

112TH CONGRESS
1ST SESSION

H. R. 3109

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

OCTOBER 5, 2011

Ms. PINGREE of Maine (for herself, Mr. ANDREWS, Mr. BLUMENAUER, Ms. BORDALLO, Mrs. CAPPs, Mrs. CHRISTENSEN, Mr. CONNOLLY of Virginia, Mr. FARR, Mr. FILNER, Mr. KEATING, Ms. LEE of California, Mr. MCINTYRE, Mr. MORAN, Mr. PIERLUISI, Mr. QUIGLEY, Ms. SLAUGHTER, Mr. TONKO, and Ms. WOOLSEY) 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 2011”.

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 businesses, tourism, aquaculture, boatbuilding,
13 transportation, and many other water-depend-
14 ent businesses.

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 busi-
15 nesses, aquaculture, boatbuilding, or other water-de-
16 pendent 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)(A) Subject to the availability of appropria-
2 tions, the Secretary shall award matching grants
3 under the program to coastal states with approved
4 working waterfront plans through a regionally equi-
5 table, competitive funding process in accordance
6 with the following:

7 “(i) The Governor, or the lead agency des-
8 ignated by the Governor for coordinating the
9 implementation of this section, where appro-
10 prium in consultation with the appropriate local
11 government, shall determine that the applica-
12 tion is consistent with the State’s or territory’s
13 approved coastal zone plan, program, and poli-
14 cies prior to submittal to the Secretary.

15 “(ii) In developing guidelines under this
16 section, the Secretary shall consult with coastal
17 states, other Federal agencies, and other inter-
18 ested stakeholders with expertise in working
19 waterfront planning.

20 “(iii) Coastal states may allocate grants to
21 local governments, agencies, or nongovernment
22 organizations eligible for assistance under this
23 section.

24 “(3) In awarding a grant to a coastal state, the
25 Secretary shall consider—

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

3 “(B) the demonstrated working waterfront
4 needs of the coastal state as outlined by a
5 working waterfront plan approved for the coast-
6 al state under subsection (c), and the value of
7 the proposed project for the implementation of
8 such Plan;

9 “(C) the ability to successfully leverage
10 funds among participating entities, including
11 Federal programs, regional organizations, State
12 and other government units, landowners, cor-
13 porations, or private organizations;

14 “(D) the potential for rapid turnover in
15 the ownership of working waterfront in the
16 coastal state, and where applicable the need for
17 coastal states to respond quickly when prop-
18 erties in existing or potential working water-
19 front areas or public access areas as identified
20 in the working waterfront plan submitted by
21 the coastal state come under threat or become
22 available;

23 “(E) the impact of the working waterfront
24 plan approved for the coastal state under sub-

1 section (c) on the coastal ecosystem and the
2 users of the coastal ecosystem; and

3 “(F) the extent of the historic connection
4 between working waterfronts and the local com-
5 munities within the coastal state.

6 “(4) The Secretary shall approve or reject an
7 application for such a grant within 60 days after re-
8 ceiving an application for the grant.

9 “(c) WORKING WATERFRONT PLANS.—

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

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 businesses, aquaculture, boatbuilding, or
22 other water-dependent, coastal-related business;

23 “(B) shall include—

1 “(i) an assessment of the economic,
2 social, cultural, and historic value of work-
3 ing waterfront 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 businesses, aquaculture,
13 boatbuilding, or other water-dependent,
14 coastal-related business, and the level of
15 that threat;

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

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

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

3 “(vi) a strategic and prioritized plan
4 for the preservation, expansion, and im-
5 provement of working waterfronts in the
6 coastal state;

7 “(vii) for areas identified under
8 clauses (iii), (iv), (v), and (vi), identifica-
9 tion of current availability and potential
10 for expansion of public access to coastal
11 waters;

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

15 “(ix) a contingency plan for properties
16 that revert to the coastal state pursuant to
17 determinations made by the coastal state
18 under subsection (g)(4)(C);

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

21 “(D) shall utilize to the maximum extent
22 practicable existing information contained in
23 relevant surveys, plans, or other strategies to
24 fulfill the information requirements under this
25 paragraph; and

1 “(E) shall incorporate the policies and reg-
2 ulations adopted by communities under local
3 working waterfront plans or strategies in exist-
4 ence prior to the date of enactment of this sec-
5 tion.

6 “(3) A working waterfront plan—

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

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

12 “(C) shall be complimentary to and incor-
13 porate the policies and objectives of regional or
14 local working waterfront plans as in effect be-
15 fore the date of enactment of this section or as
16 subsequently revised.

17 “(4) The Secretary may—

18 “(A) award planning grants to coastal
19 states for the purpose of developing or revising
20 comprehensive working waterfront plans; and

21 “(B) award grants consistent with the pur-
22 poses of this section to States undertaking the
23 working waterfront planning process under this
24 section, for the purpose of preserving and pro-

1 tecting working waterfronts during such proc-
2 ess.

