

Compatibility Determination

July 10, 2007

Use: Construction of an access road and landfill facility on Isanotski Corporation, ANCSA 22(g) Lands.

Refuge Name: Alaska Maritime National Wildlife Refuge, Unimak Island; administered by Izembek National Wildlife Refuge.

Establishing and Acquisition Authority:

In December 1980, Congress enacted the Alaska National Interest Lands Conservation Act (ANILCA; Public Law 96-487). This act established the Alaska Maritime National Wildlife Refuge by merging 11 previously existing refuges and adding additional acreage. The Alaska Maritime National Wildlife Refuge includes Unimak Island. Unimak Island was part of the Aleutian Islands Reservation established by Executive Order No. 1733, signed by President Taft on March 3, 1913.

A legislative proposal to adjust the boundaries of several Alaskan refuges, including Izembek National Wildlife Refuge (NWR), was first submitted to Congress in 1988, but has not yet passed into law. Although the boundary adjustment has not yet been authorized by Congress, Izembek NWR has managed Unimak Island since 1982 as an administrative unit.

The Alaska Native Claims Settlement Act (ANCSA) was enacted in 1971 to settle aboriginal land claims of Alaska's Natives by providing land and money in exchange for extinguishment of their land claims. Section 22(g) of the Act made National Wildlife Refuge (Unimak Island) lands available for selection by Native Village Corporations, but contained a provision that "...such lands remain subject to the laws and regulations governing use and development of such Refuge." These lands were deeded to the Isanotski Native Corporation with specific restrictions, called covenants, on their sale and use.

Final Compatibility Regulations pursuant to the National Wildlife Refuge System Improvement Act of 1997 went into effect on October 18, 2000. The Code of Federal Regulations, 50 CFR 25.21(b)(1), states that compatibility determinations will be completed for uses of ANCSA 22(g) lands. Compatibility determinations, for proposed uses of 22(g) lands, will include only evaluations of how the proposed use would affect the ability of the refuge to meet its mandated purposes [50 CFR 25.21(b)(1)(iii)]. Compatibility determinations for proposed uses of 22(g) lands will only evaluate the effects of the use on the adjacent refuge lands, and the ability of that refuge to achieve its purposes, not on the effects of the proposed use to the 22(g) lands [50 CFR 25.21(b)(1)(v)]. Therefore, only the upland aspects of this project, which are located on lands within the ANCSA boundaries of Unimak Island, Aleutian Islands Reserve, now known as Alaska Maritime National Wildlife Refuge, are subject to the compatibility requirements.

The Wilderness Act of 1964 (78 Stat. 892), ANILCA, Section 702(13) designated the Unimak Wilderness of approximately nine hundred and ten thousand acres. This Wilderness designation only applies to Refuge lands, it does not apply to the private lands within the Wilderness boundary.

Refuge purposes:

As designated by Executive Order No. 1733:

“...to set apart as a preserve and breeding ground for native birds, for the propagation of reindeer and fur bearing animals, and for the encouragement and development of the fisheries.”

As designated by ANILCA, Section 303(1)(B):

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

(iv) 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 subparagraph (i), water quality and necessary water quantity within the refuge.

As designated by Wilderness Act of 1964 (16 U.S.C. 1131-1136), Section 2.(a):

“For this purpose there is hereby established a National Wilderness Preservation System to be composed of federally owned areas designated by the Congress as “wilderness areas,” and these shall be administered 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 National Wildlife Refuge System Mission will not be considered in a compatibility determination evaluation with regard to lands under Section 22(g) of ANCSA, per 50 CFR 25.21(b)(1)(iii).

Description of Use:

(a) What is the use?

An access road and landfill facility is proposed for construction north of False Pass, Alaska. A gravel surface road will be constructed at the end of an existing road located adjacent to the crab pot storage area (north of the City Dock) with a bridge spanning the Ungaman Creek to a new landfill facility to be located on the north side of the creek.

(b) Where would the use be conducted?

