

110TH CONGRESS  
1ST SESSION

# H. R. 3223

To amend the Coastal Zone Management Act of 1972 to establish a grant program to ensure coastal access for commercial and recreational fishermen and other water-dependent coastal-related businesses, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 30, 2007

Mr. ALLEN (for himself 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 grant program to ensure coastal access for commercial and recreational fishermen and other water-dependent coastal-related businesses, 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 Our Waterfronts  
5 Working Act of 2007”.

1 **SEC. 2. WORKING WATERFRONT PROGRAM.**

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

5 **“SEC. 320. WORKING WATERFRONT GRANT PROGRAM.**

6 “(a) FINDINGS AND PURPOSE.—

7 “(1) The Congress finds the following:

8 “(A) Water-dependent commercial activi-  
9 ties are the economic and cultural heart of  
10 many coastal communities. These activities in-  
11 clude commercial fishing, recreational fishing,  
12 tourism, aquaculture, boat-building, transpor-  
13 tation, and many other water-dependent busi-  
14 nesses.

15 “(B) Water-dependent commercial activi-  
16 ties depend on coastal access in the form of  
17 docks, wharfs, lifts, wet and dry marinas, boat  
18 ramps, boat hauling, repair, and construction  
19 facilities, commercial fishing facilities, and  
20 other support structures on, over, or adjacent  
21 to navigable bodies of water.

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

1 coastal areas experience a demographic shift fa-  
2 voring older and wealthier citizens.

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) The purpose of this section is to preserve,  
12 protect, and expand coastal access for persons en-  
13 gaged in water-dependent commercial activities in-  
14 cluding commercial fishing, recreational fishing,  
15 aquaculture, boat-building, or other water-dependent  
16 coastal-related businesses.

17 “(b) GRANT PROGRAM.—

18 “(1) The Secretary shall establish a Working  
19 Waterfront Grant Program, in cooperation with ap-  
20 propriate State, regional, and other units of govern-  
21 ment, under which the Secretary may make a grant  
22 to any coastal state for the purpose of implementing  
23 a working waterfront plan approved by the Secretary  
24 under subsection (c).

1           “(2) Subject to the availability of appropria-  
2           tions, the Secretary shall award matching grants  
3           under the program through a regionally equitable,  
4           competitive funding process.

5           “(3) In awarding a grant to an eligible coastal  
6           State, the Secretary shall consider—

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

9                   “(B) the working waterfront and needs of  
10                  the coastal state as outlined in the working wa-  
11                  terfront plan submitted by the coastal state  
12                  under subsection (c);

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

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

24                  “(E) the potential for rapid turnover in the  
25                  ownership of working waterfront in the coastal

1 state, and where applicable the need for coastal  
2 states to respond quickly when properties in ex-  
3 isting or potential working waterfront areas or  
4 public access areas as identified in the working  
5 waterfront plan submitted by the coastal state  
6 come under threat or become available; and

7 “(F) the impact of the proposed project on  
8 the coastal ecosystem.

9 “(4) The Secretary shall approve or reject an  
10 application for such a grant within 30 days after re-  
11 ceiving an application for the grant.

12 “(c) WORKING WATERFRONT PLANS.—

13 “(1) To qualify for a grant under subsection  
14 (b), a coastal state must submit and have approved  
15 by the Secretary a comprehensive working water-  
16 front plan in accordance with this subsection.

17 “(2) Such plan—

18 “(A) must provide for preservation and ex-  
19 pansion of access to coastal waters to persons  
20 engaged in commercial fishing, recreational  
21 fishing, or other water-dependent coastal-re-  
22 lated business;

23 “(B) shall include—

1           “(i) an assessment of the economic,  
2           social, and cultural value of working water-  
3           front to the coastal state;

4           “(ii) a description of relevant State  
5           and local laws and regulations affecting  
6           working waterfront in the geographic areas  
7           identified in the working waterfront plan;

8           “(iii) identification of geographic  
9           areas where working waterfronts are cur-  
10          rently under threat of conversion to uses  
11          incompatible with commercial fishing, rec-  
12          reational fishing, or other water-dependent  
13          coastal-related business, and the level of  
14          that threat;

15          “(iv) identification of geographic areas  
16          appropriate for working waterfronts where  
17          working waterfronts are not currently  
18          available, and, where appropriate, an as-  
19          sessment of the environmental impacts of  
20          any expansion or new development of  
21          working waterfronts on the coastal eco-  
22          system;

23          “(v) identification of other working  
24          waterfront needs including improvements

1 to existing working waterfronts and work-  
2 ing waterfront areas;

3 “(vi) for areas identified under  
4 clauses (iii), (iv) and (v), identification of  
5 current availability and potential for ex-  
6 pansion of public access to coastal waters;

7 “(vii) a strategic and prioritized plan  
8 for the preservation, expansion, and im-  
9 provement of working waterfronts in the  
10 coastal state, including where appropriate  
11 provisions for the preservation and expan-  
12 sion of public access to coastal waters; and

13 “(viii) a description of the degree of  
14 community support for such strategic plan;  
15 and

16 “(C) may be part of the management pro-  
17 gram approved under section 306.

