

**To:** Foss, Scott E[sfoss@blm.gov]  
**Cc:** Liggett, Gregory A[gliggett@blm.gov]; Gensler, Philip A[pgensler@blm.gov]; Hunt Foster, Rebecca[rhuntfoster@blm.gov]; Hugh McDonald[hmcDonald@blm.gov]; Matthews, Neffra A[n1matthe@blm.gov]; Colin Dunn[crdunn@blm.gov]; Alan Titus[atitus@blm.gov]  
**From:** Breithaupt, Brent  
**Sent:** 2017-10-13T14:43:29-04:00  
**Importance:** Normal  
**Subject:** Fwd: HR 3990 - Specific Reference to Fossils  
**Received:** 2017-10-13T14:43:40-04:00  
[H.R. 3990 NM Creation and Protection Act.pdf](#)  
[SANTUCCI 2006 - RANGER - FOSSILS, OBJECTS OF ANTIQUITY.pdf](#)

Scott  
Are you involved with this?  
Brent

\*\*\*\*\*

Brent H. Breithaupt  
BLM Regional Paleontologist - WY, ID, MT, ND, SD, NE, AK  
Wyoming State Office  
5353 Yellowstone Road  
Cheyenne, WY 82009  
Phone: (307) 775-6052  
Fax: (307) 775-6042  
Brent\_Breithaupt@blm.gov

----- Forwarded message -----

From: Santucci, Vincent <vincent\_santucci@nps.gov>  
Date: Fri, Oct 13, 2017 at 9:59 AM  
Subject: HR 3990 - Specific Reference to Fossils  
To: "P. David Polly, SVP" <svp\_president@vertpaleo.org>, "tedjv@pioneerballoon.com" <tedjv@pioneerballoon.com>, "Shimada, Kenshu" <KSHIMADA@depaul.edu>, Scott Foss <sfoss@blm.gov>, Greg Liggett <gliggett@blm.gov>, Mike Fracasso <mfracasso@fs.fed.us>, "Breithaupt, Brent" <bbreitha@blm.gov>, Philip Gensler <pgensler@blm.gov>, Greg McDonald <greg\_mcdonald@nps.gov>, Glenn Storrs <gstorrs@cincymuseum.org>

FYI -

HR 3990 draft bill and media attached here. Please note that "fossils" are specifically included in "Objects of Antiquity". This is an important discussion. Attached is an article I published on this topic in 2006 (during the centennial of the Antiquities Act).

NATIONAL MONUMENTS

Antiquities Act revision advances

Jennifer Yachnin, E&E News reporter

Published: Thursday, October 12, 2017

The House Natural Resources Committee last night voted in favor of legislation that would overhaul the Antiquities Act for the first time since its enactment more than a century ago, approving reforms that would sharply reduce the size of future monuments and create a formal process for reductions.

Lawmakers passed the measure sponsored by Chairman Rob Bishop (R-Utah) on a party-line vote, 23 to 17.

"The only path to transparency and to accountability that we all claim to be seeking, no matter which party controls the White House, is to amend the act itself," Bishop said in his opening remarks.

The Utah lawmaker's legislation, H.R. 3990, the "National Monument Creation and Protection Act," would limit the size of new monuments to a maximum of 85,000 acres and require approval from local and state lawmakers and governors, as well as review under the National Environmental Policy Act.

The measure, also known as the "CAP Act," would also limit designations to protect areas with relics, cultural artifacts and fossils, while eliminating the inclusion of "vast landscape domains."

As the law stands now, a president may designate existing public lands as a monument to protect areas of cultural, scientific or historical value, without any restrictions on acreage.

During the committee's markup, Bishop noted the legislation would refocus the law on its original intent of protecting man-made relics, and that requirements for NEPA review and state or local input would provide a formal decisionmaking process for new monuments.

"It establishes a process to get information before the designation, not afterward," Bishop said. He criticized unspecified monuments created in recent years as designations made "not on scientific or archaeological" basis "but for political purposes."

