

Testimony on “Keep Our Waterfronts Working Act of 2007”

H.R. 3223 An Act 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

Good morning Chairwoman Bordallo and members of the House Subcommittee on Fisheries, Wildlife and Oceans. My name is Jim Connors. I am representing the Maine Working Waterfront Coalition today to provide testimony on H.R. 3223, Keep Our Waterfronts Working Act of 2007.

The Working Waterfront Coalition (WWC) is a coast-wide group of fishing industry associations, nonprofit organizations, state agencies, and individuals dedicated to supporting and enhancing Maine’s working waterfronts through policy, planning, investment, and education.

Over the past few years the Coalition has worked closely with political leadership in the Legislature and the Governor’s Office, as well as the fishing industry to create new tools and programs aimed at protecting and securing working access to the tidal waters. The Coalition has been successful in helping to envision and create an active working waterfront protection program, using public bond funds approved by the voters of Maine.

Section 320, (a) Findings and Purpose:

The Problems confronting working waterfronts is well summarized in the Findings and Purpose section of the bill. To support these findings we offer the following research based information.

In 2001, The Maine State Planning Office engaged the services of Coastal Enterprises Inc. to conduct a survey of 25 coastal fishing communities that are representative of the array of commercial fishing centers found along the coast from Kittery to Eastport. The purposes of this study were to (1) document the status of working waterfronts and the present and future threats of change or loss, (2) to identify municipal responses and technical needs for dealing with problems, and (3) to make recommendations regarding the best ways of monitoring changes and trends in the future. The study was conducted by interviewing knowledgeable people in each selected community in order to better understand the status of their working waterfronts, and how the towns are handling changes confronting their commercial fisheries.

A summary of major findings follows:

The loss of commercial fishing access takes many forms, which adds to the complexity of tracking change and formulating effective public policy. A number of types of loss are identified:

1. Loss of access to inter-tidal areas due to posting of private lands, and new land owners closing off/contesting established public access ways, traditionally used by clam and worm diggers,
2. Loss of tenuous lease or use arrangements with other private pier and wharf owners,

3. Conflict and competition for use of public facilities, especially those with limited parking and equipment storage space,
4. Conversion of working wharves to residential/recreational or other commercial use.

Threats to established commercial access facilities and sites are real, persistent, and pervasive. The surveyed communities identified a list of problems:

1. Intense development pressure to use waterfront lands and facilities for non-commercial fishing/water dependent uses,
2. As fishing families sell waterfront facilities, access use moves to town/public piers, which increases use pressure on these facilities,
3. The use of public wharves must balance and serve both commercial and recreational use, which can lead to conflicts,
4. Limited parking areas, combined with increased tourism use, can intensify potential conflicts,
5. In some areas with heavy recreational boating use there are limited moorings available,
6. Boats are getting bigger (both commercial and recreational), which requires more berthing and mooring space,
7. Increased cost for coastal towns for legal challenges over access rights,
8. Sales of higher value property triggers re-valuation, leading to higher taxes,
9. Municipal and private wharves have costly infrastructure and upkeep; and resulting challenge to keep them economically self-sustaining,
10. Towns and individual fishermen cannot afford inflated market price for waterfront property.

There is strong support and concern for protecting commercial fishing access. 64% of the 25 towns surveyed indicated that commercial fishing access is a problem now, and 80% of the towns surveyed are planning to address this issue.

Commercial fishing access is provided through publicly owned facilities, privately owned commercial piers and through arrangements with other privately owned wharves. 25% of access usage is at publicly owned facilities, and 75% at privately owned facilities. Of the usage of privately owned facilities, 35% occurs at commercial business facilities, and 40% at other privately owned wharves.

(Taken from A Review of the Effectiveness of the Maine Coastal Plan in Meeting the State's Public Access and Working Waterfront Policy Goals. 2002)

In 2007 in preparation for the National Symposium on Working Waterways and Waterfronts the National Sea Grant Network conducted a coastal zone-wide survey to characterize the scope of coastal access issues and the effects on coastal communities. In a report entitled *Access to the Waterfront, issues and Solutions Across the Nation* they highlighted three issues:

- Concerns over the loss of access for commercial fishermen
- Problems with conflicts over recreational access

- Shrinking access for the public

The report goes on to discuss three important conclusions:

1. The tools and solutions to address and resolve access loss and conflicts will need to be localized,
2. Given the wide spread nature of the problems, there is a need for national strategies to support local efforts,
3. Although there are many tools being used, there are more innovative solutions yet to be identified and developed.

