



THE WILDERNESS SOCIETY

Good Morning Chairman Rahall and Committee Members. I am Nicole Whittington-Evans, Associate Regional Director and Alaska Refuge Program Director of The Wilderness Society's Alaska office. I appreciate the opportunity to address the panel today, October 31, 2007, regarding the hearing topic H.R. 2801.

I offer this testimony on behalf of The Wilderness Society (TWS), an organization with over 300,000 members and supporters. Joining TWS in our comments are the Blue Goose Alliance, Environmental Defense, National Audubon Society and the Sierra Club. Many of these groups and 18 other associations sent a letter to Congress in June stating our united opposition to the land exchange for the purposes of building a road between the two small communities of King Cove and Cold Bay. This road would be incompatible with the primary purposes of the Izembek National Wildlife Refuge and fragment the ecological heart of the Refuge; violating the very foundation of its congressionally designated Wilderness and place at risk the integrity of its internationally significant and strategically vital waterfowl wetlands habitat for many species of waterfowl located at the tip of the Alaska Peninsula

As a long-time resident of Alaska, I have been fortunate to visit many of the special places that characterize the beautiful, wild landscapes and spectacular wildlife habitat of Alaska. On two occasions, I was fortunate to spend time at the Izembek Refuge and see firsthand the lands and water holding the distinction of being nominated by President Ronald Reagan as the first U.S. site to be recognized under the Ramsar Convention as an internationally important wetland. I have stood at the edge of the wilderness to see the narrow peninsula where the proposed road would be constructed. From that vantage point, I could see both the Izembek and Kinzarof Lagoons (the Lagoons Complex). In between these lagoons are rolling hills and valleys of soft, spongy and fragile tundra dotted by abundant marshes, lakes and pools of water.

While visiting Izembek Refuge, I witnessed the Lagoons crowded with Pacific black brant, Emperor geese, and the threatened Steller's eider. At that time, I did not see them, but a local expert described to me the wildlife that use the isthmus as a travel corridor, foraging area and home in vivid detail. I could picture the caribou, wolves, grizzly bears, foxes and other wildlife that use the isthmus as a travel corridor, hunting zone and home during winter or summer.

During my trips to Cold Bay, I chartered a small plane to view the lagoon complex from the air and looked down on the lands proposed for excision in H.R. 2801. In order to

build the proposed road, the bill would remove Wilderness protection from 206 acres of critical wildlife habitat on that narrow wetland isthmus between the Izembek and Kinzarof Lagoons ultimately removing them from the refuge via an exchange. In return, the Refuge would get almost entirely unrelated and notably dissimilar habitat. Only some of the parcels included in the exchange would qualify to be designated as Wilderness.

Important Historical Context Regarding This Wilderness and Proposed Road

When at the Izembek Refuge, I read through the historical files that chronicled the extensive outreach during the 1970s to State officials and policymakers, the Alaska media, and the public. I reviewed many of the comments submitted regarding what was then proposed Wilderness. The files show overwhelming support for the Wilderness, including a letter from the Governor of Alaska. In total, ten years transpired from the time the Izembek wilderness was proposed to when Congress granted Wilderness designation to the recommended Refuge lands. That decade-long process included town meetings, hearings, debates, numerous editorials and opinion pieces, outreach to multiple Native organizations, and state, federal, and joint governmental proposals spanning several Congressional sessions. All this outreach and discussion provided ample time and opportunities for public discourse and final decisions, eventually leading to the comprehensive 1980 Alaska National Interest Lands Conservation Act (ANILCA).

Yet, throughout that time a road between King Cove and Cold Bay was not an issue of debate and was raised only once at the Cold Bay wilderness hearing in 1970, posed as a question which was politely answered by an official. Further, throughout the many House and Senate hearings leading to passage of ANILCA, the road issue was not raised nor was it advocated by the very able members of the Alaska Congressional delegation. In fact, the next time a road was discussed as a possible link between the two towns, occurred during the Bristol Bay Cooperative Management Plan studies and planning sessions, circa 1982-83. The detailed analyses in that plan made clear that such a road would be incompatible with the purposes for which Izembek NWR had been established, adding that it would cause significant, long-term, ongoing and irreparable damage to important fish, wildlife, habitat and wilderness values of that refuge. That analysis and discussion was authored by several U.S. Fish and Wildlife Service (FWS) biologists and then approved and supported by their Alaska Regional Director. From that time to today, the compatibility determination, descriptions and likely impacts from building a road between the two towns has remained unchanged. On many occasions and in many published and circulated documents, the FWS has consistently declared any such road and its construction through the refuge to be incompatible and extremely damaging. There has been no change in those findings and conclusions to this day.