Bishop has been a longtime critic of the Antiquities Act, specifically with sites in his home state including the Bears Ears National Monument created by President Obama in late 2016 and the Grand Staircase-Escalante National Monument created by President Clinton in 1996.

Arizona Rep. Raúl Grijalva, the committee's top Democrat, slammed Bishop's proposal, which he said "essentially destroys the Antiquities Act."

"We need additional national monuments, not fewer. Our national monuments should be larger, not smaller," he later added.

Democratic lawmakers and conservation groups also criticized Bishop's bill ahead of the hearing, arguing its passage would lead to fewer national parks in the future.

About one-third of national monuments created under the Antiquities Act have been converted to national parks, historic parks or sites, national preserves, or other properties controlled by the National Park Service, according to data provided by the Wilderness Society.

But Bishop rebutted those claims as "misinformation" intended to create opposition to his legislation. "With all due respect, Trump Tower could not be made a national monument because that's private property," Bishop noted wryly.

He later added: "The idea that Grand Canyon or Zion National Park would never have been created without this is misinformation. Those are national parks that can only be made by Congress. The idea that this stops the process is simply one of those things you throw out there that is a nice argument, but it's not a real argument."

Democrats did praise provisions in Bishop's bill that would prohibit presidents from reducing a monument by more than 85,000 without agreement of local and state officials.

Opponents have argued presidents do not have authority to reduce monuments under the Antiquities Act and have vowed to challenge the Trump administration in court if it attempts to do so.

Although presidents have previously reduced the size of some monuments, none of those cases has ever been tested in federal court. President Kennedy was the last to do so when he modified the Bandelier National Monument in New Mexico.

"There is something good about this bill," said Virginia Rep. Don McEachin (D). "And that is that it points out that the president has no authority to unilaterally shrink or redesignate a national monument under current law. This admission is useful because the president may soon try to invoke that nonexistent power to the lasting detriment of our country."

Earlier in the day Bishop said that such interpretations are incorrect, stating the bill does not create a "new power" but defines one that already exists (E&E News PM, Oct. 11).

#### Democratic resolution

During the meeting, lawmakers also voted on a resolution of inquiry sponsored by Grijalva that aimed to force the Trump administration to disclose the details of its recent review of more than two dozen national monuments.

In a private report to President Trump in late August, which leaked to the media last month, Interior Secretary Ryan Zinke recommended reducing the boundaries of six monuments and altering the management plans of a handful more (Greenwire, Sept. 18).

Neither the White House nor the Interior Department has commented on that report, which has not been finalized. Noting the Trump administration conducted an "extensive review," Grijalva said Democrats were attempting to force a formal disclosure of the

recommendations.

"We would like to read that report," he said. "We would like to see the information that was gathered during the review process so we can make informed decisions regarding the value of the report."

The committee voted along party lines, 23-17, to report the resolution unfavorably to the House, effectively killing the measure.

Reporter Kellie Lunney contributed.

<https://www.eenews.net/eedaily/2017/10/12/stories/1060063399>

Here is the specific language which identifies "fossils" as "Objects of Antiquity":

"(3) OBJECT OR OBJECTS OF ANTIQUITY.—

"(A) The term 'object or objects of antiquity' means—

"(i) relics;

"(ii) artifacts;

"(iii) human or animal skeletal remains;

"(iv) fossils (other than fossil fuels); and

"(v) certain buildings constructed before the date of the enactment of this subsection.

'(B) The term 'object or objects of antiquity' does not include—

"(i) natural geographic features; and

"(ii) objects not made by humans, except fossils (other than fossil fuels) or

human or animal skeletal remains.".

