

110TH CONGRESS
1ST SESSION

H. R. 3223

To amend the Coastal Zone Management Act of 1972 to establish a grant program to ensure coastal access for commercial and recreational fishermen and other water-dependent coastal-related businesses, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 30, 2007

Mr. ALLEN (for himself and Mrs. CAPPS) introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To amend the Coastal Zone Management Act of 1972 to establish a grant program to ensure coastal access for commercial and recreational fishermen and other water-dependent coastal-related businesses, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Keep Our Waterfronts
5 Working Act of 2007”.

1 **SEC. 2. WORKING WATERFRONT PROGRAM.**

2 The Coastal Zone Management Act of 1972 (16
3 U.S.C. 1451 et seq.) is amended by adding at the end
4 the following:

5 **“SEC. 320. WORKING WATERFRONT GRANT PROGRAM.**

6 “(a) FINDINGS AND PURPOSE.—

7 “(1) The Congress finds the following:

8 “(A) Water-dependent commercial activi-
9 ties are the economic and cultural heart of
10 many coastal communities. These activities in-
11 clude commercial fishing, recreational fishing,
12 tourism, aquaculture, boat-building, transpor-
13 tation, and many other water-dependent busi-
14 nesses.

15 “(B) Water-dependent commercial activi-
16 ties depend on coastal access in the form of
17 docks, wharfs, lifts, wet and dry marinas, boat
18 ramps, boat hauling, repair, and construction
19 facilities, commercial fishing facilities, and
20 other support structures on, over, or adjacent
21 to navigable bodies of water.

22 “(C) The coastal zone across the United
23 States is experiencing rising property values
24 and taxes, and related development pressure, as
25 more people move to the coastal zone, and as

1 coastal areas experience a demographic shift fa-
2 voring older and wealthier citizens.

3 “(D) Privately owned access areas for
4 water-dependent commercial activity in many
5 States are under increasing threat from private
6 residential development and other conversion.

7 “(E) Loss of access for water-dependent
8 commercial activity would have economically
9 and culturally devastating consequences for
10 many coastal communities.

11 “(2) The purpose of this section is to preserve,
12 protect, and expand coastal access for persons en-
13 gaged in water-dependent commercial activities in-
14 cluding commercial fishing, recreational fishing,
15 aquaculture, boat-building, or other water-dependent
16 coastal-related businesses.

17 “(b) GRANT PROGRAM.—

18 “(1) The Secretary shall establish a Working
19 Waterfront Grant Program, in cooperation with ap-
20 propriate State, regional, and other units of govern-
21 ment, under which the Secretary may make a grant
22 to any coastal state for the purpose of implementing
23 a working waterfront plan approved by the Secretary
24 under subsection (c).

1 “(2) Subject to the availability of appropria-
2 tions, the Secretary shall award matching grants
3 under the program through a regionally equitable,
4 competitive funding process.

5 “(3) In awarding a grant to an eligible coastal
6 State, the Secretary shall consider—

7 “(A) the economic and cultural significance
8 of working waterfront to the coastal state;

9 “(B) the working waterfront and needs of
10 the coastal state as outlined in the working wa-
11 terfront plan submitted by the coastal state
12 under subsection (c);

13 “(C) the demonstrated working waterfront
14 needs of the coastal state as outlined by a
15 working waterfront plan approved for the coast-
16 al state under subsection (c), and the value of
17 the proposed project for the implementation of
18 such Plan;

19 “(D) the ability to successfully leverage
20 funds among participating entities, including
21 Federal programs, regional organizations, State
22 and other government units, landowners, cor-
23 porations, or private organizations;

24 “(E) the potential for rapid turnover in the
25 ownership of working waterfront in the coastal

1 state, and where applicable the need for coastal
2 states to respond quickly when properties in ex-
3 isting or potential working waterfront areas or
4 public access areas as identified in the working
5 waterfront plan submitted by the coastal state
6 come under threat or become available; and

7 “(F) the impact of the proposed project on
8 the coastal ecosystem.