The use being evaluated includes only the Isanotski Native Corporation, ANCSA 22(g) lands (surface estate lands) located 1 mile to the north of the False Pass village at 54.8750° north latitude, 163.4342° west longitude, Section 28, Township 61 South, Range 94 West, Seward Meridian.

There are potential concerns with the impacts to subsurface lands with respect to the landfill operations. An agreement between the Isanotski Corporation and the U.S. Fish and Wildlife Service has been signed to complete an exchange of subsurface lands in this area to resolve the subsurface issues. It is expected that the exchange will be completed prior to the 2008 construction season. The land exchange agreement will be drafted by the U.S. Fish and Wildlife Service, Region 7, Realty Division. After the exchange the Isanotski Corporation will have rights to the subsurface materials (such as gravel) without oversight from the Fish and Wildlife Service and the entire responsibility for the landfill. Planned projects will still require 22(g) compatibility determinations for the impacts to adjacent refuge lands.

(c) When would the use be conducted?

Upon beginning of construction, start date anticipated to be Spring of 2008. Facilities will be utilized indefinitely or until closure of the landfill.

(d) How would the use be conducted?

The project is described in the *False Pass Landfill Access Road, Categorical Exclusion Documentation* dated April 6, 2007 and the *Environmental Assessment and Finding of No Significant Impact, False Pass, Alaska*, dated May 4, 2005. Copies of these reference documents may be obtained through the Refuge Office or the following web site: <http://alaska.fws.gov/nwr/planning/completed.htm>

The road will be a one-lane, gravel-surfaced, with turnouts. The traveling surface will be approximately 14 feet with a total width of (22.5 feet including slopes) by 3,360 feet long (0.6 miles). The road design is for a speed of 20 miles per hour and side slopes would be 4 to 1 or steeper gradient. A single lane bridge (a pre-engineered modular truss bridge) approximately 110 feet long would be installed ½ mile from the creek's outlet into Isanotski Strait and would not require abutments or piers in the creek. Guide banks to protect the bridge from flood damage and lateral shifts of the creek will be 120 feet long with 2:1 side slopes and extend 50 feet up stream of the bridge with Class III riprap at the toe of the slope.

The new landfill will include two solid waste disposal cells, two sludge pits, a stockpile of cover materials, drainage controls and fencing of the entire seven acre site.

Use of Federal subsurface sand and gravel at the site has not been requested for this project and is not covered under this compatibility determination. Use of sand and gravel would require a Special Use Permit and a separate analysis.

(e) Why is the use being proposed?

The existing landfill is an unpermitted, open dump located at the southwest end of town. The facility is located upstream, too close to the village and within 5,000 feet for the airport runway. It is rather small and is at near capacity. It also poses a risk to the local human population from wildlife encounters including bear and fox (with potential rabies). It is proposed that a new landfill would provide safer operating conditions for users of this area.

All activity during construction and operation of the access road and landfill will be off of refuge surface-estate lands.

Availability of resources:

The construction and operation of an access road and landfill facility in False Pass on Isanotski Native Corporation ANCSA 22(g) lands will not result in an increase of costs for the refuge staff to administer or manage.

Anticipated impacts of the use:

The U.S. Department of Agriculture, *False Pass Landfill Environmental Assessment and Finding of No Significant Impact, False Pass, Alaska*, May 4, 2005 provides an analysis of the potential impacts to federally listed species. Most of the resources addressed, i.e., Steller's eider, would not be found on adjacent refuge lands.

Ungaman Creek is reported by Alaska Department of Fish and Game as not supporting anadromous fish. Local residents report the creek is not fished for salmon. The upper reaches of this body of water are located on Isanotski Corporation lands located one mile from refuge lands.

Impacts to adjacent refuge lands and trust fish and wildlife resources are anticipated to be non-existent due to the topography of the area (highly mountainous) and distance to refuge lands upstream. Upon refuge staff aerial identification, only one inactive bald eagle nest was found located more than 2,640 feet south of the project area. Should a suspected eagle nest be found (active or not) during construction, the USFWS will be contacted at 1-877-837-6332 for recommendations prior to proceeding. The closest refuge surface estate lands are located approximately 1.5 miles south (Section 4, Township 62 South, Range 94 West, Seward Meridian) and 2.7 miles (Section 25, Township 62, Range 95 West, Seward Meridian) to the west of the project site. Activity associated with construction and use of the proposed road and landfill project should not "spill over" onto adjacent refuge lands.

