

Calendar No. 692

114TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 114-388

ACCESS FOR SPORTFISHING ACT OF 2016

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 3099



NOVEMBER 28, 2016.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

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Mr. THUNE, from the Committee on Commerce, Science, and
Transportation, submitted the following

R E P O R T

[To accompany S. 3099]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 3099) to preserve and enhance saltwater fishing opportunities for recreational anglers, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of S. 3099 is to preserve and enhance saltwater fishing opportunities for recreational anglers. The bill would prohibit implementation and enforcement of restrictions on recreational fishing in Biscayne National Park (BNP), Florida, that were not developed with the Fish and Wildlife Conservation Commission of Florida (FWC). It also would prohibit shark feeding, except for harvesting purposes in the exclusive economic zone (EEZ). Lastly, it would require the Secretary of Commerce to issue a final rule to implement the Billfish Conservation Act of 2012 (16 U.S.C. 1827a).

BACKGROUND AND NEEDS

Biscayne National Park

Located adjacent to Miami in Biscayne Bay, the BNP is the largest marine park in the National Park system.¹ In June 2015, BNP officials finalized an update of the BNP's General Management Plan (GMP), which was last updated in 1983. BNP officials approved a no-fishing marine reserve in more than 10,000 acres of the BNP's most popular and productive fishing area, despite commitments made by BNP officials to work with stakeholders and the

¹National Park Service, "Ocean Parks," at <http://www.nps.gov/subjects/oceans/ocean-parks.html>.

State of Florida to explore less restrictive options. This decision ran counter to the recommendations from stakeholders, the BNP's own working group, and the FWC.² In particular, the FWC stated that the GMP was not consistent with the memorandum of understanding (MOU) between the FWC and the BNP,³ which states that, "FWC and the [BNP] agree to seek the least restrictive management actions necessary to fully achieve mutual management goals for the fishery resources of the Park and adjoining areas. Furthermore, both parties recognize the FWC's belief that marine reserves (no-take areas) are overly restrictive and that less-restrictive management measures should be implemented during the duration of this MOU."⁴

Despite these facts, the BNP states in its GMP that no-take zones are more effective for managing coral reef fisheries populations than other less restrictive options, and further states that less restrictive options would be difficult to enforce. It is troubling that such statements are patently focused on fisheries management and directly conflict with provisions in the MOU under which no-take areas are not to be considered for fisheries management unless other less restrictive measures have been tried and have failed.

The Committee believes the GMP will unnecessarily prohibit all recreational and commercial fishing in the 10,522 acre Marine Reserve Zone. While the GMP notes that the Marine Reserve Zone represents only 7 percent of the entire water area of the BNP, it fails to consider that it also encompasses some of the most popular and productive fishing grounds in the Biscayne Bay. There is insufficient scientific basis to support fisheries closures in the GMP. The GMP cites scientific studies relative to restoration of coral reef systems, but the validity of these studies appears to be tenuous at best, and the broad assumptions and conclusions in the GMP regarding the effectiveness of no fishing zones are unaccompanied by serious analysis, metrics, or other quantifiable measures to support them.

The Committee also is concerned that the input and interests of the State of Florida, the FWC, and numerous boaters and anglers provided during the GMP planning process and prior to the selection of the preferred alternative were not given any meaningful consideration by the BNP. To select the preferred alternative as the BNP did, with little if any meaningful engagement with the State of Florida, is completely inconsistent with the manner in which the State and the BNP historically have managed fishing activity in the Biscayne Bay. Since 1970, the State of Florida has conveyed a significant amount of acreage to the BNP to be incorporated into the BNP, and the BNP has, through its MOU with the FWC, agreed to share responsibilities and authorities regarding fisheries management and enforcement.

The Committee also notes that implementation of the Marine Reserve Zone by the BNP would be inconsistent with Florida's feder-

²National Park Service, *Biscayne National Park Final General Management Plan/Environmental Impact Statement*, Vol. 2, Appendices F and G, April, 2015, at <http://www.parkplanning.nps.gov/document.cfm?parkID=353&projectID=11168d&documentID=65801>.

³Letter from Nick Wiley, Executive Director, Florida Fish and Wildlife Commission to Lauren Milligan, Office of Intergovernmental Programs, Department of Environmental Protection, July 14, 2015.

⁴Memorandum of Understanding between the State of Florida, Fish and Wildlife Conservation Commission and the National Park Service, Biscayne National Park. FWC Agreement No. 12179 and NPS Agreement number G525000001, October 5, 2012.

ally approved Coastal Zone Management Program under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.). Had the BNP adhered to the cooperative process established under its MOU with the FWC, it would likely have avoided such inconsistencies with the Florida Coastal Zone Management Program.

