

1 (3) apply to, or require a permit for, casual col-
2 lecting of a rock, mineral, or invertebrate or plant
3 fossil that is not protected under this subtitle;

4 (4) affect any land other than Federal land or
5 affect the lawful recovery, collection, or sale of paleon-
6 tological resources from land other than Federal land;

7 (5) alter or diminish the authority of a Federal
8 agency under any other law to provide protection for
9 paleontological resources on Federal land in addition
10 to the protection provided under this subtitle; or

11 (6) create any right, privilege, benefit, or entitle-
12 ment for any person who is not an officer or employee
13 of the United States acting in that capacity. No per-
14 son who is not an officer or employee of the United
15 States acting in that capacity shall have standing to
16 file any civil action in a court of the United States
17 to enforce any provision or amendment made by this
18 subtitle.

19 **SEC. 6312. AUTHORIZATION OF APPROPRIATIONS.**

20 There are authorized to be appropriated such sums as
21 may be necessary to carry out this subtitle.

22 **Subtitle E—Izembek National**
23 **Wildlife Refuge Land Exchange**

24 **SEC. 6401. DEFINITIONS.**

25 In this subtitle:

1 (1) *CORPORATION.*—*The term “Corporation”*
2 *means the King Cove Corporation.*

3 (2) *FEDERAL LAND.*—*The term “Federal land”*
4 *means—*

5 (A) *the approximately 206 acres of Federal*
6 *land located within the Refuge, as generally de-*
7 *scribed on the map; and*

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

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

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

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

18 (4) *NON-FEDERAL LAND.*—*The term “non-Fed-*
19 *eral land” means—*

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

23 (B) *the approximately 13,300 acres of land*
24 *owned by the Corporation (including approxi-*
25 *mately 5,430 acres of land for which the Cor-*

1 *poration shall relinquish the selection rights of*
2 *the Corporation under the Alaska Native Claims*
3 *Settlement Act (43 U.S.C. 1601 et seq.) as part*
4 *of the land exchange under section 6402(a)), as*
5 *generally depicted on the map.*

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

8 (6) *SECRETARY.*—*The term “Secretary” means*
9 *the Secretary of the Interior.*

10 (7) *STATE.*—*The term “State” means the State*
11 *of Alaska.*

12 (8) *TRIBE.*—*The term “Tribe” means the*
13 *Agdaagux Tribe of King Cove, Alaska.*

14 **SEC. 6402. LAND EXCHANGE.**

15 (a) *IN GENERAL.*—*Upon receipt of notification by the*
16 *State and the Corporation of the intention of the State and*
17 *the Corporation to exchange the non-Federal land for the*
18 *Federal land, subject to the conditions and requirements de-*
19 *scribed in this subtitle, the Secretary may convey to the*
20 *State all right, title, and interest of the United States in*
21 *and to the Federal land. The Federal land within the Refuge*
22 *shall be transferred for the purpose of constructing a single-*
23 *lane gravel road between the communities of King Cove and*
24 *Cold Bay, Alaska.*

1 **(b) COMPLIANCE WITH NATIONAL ENVIRONMENTAL**
2 **POLICY ACT OF 1969 AND OTHER APPLICABLE LAWS.—**

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

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

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

12 **(2) ENVIRONMENTAL IMPACT STATEMENT.—**

13 **(A) IN GENERAL.—***Not later than 60 days*
14 *after the date on which the Secretary receives no-*
15 *tification under subsection (a), the Secretary*
16 *shall initiate the preparation of an environ-*
17 *mental impact statement required under the Na-*
18 *tional Environmental Policy Act of 1969 (42*
19 *U.S.C. 4321 et seq.).*

20 **(B) REQUIREMENTS.—***The environmental*
21 *impact statement prepared under subparagraph*
22 *(A) shall contain—*

23 **(i) an analysis of—**

24 **(I) the proposed land exchange;**

25 *and*

1 (II) *the potential construction and*
2 *operation of a road between the com-*
3 *munities of King Cove and Cold Bay,*
4 *Alaska; and*

5 (i) *an evaluation of a specific road*
6 *corridor through the Refuge that is identi-*
7 *fied in consultation with the State, the City*
8 *of King Cove, Alaska, and the Tribe.*

9 (3) *COOPERATING AGENCIES.—*

10 (A) *IN GENERAL.—During the preparation*
11 *of the environmental impact statement under*
12 *paragraph (2), each entity described in subpara-*
13 *graph (B) may participate as a cooperating*
14 *agency.*

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

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

20 (ii) *the State;*

21 (iii) *the Aleutians East Borough of the*
22 *State;*

23 (iv) *the City of King Cove, Alaska;*

24 (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 subject*
5 *to any requirement under any Federal law (including regu-*
6 *lations) relating to the valuation, appraisal, or equalization*
7 *of land.*

8 (d) *PUBLIC INTEREST DETERMINATION.—*

9 (1) *CONDITIONS FOR LAND EXCHANGE.—Subject*
10 *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 the*
14 *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 Alaska*
23 *National Interest Lands Conservation Act (16*
24 *U.S.C. 3113)) of waterfowl by rural residents of*
25 *the State.*

