

## Working Waterfront Legislative Committees: Do they Instigate Change?

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*Abstract: Between 2001 and 2010, five state legislatures created special study committees to evaluate problems facing their working waterfronts. These committees, in Alabama, Maine, Maryland, North Carolina, and Rhode Island, came up with strategies for land use planning, property taxation, funding, and education, among other ideas. The earliest committee in Maine successfully implemented a majority of the committee recommendations. The other states had mixed results primarily due to lack of funding during the recession starting in 2008. However, as the economy improves, these states have blueprints for action. This Article discusses the purpose and structure of these committees, summarizes the key committee recommendations, and examines progress toward implementation in each state.*

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## I. Introduction and Summary

In the last 10 to 15 years, waterfront communities in a number of states on the East and Gulf coasts have faced major crises. Land prices have escalated as demand for waterfront property increases, pressuring property owners to sell or convert their property. Such sales and conversions often result in the loss of waterfront access for traditional fishing and maritime users. A decline in the fishing industry has compounded these pressures.

This Article examines state efforts to address the problems of working waterfronts in a specific way – through the establishment of legislative committees and their recommendation reports. It focuses on five states—Alabama, Maine, Maryland, North Carolina, and Rhode Island—that recognized the importance of working waterfronts to their economies. Each established a legislative committee, via a joint order, joint resolution, session law, or senate bill, to recommend strategies to protect them. These committees ranged in size from ten to twenty-eight members. Between 2001 and 2012 the committees met over the course of one to three years to develop specific recommendations and reported back to their legislatures.

Although similar issues drove the creation of all these committees, each state responded uniquely to particular challenges. In Maine, escalating waterfront property values compounded the impact of a significant decline in the fishing industry. In North Carolina, Maryland, and Alabama, rising land prices and development pressures, and the resulting reduced waterfront access for both commercial and recreational uses, provided the basis for the legislatures to take action. Rhode Island recognized a need to enhance economic opportunities for its ports.

Each state proposed recommendations specific to its needs, but some common themes and strategies ran through all of them. This Article discusses the mechanisms recommended for land use planning, taxation, submerged lands, direct funding, indirect or incentive-based funding, the transfer and purchase of development rights, and educational activities. In addition, some of the states recommended creating new committees to carry out some of the actions proposed in their reports.

The Article concludes by following up on the outcomes for each state’s recommendations. The recession of 2007 and 2008 slowed the implementation of most of the states’ recommendations. Maine was an exception; it completed its work earlier than most other states and had enough resources to implement its recommendations.

It is important to note the scope of this Article. Significant accomplishments have been made in all five states associated with working waterfronts over the years. This report only tracks those efforts directly related to the legislative committee recommendations.

## II. Background on Working Waterfront Legislative Committees

State legislatures can initiate action on issues of statewide significance in many different ways. Although legislatures most often act by enacting new laws, they can also take action by passing resolutions creating committees to research and evaluate issues of pressing, critical concern. Unlike standing legislative committees, which consider bills in a particular subject area for recommendation

to one house or the other, study (or sometimes called select or interim) committees are usually established by resolutions of both houses, with specific directives as to their composition and the tasks they will accomplish.

Legislatures traditionally establish interim committees “to study or investigate certain matters between annual or biennial legislative sessions and to report to the next regular session.”<sup>2</sup> Typically, interim committees are formed during the legislative session. At that time, the House and Senate leadership decides on who will be on the interim committees, with members of the interim committees usually serving one term. The committees often invite experts to present information to them. Members of the public also get a chance to have their say. Legislators will then use what they learn from the interim studies to make decisions about what bills to consider during the next session.

With respect to working waterfronts, some states created study committees, such as the Maine Committee to Study the Loss of Commercial Fishing Waterfront Access and Other Economic Development Issues.<sup>3</sup> Maryland used the term Working Waterfront *Commission*.<sup>4</sup> A similar process occurred in both cases where the legislature authorized creation of the group and provided direction as to what would be studied during the term of the committee or commission. Even though there may be different titles for the groups, their functions were the same. This Article will use the term “committee” to refer to all these committees and commissions, as their functions are essentially the same.

Providing a consistent definition of working waterfronts is important in all states as they search for solutions to address impacts to working waterfronts. Over the years there have been a wide array of definitions which has led to sometimes conflicting results and recommendations. The starting point for a definition can be found in the 1972 Coastal Zone Management Act which recognized the need to plan for and give priority to coastal-dependent uses such as fisheries, recreation, ports and transportation, and industrial development relying upon access to the coast.<sup>5</sup>

Clarifying what type of development depends upon access to the water has been the source of numerous debates over the years.<sup>6</sup> What activities should be considered part of the “family” of working waterfronts and thereby the subject of focus for such efforts as these working waterfront committees and the subject of recommendations? Only North Carolina and Alabama actually include definitions of terms in their final legislative report. The North Carolina report from 2006 contains the following definition for working waterfronts:

**Working Waterfronts** – are commercial facilities that require direct access to or a location on, over or adjacent to North Carolina’s coastal public trust waters and submerged lands. The

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<sup>2</sup> *Glossary of Legislative Terms*, NATIONAL CONFERENCE OF STATE LEGISLATURES, <http://www.ncsl.org/research/about-state-legislatures/glossary-of-legislative-terms.aspx> (last visited Jan. 31, 2014).

<sup>3</sup> Maine Legislature, H. P. 1384, Joint Study Order Establishing the Committee to Study the Loss of Commercial Fishing Waterfront Access and Other Economic Development Issues Affecting Commercial Fishing (June 21, 2001) [hereinafter Maine H.P. 1384].

<sup>4</sup> See Maryland Legislature, S.B. 414, Chapter 30 (April 10, 2007) [hereinafter Maryland S.B. 414].

<sup>5</sup> 16 U.S.C. § 1452(2)(D).

<sup>6</sup> For an in-depth discussion on defining “working waterfront,” see TERRA BOWLING, WORKING WATERFRONTS AND THE CZMA: DEFINING WATER-DEPENDENT USE (2013), available at <http://www.wateraccessus.com/toolkit.html>; MICHAEL DIXON, TAX-BASED OPPORTUNITIES AND CHALLENGES FOR WORKING WATERFRONT PROTECTION (2010) available at [http://www.accessingthemaineoast.com/coastal\\_access\\_toolkit/DixonMemo\\_final.pdf](http://www.accessingthemaineoast.com/coastal_access_toolkit/DixonMemo_final.pdf).

term includes water-dependent facilities that may be open to the public, offer access by vessels to State waters and lands or that support facilities for recreational, commercial, research or government vessels.

Examples include, but are not limited to: commercial fishing facilities, including fish houses; wet and dry marinas available for public use; boat construction facilities; boat haul-out and repair facilities; recreational fishing facilities, including fishing piers; facilities engaged in or offering boating for hire (e.g. charter/headboats); and aquaculture facilities that require direct use/flow of coastal waters and/or wharf areas for marine aquaculture operations and product transport.<sup>7</sup>

This definition focuses on the commercial fishing industry and is also used in the Alabama report.

In 2007, the Maine legislature adopted “An Act Regarding Working Waterfront Projects” and defined both working waterfront activities and working waterfront land.

“Working waterfront activity” means an activity that qualifies a parcel of land as working waterfront land. “Working waterfront activity” includes commercial fishing activities; boat building and repair; hauling, launching, storage and berthing of boats; and other similar commercial activities that are dependent on the waterfront.<sup>8</sup>

The definitions from Maine, North Carolina, and Alabama are relatively similar as to what activities and uses they encompass with an emphasis on the fishing industry. Recommendations from the state committees subsequently reflected the need to provide protection for this defined set of users.<sup>9</sup>

### III. Issues Driving Creation of Working Waterfront Committees

While all these legislative committees were established to focus on the general issue of working waterfronts, each state had its own key issues to address. Similar themes emerged related to declining fishing industries, rising land values due to population growth, demand for prime waterfront locations for residential and non-water dependent commercial purposes, effects on industries dependent upon waterfront access, and the impact on economic development in each state.

In **Maine**, a decline in fish stocks compounded by the rising costs of waterfront properties and the resulting impacts on the fishing industry drove the committee to focus on strategies to ensure waterfront access and help commercial fisheries remain viable. In addition, Maine focused on economic development strategies to support the workforce affected by the loss of jobs in the fishing industry.<sup>10</sup>

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<sup>7</sup> NORTH CAROLINA WATERFRONT ACCESS STUDY COMMITTEE, FINAL REPORT 13 (2007) [hereinafter N.C. REPORT].

<sup>8</sup> MAINE REV. STAT. tit. 38, §480-B(11).

<sup>9</sup> By contrast, the Florida legislature adopted a much broader definition that included hotels and resorts. See FLA. STAT. §§ 342.07, 342.201.

<sup>10</sup> See Maine H.P. 1384, *supra* note 3.