Scope of the Bill

The Committee has asked for Comments on the scope of the bill. We offer comments on three important elements of the bill:

Keeping an emphasis on working access for commercial fishing and other water dependent uses and businesses,

Differentiating between commercial facilitated access vs general public access, and,

comments on the definition of working waterfront.

We recognize that the problem of maintaining working access to the coast varies from state to state and includes issues related to the loss of recreational boating access, particularly in areas experiencing re-development into condominiums and dockaminiums. We think that a national program has to cover the needs of commercial fishing and those water dependent business that serve the recreational and boating needs of the public at large, such as marinas and boatyards.

The Maine WWC is specifically concerned about the plight of commercial fishermen, who must have adequate working access to conduct their fishing operations. Fishermen are in a unique position in which they sell their catch into markets with set prices that they can not influence. At the same time they face all of the cost associated with harvesting and landing the catch. They are caught between set market based prices and their production costs. They do not have the opportunity to push costs forward through to the consumers (such as a fee for business might) so they get pinched by rising costs such as increasing property values and taxes that have to be absorbed in the narrow gap between production costs and market price. It's no wonder that fishermen are being squeezed off the waterfront.

We think that the program should be focused on commercial water dependent uses that need to be on the waterfront to successfully conduct their businesses. This is not to say that certain assurances of "public access" can not be incorporated into the outcomes of the grant program. But the issue of public access in general, at publically owned sites, is and has been a fundamental part of CZMA that should continue to be a coastal program priority but separate from a working waterfront program. The emphasis in this bill should be on "commercial" working access. That is, assuring that access is secure for businesses that require access to tidal waters. We think that the public access requirement should be

removed as an element of this working waterfront program, but certainly retained as a key element of CZMA, otherwise it is a deal killer! H.R. 3223 provides an opportunity to recognize the importance of dealing with the problems being faced by fishermen and other water dependent businesses by creating a program that fills an existing gap in CZM programs between public access programs and major port and harbor development programs.

Definition of Working Waterfront - Members of the Maine WWC participated in a Working Waterways & Waterfronts Symposium Conference held in Norfolk, VA 5/8,9,10,11/07. The concept of working waterfront was a unifying concept, but we learned that people have differing views of what makes up a water dependent use based on their particular local access issues and needs. In a wrap-up planning session the participants described working waterfront in terms ranging from commercial fisheries activities through marinas, boatyards, commercial sports fishing services, ferry services, tourist oriented nature cruising, to heavy industrial uses. A common theme of working waterfront is “commercial” access for water dependent businesses. For the marine industries the water access may be for recreational leisure time pursuits, but for those waterfront companies they are a business serving the public at large for a fee. Which in a way is part of the supply of public access which is facilitated by the business enterprise. I want to be clear that this bill is aimed at addressing the water access needs of businesses that need physical access to the water.

One small point, in the Definitions section, aquaculture needs to be added to the definition of the term ‘working waterfront’, to be consistent with the use of this term in the body of the bill.

State Plan Requirement

The Committee has asked for comments on enhancements to requirements for the development of a state plan.

In general, the WWC supports a planning function that positions the state to deliver a good and efficient program. But it needs to be a plan that is practical and useful, more of a functional “program” plan rather than a “comprehensive” water access plan. We are concerned that preparing (and updating) a big, expensive, comprehensive access plan as a requirement for participating in the grant program will be a major impediment to coastal states that could otherwise put the program to good use. We agree that state Coastal Programs should be doing this type of planning, but it creates a major hurdle to implementing the grants program.

As written, the current bill is asking for more planning work than is really needed to guide a Federal Program at the state level. We would ask the committee to consider the difference between a plan to guide the operation of a program and a plan that is a comprehensive analysis of the coast and access needs. A good example of a program participation is provided by the current Coastal Estuarine Land Conservation Program, which is administered by NOAA.