9 “(4) The Secretary shall approve or reject an
10 application for such a grant within 30 days after re-
11 ceiving an application for the grant.

12 “(c) WORKING WATERFRONT PLANS.—

13 “(1) To qualify for a grant under subsection
14 (b), a coastal state must submit and have approved
15 by the Secretary a comprehensive working water-
16 front plan in accordance with this subsection.

17 “(2) Such plan—

18 “(A) must provide for preservation and ex-
19 pansion of access to coastal waters to persons
20 engaged in commercial fishing, recreational
21 fishing, or other water-dependent coastal-re-
22 lated business;

23 “(B) shall include—

1 “(i) an assessment of the economic,
2 social, and cultural value of working water-
3 front to the coastal state;

4 “(ii) a description of relevant State
5 and local laws and regulations affecting
6 working waterfront in the geographic areas
7 identified in the working waterfront plan;

8 “(iii) identification of geographic
9 areas where working waterfronts are cur-
10 rently under threat of conversion to uses
11 incompatible with commercial fishing, rec-
12 reational fishing, or other water-dependent
13 coastal-related business, and the level of
14 that threat;

15 “(iv) identification of geographic areas
16 appropriate for working waterfronts where
17 working waterfronts are not currently
18 available, and, where appropriate, an as-
19 sessment of the environmental impacts of
20 any expansion or new development of
21 working waterfronts on the coastal eco-
22 system;

23 “(v) identification of other working
24 waterfront needs including improvements

1 to existing working waterfronts and work-
2 ing waterfront areas;

3 “(vi) for areas identified under
4 clauses (iii), (iv) and (v), identification of
5 current availability and potential for ex-
6 pansion of public access to coastal waters;

7 “(vii) a strategic and prioritized plan
8 for the preservation, expansion, and im-
9 provement of working waterfronts in the
10 coastal state, including where appropriate
11 provisions for the preservation and expan-
12 sion of public access to coastal waters; and

13 “(viii) a description of the degree of
14 community support for such strategic plan;
15 and

16 “(C) may be part of the management pro-
17 gram approved under section 306.

18 “(3) A working waterfront plan—

19 “(A) shall be effective for purposes of this
20 section for the 5-year period beginning on the
21 date it is approved by the Secretary; and

22 “(B) must be updated and re-approved by
23 the Secretary before the end of such period.

1 “(4) The Secretary may award planning grants
2 to coastal states for the purpose of developing or re-
3 vising comprehensive working waterfront plans.

4 “(d) USES, TERMS, AND CONDITIONS.—

5 “(1) Each grant made by the Secretary under
6 this section shall be subject to such terms and condi-
7 tions as may be appropriate to ensure that the grant
8 is used for purposes consistent with this section.

9 “(2) A grant under this section may be used—

10 “(A) to acquire a working waterfront, or
11 an interest in a working waterfront; or

12 “(B) to make improvements to a working
13 waterfront, including the construction or repair
14 of wharfs, boat ramps, or related facilities.

15 “(e) PUBLIC ACCESS REQUIREMENT.—A working
16 waterfront project funded by grants made under this sec-
17 tion must provide for expansion or improvement of public
18 access to coastal waters at or in the vicinity of a working
19 waterfront, except for commercial fishing or other indus-
20 trial access points where the coastal state determines that
21 public access would be unsafe.

22 “(f) LIMITATIONS.—

23 “(1) Except as provided in paragraph (2), a
24 grant awarded under this section may be used to
25 purchase working waterfront or an interest in work-

1 ing waterfront, including an easement, only from a
2 willing seller and at fair market value.

3 “(2) A grant awarded under this section may
4 be used to acquire working waterfront or an interest
5 in working waterfront at less than fair market value
6 only if the owner certifies to the Secretary that the
7 sale is being entered into willingly and without coer-
8 cion.

9 “(3) No Federal, State, or local entity may ex-
10 ercise the power of eminent domain to secure title to
11 any property or facilities in connection with a
12 project carried out under this section.

