

114TH CONGRESS  
2D SESSION

# H. R. 5277

To amend the Coastal Zone Management Act of 1972 to establish a Working Waterfront Task Force and a working waterfronts grant program, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 18, 2016

Ms. PINGREE (for herself, Mr. WITTMAN, and Mrs. CAPPS) introduced the following bill; which was referred to the Committee on Natural Resources

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## A BILL

To amend the Coastal Zone Management Act of 1972 to establish a Working Waterfront Task Force and a working waterfronts grant program, 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 America’s Water-  
5 fronts Working Act”.

6 **SEC. 2. WORKING WATERFRONTS GRANT PROGRAM.**

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

1 **“SEC. 320. WORKING WATERFRONTS GRANT PROGRAM.**

2 “(a) FINDINGS AND PURPOSE.—The Congress finds  
3 the following:

4 “(1) FINDINGS.—

5 “(A) Water-dependent commercial activi-  
6 ties are the economic and cultural heart of  
7 many coastal communities. These activities in-  
8 clude commercial fishing, recreational fishing  
9 businesses, tourism, aquaculture, boatbuilding,  
10 transportation, and many other water-depend-  
11 ent businesses.

12 “(B) Water-dependent commercial activi-  
13 ties depend on coastal access in the form of—

14 “(i) docks, wharfs, boat lifts, wet and  
15 dry marinas, and boat ramps;

16 “(ii) boat hauling, repair, and con-  
17 struction facilities;

18 “(iii) commercial fishing facilities; and

19 “(iv) other support structures on,  
20 over, or adjacent to navigable bodies of  
21 water.

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

1 areas experience a demographic shift favoring  
2 wealthier individuals.

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) PURPOSE.—The purpose of this section is  
12 to preserve and protect coastal access for persons  
13 engaged in water-dependent commercial activities,  
14 including commercial fishing, recreational fishing  
15 businesses, aquaculture, boatbuilding, or other  
16 water-dependent coastal-related businesses.

17 “(b) WORKING WATERFRONT TASK FORCE.—

18 “(1) ESTABLISHMENT AND FUNCTIONS.—The  
19 Secretary of the Interior shall establish a task force  
20 to identify and address critical needs with respect to  
21 working waterfronts.

22 “(2) MEMBERSHIP.—The members of the task  
23 force shall be appointed by the Secretary of the Inte-  
24 rior, and shall include—

1           “(A) experts in the unique economic, so-  
2           cial, cultural, ecological, geographic, and re-  
3           source concerns of working waterfronts; and

4           “(B) representatives from the National  
5           Oceanic and Atmospheric Administration’s  
6           Coastal Services Center, the United States Fish  
7           and Wildlife Service, the Department of Agri-  
8           culture, the Environmental Protection Agency,  
9           the United States Geological Survey, the Navy,  
10          the National Marine Fisheries Service, and such  
11          other Federal agencies as the Secretary con-  
12          siders appropriate.

13          “(3) FUNCTIONS.—The task force shall—

14                 “(A) identify and prioritize critical needs  
15                 with respect to working waterfronts in States  
16                 that have a management program approved by  
17                 the Secretary of Commerce pursuant to section  
18                 306, in the areas of—

19                         “(i) economic and cultural importance  
20                         of working waterfronts to communities;

21                         “(ii) changing environments and  
22                         threats working waterfronts face from en-  
23                         vironment changes, trade barriers, and  
24                         marketplace variables; and

1                   “(iii) identifying working waterfronts  
2                   and highlighting them within communities;

3                   “(B) outline options to address such crit-  
4                   ical needs;

5                   “(C) identify Federal agencies that are re-  
6                   sponsible under existing law for addressing such  
7                   critical needs; and

8                   “(D) recommend Federal agencies best  
9                   suited to address any critical needs for which  
10                  no agency is responsible under existing law.

11                  “(4) INFORMATION TO BE CONSIDERED.—In  
12                  identifying and prioritizing policy gaps pursuant to  
13                  paragraph (3), the task force shall consider the find-  
14                  ings and recommendations contained in section VI of  
15                  the report entitled ‘The Sustainable Working Water-  
16                  fronts Toolkit: Final Report’, dated March 2013.