In 2008, **Maryland** identified the important role waterfronts play in the economy, heritage, culture, and history of Maryland.<sup>11</sup> The legislature noted development pressures increasingly eliminate commercial working waterfronts. And the state needed to take a role in the protection and preservation of access for the commercial fishing industry to public trust waters.<sup>12</sup>

**North Carolina** and **Alabama** broadened the scope of their reviews beyond impacts on the fishing industry. Both their legislative committees were tasked with evaluating the degree of loss in the diversity of uses along their shorelines.<sup>13</sup> The North Carolina legislature directed the committee to “study the degree of loss and potential loss of the diversity of uses along the coastal shoreline....”<sup>14</sup> The Alabama legislature patterned their bill and its purpose off of the North Carolina law.<sup>15</sup>

**Rhode Island’s** legislative committee focused on its ports and wanted to ensure growth in all types of maritime industries, not just fishing.<sup>16</sup> The legislature stated that the purpose of the commission would be to “study potential economic opportunities in the development of port facilities in the State of Rhode Island.”<sup>17</sup> As one analysis of the need for the study explained:

This gentrification of Providence’s working waterfront is extremely shortsighted. While condos, hotels, and marinas may increase the city’s property tax revenues, they will come at the expense of existing successful taxpaying businesses, good blue-collar jobs, and a regional economic resource that will never be rebuilt. The costs to the region could be immense, as thousands of port-related jobs could be lost and heating and energy costs would increase due to the expense of transporting these resources from other ports.<sup>18</sup>

In each of the five states reviewed in this report, a joint resolution of the legislature established a committee to evaluate working waterfront issues. Table 1 provides the name and the session law creating each committee.

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<sup>11</sup> See Maryland S.B. 414, *supra* note 4.

<sup>12</sup> *Id.*

<sup>13</sup> See General Assembly of North Carolina, Session Law 2006-248, H.B. 1723, § 45.3 (Aug. 16, 2006) [hereinafter North Carolina H.B. 1723]; ALABAMA WATERFRONT ACCESS STUDY COMMITTEE, FINAL REPORT TO THE LEGISLATURE OF ALABAMA 3 (2012) [hereinafter ALABAMA REPORT].

<sup>14</sup> North Carolina H.B. 1723, *supra* note 13.

<sup>15</sup> Alabama Legislature, House Joint Resolution 656, Senate Joint Resolution 42 (2008) [hereinafter Alabama Joint Resolution].

<sup>16</sup> See *generally*, SPECIAL LEGISLATIVE COMMISSION TO STUDY POTENTIAL ECONOMIC OPPORTUNITIES IN THE DEVELOPMENT OF PORT FACILITIES IN RHODE ISLAND, FINAL REPORT (2012) [hereinafter RI REPORT].

<sup>17</sup> Rhode Island General Assembly, H. 5084, Joint Resolution creating a Special Legislative Commission to Study Potential Economic Opportunities in the Development of Port Facilities in Rhode Island (2009) [hereinafter Rhode Island H. 5084].

<sup>18</sup> Joel Cohen, *Your View: Pulse of the Ports: Protect Providence's Working Waterfront*, SOUTH COAST TODAY, Sept. 26, 2008,

<http://www.southcoasttoday.com/apps/pbcs.dll/article?AID=/20080926/OPINION/809260303/-1/NEWS10>.

**Table 1.** State Committee Names and Resolution Number.

State	Year	Title of Committee	Resolution
Maine	2001	Committee to Study the Loss of Commercial Fishing Waterfront Access and Other Economic Development Issues Affecting Commercial Fishing	Joint Order HP 1384
North Carolina	2006	Waterfront Access Study Committee	Session Law 2006-248, HB 1723
Maryland	2007	Working Waterfront Commission	Chapter 30 of 2007, Senate Bill 414
Alabama	2008	Alabama Waterfront Access Study Committee	House Joint Resolution 656, Senate Joint Resolution 42
Rhode Island	2009	Special Legislative Commission to Study Potential Economic Opportunities in the Development of Port Facilities in State of Rhode Island	Joint Resolutions 2009 H. 5084 and 2009 S. 0017

The committees' structures and duties varied according to state. Committee sizes ranged from 10 members in Maine to 28 in Alabama. Each resolution provided guidelines for membership, ensuring a cross-section of stakeholders associated with working waterfronts. In addition to house and senate members, the committees included representatives of state agencies such as those representing the fishing industry, coastal management divisions, marine resources divisions, and parks and recreation departments, as well as local governments. From the private sector, members included representatives of the commercial and recreational fishing industries, seafood industry, marine trades, real estate and residential building industries, and environmental community. The size and composition of each committee, detailed in Table 2, indicate the range of interests identified by each state.

**Table 2.** Composition of committees by state.

State	Size of Committee	Composition of Committee Members
Maine	10	(1) One senator appointed by the president of the Senate; (2) Three members of the House of Representatives, at least one of whom serves on the Joint Standing Committee on Marine Resources; (3) Two members representing the fishing industry; (4) Two members of the general public; and (5) Two members representing state agencies that regulate the fishing industry.
North Carolina	21	(1) The Director of the Sea Grant College Program; (2) the Senate co-chair of the Joint Legislative Commission on Seafood and Aquaculture; (3) the House co-chair of the Joint Legislative Commission on Seafood and Aquaculture; (4) the Chair of the Marine Fisheries Commission; (5) the Chair of the Coastal Resources Commission; (6) the Chair of the Wildlife Resources Commission; (7) the Director of the Division of Marine Fisheries; (8) the Director of the Division of Coastal Management; (9) the President of the North Carolina Recreation and Parks Association; (10) a representative of a local government in the Northeast Coastal Region; (11) a representative of a local government in the Central Coastal Region; (12) a representative of a local government in the Southeast Coastal Region; (13) an economist; (14) a representative of the residential building industry who builds in a coastal region; (15) a realtor; (16) an individual involved in economic development in a coastal region; (17) a representative of the marine trades industry; (18) a representative of the commercial fishing industry; (19) a representative of the recreational fishing industry; (20) a social scientist; and (21) a representative of the environmental community.
Maryland	15	(1) One member from the Senate, (2) one member from the House of Delegates, (3) the secretary of the Department of Natural Resources, (4) the secretary of Planning, (5) the secretary of Economic Development, (6) the director of the Association of Counties, (7) the director of the Maryland Municipal league, (8) the director of the Maryland Agricultural and Resource-Based Industry Development Corporation, (9) the director of the Coastal Bay Association, (10) the director of the Chesapeake Bay Seafood Industries Association, (10) the director of the Maryland Sea Grant Program, (11) the director of the Maryland Waterman's Association, (12) the director of the Saltwater Sport Fishermen's Association, (13) a representative of coastal bay residents, (14) a representative of lower bay residents, and (15) a representative of upper bay residents.
Rhode Island	12	12 members from the General Assembly, six from the House, and six from the Senate.
Alabama	28	(1) The director of the Mississippi-Alabama Sea Grant Program, (2) a representative of the Alabama Department of Conservation and Natural Resources, (3) a representative of the Alabama Department of Conservation and Natural Resources, Marine Resources Division, (4) a representative of the Alabama Working Waterfront Coalition, (5) a representative of the Alabama Port Authority, (6) a representative of the commercial fishing industry, (7) a representative of the recreational fishing industry (8) a representative of the U.S. Army Corps of Engineers, (9) an economist, (10) a social scientist, (11) a representative of the Alabama Home Builders Association, (12) a representative of the Alabama Association of Realtors, (13) a representative of the marine trades and manufacturing industry, (14) a representative of the Alabama Bureau of Tourism and Travel, (15) a representative of the commercial fishing support industry, (16) a local government representative from each congressional district, (17) the chair of the Senate Agriculture, Conservation and Forestry Committee, (18) the chair of the House Agriculture and Forestry Committee, (19) members of the House of Representatives representing house districts 95 and 105, (20) senators representing senate districts 32 and 35.

The focus and responsibilities of these committees varied broadly depending upon state. In Maine, the joint resolution merely stated that the committee should "Review current policy regarding [the] state's fishing industry and make recommendations to preserve the fishing industry."<sup>19</sup> During the course of four meetings, the Maine committee met and heard testimony on the decline of the fishing industry. The key issues to be addressed by the committee, as established by the Joint Order, included:

- Waterfront access for commercial fisheries, including zoning restrictions, municipal comprehensive plans, current-use taxation, smart growth and set-asides.
- Economic development including incentives and disincentives, taxation policies, promotion and marketing issues, financing and workforce development.

Like Maine, Maryland focused on commercial fishing; its legislation provided a very simple direction for the committee to "study and make recommendations regarding protecting and preserving Maryland's commercial fishing industry's access to public trust waters."<sup>20</sup> The committee broke into three workgroups to explore ideas and develop recommendations regarding working waterfront access. These three groups reviewed other states' working waterfront programs, considered establishing working waterfront or maritime enterprise zones, and identified critical working waterfront sites in Maryland.<sup>21</sup>

By contrast, North Carolina's legislation contained explicit directions. It instructed the state's working waterfront committee to study "the degree of loss and potential loss of the diversity of uses along the coastal shoreline of North Carolina and how these losses impact access to the public trust waters of the State."<sup>22</sup> The specific duties spelled out in the law included:

- Gather information about local land-use management and zoning, current shoreline development trends, and local tax rates, including tax assessment trends for shoreline properties.
- Collect research and information from North Carolina and other states and jurisdictions regarding incentive-based techniques and management tools used to preserve waterfront diversity.
- Assess the applicability of such tools and techniques to the coastal shorelines of North Carolina.
- Prepare a draft report with a statement of the issues, a summary of the research, and recommendations to address issues of diversity of waterfront use and access in North Carolina.

