

TRIBAL COASTAL RESILIENCY ACT

NOVEMBER 13, 2019.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GRIJALVA, from the Committee on Natural Resources,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 729]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 729) to amend the Coastal Zone Management Act of 1972 to authorize grants to Indian Tribes to further achievement of Tribal coastal zone objectives, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 729 is to amend the Coastal Zone Management Act of 1972 to authorize grants to Indian Tribes to further achievement of Tribal coastal zone objectives, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

While all communities are at risk from the adverse impacts associated with climate change, some discrete populations are disproportionately impacted by the threats to public health, food secu-

riety, and extreme weather events.¹ Among those vulnerable populations are the indigenous peoples of the United States.²

Throughout Indian Country, the effects of climate change are already being felt. Chronic flooding, wildfire, drought, and rising sea levels are threatening indigenous peoples' ways of life, affecting their traditional subsistence hunting and fishing rights, and endangering their commercial activities and tourism enterprises. These impacts are especially significant for tribes along coastal areas, where residents are seeing changes in their coastal lands due to extreme weather,³ erosion,⁴ and other impacts to their natural resources.⁵

Indigenous peoples have been proactively identifying and addressing climate impacts, but they face institutional barriers that hinder their effectiveness.⁶ These barriers include limited access to programs and funding streams that account for the unique situations of indigenous communities.

H.R. 729 provides a funding mechanism under the Coastal Zone Management Act⁷ (CZMA) to help Indian Tribes build coastal resilience. Approximately twenty-seven federally recognized tribes, representing approximately 270 miles of coastline,⁸ will be eligible to apply.

COMMITTEE ACTION

H.R. 729 was introduced on January 23, 2019, by Representative Derek Kilmer (D-WA). The bill was referred solely to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water, Oceans, and Wildlife and the Subcommittee for Indigenous Peoples of the United States. On July 25, 2019, the Subcommittee on Water, Oceans, and Wildlife held a hearing on the bill. On September 25, 2019, the Natural Resources Committee met to consider the bill. The Subcommittees were discharged by unanimous consent. No amendments were offered, and the bill was ordered favorably reported to the House of Representatives by voice vote.

¹Janet L. Gamble & John Balbus et al., *Ch. 9: Populations of Concern*, in U.S. GLOB. CHANGE RESEARCH PROGRAM, THE IMPACTS OF CLIMATE CHANGE ON HUMAN HEALTH IN THE UNITED STATES: A SCIENTIFIC ASSESSMENT 247 (Allison Crimmins et al. eds., 2016), <http://dx.doi.org/10.7930/JOQ81BOT>.

²See generally *id.*; Lesley Jantarasami & Rachael Novak et al., *Tribes and Indigenous Peoples*, in U.S. GLOB. CHANGE RESEARCH PROGRAM, 2 IMPACTS, RISKS, AND ADAPTATION IN THE UNITED STATES: FOURTH NATIONAL CLIMATE ASSESSMENT 572 (David Reidmiller et al. eds., 2018), https://nca2018.globalchange.gov/downloads/NCA4_Ch15_Tribes-and-Indigenous-Peoples_Full.pdf.

³*E.g.*, KATHRYN NORTON-SMITH ET AL., U.S. DEP'T OF AGRIC., GEN. TECHNICAL REP. PNW-GTR-944, CLIMATE CHANGE AND INDIGENOUS PEOPLES: A SYNTHESIS OF CURRENT IMPACTS AND EXPERIENCES (2016), https://www.fs.fed.us/pnw/pubs/pnw_gtr944.pdf.

⁴*E.g.*, *id.*; Darryl Fears, *Coastal Alaska Natives Face "Some of the Highest Shoreline Erosion in the World."* WASH. POST (July 2, 2015, 2:03 p.m. EDT), <https://www.washingtonpost.com/news/energy-environment/wp/2015/07/02/coastal-alaska-natives-face-some-of-the-highest-shoreline-erosion-in-the-world/>.

⁵*E.g.*, NW INDIAN FISHERIES COMM'N, CLIMATE CHANGE AND OUR NATURAL RESOURCES: A REPORT FROM THE TREATY TRIBES IN WESTERN WASHINGTON (2016), http://nwifc.org/wp-content/uploads/downloads/2017/01/CC_and_Our_NR_Report_2016-1.pdf.

⁶*E.g.*, Shannon M. McNeeley, *Sustainable Climate Change Adaptation in Indian Country*, 9(3) WEATHER, CLIMATE, & SOC'Y 393 (2017), <https://journals.ametsoc.org/doi/pdf/10.1175/WCAS-D-16-0121.1>.

⁷16 U.S.C. §§ 1451 *et seq.*

⁸Estimates were conducted by Committee staff using the Bureau of Indian Affairs Tribal Leaders Directory.

