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Re: Working Waterfront Legislation (NSGLC-12-04-09)

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Dear Nicole,

Please find below a brief review of current, pending, and recently proposed legislative actions with regard to working waterfronts. I hope you find this information helpful. If you would like additional information, please let us know.

Sincerely,

/s/ Terra Bowling
Research Counsel, National Sea Grant Law Center

WWF LEGISLATION

Existing Legislation

Maine

In 2005, the Maine Legislature passed Senate Paper 338 to protect the state's waterfront commercial fishing facilities. The bill called for a vote on a \$33 million bond issue to fund a variety of projects. Mainers approved the bond issue on November 8, 2005. Two million dollars of the bond was dedicated to the Maine Working Waterfront Access Pilot Program. The Program is intended encourage the purchase of strategically important working waterfronts that are in danger of conversion to other uses. Mainers voted to give the state the authority to issue \$12 million in bonds to buy property and conservation easements to preserve water access and working waterfronts. In November 2007, Maine voters approved another bond for an additional \$3 million.

Mainers also voted to amend the Maine Constitution to authorize the assessment of property taxes for waterfront property used by commercial fishers based upon the land's current use, rather than its potential for development. This ensures that high tax bills do not force commercial fishers to sell their property. "Working waterfront land means a parcel of land, or a portion thereof, abutting water to the head of tide or land located in the intertidal zone that is used primarily or used predominantly to provide access to or support the conduct of commercial fishing activities." 36 M.R.S. § 1132. The statute further describes the phrase "support the conduct of commercial fishing activities" and specifies that "predominantly" means more than 90% of the land is used for commercial fishing activity, while "primarily" means more than 50%, and the rate of reduction on the tax valuation varies accordingly.

Florida

In 1996, the Florida Coastal Management Program conducted a study to identify the needs of communities wishing to revitalize their waterfronts. The study led to the creation of the Waterfronts Florida Partnership Program (WFPP) in 1997, which offers grants and planning assistance for communities seeking to revitalize waterfront areas and promote traditional waterfront trades. The Program is managed by the Florida Department of Economic Opportunity, and is funded by the Florida Department of Environmental Protection, Florida Coastal Management Program, and the National Oceanic and Atmospheric Administration (NOAA). The WFPP was codified by the Florida Legislature in 2005 through the Working Waterfront Protection Act (codified at Fla. Stat. §§ 342.07, 342.201).

Communities eligible to take advantage of the program are those which are required to have a coastal element to their comprehensive plan: "[u]nits of local government abutting the Gulf of Mexico or the Atlantic Ocean, or which include or are contiguous to waters of the state where marine species of vegetation...constitute the dominant plant community." Fla. Stat. §§ 163.3177(6)(g), 380.24. Since 1997, a total of 23 communities have received designation as Waterfronts Florida Partnership Communities.

The Act expanded the scope of the Program to include recreational use of waterfronts, and mandated that all future comprehensive land use plans offer incentives and strategies to preserve working waterfronts. Comprehensive plans must contain “a shoreline use component that identifies public access to beach and shoreline areas and addresses the need for water-dependent and water-related facilities, including marinas, along shoreline areas. Such component must include the strategies that will be used to preserve recreational and commercial working waterfronts” as defined by the statute. Fla. Stat. § 163.3178(2).

The statute defines a “recreational and commercial working waterfront” as “a parcel or parcels of real property that provide access for water-dependent commercial activities or provide access for the public to the navigable waters of the state.” Fla. Stat. § 342.07(2). Working waterfronts may contain support facilities for recreational, commercial, research, or government vessels. Such facilities include “docks, wharfs, lifts, wet and dry marinas, boat ramps, boat hauling and repair facilities, commercial fishing facilities, boat construction facilities and other support structures over water.” *Id.* Seaports are not considered working waterfronts within the statutory meaning.

Florida statutes also allow county commissions and cities to write ordinances that defer ad valorem taxes and non-ad valorem assessments for working waterfront property owners. The taxes and assessments may be waived so long as the property is maintained as a working waterfront. If the property ceases to be used as a recreational or commercial working waterfront, the Act requires back payment of all deferred taxes and assessments. Fla. Stat. § 197.303. This may discourage landowners from selling working waterfronts for non-working waterfront development.

Maryland

During the 2008 Session of the Maryland General Assembly, the legislature gave the City of Baltimore, municipal corporations, and counties in Maryland the authority to grant tax credits for “commercial waterfront properties,” including the authority to determine the amount and duration of the tax credit, any additional eligibility criteria, regulations and procedures for application, and any other necessary provisions. MD. Code Ann., Tax-Prop. § 9-249 (West 2012). The statute defines “commercial waterfront property” as real property that is “adjacent to the tidal waters of the State; used primarily for a commercial fish operation or as a commercial marina or commercial marine repair facility; and for the most recent 3-year period, has produced an average annual gross income of at least \$1,000.” § 9-249(a)(6)(i). It also defines “commercial fish operation,” “commercial marina,” and “commercial marine repair facility.” § 9-249(a)(2)-(5).

