

AMENDMENT NO. _____ Calendar No. _____

Purpose: To provide a complete substitute.

IN THE SENATE OF THE UNITED STATES—110th Cong., 2d Sess.

S. 1680

To provide for the inclusion of certain non-Federal land in the Izembek National Wildlife Refuge and the Alaska Peninsula National Wildlife Refuge in the State of Alaska, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by _____

Viz:

1 Strike all after the enacting clause and insert the fol-

2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Izembek and Alaska

5 Peninsula Refuge Enhancement Act of 2008”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) CORPORATION.—The term “Corporation”

9 means the King Cove Corporation.

1 (2) FEDERAL LAND.—The term “Federal land”
2 means—

3 (A) the approximately 206 acres of Federal
4 land located within the Refuge, as generally de-
5 picted on the map; and

6 (B) the approximately 1,600 acres of Fed-
7 eral land located on Sitkinak Island, as gen-
8 erally depicted on the map.

9 (3) MAP.—The term “map” means each of—

10 (A) the map entitled “Izembek and Alaska
11 Peninsula National Wildlife Refuges” and dated
12 September 2, 2008; and

13 (B) the map entitled “Sitkinak Island–
14 Alaska Maritime National Wildlife Refuge” and
15 dated September 2, 2008.

16 (4) NON-FEDERAL LAND.—The term “non-Fed-
17 eral land” means—

18 (A) the approximately 43,093 acres of land
19 owned by the State, as generally depicted on
20 the map; and

21 (B) the approximately 13,300 acres of land
22 owned by the Corporation (including approxi-
23 mately 5,430 acres of land for which the Cor-
24 poration shall relinquish the selection rights of
25 the Corporation under the Alaska Native

1 Claims Settlement Act (43 U.S.C. 1601 et seq.)
2 as part of the land exchange under section
3 3(a)), as generally depicted on the map.

4 (5) REFUGE.—The term “Refuge” means the
5 Izembek National Wildlife Refuge.

6 (6) SECRETARY.—The term “Secretary” means
7 the Secretary of the Interior.

8 (7) STATE.—The term “State” means the State
9 of Alaska.

10 (8) TRIBE.—The term “Tribe” means the
11 Agdaagux Tribe of King Cove, Alaska.

12 **SEC. 3. LAND EXCHANGE.**

13 (a) IN GENERAL.—Upon receipt of notification by
14 the State and the Corporation of the intention of the State
15 and the Corporation to exchange the non-Federal land for
16 the Federal land, subject to the conditions and require-
17 ments described in this Act, the Secretary may convey to
18 the State all right, title, and interest of the United States
19 in and to the Federal land for the purpose of constructing
20 a single-lane gravel road between the communities of King
21 Cove and Cold Bay, Alaska.

22 (b) COMPLIANCE WITH NATIONAL ENVIRONMENTAL
23 POLICY ACT OF 1969 AND OTHER APPLICABLE LAWS.—

1 (1) IN GENERAL.—In determining whether to
2 carry out the land exchange under subsection (a),
3 the Secretary shall—

4 (A) comply with the National Environ-
5 mental Policy Act of 1969 (42 U.S.C. 4321 et
6 seq.); and

7 (B) except as provided in subsection (c),
8 comply with any other applicable law (including
9 regulations).

10 (2) ENVIRONMENTAL IMPACT STATEMENT.—

11 (A) IN GENERAL.—Not later than 60 days
12 after the date on which the Secretary receives
13 notification under subsection (a), the Secretary
14 shall initiate the preparation of an environ-
15 mental impact statement or similar analysis re-
16 quired under the National Environmental Pol-
17 icy Act of 1969 (42 U.S.C. 4321 et seq.).

18 (B) REQUIREMENTS.—The environmental
19 impact statement or similar analysis prepared
20 under subparagraph (A) shall contain—

21 (i) an analysis of—

22 (I) the proposed land exchange;

23 and

24 (II) the potential construction
25 and operation of a road between the

1 communities of King Cove and Cold
2 Bay, Alaska; and

3 (ii) an evaluation of a specific road
4 corridor that—

5 (I) is designed to extend through
6 the Refuge; and

7 (II) is identified in consultation
8 with the State, the City of King Cove,
9 Alaska, and the Tribe.

10 (3) COOPERATING AGENCIES.—

11 (A) IN GENERAL.—During the preparation
12 of the environmental impact statement or simi-
13 lar analysis under paragraph (2), each entity
14 described in subparagraph (B) may participate
15 as a cooperating agency.