What has changed is the administration at the Department of the Interior, which apparently feels that the well-documented incompatibility and subsequent ongoing damages from construction and operation of the road can be “mitigated” by an exchange of lands now outside the Refuge for the relatively small amount of Refuge Wilderness land immediately, directly and harmfully impacted by building the currently described

road. This exchange would give thousands of acres of mostly undeveloped land to the refuge, and most of this land is under no threat of development.

Mr. Chairman and members, The Wilderness Society and each of the organizations joining our testimony today endorse and support the original 1982-83 statements of incompatibility and the numerous similar subsequent declarations by the FWS throughout the past 25 years. Further, we strongly believe that the resulting damages would not be mitigated to any measurable or satisfying extent by the proffered exchange lands—given their disjunctive locations, generally lower wildlife and habitat values, and type of developments on some parcels and lack of documented threats to any of the offered lands.

Summary

The Alaska community of King Cove is asking for costly and damaging road access to the Cold Bay airport. The proposed road would cut through Izembek National Wildlife Refuge and Wilderness, raising serious concerns about impacts to fish and wildlife populations. Izembek National Wildlife Refuge is a globally significant wildlife sanctuary and has been recognized on the Ramsar Convention List of Wetlands of International Importance.

Congress already rejected the Izembek road proposal in 1998, approving instead a marine connection between King Cove and Cold Bay, a connection that is operational today, and that has already proven itself in completing several emergency evacuations. Recently renewed efforts to construct the road include a proposed land exchange that would nominally compensate for any loss of Wilderness as a result of the road. Equally important, is that the lands being offered in the exchange do not represent comparable wildlife habitat value.

The proposed land exchange would add acreage to the refuge but not wildlife value. More specifically, the value of any exchange lands would be diminished if the ecological heart of the refuge is lost. More specifically, the value of any exchange lands would be made *de minimus* if the negative impacts described by FWS biologists for more than 25 years become reality. The road would sever these fragile refuge wetlands, leading to the degradation of significant ecological habitats. Construction, operation and maintenance will entail filling wetlands, modifying drainages, potential spillages and pollution, dust, noise, on-land barriers and over-land turmoil and disruptions.

A road would destroy wilderness values and create serious threats to sensitive bird populations, brown bears, caribou, and many other wildlife species. Citing potential harm to the critical habitat of the Pacific black brant is why the Association of Village Council Presidents, which represents 56 indigenous Native villages within Western Alaska, opposes the King Cove Road.

Recently, on Saturday, October 20, President Bush expressed concerns over the nation's diminishing migratory bird habitat. The President stated, "I don't know if you know this

or not, but each year more than 800 species of migratory birds brave stiff winds, harsh weather and numerous predators to fly thousands of miles. Their final destination is the warm climate of the American south, the Caribbean or Mexico, where they stay for the winter. These amazing travelers will then return to their breeding grounds in the north. And as they span these distances, they fascinate and bring joy to millions of our citizens. A lot of folks across the country love to watch birds. One of the things we've discussed here is a significant environmental challenge we face here in America, and that is birds are losing the stopover habitats they need and depend on for their annual migrations."

The President stressed that this is a national issue requiring national attention. He also announced an initiative to have Department of the Interior Secretary Kempthorne produce a State of the Birds Report by 2009. This report will help the U.S. bring more of America's bird species into a healthy and sustainable status. The question we need to ask is will this report measure our country's protection of one of the world's critically important migratory waterfowl sites; lands that the U.S. now protects, but would put at risk by constructing a road adjacent to the Kinzarof Lagoon, which is heavily used by brant and other waterfowl.

Furthermore, a road through Izembek's Wilderness will cost taxpayers millions of dollars. Congress has already helped finance the most cost effective mode of transport between King Cove and Cold Bay—a specially designed marine hovercraft-ferry system.

