Working Waterfront Protection Tools

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Thursday, June 27th, 2013
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Discussion of Three Principal Tools

- Working Waterfront Access Protection Program (WWAPP)
- Current User Tax Law (CUT) for Working Waterfronts
- Comprehensive Plans for Towns

Rationale for Key Legislation Creating Tools

- 1980's-2000's:
  - In-migration
  - Retirement to second homes
- Demand for waterfront land → rise in prices and property taxes
- 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.

Rational Continued…

- 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

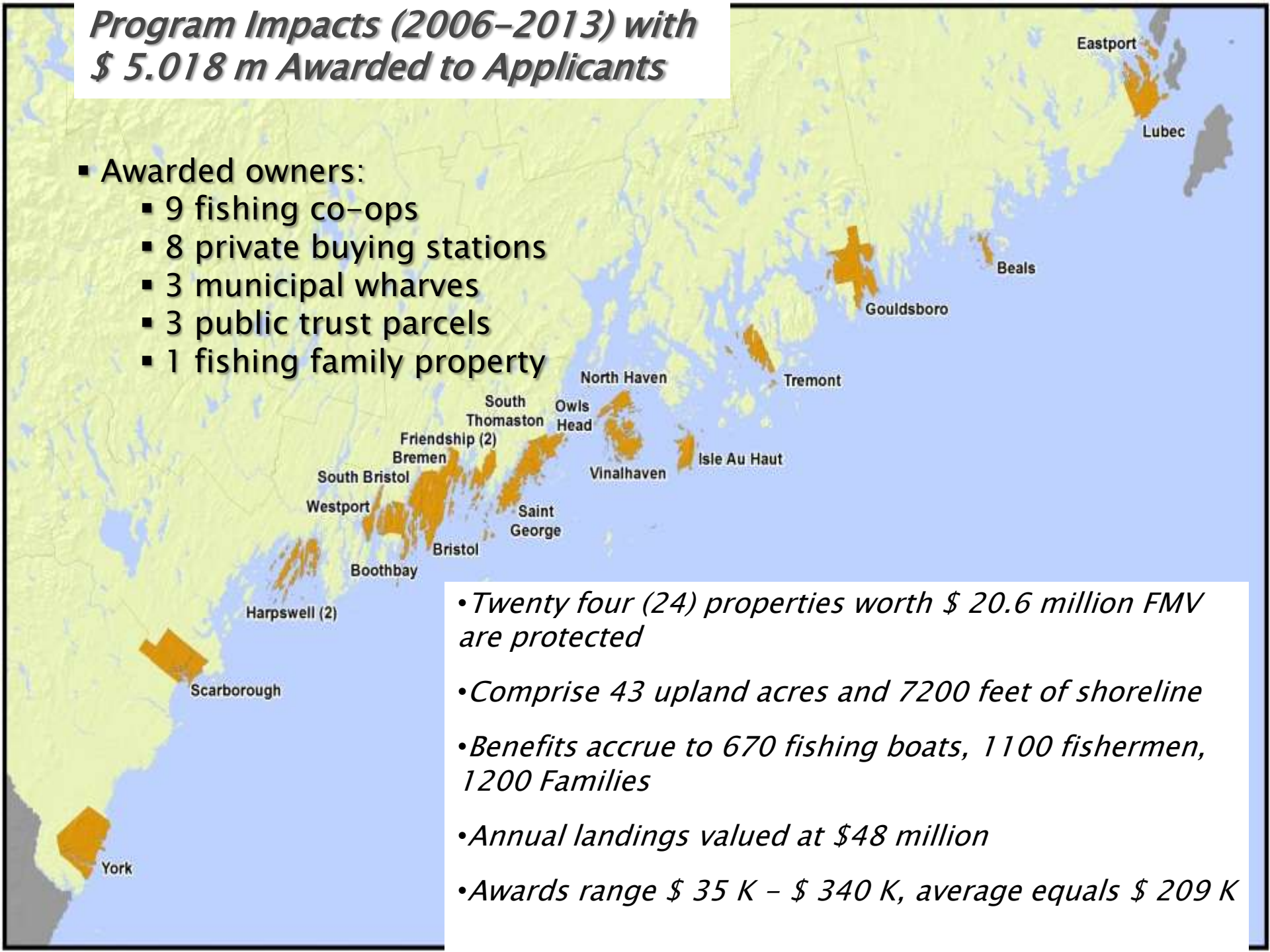
Purpose and description of WWAPP

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.
- Competitive applications, awards average 25% of FMV of property.

