

To: Shimada, Kenshu[KSHIMADA@depaul.edu]
Cc: Santucci, Vincent[vincent_santucci@nps.gov]; Polly, P. David[pdpolly@indiana.edu]; Randall Irmis[irmis@umnh.utah.edu]
From: Foss, Scott
Sent: 2017-05-08T13:13:28-04:00
Importance: Normal
Subject: Re: Question
Received: 2017-05-08T13:13:59-04:00
[Antiquities Act.pdf](#)

Hi Kenshu,

The list of monuments under review was released by the department last week:
<https://www.doi.gov/pressreleases/interior-department-releases-list-monuments-under-review-announces-first-ever-formal>
The Executive Order (1) states that the review should be limited to designations and expansions that have been made since January 1, 1996. Your comments should probably be limited to those monuments, since no other monuments are subject to review at this time.

And here is a list of all national monuments that were designated under the authority of the Antiquities Act. Keep in mind that many of these have since been recognized or expanded by Congress:

<https://www.doi.gov/pressreleases/interior-department-releases-list-monuments-under-review-announces-first-ever-formal>

If you are discussing all monuments that were established under the authority of the Antiquities Act, then be careful to omit ones that have been subsequently authorized by Congress. For example, Petrified Forest "National Monument" was established in 1906 by Theodore Roosevelt under the authority of the Antiquities Act, but Congress subsequently re-authorized the designation in 1958 by expanding the boundaries and elevating the status of the unit from a national monument to a national park. Therefore, Petrified Forest National Park should not be subject to a review of the Antiquities Act.

There is a more interesting discussion that can and should be had, which is, "what IS a national monument?"

The authority to buy, sell, and make rules on federal lands rests with Congress (2). However, Congress routinely delegates authority to the executive to make rules (3). In the case of the Antiquities Act, Congress delegated non-exclusive authority to the the President to designate national monuments (4).

The question we should be asking is what is a national monument (NM), and how is that quantitatively different from a national park (NP) or a national conservation area (NCA)? Vince and I can explain the qualitative differences (5), but nobody can quantify the actual difference between the designations, because a description of what each designation "looks like" has not been legislated or codified.

In 1964, Congress passed the Wilderness Act, which contains a description of "wilderness character" (6). An area must possess and maintain these quantifiable wilderness characteristics in order to be designated wilderness. There are no such quantifiable metrics for a NM, NP, or NCA.

The NPS Organic Act of 1916 (7) solved this problem by establishing what a National Park Service (NPS) unit looks like, and thus the minimal quantifiable metrics for what a NM or NP must look like (8). However, these quantifiable metrics only apply to designations that are managed by the NPS. National monuments that are managed by the Bureau of Land Management (BLM), the U.S. Fish and Wildlife Service (FWS), the U.S.D.A. Forest service, the Department of Energy (DOE), and by the National Oceanographic and Atmospheric Administration (NOAA) are not subject to the Organic Act of 1916 and so what the units look like is guided by the language of each unit's enabling legislation or presidential proclamation. Unfortunately, many of these authorizing documents are frighteningly vague.

Therefore, any discussion about national monument designations should also discuss the question of what a national monument should look like. As is currently the case, bureaus are forced to make this determination in the course of managing lands that are assigned to them by Congress.

And a final thought, discussions about the veracity and status of national monuments should include Congress, with the help of the executive, and with the help of knowledgeable partners and stakeholders; all stakeholders.

I hope this is helpful,
S

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(1) Presidential Order 13792 - Review of designations under the Antiquities Act. <https://www.whitehouse.gov/the-press-office/2017/04/26/presidential-executive-order-review-designations-under-antiquities-act>

(2) U.S. Constitution - Article IV, Section 3, Clause 2 - *The Congress shall have the power to dispose of and make all needful rules and regulations respecting the territory and other property belonging to the United States...*

(3) Such as PRPA, Section 6310 - *As soon as practical after the date of enactment of this Act, the Secretary shall issue such regulations as are appropriate to carry out this subtitle, providing opportunities for public notice and comment.*

(4) Antiquities Act of 1906, Section 2 - *The President of the United States is authorized, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon lands owned or controlled by the Government of the United States to be national monuments...*

(5) - Monuments generally have at least one nationally or internationally significant value that warrants unimpaired preservation for present and future generations, whereas national parks generally have multiple nationally or internationally significant values that warrant unimpaired preservation for present and future generations;
- NCA's only exist on lands managed by BLM;
- Congress can authorize monuments, parks, and NCA's, whereas the President can only authorize monuments.

