from Alaska Maritime Refuge to Togiak Refuge. Approximately 74,000 acres in size, Hagemeister Island became part of Alaska Maritime Refuge with the passage of ANILCA on December 2, 1980.

Refuge Purpose(s)

Cape Newenham Refuge (now part of Togiak Refuge) was established in 1969 by Public Land Order 4583 "...for the protection of wildlife and their habitat...".

Sections 303(1)(B) and 303(6)(B) of ANILCA set forth the purposes for which Togiak and Alaska Maritime Refuges (including Cape Newenham Refuge) were established and shall be managed, including:

(i) to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to,

[Togiak Refuge] salmonids, marine birds and mammals, migratory birds and large mammals (including their restoration to historic levels);

[Alaska Maritime Refuge] 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 purposes set forth in subparagraphs (i) and (ii), the opportunity for continued subsistence uses by local residents;

(iv) [Alaska Maritime Refuge] to provide, in a manner consistent with 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 purposes set forth in paragraph (i), water quality and necessary water quantity within the refuge.

The Wilderness Act of 1964 (Public Law 88-577) creates additional Refuge purposes for the Togiak Wilderness Area. Designated wilderness areas are to be managed “for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness, and so as to provide for the protection of these areas, the preservation of their wilderness character, and for the gathering and dissemination of information regarding their use and enjoyment as wilderness.”

National Wildlife Refuge System Mission:

The mission of the National Wildlife 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 (National Wildlife Refuge System Administration Act, as amended).

Description of Use(s)

The Refuge anticipate requests to rebury human remains eroding from recorded and unrecorded prehistoric sites and remains that have been removed from prehistoric sites. The Inadvertent Discovery section (§ [3][d]) of the Native American Graves Protection and Repatriation Act of 1990 (Public Law 101-601) requires that the land management agency identify and notify the closest Native group and then, if requested, provide for the repatriation of the remains.

With this in mind, we have prepared this compatibility determination to cover an expected one to three reburial requests annually for the next 10 years. 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 (§106) prior to issuance of a permit.

It is anticipated that the majority of reburial sites would be accessible by boat, which would be the mode of access for this activity. Other forms of requested access that do not use traditional means of access would be reviewed on a case by case basis using existing policy and other guidance as appropriate.

Availability of Resources

Except for issuance of the permit, no refuge resources are needed to administer use. All activities associated with use will be accomplished by the permittee.

Anticipated Impacts of the Use(s)

This project will result in minimal and short-term impacts to refuge resources, involving a few small-scale excavations with hand tools and then reburial. Reburial of repatriated human remains would take place near the place of discovery of such remains and/or near their original burial place. Each burial would involve a small excavation with hand tools.

Impacts to refuge resources would be negligible and short-term, with no foreseeable long-term effects, and would not affect subsistence use of the refuge. A copy of the Global Positioning System (GPS) coordinates and contents of the burial site will be filed at the Refuge headquarters and with the Regional Historic Preservation Officer. The remains should be buried with a modern object (e.g., coin, button—with date) to indicate it is a historical reburial.

Public Review and Comment

Draft compatibility determinations were published as a portion of the Draft Revised Comprehensive Conservation Plan, and public review was invited with comments on the plan. The State of Alaska provided several comments on this compatibility determination. The State requested that we clarify that off-road vehicles may be allowed by Service regulations on designated routes and areas or by special use permit. We did not make the requested changes as this compatibility determination is for native allotment surveys and by terms of their special use permits we do not allow off-road vehicles for this use. The State requested we revise the paragraph preceding the list of conditions included in refuge permits. We made the requested change. The State also provided a number of comments on the permit special conditions. The Service's regional permit special conditions are being reviewed in a separate process and comments on them have been forwarded to those working on this task. Comments on regional permit special conditions are not addressed in this compatibility determination and no changes were made to the regional permit special conditions.

Determination

_____ Use is Not Compatible

 X Use is Compatible

Stipulations Necessary to Ensure Compatibility

The following stipulations will be made part of a special-use permit for Reburial of Archaeological Human Remains per State and Federal Guidelines.

The conditions listed below are included on Refuge permits issued for reburial of archaeological human remains per State and Federal guidelines, most of which are intended to minimize impacts and ensure compatibility. Refuge permits may also include other special conditions as necessary or appropriate for the specific operations or activities that are proposed.

- Failure to abide by any part of the special-use permit for this activity; violation of any refuge-related provision in Titles 43 (Part 36) or 50 (subchapters B and C) Code of Federal Regulations; or violation of any pertinent state regulation (e.g., fish or game violation) will, with due process, be considered grounds for immediate revocation of the permit and could result in denial of future permit requests for lands administered by the U.S. Fish and Wildlife Service. This provision applies to all persons working under the authority of this permit (e.g., assistants). Appeals of decisions relative to permits are handled in accordance with Title 50 Code of Federal Regulations Part 36.41.
- The permittee is responsible for ensuring that all employees, party members, aircraft pilots, and any other persons working for the permittee and conducting activities allowed by this permit are familiar with and adhere to the conditions of the permit.

- Reburial of repatriated human remains will take place near the place of discovery of such remains and/or near their original burial place.
- The permittee or permittees representatives will make the smallest possible excavation, using only hand tools
- The Global Positioning System (GPS) coordinates and contents of the burial site will be filed at the Refuge headquarters and with the Regional Historic Preservation Officer.
- Remains shall be buried with a modern object (e.g., coin, button, etc.—with date) to indicate that it is a historical reburial.
- Any problem with wildlife and/or animals taken in defense of life or property must be reported immediately to the refuge manager and the Alaska Department of Fish and Game; animals taken in defense of life or property must be salvaged in accordance with state regulations.
- The use of Native or state lands that have been selected but not yet conveyed is prohibited unless a letter of concurrence from the interested party is submitted to the refuge manager prior to beginning any activities allowed by the permit.
- The permittee shall notify the refuge manager during refuge working hours in person or by telephone before beginning and upon completion of activities allowed by the permit.
- Prior to beginning any activities allowed by this permit, the permittee shall provide the refuge manager with the following: (1) name and method of contact for the field party chief or supervisor; (2) aircraft and other vehicle types to be used, with identification information.
- The refuge manager, upon request, shall be afforded the opportunity and logistical support, from the nearest commercial transportation site, to accompany the permittee for the purpose of inspection and monitoring permittee activities. A final inspection trip, provided by the permittee, of the areas of use may be required by the refuge manager to determine compliance with the terms of this permit.
- The operation of aircraft at altitudes and in flight paths resulting in the herding, harassment, hazing, or driving of wildlife is prohibited. It is recommended that all aircraft, except for take off and landing, maintain a minimum altitude of 2,000 feet above ground level.
- A copy of this permit must be in the permittee's possession at all times while exercising the privileges of this permit.
- The permittee shall provide the refuge manager with a report of activities under this permit within 30 days of permit expiration.

Justification

The proposed use is limited and short-term and thus will result in minimal impact to refuge resources. This use is necessary for the Refuge to comply with the Native American Graves Protection and Repatriation Act of 1990 (Public Law 101-601). It will not interfere with or detract from the National Wildlife Refuge System mission or the purposes of the Refuge.