HEARINGS

For the purposes of section 103(i) of H. Res. 6 of the 116th Congress—the following hearing was used to develop or consider H.R. 729: legislative hearing by the Subcommittee on Water, Oceans, and Wildlife held on July 25, 2019.

SECTION-BY-SECTION ANALYSIS

*Section 1. Short title**Section 2. Grants to further achievement of tribal coastal zone objectives*

This section amends the CZMA by adding a new section that authorizes a competitive grant program specifically for Indian Tribes. Grants would help tribes achieve tribal coastal zone objectives: (1) the protection, restoration, or preservation of coastal zones that hold important ecological, cultural, and sacred significance, or traditional, historic, and aesthetic values essential to a tribe; (2) the preparation and implementation of a special area management plan and technical planning for important coastal areas; and (3) coastal or shoreline stabilization measures for the purpose of public safety, public access, or cultural or historical preservation. This section also modifies existing state grants such that they may be used to fulfill these objectives as well.

The bill authorizes \$5 million to carry out these grants and includes, for grants of \$200,000 or more, a matching requirement that may be waived or reduced if a tribe does not have sufficient funds.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. *Cost of Legislation and the Congressional Budget Act.* With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 30, 2019.

Hon. RAÚL M. GRIJALVA,
*Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 729, the Tribal Coastal Resiliency Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Robert Reese.

Sincerely,

MARK P. HADLEY
(For Phillip L. Swagel, Director).

Enclosure.

H.R. 729, Tribal Coastal Resiliency Act			
As ordered reported by the House Committee on Natural Resources on September 25, 2019			
By Fiscal Year, Millions of Dollars	2020	2020-2024	2020-2029
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	3	22	47
Statutory pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

H.R. 729 would amend the Coastal Zone Management Act of 1972 and would authorize the appropriation of \$5 million a year for the National Oceanic and Atmospheric Administration (NOAA) to provide grants to Indian tribes to restore or preserve areas with ecological, cultural, historic, sacred, or esthetic significance and to stabilize coastal shorelines.

CBO estimates that implementing the bill would cost \$22 million over the 2020–2024 period and \$5 million a year thereafter, assuming appropriation of the authorized amounts. In 2019, NOAA allocated about \$75 million for all coastal zone management grants. The costs of the legislation, detailed in Table 1, fall within budget function 300 (natural resources and environment).

TABLE 1.—ESTIMATED INCREASES IN SPENDING SUBJECT TO APPROPRIATION UNDER H.R. 729

	By fiscal year, in millions of dollars—					
	2020	2021	2022	2023	2024	2020–2024
Authorization	5	5	5	5	5	25
Estimated Outlays	3	4	5	5	5	22

The CBO staff contact for this estimate is Robert Reese. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

2. *General Performance Goals and Objectives.* As required by clause 3(c)(4) of rule XIII, the general performance goals and objectives of this bill is to amend the Coastal Zone Management Act of 1972 to authorize grants to Indian Tribes to further achievement of Tribal coastal zone objectives.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

UNFUNDED MANDATES REFORM ACT STATEMENT

This bill contains no unfunded mandates.

EXISTING PROGRAMS

This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139.

The Coastal Zone Management Administration Awards (CFDA No. 11.419) grants to states modified by this bill at Sec. 2(c) are related and complementary to, but not duplicative of, the following programs identified in the most recent Catalog of Federal Domestic Assistance published pursuant to 31 U.S.C. 6104: Sea Grant Support (CFDA No. 11.417), Coastal Zone Management Estuarine Research Reserves (CFDA No. 11.420), Financial Assistance for National Centers for Coastal Ocean Science (CFDA No. 11.426), Marine Sanctuary Program (CFDA No. 11.429), Regional Fishery Management Councils (CFDA No. 11.441), Chesapeake Bay Studies (CFDA No. 11.457), Congressionally Identified Awards and Projects (CFDA No. 11.469), Office for Coastal Management (CFDA No. 11.473), and Coral Reef Conservation Program (CFDA No. 11.482).