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<sup>19</sup> Maine H.P. 1384, *supra* note 3, at § 5.

<sup>20</sup> Maryland S.B. 414, *supra* note 4, at § 1(f).

<sup>21</sup> MARYLAND WORKING WATERFRONT COMMISSION, FINAL REPORT 10-11 (2008), available at <http://www.dnr.maryland.gov/fisheries/commercial/wwc/MWWC120208finalversion2.pdf> [hereinafter MARYLAND REPORT].

<sup>22</sup> North Carolina H.B. 1723, *supra* note 13.



- Hold three public meetings to present the draft report and recommendations to the public and user groups. One public meeting shall be held in each of ... three coastal regions....<sup>23</sup>

The North Carolina committee members heard testimony by a range of stakeholders related to land use and taxation, natural resource issues, impact on the seafood industry, and public access. These discussions provided a basis for developing recommendations. Alabama followed North Carolina's lead, using exactly the same language to describe the tasks for its committee.

Port facilities were the focus of the Rhode Island legislation, in contrast to the other four legislative committees. In Joint Resolutions 2009 H. 5084 and 2009 S. 0017, the legislature declared that "the purpose of the commission shall be to study potential economic opportunities in the development of port facilities in the State of Rhode Island and to make recommendations to the General Assembly as to the feasibility and desirability of such port-facility development within this State."<sup>24</sup> Over the next three years the Rhode Island committee heard more than forty hours of testimony from more than twenty-five individuals representing government entities, port operators, logistics providers, and many other maritime sectors. Committee members held eleven meetings and toured three in-state port facilities.<sup>25</sup>

#### IV. Recommendations and Progress towards Implementation

The most important contrasts between these legislative committees lie in the actions recommended in their final reports, which are organized into various categories. Each state used different categories:

- The **Maine** report contains 23 recommendations in two categories: waterfront access issues and economic development issues.<sup>26</sup>
- The **North Carolina** report's 27 recommendations concern: (1) retaining and enhancing working waterfronts, (2) enhancing public access to coastal waters, (3) planning and zoning approaches to waterfront and access issues, (4) purchase or transfer of development rights, (5) fishing piers, a North Carolina heritage, (6) fees for public trust submerged lands and easements, (7) meeting environmental compliance costs, (8) the need for a comprehensive socioeconomic study, (9) cooperative state-local partnerships and approaches, (10) educational outreach, and (11) further study and oversight.<sup>27</sup>
- **Maryland's** 14 recommendations deal with: (1) tax abatement, (2) infrastructure preservation and development, (3) working waterfront conservations easements, (4) local planning and zoning assistance, (5) education, research and outreach, and (6) federal legislation.<sup>28</sup>

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<sup>23</sup> *Id.*

<sup>24</sup> Rhode Island H. 5084, *supra* note 17.

<sup>25</sup> RI Report, *supra* note 16, at 4.

<sup>26</sup> COMMITTEE TO STUDY THE LOSS OF COMMERCIAL FISHING WATERFRONT ACCESS AND OTHER ECONOMIC DEVELOPMENT ISSUES AFFECTING COMMERCIAL FISHING, FINAL REPORT 8-14 (2001) [hereinafter MAINE REPORT].

<sup>27</sup> N.C. REPORT, *supra* note 7, at 3-6.

<sup>28</sup> MARYLAND REPORT, *supra* note 21, at 27-32.

- The **Rhode Island** report included 15 recommendations organized around six topics: (1) Port Economic Policy Ombudsman, (2) lack of coordination between stakeholders regarding marketing and infrastructure development, (3) development of marine highway hubs, (4) exploration of public/private partnerships, (5) development of non-federally funded dredging project, and (6) revision of Rhode Island Master Guide Plan.<sup>29</sup>
- The **Alabama** report sorted its 13 recommendations into the following four categories while also identifying them as Tier I, II, or III priorities: (1) planning and zoning issues, (2) financial incentive issues, (3) socioeconomic issues, and (4) infrastructure issues.<sup>30</sup>

For the purposes of this Article and for ease of comparison, the recommendations have been grouped into six general categories:

- Land Use Planning
- Taxation
- Submerged Lands
- Funding (direct and indirect)
- Transfer of development rights, purchase of development rights, and easements
- Education

The extent and details of recommendations varied widely by state, and not all the state committees addressed these specific categories. Some focused on initiatives aimed at improving land use planning, while others focused primarily on methods to finance construction of new infrastructure in support of working waterfronts. However, it is interesting to note the similarities in their approaches.

As stated at the beginning, this Article only focuses on recommendations directly resulting from these five legislative committees.

#### A. *Land Use Planning and Zoning*

All the committees recognized the importance of the state land use planning process in addressing working waterfront issues. The strategies recommended were slightly different in each state, depending on the extent or effectiveness of a state's planning scheme to address the issues of planning for and assisting with the implementation of water access. Land use planning can encompass detailed mapping, classification of land, strategic plans, and specific management plans designed to guide development.<sup>31</sup> The implementation of each of these strategies may take on various forms including physical plans, policy documents, regulations, and laws. The wide range of tools available within the land use planning category is evidenced by the various recommendations contained in the five state legislative reports.

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<sup>29</sup> RI REPORT, *supra* note 16, at 8-21.

<sup>30</sup> ALABAMA REPORT, *supra* note 13, at 7-10.

<sup>31</sup> See generally, Edward J. Kaiser & David R. Godschalk, *Twentieth Century Land Use Planning: A Stalwart Family Tree*, 61 J. AM. PLANNING ASS'N 365 (1995).

## 1. Maine

Maine's legislative committee recommended a range of land use planning efforts. These included some very specific and focused efforts to use planning and regulatory tools to address loss of land for working waterfronts, including:

- Evaluate the effectiveness of the Coastal Zone Management program;
- Collect baseline data regarding loss of waterfront access for commercial fishing, update the port facilities database each year, and create an interagency workgroup to collect and share data on water access;
- Hold community dialogues to determine local interest in the issues and in pursuing working waterfront strategies;
- Provide incentives for community planning;
- Model ordinance development; and
- Review how a three-port strategy addresses commercial fishing access.

Maine has made solid progress toward implementing these recommendations. The State of Maine has put significant effort into mapping and inventory work in order to provide the baseline data for further analysis.<sup>32</sup> The state planning office issued a comprehensive analysis of current conditions and threats to commercial fishing access in 25 communities that provided a basis for further policy and planning.<sup>33</sup> Detailed descriptions of potential land use planning techniques are listed on the website *Accessing the Maine Coast*.<sup>34</sup>

No model ordinances for working waterfronts were developed, although the Coastal Management Program has issued guidance and recommendations as part of their Working Waterfront Initiative.<sup>35</sup> In 2010, Portland, Maine adopted a sweeping new waterfront-zoning

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<sup>32</sup> See, i.e., Island Institute, MAPPING MAINE'S WORKING WATERFRONT: A STATEWIDE INVENTORY (2007), available at <http://www.islandinstitute.org/publications/Mapping-Maines-Working-Waterfront/12270/>; Working Waterfront Mapping, Geographic Information Systems (GIS) Services, ISLAND INSTITUTE, [http://www.islandinstitute.org/working\\_waterfront\\_mapping.php](http://www.islandinstitute.org/working_waterfront_mapping.php) (last visited Jan. 31, 2014).

<sup>33</sup> ELIZABETH SHEEHAN & HUGH COWPERTHWAIT, COASTAL ENTERPRISES, INC., PRESERVING COMMERCIAL FISHING ACCESS: A STUDY OF WORKING WATERFRONTS IN 25 MAINE COMMUNITIES (2002), available at <http://www.maine.gov/dacf/mcp/downloads/workingwaterfront/preservingcommercialfishing.pdf>.

<sup>34</sup> *Plan and Regulate for Access*, ACCESSING THE MAINE COAST, [http://www.accessingthemainecoast.com/coastal\\_access\\_toolkit/plan\\_and\\_regulate\\_for\\_access.shtml](http://www.accessingthemainecoast.com/coastal_access_toolkit/plan_and_regulate_for_access.shtml) (last visited Jan. 31, 2014).

