

House Committee on Natural Resources
Rob Bishop, Chairman
Hearing Memo

July 30, 2015

To: House Natural Resources Members

From: Water, Power and Oceans Subcommittee Republican Staff (x58331)

Hearing: Joint Full Committee Oversight Field Hearing (with the Small Business Committee) on “*Restricted Access at Biscayne National Park and Implications for Fishermen, Small Businesses, the Local Economy and Environment*”

Hearing Overview

On Monday, August 3, 2015 at 10:00 a.m. (EDT), in Homestead, Florida, the House Natural Resources and Small Business Committees will hold a joint oversight field hearing on “*Restricted Access at Biscayne National Park and Implications for Fishermen, Small Businesses, the Local Economy and Environment.*” This hearing will focus on the National Park Service’s policy to restrict recreational and commercial fishing access to parts of Biscayne National Park, the State of Florida’s position on such closure and the impacts to the public.

Policy Overview

- On June 5, 2015, the National Park Service (NPS) released its final General Management Plan (GMP) for the park, which includes a 10,502 acre Marine Reserve Zone (MRZ) ¹ that would be closed to all commercial and recreational fishing. This MRZ includes 37 percent of the Park’s hard bottom habitat for reef fishing.²
- Although the NPS states that “[t]he park continues to work cooperatively with partner agencies, especially the Florida Fish and Wildlife Conservation Commission,” the state agency opposes NPS’ plan to implement an MRZ within state waters.³
- Although the Park is part of a federal agency, fishing and other harvesting activities are largely governed by state law. This management arrangement is grandfathered in the Park’s enabling law.”⁴

¹ [U.S. Department of the Interior, National Park Service: Biscayne National Park, Final General Management Plan / Environmental Impact Statement, Vol. 1. April 2015.](#)

² [Mr. Nick Wiley, Executive Director, Florida Fish and Wildlife Conservation Commission to Florida Department of Environmental Protection. July 14, 2015.](#)

³ [Id.](#)

⁴ <http://www.nps.gov/bisc/planyourvisit/fishing-and-lobstering.htm>

Invited Witnesses *(listed in alphabetical order)*

Dr. Jerry Ault Professor
Department of Marine Ecosystems and Society
Rosenstiel School of Marine and Atmospheric Science
University of Miami
Miami, Florida

Mr. Bryan Boyd, Owner
Ocean Blue Yacht Sales
Stuart, Florida

Mr. Brian Carlstrom, Superintendent
Biscayne National Park
Homestead, Florida

Mr. Carl Liederman, Owner
Captain Harry's Fishing Supply
Miami, Florida

Ms. Jessica McCawley, Director
Division of Marine Fisheries Management
Florida Fish and Wildlife Conservation Commission
Tallahassee, Florida

Mr. Ernie Piton
Commercial Fishermen
Florida Keys Commercial Fishermen's Association,
Key Largo, Florida

Mr. Scott Salyers
Palmetto Bay, Florida

Mr. Bouncer Smith, Owner
Bouncer's Dusky 33 Fishing Charters
Miami, Florida

Mr. Jimbo Thomas
Charter boat Captain
Miami, Florida

Background

Many know the State of Florida (State) as the “fishing capital of the world” where roughly 2.4 million saltwater recreational anglers fish annually.⁵ According to a 2014 report released by the National Oceanic and Atmospheric Administration, the State is third in jobs (82,141) supported by the seafood industry and is second in total sales (\$16.6 billion) generated by the same industry.⁶

Biscayne National Park (Park), located southeast of Miami, Florida, is comprised of 173,904 acres (some of which was conveyed by the State),⁷ most of which is covered by water. Public Law 96-287 (signed into law on June 28, 1980) created the Park.⁸ Prior to 1980, parts of the current Park were part of the Biscayne National Monument, which was created in 1968.⁹ The current Biscayne National Park stretches from just below Key Biscayne all the way just north of Key Largo, and includes islands such as Elliott Key. According to the National Park Service (NPS):

“Unlike many parks where visitors are generally confined to roads, trails and developed areas, Biscayne’s visitation is much more dispersed. In some ways, that means that overall impacts to the resource by such large numbers of people are spread out and less noticeable. In other ways, it means that just about every part of the park is accessible by some form of boat.”¹⁰

According to NPS, Biscayne National Park hosted 525,745 visitors¹¹ in 2014 that spent an estimated \$32.4 million¹² in the communities surrounding the Park. NPS further estimated that visitor spending supported 459 local jobs and had a cumulative benefit of almost \$45 million to the local economy in 2014.¹³ Of the 525,745 visitors, 85 percent did so via boat.¹⁴ A 2005 report on fisheries specific to Biscayne Bay found the value of bay-dependent commercially harvested species to be \$1.9 million in 2002.¹⁵ 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.¹⁶ The Secretary may only