18 “(3) A working waterfront plan—

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

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

1           “(4) The Secretary may award planning grants  
2           to coastal states for the purpose of developing or re-  
3           vising comprehensive working waterfront plans.

4           “(d) USES, TERMS, AND CONDITIONS.—

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

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

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

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

15           “(e) PUBLIC ACCESS REQUIREMENT.—A working  
16           waterfront project funded by grants made under this sec-  
17           tion must provide for expansion or improvement of public  
18           access to coastal waters at or in the vicinity of a working  
19           waterfront, except for commercial fishing or other indus-  
20           trial access points where the coastal state determines that  
21           public access would be unsafe.

22           “(f) LIMITATIONS.—

23           “(1) Except as provided in paragraph (2), a  
24           grant awarded under this section may be used to  
25           purchase working waterfront or an interest in work-

1       ing waterfront, including an easement, only from a  
2       willing seller and at fair market value.

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

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

13      “(g) ALLOCATION OF GRANTS TO LOCAL GOVERN-  
14      MENTS AND OTHER ENTITIES.—

15           “(1) Subject to the approval of the Secretary,  
16      a coastal state may, as part of an approved working  
17      waterfront plan, designate as a qualified holder any  
18      unit of local government or nonprofit organization.

19           “(2) A coastal state or a qualified holder des-  
20      ignated by a coastal state that is the recipient of a  
21      grant made under this section may allocate to a unit  
22      of local government, non-profit organization, fishing  
23      cooperative, or other entity, a portion of any grant  
24      made under this section for the purpose of carrying  
25      out this section, except that such an allocation shall

1 not relieve the coastal state of the responsibility for  
2 ensuring that any funds so allocated are applied in  
3 furtherance of the coastal state's approved working  
4 waterfront plan.

5 “(3) A qualified holder may hold title to or in-  
6 terest in property acquired under this section, except  
7 that—

8 “(A) all persons holding title to or interest  
9 in working waterfront affected by a grant under  
10 this section, including a qualified holder, private  
11 citizen, private business, non-profit organiza-  
12 tion, fishing cooperative, or other entity, shall  
13 enter into a working waterfront covenant;

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

17 “(C) if the coastal state determines, on the  
18 record after an opportunity for a hearing, that  
19 the working waterfront covenant has been vio-  
20 lated—

21 “(i) all right, title, and interest in and  
22 to the working waterfront covered by such  
23 covenant shall, except as provided in sub-  
24 paragraph (D), revert to the coastal state;  
25 and

1                   “(ii) the coastal state shall have the  
2                   right of immediate entry onto the working  
3                   waterfront.

4                   “(D) If a Coastal State makes a deter-  
5                   mination under subparagraph (C), the Coastal  
6                   State may convey or authorize the qualified  
7                   holder to convey the working waterfront or in-  
8                   terest in working waterfront to another quali-  
9                   fied holder.

10                  “(h) MATCHING CONTRIBUTIONS.—

11                   “(1) Except as provided in paragraph (2), the  
12                   Secretary shall require that each coastal state that  
13                   receives a grant under this section, or a qualified  
14                   holder designated by that coastal state under sub-  
15                   section (e), shall provide matching funds in an  
16                   amount equal to at least 25 percent of the total cost  
17                   of the project carried out with the grant.

18                   “(2) The Secretary may waive the application  
19                   of paragraph (1) for any qualified holder that is an  
20                   underserved community, a community that has an  
21                   inability to draw on other sources of funding because  
22                   of the small population or low income of the commu-  
23                   nity, or for other reasons the Secretary considers ap-  
24                   propriate.

1           “(3) As a condition of receipt of a grant under  
2 this section, the Secretary shall require that a coast-  
3 al state provide to the Secretary such assurances as  
4 the Secretary determines are sufficient to dem-  
5 onstrate that the share of the cost of each eligible  
6 project that is not funded by the grant awarded  
7 under this section has been secured.