Our organizations support helping the people of King Cove improve their transportation link to Cold Bay and have consistently encouraged them to seek a safe and dependable marine transportation link. The currently available hovercraft-ferry system provides a reasonable, financially feasible, safe and practical transportation link between King Cove and Cold Bay. It avoids the need to complete a road across multiple avalanche zones, unstable volcanic soils and a designated Wilderness area. Further, a road would not ensure a safer, reliable transportation link. Keeping the roads open during winter months would be extremely difficult, if not impossible, when snow is drifting. Even routine maintenance of a road that is built on wetlands would be challenging and very costly to taxpayers. The hovercraft reportedly has already successfully transported a number of med-evac patients from King Cove to Cold Bay.

The road proposed in H.R. 2801 would cut through the protected Wilderness of the Izembek National Wildlife Refuge. Over a decade of public debate and meetings were held prior to the Congressional designation of these lands as Wilderness, to be sure that qualified lands were added into the Wilderness System, that watersheds were permanently protected, and known conflicts were addressed. A road is incompatible with the purposes of Izembek refuge, and would legally contradict the King Cove Health and Safety Act, which Congress adopted to specifically prohibit a road through Izembek Wilderness. Continuing the Congressional protection of this internationally significant wildlife habitat and important public land for future generations makes sense. The road and land exchange proposal should be rejected.

The remainder of my testimony provides greater detail on the issues I have mentioned and describes additional legal concerns raised by the bill's provisions as well as other matters of deep concern to The Wilderness Society and other opponents of this unneeded measure.

The Heart of the Wildlife Refuge

Congress established the Izembek National Wildlife Refuge and Wilderness in 1980 as part of the Alaska National Interest Lands Conservation Act to safeguard the refuge's extraordinary value. The Izembek refuge was established to protect the Pacific black brant and its habitat along with other migratory waterfowl and other birds.

At the center of the 417,533-acre Izembek National Wildlife Refuge are two lagoons, the Izembek and Kinzarof. These lagoons are separated by a narrow isthmus just 3 miles wide. Combined, the lagoons, their immediate watersheds, and the isthmus—the Lagoons Complex—make up the ecological heart of the refuge. The area has been recognized internationally for having some of the most striking wildlife and wilderness values in the northern hemisphere.

The Izembek/Kinzarof Lagoons Complex has been repeatedly recognized internationally for its global significance. Specifically, the refuge was:

- Identified under the RAMSAR Convention in 1986 and was the first wetlands area in North America on the List of Wetlands of International Importance;
- Included as a Marine Protected Area in order to provide lasting protection for this Lagoon Complex;
- Recognized as an Important Bird Area (IBA) of global significance in 2001 by Birdlife International in partnership with National Audubon Society;
- Listed as a Sister Refuge with Russia's Kronotskiy State Biosphere Reserve in 1991 through a U.S. – Russian Governmental Agreement on Cooperation in Environmental Protection; and
- Celebrated as globally significant for its habitat value and role in biodiversity protection by World Wildlife Fund (WWF) and The Nature Conservancy (TNC).

The refuge also qualifies as a Western Hemispheric Shorebird Reserve Network Site. Izembek National Wildlife Refuge is best known for its world-class waterfowl and shorebird habitat. The Lagoons Complex provides breeding, molting, nesting, refueling, staging and resting grounds for:

- virtually the entire world's populations of Pacific black brant (~150,000) and Emperor geese (~55,000);
- a significant portion of the world's "threatened" population of Steller's eiders (~150,000) which were listed as threatened under the Endangered Species Act in 1997; and
- many other migratory and resident waterfowl, including Pacific golden plovers, rock sandpipers, dunlins, ruddy turnstones, semipalmated plovers, western sandpipers and Izembek tundra swans, which are the only essentially nonmigratory breeding population in North America.

The Izembek/Kinzarof Lagoons Complex is important for so many bird species due to the presence of some of the world's largest eelgrass beds. More than 98 percent of the world's Pacific black brant converge on Izembek Lagoon each year to feed on the eelgrass in preparation for their 3,000 mile, 55 hour non-stop flight to wintering grounds in Mexico. The birds feed on eelgrass for approximately eight weeks before their long flight south that usually begins in early November. Emperor and Canada geese rely on the eelgrass in the lagoons for nutrients as do invertebrates, and marine mammals.