(6) Wilderness Act of 1964, Section 2 - *A wilderness...*

- 1. generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable;*
- 2. has outstanding opportunities for solitude or a primitive and unconfined type of recreation;*
- 3. has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and*
- 4. may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.*

(7) <https://www.nps.gov/grba/learn/management/organic-act-of-1916.htm>

(8) NPS Organic Act of 1916 - *...to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.*

On Sat, May 6, 2017 at 12:48 PM, Shimada, Kenshu <KSHIMADA@depaul.edu> wrote:

Hi Scott and Vince,

I just received the message below from David, and I would like to know the known paleontological recourses (particularly vertebrate fossils), if any, from each of the named national monuments other than the Bears Ears and Grand Staircase-Escalante. While SVP is very familiar with the scientific importance of the Bears Ears and Grand Staircase-Escalante, I'm here requesting for known paleontological facts on other national monuments if DOI has any record or publications. Thanks!

Kenshu

-----Original Message-----

From: Polly, P. David [<mailto:pdpolly@indiana.edu>]

Sent: Saturday, May 06, 2017 11:24 AM

To: Randall Irmis

Cc: Shimada, Kenshu

>>>press release from DOI

>>><https://www.doi.gov/pressreleases/interior-department-releases-list-monuments-under-review-announces-first-ever-formal>

Antiquities Act of 1906

AS AMENDED

This Act became law on June 8, 1906 (34 Stat. 225, 16 U.S.C. 431-433) and has been amended once. This description of the Act, as amended, tracks the language of the United States Code except that (following common usage) we refer to the "Act" (meaning the Act, as amended) rather than to the "subchapter" or the "title" of the Code.

16 U.S.C. 433,
Penalties for damage,
destruction, etc. of
antiquities

Section 1

Any person who shall appropriate, excavate, injure, or destroy any historic or prehistoric ruin or monument, or any object of antiquity, situated on lands owned or controlled by the Government of the United States, without the permission of the Secretary of the Department of the Government having jurisdiction over the lands on which said antiquities are situated, shall, upon conviction, be fined in a sum of not more than five hundred dollars or be imprisoned for a period of not more than ninety days, or shall suffer both fine and imprisonment, in the discretion of the court.

16 U.S.C. 431,
Proclamation of
national monuments,
reservation of lands,
etc.

Section 2

The President of the United States is authorized, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with proper care and management of the objects to be protected. When such objects are situated upon a tract covered by a bona fide unperfected claim or held in private ownership, the tract, or so much thereof as may be necessary for the proper care and management of the object, may be relinquished to the Government, and the Secretary of the Interior is hereby authorized to accept the relinquishment of such tracts in [sic] behalf of the Government of the United States.

16 U.S.C. 431a,
Limitation on more
national monuments
in Wyoming

No further extension or establishment of national monuments in Wyoming may be undertaken except by express authorization of Congress.

Antiquities Act of 1906

16 U.S.C. 432,
Permits for excavation, etc.

Section 3

Permits for the examination of ruins, the excavation of archaeological sites, and the gathering of objects of antiquity upon the lands under their respective jurisdictions may be granted by the Secretaries of the Interior, Agriculture, and Army to institutions which they may deem properly qualified to conduct such examination, excavation, or gathering, subject to such rules and regulation as they may prescribe: *Provided*, That the examinations, excavations, and gatherings are undertaken for the benefit of reputable museums, universities, colleges, or other recognized scientific or educational institutions, with a view to increasing the knowledge of such objects, and that the gatherings shall be made for permanent preservation in public museums.

16 U.S.C. 432,
Rules and regulations

Section 4

The Secretaries of the departments aforesaid shall make and publish from time to time uniform rules and regulations for the purpose of carrying out the provisions of this Act.