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

14           “(5) The Secretary shall treat as non-Federal  
15 match the value of a working waterfront or interest  
16 in a working waterfront, including conservation and  
17 other easements, that is held in perpetuity by a  
18 qualified holder, if the working waterfront or inter-  
19 est is identified in the application for the grant and  
20 acquired by the qualified holder within 3 years be-  
21 fore submission of the application, or within 3 years  
22 after the submission of the application and before  
23 the end of the grant award period. Such value shall  
24 be determined by an appraisal performed at such

1 time before the award of the grant as the Secretary  
2 considers appropriate.

3 “(6) The Secretary shall treat as non-Federal  
4 match the costs associated with acquisition of a  
5 working waterfront or an interest in a working wa-  
6 terfront, and the costs of restoration, enhancement,  
7 or other improvement to a working waterfront, if the  
8 activities are identified in the project application and  
9 the costs are incurred within the period of the grant  
10 award, or, for working waterfront described in para-  
11 graph (5), within the same time limits described in  
12 that paragraph. These costs may include either cash  
13 or in-kind contributions.

14 “(i) LIMIT ON ADMINISTRATIVE COSTS.—No more  
15 than 5 percent of the funds made available to the Sec-  
16 retary under this section may be used by the Secretary  
17 for planning or administration of the program under this  
18 section

19 “(j) OTHER TECHNICAL AND FINANCIAL ASSIST-  
20 ANCE.—The Secretary shall—

21 “(1) assist coastal states in identifying and ob-  
22 taining other sources of available Federal technical  
23 and financial assistance for the development and re-  
24 vision of a working waterfront plan and the imple-

1       mentation of an approved working waterfront plan;  
2       and

3               “(2) provide technical assistance to States for  
4       the development and revision of comprehensive work-  
5       ing waterfront plans, which may include, subject to  
6       the availability of appropriations, planning grants  
7       and assistance and feasibility studies.

8       “(k) REPORTS.—

9               “(1) The Secretary shall—

10                   “(A) develop performance measures to  
11       evaluate and report on the effectiveness of the  
12       program under this section in accomplishing the  
13       purpose of this section; and

14                   “(B) submit to Congress a biennial report  
15       that includes such evaluations, an account of all  
16       expenditures, and descriptions of all projects  
17       carried out using grants awarded under this  
18       section.

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

22       “(l) AUTHORIZATION OF APPROPRIATIONS.—There  
23       are authorized to be appropriated to the Secretary to carry  
24       out this section \$25,000,000 for fiscal year 2008,

1 \$50,000,000 for fiscal year 2009, and \$75,000,000 for fis-  
2 cal year 2010.

3 “(m) DEFINITIONS.—In this section:

4 “(1) The term ‘qualified holder’ means a coast-  
5 al state or a unit of local or coastal state govern-  
6 ment or a non-profit organization designated by a  
7 coastal state under subsection (e).

8 “(2) The term ‘Secretary’ means the Secretary,  
9 acting through the National Oceanic and Atmos-  
10 pheric Administration.

11 “(3) The term ‘working waterfront’ means real  
12 property (including support structures over water  
13 and other facilities) that provides access to coastal  
14 waters to persons engaged in commercial fishing,  
15 recreational fishing business, or other water-depend-  
16 ent coastal-related business and is used for, or that  
17 supports, commercial fishing, recreational fishing, or  
18 other water-dependent coastal-related business.

19 “(4) The term ‘working waterfront covenant’  
20 means an agreement in recordable form between the  
21 owner of working waterfront and one or more quali-  
22 fied holders, that provides such assurances as the  
23 Secretary may require that—

24 “(A) the title to or interest in the working  
25 waterfront will be held by a grant recipient or

1 qualified holder in perpetuity, except as pro-  
2 vided in subparagraph (C);

3 “(B) the working waterfront will be man-  
4 aged in a manner that is consistent with the  
5 purposes for which the property is acquired  
6 pursuant to this section, and the property will  
7 not be converted to any use that is inconsistent  
8 with the purpose of this section;

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

11 “(i) all working waterfront owners  
12 and qualified holders involved in such sale  
13 or exchange shall accede to such agree-  
14 ment; or

15 “(ii) funds equal to the fair market  
16 value of the working waterfront or interest  
17 in working waterfront shall be paid to the  
18 Secretary by parties to the sale or ex-  
19 change, and such funds shall, at the dis-  
20 cretion of the Secretary, be paid to the  
21 coastal state in which the working water-  
22 front is located for use in the implementa-  
23 tion of the working waterfront plan of the  
24 State approved by the Secretary under this  
25 section; and

1           “(D) such covenant is subject to enforce-  
2           ment and oversight by the coastal state or by  
3           another person as determined appropriate by  
4           the Secretary.”.

○