

109TH CONGRESS
1ST SESSION

S. 1723

To amend the Magnuson-Stevens Fishery Conservation and Management Act to establish a grant program to ensure waterfront access for commercial fishermen, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 19, 2005

Ms. COLLINS introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Magnuson-Stevens Fishery Conservation and Management Act to establish a grant program to ensure waterfront access for commercial fishermen, 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 “Working Waterfront
5 Preservation Act of 2005”.

1 **SEC. 2. COMMERCIAL FISHING ACCESS PROTECTION PRO-**
 2 **GRAM.**

3 The Magnuson-Stevens Fishery Conservation and
 4 Management Act (16 U.S.C. 1801 et seq.) is amended by
 5 adding at the end the following new title:

6 **“TITLE V—GRANTS FOR**
 7 **COMMERCIAL FISHING ACCESS**

8 **“SEC. 501. DEFINITIONS.**

9 “In this title:

10 “(1) COASTAL STATE.—The term ‘Coastal
 11 State’ has the meaning given the term ‘coastal state’
 12 in section 304 of the Coastal Zone Management Act
 13 of 1972 (16 U.S.C. 1453).

14 “(2) COASTAL WATERS.—The term ‘coastal wa-
 15 ters’ has the meaning given that term in section 304
 16 of the Coastal Zone Management Act of 1971 (16
 17 U.S.C. 1453).

18 “(3) ELIGIBLE ENTITY.—The term ‘eligible en-
 19 tity’ means—

20 “(A) the government of a Coastal State;

21 “(B) a unit of local government within a
 22 Coastal State; or

23 “(C) a nonprofit organization or a fishing
 24 cooperative that the Secretary determines is ap-
 25 propriate to receive a grant under section 502.

1 “(4) ELIGIBLE PROJECT.—The term ‘eligible
2 project’ means—

3 “(A) a project to acquire real property or
4 an interest in real property located in a Coastal
5 State for the purpose of providing access to
6 persons engaged in the commercial fishing in-
7 dustry or the aquaculture industry to coastal
8 waters in working waterfront areas; or

9 “(B) a project to make improvements to
10 real property located in a Coastal State and
11 owned by an eligible entity, including the con-
12 struction or repair of wharfs or related facili-
13 ties, to provide access to persons engaged in the
14 commercial fishing industry or the aquaculture
15 industry to coastal waters in working water-
16 front areas.

17 “(5) FISHING COOPERATIVE.—The term ‘fish-
18 ing cooperative’ means a fishing or fish marketing
19 association organized in a coastal state for the pur-
20 pose of a promoting, fostering, and encouraging fish-
21 ing or marketing of fish and fishery products
22 through cooperation of its members and for the ben-
23 efit of their members as producers of such products.

1 “(6) NONPROFIT ORGANIZATION.—The term
2 ‘nonprofit organization’ means an organization that
3 is—

4 “(A) described in section 501(c) of the In-
5 ternal Revenue Code of 1986; and

6 “(B) exempt from taxation under section
7 501(a) of the Internal Revenue Code of 1986.

8 “(7) STATE FISHERIES OFFICIAL.—The term
9 ‘State fisheries official’ means the principal State of-
10 ficial with marine fishery management responsibility
11 and expertise in a coastal State, who is designated
12 as such by the Governor of the State, so long as the
13 official continues to hold such position, or the des-
14 ignee of such official.

15 “(8) WORKING WATERFRONT AREAS.—The
16 term ‘working waterfront areas’ means land that is
17 used for or that supports commercial fishing or the
18 aquaculture industry.

19 **“SEC. 502. GRANT PROGRAM.**

20 “(a) IN GENERAL.—The Secretary is authorized to
21 award a grant to an eligible entity for the purpose of car-
22 rying out an eligible project.

23 “(b) CONSIDERATIONS.—In awarding a grant for an
24 eligible project under this section, the Secretary shall con-
25 sider—

1 “(1) the need for the eligible project based on
2 the assessment of need submitted under subsection
3 (c)(2)(A);

4 “(2) the economic significance of the eligible
5 project to the commercial fishing industry or the
6 aquaculture industry in the immediate vicinity and
7 in the Coastal State in which the eligible project is
8 located;

9 “(3) the degree of community support for the
10 eligible project;

11 “(4) the level of threat of that the property pro-
12 posed to be acquired or improved with such grant
13 will be converted to uses incompatible with commer-
14 cial fishing or the aquaculture industry;

15 “(5) the utility of the eligible project for com-
16 mercial fishing or the aquaculture industry, with re-
17 spect to the natural characteristics and developed in-
18 frastructure of the property proposed to be acquired;

19 “(6) whether a business plan or a harbor plan
20 exists for the area in which the project will be lo-
21 cated and whether the eligible project is consistent
22 with such plan;

23 “(7) for an eligible project described in section
24 501(4)(A), the availability of alternative real prop-
25 erty or an alternative interest in real property that

would ensure that persons engaged in the commercial fishing industry or the aquaculture industry have access to coastal waters in working waterfront areas; and

“(8) whether a land use plan exists for the area in which the project will be located and whether the project is consistent with such plan.

“(c) APPLICATION AND REVIEW.—

“(1) IN GENERAL.—An eligible entity that seeks a grant under this section shall submit to the appropriate State fisheries official, at such time and in such manner as the Secretary shall prescribe, an application for the grant.

