

111TH CONGRESS
1ST SESSION

H. R. 2548

To amend the Coastal Zone Management Act of 1972 to require establishment of a Working Waterfront Grant Program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 21, 2009

Ms. PINGREE of Maine (for herself, Ms. BORDALLO, Mrs. CAPPS, Mr. DELAHUNT, Mr. FARR, Mr. FRANK of Massachusetts, Mr. KENNEDY, Mr. KLEIN of Florida, Mr. LANGEVIN, Mr. MCGOVERN, Mr. MCINTYRE, Mr. MICHAUD, Mr. MORAN of Virginia, Mr. THOMPSON of California, and Mr. WITTMAN) introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To amend the Coastal Zone Management Act of 1972 to require establishment of a Working Waterfront Grant Program, 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 America’s Water-
5 fronts Working Act of 2009”.

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 “WORKING WATERFRONT GRANT PROGRAM

6 “SEC. 320. (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, boatbuilding, 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 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, boatbuilding, 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 demonstrated working waterfront
10 needs of the coastal state as outlined by a
11 working waterfront plan approved for the coast-
12 al state under subsection (c), and the value of
13 the proposed project for the implementation of
14 such Plan;

15 “(C) the ability to successfully leverage
16 funds among participating entities, including
17 Federal programs, regional organizations, State
18 and other government units, landowners, cor-
19 porations, or private organizations;

20 “(D) the potential for rapid turnover in
21 the ownership of working waterfront in the
22 coastal state, and where applicable the need for
23 coastal states to respond quickly when prop-
24 erties in existing or potential working water-
25 front areas or public access areas as identified

1 in the working waterfront plan submitted by
2 the coastal state come under threat or become
3 available;

4 “(E) the impact of the working waterfront
5 plan approved for the coastal state under sub-
6 section (c) on the coastal ecosystem and the
7 users of the coastal ecosystem; and

8 “(F) the extent of the historic connection
9 between working waterfronts and the local com-
10 munities within the coastal state.

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

14 “(c) WORKING WATERFRONT PLANS.—

15 “(1) To qualify for a grant under subsection
16 (b), a coastal state must submit and have approved
17 by the Secretary a comprehensive working water-
18 front plan in accordance with this subsection or be
19 in the process of developing such a plan and have an
20 established working waterfront program at the State
21 or local level.

22 “(2) Such plan—

23 “(A) must provide for preservation and ex-
24 pansion of access to coastal waters to persons
25 engaged in commercial fishing, recreational

1 fishing, aquaculture, boatbuilding, or other
2 water-dependent coastal-related business;

3 “(B) shall include—

4 “(i) an assessment of the economic,
5 social, cultural, and historic value of work-
6 ing waterfront to the coastal state;

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

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

19 “(iv) identification of geographic areas
20 with a historic connection to working wa-
21 terfronts where working waterfronts are
22 not currently available, and, where appro-
23 priate, an assessment of the environmental
24 impacts of any expansion or new develop-

1 ment of working waterfronts on the coastal
2 ecosystem;

3 “(v) identification of other working
4 waterfront needs including improvements
5 to existing working waterfronts and work-
6 ing waterfront areas;

7 “(vi) for areas identified under
8 clauses (iii), (iv) and (v), identification of
9 current availability and potential for ex-
10 pansion of public access to coastal waters;

11 “(vii) a strategic and prioritized plan
12 for the preservation, expansion, and im-
13 provement of working waterfronts in the
14 coastal state, including reasonable and ap-
15 propriate provisions for the preservation
16 and expansion of public access to coastal
17 waters;

18 “(viii) a description of the degree of
19 community support for such strategic plan;
20 and

21 “(ix) a contingency plan for properties
22 that revert to the coastal state pursuant to
23 determinations made by the coastal state
24 under subsection (g)(4)(C);

1 “(C) may be part of the management pro-
2 gram approved under section 306;

3 “(D) shall utilize to the maximum extent
4 practicable existing information contained in
5 relevant surveys, plans, or other strategies to
6 fulfill the information requirements under this
7 paragraph; and

8 “(E) shall incorporate the policies and reg-
9 ulations adopted by communities under local
10 working waterfront plans or strategies in exist-
11 ence prior to the date of enactment of this sec-
12 tion.

13 “(3) A working waterfront plan—

14 “(A) shall be effective for purposes of this
15 section for the 5-year period beginning on the
16 date it is approved by the Secretary;

17 “(B) must be updated and re-approved by
18 the Secretary before the end of such period; and

19 “(C) shall be complimentary to and incor-
20 porate the policies and objectives of regional or
21 local working waterfront plans as in effect be-
22 fore the date of enactment of this section or as
23 subsequently revised.

24 “(4) The Secretary may—

1 “(A) award planning grants to coastal
2 states for the purpose of developing or revising
3 comprehensive working waterfront plans; and

4 “(B) award grants consistent with the pur-
5 poses of this section to States undertaking the
6 working waterfront planning process under this
7 section, for the purpose of preserving and pro-
8 tecting working waterfronts during such pro-
9 cess.