16 (B) AUTHORIZED ENTITIES.—An author-
17 ized entity may include—

18 (i) any Federal agency that has per-
19 mitting jurisdiction over the road described
20 in paragraph (2)(B)(i)(II);

21 (ii) the State;

22 (iii) the Aleutians East Borough of
23 the State;

24 (iv) the City of King Cove, Alaska;

25 (v) the Tribe; and

1 (vi) the Alaska Migratory Bird Co-
2 Management Council.

3 (c) VALUATION.—The conveyance of the Federal land
4 and non-Federal land under this section shall not be sub-
5 ject to any requirement under any Federal law (including
6 regulations) relating to the valuation, appraisal, or equali-
7 zation of land.

8 (d) PUBLIC INTEREST DETERMINATION.—

9 (1) CONDITIONS FOR LAND EXCHANGE.—Sub-
10 ject to paragraph (2), to carry out the land exchange
11 under subsection (a), the Secretary shall determine
12 that the land exchange (including the construction of
13 a road between the City of King Cove, Alaska, and
14 the Cold Bay Airport) is in the public interest.

15 (2) LIMITATION OF AUTHORITY OF SEC-
16 RETARY.—The Secretary may not, as a condition for
17 a finding that the land exchange is in the public in-
18 terest—

19 (A) require the State or the Corporation to
20 convey additional land to the United States; or

21 (B) impose any restriction on the subsist-
22 ence uses (as defined in section 803 of the
23 Alaska National Interest Lands Conservation
24 Act (16 U.S.C. 3113)) of waterfowl by rural
25 residents of the State.

1 (e) KINZAROFF LAGOON.—The land exchange under
2 subsection (a) shall not be carried out until the date on
3 which the parcel of land owned by the State that is located
4 in the Kinzaroff Lagoon has been designated by the State
5 as a State refuge, in accordance with the applicable laws
6 (including regulations) of the State.

7 (f) DESIGNATION OF ROAD CORRIDOR.—In desig-
8 nating the road corridor described in subsection
9 (b)(2)(B)(ii), the Secretary shall—

10 (1) minimize the adverse impact of the road
11 corridor on the Refuge;

12 (2) transfer the minimum acreage of Federal
13 land that is required for the construction of the road
14 corridor; and

15 (3) to the maximum extent practicable, incor-
16 porate into the road corridor roads that are in exist-
17 ence as of the date of enactment of this Act.

18 (g) ADDITIONAL TERMS AND CONDITIONS.—The
19 land exchange under subsection (a) shall be subject to any
20 other term or condition that the Secretary determines to
21 be necessary.

22 **SEC. 4. KING COVE ROAD.**

23 (a) REQUIREMENTS RELATING TO USE, BARRIER
24 CABLES, AND DIMENSIONS.—

25 (1) LIMITATIONS ON USE.—

1 (A) IN GENERAL.—Except as provided in
2 subparagraph (B), any portion of the road con-
3 structed on the Federal land conveyed pursuant
4 to this Act shall be used only for noncommer-
5 cial purposes.

6 (B) EXCEPTIONS.—Notwithstanding sub-
7 paragraph (A), the use of taxis, commercial
8 vans for public transportation, and shared rides
9 (other than organized transportation of employ-
10 ees to a business or other commercial facility)
11 shall be allowed on the road described in sub-
12 paragraph (A).

13 (C) REQUIREMENT OF AGREEMENT.—The
14 limitations of the use of the road described in
15 this paragraph shall be enforced in accordance
16 with an agreement entered into between the
17 Secretary and the State.

18 (2) REQUIREMENT OF BARRIER CABLE.—The
19 road described in paragraph (1)(A) shall be con-
20 structed to include a cable barrier on each side of
21 the road, as described in the record of decision enti-
22 tled “Mitigation Measure MM-11, King Cove Access
23 Project Final Environmental Impact Statement
24 Record of Decision” and dated January 22, 2004.

1 (3) REQUIRED DIMENSIONS.—The road de-
2 scribed in paragraph (1)(A) shall—

3 (A) have a width of not greater than a sin-
4 gle lane;

5 (B) be constructed with gravel, in accord-
6 ance with the applicable road standards of the
7 State; and

8 (C) if determined to be necessary, be con-
9 structed to include appropriate safety pullouts.