<sup>35</sup> See *Case Study: Zoning for a Vital Waterfront*, MAINE COASTAL PROGRAM, [http://www.maine.gov/dacf/mcp/wwi/casestudies/casestudy\\_zoning.htm](http://www.maine.gov/dacf/mcp/wwi/casestudies/casestudy_zoning.htm) (last visited Jan. 31, 2014).

ordinance to address pressures faced by the working waterfront from non-water dependent uses. The planning department engaged in extensive analysis to justify the need for this protective zoning.<sup>36</sup>

## 2. North Carolina

The North Carolina committee found that several land use-related efforts were already underway in numerous jurisdictions to address working waterfront issues.<sup>37</sup> To strengthen those efforts, it recommended focusing primarily on planning guidelines and policies. The committee recommended that the North Carolina Coastal Resources Commission (CRC) amend its land use planning guidelines to include a requirement that local governments inventory, assess, and develop policies for working waterfronts. To assist local government in these efforts the committee recommended awarding grants to develop public access inventories and plans, and to enable local governments to inventory their working waterfronts and plan for their retention and enhancement. Finally, the North Carolina committee recommended exploring special zoning techniques, including the use of conditional zoning as a regulatory method to provide some measure of control over the loss of land used for working waterfronts.<sup>38</sup>

North Carolina's implementation progress has been mixed. The North Carolina Division of Coastal Management has engaged in mapping of working waterfront facilities. Some of this mapping of public access sites began in 2005, which was prior to the work of the legislative committee. The mapping following the Committee's report included new efforts to map locations of docks, piers, and bulkheads. Some of this work has been completed, although more needs to be done to complete the entire coastline of the state.<sup>39</sup> As to the North Carolina recommendations for Land Use Planning Guidelines to incorporate policies concerning working waterfronts, although the state guidelines include requirements for public access, no additional requirements were adopted for working waterfronts as part of the state Coastal Area Management Plan.<sup>40</sup>

## 3. Alabama

Alabama's committee recommended the state complete a comprehensive working waterfront plan. To facilitate implementation of the plan the committee recommended creating a Waterfront Alabama Partnership Program that would assist regional planning commissions, state agencies,

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<sup>36</sup> See City of Portland, Code of Ordinance, Article III, Chapter 14, §§14-305-14-315. Additional background information is available at *WCZ Policy and Zoning Process*, PORTLAND MAINE PLANNING DIVISION, <http://www.portlandmaine.gov/planning/wcz.asp> (last visited Jan. 31, 2014). The city has now conducted two inventories demonstrating the use trends. The most recent inventory is dated June 2013. See JEFF LEVIN, ALEX JAEGERMAN, & BILL NEEDELMAN, DEPARTMENT OF URBAN PLANNING AND DEVELOPMENT, 2012 WATERFRONT ZONING USE INVENTORY: JUNE 2013, REPORT TO CITY OF PORTLAND MAINE CITY COUNCIL (2013), available at <http://www.portlandmaine.gov/planning/wczinventory.pdf>.

<sup>37</sup> N.C. REPORT, *supra* note 7, at 21.

<sup>38</sup> *Id.* at 24.

<sup>39</sup> Personal communication with Lisa Schiavinato, Director of Law and Policy, N.C. Coastal Res. L. & Pol'y Ctr (Sept. 24, 2013).

<sup>40</sup> See 15A N.C. ADMIN. CODE 7B.0702; Personal conversation with John Thayer, Manager of Planning, North Carolina Division of Coastal Management (Nov. 20, 2013).

municipal planning organizations, counties and municipalities in incorporating working waterfront and water access issues into their comprehensive plans.<sup>41</sup>

Following the issuance of the committee's report, Alabama has engaged in extensive mapping efforts to identify working waterfront businesses and is planning to use the information to develop a socio-economic survey of the state's working waterfronts.<sup>42</sup> The City of Gulf Shores, Alabama, with legal research and technical assistance from the Mississippi-Alabama Sea Grant Consortium (MASGC) as part of its working waterfront outreach programming, developed a waterfront plan and adopted a Waterway Village Overlay District to protect and preserve working waterfronts.<sup>43</sup> In addition, the Auburn University, MASGC, and the Northern Gulf Institute have pursued funding for an economic inventory and GIS mapping of working waterfronts in coastal Alabama and Mississippi.<sup>44</sup>

#### 4. Maryland

The Maryland committee examined ways the state Coastal Program might work with local jurisdictions to address preservation of working waterfronts. It recommended evaluating the potential use of special area management plans (SAMPs), which are resource-management plans authorized under the U.S. Coastal Zone Management Act.<sup>45</sup> It also recommended enactment of state legislation to require inclusion of working waterfront provisions in local comprehensive plans.<sup>46</sup>

In 2012, the state of Maryland passed legislation requiring planning commissions in counties located along tidal waters to designate "areas on or near the tidal waters for: (1) loading, unloading, and processing finfish and shellfish; and (2) docking and mooring commercial fishing boats and vessels."<sup>47</sup> These designated areas are to be geographically located to "(1) facilitate the commercial harvesting of finfish and shellfish; and (2) ensure reasonable access to the waterways of the State by commercial watermen."<sup>48</sup> The Committee's other land use recommendations were not adopted.

#### 5. Rhode Island

The Rhode Island committee focused its recommendations on a state-level planning initiative. The report recommended a revision of the statewide master guide plan to specifically identify and maintain vital water-dependent commercial operations and ensure the viability of Rhode Island's marine economy.<sup>49</sup>

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<sup>41</sup> ALABAMA REPORT, *supra* note 13, at 8.

<sup>42</sup> See Jody Thompson, *Alabama's Working Waterfronts: Preserving Vital Economies*, presentation at 2013 National Working Waterfronts & Waterways Symposium, Tacoma, WA, Mar. 27, 2013, available at [http://wsg.washington.edu/mas/pdfs/nwwws/F2/F2\\_Thompson.pdf](http://wsg.washington.edu/mas/pdfs/nwwws/F2/F2_Thompson.pdf).

<sup>43</sup> City of Gulf Shores, Zoning Ordinance for the City of Gulf Shores, *Waterway Village Overlay District*, §10-9 (2013), available at [www.gulfshoresal.gov/documentcenter/view/56](http://www.gulfshoresal.gov/documentcenter/view/56).

<sup>44</sup> ALABAMA REPORT, *supra* note 13, at 9.

<sup>45</sup> MARYLAND REPORT, *supra* at note 21, at 21.

<sup>46</sup> *Id.* at 30.

<sup>47</sup> MD. CODE, LAND USE § 3-113(a).

<sup>48</sup> *Id.* § 3-113(b).

<sup>49</sup> RI REPORT, *supra* note 16, at 19.

The state of Rhode Island is currently engaged in state-wide planning efforts to revise its Master Guide Plan and planners hope to include more protective language for working waterfronts.<sup>50</sup> Another related planning effort involves working towards the inclusion of Rhode Island in the Marine Highway System, which “consists of over 29,000 nautical miles of navigable waterways including rivers, bays, channels, the Great Lakes, the Saint Lawrence Seaway System, coastal, and open-ocean routes.”<sup>51</sup> The U.S. Department of Transportation’s Marine Highway Program works to include these waterways into the greater U.S. transportation system and recent concept plans for a major East Coast transportation corridor include reference to the Port of Providence.<sup>52</sup>

## B. Property Taxes

As property values of coastal properties continue to rise, one of the primary impacts felt by the commercial working waterfront industry has been an increase in property taxes.<sup>53</sup> Three states, Maryland, North Carolina, and Maine, recommended using property tax-related mechanisms to address this issue for working waterfront properties.

### 1. Maine

The State of Maine has recognized the importance of reducing the tax impacts on working waterfronts. In 2000, the state legislature passed a constitutional resolution to amend the state constitution to allow the assessment of waterfront land used for commercial fishing purposes based upon the current use of the property instead of using the “highest and best use” standard. Unfortunately, Maine voters defeated the proposal when placed on the ballot in November 2000. In response to this defeat, the legislative committee avoided any specific recommendation for a tax-related initiative. It was noted that there was a lack of empirical data demonstrating the loss of access.<sup>54</sup> Thus the legislative committee focused recommendations on developing additional data.

Although Maine voters rejected the constitutional amendment in 2000, proponents tried again five years later. This time voters approve a current use tax program for working waterfront properties. In 2006, the Maine legislature passed the enabling act authorizing current use

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<sup>50</sup> Personal communications with Ames Colt, Rhode Island Bays, Rivers, and Watersheds Coordination Team Chair, Office of Governor, Rhode Island Department of Environmental Management (Nov. 19, 2013).

<sup>51</sup> *America’s Marine Highway Program*, U.S. DEP’T OF TRANSPORTATION MARITIME ADMIN., [http://www.marad.dot.gov/ships\\_shipping\\_landing\\_page/mhi\\_home/mhi\\_home.htm](http://www.marad.dot.gov/ships_shipping_landing_page/mhi_home/mhi_home.htm) (last visited Jan. 31, 2014).

<sup>52</sup> Personal communications with Ames Colt, *supra* note 50.

<sup>53</sup> See, *i.e.*, MARYLAND REPORT, *supra* note 21, at 42. For an in-depth analysis of different types of tax-related solutions available to address impacts to working waterfronts, see KRISTEN GRANT, AMANDA LABELLE, & CATHERINE SCHMIDT, WORKING WATERFRONT PRESERVATION: OPPORTUNITIES POSED BY TAX POLICY – EXECUTIVE SUMMARY (2010), available at [http://www.accessingthemainecoast.com/coastal\\_access\\_toolkit/WWFTax1PGExecSum.pdf](http://www.accessingthemainecoast.com/coastal_access_toolkit/WWFTax1PGExecSum.pdf).