17                  “(5) REPORT.—Not later than 18 months after  
18                  the date of the enactment of this section, the task  
19                  force shall submit a report to Congress on its find-  
20                  ings.

21                  “(6) IMPLEMENTATION.—The head of each  
22                  Federal agency identified in the report pursuant to  
23                  paragraph (3)(C) shall take such action as is nec-  
24                  essary to implement the recommendations contained

1 in the report by not later than 1 year after the date  
2 of the issuance of the report.

3 “(c) WORKING WATERFRONT GRANT PROGRAM.—

4 “(1) The Secretary shall establish a Working  
5 Waterfront Grant Program, in cooperation with ap-  
6 propriate State, regional, and other units of govern-  
7 ment, under which the Secretary may make a grant  
8 to any coastal state for the purpose of implementing  
9 a working waterfront plan approved by the Secretary  
10 under subsection (d).

11 “(2) Subject to the availability of appropria-  
12 tions, the Secretary shall award matching grants  
13 under the program to coastal states with approved  
14 working waterfront plans through a regionally equi-  
15 table, competitive funding process in accordance  
16 with the following:

17 “(A) The Governor, or the lead agency  
18 designated by the Governor for coordinating the  
19 implementation of this section, where appro-  
20 priate in consultation with the appropriate local  
21 government, shall determine that the applica-  
22 tion is consistent with the State’s or territory’s  
23 approved coastal zone plan, program, and poli-  
24 cies prior to submittal to the Secretary.

1           “(B) In developing guidelines under this  
2 section, the Secretary shall consult with coastal  
3 states, other Federal agencies, and other inter-  
4 ested stakeholders with expertise in working  
5 waterfront planning.

6           “(C) Coastal states may allocate grants to  
7 local governments, agencies, or nongovernment  
8 organizations eligible for assistance under this  
9 section.

10           “(3) In awarding a grant to a coastal state, the  
11 Secretary shall consider—

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

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

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

1           “(D) the potential for rapid turnover in  
2           the ownership of working waterfront in the  
3           coastal state, and where applicable the need for  
4           coastal states to respond quickly when prop-  
5           erties in existing or potential working water-  
6           front areas or public access areas as identified  
7           in the working waterfront plan submitted by  
8           the coastal state come under threat or become  
9           available;

10           “(E) the impact of the working waterfront  
11           plan approved for the coastal state under sub-  
12           section (d) on the coastal ecosystem and the  
13           users of the coastal ecosystem; and

14           “(F) the extent of the historic connection  
15           between working waterfronts and the local com-  
16           munities within the coastal state.

17           “(4) The Secretary shall approve or reject an  
18           application for such a grant within 60 days after re-  
19           ceiving an application for the grant.

20           “(d) WORKING WATERFRONT PLANS.—

21           “(1) To be eligible for a grant under subsection  
22           (c), a coastal state must submit and have approved  
23           by the Secretary a comprehensive working water-  
24           front plan in accordance with this subsection or be  
25           in the process of developing such a plan and have an



1 established working waterfront program at the State  
2 or local level.

3 “(2) Such plan—

4 “(A) must provide for preservation and ex-  
5 pansion of access to coastal waters to persons  
6 engaged in commercial fishing, recreational  
7 fishing businesses, aquaculture, boatbuilding, or  
8 other water-dependent, coastal-related business;

9 “(B) shall include—

10 “(i) an assessment of the economic,  
11 social, cultural, and historic value of work-  
12 ing waterfront to the coastal state;

13 “(ii) a description of relevant State  
14 and local laws and regulations affecting  
15 working waterfront in the geographic areas  
16 identified in the working waterfront plan;

17 “(iii) identification of geographic  
18 areas where working waterfronts are cur-  
19 rently under threat of conversion to uses  
20 incompatible with commercial fishing, rec-  
21 reational fishing businesses, aquaculture,  
22 boatbuilding, or other water-dependent,  
23 coastal-related business, and the level of  
24 that threat;