10 “(5) A coastal state is encouraged to—

11 “(A) develop a working waterfront plan
12 under this subsection, using a process that in-
13 volves the public and stakeholders; and

14 “(B) coordinate development and imple-
15 mentation of such a plan with other coastal
16 management plans, regulations, and activities of
17 the coastal state.

18 “(d) USES, TERMS, AND CONDITIONS.—

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

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

24 “(A) to acquire a working waterfront, or
25 an interest in a working waterfront; or

1 “(B) to make improvements to a working
2 waterfront, including the construction or repair
3 of wharfs, boat ramps, or related facilities.

4 “(e) PUBLIC ACCESS REQUIREMENT.—A working
5 waterfront project funded by grants made under this sec-
6 tion must provide for expansion or improvement of reason-
7 able and appropriate public access to coastal waters at or
8 in the vicinity of a working waterfront, except for commer-
9 cial fishing or other industrial access points where the
10 coastal state determines that public access would be un-
11 safe.

12 “(f) LIMITATIONS.—

13 “(1) Except as provided in paragraph (2), a
14 grant awarded under this section may be used to
15 purchase working waterfront or an interest in work-
16 ing waterfront, including an easement, only from a
17 willing seller and at fair market value.

18 “(2) A grant awarded under this section may
19 be used to acquire working waterfront or an interest
20 in working waterfront at less than fair market value
21 only if the owner certifies to the Secretary that the
22 sale is being entered into willingly and without coer-
23 cion.

24 “(3) No Federal, State, or local entity may ex-
25 ercise the power of eminent domain to secure title to

1 any property or facilities in connection with a
2 project carried out under this section.

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

5 “(1) The Secretary shall encourage coastal
6 states to broadly allocate amounts received as grants
7 under this section among working waterfronts iden-
8 tified in working waterfront plans approved under
9 subsection (c).

10 “(2) Subject to the approval of the Secretary,
11 a coastal state may, as part of an approved working
12 waterfront plan, designate as a qualified holder any
13 unit of local government or nonprofit organization.

14 “(3) A coastal state or a qualified holder des-
15 igned by a coastal state that is the recipient of a
16 grant made under this section may allocate to a unit
17 of local government, non-profit organization, fishing
18 cooperative, or other entity, a portion of any grant
19 made under this section for the purpose of carrying
20 out this section, except that such an allocation shall
21 not relieve the coastal state of the responsibility for
22 ensuring that any funds so allocated are applied in
23 furtherance of the coastal state’s approved working
24 waterfront plan.

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

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

10 “(B) such covenant shall be held by the
11 coastal state or a qualified holder designated
12 under paragraph (2);

13 “(C) if the coastal state determines, on the
14 record after an opportunity for a hearing, that
15 the working waterfront covenant has been vio-
16 lated—

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

22 “(ii) the coastal state shall have the
23 right of immediate entry onto the working
24 waterfront.

1 “(D) If a coastal state makes a determina-
2 tion under subparagraph (C), the coastal state
3 may convey or authorize the qualified holder to
4 convey the working waterfront or interest in
5 working waterfront to another qualified holder.

6 “(E) Nothing in this subsection waives any
7 legal requirement under any Federal or State
8 law.

9 “(h) MATCHING CONTRIBUTIONS.—

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

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

24 “(3) A local community designated as a quali-
25 fied holder under subsection (g) may utilize funds or

1 other in-kind contributions donated by a non-govern-
2 mental partner to satisfy the matching funds re-
3 quirement under this subsection.

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

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

17 “(6) The Secretary shall treat as non-Federal
18 match the value of a working waterfront or interest
19 in a working waterfront, including conservation and
20 other easements, that is held in perpetuity by a
21 qualified holder, if the working waterfront or inter-
22 est is identified in the application for the grant and
23 acquired by the qualified holder within 3 years be-
24 fore submission of the application, or within 3 years
25 after the submission of the application and before

1 the end of the grant award period. Such value shall
2 be determined by an appraisal performed at such
3 time before the award of the grant as the Secretary
4 considers appropriate.

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

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

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

23 “(1) assist coastal states in identifying and ob-
24 taining other sources of available Federal technical
25 and financial assistance for the development and re-

1 vision of a working waterfront plan and the imple-
2 mentation of an approved working waterfront plan;
3 and

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

9 “(k) REPORTS.—

10 “(1) The Secretary shall—

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

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

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

23 “(l) AUTHORIZATION OF APPROPRIATIONS.—There
24 are authorized to be appropriated to the Secretary to carry
25 out this section \$25,000,000 for fiscal year 2010,

1 \$50,000,000 for fiscal year 2011, and \$75,000,000 for
2 each of fiscal years 2012 and 2013.

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 (g).

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, boatbuilding, aqua-
16 culture, or other water-dependent coastal-related
17 business and is used for, or that supports, commer-
18 cial fishing, recreational fishing, boatbuilding, aqua-
19 culture, or other water-dependent coastal-related
20 business.

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

1 “(A) the title to or interest in the working
2 waterfront will be held by a grant recipient or
3 qualified holder in perpetuity, except as pro-
4 vided in subparagraph (C);

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

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

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

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

1 State approved by the Secretary under this
2 section; and

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

○