<sup>54</sup> MAINE REPORT, *supra* note 26, at 2.

assessments.<sup>55</sup> As of 2012, over 81 working waterfront properties have been enrolled in the program.<sup>56</sup>

## 2. Maryland

In Maryland high taxes on waterfront properties made it difficult for waterfront businesses to compete for space and retain their sites. To address these concerns, the Maryland committee recommended granting commercial waterfront properties an exemption from the inheritance tax, or evaluating an alternative payment schedule to make tax payments more manageable.<sup>57</sup>

In 2008, the State of Maryland enacted a provision for a special use tax assessment for commercial waterfronts. This measure provides a tax credit for working waterfronts in situations where the new assessment exceeds the old one by 20%.<sup>58</sup>

## 3. North Carolina

The North Carolina committee also recommended evaluating current use taxation for working waterfront properties, referred to as present-use value taxation in North Carolina. A present-use value tax program was initiated in North Carolina in 1974 to address the burdens created by taxing certain types of property, such as forest and agricultural land, at market value. The committee recommended extending eligibility for present-use value taxation to working waterfront property, and to private fishing piers providing public access.<sup>59</sup>

In 2009, in response to the Committee's report, the North Carolina state legislature approved creation of a property tax exemption, or deferred tax program, for working waterfronts. This present-use tax law grants relief from increases in property taxes to working waterfront properties and was an extension of the state's existing present-use tax law.<sup>60</sup>

### C. *Submerged Lands*

Both Maine and North Carolina recommended actions related to submerged lands, a term defined on a state-by-state basis. In Maine, "submerged lands" are those seaward of the low-water mark out to the three-nautical mile territorial state marine boundary.<sup>61</sup> In North Carolina "submerged

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<sup>55</sup> See 36 ME REV. STAT. §§ 1131-1140-B.

<sup>56</sup> See Hugh Cowperthwaite, *Maine's Working Waterfront Coalition: Coalition Building – Strategies for Engaging the Public in Working Waterfronts*, presentation at 2013 National Working Waterfronts & Waterways Symposium, Tacoma, WA, March 27, 2013, available at [http://wsg.washington.edu/mas/pdfs/nwwws/F2/F2\\_Cowperthwaite.pdf](http://wsg.washington.edu/mas/pdfs/nwwws/F2/F2_Cowperthwaite.pdf).

<sup>57</sup> MARYLAND REPORT, *supra* note 21, at 27.

<sup>58</sup> MD. CODE ANN. TAX-PROP. § 9-249. For more information on this legislation, see Terra Bowling, National Sea Grant Law Center, Working Waterfront Legislation (2012), available at <http://nsglc.olemiss.edu/Advisory/WWF-LEGISLATION.10-12%5B28%5D.pdf>.

<sup>59</sup> N.C. REPORT, *supra* note 7, at 27.

<sup>60</sup> N.C. GEN. STAT. §105-277.14.

<sup>61</sup> See 12 ME. REV. STAT. §1801.

lands" are those from the normal high-water mark to the three-nautical mile territorial state marine boundary.<sup>62</sup>

### 1. Maine

In Maine, small fishing piers are subject to high fees for easements or leases from the State on submerged lands. To address this issue the Maine legislative committee recommended that fees for easements on publicly owned submerged lands be adjusted to accommodate working waterfront uses, with a cap of 1% of upland value compared to the 2% to 4% charged for other uses.<sup>63</sup>

The State of Maine had an existing exception for commercial fishing facilities occupying less than 2,000 square feet of submerged land.<sup>64</sup> For commercial fishing facilities over 2,000 square feet, the Department of Commerce proposed in 2008 that the state change its fee rate to 2.5% per square foot plus 0.01% of the upland square foot value.<sup>65</sup> The stated purpose for changing the fee structure in 2009 was to "significantly improve the fairness and equity for existing and future leaseholders, lower overall lease rates, and will, over time, provide sufficient revenues for the Bureau to meet its obligation to fairly compensate the public for the private use of submerged land held in the public trust."<sup>66</sup> The current fee structure for the leasing of submerged lands for commercial fishing activities occupying more than 2,000 square feet, as set forth by the Legislature, requires the Department to "charge the lessee a rent that practically approximates the fair market rental value of the submerged land," but authorizes reduction factors and base rates for some use categories.<sup>67</sup> For instance, commercial fishing uses of renewable aquatic resources qualify for "a reduction factor of 0.1% plus a base rate of \$0.025 per square foot."<sup>68</sup>

### 2. North Carolina

The North Carolina legislative committee recommended evaluating the use of income from submerged land easements to fund public access projects. It also recommended evaluating whether to redesign the fee structure for submerged lands so as to create an annual fee or surcharge to be applied towards working waterfronts and public access development. Finally, it also recommended that the state examine the legality of long-term leases and private sales of docks on submerged lands. Evidence showed that this "privatization" of docking space had increased the value of such facilities and thus created incentives for more conversion of traditional working waterfront facilities to private marinas.<sup>69</sup>

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<sup>62</sup> N.C. GEN. STAT. §146-64(7).

<sup>63</sup> MAINE REPORT, *supra* note 26, at 6, 11.

<sup>64</sup> See 04-509 ME. CODE R. § 1.5.

<sup>65</sup> MAINE DEPARTMENT OF CONSERVATION, REPORT TO AGRICULTURE, CONSERVATION AND FORESTRY COMMITTEE SUBMERGED LANDS PROGRAM PROPOSED LEASE RENT SCHEDULE 4 (2008), available at [http://www.maine.gov/dacf/parks/get\\_involved/planning\\_and\\_acquisition/docs/submergedlandsfeereport.pdf](http://www.maine.gov/dacf/parks/get_involved/planning_and_acquisition/docs/submergedlandsfeereport.pdf).

<sup>66</sup> *Id.* at 2.

<sup>67</sup> 12 ME. REV. STAT. § 1862(2)(A)(1).

<sup>68</sup> *Id.* § 1862(2)(A)(1)(b).

<sup>69</sup> N.C. REPORT, *supra* note 7, at 28.



No changes have been made to the North Carolina law to date.<sup>70</sup> While articles and attention were given to the issue of “dockminiums”, no changes have been made to North Carolina law.<sup>71</sup>

#### D. Funding of Infrastructure

All five states’ committees addressed the need for greater public funding of infrastructure in one form or another to support the working waterfront industry. In addition to identifying sources of funding, some recommended ways to create linkages between project planning, construction programs, and access projects. Funding recommendations are divided into direct and indirect funding sources. Direct funding looked to the states to find sources of funds for grants. Four of the states recommended funding of this sort. And three of the states identified a need to find ways to leverage funding through indirect means.

##### 1. North Carolina

North Carolina’s committee recommended the greatest number of strategies for directly funding working waterfront facilities and access projects, including the following:

- Create a working waterfront trust fund or some other set-aside of state funds to help retain and enhance working waterfront uses;
- Increase funding for the state Boating Infrastructure Program;
- Fund public beach and coastal waterfront access programs at higher levels;
- Use funding from coastal recreational fishing licenses to fund public coastal fishing access enhancements;
- Explore funding sources to help private fishing piers providing public access to repair storm damage, such as setting aside funds to finance low-interest loans; and
- Use aquariums to fund pilot projects to design and operate three public fishing piers for angling access and public education.<sup>72</sup>

In 2007, the North Carolina Legislature authorized \$20 million to purchase working waterfront property for public access, and repair and expand access. This program, called the North Carolina Waterfront Access and Marine Industry Fund (WAMI), managed through the Division of Marine Fisheries, identified projects through a request for proposal (RFP) process. The program was patterned after the success of the Maine Working Waterfront Access Pilot Program (WWAPP) discussed below. The overall goal for the use of the WAMI Fund was to retain and enhance working waterfronts and public access to coastal waters through cooperative state and local partnerships. Four priority-funding areas were established: (1) public docking facilities; (2) public boat ramps; (3) fishing access; and (4) other marine industry facilities. The fund was a one-year allocation administered through a competitive grants process. Thirteen different projects received funding

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<sup>70</sup> Personal communication with Lisa Schiavinato, *supra* note 39.

<sup>71</sup> *Id.*

<sup>72</sup> See generally, N.C. REPORT, *supra* note 7, at 3-6.

throughout the state.<sup>73</sup> Funding also went toward implementing the recommendation to work with aquariums to design and operate three public fishing piers for angling access and public education. The first of these piers is now complete at Nag's Head, North Carolina.<sup>74</sup>

In addition to the funding for the WAMI program, the state authorized the Wildlife Recreation Commission to increase boater license fees so as to increase funds dedicated towards public access projects.<sup>75</sup> Over the years, many access projects have been funded through these two different programs.<sup>76</sup>

The North Carolina committee also looked at indirect sources of funding for working waterfronts. The North Carolina report recommended that the state's Water Resources Development Project Grant Program and Clean Water Management Trust Fund give higher priority to projects that provide public access. It also suggested working with the state Department of Transportation, power companies, local governments, nonprofits, and other state agencies to proactively and cooperatively promote public access. Since the release of the report the Department of Transportation entered into a written agreement with the North Carolina boating program to improve access areas at bridge crossings.<sup>77</sup>

## 2. Maine

The Maine committee recommended two specific funding options: (1) provide bond funding for the Small Harbor Improvement Program; and (2) encourage use of the Shore and Harbor Management Fund to open water access for commercial fishing.<sup>78</sup> In addition to providing funding for infrastructure, the Maine committee recommended creating a seafood innovation, marketing, and research fund to support value-added processing and enhance economic development.