3 “(5) Any coastal state applying for a working
4 waterfront grant under this title shall—

5 “(A) develop a working waterfront plan,
6 using a process that involves the public and
7 those with an interest in the coastal zone;

8 “(B) coordinate development and imple-
9 mentation of such a plan with other coastal
10 management programs, regulations, and activi-
11 ties of the coastal state; and

12 “(C) if the coastal state allows qualified
13 holders (other than the coastal state) to enter
14 into working waterfront covenants, provide as
15 part of the working waterfront plan under this
16 subsection a mechanism or procedure to ensure
17 that the qualified holders are complying their
18 duties to enforce the working waterfront cov-
19 enant.

20 “(d) USES, TERMS, AND CONDITIONS.—

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

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

1 “(A) to acquire a working waterfront, or
2 an interest in a working waterfront; or

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

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

14 “(f) LIMITATIONS.—

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

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

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

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

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

12 “(2) Subject to the approval of the Secretary,
13 a coastal state may, as part of an approved working
14 waterfront plan, designate as a qualified holder any
15 unit of State or local government or nongovernment
16 organization, if the coastal state is ultimately re-
17 sponsible for ensuring that the property will be man-
18 aged in a manner that is consistent with the pur-
19 poses for which the land entered into the program.

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

1 tion shall not relieve the coastal state of the respon-
2 sibility for ensuring that any funds so allocated are
3 applied in furtherance of the coastal state’s approved
4 working waterfront plan.

5 “(4) 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, nonprofit organization,
12 fishing cooperative, or other entity, shall enter
13 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 (2);

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 determina-
5 tion under subparagraph (C), the coastal state
6 may convey or authorize the qualified holder to
7 convey the working waterfront or interest in
8 working waterfront to another qualified holder.

9 “(E) Nothing in this subsection waives any
10 legal requirement under any Federal or State
11 law.

12 “(h) MATCHING CONTRIBUTIONS.—

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

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

1 nity, or for other reasons the Secretary considers ap-
2 propriate.

3 “(3) A local community designated as a quali-
4 fied holder under subsection (g) may utilize funds or
5 other in-kind contributions donated by a nongovern-
6 mental partner to satisfy the matching funds re-
7 quirement under this subsection.

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

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

21 “(6) The Secretary shall treat as non-Federal
22 match the value of a working waterfront or interest
23 in a working waterfront, including conservation and
24 other easements, that is held in perpetuity by a
25 qualified holder, if the working waterfront or inter-

1 est is identified in the application for the grant and
2 acquired by the qualified holder within 3 years of
3 the grant award date, or within 3 years after the
4 submission of the application and before the end of
5 the grant award period. Such value shall be deter-
6 mined by an appraisal performed at such time before
7 the award of the grant as the Secretary considers
8 appropriate.

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

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

1 “(j) OTHER TECHNICAL AND FINANCIAL ASSIST-
2 ANCE.—

3 “(1) Up to 5 percent of the funds appropriated
4 under this section may be used by the Secretary for
5 purposes of providing technical assistance as de-
6 scribed in this subsection.

7 “(2) The Secretary shall—

8 “(A) provide technical assistance to coastal
9 states and local governments in identifying and
10 obtaining other sources of available Federal
11 technical and financial assistance for the devel-
12 opment and revision of a working waterfront
13 plan and the implementation of an approved
14 working waterfront plan;

15 “(B) provide technical assistance to States
16 and local governments for the development, im-
17 plementation, and revision of comprehensive
18 working waterfront plans, which may include,
19 subject to the availability of appropriations,
20 planning grants and assistance, pilot projects,
21 feasibility studies, and other projects necessary
22 to further the purposes of this section;

23 “(C) assist States in developing other tools
24 to protect working waterfronts; and

1 “(D) collect and disseminate to States
2 guidance for best storm water management
3 practices in regards to working waterfronts.

4 “(k) REPORTS.—

5 “(1) The Secretary shall—

6 “(A) develop performance measures to
7 evaluate and report on the effectiveness of the
8 program under this section in accomplishing the
9 purpose of this section; and

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

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

18 “(l) AUTHORIZATION OF APPROPRIATIONS.—There
19 are authorized to be appropriated to the Secretary to carry
20 out this section \$25,000,000 for fiscal year 2012,
21 \$50,000,000 for fiscal year 2013, and \$75,000,000 for
22 each of fiscal years 2014 and 2015.

23 “(m) DEFINITIONS.—In this section:

24 “(1) The term ‘qualified holder’ means a coast-
25 al state or a unit of local or coastal state govern-

1 ment or a non-State organization designated by a
2 coastal state under subsection (g).

3 “(2) The term ‘Secretary’ means the Secretary,
4 acting through the National Oceanic and Atmos-
5 pheric Administration.

6 “(3) The term ‘working waterfront’ means real
7 property (including support structures over water
8 and other facilities) that provides access to coastal
9 waters to persons engaged in commercial fishing,
10 recreational fishing businesses, boatbuilding, aqua-
11 culture, or other water-dependent, coastal-related
12 business and is used for, or that supports, commer-
13 cial fishing, recreational fishing businesses,
14 boatbuilding, aquaculture, or other water-dependent,
15 coastal-related business.

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

21 “(A) the title to or interest in the working
22 waterfront will be held by a grant recipient or
23 qualified holder in perpetuity, except as pro-
24 vided in subparagraph (C);

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

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

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

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

24 “(D) such covenant is subject to enforce-
25 ment and oversight by the coastal state or by

1 another person as determined appropriate by
2 the Secretary.”.

○