

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.

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## 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

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## 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.”.

○