

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 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 propiate 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 facil-  
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

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

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

8 “(c) APPLICATION AND REVIEW.—

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

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

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

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

23 “(ii) the needs of other industries and  
24 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 interest  
2           in real property acquired with a grant awarded  
3           under this section may be held, as determined appropriate  
4           by the Secretary in consultation with the appropriate  
5           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 eligible  
14           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 Secretary  
17           determines are appropriate to ensure that the eligible  
18           project is not converted to a use that is inconsistent  
19           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 interest  
25           in and to the property shall, except as pro-

8                             “(B) DETERMINATION.—The determina-  
9                             tion referred to in subparagraph (A) is a deter-  
10                           mination that—

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.

○