In 2005, the Maine legislature created the Maine Working Waterfront Access Pilot Program (WWAPP).<sup>79</sup> Maine voters approved a \$33 million bond issue, of which \$3 million was dedicated to working waterfront projects. The Department of Marine Resources and Land for Maine's Future board (within the Maine Department of Agriculture, Conservation and Forestry) administers the program providing grants to help purchase access easements, rights of way, or development rights on properties entirely dedicated to commercial fisheries uses.<sup>80</sup> In 2007 Maine voters approved an additional \$2 million bond for the program and in 2010 the Maine legislature approved an additional \$1.75 million. In 2012, a portion of a \$5 million bond was allocated for the WWAPP Program. This

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<sup>73</sup> See WATERFRONT ACCESS AND MARINE INDUSTRY FUND: 2009 ANNUAL REPORT (2009) (on file with author).

<sup>74</sup> See JENETTE'S PIER IN NAGS HEAD, <http://www.jennettespier.net/>.

<sup>75</sup> Personal communication with Chris Dillon, North Carolina Wildlife Resource Commission (Nov. 19, 2013).

<sup>76</sup> For more information on the results of the North Carolina efforts, see *North Carolina Water Access Study Committee Yields Major Results in Water Access Protection*, NATIONAL WORKING WATERFRONT NETWORK, [http://www.wateraccessus.com/case\\_study.cfm?ID=46](http://www.wateraccessus.com/case_study.cfm?ID=46) (last visited Jan. 31, 2014).

<sup>77</sup> Press Release, North Carolina Wildlife Resources Commission, *Wildlife Commission Receives National Boating Access Award*, Nov. 7, 2012, <http://www.ncwildlife.org/News/NewsArticle/tabid/416/IndexId/8332/Default.aspx>.

<sup>78</sup> MAINE REPORT, *supra* note 26, at 10-12.

<sup>79</sup> 12 ME. REV. STAT. § 61-73-A.

<sup>80</sup> Coastal Enterprises, Inc., Maine's Department of Resources Working Waterfront Access Pilot Program, available at <http://www.ceimaine.org/Resources/Documents/Overview%20process%20and%20timeline%20WWAPP%20011.pdf>.

program has resulted in 19 waterfront properties totaling 35 acres placed in permanent status as working waterfronts as of 2012.<sup>81</sup>

### 3. Alabama

Alabama's committee recommended establishing a fund to acquire property for working waterfront uses and waterfront access. It also recommended identifying high priority working waterfront areas and encouraging the development of suitable infrastructure using Coastal Impact Assistance Program or other federal funding mechanisms.<sup>82</sup> The state of Alabama has not yet funded a program to acquire or protect working waterfront uses and public access.<sup>83</sup>

The Alabama committee also considered indirect sources of funding and recommended that state agencies expand public access in project planning and construction, but identified no funding sources. Although the committee had no authority over federal and local agencies, it "encouraged" them to incorporate public boat access and bank fishing into project design. It also recommended creating incentives for working waterfront businesses but provided no details. This recommendation has not been pursued by the state.<sup>84</sup>

### 4. Rhode Island

Rhode Island's committee took a different approach. It recommended encouraging the creation of public/private partnerships that would explore opportunities to develop port facilities. It also recommended using state revenue bonds to dredge critical harbor facilities, in order to be competitive with other East Coast ports. One major effort undertaken by the state of Rhode Island as a direct result of the legislative committee report was maintenance dredging of the Port of Davisville's berths and turn basin. This dredging effort was a partnership between the Rhode Island Economic Development Corporation and the Quonset Development Corporation including \$7.5 million bond funding from the state.<sup>85</sup>

After the release of the legislative report, the federal Economic Development Commission took a greater interest in port and maritime issues. The Rhode Island Bays, Rivers and Watershed Coordination Team began funding the port and maritime component of the U.S. Department of Transportation's Moving Ahead for Progress in the 21<sup>st</sup> Century Program (MAP 21). These same interests have entered into conversations with U.S. Department of Transportation Maritime Administration and White House staff about what more can be done to support port efforts in Rhode Island.<sup>86</sup>

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<sup>81</sup> MAINE DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY, LAND FOR MAINE'S FUTURE PROGRAM BIENNIAL REPORT JANUARY 2011 – DECEMBER 2012 (2013), available at [www.maine.gov/dacf/lmf/docs/ACF\\_BiennialReport2013.pdf](http://www.maine.gov/dacf/lmf/docs/ACF_BiennialReport2013.pdf).

<sup>82</sup> ALABAMA REPORT, *supra* note 13, at note 9.

<sup>83</sup> Thompson, *supra* note 42.

<sup>84</sup> Personal communication with Jody Thompson, Environmental Extension Associate, Auburn University and Mississippi-Alabama Sea Grant Consortium (Nov. 19, 2013).

<sup>85</sup> Press Release, State of Rhode Island, *Davisville Port Dredging Bond Bills Head to Governor*, June 6, 2012, <http://www.makingbusinesseasyri.com/news/files/aabdac842dcc34efe182569b1ce1667b-55.html>.

<sup>86</sup> Personal communication with Jennifer McCann, Director of U.S. Coastal Programs and Extension Programs, Rhode Island Sea Grant College Program (Oct. 1, 2013).

## 5. Maryland

The Maryland committee focused on how existing programs could be leveraged to encourage public access projects and infrastructure improvements and recommended giving greater weight in the project-scoring criteria for its Waterway Improvement Program to projects that provided access to commercial fishermen. This recommendation for a change in project scoring criteria has not been implemented at this time.<sup>87</sup>

### *E. Acquisition and Transfer of Property Rights*

Three of the state committees evaluated market-based approaches to preserving working waterfront or public access. These approaches involve either the voluntary transfer of value from one property to another (transfer of development rights or TDR) or the public purchase of the development rights for one property for use at another (purchase of development rights or PDR).<sup>88</sup> The intent behind both programs, which are used elsewhere to preserve farmland and historic landmarks, is to transfer the potential development value of a working waterfront site to a non-waterfront parcel, enhancing the second property's development opportunities. In return for accepting restrictions on use, the waterfront owner receives the fair value of the lost development potential. The TDR program is a private market transaction where development rights are "purchased" by a second landowner. The PDR program involves a governmental purchase of development rights that places permanent restrictions on future uses of the property. In both TDR and PDR, property values are manipulated to ensure the economic viability of working waterfront uses. Another market-based approach discussed is the acquisition of a conservation easement permanently restricting a property to use as a working waterfront.

## 1. Maine

The Maine committee recognized that land acquisition could be an important tool for supporting the fishing industry. It recommended investigating the use of a nonprofit organization or program to purchase vulnerable waterfront lands and development rights, hold title to property and development rights, and lease the lands to towns or businesses.<sup>89</sup>

The specific mechanism of using TDRs for working waterfronts was never adopted in Maine. The state legislature adopted TDR language in 2001.<sup>90</sup> However, there has never been a specific program created to address working waterfronts with an actual transfer of development rights from one parcel to another. The Working Waterfront Access Pilot Program, working with the Maine Lands for Maine's

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<sup>87</sup> Personal communication with Sarah Widman, Maryland Department of Natural Resource (Nov. 19, 2013).

<sup>88</sup> For a full discussion on TDR, see KATHARINE OTTO, SMART GROWTH THROUGH THE TRANSFER OF DEVELOPMENT RIGHTS: A SELECTION OF TDR CASE STUDIES WITH RELEVANCE FOR THE PRESERVATION OF FARMLAND, OPEN SPACE AND OTHER NATURAL RESOURCES IN NEW JERSEY (2010), available at <http://www.njfuture.org/wp-content/uploads/2011/07/Case-Studies-in-Transfer-of-Development-Rights-8-10-Intern-report.pdf>. The North Carolina report included a good analysis of how to apply TDR for working waterfronts. See N.C. REPORT, *supra* note 7, at 24-26.

<sup>89</sup> MAINE REPORT, *supra* note 26, at ii.

<sup>90</sup> See 30-A ME. REV. STAT. §4328.

Future (LMF), does include restrictive covenants on properties to limit development rights on properties. This program operates like a PDR through its use of government funding.<sup>91</sup> Funds from the Working Waterfront Access Protection Fund may be “applied and expended to acquire property or interests in property that are designed to protect access to working waterfront property,”<sup>92</sup> including fee simple acquisition, permanent conservation easements, access easements, working waterfront covenants, and other permanent interests in land.

## 2. North Carolina

The North Carolina committee took a more direct approach. It recommended state legislation authorizing both PDR and TDR programs at the local government level to facilitate the retention and enhancement of working waterfronts and public access. A 1987 North Carolina statute allows the severance of development rights,<sup>93</sup> a form of transferring development rights, but a program specifically oriented to working waterfronts has not been developed to date.