Study Committees

North Carolina

In 2006, the North Carolina General Assembly passed a bill establishing the Waterfront Access Study Committee. Signed into law Aug. 16, 2006, the statute called for the Committee to “study the loss of diversity of uses along the coastal shoreline of North Carolina and how these losses impact access to the coastal public trust waters of the State.”

In its final report published in April 2007, the Committee determined that the need to ensure existing waterfront-dependent uses, to ensure future diverse waterfront-dependent uses of the shoreline, and to retain and enhance public access to coastal public trust waters is an important and urgent issue confronting the people of North Carolina, and that there are grounds for an immediate, comprehensive, and creative response by the State. The Committee made 27 recommendations, among which it urged the General Assembly to make working waterfront property eligible for present use taxation, establish a trust fund or state fund to help enhance and maintain such property, and to increase funding for state programs that promote public access.

The final report is available at:

http://masgc.org/pdf/workwater/NC_Final_Report.pdf

Alabama

Passed in 2008, House Joint Resolution 656 established Alabama’s Waterfront Access Study Committee (WASC). The charge of the WASC was to provide to the Alabama Legislature by the 2010 regular session, a report studying the loss and potential loss of the diversity of uses along the shorelines of Alabama and how these losses impact access to the public trust waters of the state.

In its 2011 report, the Committee recognized that tourism, transportation, municipal and industrial supply, fisheries production, and recreation are all dependent on Alabama’s waters. The Committee also found that the expanding coastal population is causing increased pressure for waterfront development, which is decreasing recreational and industrial waterfront access. Concerned with the protection and preservation of waterfront access, the Committee submitted thirteen recommendations to the state legislature in this report, which was recently updated in March 2012.

The Committee’s recommendations are prioritized into tiers, with Tier I being the highest priority. In addition to tier prioritization, the Committee’s recommendations are also grouped into the following categories: Planning/Zoning Issues, Financial Incentive Issues, Socioeconomic Issues, and Infrastructure Issues.

The Committee made four Tier I recommendations: completing a comprehensive working waterfronts plan as defined by any federal legislation; creating a Waterfronts Alabama Partnership Program to assist regional planning commissions, state agencies, municipal planning organizations, etc. in incorporating working waterfront and access issues into comprehensive planning; conducting a statewide economic inventory of working waterfronts and waterfront access, including tonnage shipped, job creation and retention,

water-dependent tourism, GIS mapping, etc.; and conducting an economic impact study of Alabama's working waterfronts. The report also notes the steps that have been taken to further these Tier I priorities by the Auburn University Marine Extension and Research Center, the Mississippi-Alabama Sea Grant Consortium, and the National Sea Grant Law Center.

The Committee made five Tier II recommendations: create incentives for working waterfront businesses; establish a fund for the acquisition of property for working waterfront and waterfront access properties; identify high priority working waterfront areas and encourage funding under future Coastal Impact Assistance Programs or other federal funding mechanisms; enable the Alabama Cooperative Extension System and the Mississippi-Alabama Sea Grant Consortium to provide technical assistance and support to waterfront stakeholders in sustainable business practices, and to provide public education on the economic, environmental, and societal importance of working waterfronts to the State; and encourage continued commercial use associated with working waterfronts to better reflect economic values of shipping on waterways.

The Committee made four Tier III recommendations: seek legislative approval for the waiver of emergency permit fees for rebuilding waterfront properties after declared natural disasters; enable the Department of Conservation and Natural Resources to increase boating registration fees and/or annually using the consumer price index (CPI) to make adjustments in boater registration due to inflation, with such funds to be used to maintain and/or increase the number of marine police officers on Alabama waterways and for other working waterfront related duties of the Marine Police Division; direct all state agencies to expand public access to waters in project planning and construction programs; and encourage federal and local agencies to incorporate public waterfront access and/or facilities in projects with access to public trust waters of the state of Alabama, for example, boat access and bank fishing.

The final report is available at:

<http://www.masgc.org/pdf/workwater/WASC-SJR43.pdf>

Maryland

The Working Waterfront Commission was created by Senate Bill 414 in 2007, which tasked the Commission with studying and making recommendations for protecting and preserving Maryland's commercial fishing industry's access to public trust waters. In its 2008 report, the Commission identified four primary causes of access issues: increased population growth; declining profitability of the commercial fishing industry; rising real estate values and other economic drivers; and limited information exchange among stakeholders concerning issues, needs, and solutions to coastal waterfront access issues. As a result of these issues, Maryland has experienced: a lack of commercial and boat docking and unloading areas; increased taxes paid by owners of commercial waterfront property; and loss of commercial waterfront properties that supply services to commercial watermen. In order to address these findings, the Commission recommends action in five areas: tax

abatement; infrastructure preservation and development; local planning/zoning assistance; education/research/outreach; and federal legislation.