--

Vincent L. Santucci  
Paleontology Program Coordinator  
National Park Service  
Geologic Resources Division  
1849 C Street, NW  
Washington, DC 20240  
Office: (202) 513-7186  
Cell: (202) 359-4124  
[vincent\\_santucci@nps.gov](mailto:vincent_santucci@nps.gov)

Celebrate National Fossil Day - October 11, 2017  
<http://nature.nps.gov/geology/nationalfossilday/>

G:\M\15\BISHUT\BISHUT\_007.XML

.....  
(Original Signature of Member)

115TH CONGRESS  
1ST SESSION

# H. R. 3990

To amend title 54, United States Code, to reform the Antiquities Act of 1906, and for other purposes.

---

## IN THE HOUSE OF REPRESENTATIVES

Mr. BISHOP of Utah introduced the following bill; which was referred to the Committee on \_\_\_\_\_

---

## A BILL

To amend title 54, United States Code, to reform the Antiquities Act of 1906, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “National Monument  
5 Creation and Protection Act”.

6 **SEC. 2. LIMITATION ON SIZE; CLARIFICATION OF ELIGIBLE**  
7 **OBJECTS.**

8 Section 320301 of title 54, United States Code, is  
9 amended—

G:\M\15\BISHUT\BISHUT 007.XML

1 (1) in subsection (a), by striking “historic land-  
2 marks, historic and prehistoric structures, and other  
3 objects of historic or scientific interest” and insert-  
4 ing “object or objects of antiquity”;

5 (2) in subsection (b), by striking “confined to  
6 the smallest area compatible with the proper care  
7 and management of the objects to be protected” and  
8 inserting “in accordance with the limitations out-  
9 lined in subsections (e), (f), (g), and (h)”;

10 (3) by adding at the end the following:

11 “(e) LIMITATION ON SIZE OF NATIONAL MONU-  
12 MENTS. Except as provided by subsections (f), (g), and  
13 (h), after the date of the enactment of this subsection,  
14 land may not be declared under this section in a configura-  
15 tion that would create a national monument

16 “(1) that is more than 640 acres; and

17 “(2) whose exterior boundary is less than 50  
18 miles from the closest exterior boundary of another  
19 national monument declared under this section.

20 “(f) EXCEPTION FOR MONUMENTS OF LESS THAN  
21 5,000 ACRES. Subsection (e) shall not apply to the des-  
22 ignation of a national monument under this section if the  
23 national monument so designated

24 “(1) would be less than 5000 acres;

G:\M\15\BISHUT\BISHUT 007.XML

1 “(2) would have all exterior boundaries 50  
2 miles or more from the closest exterior boundary of  
3 another national monument declared under this sec-  
4 tion; and

5 “(3) has been reviewed under the National En-  
6 vironmental Policy Act of 1969 (42 U.S.C. 4321 et  
7 seq.) by the Secretary of the Interior or the Sec-  
8 retary of Agriculture, as appropriate.

9 “(g) EXCEPTION FOR MONUMENTS OF 5,000 ACRES  
10 AND UP TO 10,000 ACRES.

11 “(1) IN GENERAL. Subsection (e) shall not  
12 apply to the designation of a national monument  
13 under this section if the national monument so des-  
14 ignated

15 “(A) would be at least 5000 acres but not  
16 more than 10,000 acres; and

17 “(B) would have all exterior boundaries 50  
18 miles or more from the closest exterior bound-  
19 ary of another national monument declaration  
20 under this section.

21 “(2) OTHER REQUIREMENT. A monument de-  
22 scribed in this subsection shall be subject to the  
23 preparation of an environmental assessment or envi-  
24 ronmental impact statement as part of a review  
25 under the National Environmental Policy Act of

G:\M\15\BISHUT\BISHUT 007.XML

1 1969 (42 U.S.C. 4321 et seq.). The choice of envi-  
2 ronmental review document shall be within the dis-  
3 cretion of the Secretary of the Interior or the Sec-  
4 retary of Agriculture, as appropriate.

