

Committee on Natural Resources

Rob Bishop Chairman
Mark-Up Memorandum

March 17, 2018

To: All Natural Resources Committee Members

From: Majority Committee Staff
Subcommittee on Water, Power and Oceans (x58331)

Mark-Up: **H.R. 5269 (Rep. Amata Coleman Radewagen, R-AS)**, To require State or territorial approval of restriction by the Secretary of the Interior and the Secretary of Commerce of recreational or commercial fishing access to certain State or territorial waters, respectively.
Wednesday, March 21, 2018; 1324 Longworth HOB

H.R. 5269, *STAR Fishing Act*

Summary of the Bill

H.R. 5269, the *STAR Fishing Act*, requires the National Park Service (NPS) or Office of National Marine Sanctuaries (ONMS) with jurisdiction in State or territorial waters to obtain approval from the appropriate State or territorial agency with fisheries management authority before imposing any restrictions on commercial or recreational fishing in such waters.

Background

Marine Protected Areas

Marine Protected Areas (MPAs) refer to a broad category of marine waters where governments restrict activities otherwise allowed within the boundaries. President George W. Bush established the National System of Marine Protected Areas by Executive Order 13158 which defined marine protected areas as “any area of the marine environment that has been reserved by Federal, State, territorial, tribal, or local laws or regulations to provide lasting protection for part or all of the natural and cultural resources therein”.¹ This definition and the broader system do not include private efforts to conserve marine environments. The United States has more than 1,700 MPAs which constitute approximately 41% of U.S. waters; this number includes fishery MPAs which usually have specific gear restrictions over large ocean areas.² MPAs established to conserve natural and cultural resources comprise closer to 8% of U.S. waters.³

MPAs consist of national marine sanctuaries, national parks, national wildlife refuges, marine monuments and partnerships with State, local and tribal governments.⁴ The ability of a

¹ [Executive Order No. 13158, 65 C.F.R. 34909 \(2000\).](#)

² [“Analysis of United States MPAs” prepared by Office of National Marine Sanctuaries, p. 1.](#)

³ [Id., p. 2.](#)

⁴ <https://sanctuaries.noaa.gov/marine-protected-areas/>

President to establish a national monument in the ocean is the subject of ongoing litigation and of dubious legality.⁵ A variety of agencies manage these areas including ONMS (which is within the National Oceanic and Atmospheric Administration (NOAA)), NPS, and the U.S. Fish and Wildlife Service (FWS). Restrictions on human activities and consumptive uses vary across individual MPAs. The appropriate agency develops a management plan for each MPA which details the terms of public access.

In general, the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) governs fishing in federal waters for species throughout their ranges, except where MPA management plans restrict such activities. According to ONMS, “no take” MPAs constitute approximately 3% of all U.S. waters and 7% of MPAs; however, 14% of the area within MPAs prohibit extractive uses.⁶

Federal Marine Reservations in State Waters

ONMS manages several national marine sanctuaries in State or territorial waters, including the Thunder Bay National Marine Sanctuary in Lake Huron and the American Samoa National Marine Sanctuary, a portion of which extends into American Samoan territorial waters.⁷ NOAA proposed two new sanctuary designations -- Mallows Bay in the Potomac River and Wisconsin-Lake Michigan -- which, if formally designated, would be entirely in State waters. Under current law, if a national marine sanctuary is proposed in State waters, and “the Governor affected certifies to the Secretary [of Commerce] that the designation or any of its terms is unacceptable” then “the designation or the unacceptable term shall not take effect in the area of the sanctuary lying within the seaward boundary of the State.”⁸

The two proposed sanctuaries would be the first new designations since 2000. In December 2014, the State of Wisconsin proposed a sanctuary in Lake Michigan.⁹ On February 27, 2018, Governor Scott Walker wrote a letter rescinding his support for the Lake Michigan sanctuary citing Wisconsin’s strong history of protecting its shipwrecks and the “unnecessary bureaucratic red tape” a designation would bring.¹⁰ NOAA has yet to state publicly the agency’s intention to formally withdraw the nomination.