10 (b) SUPPORT FACILITIES.—Support facilities for the
11 road described in subsection (a)(1)(A) shall not be located
12 within the Refuge.

13 (c) FEDERAL PERMITS.—It is the intent of Congress
14 that any Federal permit required for construction of the
15 road be issued or denied not later than 1 year after the
16 date of application for the permit.

17 (d) APPLICABLE LAW.—Nothing in this section
18 amends, or modifies the application of, section 1110 of
19 the Alaska National Interest Lands Conservation Act (16
20 U.S.C. 3170).

21 (e) MITIGATION PLAN.—

22 (1) IN GENERAL.—Based on the evaluation of
23 impacts determined through the completion of the
24 environmental impact statement or similar analysis

1 under section 3(b)(2), the Secretary shall develop an
2 enforceable mitigation plan.

3 (2) CORRECTIVE MODIFICATIONS.—The Sec-
4 retary may make corrective modifications to the
5 mitigation plan developed under paragraph (1) if—

6 (A) the mitigation standards required
7 under the mitigation plan are maintained; and

8 (B) the Secretary provides an opportunity
9 for public comment with respect to any pro-
10 posed corrective modification.

11 **SEC. 5. ADMINISTRATION OF CONVEYED LANDS.**

12 (1) FEDERAL LAND.—Upon completion of the
13 land exchange under section 3(a)—

14 (A) the boundary of the land designated as
15 wilderness within the Refuge shall be modified
16 to exclude the Federal land conveyed to the
17 State under the land exchange; and

18 (B) the Federal land located on Sitkinak
19 Island that is withdrawn for use by the Coast
20 Guard shall be transferred by the Secretary to
21 the State upon the relinquishment or termi-
22 nation of the withdrawal.

23 (2) NON-FEDERAL LAND.—Upon completion of
24 the land exchange under section 3(a), the non-Fed-

1 eral land conveyed to the United States under this
2 Act shall be—

3 (A) added to the Refuge or the Alaska Pe-
4 ninsula National Wildlife Refuge, as appro-
5 priate, as generally depicted on the map; and

6 (B) administered in accordance with the
7 laws generally applicable to units of the Na-
8 tional Wildlife Refuge System.

9 (3) WILDERNESS ADDITIONS.—

10 (A) IN GENERAL.—Upon completion of the
11 land exchange under section 3(a), approxi-
12 mately 43,093 acres of land as generally de-
13 picted on the map shall be added to—

14 (i) the Izembek National Wildlife Ref-
15 uge Wilderness; or

16 (ii) the Alaska Peninsula National
17 Wildlife Refuge Wilderness.

18 (B) ADMINISTRATION.—The land added as
19 wilderness under subparagraph (A) shall be ad-
20 ministered by the Secretary in accordance with
21 the Wilderness Act (16 U.S.C. 1131 et seq.)
22 and other applicable laws (including regula-
23 tions).

1 **SEC. 6. FAILURE TO BEGIN ROAD CONSTRUCTION.**

2 (a) NOTIFICATION TO VOID LAND EXCHANGE.—If
3 the Secretary and the State enter into the land exchange
4 authorized under section 3(a), the State or the Corpora-
5 tion may notify the Secretary in writing of the intention
6 of the State or Corporation to void the exchange if con-
7 struction of the road through the Refuge has not begun.

8 (b) DISPOSITION OF LAND EXCHANGE.—Upon the
9 latter of the date on which the Secretary receives a request
10 under subsection (a), and the date on which the Secretary
11 determines that the Federal land conveyed under the land
12 exchange under section 3(a) has not been adversely im-
13 pacted (other than any nominal impact associated with the
14 preparation of an environmental impact statement or simi-
15 lar analysis under section 3(b)(2)), the land exchange shall
16 be null and void.

17 (c) RETURN OF PRIOR OWNERSHIP STATUS OF FED-
18 ERAL AND NON-FEDERAL LAND.—If the land exchange
19 is voided under subsection (b)—

20 (1) the Federal land and non-Federal land shall
21 be returned to the respective ownership status of
22 each land prior to the land exchange;

23 (2) the parcel of the Federal land that is lo-
24 cated in the Refuge shall be managed as part of the
25 Izembek National Wildlife Refuge Wilderness; and

1 (3) each selection of the Corporation under the
2 Alaska Native Claims Settlement Act (43 U.S.C.
3 1601 et seq.) shall be reinstated.