13 “(g) ALLOCATION OF GRANTS TO LOCAL GOVERN-
14 MENTS AND OTHER ENTITIES.—

15 “(1) Subject to the approval of the Secretary,
16 a coastal state may, as part of an approved working
17 waterfront plan, designate as a qualified holder any
18 unit of local government or nonprofit organization.

19 “(2) A coastal state or a qualified holder des-
20 ignated by a coastal state that is the recipient of a
21 grant made under this section may allocate to a unit
22 of local government, non-profit organization, fishing
23 cooperative, or other entity, a portion of any grant
24 made under this section for the purpose of carrying
25 out this section, except that such an allocation shall

1 not relieve the coastal state of the responsibility for
2 ensuring that any funds so allocated are applied in
3 furtherance of the coastal state's approved working
4 waterfront plan.

5 “(3) A qualified holder may hold title to or in-
6 terest in property acquired under this section, except
7 that—

8 “(A) all persons holding title to or interest
9 in working waterfront affected by a grant under
10 this section, including a qualified holder, private
11 citizen, private business, non-profit organiza-
12 tion, fishing cooperative, or other entity, shall
13 enter into a working waterfront covenant;

14 “(B) such covenant shall be held by the
15 coastal state or a qualified holder designated
16 under paragraph (1);

17 “(C) if the coastal state determines, on the
18 record after an opportunity for a hearing, that
19 the working waterfront covenant has been vio-
20 lated—

21 “(i) all right, title, and interest in and
22 to the working waterfront covered by such
23 covenant shall, except as provided in sub-
24 paragraph (D), revert to the coastal state;
25 and

1 “(ii) the coastal state shall have the
2 right of immediate entry onto the working
3 waterfront.

4 “(D) If a Coastal State makes a deter-
5 mination under subparagraph (C), the Coastal
6 State may convey or authorize the qualified
7 holder to convey the working waterfront or in-
8 terest in working waterfront to another quali-
9 fied holder.

10 “(h) MATCHING CONTRIBUTIONS.—

11 “(1) Except as provided in paragraph (2), the
12 Secretary shall require that each coastal state that
13 receives a grant under this section, or a qualified
14 holder designated by that coastal state under sub-
15 section (e), shall provide matching funds in an
16 amount equal to at least 25 percent of the total cost
17 of the project carried out with the grant.

18 “(2) The Secretary may waive the application
19 of paragraph (1) for any qualified holder that is an
20 underserved community, a community that has an
21 inability to draw on other sources of funding because
22 of the small population or low income of the commu-
23 nity, or for other reasons the Secretary considers ap-
24 propriate.

1 “(3) As a condition of receipt of a grant under
2 this section, the Secretary shall require that a coast-
3 al state provide to the Secretary such assurances as
4 the Secretary determines are sufficient to dem-
5 onstrate that the share of the cost of each eligible
6 project that is not funded by the grant awarded
7 under this section has been secured.

8 “(4) If financial assistance under this section
9 represents only a portion of the total cost of a
10 project, funding from other Federal sources may be
11 applied to the cost of the project. Each portion shall
12 be subject to match requirements under the applica-
13 ble provision of law.

14 “(5) The Secretary shall treat as non-Federal
15 match the value of a working waterfront or interest
16 in a working waterfront, including conservation and
17 other easements, that is held in perpetuity by a
18 qualified holder, if the working waterfront or inter-
19 est is identified in the application for the grant and
20 acquired by the qualified holder within 3 years be-
21 fore submission of the application, or within 3 years
22 after the submission of the application and before
23 the end of the grant award period. Such value shall
24 be determined by an appraisal performed at such

1 time before the award of the grant as the Secretary
2 considers appropriate.

3 “(6) The Secretary shall treat as non-Federal
4 match the costs associated with acquisition of a
5 working waterfront or an interest in a working wa-
6 terfront, and the costs of restoration, enhancement,
7 or other improvement to a working waterfront, if the
8 activities are identified in the project application and
9 the costs are incurred within the period of the grant
10 award, or, for working waterfront described in para-
11 graph (5), within the same time limits described in
12 that paragraph. These costs may include either cash
13 or in-kind contributions.