## 3. Alabama

The Alabama committee recommended encouraging the use of business improvement districts, industrial parks, and the transfer of development rights to promote waterfront access. Alabama does not have a state statute authorizing transfer of development rights. However, existing land trusts provide opportunities for transfers of property into conservation easements. These programs can protect public access to waterfronts as well as preserving working waterfront sites.<sup>94</sup> For example, in 1997 the Weeks Bay Foundation, with funding from a local land trust and state agencies, purchased a private boat launch and marina adjacent to the Weeks Bay National Estuarine Research Reserve (NERR) in Alabama in 1997.<sup>95</sup> The Weeks Bay NERR later purchased the properties from the Foundation, which had converted the boat ramp to a public facility. The purchase and transfer of these properties provided the public with an additional water access site along the Alabama coast.

## F. *Education and Outreach*

Four of the five state committees identified the need for education and outreach to the general public.

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<sup>91</sup> DIXON, *supra* note 6.

<sup>92</sup> 5 ME. REV. STAT. § 6203-B(3).

<sup>93</sup> N.C. GEN. STAT. § 136-66 11.

<sup>94</sup> *Acquiring & Transferring Access*, ACCESSING THE ALABAMA COAST, [http://accessingthealcoast.masgc.org/coastal\\_access\\_toolkit/acquiring\\_access\\_case\\_studies.html](http://accessingthealcoast.masgc.org/coastal_access_toolkit/acquiring_access_case_studies.html) (last visited Jan. 31, 2014).

<sup>95</sup> *Id.*

### 1. Maine

Maine's committee recommended developing mechanisms for improving relations with the public, media, and financial community.<sup>96</sup> Extensive outreach and education has occurred in Maine as a direct result of the recommendations of the legislative committee. The Maine Working Waterfront Initiative is implemented by the Maine Coastal Program which is located within the Department of Agriculture, Conservation and Forestry, Bureau of Resource Information and Land Use Planning. The state also facilitated the creation and coordination of the Working Waterfront Coalition. Since 2003 the Coalition has facilitated numerous workshops along the coast of Maine on a wide range of working waterfront issues. The Working Waterfront Initiative website provides a wide range of resources on working waterfront issues.<sup>97</sup>

Another important outcome of the Maine legislative committee was the effort to consolidate information in one location. In 2007, Maine Sea Grant and its partners Maine Coastal Program, The Center for Law and Innovation of University of Maine School of Law, and Island Institute received funding from the National Sea Grant Law Center to develop an online coastal access resource for private waterfront landowners, government and public entities, and waterfront users. The resulting website, "Accessing the Maine Coast," has become a model for the dissemination of information about waterfront access issues and has been adapted for use in a number of other states, including Alabama.<sup>98</sup>

### 2. Maryland

The Maryland committee recognized a need to bring commercial fishermen and local stakeholders together and to focus education, research, and outreach on working waterfront needs through the Chesapeake Bay NERR's Coastal Training Program and other training organizations.<sup>99</sup> No education or outreach recommendations were implemented in Maryland because of lack of funding for programs.<sup>100</sup> However, there are new efforts underway through the Maryland Coastal Program to begin to address working waterfront issues.<sup>101</sup>

### 3. North Carolina

North Carolina's committee recommended endorsing and financially supporting outreach programs to improve retention and enhancement of working waterfronts and public access.<sup>102</sup> Significant amounts of education and outreach accompanied the efforts in North Carolina as part of the Waterfront Access and Marine Industry Fund (WAMI) program. North Carolina Sea Grant played a

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<sup>96</sup> *Id.*

<sup>97</sup> *Working Waterfront Initiative*, MAINE COASTAL PROGRAM, <http://www.maine.gov/dacf/mcp/wwi/community-actions.htm> (last visited Jan. 31, 2014).

<sup>98</sup> *See Replicating a National Model: Maine's Accessing the Coast Website*, NATIONAL SEA GRANT LAW CENTER, [http://nsglc.olemiss.edu/Coast/Accessing\\_Coast.html](http://nsglc.olemiss.edu/Coast/Accessing_Coast.html) (last visited Jan. 31, 2014).

<sup>99</sup> MARYLAND REPORT, *supra* note 21, at 30.

<sup>100</sup> Personal communication with Sarah Widman, *supra* note 87.

<sup>101</sup> *Id.* *See also Working Waterfronts Initiative*, MARYLAND DEPT. OF NATURAL RESOURCES, <http://dnr.maryland.gov/ccs/workingwaterfronts.asp> (last visited Jan. 31, 2014).

<sup>102</sup> N.C. REPORT, *supra* note 7, at 35.

pivotal role in these efforts, particularly through the NC Coastal Resources Law, Policy and Planning Center.<sup>103</sup>

#### 4. Alabama

The Alabama committee recommended that the Alabama Cooperative Extension and Mississippi-Alabama Sea Grant Consortium (MASGC) provide technical assistance and support to waterfront stakeholders in sustainable business practices, and provide public education on the economic, environmental, and societal importance of working waterfronts to the state.<sup>104</sup> In response, the MASGC and the Auburn University Marine Extension and Research Center (AUMERC) have sponsored education and outreach in Alabama as a result of the legislative committee report. In November 2010, a Working Waterfronts Planners Workshop was held for regional, state, county and municipal planners in coastal Alabama and Mississippi. AUMERC and MASGC continue to coordinate and facilitate actions in furtherance of the recommendations of the Waterfront Access Study Committee.<sup>105</sup>

#### G. *Creation of Additional Committees*

In addition to the actions outlined above, three states' committees recommended establishing new committees to address working waterfront concerns.

- **North Carolina's** recommended a formal joint legislative commission to continue the work of the Waterfront Access Study Committee and guide any programs or actions resulting from the study's recommendations or related deliberations.
- **Rhode Island's** recommended a Port Marketing Collaborative to address the need for further integration between government and nongovernment stakeholders in marketing, port-related infrastructure development, and maritime trade.
- **Maine's** recommended a legislative task force to study issues related to preserving the commercial fishing industry in Maine.

In North Carolina, the legislation creating the committee included a termination date for the committee.<sup>106</sup> After that date no further committees were created to carry on after the Waterfront Access Study Committee completed its report.<sup>107</sup>

In February 2013, the Rhode Island legislature considered a bill in both the house and senate to create a Port Marketing Collaborative.<sup>108</sup> The bill never made it out of committee during 2013 session.

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<sup>103</sup> Personal communication with Lisa Schiavinato, *supra* note 39. See also *Projects*, NORTH CAROLINA COASTAL RESOURCES LAW, PLANNING, AND POLICY CENTER, <http://www.nccoastallaw.org/projects.htm> (last visited Jan. 31, 2014).

<sup>104</sup> ALABAMA REPORT, *supra* note 13, at 10.

<sup>105</sup> Thompson, *supra* note 42.

<sup>106</sup> North Carolina H.B. 1723, *supra* note 13.

<sup>107</sup> Personal conversation with John Thayer, *supra* note 30.

The intent of the bill was not only to create a Port Marketing Collaborative; it would have initiated a statewide port strategy.

The Maine legislature never followed up on the recommendation to create an ongoing legislative committee. However, in 2003 a coalition of representatives from twelve different organizations representing industry associations, nonprofits, state agencies and individuals led by the Island Institute formed the Maine Working Waterfront Coalition to address concerns over the loss of the state's working waterfronts. This coalition became the driving force behind creation of the Working Waterfront Access Pilot Program and passage of the current use tax law.<sup>109</sup>

#### H. Comparison of Recommendations

There are consistencies in the approaches recommended by the different states. All recognized the importance of land use strategies to address the challenges facing working waterfronts. All five recommended either direct or indirect funding for infrastructure improvements on working waterfronts. Four states recognized the importance of education about working waterfront issues. An overview of the mechanisms recommended, by state, is shown in Table 4 below. Table 5 summarizes the actions that have been implemented to date in each state by category. The Appendix provides a more detailed summary chart of a majority of the recommendations from the five legislative committee reports and subsequent implementation actions.

**Table 4.** State committee recommendations by mechanism.

State	Land Use Planning	Taxation	Submerged Lands	Funding: Direct	Funding: Incentives	Transfer of Development Rights, etc.	Education
Maine	X	X	X	X		X	X
North Carolina	X	X	X	X	X	X	X
Maryland	X	X			X		X
Alabama	X				X	X	X
Rhode Island	X			X			

<sup>108</sup> Rhode Island General Assembly, S. 0172, The Rhode Island Port Marketing Collaborative of 2013, introduced Feb. 6, 2013.

<sup>109</sup> *Working Waterfront Initiative*, *supra* note 97.



**Table 5.** Overview of state implementation measures to date.

State	Land Use Planning	Taxation	Submerged Lands	Funding: Direct	Funding: Incentives	Transfer of Development Rights, etc.	Education
Maine	X	X	X	X		X	X
North Carolina	X	X		X	X		X
Maryland	X	X					
Alabama	X						X
Rhode Island				X			

Addressing the issues faced by working waterfronts requires a broad range of economic development measures. However, only two states' committees recommended preparation of an overall economic development plan. North Carolina's committee recommended a full socioeconomic study of working waterfronts and access to coastal public trust waters. Alabama's committee recommended first conducting an inventory of working waterfronts using current economic census data. The committee further recommended that following the inventory the state conduct an economic impact study of working waterfronts. In its final report, the Alabama committee found that "the State also recognizes that access to coastal and inland waters (waterfront access) is *essential to economic development* and the shared use and enjoyment of public trust waters, submerged lands, and inland streams, rivers, and lakes."<sup>110</sup> The committee ranked the inventory as a top priority. Rhode Island's committee was the only one to recommend establishing an economic policy ombudsperson. The ombudsperson would report directly to the governor on the coordination of port-related economic development and job creation and retention programs.