A road through this ecologically sensitive habitat would fragment and degrade the integrity of the Lagoons Complex. This will result in impacts that extend well beyond the road and affect the integrity of the entire refuge. Birds and mammals use the lagoons, isthmus wetlands, tundra and tidal flats to nest, feed, transit and forage - the species hardest hit will be those whose essential habitat would be directly or indirectly impacted by road construction, maintenance, and traffic. In particular, Pacific brant, Steller's eiders, Emperor geese, caribou, tundra swans, brown bears, sea otters, sea lions, seals and whales would be impacted. Many of these species are rare, declining or even listed as Threatened under the Endangered Species Act.

In addition, the narrow isthmus between Izembek and Kinzarof Lagoons is a crucial travel corridor—the only path between the west and east sides of the refuge—for wide-ranging species such as bears, caribou, and wolves. The Alaska Peninsula Caribou Herd, a population that has declined from about 10,000 to fewer than 1,000 in the last 10 years, uses the isthmus as the only migration corridor between calving and wintering grounds. The isthmus is also an important winter foraging area for these animals. Moreover, the caribou are known to spend the entire winter on the isthmus.

Some of the highest densities of brown bears on the Lower Alaska Peninsula are found in the Joshua Green River Valley, an area within three miles of the isthmus and proposed road corridor. Low levels of human disturbance have helped maintain the high habitat value of this area for brown bears. Bears use the isthmus frequently to forage and roam in their search for food. Harbor seals, sea otters, Steller's sea lions, and whales frequent the productive waters surrounding the refuge. Sea otters, seals, and sea lions spend time along the coast and in the lagoons. Both sea otters and Steller's sea lions are listed as Threatened under the Endangered Species Act.

Lagoons

Recognizing that both Izembek and Kinzarof lagoons are essential to the wildlife is an imperative first recognized by the establishment of the Izembek Refuge in 1960. Brant fly back and forth between the lagoons to forage, Emperor geese use Kinzarof Lagoon while often foraging in the upland tundra area for crowberries; and the endangered Steller's eider's prefer Kinzarof. Last winter, Izembek Lagoon froze-over several times, making Kinzarof Lagoon particularly important for the survival of the wildlife. Both lagoons are essential to wildlife, and the Lagoon Complex comprises vital, high quality habitat for many species. Degradation or loss of this habitat complex cannot be mitigated

by offering distant uplands or areas not used by those species. Population declines will occur in many species that rely on this habitat complex. Such losses may be substantial.

Studies Detail the Harmful Impacts of the Road

In August 1999 the FWS prepared the King Cove Briefing Report. And once again in an unchanged affirmation of the 1982 conclusions found that the road alternative is contrary to the purposes of the refuge and foresaw unacceptable environmental impacts if a road was constructed on refuge lands through the wilderness area. The Service supported further study and consideration of other alternatives, such as a marine link, which would provide increased travel safety, economic growth and fewer ecological impacts. Other State and Federal studies of the same period also documented the road as the most destructive and costly alternative and similarly favored the marine ferry concept.

A June 2003 draft Environmental Impact Statement (EIS), conducted by the Army Corps of Engineers, examined the potential threats of the proposed road from King Cove to Cold Bay. The report stated that there is sufficient information available to conclude that the road alternative would not qualify as an environmentally preferable alternative. The report noted that the determination is based in part on the largest footprint (287.0 acres) among the alternatives. The report documented the potential scope of the construction, noting the need for 36.7 acres of placement of fill material in waters of the U.S. including wetlands, of which 2.09 acres are below HTL; 254 stream and drainage crossings requiring 8 bridges and 19 culverts across fish bearing streams. There would be direct, indirect and cumulative impacts on the lands and on wildlife...citing caribou, swans, bears and wolves.

