

LIVING SHORELINES ACT OF 2019

NOVEMBER 26, 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

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 3115]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 3115) to direct the Administrator of the National Oceanic and Atmospheric Administration to make grants to State and local governments and nongovernmental organizations for purposes of carrying out climate-resilient living shoreline projects that protect coastal communities by supporting ecosystem functions and habitats with the use of natural materials and systems, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Living Shorelines Act of 2019”.

SEC. 2. LIVING SHORELINE GRANT PROGRAM.

(a) ESTABLISHMENT.—The Administrator shall make grants to eligible entities for purposes of—

- (1) designing and implementing large- and small-scale, climate-resilient living shoreline projects; and
 - (2) applying innovative uses of natural materials and systems to protect coastal communities, habitats, and natural system functions.

(b) PROJECT PROPOSALS.—To be eligible to receive a grant under this section, an eligible entity shall—

(1) submit to the Administrator a proposal for a living shoreline project, including monitoring, data collection, and measurable performance criteria with respect to the project; and

(2) demonstrate to the Administrator that the entity has any permits or other authorizations from local, State, and Federal government agencies necessary to carry out the living shoreline project or provide evidence demonstrating general support from such agencies.

(c) PROJECT SELECTION.—

(1) DEVELOPMENT OF CRITERIA.—The Administrator shall select eligible entities to receive grants under this section based on criteria developed by the Administrator, in consultation with relevant offices of the National Oceanic and Atmospheric Administration, such as the Office of Habitat Conservation, the Office for Coastal Management, and the Restoration Center.

(2) CONSIDERATIONS.—In developing criteria under paragraph (1) to evaluate a proposed living shoreline project, the Administrator shall take into account—

(A) the potential of the project to protect the community and maintain the viability of the environment, such as through protection of ecosystem functions, environmental benefits, or habitat types, in the area where the project is to be carried out;

(B) the historic and future environmental conditions of the project site, particularly those environmental conditions affected by climate change;

(C) the ecological benefits of the project; and

(D) the ability of the entity proposing the project to demonstrate the potential of the project to protect the coastal community where the project is to be carried out, including through—

(i) mitigating the effects of erosion;

(ii) attenuating the impact of coastal storms and storm surge;

(iii) mitigating shoreline flooding;

(iv) mitigating the effects of sea level rise, accelerated land loss, and extreme tides;

(v) sustaining, protecting, or restoring the functions and habitats of coastal ecosystems; or

(vi) such other forms of coastal protection as the Administrator considers appropriate.

(3) PRIORITY.—In selecting living shoreline projects to receive grants under this section, the Administrator shall give priority consideration to a proposed project to be conducted in an area—

(A) for which the President has declared, during the 10-year period preceding the submission of the proposal for the project under subsection (b), that a major disaster exists pursuant to section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) because of a hurricane, tropical storm, coastal storm, or flooding; or

(B) that has a documented history of coastal erosion or frequent coastal inundation during that 10-year period.

(4) MINIMUM STANDARDS.—

(A) IN GENERAL.—The Administrator shall develop minimum standards to be used in selecting eligible entities to receive grants under this section, taking into account—

(i) the considerations described in paragraph (2); and

(ii) the need for such standards to be general enough to accommodate concerns relating to specific project sites.

(B) CONSULTATIONS.—In developing standards under subparagraph (A), the Administrator—

(i) shall consult with relevant offices of the National Oceanic and Atmospheric Administration, such as the Office of Habitat Conservation, the Office for Coastal Management, and the Restoration Center; and

(ii) may consult with—

(I) relevant interagency councils, such as the Estuary Habitat Restoration Council;

(II) State coastal management agencies; and

(III) relevant nongovernmental organizations.

(d) USE OF FUNDS.—A grant awarded under this section to an eligible entity to carry out a living shoreline project may be used by the eligible entity only—

(1) to carry out the project, including administration, design, permitting, entry into negotiated indirect cost rate agreements, and construction; and

(2) to monitor, collect, and report data on the performance (including performance over time) of the project, in accordance with standards issued by the Administrator under subsection (f)(2).

