

111TH CONGRESS
1ST SESSION

S. 533

To amend the Coastal Zone Management Act of 1972 to establish a grant program to ensure waterfront access for commercial fishermen, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 5, 2009

Ms. COLLINS (for herself, Mr. KENNEDY, and Ms. SNOWE) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Coastal Zone Management Act of 1972 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 2009”.

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

3 The Coastal Zone Management Act of 1972 (16
 4 U.S.C. 1451 et seq.) is amended by inserting after section
 5 306 the following:

6 **“SEC. 306A. COMMERCIAL FISHING ACCESS GRANTS.**

7 “(a) DEFINITIONS.—In this section:

8 “(1) ELIGIBLE ENTITY.—The term ‘eligible en-
 9 tity’ means—

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

11 “(B) a unit of local government within a
 12 Coastal State; or

13 “(C) a nonprofit organization or a fishing
 14 cooperative that the Secretary determines is ap-
 15 propriate to receive a grant under subsection
 16 (b).

17 “(2) ELIGIBLE PROJECT.—The term ‘eligible
 18 project’ means—

19 “(A) a project to acquire real property or
 20 an interest in real property located in a Coastal
 21 State for the purpose of providing access to
 22 persons engaged in the commercial fishing in-
 23 dustry or the aquaculture industry to coastal
 24 waters in working waterfront areas; or

25 “(B) a project to make improvements to
 26 real property located in a Coastal State and

owned by an eligible entity, including the construction or repair of wharfs or related facilities, to provide access to persons engaged in the commercial fishing industry or the aquaculture industry to coastal waters in working waterfront areas.

“(3) FISHING COOPERATIVE.—The term ‘fishing cooperative’ means a fishing or fish marketing association organized in a Coastal State for the purpose of promoting, fostering, and encouraging fishing or marketing of fish and fishery products through cooperation of the members of such association and for the benefit of such members as producers of such products.

“(4) NONPROFIT ORGANIZATION.—The term ‘nonprofit organization’ means an organization that is—

“(A) described in section 501(c) of the Internal Revenue Code of 1986; and

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

“(5) STATE FISHERIES OFFICIAL.—The term ‘State fisheries official’ means the principal State official with marine fishery management responsibility and expertise in a Coastal State, who is designated

1 as such by the Governor of the State, so long as the
 2 official continues to hold such position, or the des-
 3 ignee of such official.

4 “(6) WORKING WATERFRONT AREAS.—The
 5 term ‘working waterfront areas’ means land that is
 6 used for, or that supports, commercial fishing or the
 7 aquaculture industry.

8 “(b) GRANT PROGRAM.—

9 “(1) IN GENERAL.—The Secretary is authorized
 10 to award a grant to an eligible entity for the purpose
 11 of carrying out an eligible project.

12 “(2) CONSIDERATIONS.—In awarding a grant
 13 for an eligible project under this section, the Sec-
 14 retary shall consider—

15 “(A) the need for the eligible project based
 16 on the assessment of need submitted under
 17 paragraph (3)(B)(i);

18 “(B) the economic significance of the eligi-
 19 ble project to the commercial fishing industry
 20 or the aquaculture industry in the immediate vi-
 21 cinity and in the Coastal State in which the eli-
 22 gible project is located;

23 “(C) the degree of community support for
 24 the eligible project;

1 “(D) the level of threat that the property
2 proposed to be acquired or improved with such
3 grant will be converted to uses incompatible
4 with commercial fishing or the aquaculture in-
5 dustry;

6 “(E) the utility of the eligible project for
7 commercial fishing or the aquaculture industry,
8 with respect to the natural characteristics and
9 developed infrastructure of the property pro-
10 posed to be acquired;

11 “(F) whether a business plan or a harbor
12 plan exists for the area in which the project will
13 be located and whether the eligible project is
14 consistent with such plan;

15 “(G) for an eligible project described in
16 subsection (a)(2)(A), the availability of alter-
17 native real property or an alternative interest in
18 real property that would ensure that persons
19 engaged in the commercial fishing industry or
20 the aquaculture industry have access to coastal
21 waters in working waterfront areas; and

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

1 “(3) APPLICATION AND REVIEW.—

2 “(A) IN GENERAL.—An eligible entity
3 seeking a grant under this section shall submit
4 to the appropriate State fisheries official, at
5 such time and in such manner as the Secretary
6 shall prescribe, an application for the grant.

