

Working Waterfront Access Protection Program (WWAPP)

How It Works

Dick Clime
Coastal Enterprises Inc.
Wiscasset, Maine
rdc@ceimaine.org
207-882-5191



Working Waterfront Access Protection Program (WWAPP)

Significant Points I Will Cover

- 1. Background**
- 2. Purpose and description**
- 3. Funding**
- 4. Covenant and Right of First Refusal**
- 5. Appraisal and award**
- 6. Due diligence requirements**
- 7. Application and review**
- 8. CEI assistance to applicants**
- 9. Projects and accomplishments**
- 10. What we've learned**



Development Pressures on Working Waterfronts

- **1980's – 2000's, in-migration, second homes, retirement from northeast urban areas**
- **Demand for waterfront land, rise in prices and property taxes**
- **Transfer of working waterfront from fishing families to wealthy “gentry”**
- **Threat to strategic access for small harbor fishing fleets**
 - **Tracking and Preserving Commercial Fishing Access, 25 communities surveyed, CEI, 2002.**
 - **The Last 20 Miles, Mapping Maine's Working Waterfront, Island Institute, 2005.**
- **Working Waterfront Coalition formed...CEI instrumental**
 - **More than 140 industry associations, non-profits, state agencies and individuals**
- **Builds legislative support for two laws passed in 2005**
 - **Working Waterfront property tax capped by Current Use Tax Law**
 - **Working Waterfront protection by restrictive Covenant and Right of First Refusal**
- **Both programs implemented in 2006**





Purpose and **description**

To provide protection to strategically significant working waterfront properties whose continued availability to commercial fishing businesses is essential to the long-term future of this economic sector

State buys future development rights

Restrictive covenant signed by owner (Grantor) and state (Holder)

Standardized appraisal determines covenant price

Mixed uses possible...compatibility with fisheries use

Dept. of Marine Resources (DMR) and Land for Maine's Future Program (LMF) given dual authority

Voter approved, state issued bonds fund program

Historical funding & current status

Four rounds of funding

- *2005 = \$ 3 million*
- *2007 = \$ 2 million*
- *2010 = \$ 1.75 million*
- *2012 = undetermined share of \$ 5 million bond*



Halt to borrowing

- *Governor refuses to issue voter approved bonds*
- *Used as bargaining chip with Legislature*
- *Awaits compromise between Governor/Legislature*



What is a restrictive covenant?



Characteristics of the Covenant

- Recordable legal agreement between property owner and the state (DMR).
- Limits property's future use, alteration, and development that conflict with fisheries.
- Runs with the land in perpetuity, regardless of ownership.
- Property owner retains customary rights of ownership
- Requires annual report of any maintenance, alterations, repairs, and improvements.
- Owner needs permission for future improvements and changes.

Characteristics of the Right of First Refusal (RoFR)

- Mandatory condition of the covenant that strengthens enforcement.
- Allows state to intervene in future transfer or sale of property.
- Limits the future sale price to future appraised commercial fisheries value.

How is monetary award determined?

- Not a grant, but the sale price of future development rights.
- Amount determined by a standardized working waterfront appraisal.
- Appraisal is peer reviewed, approved by LMF Board.
- Applicant chooses among two types of appraisals:
 - Choice 1:
FMV minus Restricted Value = Covenant Value award amount
 - Choice 2:
FMV multiplied times 25% = Substitute award amount
- Award upper limit = 50% of FMV
- Applicants “must” use money for investment in property or business.



Due diligence requirements

Primary

- Business plan accompanies application
- Appraisal reviews by peer appraiser and LMF Board committee
- Clear title demonstrated...legal title opinion or title insurance
- Environmental Site Assessment (ESA) required
- Accurate survey required
- Covenant language agreed by Grantor and Holder
- Mortgage holders subordinate their interest



Application and review



- Determine total dollars available
- Rolling deadline every four months
- Application review
 - CEI finance and business experts
 - Advisory Panel - public members from fisheries
- DMR Commissioner receives Panel advice, recommends to LMF Board
- Board votes yes/no and \$ allocations
- Applicants complete due diligence tasks
- Average 12 months from allocation to completion
- Covenant signed, recorded at Deeds Registry
- Applicant given award check.

CEI role to administrate & assist

CEI consultants will:

- **Provide detailed information**
- **Visit property and offer advice**
- **Coach the writing of the application**
- **Proof-read early drafts**
- **Determine completeness of application**
- **Request overlooked items before review**
- **Communicate progress of review and approval process**
- **Notify applicants of LMF Board decision**
- **Help applicants complete due diligence**
- **Schedule and coordinate closing**
- **Publicize successful projects/report to state agencies**