For all these reasons, the Committee believes that the BNP and FWC need to revisit the proposed Marine Reserve Zone to ensure that any fishing restrictions imposed upon recreational, charter, and commercial fishermen in the Biscayne Bay are the least restrictive measures necessary to achieve conservation and management goals.

Shark Feeding

Some dive charters introduce food (chum) to attract sharks to their clients so they can see and photograph the sharks. This is extremely dangerous because the divers may or may not be in a cage and are at risk of attacks. Sharks also may learn to associate divers with food since divers are feeding the sharks directly from their hands. Marine biologists and other interested parties agree that sharks attack humans because they mistake humans for marine life.⁵ Concerns about the increased likelihood of shark attacks apply both to the divers participating in feeding trips and to other divers who encounter previously fed sharks during non-feeding trips. These concerns have led to State bans on the feeding of sharks for all purposes (excluding feeding sharks for the purpose of harvesting).⁶ Other than in the case of Federal waters off Hawaii, no similar bans exist in Federal waters.

Billfish Conservation Act of 2012

More than two decades ago, the United States banned the commercial sale and harvest of Atlantic-caught billfish (marlin, sailfish, and spearfish), in order to maximize recreational opportunities for these relatively rare fish. Catch-and-release recreational angling for billfish generates many millions of dollars in economic benefits to the U.S. economy each year.⁷ On October 5, 2012, President Obama signed into law the Billfish Conservation Act of 2012, effectively banning the importation of all billfish into the continental United States.⁸ This legislation was in response to declining billfish populations due to overfishing by non-U.S. commercial fishing fleets. In an effort to conserve billfish, the Billfish Conservation Act of 2012 prohibits the sale of nearly all billfish. The sale of swordfish is still allowed and billfish may be caught if landed and retained in Hawaii. The Hawaii exemption was for the purpose of protecting traditional fisheries and markets in that State.⁹ The rulemaking to implement that Act has not been completed, how-

⁵National Oceanic and Atmospheric Administration, "NOAA Fisheries Fact Sheet - Frequently Asked Questions About Sharks," at http://www.nmfs.noaa.gov/sharks/FS_faq.html.

⁶Florida Fish and Wildlife Conservation Commission, "Regulations for Feeding Fish, Shark, or other Marine Species," at <http://myfwc.com/fishing/saltwater/recreational/feeding-fish>.

⁷Congressional Sportsmen's Foundation "Billfish Conservation Act of 2012 Passes the House of Representatives," press release, September 12, 2012, at <http://sportsmenslink.org/the-media-room/news/billfish-conservation-act-of-2012-passes-the-house-of-representatives>.

⁸P.L. 112-183

⁹Congressional Sportsmen's Foundation "Billfish Conservation Act of 2012 Becomes Law," press release, October 16, 2012, at <http://sportsmenslink.org/the-media-room/news/billfish-conservation-act-of-2012-passes-the-house-of-representatives>.

ever, thus its passage has not yet yielded any conservation benefits.

SUMMARY OF PROVISIONS

If enacted, S. 3099 would do the following:

- Prohibit implementation or enforcement of restrictions on recreational fishing activities in the BNP that were not developed in coordination and consultation with the FWC.
- Prohibit any person from engaging in shark feeding, with the exception of harvest purposes, in the EEZ.
- Require the Secretary of Commerce to issue a final rule implementing the Billfish Conservation Act of 2012 not later than 45 days after the date of enactment of this Act.

LEGISLATIVE HISTORY

S. 3099 was introduced on June 23, 2016, by Senator Nelson and is cosponsored by Senator Rubio. Related bills have been introduced by Senators Cassidy and Rubio (S. 2807) and Representative Ros-Lehtinen (H.R. 3310). S. 2807 and H.R. 3310 would have required the National Park Service to have approval from State fish and wildlife agencies before closing State marine or Great Lakes waters to recreational or commercial fishing.

On June 29, 2016, the Committee met in open Executive Session and, by voice vote, ordered S. 3099 to be reported favorably without amendment.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

S. 3099—Access for Sportfishing Act of 2016

S. 3099 would prohibit the National Park Service (NPS) from implementing or enforcing restrictions on fishing in Biscayne National Park in Florida, unless the restrictions are developed in coordination with the Florida Fish and Wildlife Conservation Commission (FWC) and are the least restrictive measures necessary for effective management of the fishery. The bill also would require the National Oceanic and Atmospheric Administration (NOAA) to issue a final regulation implementing the Billfish Conservation Act of 2012, which prohibits the sale of billfish, within 45 days of enactment of the bill. Finally, S. 3099 would amend the Magnuson-Stevens Fishery Conservation and Management Act to prohibit people from feeding sharks in federal waters.