5 “(h) EXCEPTION FOR MONUMENTS 10,000 ACRES  
6 AND UP TO 85,000 ACRES. Subsection (e) shall not apply  
7 to the designation of a national monument under this sec-  
8 tion if the national monument so designated

9 “(1) would be at least 10,000 acres but not  
10 more than 85,000 acres;

11 “(2) would have all exterior boundaries 50  
12 miles or more from the closest exterior boundary of  
13 another national monument declaration under this  
14 section; and

15 “(3) has been approved by the elected gov-  
16 erning body of each county (or county equivalent),  
17 the legislature of each State, and the Governor of  
18 each State within whose boundaries the national  
19 monument will be located (and the Governor of each  
20 such State has transmitted a copy of each such ap-  
21 proval to the President).

22 “(i) EXCEPTION FOR EMERGENCY DESIGNATION.

23 “(1) IN GENERAL. Subsection (e) shall not  
24 apply to the designation under this section of a na-  
25 tional monument of any acreage amount if designa-

G:\M\15\BISHUT\BISHUT 007.XML

1       tion is made to prevent imminent and irreparable  
2       harm to the object or objects of antiquity to be pro-  
3       tected by the designation.

4       “(2) ONE YEAR LIMITATION. A national  
5       monument designation under this subsection shall  
6       terminate on the date that is one calendar year after  
7       the date of the designation.

8       “(3) ONE TIME DESIGNATION. Land des-  
9       ignated as a national monument under this sub-  
10      section

11           “(A) may only be so designated one time;  
12      and

13           “(B) may not also be permanently des-  
14      ignated as a national monument under this sec-  
15      tion.

16      “(4) RIGHTS AND USES. Land designated as a  
17      national monument under this subsection shall re-  
18      main subject to

19           “(A) valid existing rights; and

20           “(B) uses allowed on the day before such  
21      designation under an applicable Resource Man-  
22      agement Plan or Forest Plan.

23      “(j) PRESIDENTIAL AUTHORITY TO REDUCE SIZE OF  
24      DECLARED MONUMENTS. The President may

G:\M\15\BISHUT\BISHUT 007.XML

6

1 “(1) reduce the size of any national monument  
2 declared under this section by 85,000 acres or less;  
3 or

4 “(2) reduce the size of any national monument  
5 declared under this section by more than 85,000  
6 acres only if the reduction

7 “(A) has been approved by the elected gov-  
8 erning body of each county (or county equiva-  
9 lent), the legislature of each State, and the  
10 Governor of each State within whose boundaries  
11 the national monument will be located (and the  
12 Governor of each such State has transmitted a  
13 copy of each such approval to the President);  
14 and

15 “(B) has been reviewed under the National  
16 Environmental Policy Act of 1969 (42 U.S.C.  
17 4321 et seq.) by the Secretary of the Interior  
18 or the Secretary of Agriculture, as appropriate.

19 “(k) NON-FEDERALLY OWNED PROPERTY. After  
20 the date of the enactment of this subsection, land may  
21 not be declared as a national monument under this section  
22 in a configuration that would place non-federally owned  
23 property within the exterior boundaries of the national  
24 monument without the express written consent of the own-  
25 ers of that non-federally owned property.

G:\M\15\BISHUT\BISHUT 007.XML

7

1       “(l) EFFECT OF DECLARATION ON FEDERAL  
2 FUNDS. No declaration under this section shall be con-  
3 strued to increase the amount of Federal funds that are  
4 authorized to be appropriated for any fiscal year.

5       “(m) WATER RIGHTS ASSOCIATED WITH A DEC-  
6 LARATION. Water rights associated with a declaration  
7 under this section

8           “(1) may not be reserved expressly or by impli-  
9 cation by a declaration under this section; and

10          “(2) may be acquired for a declaration under  
11 this section only in accordance with the laws of the  
12 State in which the water rights are based.

13       “(n) DEFINITIONS. For the purposes of this section:

14           “(1) DECLARATION; DECLARED. The terms  
15 ‘declaration’ and ‘declared’ shall only include the  
16 creation or expansion of a national monument under  
17 this section.