The report also stated that if the road between King Cove and Cold Bay were completed, it would be open for travel by all residents, placing no restrictions on the numbers or types of vehicles. Estimates of traffic rates on the road are unavailable, but vehicular traffic is likely to be variable both on a daily and seasonal basis. Increased traffic is also expected beyond that needed for access to Cold Bay Airport (for example, the Peter Pan Seafood's Corporation has previously indicated that it would truck about 1 million pounds of products per year to the Cold Bay airport via the road). Increased traffic and transit by large and noisy vehicles would further exacerbate the impacts on waterfowl usage of those vital habitats, thereby increasing unnecessary stress and negative effects.

The report also noted that the road has the greatest potential of any alternative to adversely affect subsistence harvest due to its potential to create great competition between residents of Cold Bay and King Cove. Greater access could lead to distributional changes in wildlife, such as caribou, brown bear, and wolves. This impact on subsistence use due to enhanced access would be negative and potentially significant.

Other Native Stakeholders Oppose the Road

The potential damage to subsistence use is a primary reason that the Association of Village Council Presidents (AVCP), the recognized tribal organizations and non profit Alaska Native Regional Corporation for its 56 member indigenous Native villages within Western Alaska, has opposed the King Cove Road. In 1998, the AVCP passed a resolution opposing the road. On October 17, 2007, I received a letter from Myron Naneng, President of the AVCP reaffirming their opposition and citing their interest and concern for the critical habitat of our Pacific black brant that use the area for staging and feeding during their long and treacherous spring and fall migrations.

The resolution notes that “the people of the Y-K Delta are primary stakeholders of waterfowl, our customary, and traditional use of birds has long been used as part of our diet and culture and because of the destructive development and habitat loss conducted by those areas in the Pacific Flyway through out the 1960’s, 70s, and 80’s significantly affect waterfowl populations resulting in curtailing our subsistence hunters and gather’s practice.”

Congress already rejected a road and funded an alternative

Congress determined that a road through Izembek Wilderness is not in the public’s best interest when, in 1998, it passed the King Cove Health and Safety Act. With this legislation, Congress addressed King Cove residents’ health and safety concerns by providing \$37.5 million to upgrade King Cove’s medical facilities, improve the airstrip in King Cove, purchase a hovercraft, construct marine terminals in King Cove and Cold Bay, and build an unpaved road between the town of King Cove and the connecting marine terminal.

Congress reiterated its intention not to permit a road through Izembek’s designated Wilderness in the King Cove Health and Safety Act, Section 353:

In no instance may any part of such road pass over any land within the Congressionally-designated wilderness (d) All actions undertaken pursuant to this section must be in accordance with all other applicable laws.

After passage of the King Cove Health and Safety Act, Alaska Senator Ted Stevens sponsored a rider on an appropriations bill that directed a 17-mile road be built from King Cove to a hovercraft terminal. Construction for this road began in March, 2004. More than \$25 million dollars have been spent for this road, which remains unfinished. Construction costs continued to escalate as crews confronted numerous obstacles, including unstable volcanic soils in the area. Avoiding the unstable soils has meant rerouting the road onto the sensitive shores of Cold Bay, where winter ice scouring and spray will increase maintenance costs. All of that effort and additional cost remains puzzling to observers since it would move the existing ferry terminus in Lenard Harbor, which is only seven miles from King Cove, to a point 10 miles further away and requires longer transits across steep mountainous terrain where winter travel conditions would be made even more treacherous.

Hovercraft Ferry is as Successful as Congress Intended

A portion of the \$37.5 million in taxpayer funds was used to acquire and equip a hovercraft, a type of vehicle most often used by commercial and military operators in such conditions as ice floes, mudflats, beaches and tundra. Unique to the hovercraft is its ability to land without a traditional dock or harbor.

The near 100-foot hovercraft has been operating for about a year and in the past year has been used successfully in 15 medical evacuations helping King Cove residents cross the 20 miles across the bay to reach the Cold Bay airport. The hovercraft, powered by four MTU 2000 diesel engines, is the largest hovercraft ever built in the U.S. The craft seats 49 passengers and travels an average of 52 mph. On flat water with a light load, the hovercraft can maintain speeds in excess of 578 mph. In reasonable weather, fully loaded, cruise speed is around 40 mph and the hovercraft can complete the one way trip from King Cove to Cold Bay in 15 minutes. The hovercraft can operate routinely in waves of more than 6 feet and winds up to 46 mph.

Road Extension Would be Costly; Wouldn't Consistently Be Available.

