

Gravel on the Isthmus: The Decades-Long Fight to Save Izembek

By Dana Johnson

Nestled at the far reaches of the Alaska Peninsula, the Izembek Wilderness is a remote and ecologically critical stretch of land where a quarter-million migratory birds—including nearly every Pacific black brant, Emperor goose, and Steller’s Eider in the world—congregate in the fall. They are drawn to a diverse freshwater wetlands complex and to the Izembek Lagoon, a 150-square-mile eelgrass community providing an undersea food and nursery mecca for fish and invertebrates. Izembek is known internationally as a Wetland of International Importance, and the Department of Interior has called it “the most important concentration point for waterfowl in Alaska.” And with the climate heating up, an increasing number of these once migratory birds are making Izembek their year-round refuge.



Kristine Sowl/USFWS

the Joshua Green River Valley as caribou make their annual trek into the Wilderness, overwintering until spring takes them north once again to their calving grounds. Hundreds of sea otters swim with their young in the Lagoon, occasionally in the vicinity of migrating orcas, gray whales, and minke whales. Harbor seals lounge on its sandbars. Izembek is a hub of natural diversity and wildness, protected in large part because of its seclusion and lack of surrounding development.

But, for decades, a battle to blaze a 12-mile road right through the center of this ecological hub has persistently waged. Its coastline filled with commercial fishing boats, King Cove is an isolated Aleut town on the far side of the Wilderness, and it is home to the Peter Pan Seafoods cannery, a

subsidiary of Maruha Nichiro—a Japanese company and one of the largest multinational seafood corporations in the world. King Cove has long pushed for a road to “link together two communities having one of the State’s premier fishing ports/harbors (including North America’s largest salmon cannery) in King Cove with one of the State’s premier airports at Cold Bay.” King Cove and a supportive Alaskan Congressional delegation consistently and resoundingly touted a commercial justification for the road. Recently, the messaging changed. The commercial narrative was dropped and replaced with a narrative of public

The Wilderness is also home to massive brown bears, with as many as nine per mile lumbering through its streams during peak summer salmon runs. Later in the year, the bears retreat to world-renowned denning habitat nestled in the steep slopes of

In This Issue...

Izembek Victory	1
Executive Director's Message	2
On the Watch	4
In the Courts	6
In Congress	7

... and More

Izembek Victory continued on page 3

Izembek Victory (continued from page 1)

health and safety—that the road was needed for evacuation during medical emergencies, a claim that has been hotly disputed by many, including the doctor who was in charge of King Cove medical evacuations for over a decade. He called evacuation of medical patients along a remote 40-mile gravel road in bad weather “suicidal,” and various reports indicate air and water transport to be viable, and in many cases better, options.

Over the years, after various intensive studies, the Department of Interior consistently found that cutting a road through Izembek would “lead to significant degradation of irreplaceable ecological resources,” and the “presence of a road, vehicular traffic, and intensified human use could alter migratory patterns” of the “nearly 6,000-7,000” caribou that migrate across the isthmus where the new road would be constructed. The road would “provide greater access into a relatively remote, undisturbed region in the Joshua Green River drainage and in key bear use areas,” and “[b]ears could be expected to change their behavior ... and might abandon some traditional use areas.” It even called the road construction proposal “the greatest known potential threat to wildlife and wilderness values within the Izembek complex.”

Even though the issue had been studied ad-nauseam for decades, political forces pressed on, and Congress once again instructed the Department of Interior, this time with former Secretary Jewell at the helm, to investigate whether a land-exchange to facilitate the road construction would be in the public interest. Predictably, Secretary Jewell found that road construction through the Izembek Wilderness and Refuge would significantly and adversely affect the Refuge, impacts to the remaining wilderness in Izembek would be “irreparabl[e] and significant,” and the exchange of State-owned lands and King Cove Corporation-owned lands would not offset those impacts. She also found that “reasonable and viable transportation alternatives exist.”

The State of Alaska and King Cove Corporation challenged Jewell’s decision in federal court and lost. They appealed to the Ninth Circuit but then abruptly and voluntarily pulled their case just before oral argument.

Que a few winks and nods between Donald Trump, former Secretary Zinke, Senator Lisa Murkowski of Alaska, and King Cove Corporation, and the reasons behind the sudden distaste for litigation comes into focus. On January 22, 2018, during the government shut-down, Zinke entered into a behind-the-scenes “Agreement for the Exchange of Lands” with King Cove Corporation whereby Zinke committed the federal government to an “equal value” land exchange, promising to swap a 12-mile corridor through the middle of the Izembek Wilderness for lands held by King Cove Corporation.

Wilderness Watch and eight other conservation groups challenged the agreement as illegal on multiple grounds. Pointing to a sturdy line of caselaw addressing situations where an agency reverses course from prior policies after a change in presidential administration, a federal judge agreed. The court found that these administrative about-faces are only permissible when the agency acknowledges it is changing position, shows the change is legally permissible, believes the new policy is better, and provides a reasoned explanation for why it is disregarding facts and circumstances underlying the old policy. Zinke did not do those things. Instead, the Court found “the Secretary reverse[d] the previous policy of the [Department of Interior] without any reasoned explanation,” without discussion of “the existence of viable alternatives to a road,” and “the Secretary ignore[d] the agency’s prior determinations concerning the road’s environmental impact on Izembek[.]” In fact, “the Exchange Agreement does not address [] prior finding[s] or contain any discussion of the environmental impact of the road.” Secretary Zinke “did not provide even a ‘conclusory statement’ acknowledging its policy reversal, but rather ‘simply discarded’ its prior factual findings without any explanation.”

End of the road? Not yet. Even though Zinke has ridden his horse off into the sunset, the Trump administration marches on. On May 24, the Department of Interior appealed the lower court’s ruling to the Ninth Circuit. Sometimes that doesn’t mean much—federal agencies often file “placeholder” appeals of adverse lower court decisions to ensure they meet the appeal deadline while the approval process makes its slow way through the Solicitor General’s office. Oftentimes the agencies withdraw their appeal after getting the no-go signal from the Solicitor. Sometimes the appeals stick. For now, we just have to wait to see where this one will fall.

Either way, we can be certain that this fight is not over—at least not as long as Trump and Murkowski have their eyes set on a “thriving economic future.” And, there is no comfort in Zinke’s absence. David Bernhardt, Zinke’s replacement, was a key figure in arranging the land swap with King Cove in 2017, and he is well known for his efforts as a lobbyist for the state of Alaska and Big Oil to bring oil development to the Arctic National Wildlife Refuge. Whatever the next chapter, Wilderness Watch will continue to defend these remarkable wild places from development and exploitation. The voices of money and commerce always speak loudly. We’re here to make sure the interests of the caribou walking its ancient path across the Izembek isthmus are not lost in the chorus. 🐾

Dana Johnson is Wilderness Watch’s staff attorney.