The Maine Working Waterfront Access Pilot Program offers an example of a program that is competitive, guided by a set of project selection criteria, and responsive to opportunities to work with fishing businesses, property owners, municipalities, and willing sellers as the opportunities arise. More information can be found at the program website: www.wwapp.org

Comments on the application process

The Committee has asked for comments on the application process. The WWC offers comment on five elements of the application and granting process,

- Responsiveness to immediate opportunities
- State responsibilities, capacities, assurances, and process
- Non-profit organization as a qualified holder
- Creation of a Working Waterfront Covenant
- Violation of a Working Waterfront Covenant

The WWC recognizes that NOAA has a long, well established record for running competitive grant programs, which the Committee should value and take full advantage off. As written, however, the WWC has several suggestions for your consideration regarding the application and granting process:

Responsiveness to immediate opportunities – The bill as written correctly implies that there is a need to be responsive as opportunities arise or a need for action is paramount. We know that there is a difficult balancing act between administering a competitive grants program and the responsiveness needed to proceed in a timely manor when a critically important opportunity arises. The responsiveness (or lack thereof) of a government funding program is an issue for the WWC and other working waterfront advocates when they see the need to move quickly to take advantage of an opportunity. We have found that working waterfront projects must be fairly patient when dealing with government programs (usually for good reasons related to due diligence and program capacities), but still we ask the committee to consider carefully how the program can be operated to be responsive to crisis situations.

State responsibilities, capacities, assurances, and process – The grant program, as envisioned, would be run in cooperation with the appropriate state Coastal Program, or other state, regional, or other unit of government. It is up to the coastal state to figure out how to run a working waterfront program. The state retains the responsibility to assure the grant funds are used as proposed, make certain certification of matching funds, hold the working waterfront Covenant (or designated holder) and enforcement responsibilities (including policing qualified holders). In Maine, and a few other states, compatible working waterfront programs exist which could assume and exercise these responsibilities, but in other coastal states creating and implementing a working waterfront program will be a relatively greater challenge.

Non-profit organization as a qualified holder – the bill provides that a state may designate a non-profit organization (such as a land trust or working waterfront heritage

trust) as a qualified holder of a property or an interest in a property. Recognizing and authorizing this role for a non-profit non-governmental entity is a significant step for Congress. Certainly in Maine and across the country, duly incorporated 501(c) land trusts are playing a vital role in conserving the nation's resources. In one Maine working waterfront project the holder (owner) of the protected property is a new nonprofit foundation dedicated to the continued operation of the property as working waterfront. So the model exist and a track record for nonprofits is established, the WWC feels that a nonprofit fishing heritage trust has a role to play in the future as the experience with these programs unfolds.

Working Waterfront Covenant – The bill calls for the use of a working waterfront covenant as a means to gain permanent protection of the subject property. This is a relatively new mechanism for holding property interests with its roots in conservation easements and affordable housing covenants. The Maine Legislature has enacted statutory language to guide the purpose and scope of a working waterfront covenant. A model covenant has been created by the Land for Maine's Future Program, and specific covenants are currently being prepared for six working waterfront projects. The first one was consummated last week and a second is due to close on March 12th.

Violation of the Covenant – this section needs further work, guided by consideration of due process, legal practice, and enforcement experience with Conservation easements. Reference to the Maine model covenant would be useful.

CZMA

The committee asked for views of how the CZMA might be amended, in general, to better attain the goal of preserving working waterfronts and marine-dependent uses and the public's access to them.

The WWC is not in a good position to comment on the re-authorization of the CZMA. We understand that many good minds have been hard at work on this task. The WWC does feel that a working waterfront program has a place in the CZMA and state coastal programs. Various members of the WWC have a long, successful, and productive working partnership with the State's Coastal Management Program and we would not want to see that change.

The program envisioned in HR 3223 seems like a natural fit with the purposes and goals of the CZMA. A working waterfront program would be an additional tool to help the state achieve its objectives. A working waterfront program element in the CZMA, with funding support would send a strong message to state programs about the importance of these issues.

In summary

We think that H.R. 3223 has three significant impacts:

First it recognizes the importance of the issues and brings attention to the problem,

Second, the bill establishes working access as a priority in the CZMA (in addition to ports and harbor programs, and public access programs),

And third, the bill creates a program with funding and access to other NOAA programs and tools that can augment and support state level efforts to preserve working waterfronts.

The Maine Working Waterfront Coalition is pleased to be able to help craft this important program and stands ready to continue to assist as its experience and expertise allows.