The grants to Indian Tribes established by this bill at Sec. 2(a) would be related and complementary to, but not duplicative of, the following programs identified in the most recent Catalog of Federal Domestic Assistance published pursuant to 31 U.S.C. 6104: Tribal Climate Resilience (CFDA No. 15.156), Gulf Coast Ecosystem Restoration Council Comprehensive Plan Component (CFDA No. 66.130), National Estuary Program (CFDA No. 66.456), Direct Implementation Tribal Cooperative Agreements (CFDA No. 66.473), Gulf Coast Ecosystem Restoration Council Comprehensive Plan Component Program (CFDA No. 87.051), and Flood Mitigation Assistance (CFDA No. 97.029), as well as Sea Grant Support (CFDA No. 11.417), Coastal Zone Management Administration Awards (CFDA No. 11.419), Coastal Zone Management Estuarine Research Reserves (CFDA No. 11.420), Financial Assistance for National Centers for Coastal Ocean Science (CFDA No. 11.426), Marine Sanctuary Program (CFDA No. 11.429), Regional Fishery Management Councils (CFDA No. 11.441), Chesapeake Bay Studies (CFDA No. 11.457), Congressionally Identified Awards and Projects (CFDA No. 11.469), Office for Coastal Management (CFDA No. 11.473), and Coral Reef Conservation Program (CFDA No. 11.482).

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or

accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

PREEMPTION OF STATE, LOCAL, OR TRIBAL LAW

Any preemptive effect of this bill over state, local, or tribal law is intended to be consistent with the bill's purposes and text and the Supremacy Clause of Article VI of the U.S. Constitution.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, and existing law in which no change is proposed is shown in roman):

COASTAL ZONE MANAGEMENT ACT OF 1972

TITLE III—MANAGEMENT OF THE COASTAL ZONE

* * * * *

RESOURCE MANAGEMENT IMPROVEMENT GRANTS

SEC. 306A. (a) For purposes of this section—

(1) The term “eligible coastal state” means a coastal state that for any fiscal year for which a grant is applied for under this section—

(A) has a management program approved under section 306; and

(B) in the judgment of the Secretary, is making satisfactory progress in activities designed to result in significant improvement in achieving the coastal management objectives specified in section 303(2)(A) through (K).

(2) The term “urban waterfront and port” means any developed area that is densely populated and is being used for, or has been used for, urban residential recreational, commercial, shipping or industrial purposes.

(b) The Secretary may make grants to any eligible coastal state to assist that state in meeting one or more of the following objectives:

(1) The preservation or restoration of specific areas of the state that (A) are designated under the management program procedures required by section 306(d)(9) because of their conservation recreational, ecological, or esthetic values, or (B) contain one or more coastal resources of national significance, or for the purpose of restoring and enhancing shellfish production by the purchase and distribution of clutch material on publicly owned reef tracts.

(2) The redevelopment of deteriorating and underutilized urban waterfronts and ports that are designated in the state's management program pursuant to section 306(d)(2)(C) as areas of particular concern.

(3) The provision of access to public beaches and other public coastal areas and to coastal waters in accordance with the planning process required under section 306(d)(2)(G).

(4) The development of a coordinated process among State agencies to regulate and issue permits for aquaculture facilities in the coastal zone.

(c)(1) Each grant made by the Secretary under this section shall be subject to such terms and conditions as may be appropriate to ensure that the grant is used for purposes consistent with this section.

(2) Grants made under this section may be used for—

(A) the acquisition of fee simple and other interests in land;

(B) low-cost construction projects determined by the Secretary to be consistent with the purposes of this section, including but not limited to, paths, walkways, fences, parks, and the rehabilitation of historic buildings and structures; except that not more than 50 per centum of any grant made under this section may be used for such construction projects;

(C) in the case of grants made for objectives described in subsection (b)(2)—

(i) the rehabilitation or acquisition of piers to provide increased public use, including compatible commercial activity,

(ii) the establishment of shoreline stabilization measures including the installation or rehabilitation of bulkheads for the purpose of public safety or increasing public access and use, and

(iii) the removal or replacement of pilings where such action will provide increased recreational use of urban waterfront areas,

but activities provided for under this paragraph shall not be treated as construction projects subject to the limitations in paragraph (B);

(D) engineering designs, specifications, and other appropriate reports; **[and]**

(E) educational, interpretive, and management costs and such other related costs as the Secretary determines to be consistent with the purposes of this section~~[""]~~; and

(F) *fulfilling any Tribal coastal zone objective (as that term is defined in section 320).*

(d)(1) The Secretary may make grants to any coastal state for the purpose of carrying out the project or purpose for which such grants are awarded, if the state matches any such grant according to the following ratios of Federal to state contributions for the applicable fiscal year: 4 to 1 for fiscal year 1986; 2.3 to 1 for fiscal year 1987; 1.5 to 1 for fiscal year 1988; and 1 to 1 for each fiscal year after fiscal year 1988.

(2) Grants provided under this section may be used to pay a coastal state's share of costs required under any other Federal program that is consistent with the purposes of this section.

(3) The total amount of grants made under this section to any eligible coastal state for any fiscal year may not exceed an amount equal to 10 per centum of the total amount appropriated to carry out this section for such fiscal year.