(e) COST-SHARING.—

(1) IN GENERAL.—Except as provided in paragraph (2), an eligible entity that receives a grant under this section to carry out a living shoreline project shall provide, from non-Federal sources, funds or other resources (such as land or conservation easements or in-kind matching from private entities) valued at not less than 50 percent of the total cost, including administrative costs, of the project.

(2) REDUCED MATCHING REQUIREMENT FOR CERTAIN COMMUNITIES.—The Administrator may reduce or waive the matching requirement under paragraph (1) for an eligible entity representing a community or nonprofit organization if—

- (A) the eligible entity submits to the Administrator in writing—
 - (i) a request for such a reduction and the amount of the reduction; and
 - (ii) a justification for why the entity cannot meet the matching requirement; and
- (B) the Administrator agrees with the justification.

(f) MONITORING AND REPORTING.—

(1) IN GENERAL.—The Administrator shall require each eligible entity receiving a grant under this section (or a representative of the entity) to carry out a living shoreline project—

- (A) to transmit to the Administrator data collected under the project;
- (B) to monitor the project and to collect data on—
 - (i) the ecological benefits of the project and the protection provided by the project for the coastal community where the project is carried out, including through—
 - (I) mitigating the effects of erosion;
 - (II) attenuating the impact of coastal storms and storm surge;
 - (III) mitigating shoreline flooding;
 - (IV) mitigating the effects of sea level rise and extreme tides;
 - (V) sustaining, protecting, or restoring the functions and habitats of coastal ecosystems; or
 - (VI) such other forms of coastal protection as the Administrator considers appropriate; and
 - (ii) the performance of the project in providing such protection;

(C) to make data collected under the project available on a publicly accessible internet website of the National Oceanic and Atmospheric Administration; and

(D) not later than one year after the entity receives the grant, and annually thereafter until the completion of the project, to submit to the Administrator a report on—

- (i) the measures described in subparagraph (B); and
- (ii) the effectiveness of the project in increasing protection of the coastal community where the project is carried out through living shorelines techniques, including—

- (I) a description of—
 - (aa) the project;
 - (bb) the activities carried out under the project; and
 - (cc) the techniques and materials used in carrying out the project; and
- (II) data on the performance of the project in providing protection to that coastal community.

(2) GUIDELINES.—In developing guidelines relating to paragraph (1)(C), the Administrator shall consider how additional data could safely be collected before and after major disasters or severe weather events to measure project performance and project recovery.

(3) STANDARDS.—

(A) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the Administrator shall, in consultation with relevant offices of the National Oceanic and Atmospheric Administration, relevant interagency councils, and relevant nongovernmental organizations, issue standards for the monitoring, collection, and reporting under subsection (d)(2) of data regarding the performance of living shoreline projects for which grants are awarded under this section.

(B) REPORTING.—The standards issued under subparagraph (A) shall require an eligible entity receiving a grant under this section to report the data described in that subparagraph to the Administrator on a regular basis.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated \$50,000,000 to the Administrator for each of fiscal years 2020 through 2025 for purposes of carrying out this section.

(h) DEFINITIONS.—In this section:

- (1) ADMINISTRATOR.—The term “Administrator” means the Administrator of the National Oceanic and Atmospheric Administration.
- (2) ELIGIBLE ENTITY.—The term “eligible entity” means any of the following:
 - (A) A unit of a State or local government.
 - (B) An organization described in section 501(c)(3) of the Internal Revenue Code of 1986 that is exempt from taxation under section 501(a) of such Code.
 - (C) An Indian Tribe (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304)).
- (3) LIVING SHORELINE PROJECT.—The term “living shoreline project”—
 - (A) means a project that—
 - (i) restores or stabilizes a shoreline, including marshes, wetlands, and other vegetated areas that are part of the shoreline ecosystem, by using natural materials and systems to create buffers to attenuate the impact of coastal storms, currents, flooding, and wave energy and to prevent or minimize shoreline erosion while supporting coastal ecosystems and habitats;
 - (ii) incorporates as many natural elements as possible, such as native wetlands, submerged aquatic plants, oyster shells, native grasses, shrubs, or trees;
 - (iii) utilizes techniques that incorporate ecological and coastal engineering principles in shoreline stabilization; and
 - (iv) to the extent possible, maintains or restores existing natural slopes and connections between uplands and adjacent wetlands or surface waters;
 - (B) may include the use of—
 - (i) natural elements, such as sand, wetland plants, logs, oysters or other shellfish, submerged aquatic vegetation, native grasses, shrubs, trees, or coir fiber logs;
 - (ii) project elements that provide ecological benefits to coastal ecosystems and habitats in addition to shoreline protection; and
 - (iii) structural materials, such as stone, concrete, wood, vinyl, oyster domes, or other approved engineered structures in combination with natural materials; and
 - (C) may include a project that expands upon or restores natural living shorelines or existing living shoreline projects.
- (4) STATE.—The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

PURPOSE OF THE BILL

The purpose of H.R. 3115 is to direct the Administrator of the National Oceanic and Atmospheric Administration to make grants to State and local governments and nongovernmental organizations for purposes of carrying out climate-resilient living shoreline projects that protect coastal communities by supporting ecosystem functions and habitats with the use of natural materials and systems, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

Urbanization along the coast has historically led to the construction of hard armoring structures, such as seawalls, bulkheads, and revetments, to reduce erosion and flooding in coastal communities. Armored shorelines make up as much as 50 percent of the shore

in some urbanized areas,¹ despite the significant negative ecological consequences commonly documented in armored areas.²

Living shorelines are a form of nature-based infrastructure that uses native plants, rock, sand, oysters, and other natural elements to stabilize shorelines as an alternative to hard shoreline stabilization techniques.³ Living shorelines can include marshes, wetlands, and other vegetated areas that attenuate coastal storms, currents, flooding, and wave energy to prevent or minimize shoreline erosion.

In recognition of the numerous benefits of living shorelines, including improved ecological function,⁴ carbon sequestration,⁵ and shoreline stabilization,⁶ living shorelines are being installed around the country to protect coastal communities and ecosystems.⁷ Federal agencies, including the National Oceanic and Atmospheric Administration, Environmental Protection Agency, and Army Corps of Engineers, have provided funding and design assistance for living shoreline installations,⁸ and several states have enacted regulations to encourage or require installation of living shorelines as an alternative to non-natural structures.⁹

COMMITTEE ACTION

H.R. 3115 was introduced on June 5, 2019, by Representative Frank Pallone (D–NJ). The bill was referred solely to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water, Oceans, and Wildlife. 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 Subcommittee was discharged by unanimous consent. Representatives Joe Cunningham (D–SC) and Garret Graves (R–LA) offered an amendment designated amendment #1. The amendment was agreed to by voice vote. The bill, as amended, was adopted and ordered favorably reported to the House of Representatives by a roll call vote of 22 yeas and 13 nays, as follows:

¹Donna Marie Bilkovic et al., *The Role of Living Shorelines as Estuarine Habitat Conservation Strategies*, 44(3) COASTAL MGMT. 161, 161 (2016), <https://doi.org/10.1080/08920753.2016.1160201>. See generally Rachel K. Gittman et al., *Engineering Away Our Natural Defenses: An Analysis of Shoreline Hardening in the US*, 13(6) FRONTIERS IN ECOLOGY & THE ENV'T 301 (2015), <https://doi.org/10.1890/150065>.

²See, e.g., Rachel K. Gittman et al., *Ecological Consequences of Shoreline Hardening: A Meta-Analysis*, 66(9) BIOSCIENCE 763 (2016), <https://doi.org/10.1093/biosci/biw091>.

³Understanding Living Shorelines, NOAA FISHERIES (June 19, 2017), <https://www.fisheries.noaa.gov/insight/understanding-living-shorelines>.