Public review and comment:

Opportunities for public input included a thirty-day comment period as announced in a public notice in the Anchorage Daily News on May 23, 2007. Public notices were also sent to the Dutch Harbor Times; postmasters in Sand Point, King Cove, Nelson Lagoon, Cold Bay, False Pass and Akutan for posting in the Post Offices; local Native corporations and Tribal offices, Alaska Dept. of Fish and Game local and State offices, and Alaska non-government organizations. The compatibility determination was available for review at the Izembek National Wildlife Refuge Headquarters in Cold Bay, Alaska and on the U.S. Fish and Wildlife Service – Alaska Region's compatibility

determination Web site: <http://alaska.fws.gov/nwr/planning/completed.htm>

The period of public review and comment began on May 21, 2007 and ended on June 20, 2007. The following methods were used to solicit public review and comment:

- Posted notice at the refuge headquarters and four locations in Cold Bay
- Public notice in newspaper with wide local distribution
- Public notice mailed to adjacent landowners and community governments
- Email to other interested persons.

During the public comment period four people sent comments on the draft compatibility statement. Of those four people, two said that they supported the False Pass Landfill on Unimak Island adjacent to refuge lands. The remaining comments did not state opposition to the landfill. One explained that the current landfill's permit had expired and the other suggested a change in the compatibility determination concerning location of an eagle nest.

An aerial reconnaissance of the eagle nest was completed during the first week of July by refuge staff. The nest was mapped in relation to the project site and found to be more than ½ mile from the nest. The nest was also determined to be inactive during that time. A change in this document was made to reflect this information.

Use is Compatible or Not Compatible:

I find this use COMPATIBLE, based on my personal experience, knowledge of the refuge, the best science available, principles of fish and wildlife management and administration, and other applicable laws. This use will not materially interfere with or materially detract from fulfilling the purposes of the refuge.

Stipulations Necessary to Ensure Compatibility:

A new or significant enlargement of a gravel or fill material quarry site on ANCSA 22(g) or refuge land (surface or subsurface) is not part of this compatibility determination. Such a site would require a separate analysis.

Justification:

In 1971, Congress enacted ANSCA to settle aboriginal land claims of Alaska's native peoples by providing land and money in exchange for extinguishment of their land claims. Section 22 (g) of the Act made the National Wildlife Refuge lands available for selection by Native Village Corporations, but it also contained a provision that "...such land remain subject to the laws and regulations governing use and development of such Refuge." This means that the refuge laws and regulations requiring compatibility determinations for proposed refuge uses applies to the village corporation lands in National Wildlife Refuges in Alaska withdrawn under Section 22(g) of ANSCA. These lands were deeded to Alaska Native Village Corporations with specific restrictions, called covenants, on their sale and use. **On 22(g) lands refuge managers focus their compatibility determination on how the impacts of the proposed use would affect adjacent refuge lands and the degree that the proposed use would materially interfere with the refuge's ability to achieve its legally mandated purposes.** This is

the fundamental protection provided to the parent refuges from the effects of uses of 22 (g) lands that Congress provided in Section 22 (g) of ANCSA.

The upland impacts of this project are confined to a portion of the Isanotski Native Corporation ANCSA 22(g) surface estate lands located north of the city of False Pass and adjacent to the waters of Isanotski Strait. The use area is located approximately 1.5 to 2.7 miles from refuge surface estate lands and will not have a significant impact of refuge lands or materially interfere with or materially detract from fulfilling the purposes of the refuge.

Signature:

Refuge Manager: /s/ Sandra Siekaniec Date: 7/10/07
(Signature)

Concurrence:

Alaska Regional Chief of Refuges: /s/ Todd Logan Date: 7/11/07
(Signature)

Mandatory 10-Year Reevaluation Date: July 2017