Alabama has initiated efforts to conduct an inventory of working waterfronts to use in a future economic impact study. However, at this point North Carolina has not initiated the socioeconomic study recommended by its committee nor has Rhode Island established an economic policy ombudsperson.

## V. Conclusion

Legislative committees can be an important means to develop policies addressing issues of statewide concern. The creation of the committee by a joint resolution of both the house and senate indicates a broad level of support. Recommendations resulting from such committees represent a balancing of the interests of the participants in the committees.

It is no surprise the major factor influencing success of a legislative committee lies with funding sources. And timing is key. Maine began implementation of its recommendations when property values continued to soar and state funding existed for programs. As a result, Maine initiatives achieved a wide range of successes. North Carolina completed its recommendations in time to secure a significant initial funding source. However, the recession, starting in late 2007 and 2008, put a

<sup>110</sup> ALABAMA REPORT, *supra* note 13, at 6.

damper on further funding for programs and the political will to pursue many of the other recommendations dwindled. Rhode Island, Maryland, and Alabama all completed their legislative reports at the beginning of the economic crisis of 2008 and implementation (or lack of implementation) can be tied to these states shifting focus from protecting one aspect of the economy (working waterfronts) to bolstering the state economy as a whole.

Changes to land use policies and plans appeared in every set of recommendations. However, many of these recommendations failed to be implemented due to lack of funding or political will. Implementing a current use tax program or similar tax relief for working waterfronts appeared to be an important tool and one that was implemented in North Carolina, Maryland, and Maine in one form or another. These programs provide good role models for other states examining this option.

Both Maine and North Carolina created dynamic funding programs with significant impacts. Due to the timing of the initiative (before the recession) and building upon demonstrated successes, the State of Maine continued to leverage its bond-financing program multiple times. By contrast, North Carolina created a successful program with a one-time infusion of funding. However, due to the recession the program received no further funding. Other states recommended a variety of funding options to protect and preserve working waterfronts but these failed due to lack of resources. Had the timing been different, these programs would likely have been funded. And as the economy begins to recover there may well be future opportunities to establish funding programs.

Almost every state report recommended educating the public about the importance of working waterfronts. This reflects a need for wider recognition of the problems faced by coastal communities. Greater understanding would bring support for efforts to change land use laws and tax laws and other measures requiring voter support. And in each case there has been at least some effort, and in some cases significant efforts, to disseminate information about working waterfronts. Again, lack of funding has limited the reach of these efforts. The website created in Maine is an excellent model of how to bring together resources and links to other resources in one location. Many of the original working waterfront web links for state agencies created during the process of preparing the legislative committee reports no longer work. Creating a non-governmental site within each state can be an important resource.

Thanks to the recession, the pressure to convert working waterfront property to other commercial and residential uses slowed. This relieved the immediate impetus to action. As the economy rebuilds and conversion pressures resume, will these committee reports prove to have laid a foundation for the timely action and political support needed to protect working waterfronts?

## Appendix

Summary Table of Committee Recommendations and Results

State	Recommendation	Result
<b>Land Use</b>		
<b>Maine</b>	Evaluate effectiveness of CZM program	Implemented
	Collect baseline data re: loss of waterfront access for commercial fishing, update port facilities database each year, create interagency workgroup to collect and share data on water access	Implemented
	Hold community dialogues to determine local interest in issues, interest in pursuing working waterfront strategies	Implemented
	Provide incentives for community planning	Implemented
	Model ordinance development	Not implemented
	Review how three-port strategy addresses commercial fishing access	Not implemented
<b>Maryland</b>	Funding – work with local jurisdictions on access issues, expand existing planning law	Not implemented
<b>North Carolina</b>	Develop GIS based model to identify working lands including working waterfronts.	Implemented in part
	Amend land use planning guidelines to include policies concerning working waterfronts within planning jurisdictions.	Not implemented
	Explore potential use of special zoning techniques including conditional zoning.	Not implemented
<b>Rhode Island</b>	Revise statewide master guide plan to specifically identify and maintain vital water-dependent commercial operations and ensure viability of the Rhode Island marine economy	Pending
<b>Alabama</b>	Complete comprehensive working waterfront plan	Not implemented
	Create waterfront Alabama partnership program to assist regional planning commissions, state agencies, municipal planning organizations, counties and municipalities in incorporating working waterfront and water access issues into comprehensive planning and implementation	Implemented (one jurisdiction)
<b>Taxation</b>		
<b>Maine</b>	Current Use Taxation (not specifically in recommendations)	Implemented
<b>Maryland</b>	Tax abatement	Implemented
	Inheritance tax abatement	Not implemented
<b>North Carolina</b>	Extend eligibility of present use value taxation to working waterfront properties	Implemented
	Extend present use value taxation classification to existing private fishing piers providing public access	Implemented
<b>Submerged Lands</b>		
<b>Maine</b>	Grandfathering in fees, exemptions	Implemented
<b>North Carolina</b>	Dockominiums	Researched, no changes to law

	Examine the nature and legality of long-term or permanent sale of docks or dockminiums that occupy coastal public trust submerged lands.	Not implemented
	Examine reformulation of state public trust submerged easement fee structure to create more substantive source of revenues. Use for working waterfront and public access retention programs.	Not implemented
<b>Funding: Direct</b>		
<b>Maine</b>	Small Harbor Improvement Program funding each year	Implemented
	Pier and wharf maintenance funding	Implemented
	Inventory critical infrastructure for commercial fishing	Implemented
	When issuing grants for shore and harbor management grants recognize importance of commercial fishing access.	Implemented
<b>North Carolina</b>	Create working waterfront trust fund or some other separate/distinct set-aside of state funds to assist in retention and enhancement of working waterfront land use issues	Implemented
	Increase funding of boating infrastructure program	Not implemented
	Fund public beach and coastal waterfront access program at higher levels	Not implemented
	Use funding from coastal recreational fishing license to public coastal fishing access enhancements	Implemented
	Additional funding to finance conservation and cultural and historic preservation	Not implemented
	Use State Clean Water Management Trust Fund to require public access in awarded projects	Not implemented
	Funding to NC Division of Coastal Management to fund development of public access inventories and plans.	Not implemented
	Amend Coastal Area Management Act to provide grants to local governments to inventory and plan for retention and enhancement of public access grants.	Not implemented
	Explore funding sources to assist private fishing piers providing public access with storm damage repair, set aside fund to finance low-interest loan program.	Not implemented
	Use aquariums to fund pilot projects to design and operate three public fishing piers for angling access and public education.	Implemented
	Funding sources and mechanisms be made available and tapped to assist working waterfront and public access facility developers, pursuant to local government approval, in developing or redeveloping facilities along the waterfront in ways that comply fully with environmental regulations	Not implemented
<b>Rhode Island</b>	Develop public/private partnership opportunities for port facilities	Not implemented
	Create non-federal funded dredging project	Implemented
<b>Alabama</b>	Fund to acquire property for working waterfront access	Not implemented
	Encourage funding from Coastal Impact Assistance Program for high priority working waterfront areas	Not implemented

	Adjust boater registration fees	Not implemented
<b>Funding: Indirect</b>		
<b>Maryland</b>	Greater weight to project scoring criteria for waterway improvement program projects	Not implemented
<b>North Carolina</b>	Address public access by working with DOT, power companies, local government, non-profits and other state agencies to proactively and cooperatively address public access	Implemented
	Give greater priority to grant applications seeking to enhance access to coastal public trust waters.	Not implemented
<b>Alabama</b>	Incentives for working waterfront businesses	Not implemented
	Encourage federal and local agencies to incorporate public waterfront access and facilities in project with access to public trust waters – boating access and bank fishing.	Not implemented
	Direct state agencies to expand public access in project planning and construction programs	Not implemented
<b>TDR, PDR, and Conservational Easements</b>		
<b>Maine</b>	Consider TDR legislation (implemented Conservation Easement Program)	Implemented
<b>North Carolina</b>	Consider legislation to authorize PDR and TDR programs at local government level for working waterfront and public access retention	Not implemented
<b>Alabama</b>	Consider legislation to authorize PDR and TDR programs at local government level for working waterfront and public access retention	Not implemented
<b>Education</b>		
<b>Maine</b>	Mechanisms for improving public relations with public, media and financial community	Implemented
<b>Maryland</b>	Develop planning and education about commercial fishermen rights under state programs affecting access to public trust waters	Not Implemented
	Reduced slip fees for commercial fishermen	Not Implemented
<b>North Carolina</b>	Endorse and financially support educational outreach programs to improve retention and enhancement of working waterfronts and public access	Implemented
<b>Alabama</b>	Provide public education on economics, environmental, and societal importance of working waterfront.	Implemented in part
	Provide technical assistance and support to waterfront stakeholders in sustainable business practices	Not Implemented