⁴See, e.g., Rachel K. Gittman et al., *Living Shorelines Can Enhance the Nursey Role of Threatened Estuarine Habitats*, 26(1) ECOLOGICAL APPLICATIONS 249 (2016), <https://doi.org/10.1890/14-0716>.

⁵See generally Jenny L. Davis et al., *Living Shorelines: Coastal Resilience with a Blue Carbon Benefit*, 10(11) PLOS ONE (2015), <https://doi.org/10.1371/journal.pone.0142595>.

⁶See, e.g., Rachel K. Gittman et al., *Marshes with and without Sills Protect Estuarine Shorelines from Erosion Better Than Bulkheads During a Category 1 Hurricane*, 102(A) OCEAN & COASTAL MGMT. 94 (2014), <https://doi.org/10.1016/j.ocemocean.2014.09.016>.

⁷See, e.g., NOAA's Living Shorelines Projects, NOAA, <https://www.habitatblueprint.noaa.gov/storymap/lss/index.html> (last visited Nov. 19, 2019); Stijn Temmerman et al., *Ecosystem-Based Coastal Defence in the Face of Global Change*, 504 NATURE 79 (2013), <https://doi.org/10.1038/nature12859>.

⁸Bilkovic et al., *supra* note 1.

⁹*Id.*

COMMITTEE ON NATURAL RESOURCES
116th Congress - Roll Call

Bill / Motion: H.R. 3115

Amendment:

Disposition: Final Passage: H.R. 3115, as amended, was adopted and ordered favorably reported to the House of Representatives by a roll call vote of 22 yeas and 13 nays.

	DEM. MEMBERS (25)	YEAS	NAYS	PRESENT
1	Mr. Brown, MD	X		
2	Mr. Cartwright, PA	X		
3	Mr. Case, HI	X		
4	Mr. Clay, MO			
5	Mr. Costa, CA	X		
6	Mr. Cox, CA	X		
7	Mr. Cunningham, SC	X		
8	Ms. DeGette, CO			
9	Mrs. Dingell, MI	X		
10	Mr. Gallego, AZ	X		
11	Mr. Grijalva, AZ (Chair)	X		
12	Ms. Haaland, NM	X		
13	Mr. Horsford, NV			
14	Mr. Huffman, CA	X		
15	Mr. Levin, CA	X		
16	Mr. Lowenthal, CA	X		
17	Mr. McEachin, VA			
18	Ms. Napolitano, CA	X		
19	Mr. Neguse, CO	X		
20	Mr. Sablan, CNMI	X		
21	Mr. San Nicolas, GU			
22	Mr. Soto, FL	X		
23	Mr. Van Drew, NJ	X		
24	Mr. Tonko, NY	X		
25	Ms. Velázquez, NY	X		
	REP. MEMBERS (19)	Y	N	P
1	Mr. Bishop, UT (Ranking)		X	
2	Ms. Cheney, WY			
3	Mr. Cook, CA		X	
4	Mr. Curtis, UT		X	
5	Mr. Fulcher, ID		X	
6	Mr. Gohmert, TX		X	
7	Ms. González-Colón, PR	X		
8	Mr. Gosar, AZ		X	
9	Mr. Graves, LA			
10	Mr. Hern, OK		X	
11	Mr. Hice, GA		X	
12	Mr. Johnson, LA		X	
13	Mr. Lamborn, CO		X	
14	Mr. McClintock, CA		X	
15	Mrs. Radewagen, AS			
16	Mr. Webster, FL		X	
17	Mr. Westerman, AR		X	
18	Mr. Wittman, VA	X		
19	Mr. Young, AK			
	TOTALS	22	13	
	Total: 44 / Quorum: 15 / Report: 23	YEAS	NAYS	PRESENT

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. 3115: 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. Living shorelines grant program.

This section establishes a grant program to fund the design, implementation, and monitoring of large- and small-scale climate resilient living shoreline projects intended to protect coastal communities and ecosystem function from environmental conditions, particularly those impacted by climate change. Living shoreline projects include any project that restores or stabilizes a shoreline by using natural materials and systems to attenuate the impacts of natural hazards or minimizes shoreline erosion while supporting coastal ecosystems and habitats.