The road now being proposed to extend the incomplete \$25 million 17 mile segment and connect King Cove and Cold Bay could be an additional cost to taxpayers that does not make sense. Due to high winds and drifting snow, roads in Cold Bay are difficult to keep open in winter months. Last year several roads in Cold Bay, including the current road to the airport, were closed due to the inability to keep the road plowed. Throughout the year, the cost of keeping another road open and maintained would require a significant financial increase of staff and equipment, as well as extravagant use of scarce materials such as gravel and fill.

Quality v. Quantity of Lands Offered for Exchange

The exchange lands being proposed would not provide habitat comparable to or able to compensate for loss or degradation of the Lagoons Complex. Indeed, no amount of exchange lands can compensate for the irreversible impacts a road would have on these globally significant and unique wildlife habitat values.

State Townships: The two townships offered by the State (approximately 43,000 acres) do not include comparable wetlands habitat. The southernmost state township is entirely uplands, with some bear denning habitat, but virtually no value for waterfowl. The more northern township has some wetlands with viable caribou and brown bear habitat, but is of little value for the many species of waterfowl found in the lagoons and isthmus wetlands complex. The state townships also have no current development threat, and offer minimal conservation benefit. They are located entirely outside the watershed of

the Izembek National Wildlife Refuge and will be costly to inventory and administer due to access limitations.

King Cove Corporation lands: Corporation owned lands offered along the eastern shore of Cold Bay (relinquished ANILCA selections, approximately 5,430 acres, are primarily uplands with little to no value for caribou or important waterfowl species, such as Pacific Brant, Emperor geese and Threatened Steller's eiders.

Lands offered in the Mortensen Lagoon parcel, approximately 10,800 acres, include wetlands with some swan and shorebird habitat value, but this area does not attract the high level levels of use by key species such as Pacific brant, Emperor goose or the Threatened Steller's eider compared to the Lagoons Complex. The FWS 1997 King Cove Road Briefing Report indicates that the Mortensen Lagoon area is a "medium use" area for Canada goose and Northern pintail, whereas the lagoons and isthmus complex is a "high-use" area for the Threatened Steller's eider and virtually the entire world's population of Pacific brant and Emperor geese. Additionally, the Mortensen Lagoon parcel contains significantly less tidelands, especially important for shorebirds, and is inadequate compensation for the tremendous impact a road would have on the critically important Lagoon Complex. Further, a road already bisects these Corporation lands, and will continue to be used, which likely precludes wilderness qualification and diminishes further the conservation value of these lands.

The "bookend" parcels at the mouth of Kinzarof Lagoon, about 2,500 acres, contain high waterfowl habitat value, but currently have no development threat. As such, these lands offer limited compensation. These parcels are located within the zone of influence of road construction, operation and maintenance and therefore may sustain diminished usage and reduction in value.

State Refuge Lands: The exchange proposal includes an offer to make Kinzarof Lagoon a State refuge. Although Kinzarof Lagoon is valuable from a conservation perspective historically Alaska has not made State Game Refuge management a priority. For example, Izembek State Game Refuge was established in 1972 and still has no management plan and virtually no state refuge personnel overseeing refuge activities. In state ownership, the future of Kinzarof Lagoon would remain in question and may sustain unavoidable negative impacts from road construction, operation and maintenance thereby limiting its benefit to Izembek refuge.

Legal Concerns

As currently written, H. R. 2801 also raises a number of legal and policy concerns. More specifically, before Congress adopted ANILCA in 1980, its committees and members spent hours debating the proper balance between access and conservation on the bill's conservation lands. The result was Title XI, the access and transportation title, which provides a process for authorizing the construction of transportation corridors through conservation lands like the Izembek Wilderness. That process requires the FWS to detail findings about the potential impacts of the road on the refuge that it would cross. Because the proposed road would bisect designated Wilderness, the process would also require presidential review and congressional approval of the proposed road corridor.

These important protections designed by Congress to balance access with the need to protect designated Wilderness would be stripped under these bills.