⁵ <http://www.myfwc.com/conservation/value/saltwater-fishing/>

⁶ [National Marine Fisheries Service, Fisheries Economics of the U.S. 2012 Report: National Overview, 2014.](#)

⁷ [National Park Service, Final General Management Plan / Environmental Impact Statement \(Newsletter\), May 2015.](#)

⁸ [Public Law 96-287, Title I, Section 101. June 28, 1980.](#)

⁹ [Public Law 90-606. October 18, 1968.](#)

¹⁰ <http://www.nps.gov/bisc/learn/management/statistics.htm>

¹¹ [Id.](#)

¹² [Id.](#)

¹³ [Id.](#)

¹⁴ <https://irma.nps.gov/Stats/SSRSReports/Park%20Specific%20Reports/Park%20YTD%20Version%201?Park=BISC>

¹⁵ [C](#)

¹⁵ [National Park Service, Biscayne National Park: Final General Management Plan / Environmental Impact Statement Vol.1:233.](#)

¹⁶ [Public Law 96-287, Title I, June 28, 1980.](#)

regulate fisheries in the Park if done so in full consultation with the State.¹⁷ Cooperative management of the fisheries between the State and NPS has been generally successful due to a Memorandum of Understanding (MOU) between the two entities. Within this MOU is an agreement between the State and NPS that the two parties “agree to seek the least restrictive management actions necessary to fully achieve mutual management goals for the fishery resources of the park.”¹⁸

NPS issues General Management Plans (GMP) for parks within its jurisdiction to provide a strategic planning document that outlines future management of a National Park. NPS issued the last GMP for Biscayne National Park in 1983. NPS has cited population growth, visitor use patterns, and new recreational activities as reasons to update the 1983 GMP.¹⁹

On June 5, 2015, NPS released the final updated GMP for Biscayne National Park.²⁰ This release marks the end of a nearly fifteen year process. Since the beginning of this process, NPS included a number of alternatives as possible management action items. The main options were “no action”, “Special Recreation Zones” with special license requirements or seasonal closures, and a 10,000+ acre MRZ (Marine Reserve Zone) that would prohibit both recreational and commercial fisheries access.²¹ A “marine reserve” is a management tool used by NPS where it establishes “no-take” zones within park boundaries primarily for the purpose of coral reef preservation.²² In the Park, NPS has chosen to use an MRZ as the primary tool to improve the coral reef ecosystem within the Park, stating that: “Scientists have been recommending the implementation of a marine reserve within the park for more than fifteen years.”²³



Image 1 – Biscayne National Park with proposed Marine Reserve Zone.
Source: Miami Herald.

¹⁷ [Id.](#)

¹⁸ [Memorandum of Understanding between the State of Florida, Fish and Wildlife Conservation Commission and the National Park Service, Biscayne National Park, Mark Lewis, Nick Wiley, October, 2012.](#)

¹⁹ [National Park Service, Biscayne National Park: Final General Management Plan / Environmental Impact Statement Vol.1:i., April 2015.](#)

²⁰ <http://www.nps.gov/bisc/learn/management/information-about-the-current-and-developing-general-management-plans.htm>

²¹ [Superintendent Brian Carlstrom presentation to the South Atlantic Fishery Management Council, December 1, 2014.](#)

²² <http://www.nature.nps.gov/water/reserves.cfm>

²³ [National Park Service, Final General Management Plan / Environmental Impact Statement \(Newsletter\), May 2015.](#)

As mentioned above, this process began almost fifteen years ago. In February 2001, NPS announced that it had held five public meetings to “determine the scope of issues to be addressed in the Draft GMP,” and that the agency’s intent was to prepare a draft Environmental Impact Statement to assess the action options under the draft GMP.²⁴ Over eight years later, (July 1, 2009), NPS announced that it would conduct public scoping sessions to discuss the possibility of implementing an MRZ within the GMP for Biscayne National Park.²⁵ This public process resulted in three public meetings and an initial fourteen day public comment period.²⁶ NPS extended this comment period through August 17, 2009.²⁷