Funding priority would be given to communities that have recently suffered from a major natural disaster and communities with a documented history of coastal erosion and frequent coastal inundation. Matching funds of 50 percent would be required for most projects; however, the requirement may be reduced or waived if determined appropriate by the Secretary. Monitoring and reporting for funded projects are required to determine the effectiveness and benefits of living shorelines.

This bill authorizes \$50 million for fiscal years 2020–2025 to carry out this Act. States, territories, District of Columbia, nonprofits, and tribes are eligible to apply for funding.

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, October 7, 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. 3115, the Living Shorelines Act of 2019.

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

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

H.R. 3115, Living Shorelines Act of 2019			
<i>As ordered reported by the House Committee on Natural Resources on September 25, 2019</i>			
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)	10	175	300
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. 3115 would authorize the appropriation of \$50 million a year over the 2020–2025 period for the National Oceanic and Atmospheric Administration to make grants to state and local governments, nonprofit organizations, and Indian tribes to design and implement projects that restore or stabilize shorelines. Such projects would use natural materials to create buffers to lessen shoreline erosion by minimizing the impact of storms, currents, and flooding.

Using historical spending patterns for similar grant programs, CBO estimates that implementing H.R. 3115 would cost \$175 million over the 2020–2024 period and \$125 million after 2024, assuming the appropriation of the authorized amounts. 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. 3115

	By fiscal year, millions of dollars—											
	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2020– 2024	2020– 2029
Authorization	50	50	50	50	50	50	0	0	0	0	250	300
Estimated Outlays	10	25	40	50	50	50	40	25	10	0	175	300

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 are to direct the Administrator of the National Oceanic and Atmospheric Administration to make grants to State and local governments and nongovernmental organizations for purposes of carrying out climate-resilient living shoreline projects that protect coastal communities by supporting ecosystem functions and habitats with the use of natural materials and systems.

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 Living Shoreline Grant Program established by the bill at Section 2 is 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: Marine Minerals Activities (CFDA No. 15.424), Bureau of Ocean Energy Management (BOEM) Environmental Studies (ES) (CFDA No. 15.423), Hurricane Sandy Disaster Relief—Coastal Resiliency Grants (CFDA No. 15.153), Environmental Policy and Innovation Grants (CFDA No. 66.611), and Emergency Management Performance Grants (CFDA No. 97.042).

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

If enacted, this bill would make no changes to existing law.

DISSENTING VIEWS

H.R. 3115 is duplicative and wasteful. The bill attempts to create yet another federal environmental grant program for developing “living shoreline systems.”

During the hearing on H.R. 3115, the National Oceanic and Atmospheric Administration’s (NOAA) witness, Rear Admiral Gallaudet, testified that, “the agency currently provides financial and technical assistance to coastal communities for the use of living shorelines through existing programs. The National Coastal Resilience Fund is a partnership between NOAA and the National Fish and Wildlife Foundation that funds projects that protect coastal communities while enhancing fish and wildlife habitat, including living shorelines projects. Additionally, NOAA’s Community-based Habitat Restoration Program provides funds for the use of living shoreline and related techniques for marine and coastal habitat restoration.”¹

The fund referenced by Rear Admiral Gallaudet received \$30 million in fiscal year (FY) 2019.² The House-passed FY 2020 appropriation bill for NOAA doubles the funding to \$60 million.³ H.R. 3115 would authorize an additional \$50 million per year for the same work. There is no logical reason to authorize yet another grant program when the current program is being funded so generously.

Even worse, this legislation strays from the long-standing Congressional intent of providing eligible coastal States and territories the flexibility to design programs that best address local challenges by inserting federal priorities into a State-run program. For these reasons, we oppose this legislation.

ROB BISHOP.
JODY B. HICE.



¹ Written Testimony by RDML Tim Gallaudet, Deputy NOAA Administrator, Hearing July 25, 2019.

² H. Rept. 116-9 (Conference Report).

³ H. Rept. 116-101.