The bills would convey to the State fee title to the 206-acre road corridor through Wilderness, instead of merely an easement as the State originally requested. Conveying fee title to the State would not only allow road construction through the Wilderness, but opens the road corridor to possible future developments, such as pipelines. Although construction of a road under any circumstances would be bad news for the Izembek Wilderness, if the road proposal goes forward, the FWS would be better able to protect the wilderness area from excessive harm if an easement were conveyed to the State rather than full fee title to the road corridor. An easement would give the State the right to construct and maintain a road along the chosen route but would leave full ownership of the corridor under the management of the FWS.

Equally problematic is that the legislation would not provide for appraisals or valuation of land. Under existing law, the federal government must undertake an appraisal before proceeding with a land exchange, in order to ensure that the exchange is based on equal value; an exchange that is not based on equal value may proceed only if the Secretary determines that the exchange is in the public interest. FLPMA § 206; ANILCA § 1302(h). Most of the lands proposed to be exchanged under S. 1680 and H.R. 2801 have never been formally appraised or valued. If these bills become law, they likely never will be formally appraised or valued, as Section 4(d) (1) waives any such requirement. Without an appraisal, neither the landowners nor the public can effectively evaluate the fairness and relative benefits of the proposed exchange.

The bills provide (Sec. 4(c)(2)(B)) that support facilities for a road constructed under this subsection shall not be located on federally owned land in the Izembek NWR, but do not disclose what facilities will be needed or where they will be located. Such facilities could be substantial, and could potentially be located on State tide lands in the Kinzarof Lagoon or within lands to be conveyed to the Fish and Wildlife Service under the exchange agreement. Without treatment or specific parameters in the bills, these sites have no physical or environmental constraints and could be located in any number of sensitive areas, resulting in significant impacts to refuge values. If the road proposal moves forward it is imperative that the location, size and parameters of these sites be fully disclosed in the legislation and reasonable constraints invoked.

Other policy questions center on:

Section 4(c) (3) (C) would deem the as-yet undetermined road route to be compatible with the purposes for which the Izembek National Wildlife Refuge was established. This language would circumvent the existing requirement that any activity proposed within a National Wildlife Refuge be approved only if it is found to be compatible with the purposes for which the refuge was established. See 16 U.S.C. § 688dd. The compatibility review provides an important mechanism for the Fish and Wildlife Service to evaluate the impacts of proposed activity, such as construction and operation of a road,

wildlife, and habitat resources of the refuge. By bypassing this requirement, the bills remove important protection of existing law from a Wilderness area in a refuge.

Section 4(d)(2) would deem the use of existing roads and the construction of new roads on King Cove Corporation land located within the Izembek National Wildlife Refuge to access the proposed road to be consistent with ANCSA § 22(g) and not to interfere with the purposes for which the refuge was established. ANCSA § 22(g) applies the “compatibility” requirement to lands within certain National Wildlife Refuges that are conveyed to Native corporations pursuant to ANCSA. By bypassing the compatibility requirement on these lands, the bills remove an important protection of existing law.

Section 4(c)(3) provides for a multi-entity cooperative planning process for the proposed road across the Izembek Wilderness, and Section 4(c)(3)(D) provides that construction of the road along the route recommended by the Secretary pursuant to that process “is authorized in accordance with this Act.” This language could be used by road proponents to seek to avoid compliance with federal legal requirements – in addition to those that are explicitly waived – that usually govern construction of new roads.

Section 4(c)(4) provides for the reconveyance of land by the Secretary to the State or the King Cove Corporation if a court enjoins use or construction of the road, or if the State or the King Cove Corporation chooses not to proceed with construction of the road. There is no parallel provision for the reconveyance of land by the State or the King Cove Corporation to the United States. Land within designated Wilderness of the Izembek National Wildlife Refuge should not be conveyed outside the refuge; but if it is conveyed and road construction does not go forward, the land should be returned to the United States.

Section 4(g) provides that the Secretary must administer the land acquired pursuant to the land exchange “subject to valid existing rights.” Information about any valid existing rights must be disclosed and considered before the land exchange is approved; as such rights could subject the new Wilderness lands to incompatible access and other claims that may undermine their value as additions to the Izembek Wilderness.

For all of these and other reasons we oppose the land exchange and proposed road from King Cove to Cold Bay through Izembek National Wildlife Refuge’s lagoons complex and designated Wilderness. Thank you for this opportunity to bring these important concerns to the Committee.