The tax abatement recommendation is to reduce the impact of the inheritance tax on inter-generational working waterfront property transfers by either exempting, providing a special valuation for, or allowing an alternative payment schedule for working waterfront property. The Commission's recommendations relating to infrastructure preservation and development revolve around funding. Specific recommendations include: providing greater weight to project scoring criteria for Waterway Improvement Program projects benefiting commercial fishermen; providing amenities at the Langenfelder (Love Point) property; encouraging use of federal funding for economic development; creating a new State- or federally-funded economic livelihood program; and creating a new working waterfront conservation easement program. The recommendations relating to both local planning/zoning assistance and education/research/outreach focus on encouraging existing planning programs to work with local jurisdictions on access issues, to expand existing planning law, and to inform the public about commercial fishermen rights under State programs affecting access to public trust waters. Finally, the Commission recommends the support of any future federal legislation addressing working waterfront preservation.

The final report is available at:

<http://www.dnr.maryland.gov/fisheries/commercial/wwc/MWWC120208finalversion2.pdf>

Rhode Island

The Rhode Island General Assembly established a "Special Legislative Commission to Study Potential Economic Opportunities in the Development of Port Facilities in the State of Rhode Island." The final report was issued in February 2012 (not found). An interim report is available at http://providenceworkingwaterfront.org/wp-content/uploads/2009/09/port_commission_interim_report.pdf.

Introduced Legislation

Rhode Island

The Working Waterfronts Protect Act was introduced in February of 2009 "to preserve and promote working waterfronts as a workplace for commercial shipping, fishing, passenger transportation, boat building and repair, marinas, and other activities." Specifically, the Coastal Resource Management Council would ensure that working waterfronts are utilized only for water-dependent uses or otherwise serve a proper public purpose. The Council would protect and promote working waterfronts as a workplace for activities for which proximity to the water is either essential or highly advantageous. Also, if recommended by the Coastal Resources Advisory Committee, the Council would issue reasonable rules and regulations governing the termination of projects that have a water dependent use or non-water dependent use. S.B. 0758, 2009 Gen. Assemb., Reg. Sess. (R.I. 2009).

<http://webserver.rilin.state.ri.us/billtext09/senatetext09/s0758.pdf>

Washington

In February 2012, the Senate approved Bill 6170, which proposes to establish the Working Waterfront Redevelopment Jobs Act. In March, the House returned the bill to the Senate Rules Committee for a third reading by resolution. As of April 11 of the 2012 2nd Special Session, the bill has been reintroduced and retained in present status by resolution.

The Act creates a voluntary alternative procedure for satisfying some state and local regulations for job-creating projects involving redevelopment on lands zoned for commercial and industrial uses and incorporating elements that would provide a net benefit for ecological functions on those lands. The Act's purpose is to increase and preserve working waterfront jobs while also restoring the shoreline's lost ecological functions. S.B. 6170, 2012 Leg., 62nd Sess. (WA. 2011).

If a project meets the criteria to be considered a "marine area redevelopment and restoration project," the project will be approved for a "marine permit." These projects will be exempt from some of the state and local regulatory review processes. For example, marine area redevelopment and restoration projects would not have to obtain a permit to undertake a hydraulic project as long as the department decided that the project was in compliance with the standards. These projects would also be exempt from obtaining substantial development permits and any permits or approvals required by local shoreline master programs. S.B. 6170, 2012 Leg., 62nd Sess. (WA. 2011).

<http://apps.leg.wa.gov/documents/billdocs/2011-12/Pdf/Bills/Senate%20Bills/6170-S.E.pdf>

Virginia

The 2010 Virginia House Bill No. 2263, introduced in the 2011 Regular Session, was in the Committee on Agriculture, Chesapeake, and Natural Resources as of February 8, 2011. The Bill would provide for: tax and regulatory relief for and preservation of commercial fisheries by including waterfront land used for commercial fisheries in property eligible for land preservation income tax credits; permitting localities to create commercial fisheries zone in which businesses may receive relief from local license taxes, fees, and regulations; creating as a separate class of property for personal property tax rate purposes property primarily designed for and used by commercial fisheries; and establishing procedures for creating a covenant to preserve the permanent availability and affordability of real property for commercial fisheries businesses. H.D. 2263, 2011 Gen. Assemb., Reg. Sess. (MD. 2011).

<http://legiscan.com/gaits/text/106827>