To amend the Magnuson-Stevens Fishery Conservation and Management Act to establish a grant program to ensure waterfront access for commercial fishermen, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 19, 2005

Ms. COLLINS introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Magnuson-Stevens Fishery Conservation and Management Act 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.

This Act may be cited as the “Working Waterfront 4
Preservation Act of 2005”.

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SEC. 2. COMMERCIAL FISHING ACCESS PROTECTION PROGRAM.

The Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) is amended by adding at the end the following new title:

“TITLE V—GRANTS FOR COMMERCIAL FISHING ACCESS

“SEC. 501. DEFINITIONS.

“In this title:

“(1) COASTAL STATE.—The term ‘Coastal State’ has the meaning given the term ‘coastal state’ in section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453).

“(2) COASTAL WATERS.—The term ‘coastal waters’ has the meaning given that term in section 304 of the Coastal Zone Management Act of 1971 (16 U.S.C. 1453).

“(3) ELIGIBLE ENTITY.—The term ‘eligible entity’ means—

“(A) the government of a Coastal State;

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

“(C) a nonprofit organization or a fishing cooperative that the Secretary determines is appropriate to receive a grant under section 502.
“(4) ELIGIBLE PROJECT.—The term ‘eligible project’ means—

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

“(B) a project to make improvements to 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.

“(5) FISHING COOPERATIVE.—The term ‘fishing cooperative’ means a fishing or fish marketing association organized in a coastal state for the purpose of a promoting, fostering, and encouraging fishing or marketing of fish and fishery products through cooperation of its members and for the benefit of their members as producers of such products.
“(6) 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.

“(7) 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 as such by the Governor of the State, so long as the official continues to hold such position, or the designee of such official.

“(8) Working Waterfront Areas.—The term ‘working waterfront areas’ means land that is used for or that supports commercial fishing or the aquaculture industry.

“SEC. 502. GRANT PROGRAM.

“(a) In General.—The Secretary is authorized to award a grant to an eligible entity for the purpose of carrying out an eligible project.

“(b) Considerations.—In awarding a grant for an eligible project under this section, the Secretary shall consider—
“(1) the need for the eligible project based on the assessment of need submitted under subsection (c)(2)(A);

“(2) the economic significance of the eligible project to the commercial fishing industry or the aquaculture industry in the immediate vicinity and in the Coastal State in which the eligible project is located;

“(3) the degree of community support for the eligible project;

“(4) the level of threat of that the property proposed to be acquired or improved with such grant will be converted to uses incompatible with commercial fishing or the aquaculture industry;

“(5) the utility of the eligible project for commercial fishing or the aquaculture industry, with respect to the natural characteristics and developed infrastructure of the property proposed to be acquired;

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

“(7) for an eligible project described in section 501(4)(A), the availability of alternative real property or an alternative interest in real property that
would ensure that persons engaged in the commercial fishing industry or the aquaculture industry have access to coastal waters in working waterfront areas; and

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

“(c) Application and Review.—

“(1) In general.—An eligible entity that seeks a grant under this section shall submit to the appropriate State fisheries official, at such time and in such manner as the Secretary shall prescribe, an application for the grant.

“(2) Assessment of need.—An application for a grant may be considered by the Secretary if the appropriate State fisheries official—

“(A) prepares an assessment of the need for the proposed eligible project, taking into account—

“(i) the needs of the commercial fishing industry or the aquaculture industry in the State;

“(ii) the needs of other industries and other parties in the area in which the project will be located;
“(iii) whether alternative sites exist for the proposed project; and
“(iv) the social and cultural value of the industries to the affected community and State; and
“(B) submits to the Secretary—
“(i) the application submitted under paragraph (1); and
“(ii) the assessment of need prepared under subparagraph (A).
“(d) COST SHARING.—
“(1) IN GENERAL.—The amount of a grant awarded under this section to carry out an eligible project may not exceed 75 percent of the total cost of the eligible project.
“(2) ASSURANCES.—As a condition of receipt of a grant under this section, an eligible entity shall provide to the Secretary such assurances as the Secretary determines are sufficient to demonstrate that the share of the cost of each eligible project that is not funded by the grant awarded under this section has been secured.
“(3) FORM.—The share of the cost of carrying out an eligible project that is not funded by a grant
awarded under this section may be provided in cash
or in kind (including a donation of land).