“(2) ASSESSMENT OF NEED.—An application for a grant may be considered by the Secretary if the appropriate State fisheries official—

“(A) prepares an assessment of the need for the proposed eligible project, taking into account—

“(i) the needs of the commercial fishing industry or the aquaculture industry in the State;

“(ii) the needs of other industries and other parties in the area in which the project will be located;

1 “(iii) whether alternative sites exist
2 for the proposed project; and

3 “(iv) the social and cultural value of
4 the industries to the affected community
5 and State; and

6 “(B) submits to the Secretary—

7 “(i) the application submitted under
8 paragraph (1); and

9 “(ii) the assessment of need prepared
10 under subparagraph (A).

11 “(d) COST SHARING.—

12 “(1) IN GENERAL.—The amount of a grant
13 awarded under this section to carry out an eligible
14 project may not exceed 75 percent of the total cost
15 of the eligible project.

16 “(2) ASSURANCES.—As a condition of receipt of
17 a grant under this section, an eligible entity shall
18 provide to the Secretary such assurances as the Sec-
19 retary determines are sufficient to demonstrate that
20 the share of the cost of each eligible project that is
21 not funded by the grant awarded under this section
22 has been secured.

23 “(3) FORM.—The share of the cost of carrying
24 out an eligible project that is not funded by a grant

1 awarded under this section may be provided in cash
 2 or in kind (including a donation of land).

3 “(e) USE OF GRANT FUNDS FOR ELIGIBLE
 4 PROJECTS.—

5 “(1) PURCHASES.—

6 “(A) IN GENERAL.—Except as provided in
 7 subparagraph (B), grants awarded under this
 8 section may be used to purchase privately-
 9 owned real property or interests in privately-
 10 owned real property, including easements, only
 11 from willing sellers at fair market value.

12 “(B) SALES AT LESS THAN FAIR MARKET
 13 VALUE.—A grant awarded under this section
 14 may be used to acquire privately-owned real
 15 property or an interest in privately-owned real
 16 property at less than fair market value only if
 17 the owner certifies to the Secretary that the
 18 sale is being entered into willingly and without
 19 coercion.

20 “(C) NO EXERCISE OF EMINENT DO-
 21 MAIN.—No Federal, State, or local agency may
 22 exercise the power of eminent domain to secure
 23 title to any real property or facilities in connec-
 24 tion with a project carried out under this title.

1 “(2) TITLE.—Title to real property or an inter-
 2 est in real property acquired with a grant awarded
 3 under this section may be held, as determined ap-
 4 propriate by the Secretary in consultation with the
 5 appropriate Coastal State, by—

6 “(A) the Coastal State;

7 “(B) a unit of local government of the
 8 Coastal State;

9 “(C) a nonprofit organization; or

10 “(D) a fishing cooperative.

11 “(f) CONTINUED ACCESS TO COASTAL WATERS.—

12 “(1) REQUIREMENT FOR AGREEMENT.—The
 13 Secretary shall enter into an agreement with an eli-
 14 gible entity that receives a grant under this section.
 15 Such agreement shall require the eligible entity to
 16 provide the Secretary the assurances that the Sec-
 17 retary determines are appropriate to ensure that the
 18 eligible project is not converted to a use that is in-
 19 consistent with the purposes for which the grant was
 20 awarded.

21 “(2) REVERSIONARY INTEREST.—

22 “(A) IN GENERAL.—If the Governor of a
 23 Coastal State makes a determination described
 24 in subparagraph (B), all right, title, and inter-
 25 est in and to the property shall, except as pro-

vided in subparagraph (C), revert, at the option of the Governor, to the Coastal State, and the State shall have the right of immediate entry onto the property. Any determination of the Governor under this paragraph shall be made on the record after an opportunity for a hearing.

“(B) DETERMINATION.—The determination referred to in subparagraph (A) is a determination that—

“(i) the unit of local government or nonprofit organization is unable or unwilling to enforce the terms of the easement; or

“(ii) the easement has been modified in a manner that is inconsistent with the purposes for which the grant was awarded.

“(C) CONVEYANCE TO ANOTHER UNIT OF LOCAL GOVERNMENT OR NONPROFIT ORGANIZATION.—If the Governor of a Coastal State makes a determination under subparagraph (B), the State may convey or authorize the unit of local government or nonprofit organization to convey the easement to another unit of local government or nonprofit organization.

1 “(g) APPROVAL OR DISAPPROVAL.—

2 “(1) IN GENERAL.—Subject to paragraph (2),
3 as soon as practicable after the date on which the
4 Secretary receives an application under subsection
5 (c)(2)(B), the Secretary shall—

6 “(A) review the application; and

7 “(B)(i) award a grant to the applicant; or

8 “(ii) disapprove the application and pro-
9 vide the applicant a statement that describes
10 the reasons why the application was dis-
11 approved, including a deadline by which the ap-
12 plicant may resubmit the application.

13 “(h) ADMINISTRATIVE COSTS.—A Coastal State, on
14 approval of the Secretary and subject to any regulations
15 promulgated by the Secretary, may use up to 10 percent
16 of the amounts made available under this section to pay
17 the administrative costs of the Coastal State relating to
18 the program.

19 “(i) TREATMENT OF PURCHASE PROCEEDS.—For
20 purposes of the Internal Revenue Code of 1986, gross in-
21 come shall not include 50 percent of the gain from the
22 sale or exchange of private land or interests in private land
23 in purchases described in subsection (e)(1).

1 **“SEC. 503. ANNUAL REPORT.**

2 “The Secretary shall submit to Congress an annual
3 report that describes the eligible projects carried out using
4 grants awarded under this title.”.

5 **SEC. 3. AUTHORIZATION OF APPROPRIATION.**

6 There are authorized to be appropriated to the Sec-
7 retary of Commerce \$50,000,000 for each of the fiscal
8 years 2005 and 2007 to carry out the provisions of title
9 V of the Magnuson-Stevens Fishery Conservation and
10 Management Act, as added by section 2.