1           “(iv) identification of geographic areas  
2 with a historic connection to working wa-  
3 terfronts where working waterfronts are  
4 not currently available, and, where appro-  
5 priate, an assessment of the environmental  
6 impacts of any expansion or new develop-  
7 ment of working waterfronts on the coastal  
8 ecosystem;

9           “(v) identification of other working  
10 waterfront needs including improvements  
11 to existing working waterfronts and work-  
12 ing waterfront areas;

13           “(vi) a strategic and prioritized plan  
14 for the preservation, expansion, and im-  
15 provement of working waterfronts in the  
16 coastal state;

17           “(vii) for areas identified under  
18 clauses (iii), (iv), (v), and (vi), identifica-  
19 tion of current availability and potential  
20 for expansion of public access to coastal  
21 waters;

22           “(viii) a description of the degree of  
23 community support for such strategic plan;  
24 and

1           “(ix) a contingency plan for properties  
2           that revert to the coastal state pursuant to  
3           determinations made by the coastal state  
4           under subsection (h)(4)(C);

5           “(C) may be part of the management pro-  
6           gram approved under section 306;

7           “(D) shall utilize to the maximum extent  
8           practicable existing information contained in  
9           relevant surveys, plans, or other strategies to  
10          fulfill the information requirements under this  
11          paragraph; and

12          “(E) shall incorporate the policies and reg-  
13          ulations adopted by communities under local  
14          working waterfront plans or strategies in exist-  
15          ence prior to the date of enactment of this sec-  
16          tion.

17          “(3) A working waterfront plan—

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

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

23                 “(C) shall be complimentary to and incor-  
24                 porate the policies and objectives of regional or  
25                 local working waterfront plans as in effect be-

1 fore the date of enactment of this section or as  
2 subsequently revised.

3 “(4) The Secretary may—

4 “(A) award planning grants to coastal  
5 states for the purpose of developing or revising  
6 comprehensive working waterfront plans; and

7 “(B) award grants consistent with the pur-  
8 poses of this section to States undertaking the  
9 working waterfront planning process under this  
10 section, for the purpose of preserving and pro-  
11 tecting working waterfronts during such pro-  
12 cess.

13 “(5) Any coastal state applying for a working  
14 waterfront grant under this title shall—

15 “(A) develop a working waterfront plan,  
16 using a process that involves the public and  
17 those with an interest in the coastal zone;

18 “(B) coordinate development and imple-  
19 mentation of such a plan with other coastal  
20 management programs, regulations, and activi-  
21 ties of the coastal state; and

22 “(C) if the coastal state allows qualified  
23 holders (other than the coastal state) to enter  
24 into working waterfront covenants, provide as  
25 part of the working waterfront plan under this

1 subsection a mechanism or procedure to ensure  
2 that the qualified holders are complying their  
3 duties to enforce the working waterfront cov-  
4 enant.

5 “(e) USES, TERMS, AND CONDITIONS.—

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

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

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

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

16 “(f) PUBLIC ACCESS REQUIREMENT.—A working  
17 waterfront project funded by grants made under this sec-  
18 tion must provide for expansion or improvement of reason-  
19 able and appropriate public access to coastal waters at or  
20 in the vicinity of a working waterfront, except for commer-  
21 cial fishing or other industrial access points where the  
22 coastal state determines that public access would be un-  
23 safe.

24 “(g) LIMITATIONS.—

1           “(1) Except as provided in paragraph (2), a  
2           grant awarded under this section may be used to  
3           purchase working waterfront or an interest in work-  
4           ing waterfront, including an easement, only from a  
5           willing seller and at fair market value.

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

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

16          “(h) ALLOCATION OF GRANTS TO LOCAL GOVERN-  
17          MENTS AND OTHER ENTITIES.—

18                 “(1) The Secretary shall encourage coastal  
19                 states to broadly allocate amounts received as grants  
20                 under this section among working waterfronts iden-  
21                 tified in working waterfront plans approved under  
22                 subsection (d).

23                 “(2) Subject to the approval of the Secretary,  
24                 a coastal state may, as part of an approved working  
25                 waterfront plan, designate as a qualified holder any

1 unit of State or local government or nongovernment  
2 organization, if the coastal state is ultimately re-  
3 sponsible for ensuring that the property will be man-  
4 aged in a manner that is consistent with the pur-  
5 poses for which the land entered into the program.