“(e) USE OF GRANT FUNDS FOR ELIGIBLE
PROJECTS.—

“(1) PURCHASES.—

“(A) IN GENERAL.—Except as provided in
subparagraph (B), grants awarded under this
section may be used to purchase privately-
owned real property or interests in privately-
owned real property, including easements, only
from willing sellers at fair market value.

“(B) SALES AT LESS THAN FAIR MARKET
VALUE.—A grant awarded under this section
may be used to acquire privately-owned real
property or an interest in privately-owned real
property at less than fair market value only if
the owner certifies to the Secretary that the
sale is being entered into willingly and without
coercion.

“(C) NO EXERCISE OF EMINENT DO-
MAIN.—No Federal, State, or local agency may
exercise the power of eminent domain to secure
title to any real property or facilities in connec-
tion with a project carried out under this title.
“(2) TITLE.—Title to real property or an interest in real property acquired with a grant awarded under this section may be held, as determined appropriate by the Secretary in consultation with the appropriate Coastal State, by—

“(A) the Coastal State;

“(B) a unit of local government of the Coastal State;

“(C) a nonprofit organization; or

“(D) a fishing cooperative.

“(f) CONTINUED ACCESS TO COASTAL WATERS.—

“(1) REQUIREMENT FOR AGREEMENT.—The Secretary shall enter into an agreement with an eligible entity that receives a grant under this section. Such agreement shall require the eligible entity to provide the Secretary the assurances that the Secretary determines are appropriate to ensure that the eligible project is not converted to a use that is inconsistent with the purposes for which the grant was awarded.

“(2) REVERSIONARY INTEREST.—

“(A) IN GENERAL.—If the Governor of a Coastal State makes a determination described in subparagraph (B), all right, title, and interest in and to the property shall, except as pro-
vided in subparagraph (C), 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 hear-
ing.

“(B) DETERMINATION.—The determina-
tion referred to in subparagraph (A) is a deter-
mination that—

“(i) the unit of local government or
nonprofit organization is unable or unwill-
ing 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.

“(C) CONVEYANCE TO ANOTHER UNIT OF
LOCAL GOVERNMENT OR NONPROFIT ORGANIZA-
TION.—If the Governor of a Coastal State
makes a determination under subparagraph
(B), the State may convey or authorize the unit
of local government or nonprofit organization to
convey the easement to another unit of local
government or nonprofit organization.
“(g) Approval or Disapproval.—

“(1) In general.—Subject to paragraph (2), as soon as practicable after the date on which the Secretary receives an application under subsection (c)(2)(B), the Secretary shall—

“(A) review the application; and

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

“(ii) disapprove the application and provide the applicant a statement that describes the reasons why the application was disapproved, including a deadline by which the applicant may resubmit the application.

“(h) Administrative Costs.—A Coastal State, on approval of the Secretary and subject to any regulations promulgated by the Secretary, may use up to 10 percent of the amounts made available under this section to pay the administrative costs of the Coastal State relating to the program.

“(i) Treatment of Purchase Proceeds.—For purposes of the Internal Revenue Code of 1986, gross income shall not include 50 percent of the gain from the sale or exchange of private land or interests in private land in purchases described in subsection (e)(1).
SEC. 503. ANNUAL REPORT.

“The Secretary shall submit to Congress an annual report that describes the eligible projects carried out using grants awarded under this title.”.

SEC. 3. AUTHORIZATION OF APPROPRIATION.

There are authorized to be appropriated to the Secretary of Commerce $50,000,000 for each of the fiscal years 2005 and 2007 to carry out the provisions of title V of the Magnuson-Stevens Fishery Conservation and Management Act, as added by section 2.