In 2011, NPS released the draft GMP to the public for comment.²⁸ NPS’ preferred alternative under this draft GMP was similar to what was ultimately adopted and included the 10,000+ acre MRZ.²⁹ The vast majority of the support comments were form letters and mailings.³⁰ Of the comments received, those submitted by members of the fishing and marine community and those submitted by the Florida Fish and Wildlife Conservation Commission (FWC) raised a number of significant issues regarding the implementation of an MRZ.³¹ Due to the concerns received, NPS began an evaluation process to consider a number of other management actions that could “better achieve its objective of providing a diversified visitor use experience.”³²

Although the MRZ was NPS’ preferred alternative in the 2011 draft GMP, a 2013 joint statement from NPS and FWC stated that the two agencies were working together on new strategies that “may be incorporated into a supplemental plan that the [NPS] expects to release.”³³ Accordingly, on November 18, 2013, NPS noticed and released a supplemental draft GMP for Biscayne National Park.³⁴ After working in close cooperation with FWC, NPS’ preferred alternative was no longer the implementation of an MRZ that would prohibit all fishing year-round, but rather a Special Recreation Zone (SRZ).³⁵ This plan included two options for

²⁴ [Federal Register, Volume 66, Number 35:11041, February 21, 2001.](#)

²⁵ [National Park Service: Park Holds Public Meetings to Discuss Marine Reserve Areas \(press release\), July 1, 2009.](#)

²⁶ [Id.](#)

²⁷ [National Park Service: GMP Marine Reserve Zone Public Comment Period Extended Through August 17, 2009 \(press release\), August 10, 2009.](#)

²⁸ [National Park Service: Draft General Management Plan Released \(press release\), August 19, 2011.](#)

²⁹ [Id.](#)

³⁰ [Biscayne National Park Superintendent Brian Carlstrom presentation to South Atlantic Fishery Management Council, December 1, 2014.](#)

³¹ [National Park Service, Biscayne National Park: Final General Management Plan / Environmental Impact Statement Vol.2:Abstract, April, 2015.](#)

³² [Federal Register, Volume 80, Number 107:31920, June 4, 2015.](#)

³³ [National Park Service: National Park Service and Florida Fish and Wildlife Conservation Commission Joint Statement on Biscayne National Park’s General Management Plan \(press release\), May 13, 2013.](#)

³⁴ [Federal Register, Volume 78, Number 222. November 18, 2013](#)

³⁵ [National Park Service: Supplemental Draft General Management Plan Released \(press release\), November 15, 2013.](#)

implementing an SRZ: 1) year-round fishing within the zone was allowed but only with a special permit with special restrictions on fishing gear types; or 2) no permits required but there would be seasonal recreational fishing closures from June through September.³⁶ Biscayne National Park Superintendent Brian Carlstrom addressed the change in NPS' preferred alternative by stating, "The supplemental plan was developed in response to public comments and consultation with partner agencies."³⁷

Despite such statements, the NPS' final GMP released on June 5, 2015 included a 10,502 acre MRZ.³⁸ In formal comments submitted by Mr. Nick Wiley, Executive Director of the FWC, stated, "The justifications for prohibiting all fishing in the marine reserve zone simply do not hold up under objective scientific scrutiny." Mr. Wiley further stated he was "disappointed to see our recommendations and advice in this regard completely ignored by BNP as they continue to misapply this large body of scientific literature to justify expectations."³⁹

Stakeholders in both the commercial and recreational fisheries, as well as shore-side industries have also come out against the final GMP. Most of these concerns stem from the implementation of an MRZ. While the MRZ only accounts for roughly six percent of the entire Park, it encompasses 37 percent of the Park's best habitat for reef fishing in the park.⁴⁰ There is also a concern that this move could be a precursor for expansion of the MRZ. When the Park's management team established criteria and other considerations for the proposed MRZ, one of the criteria recommended by the team was the potential to connect an MRZ in Biscayne National Park with other new or existing protected areas – citing the Florida Keys Marine Sanctuary as a possible candidate for connection.⁴¹

Among the recreational fishing and marine supplier industries, the American Sportfishing Association, Congressional Sportsmen's Foundation, Center for Coastal Conservation, International Game Fish Association, Coastal Conservation Association, National Marine Manufacturers Association, BoatUS, and Guy Harvey Ocean Foundation have all joined in opposition to the implementation of an MRZ, stating:

"We strongly believe that there is not sufficient basis for implementing marine reserves at this time given the range of appropriate and effective alternatives," and that "[to] revert back to a highly opposed management option, after several years of collaborative work with the FWC and stakeholder partners, would be to

³⁶ [Id.](#)

³⁷ [Id.](#)

³⁸ [Id.](#)

³⁹ [Mr. Nick Wiley, Executive Director, Florida Fish and Wildlife Conservation Commission to Florida Department of Environmental Protection. July 14, 2015.](#)