18           “(2) LAND. The term ‘land’ shall not include  
19 submerged land or water.

20           “(3) OBJECT OR OBJECTS OF ANTIQUITY.

21           “(A) The term ‘object or objects of antiq-  
22 uity’ means

23                   “(i) relics;

24                   “(ii) artifacts;

G:\M\15\BISHUT\BISHUT 007.XML

8

1                   “(iii) human or animal skeletal re-  
2 mains;

3                   “(iv) fossils (other than fossil fuels);  
4 and

5                   “(v) certain buildings constructed be-  
6 fore the date of the enactment of this sub-  
7 section.

8                   “(B) The term ‘object or objects of antiq-  
9 uity’ does not include

10                   “(i) natural geographic features; and

11                   “(ii) objects not made by humans, ex-  
12 cept fossils (other than fossil fuels) or  
13 human or animal skeletal remains.”.

```

<?xml version="1.0" encoding="UTF-8"?>
<?xml-stylesheet href="\billres.xsl" type="text/xsl"?>
<!DOCTYPE bill PUBLIC "-//US Congress//DTDs/bill v2.8 20020720//EN"
"http://xml.house.gov/bill.dtd">
<bill bill-stage="Pre-Introduction" dms-id="H051694817D674143A40481B96E456B1F"
public-private="public" key="H" bill-type="olc">
<pre-form>
<meta-house><holc-filename>G:\M\15\BISHUT\BISHUT_007.XML</holc-filename><holc-attorney>XX
XXXX</holc-attorney><holc-last-author>XXXXXX</holc-last-author><holc-last-saved>10/6/2017
9:42</holc-last-saved><holc-creator>XXXXXXXXXXXX</holc-creator><holc-creation-date>03/15
/2017
10:03</holc-creation-date><version><version-filename>XXXXXXXXXXXXXXXXXXXXXXXXXXXX</versi
on-filename><version-date>XXXXXXXXXXXXXXXXXXXX</version-date><version-creator>XXXXXX</vers
ion-creator></version>
<holc-job-number>1151-0315-128808</holc-job-number><holc-doc-number>654845|4</holc-doc-nu
mber>
</meta-house>
<author-note display="no"><?xm-replace_text {author-note}?></author-note>
<running-header display="no">[Discussion Draft]</running-header>
<legis-counsel/> <reintroduction-code display="no"><?xm-replace_text
{reintroduction-code}?></reintroduction-code>
<signature-line display="yes">(Original Signature of Member)</signature-line>
<first-page-header display="no">[DISCUSSION DRAFT]</first-page-header>
<first-page-date display="no"><?xm-replace_text {first-page-date}?></first-page-date>
<first-page-desc display="no"><?xm-replace_text {first-page-desc}?></first-page-desc>
</pre-form>
<form>
<distribution-code display="no">I</distribution-code>
<congress>115th CONGRESS</congress> <session>1st Session</session>
<legis-num>H. R. __</legis-num>
<current-chamber>IN THE HOUSE OF REPRESENTATIVES</current-chamber>
<action>
<action-date><?xm-replace_text {action-date}?></action-date>
<action-desc><sponsor name-id="B001250">Mr. Bishop of Utah</sponsor> introduced the
following bill; which was referred to the Committee on _____</action-desc>
</action>
<legis-type>A BILL</legis-type>
<official-title>To amend title 54, United States Code, to reform the Antiquities Act of
1906, and for other purposes. </official-title>
</form>
<legis-body id="H69601F9F79F248D1B93C6AD38ED62C0B" style="OLC">
<section id="H02AEE28B71EC42039B3A78D18F67550A"
section-type="section-one"><enum>1.</enum><header>Short title</header><text
display-inline="no-display-inline">This Act may be cited as the
<quote><short-title>National Monument Creation and Protection
Act</short-title></quote>.</text></section>
<section id="HB20BF9592199488DBD16A488951133F2"
section-type="subsequent-section"><enum>2.</enum><header>Limitation on size;
clarification of eligible objects</header><text
display-inline="no-display-inline">Section 320301 of title 54, United States Code, is
amended-</text>
<paragraph id="HE939237FEF6544B38CFCBEFE21B744B1"><enum>(1)</enum><text
display-inline="yes-display-inline">in subsection (a), by striking <quote>historic
landmarks, historic and prehistoric structures, and other objects of historic or
scientific interest</quote> and inserting <quote>object or objects of antiquity</quote>;
</text></paragraph>
<paragraph id="HEFEFF86B4BA749C4B1336FF3278C3FC3"><enum>(2)</enum><text>in subsection
(b), by striking <quote>confined to the smallest area compatible with the proper care
and management of the objects to be protected</quote> and inserting <quote>in accordance
with the limitations outlined in subsections (e), (f), (g), and (h)</quote>;
and</text></paragraph>
<paragraph id="H758B2BC2082648F4AC5EA83B92EF911E"><enum>(3)</enum><text
display-inline="yes-display-inline">by adding at the end the following:</text>
<quoted-block style="OLC" id="HF548755598194410A76942EB38CE3462"
display-inline="no-display-inline">
<subsection id="H5448DD251BF14AB1BEA2D8C11D44B8E7"><enum>(e)</enum><header>Limitation on
size of national monuments</header><text display-inline="yes-display-inline">Except as
provided by subsections (f), (g), and (h), after the date of the enactment of this
subsection, land may not be declared under this section in a configuration that would
create a national monument-</text>
<paragraph id="H1013A9F565744053AC5285B662669C17"><enum>(1)</enum><text>that is more