6 “(3) A coastal state or a qualified holder des-  
7 ignated by a coastal state may allocate to a unit of  
8 local government, nongovernmental organization,  
9 fishing cooperative, or other entity, a portion of any  
10 grant made under this section for the purpose of  
11 carrying out this section, except that such an alloca-  
12 tion shall not relieve the coastal state of the respon-  
13 sibility for ensuring that any funds so allocated are  
14 applied in furtherance of the coastal state’s approved  
15 working waterfront plan.

16 “(4) A qualified holder may hold title to or in-  
17 terest in property acquired under this section, except  
18 that—

19 “(A) all persons holding title to or interest  
20 in working waterfront affected by a grant under  
21 this section, including a qualified holder, private  
22 citizen, private business, nonprofit organization,  
23 fishing cooperative, or other entity, shall enter  
24 into a working waterfront covenant;

1           “(B) such covenant shall be held by the  
2 coastal state or a qualified holder designated  
3 under paragraph (2);

4           “(C) if the coastal state determines, on the  
5 record after an opportunity for a hearing, that  
6 the working waterfront covenant has been vio-  
7 lated—

8                   “(i) all right, title, and interest in and  
9 to the working waterfront covered by such  
10 covenant shall, except as provided in sub-  
11 paragraph (D), revert to the coastal state;  
12 and

13                   “(ii) the coastal state shall have the  
14 right of immediate entry onto the working  
15 waterfront;

16           “(D) if a coastal state makes a determina-  
17 tion under subparagraph (C), the coastal state  
18 may convey or authorize the qualified holder to  
19 convey the working waterfront or interest in  
20 working waterfront to another qualified holder;  
21 and

22           “(E) nothing in this subsection waives any  
23 legal requirement under any Federal or State  
24 law.

25           “(i) MATCHING CONTRIBUTIONS.—



1           “(1) Except as provided in paragraph (2), the  
2 Secretary shall require that each coastal state that  
3 receives a grant under this section, or a qualified  
4 holder designated by that coastal state under sub-  
5 section (h), shall provide matching funds in an  
6 amount equal to at least 25 percent of the total cost  
7 of the project carried out with the grant.

8           “(2) The Secretary may waive the application  
9 of paragraph (1) for any qualified holder that is an  
10 underserved community, a community that has an  
11 inability to draw on other sources of funding because  
12 of the small population or low income of the commu-  
13 nity, or for other reasons the Secretary considers ap-  
14 propriate.

15           “(3) A local community designated as a quali-  
16 fied holder under subsection (h) may utilize funds or  
17 other in-kind contributions donated by a nongovern-  
18 mental partner to satisfy the matching funds re-  
19 quirement under this subsection.

20           “(4) As a condition of receipt of a grant under  
21 this section, the Secretary shall require that a coast-  
22 al state provide to the Secretary such assurances as  
23 the Secretary determines are sufficient to dem-  
24 onstrate that the share of the cost of each eligible

1 project that is not funded by the grant awarded  
2 under this section has been secured.

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

9 “(6) The Secretary shall treat as non-Federal  
10 match the value of a working waterfront or interest  
11 in a working waterfront, including conservation and  
12 other easements, that is held in perpetuity by a  
13 qualified holder, if the working waterfront or inter-  
14 est is identified in the application for the grant and  
15 acquired by the qualified holder within 3 years of  
16 the grant award date, or within 3 years after the  
17 submission of the application and before the end of  
18 the grant award period. Such value shall be deter-  
19 mined by an appraisal performed at such time before  
20 the award of the grant as the Secretary considers  
21 appropriate.

22 “(7) The Secretary shall treat as non-Federal  
23 match the costs associated with acquisition of a  
24 working waterfront or an interest in a working wa-  
25 terfront, and the costs of restoration, enhancement,

1 or other improvement to a working waterfront, if the  
2 activities are identified in the project application and  
3 the costs are incurred within the period of the grant  
4 award, or, for working waterfront described in para-  
5 graph (6), within the same time limits described in  
6 that paragraph. These costs may include either cash  
7 or in-kind contributions.