1 (e) *KINZAROFF LAGOON.*—*The land exchange under*
2 *subsection (a) shall not be carried out before 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 cor-*
11 *ridor 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 land*
19 *exchange under subsection (a) shall be subject to any other*
20 *term or condition that the Secretary determines to be nec-*
21 *essary.*

22 **SEC. 6403. KING COVE ROAD.**

23 (a) *REQUIREMENTS RELATING TO USE, BARRIER CA-*
24 *BLES, 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 subtitle shall be used primarily for health*
5 *and safety purposes (including access to and*
6 *from the Cold Bay Airport) and only for non-*
7 *commercial purposes.*

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

15 (C) *REQUIREMENT OF AGREEMENT.*—*The*
16 *limitations of the use of the road described in*
17 *this paragraph shall be enforced in accordance*
18 *with an agreement entered into between the Sec-*
19 *retary and the State.*

20 (2) *REQUIREMENT OF BARRIER CABLE.*—*The*
21 *road described in paragraph (1)(A) shall be con-*
22 *structed to include a cable barrier on each side of the*
23 *road, as described in the record of decision entitled*
24 *“Mitigation Measure MM–11, King Cove Access*
25 *Project Final Environmental Impact Statement*

1 *Record of Decision” and dated January 22, 2004, un-*
2 *less a different type barrier is required as a mitiga-*
3 *tion measure in the Record of Decision for Final En-*
4 *vironmental Impact Statement required in section*
5 *6402(b)(2).*

6 (3) *REQUIRED DIMENSIONS AND DESIGN FEA-*
7 *TURES.—The road described in paragraph (1)(A)*
8 *shall—*

9 (A) *have a width of not greater than a sin-*
10 *gle lane, in accordance with the applicable road*
11 *standards of the State;*

12 (B) *be constructed with gravel;*

13 (C) *be constructed to comply with any spe-*
14 *cific design features identified in the Record of*
15 *Decision for Final Environmental Impact State-*
16 *ment required in section 6402(b)(2) as Mitiga-*
17 *tion Measures relative to the passage and migra-*
18 *tion of wildlife, and also the exchange of tidal*
19 *flows, where applicable, in accordance with ap-*
20 *plicable Federal and State design standards; and*

21 (D) *if determined to be necessary, be con-*
22 *structed to include appropriate safety pullouts.*

23 (b) *SUPPORT FACILITIES.—Support facilities for the*
24 *road described in subsection (a)(1)(A) shall not be located*
25 *within the Refuge.*

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

5 (d) *APPLICABLE LAW.*—*Nothing in this section*
6 *amends, or modifies the application of, section 1110 of the*
7 *Alaska National Interest Lands Conservation Act (16*
8 *U.S.C. 3170).*

9 (e) *MITIGATION PLAN.*—

10 (1) *IN GENERAL.*—*Based on the evaluation of*
11 *impacts determined through the completion of the en-*
12 *vironmental impact statement under section*
13 *6402(b)(2), the Secretary, in consultation with the en-*
14 *tities described in section 6402(b)(3)(B), shall develop*
15 *an enforceable mitigation plan.*

16 (2) *CORRECTIVE MODIFICATIONS.*—*The Secretary*
17 *may make corrective modifications to the mitigation*
18 *plan developed under paragraph (1) if—*

19 (A) *the mitigation standards required under*
20 *the mitigation plan are maintained; and*

21 (B) *the Secretary provides an opportunity*
22 *for public comment with respect to any proposed*
23 *corrective modification.*

24 (3) *AVOIDANCE OF WILDLIFE IMPACTS.*—*Road*
25 *construction shall adhere to any specific mitigation*

1 *measures included in the Record of Decision for Final*
2 *Environmental Impact Statement required in section*
3 *6402(b)(2) that—*

4 (A) *identify critical periods during the cal-*
5 *endar year when the refuge is utilized by wild-*
6 *life, especially migratory birds; and*

7 (B) *include specific mandatory strategies to*
8 *alter, limit or halt construction activities during*
9 *identified high risk periods in order to minimize*
10 *impacts to wildlife, and*

11 (C) *allow for the timely construction of the*
12 *road.*

13 (4) *MITIGATION OF WETLAND LOSS.—The plan*
14 *developed under this subsection shall comply with sec-*
15 *tion 404 of the Federal Water Pollution Control Act*
16 *(33 U.S.C. 1344) with regard to minimizing, to the*
17 *greatest extent practicable, the filling, fragmentation*
18 *or loss of wetlands, especially intertidal wetlands, and*
19 *shall evaluate mitigating effect of those wetlands*
20 *transferred in Federal ownership under the provisions*
21 *of this subtitle.*

22 **SEC. 6404. ADMINISTRATION OF CONVEYED LANDS.**

23 (1) *FEDERAL LAND.—Upon completion of the*
24 *land exchange under section 6402(a)—*

1 (A) *the boundary of the land designated as*
2 *wilderness within the Refuge shall be modified to*
3 *exclude the Federal land conveyed to the State*
4 *under the land exchange; and*