```

than 640 acres; and</text></paragraph>  
 <paragraph id="H85DBDB54C36240B186B2091A39C725E3"><enum>(2)</enum><text>whose exterior boundary is less than 50 miles from the closest exterior boundary of another national monument declared under this section.</text></paragraph></subsection>  
 <subsection id="HDEE6B06EE3644F62952EC84F4CF51C26"><enum>(f)</enum><header>Exception for monuments of less than 5,000 acres</header><text display-inline="yes-display-inline">Subsection (e) shall not apply to the designation of a national monument under this section if the national monument so designated—</text>  
 <paragraph id="HA0EECB27BF3A4D229A75528CD64FCFCF"><enum>(1)</enum><text>would be less than 5000 acres;</text></paragraph>  
 <paragraph id="HC94038AF23D5443C8D188E403003E90E"><enum>(2)</enum><text display-inline="yes-display-inline">would have all exterior boundaries 50 miles or more from the closest exterior boundary of another national monument declared under this section; and</text></paragraph>  
 <paragraph id="H1322EBA2BD2E4D02936B66883FE49797"><enum>(3)</enum><text display-inline="yes-display-inline">has been reviewed under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) by the Secretary of the Interior or the Secretary of Agriculture, as appropriate.</text></paragraph></subsection>  
 <subsection id="HD241591E7D79450C95ADEA0E390E6E5E"><enum>(g)</enum><header>Exception for monuments of 5,000 acres and up to 10,000 acres</header>  
 <paragraph id="HD09AACCE5C80446DB2F9C244ABAB88E9"><enum>(1)</enum><header>In general</header><text>Subsection (e) shall not apply to the designation of a national monument under this section if the national monument so designated—</text>  
 <subparagraph id="H5E5FD30C8B3F469F85E5C9A74357484B"><enum>(A)</enum><text>would be at least 5000 acres but not more than 10,000 acres; and</text></subparagraph>  
 <subparagraph id="HE3C5FA4A7C7149F8A510ADBFCCE2585F6"><enum>(B)</enum><text>would have all exterior boundaries 50 miles or more from the closest exterior boundary of another national monument declaration under this section.</text></subparagraph></paragraph>  
 <paragraph id="H6B120F68336546E887ABEF97DA03DC6F"><enum>(2)</enum><header>Other requirement</header><text>A monument described in this subsection shall be subject to the preparation of an environmental assessment or environmental impact statement as part of a review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). The choice of environmental review document shall be within the discretion of the Secretary of the Interior or the Secretary of Agriculture, as appropriate.</text></paragraph></subsection>  
 <subsection id="H8B1EDA290E9849FE979A314013EB09AD"><enum>(h)</enum><header>Exception for monuments 10,000 acres and up to 85,000 acres</header><text display-inline="yes-display-inline">Subsection (e) shall not apply to the designation of a national monument under this section if the national monument so designated— </text>  
 <paragraph id="H5944744569B94048BB0A8FCBAFCCF4AA"><enum>(1)</enum><text>would be at least 10,000 acres but not more than 85,000 acres; </text></paragraph>  