14 “(i) LIMIT ON ADMINISTRATIVE COSTS.—No more
15 than 5 percent of the funds made available to the Sec-
16 retary under this section may be used by the Secretary
17 for planning or administration of the program under this
18 section

19 “(j) OTHER TECHNICAL AND FINANCIAL ASSIST-
20 ANCE.—The Secretary shall—

21 “(1) assist coastal states in identifying and ob-
22 taining other sources of available Federal technical
23 and financial assistance for the development and re-
24 vision of a working waterfront plan and the imple-

1 mentation of an approved working waterfront plan;
2 and

3 “(2) provide technical assistance to States for
4 the development and revision of comprehensive work-
5 ing waterfront plans, which may include, subject to
6 the availability of appropriations, planning grants
7 and assistance and feasibility studies.

8 “(k) REPORTS.—

9 “(1) The Secretary shall—

10 “(A) develop performance measures to
11 evaluate and report on the effectiveness of the
12 program under this section in accomplishing the
13 purpose of this section; and

14 “(B) submit to Congress a biennial report
15 that includes such evaluations, an account of all
16 expenditures, and descriptions of all projects
17 carried out using grants awarded under this
18 section.

19 “(2) The Secretary may submit the biennial re-
20 port under paragraph (1)(B) by including it in the
21 biennial report required under section 316.

22 “(l) AUTHORIZATION OF APPROPRIATIONS.—There
23 are authorized to be appropriated to the Secretary to carry
24 out this section \$25,000,000 for fiscal year 2008,

1 \$50,000,000 for fiscal year 2009, and \$75,000,000 for fis-
2 cal year 2010.

3 “(m) DEFINITIONS.—In this section:

4 “(1) The term ‘qualified holder’ means a coast-
5 al state or a unit of local or coastal state govern-
6 ment or a non-profit organization designated by a
7 coastal state under subsection (e).

8 “(2) The term ‘Secretary’ means the Secretary,
9 acting through the National Oceanic and Atmos-
10 pheric Administration.

11 “(3) The term ‘working waterfront’ means real
12 property (including support structures over water
13 and other facilities) that provides access to coastal
14 waters to persons engaged in commercial fishing,
15 recreational fishing business, or other water-depend-
16 ent coastal-related business and is used for, or that
17 supports, commercial fishing, recreational fishing, or
18 other water-dependent coastal-related business.

19 “(4) The term ‘working waterfront covenant’
20 means an agreement in recordable form between the
21 owner of working waterfront and one or more quali-
22 fied holders, that provides such assurances as the
23 Secretary may require that—

24 “(A) the title to or interest in the working
25 waterfront will be held by a grant recipient or

1 qualified holder in perpetuity, except as pro-
2 vided in subparagraph (C);

3 “(B) the working waterfront will be man-
4 aged in a manner that is consistent with the
5 purposes for which the property is acquired
6 pursuant to this section, and the property will
7 not be converted to any use that is inconsistent
8 with the purpose of this section;

9 “(C) if the title to or interest in the work-
10 ing waterfront is sold or otherwise exchanged—

11 “(i) all working waterfront owners
12 and qualified holders involved in such sale
13 or exchange shall accede to such agree-
14 ment; or

15 “(ii) funds equal to the fair market
16 value of the working waterfront or interest
17 in working waterfront shall be paid to the
18 Secretary by parties to the sale or ex-
19 change, and such funds shall, at the dis-
20 cretion of the Secretary, be paid to the
21 coastal state in which the working water-
22 front is located for use in the implementa-
23 tion of the working waterfront plan of the
24 State approved by the Secretary under this
25 section; and

1 “(D) such covenant is subject to enforce-
2 ment and oversight by the coastal state or by
3 another person as determined appropriate by
4 the Secretary.”.

○