8 “(j) LIMIT ON ADMINISTRATIVE COSTS.—No more  
9 than 5 percent of the funds made available to the Sec-  
10 retary under this section may be used by the Secretary  
11 for planning or administration of the program under this  
12 section.

13 “(k) OTHER TECHNICAL AND FINANCIAL ASSIST-  
14 ANCE.—

15 “(1) Up to 5 percent of the funds appropriated  
16 under this section may be used by the Secretary for  
17 purposes of providing technical assistance as de-  
18 scribed in this subsection.

19 “(2) The Secretary shall—

20 “(A) provide technical assistance to coastal  
21 states and local governments in identifying and  
22 obtaining other sources of available Federal  
23 technical and financial assistance for the devel-  
24 opment and revision of a working waterfront

1 plan and the implementation of an approved  
2 working waterfront plan;

3 “(B) provide technical assistance to States  
4 and local governments for the development, im-  
5 plementation, and revision of comprehensive  
6 working waterfront plans, which may include,  
7 subject to the availability of appropriations,  
8 planning grants and assistance, pilot projects,  
9 feasibility studies, and other projects necessary  
10 to further the purposes of this section;

11 “(C) assist States in developing other tools  
12 to protect working waterfronts; and

13 “(D) collect and disseminate to States  
14 guidance for best storm water management  
15 practices in regards to working waterfronts.

16 “(I) REPORTS.—

17 “(1) The Secretary shall—

18 “(A) develop performance measures to  
19 evaluate and report on the effectiveness of the  
20 program under this section in accomplishing the  
21 purpose of this section; and

22 “(B) submit to Congress a biennial report  
23 that includes such evaluations, an account of all  
24 expenditures, and descriptions of all projects

1 carried out using grants awarded under this  
2 section.

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

6 “(m) DEFINITIONS.—In this section:

7 “(1) The term ‘qualified holder’ means a coast-  
8 al state or a unit of local or coastal state govern-  
9 ment or a non-State organization designated by a  
10 coastal state under subsection (h).

11 “(2) The term ‘Secretary’ means the Secretary,  
12 acting through the National Oceanic and Atmos-  
13 pheric Administration.

14 “(3) The term ‘working waterfront’ means real  
15 property (including support structures over water  
16 and other facilities) that provides access to coastal  
17 waters to persons engaged in commercial fishing,  
18 recreational fishing businesses, boatbuilding, aqua-  
19 culture, or other water-dependent, coastal-related  
20 business and is used for, or that supports, commer-  
21 cial fishing, recreational fishing businesses, boat-  
22 building, aquaculture, or other water-dependent,  
23 coastal-related business.

24 “(4) The term ‘working waterfront covenant’  
25 means an agreement in recordable form between the

1 owner of working waterfront and one or more quali-  
2 fied holders, that provides such assurances as the  
3 Secretary may require that—

4 “(A) the title to or interest in the working  
5 waterfront will be held by a grant recipient or  
6 qualified holder in perpetuity, except as pro-  
7 vided in subparagraph (C);

8 “(B) the working waterfront will be man-  
9 aged in a manner that is consistent with the  
10 purposes for which the property is acquired  
11 pursuant to this section, and the property will  
12 not be converted to any use that is inconsistent  
13 with the purpose of this section;

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

16 “(i) all working waterfront owners  
17 and qualified holders involved in such sale  
18 or exchange shall accede to such agree-  
19 ment; and

20 “(ii) funds equal to the fair market  
21 value of the working waterfront or interest  
22 in working waterfront shall be paid to the  
23 Secretary by parties to the sale or ex-  
24 change, and such funds shall, at the dis-  
25 cretion of the Secretary, be paid to the

1 coastal state in which the working water-  
2 front is located for use in the implementa-  
3 tion of the working waterfront plan of the  
4 State approved by the Secretary under this  
5 section; and

6 “(D) such covenant is subject to enforce-  
7 ment and oversight by the coastal state or by  
8 another person as determined appropriate by  
9 the Secretary.”.

○