 <paragraph id="H25B2904A880246F2B34D3A0D0DFED393"><enum>(2)</enum><text>would have all exterior boundaries 50 miles or more from the closest exterior boundary of another national monument declaration under this section; and </text></paragraph>  
 <paragraph id="HB27C3F7D8D4F497E96B852C8D5FC86A6"><enum>(3)</enum><text>has been approved by the elected governing body of each county (or county equivalent), the legislature of each State, and the Governor of each State within whose boundaries the national monument will be located (and the Governor of each such State has transmitted a copy of each such approval to the President).</text></paragraph></subsection>  
 <subsection id="H52BB2926C28F4DE3B955733F7A0100D8"><enum>(i)</enum><header>Exception for emergency designation</header>  
 <paragraph id="HBC3EF710A0B848A6BC24217E8FCB59FB"><enum>(1)</enum><header>In general</header><text>Subsection (e) shall not apply to the designation under this section of a national monument of any acreage amount if designation is made to prevent imminent and irreparable harm to the object or objects of antiquity to be protected by the designation.</text></paragraph>  
 <paragraph id="HBD3565578C994F0689455CAF4A298AA6"><enum>(2)</enum><header>One year limitation</header><text>A national monument designation under this subsection shall terminate on the date that is one calendar year after the date of the designation.</text></paragraph>  
 <paragraph id="H92324484F6EF4B0C9B67656054682A8F"><enum>(3)</enum><header>One time designation</header><text>Land designated as a national monument under this subsection—</text>  
 <subparagraph id="H3D1A1D267DC245E9B94FFE1FB9A8D856"><enum>(A)</enum><text>may only be so designated one time; and</text></subparagraph>  
 <subparagraph id="HC6FF03CB38AB42D88113FE4F50E38C7A"><enum>(B)</enum><text>may not also be permanently designated as a national monument under this section.</text></subparagraph></paragraph>  
 <paragraph id="H27CFF235CB584A2F8EA0D8C49B1684A8"><enum>(4)</enum><header>Rights and Uses</header><text display-inline="yes-display-inline">Land designated as a national monument under this subsection shall remain subject to—</text>

<subparagraph id="HFC2B484E4650415A92B9446E8309F3F7"><enum>(A)</enum><text>valid existing rights; and</text></subparagraph>

<subparagraph id="H5056CE42BCF84C458325A755F7F47E60"><enum>(B)</enum><text>uses allowed on the day before such designation under an applicable Resource Management Plan or Forest Plan.</text></subparagraph></paragraph></subsection>

<subsection id="H676107CA08944CB49A993CCE1EB6049D"><enum>(j)</enum><header>Presidential authority to reduce size of declared monuments</header><text>The President may</text>

<paragraph id="H8BFB5E22E5E844C3A7FC64B188B64EF4"><enum>(1)</enum><text display-inline="yes-display-inline">reduce the size of any national monument declared under this section by 85,000 acres or less; or</text></paragraph>

<paragraph id="HA3A48A98F5224F378EF687F396CE2B45"><enum>(2)</enum><text>reduce the size of any national monument declared under this section by more than 85,000 acres only if the reduction</text>