(e) With the approval of the Secretary, an eligible coastal state may allocate to a local government, an areawide agency designated under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, a regional agency, or an interstate agency, a portion of any grant made under this section for the purpose of carrying out this section; except that such an allocation shall not relieve that state of the responsibility for ensuring that any funds so allocated are applied in furtherance of the state's approved management program.

(f) In addition to providing grants under this section, the Secretary shall assist eligible coastal states and their local governments in identifying and obtaining other sources of available Federal technical and financial assistance regarding the objectives of this section.

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SEC. 320. GRANTS TO FURTHER ACHIEVEMENT OF TRIBAL COASTAL ZONE OBJECTIVES.

(a) *GRANTS AUTHORIZED.*—The Secretary may award competitive grants to Indian Tribes to further achievement of the objectives of such a Tribe for its Tribal coastal zone.

(b) *COST SHARE.*—

(1) *IN GENERAL.*—The Federal share of the cost of any activity carried out with a grant under this section shall be—

(A) in the case of a grant of less than \$200,000, 100 percent of such cost; and

(B) in the case of a grant of \$200,000 or more, 95 percent of such cost, except as provided in paragraph (2).

(2) *WAIVER.*—The Secretary may waive the application of paragraph (1)(B) with respect to a grant to an Indian Tribe, or otherwise reduce the portion of the share of the cost of an activity required to be paid by an Indian Tribe under such paragraph, if the Secretary determines that the Tribe does not have sufficient funds to pay such portion.

(c) *COMPATIBILITY.*—The Secretary may not award a grant under this section unless the Secretary determines that the activities to be carried out with the grant are compatible with this title and that the grantee has consulted with the affected coastal state regarding the grant objectives and purposes.

(d) *AUTHORIZED OBJECTIVES AND PURPOSES.*—Amounts awarded as a grant under this section shall be used for one or more of the objectives and purposes authorized under subsections (b) and (c), respectively, of section 306A.

(e) *FUNDING.*—Of amounts appropriated to carry out this Act, \$5,000,000 is authorized to carry out this section for each fiscal year.

(f) *DEFINITIONS.*—In this section:

(1) *INDIAN LAND.*—The term “Indian land” has the meaning that term has under section 2601 of the Energy Policy Act of 1992 (25 U.S.C. 3501).

(2) *INDIAN TRIBE.*—The term “Indian Tribe” means an Indian tribe, as that term is defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

(3) *TRIBAL COASTAL ZONE.*—The term “Tribal coastal zone” means any Indian land of an Indian Tribe that is within the coastal zone.

(4) *TRIBAL COASTAL ZONE OBJECTIVE.*—The term “Tribal coastal zone objective” means, with respect to an Indian Tribe, any of the following objectives:

(A) *Protection, restoration, or preservation of areas in the Tribal coastal zone of such Tribe that hold—*

(i) *important ecological, cultural, or sacred significance for such Tribe; or*

(ii) *traditional, historic, and esthetic values essential to such Tribe.*

(B) *Preparing and implementing a special area management plan and technical planning for important coastal areas.*

(C) *Any coastal or shoreline stabilization measure, including any mitigation measure, for the purpose of public safety, public access, or cultural or historical preservation.*

DISSENTING VIEWS

Congress enacted the Coastal Zone Management Act (CZMA) to “preserve, protect, develop, and where possible, to restore or enhance the resources of the nation’s coastal zone.”¹

This law gives eligible coastal States and territories the flexibility to design programs that best address local challenges. One component of the CZMA is providing financial assistance through grants to States and territories to implement their coastal zone management programs. The National Oceanic and Atmospheric Administration (NOAA) allocates the majority of grants using formulas based on shoreline lengths and coastal populations, and most of the grants are matched on a 1:1 basis.²

However, this would not be the case with H.R. 729, which would permanently earmark \$5 million of the annually appropriated CZMA grant dollars for tribes and potentially waive any cost sharing requirement. This earmark is not necessary; as demonstrated by the legislation’s savings clause, tribes already have the ability to participate in any program authorized by the CZMA. We also have significant concerns with the impact this would have on existing coastal zone management programs.

Lastly, NOAA expressed concerns during our legislative hearing that H.R. 729 would focus funding on objectives it finds “capital-intensive and, in some cases, adversely affect nearby beaches, dunes, and other coastal resources.”³ For these reasons, we oppose this legislation.

ROB BISHOP (UT).
JODY B. HICE.
MIKE JOHNSON (LA).
KEVIN HERN (OK).

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¹ 16 U.S.C. 1452.

² https://www.corporateservices.noaa.gov/nbo/fy20_bluebook/NOAA-FY20-Congressional-Justification.pdf.

³ Written testimony by RDML Tim Gallaudet, Deputy NOAA Administrator, Hearing July 25, 2019.