7 “(B) ASSESSMENT OF NEED.—An applica-
8 tion for a grant may be considered by the Sec-
9 retary if the appropriate State fisheries offi-
10 cial—

11 “(i) prepares an assessment of the
12 need for the proposed eligible project, tak-
13 ing into account—

14 “(I) the needs of the commercial
15 fishing industry or the aquaculture in-
16 dustry in the State;

17 “(II) the needs of other indus-
18 tries and other parties in the area in
19 which the project will be located;

20 “(III) whether alternative sites
21 exist for the proposed project; and

22 “(IV) the social and cultural
23 value of the industries to the affected
24 community and State; and

25 “(ii) submits to the Secretary—

1 “(I) the application submitted
2 under subparagraph (A); and

3 “(II) the assessment of need pre-
4 pared under clause (i).

5 “(4) COST SHARING.—

6 “(A) IN GENERAL.—The amount of a
7 grant awarded under this section to carry out
8 an eligible project may not exceed 75 percent of
9 the total cost of the eligible project.

10 “(B) ASSURANCES.—As a condition of re-
11 ceipt of a grant under this section, an eligible
12 entity shall provide to the Secretary such assur-
13 ances as the Secretary determines are sufficient
14 to demonstrate that the share of the cost of
15 each eligible project that is not funded by the
16 grant awarded under this section has been se-
17 cured.

18 “(C) FORM.—The share of the cost of car-
19 rying out an eligible project that is not funded
20 by a grant awarded under this section may be
21 provided in cash or in kind (including a dona-
22 tion of land).

23 “(5) USE OF GRANT FUNDS FOR ELIGIBLE
24 PROJECTS.—

25 “(A) PURCHASES.—

1 “(i) IN GENERAL.—Except as pro-
2 vided in clause (ii), grants awarded under
3 this section may be used to purchase pri-
4 vately owned real property or interests in
5 privately owned real property, including
6 easements, only from willing sellers at fair
7 market value.

8 “(ii) SALES AT LESS THAN FAIR MAR-
9 KET VALUE.—A grant awarded under this
10 section may be used to acquire privately
11 owned real property or an interest in pri-
12 vately owned real property at less than fair
13 market value only if the owner certifies to
14 the Secretary that the sale is being entered
15 into willingly and without coercion.

16 “(iii) NO EXERCISE OF EMINENT DO-
17 MAIN.—No Federal, State, or local agency
18 may exercise the power of eminent domain
19 to secure title to any real property or fa-
20 cilities in connection with a project carried
21 out under this title.

22 “(B) TITLE.—Title to real property or an
23 interest in real property acquired with a grant
24 awarded under this section may be held, as de-
25 termined appropriate by the Secretary in con-

1 sultation with the appropriate Coastal State,
 2 by—

3 “(i) the Coastal State;

4 “(ii) a unit of local government of the
 5 Coastal State;

6 “(iii) a nonprofit organization; or

7 “(iv) a fishing cooperative.

8 “(6) CONTINUED ACCESS TO COASTAL WA-
 9 TERS.—

10 “(A) REQUIREMENT FOR AGREEMENT.—

11 The Secretary shall enter into an agreement
 12 with an eligible entity that receives a grant
 13 under this section. Such agreement shall re-
 14 quire the eligible entity to provide the Secretary
 15 the assurances that the Secretary determines
 16 are appropriate to ensure that the eligible
 17 project is not converted to a use that is incon-
 18 sistent with the purposes for which the grant
 19 was awarded.

20 “(B) REVERSIONARY INTEREST.—

21 “(i) IN GENERAL.—If the Governor of
 22 a Coastal State makes a determination de-
 23 scribed in clause (ii), all right, title, and
 24 interest in and to the property shall, except
 25 as provided in clause (iii), 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.

“(ii) DETERMINATION.—The determination referred to in clause (i) is a termination that—

“(I) the unit of local government, nonprofit organization, or fishing cooperative 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.

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

1 local government, nonprofit organization,
2 or fishing cooperative.

3 “(7) APPROVAL OR DISAPPROVAL.—As soon as
4 practicable after the date on which the Secretary re-
5 ceives an application under subsection (3)(B)(ii), the
6 Secretary shall—

7 “(A) review the application; and

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

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

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

20 “(9) TREATMENT OF PURCHASE PROCEEDS.—
21 For purposes of the Internal Revenue Code of 1986,
22 gross income shall not include 50 percent of the gain
23 from the sale or exchange of private land or inter-
24 ests in private land in purchases described in para-
25 graph (5)(A).

1 “(c) ANNUAL REPORT.—The Secretary shall submit
2 to Congress an annual report that describes the eligible
3 projects funded with grants awarded under this section.”.

4 **SEC. 3. AUTHORIZATION OF APPROPRIATION.**

5 There are authorized to be appropriated to the Sec-
6 retary of Commerce \$50,000,000 for each of the fiscal
7 years 2009, 2010, and 2011 to carry out the provisions
8 of section 306A of the Coastal Zone Management Act of
9 1972, as added by section 2.

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