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

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



- *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*

Historical funding & current status of WWAPP

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 ties release of bonds to hospital payments*
- *Legislature passes bill to pay hospitals, Governor signs it*
- *Waiting for issuance and sale of bonds*
- *Estimated $1.4 million for program, unreleased 2010 & new 2012 funds*
- *Call for renewed applications uncertain, Fall 2013 or January 2014*

Historical Background for Current Use Taxation

Maine Constitution

- **Section 8. All taxes upon real and personal estate, assessed by authority of this State, shall be apportioned and assessed equally according to the just value thereof.**

"Just value has been determined by the courts to be synonymous with "market value"

Modifications

1969 – Language added to the Constitution regarding the value of property based on its current use.

1971 – Enacted the Farm and Open Space tax law.

1972 – Enacted the Tree Growth tax law

2006 – Enacted the Working Waterfront Tax Law

Principals of Current Use Tax Law for Working Waterfronts

- **Local Tax Assessor establishes the current use value per parcel.**
- **May use external factors on his/her own for determination.**
- **If insufficient data available, may use guidelines established in law:**
  - **A. Land used *primarily* as working waterfront is eligible for a reduction of 10%**
  - **B. Land used *predominantly* as working waterfront is eligible for a reduction of 20%**
  - **C. Working waterfront that is permanently protected from a change in use through deeded restrictions is eligible for the reduction described in A or B and an additional reduction of 30%**

Principals Continued…

- **Definitions:**
  - A. Land abutting the water to head of tide used to access or in support of the commercial fisheries
  - B. "Primarily" means greater than 50%
  - C. "Predominantly "means greater than 90%
- **Classification perpetually runs with the land regardless of the ownership**
- **Penalty assessed for withdrawal of land from the program:**
  - A. Formulas calculate penalty amounts for years in arrears.
  - B. Substantial money…be sure that you want to enroll.
- **More than half of the total acres in Maine are enrolled in current use tax program**

Number of Parcels Enrolled by County

Working Waterfront CUT Program as of April 1, 2012

- York 1
- Cumberland 6
- Sagadahoc 4
- Lincoln 28
- Knox 23
- Waldo 0
- Hancock 8
    1. Brooksville 1
    2. Gouldsboro 3
    3. Frenchboro 1
    4. Penobscot 2
    5. Tremont 1
- Washington 11

Comprehensive Planning Mechanisms for Imposing Restrictions

- **Land Use Regulation**
- **Zoning**
- **Harbor Planning**

"The comprehensive plan serves as the basis for ordinances, capital investments, and town policies that affect the working waterfront. The primary focus of waterfront needs would be In the Marine Resources chapter. Proposed changes to zoning that affect the working waterfront may also be addressed in the Future Land Use Plan."

(Preserving the Working Waterfront,
Hancock County Planning Commission, 2013)

Tremont's Comprehensive Plan

- Inventoried marine resource areas, facilities, and dependent uses.
- Surveyed residents' opinions about access, harbor development policies, preserving harbor character, enacting restrictive development measures.
- Assessed the adequacy of existing facilities, and public access points.
- Predicted future growth and development pressures.
- Assessed effectiveness of existing measures (e.g. policies, ordinances) to protect and preserve.

Zoning Ordinances Include a Maritime Activity Zone

- Protects water dependent uses by restricting other uses.
- Residential uses not permitted unless accessory to a commercial use by employer/employees.
- Commercial uses must be accessory to maritime uses.

Municipal opinions, policies, and ordinances can change over time as the residential demographics change

Gouldsboro's Plans

- **Comprehensive Plan (amended 2005)**
  - Assesses current marine resources and facility conditions
  - Summarizes key findings and issues
  - States goals, objectives, and implementation strategies including public access, harbor ordinances, water dependent uses, preservation of fishing community.
  - Ties to Harbor Management Plan and Land Use Plan ordinances

Gouldsboro Continued…

- **Harbor Management Plan (amended 2007)**
  - Give harbor committee and harbormaster latitude to enforce ordinances
  - Moorings- first priority given to commercial fishermen
  - Harbor access facilities- first use priority given to commercial fishermen
- **Land Use Plan (amended 2010)**
  - Contains shoreland zoning ordinances protecting boat yards, piers, and landings from incompatible uses (Commercial Fishing Maritime Zone).

Summary…Three Working Waterfront Tools Compared

- **Working Waterfront Access Protection Program**
  - Perpetual covenant restricting use
  - One time award of ~ 25% of property FMV
  - Difficult to withdraw, state defends with its power

- **Current Use Taxation**
  - Reduces property taxes on land parcel
  - Savings annually in perpetuity
  - Substantial monetary penalty to withdraw

- **Comprehensive Plans**
  - Local control, enforceable by town governance
  - Implemented by ordinance, by policy, by committees, by ballot
  - Can change with residential demographics over time

Questions…comments?

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