In August 2015, the Committee on Natural Resources held a field hearing in Homestead, Florida, to examine the Obama Administration’s management plan for Biscayne National Park, an area in State waters managed by NPS. The Park, located southeast of Miami, Florida, comprises 173,904 acres (some of which was conveyed by the State to NPS),¹¹ most of which is covered by

⁵ cf. *Massachusetts Lobstermen’s Association et al v. Ross, JR et al* (2017).

⁶ [“Analysis of United States MPAs” prepared by Office of National Marine Sanctuaries, p. 3.](#)

⁷ <https://americansamoa.noaa.gov/about/location.html>.

⁸ [16 U.S.C. 1434\(b\)\(1\).](#)

⁹ [“Lake Michigan: Wisconsin National Marine Sanctuary Proposal”; December 2014.](#)

¹⁰ Governor Scott Walker, letter to Mr. Benjamin Friedman, Acting Administrator, National Oceanic and Atmospheric Administration, 27 Feb. 2018.

¹¹ [National Park Service, Final General Management Plan / Environmental Impact Statement \(Newsletter\), May 2015.](#)

water.¹² As the Park sits within the State’s jurisdiction, the law establishing the Park clearly states that the State of Florida shall continue to manage fisheries and boating law in the waters within the Park boundaries.¹³ NPS may only regulate fisheries in the Park if done so in full consultation with the State.¹⁴

NPS’s preferred alternative in the 2011 draft Park managed plan would implement a roughly 10,000-acre Marine Reserve Zone (MRZ) which established broad “no take” areas where commercial and recreational fisheries access was prohibited.¹⁵ However, the public comments submitted by members of the fishing and marine communities and those submitted by the Florida Fish and Wildlife Conservation Commission (FWC) raised a number of significant issues regarding the implementation of an MRZ.¹⁶ After working in close cooperation with FWC, NPS’s preferred alternative was no longer the implementation of an MRZ that would prohibit all fishing year round, but rather a Special Recreation Zone.¹⁷

On June 5, 2015, NPS released the final updated general management plan for Biscayne National Park.¹⁸ Ignoring FWC’s concerns, the final plan cited the use of the MRZ as the primary tool to improve the coral reef ecosystem within the Park.¹⁹ To date, NPS has not issued final regulations implementing the MRZ.

H.R. 5269 – the STAR Fishing Act

To curb federal subversion of a State or territory’s authority to regulate fisheries access in its own waters, Rep. Amata Coleman Radewagen (R-AS) introduced H.R. 5269, the *STAR Fishing Act*. This legislation would require NPS and ONMS to seek approval from the State or territorial government before imposing fishing restrictions in State or territorial waters under its jurisdiction. This language was originally adopted in the 114th Congress as an amendment to H.R. 2406, which passed the House in February 2016.²⁰ It was reported from the Committee on Natural Resources in the 115th Congress as section 801 of H.R. 3668.²¹

Major Provisions/Analysis of H.R. 5269

¹² United States National Park Service (2016), *The National Parks: Index 2012-2016*, Washington, D.C., p. 46.

¹³ [Public Law 96-287, Title I, June 28, 1980.](#)

¹⁴ [Id.](#)

¹⁵ [National Park Service: Draft General Management Plan Released \(press release\), August 19, 2011.](#)

¹⁶ [National Park Service, Biscayne National Park: Final General Management Plan / Environmental Impact Statement Vol.2:Abstract, April, 2015.](#)

¹⁷ [National Park Service: Supplemental Draft General Management Plan Released \(press release\), November 15, 2013.](#)

¹⁸ <http://www.nps.gov/bisc/learn/management/information-about-the-current-and-developing-general-management-plans.htm>

¹⁹ [National Park Service, Final General Management Plan / Environmental Impact Statement \(Newsletter\), May 2015.](#)

²⁰ <https://www.congress.gov/bill/114th-congress/house-bill/2406/actions>.

²¹ [House Committee on Natural Resources, Report to Accompany H.R. 3668, H. Rpt. 115-314.](#)

Section 2 of the legislation prohibits ONMS or NPS from imposing restrictions on commercial or recreational fishing in State or territorial water where such agency has jurisdiction without the approval from the appropriate State or territorial fisheries management agency.

Cost

The Congressional Budget Office has not completed a cost estimate of this bill.

Administration Position

The Administration has not taken a position on this legislation.

Effect on Current Law (Ramseyer)

N/A