⁴⁰ [Id.](#)

⁴¹ [National Park Service: Marine Reserve Study Summary. May 21, 2009.](#)

ignore strong public input and disregard the considerable work that went into developing more reasonable management tools.”⁴²

The Florida Keys Commercial Fishermen’s Association estimates that the economic impact of the NPS’ management actions would amount to more than \$40 million dollars to commercial fishermen in the affected area.⁴³

Supporters of the Park’s final GMP have lauded the MRZ. A letter of support for the final GMP from more than a dozen representatives from the environmental community to U.S. Department of the Interior Secretary Sally Jewell stated: “Marine reserves are one of the quickest and most effective science-based solutions for conserving the future health and sustainability of Biscayne’s coral reef ecosystem.”⁴⁴ The National Parks Conservation Association also stated “The declining health of Biscayne’s marine resources is a result of decades of over-fishing, over-use, water pollution, and warming seas. Creating a marine reserve in Biscayne National Park will help to ensure the future sustainability of its resources.”⁴⁵

While NPS claims that establishing an MRZ will only have “long-term, localized, negligible, adverse impacts to commercial fishing,” and that there will be “long-term, beneficial impacts on recreational fishing and associated service-related sectors,”⁴⁶ seafood processors and restaurants that purchase fish from commercial fishermen believe they will have difficulty obtaining the local fish species. At this point, the NPS regional director can prepare a Record of Decision which will allow the agency to begin implementing the new GMP.⁴⁷ This hearing will include testimony opposing any potential Record of Decision implementing an MRZ.

Witnesses will also indicate that NPS is ignoring science. The FWC may testify that MRZ’s have been implemented in other NPS managed marine waters, such as the Dry Tortugas National Park. However, the no-take, no-anchoring marine reserve at Dry Tortugas was developed in full consultation with the FWC and stakeholders, and sound science has identified it as important spawning ground for many snapper and grouper species.⁴⁸ Many opponents to the

⁴² [Mike Nussman, Margaret Podlich, Jeff Angers, Patrick Murray, Jeff Crane, Steve Stock, Rob Kramer, Thom Dammrich formal comments on Biscayne National Park General Management Plan, October 10, 2014.](#)

⁴³ [Id.](#)

⁴⁴ [John McCabe, Paton White, Jaclyn Lopez, Kathleen Aterno, Mary Barley, Charlie Causey, Deidre Macnab, Lance Morgan, Rachel Silverstein, Caroline McLaughlin, Drew Martin, Millard McCleary, Marjorie Holt, Doug Fetterly, Stephen Mahoney, Doug Young, Matthew Schwartz, Laura Reynolds letter to Secretary of Interior Sally Jewell, May 28, 2015.](#)

⁴⁵ [National Parks Conservation Association: Protecting Biscayne’s Coral Reefs \(fact sheet\), July 22, 2015.](#)

⁴⁶ [National Park Service, Biscayne National Park: Final General Management Plan / Environmental Impact Statement Vol.1:428-31.](#)

⁴⁷ [National Park Service, Biscayne National Park: Final General Management Plan / Environmental Impact Statement, Vol I. April 2015.](#)

⁴⁸ [National Parks Traveler: Correcting the Record on the Biscayne Marine Reserve \(op-ed\), Carl Liederman, July 19, 2015.](#)

Biscayne National Park final GMP, including FWC, have argued that no such science supports an MRZ in Biscayne.⁴⁹

To help prevent a situation of the federal government assuming management in state waters to the opposition of the state agency of jurisdiction, Reps. Ileana Ros-Lehtinen, Carlos Curbelo, and Mario Diaz-Balart sent a letter to House Committee on Natural Resources and House Committee on Small Business leadership requesting an oversight hearing to look into NPS' actions in formulating the final GMP for Biscayne National Park.⁵⁰

In addition, on July 30, 2015, Representative Ros-Lehtinen introduced H.R. 3310, with 30 original cosponsors, that would prohibit the Secretaries of Commerce and the Interior from restricting fishing access to any State or territorial marine waters within the jurisdiction of the NPS or Office of National Marine Sanctuaries, unless those restrictions were developed in coordination with and approved by the appropriate state agency.

⁴⁹ [Mr. Nick Wiley, Executive Director, Florida Fish and Wildlife Conservation Commission to Florida Department of Environmental Protection. July 14, 2015.](#)

⁵⁰ [Ileana Ros-Lehtinen, Carlos Curbelo, Mario Diaz-Balart, letter to House Committee on Natural Resources and House Committee on Small Business, June 23, 2015.](#)