Program Impacts (2006-2013) with \$ 5.018 m Awarded to Applicants

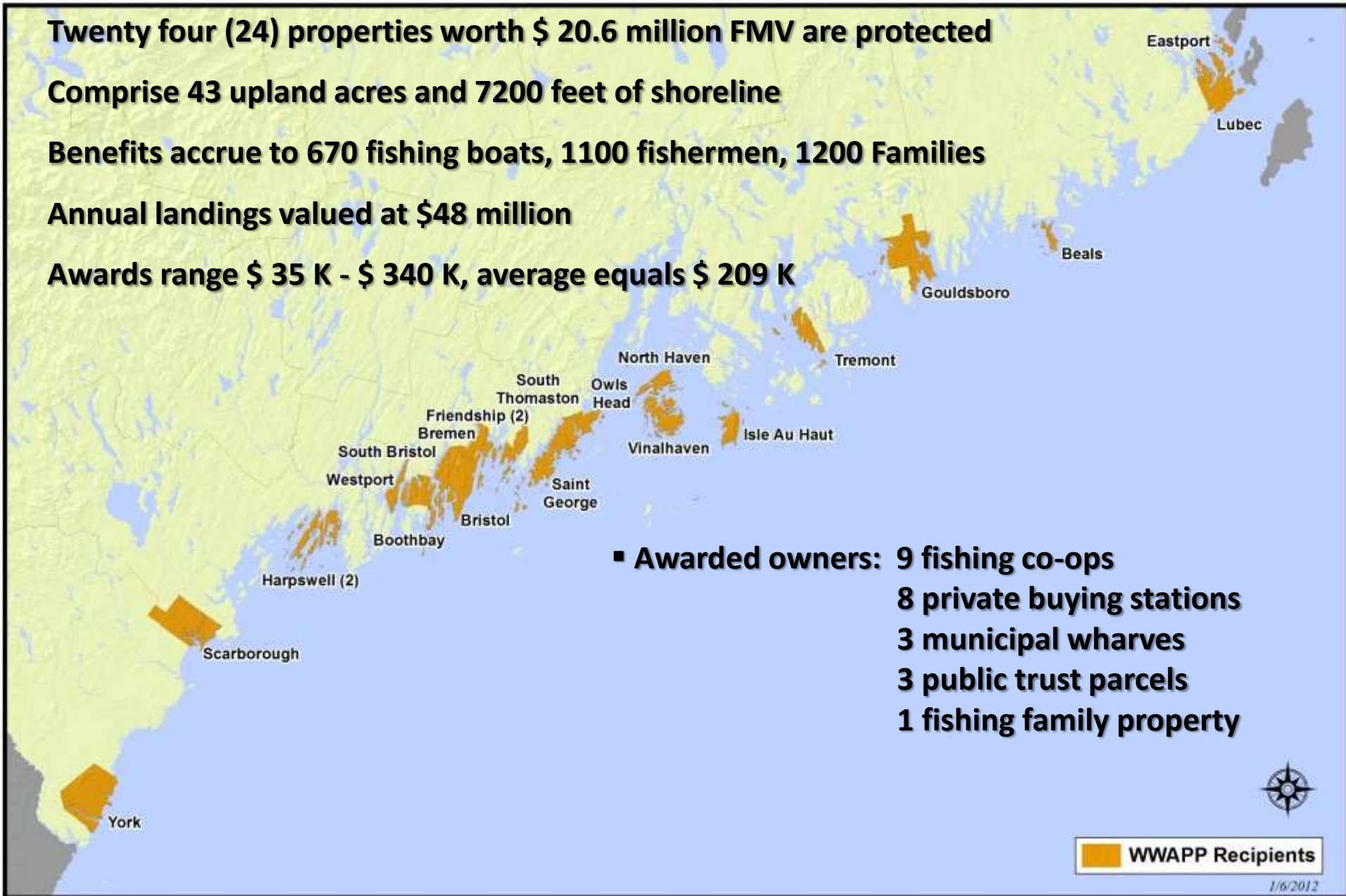
Twenty four (24) properties worth \$ 20.6 million FMV are protected

Comprise 43 upland acres and 7200 feet of shoreline

Benefits accrue to 670 fishing boats, 1100 fishermen, 1200 Families

Annual landings valued at \$48 million

Awards range \$ 35 K - \$ 340 K, average equals \$ 209 K



- **Awarded owners: 9 fishing co-ops**
- 8 private buying stations**
- 3 municipal wharves**
- 3 public trust parcels**
- 1 fishing family property**

Observations and challenges

- Purchasing covenant cheaper than purchasing property
- Support of fishing industry crucial
 - Legislature and general public keen to support fisheries
- Debate: Large size, high impact vs. small size, elevated threats
- Mixed uses possible when they do not interfere
 - Retail seafood, fueling rec. boats, winter boat storage
- Covenant language constantly evolves, e.g.
 - Legal structure for Co-ops, termination values, mixed uses
- Interest from non-fishing marine sectors, e.g. boatbuilders
- Increased economic pressures stimulate interest in program
 - More interest after start of recession in 2008
 - Economic stimulus, investment of free capital in fisheries
- Declining amounts from four bonds, will it extrapolate to zero?



Questions? Comments?

www.wwapp.org



Dick Clime
CEI Wiscasset
(207) 882-5191
rdc@ceimaine.org

Hugh Cowperthwaite
CEI Portland
(207) 535-2920
hsc@ceimaine.org