5 (B) *the Federal land located on Sitkinak Is-*
6 *land that is withdrawn for use by the Coast*
7 *Guard shall, at the request of the State, be trans-*
8 *ferred by the Secretary to the State upon the re-*
9 *linquishment or termination of the withdrawal.*

10 (2) *NON-FEDERAL LAND.*—*Upon completion of*
11 *the land exchange under section 6402(a), the non-Fed-*
12 *eral land conveyed to the United States under this*
13 *subtitle shall be—*

14 (A) *added to the Refuge or the Alaska Pe-*
15 *ninsula National Wildlife Refuge, as appro-*
16 *priate, as generally depicted on the map; and*

17 (B) *administered in accordance with the*
18 *laws generally applicable to units of the Na-*
19 *tional Wildlife Refuge System.*

20 (3) *WILDERNESS ADDITIONS.*—

21 (A) *IN GENERAL.*—*Upon completion of the*
22 *land exchange under section 6402(a), approxi-*
23 *mately 43,093 acres of land as generally depicted*
24 *on the map shall be added to—*

1 (i) *the Izembek National Wildlife Ref-*
2 *uge Wilderness; or*

3 (ii) *the Alaska Peninsula National*
4 *Wildlife Refuge Wilderness.*

5 (B) *ADMINISTRATION.—The land added as*
6 *wilderness under subparagraph (A) shall be ad-*
7 *ministered by the Secretary in accordance with*
8 *the Wilderness Act (16 U.S.C. 1131 et seq.) and*
9 *other applicable laws (including regulations).*

10 **SEC. 6405. FAILURE TO BEGIN ROAD CONSTRUCTION.**

11 (a) *NOTIFICATION TO VOID LAND EXCHANGE.—If the*
12 *Secretary, the State, and the Corporation enter into the*
13 *land exchange authorized under section 6402(a), the State*
14 *or the Corporation may notify the Secretary in writing of*
15 *the intention of the State or Corporation to void the ex-*
16 *change if construction of the road through the Refuge has*
17 *not begun.*

18 (b) *DISPOSITION OF LAND EXCHANGE.—Upon the lat-*
19 *ter of the date on which the Secretary receives a request*
20 *under subsection (a), and the date on which the Secretary*
21 *determines that the Federal land conveyed under the land*
22 *exchange under section 6402(a) has not been adversely im-*
23 *pacted (other than any nominal impact associated with the*
24 *preparation of an environmental impact statement under*

1 *section 6402(b)(2)), the land exchange shall be null and*
2 *void.*

3 *(c) RETURN OF PRIOR OWNERSHIP STATUS OF FED-*
4 *ERAL AND NON-FEDERAL LAND.—If the land exchange is*
5 *voided under subsection (b)—*

6 *(1) the Federal land and non-Federal land shall*
7 *be returned to the respective ownership status of each*
8 *land prior to the land exchange;*

9 *(2) the parcel of the Federal land that is located*
10 *in the Refuge shall be managed as part of the Izembek*
11 *National Wildlife Refuge Wilderness; and*

12 *(3) each selection of the Corporation under the*
13 *Alaska Native Claims Settlement Act (43 U.S.C. 1601*
14 *et seq.) that was relinquished under this subtitle shall*
15 *be reinstated.*

16 **SEC. 6406. EXPIRATION OF LEGISLATIVE AUTHORITY.**

17 *(a) IN GENERAL.—Any legislative authority for con-*
18 *struction of a road shall expire at the end of the 7-year*
19 *period beginning on the date of the enactment of this sub-*
20 *title unless a construction permit has been issued during*
21 *that period.*

22 *(b) EXTENSION OF AUTHORITY.—If a construction*
23 *permit is issued within the allotted period, the 7-year au-*
24 *thority shall be extended for a period of 5 additional years*
25 *beginning on the date of issuance of the construction permit.*

1 (c) *EXTENSION OF AUTHORITY AS RESULT OF LEGAL*
2 *CHALLENGES.—*

3 (1) *IN GENERAL.—*Prior to the issuance of a con-
4 struction permit, if a lawsuit or administrative ap-
5 peal is filed challenging the land exchange or con-
6 struction of the road (including a challenge to the
7 NEPA process, decisions, or any required permit
8 process required to complete construction of the road),
9 the 7-year deadline or the five-year extension period,
10 as appropriate, shall be extended for a time period
11 equivalent to the time consumed by the full adjudica-
12 tion of the legal challenge or related administrative
13 process.

14 (2) *INJUNCTION.—*After a construction permit
15 has been issued, if a court issues an injunction
16 against construction of the road, the 7-year deadline
17 or 5-year extension, as appropriate, shall be extended
18 for a time period equivalent to time period that the
19 injunction is in effect.

20 (d) *APPLICABILITY OF SECTION 6405.—*Upon the expi-
21 ration of the legislative authority under this section, if a
22 road has not been constructed, the land exchange shall be
23 null and void and the land ownership shall revert to the
24 respective ownership status prior to the land exchange as
25 provided in section 6405.