Based on information from the NPS and the FWC about the agencies' positions on fishing restrictions within the park, CBO expects that the NPS would probably not choose to enter into an agreement with the FWC to develop new fishing regulations. As a result, CBO estimates that implementing the legislation would not affect federal spending with respect to management of Biscayne National Park.

Based on information from NOAA, CBO estimates that implementing S. 3099 would cost less than \$500,000 annually to issue

rules on the sale of billfish and to implement the prohibition on feeding sharks. Any such spending would be subject to the availability of appropriated funds. Enacting the legislation could increase revenues and associated direct spending; therefore, pay-as-you-go procedures apply.

S. 3099 would create new civil and criminal penalties for feeding sharks; such penalties are recorded as revenues. Because criminal penalties are deposited into the Crime Victims Fund and later spent without further appropriations action, the bill also could increase direct spending. However, CBO expects that any additional revenues and subsequent direct spending would not be significant in any year because the number of civil and criminal violations would probably be small.

CBO estimates that enacting S. 3099 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

S. 3099 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

The bill contains private-sector mandates as defined in UMRA. Specifically, the bill would prohibit anyone from feeding sharks in U.S. waters for any purpose other than to harvest sharks. It also would prohibit anyone from operating a vessel for the purpose of carrying passengers to engage in or observe shark feeding. The cost of the mandates would be the net income forgone as a result of the prohibitions. Some diving operators use bait to attract sharks so that their customers can get a closer look. Feeding sharks is already banned in some state waters, including California and Florida. However, some dive operators have gotten around state bans by taking their customers out of state waters and into adjacent federal waters. The bill would make such practices illegal. Based on information from the academic literature about the size of the industry in the United States and in other countries, the rates charged for charter trips, and the customer base for such trips, CBO estimates that revenues generated by the industry amount to about \$10 million annually. Therefore, CBO estimates that the cost of the mandate would fall well below the annual threshold established in UMRA for private-sector mandates (\$154 million in 2016, adjusted annually for inflation).

The CBO staff contacts for this estimate are Robert Reese and Jon Sperl (for federal costs) and Logan Smith (for private-sector mandates). The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

S. 3099, as reported, would require the Secretary of Commerce to issue a final rule implementing the Bill Conservation Act of 2012. This would result in a prohibition of the sale of billfish, ex-

cept in very limited circumstances. Very few people would be covered by this since there is no commercial billfish fishery.

ECONOMIC IMPACT

The legislation is not expected to have a negative impact on the Nation's economy.

PRIVACY

The reported bill is not expected to impact the personal privacy of individuals.

PAPERWORK

S. 3099 would require the Secretary of Commerce to issue a final rule implementing the Billfish Conservation Act of 2012 not later than 45 days after the date of enactment of this Act.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title.

This section would provide the short title of the bill, the "Access for Sportfishing Act of 2016."

Section 2. Fishery management measures in Biscayne National Park.

This section would prohibit the Secretary of the Interior from implementing or enforcing any restrictions on recreational fishing, charter fishing, or commercial fishing in the BNP developed as part of a management plan adopted after December 31, 2014. In order for the Secretary of the Interior to implement restrictions, they would need to be based on best available science, developed in coordination with the FWC, and be the least restrictive measures necessary for effective fish conservation and management. "Fish", "fishery resource", "fishing", "charter fishing", "commercial fishing", "conservation and management", and "recreational fishing" would have the definitions given those terms in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) (16 U.S.C 1802).

Section 3. Shark Conservation Act of 2010.

This section would amend the Act to amend the High Seas Driftnet Fishing Moratorium Protection Act and the Magnuson-Stevens Fishery Conservation and Management Act to improve the conservation of sharks (Public Law 111-348; 124 Stat. 3668) to prohibit any person from engaging in shark feeding or operating a vessel for the purpose of carrying a passenger for hire to a site to engage in shark feeding, with the exceptions of regulations in the MSA that allow for feeding to attract sharks for harvest within the EEZ. The amendment made by this section would prohibit the re-

fusal of an authorized officer to board a fishing vessel for the purpose of enforcing this law. It would prohibit any assault, resistance, or interference of such authorized officers. The amendment made by this section would outline the civil and criminal penalties associated with violation of that Act. Nothing in that Act would supersede more restrictive State laws or regulations regarding shark feeding in State waters.

Section 4. Billfish Conservation Act of 2012.

This section would require the Secretary of Commerce to issue a final rule implementing the Billfish Conservation Act of 2012 not later than 45 days after the date of enactment of this Act and clarify that an exemption provided for certain traditional fisheries and markets applies to billfish landed and retained locally.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

AN ACT TO AMEND THE HIGH SEAS DRIFTNET FISHING
MORATORIUM PROTECTION ACT AND THE MAGNUSON-
STEVENS FISHERY CONSERVATION AND MANAGEMENT
ACT TO IMPROVE THE CONSERVATION OF SHARKS

[Public Law 111-348; 124 Stat. 3668]

[SEC. 104. OFFSET OF IMPLEMENTATION COST.

* * * * *

SEC. 104. PROHIBITION ON SHARK FEEDING.

(a) *PROHIBITION.*—*Except as provided in section 317 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1866), it is unlawful for any person—*

(1) *to engage in shark feeding; or*

(2) *to operate a vessel for the purpose of carrying a passenger for hire to any site to engage in shark feeding or to observe shark feeding.*

(b) *ADDITIONAL PROHIBITED ACTS.*—*It is unlawful for any person—*

(1) *to violate this section or any regulation promulgated under this section;*

(2) *to refuse to permit any officer authorized to enforce the provisions of this section to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this section or any regulation promulgated under the section;*

(3) *to forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search or inspection described in paragraph (2);*

(4) *to resist a lawful arrest for any act prohibited by this section; or*

(5) to interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this section.

(c) *LIMITATION.*—Any incidental feeding or attracting of a shark in the course of educational or scientific research conducted under a permit issued by the Secretary of Commerce or lawful fishing under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) shall not be considered a violation of this section.

(d) *CIVIL PENALTY.*—Any person who commits any act that is unlawful under subsection (a) or subsection (b) of this section shall be liable to the United States for a civil penalty under section 308 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1858).

(e) *CRIMINAL PENALTY.*—Any person who commits an act that is unlawful under paragraph (2), (3), (4), or (5) of subsection (b) of this section is deemed to be guilty of an offense punishable under section 309(b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1859(b)).

(f) *ENFORCEMENT.*—

(1) *IN GENERAL.*—The Secretary of Commerce and the Secretary of the department in which the Coast Guard is operating shall prevent any person from violating this section in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though sections 308 through 311 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1858, 1859, 1860, 1861) were incorporated into and made a part of this Act.

(2) *PENALTIES AND PRIVILEGES.*—Any person who violates this section is subject to the penalties and entitled to the privileges and immunities provided in the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) in the same manner and by the same means as though sections 308 through 311 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1858, 1859, 1860, 1861) were incorporated into and made a part of this Act.

(g) *DEFINITIONS.*—In this section:

(1) *PASSENGER FOR HIRE.*—The term “passenger for hire” has the meaning given that term in section 2101(21a) of title 46, United States Code.

(2) *SHARK FEEDING.*—The term “shark feeding” means the introduction of food or any other substance into the water to feed or attract sharks for any purpose other than to harvest sharks.

SEC. 105. RULE OF CONSTRUCTION.

Nothing in this Act or the amendments made by this Act shall be construed as affecting, altering, or diminishing in any way the authority of the Secretary of Commerce to establish such conservation and management measures as the Secretary considers appropriate under sections 302(a)(3) and 304(g) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(3) and 1854(g)).

BILLFISH CONSERVATION ACT OF 2012

[Public Law 112–183; 126 Stat. 1422]

SEC. 4. PROHIBITION ON SALE OF BILLFISH.

[16 U.S.C. 1827a]

(a) **PROHIBITION.**—No person shall offer for sale, sell, or have custody, control, or possession of for purposes of offering for sale or selling billfish or products containing billfish.

(b) **PENALTY.**—For purposes of section 308(a) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1858(a)), a violation of this section shall be treated as an act prohibited by section 307 of that Act (16 U.S.C. 1857).

(c) **EXEMPTIONS FOR TRADITIONAL FISHERIES AND MARKETS.**—

(1) Subsection (a) does not apply to billfish caught by US fishing vessels and landed *and retained* in the State of Hawaii or Pacific Insular Areas as defined in section 3(35) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802(35)).

(2) Subsection (a) does not apply to billfish landed by foreign fishing vessels in the Pacific Insular Areas when the foreign caught billfish is exported to non-US markets or retained within Hawaii and the Pacific Insular Areas for local consumption.

(d) **BILLFISH DEFINED.**—In this section the term “billfish”—

(1) means any fish of the species—

- (A) *Makaira nigricans* (blue marlin);
- (B) *Kajikia audax* (striped marlin);
- (C) *Istiompax indica* (black marlin);
- (D) *Istiophorus platypterus* (sailfish);
- (E) *Tetrapturus angustirostris* (shortbill spearfish);
- (F) *Kajikia albida* (white marlin);
- (G) *Tetrapturus georgii* (roundscale spearfish);
- (H) *Tetrapturus belone* (Mediterranean spearfish); and
- (I) *Tetrapturus pfluegeri* (longbill spearfish); and

(2) does not include the species *Xiphias gladius* (swordfish).