<subparagraph id="H4AF61494AAAA4977B74C831EB40E6EDB"><enum>(A)</enum><text display-inline="yes-display-inline">has been approved by the elected governing body of each county (or county equivalent), the legislature of each State, and the Governor of each State within whose boundaries the national monument will be located (and the Governor of each such State has transmitted a copy of each such approval to the President); and</text></subparagraph>

<subparagraph id="H9C824FA7404441ADB77A53E5D900695A"><enum>(B)</enum><text>has been reviewed under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) by the Secretary of the Interior or the Secretary of Agriculture, as appropriate.</text></subparagraph></paragraph></subsection>

<subsection id="HC0B8518A96464C2E9826351C0A1FD8C8"><enum>(k)</enum><header>Non-federally owned property</header><text display-inline="yes-display-inline">After the date of the enactment of this subsection, land may not be declared as a national monument under this section in a configuration that would place non-federally owned property within the exterior boundaries of the national monument without the express written consent of the owners of that non-federally owned property.</text></subsection>

<subsection id="H96B400A39E934702AA3FE076F599B09D"><enum>(l)</enum><header>Effect of declaration on federal funds</header><text>No declaration under this section shall be construed to increase the amount of Federal funds that are authorized to be appropriated for any fiscal year.</text></subsection>

<subsection id="H65347C83D8224BB3AE8F87C17C757C80"><enum>(m)</enum><header>Water rights associated with a declaration</header><text>Water rights associated with a declaration under this section</text>

<paragraph id="H80696705B0B34F8C9AE8152EDF50814A"><enum>(1)</enum><text>may not be reserved expressly or by implication by a declaration under this section; and</text></paragraph>

<paragraph id="H269F548D1A5D4E8B898677F15C3D96AC"><enum>(2)</enum><text>may be acquired for a declaration under this section only in accordance with the laws of the State in which the water rights are based.</text></paragraph></subsection>

<subsection id="H256485EC5A214D6A8B7C162726B22471"><enum>(n)</enum><header>Definitions</header><text>For the purposes of this section:</text>

<paragraph id="H986C9EFEE940493796CFEAF7BEF3B785"><enum>(1)</enum><header>Declaration; declared</header><text>The terms <quote>declaration</quote> and <quote>declared</quote> shall only include the creation or expansion of a national monument under this section.</text></paragraph>

<paragraph id="H604EF656FF804F5087FF6CE80BF8E5E0"><enum>(2)</enum><header>Land</header><text>The term <term>land</term> shall not include submerged land or water.</text></paragraph>

<paragraph id="H78F1B349E8444791887E8974AFA5150F"><enum>(3)</enum><header>Object or objects of antiquity</header><text></text></paragraph>

<subparagraph id="H13F67472C14B47D991574E3A0CDC2936"><enum>(A)</enum><text>The term <term>object or objects of antiquity</term> means</text>

<clause id="H22DAE23281EC45F8A6313F0EA27F9A2C"><enum>(i)</enum><text>relics;</text></clause>

<clause id="H817808AB24A54DAAAAAC854B7EF187EF"><enum>(ii)</enum><text>artifacts;</text></clause>

<clause id="HEF2962A92F3B4761938AD19BF2FEFDE0"><enum>(iii)</enum><text>human or animal skeletal remains;</text></clause>

<clause id="H0B73CEF721BA4606931B81A05C4A0EDD"><enum>(iv)</enum><text>fossils (other than fossil fuels); and</text></clause>

<clause id="H19EF617E429B428CA5F9C05B3E7A27A4"><enum>(v)</enum><text>certain buildings constructed before the date of the enactment of this subsection.</text></clause></subparagraph>


<subparagraph id="H07212FBBE72C46DB957E248248285C8c"><enum>(B)</enum><text>The term <term>object or objects of antiquity</term> does not include</text>

<clause id="H3D3529779998419DA3B6C48D36204946"><enum>(i)</enum><text>natural geographic features; and</text></clause>

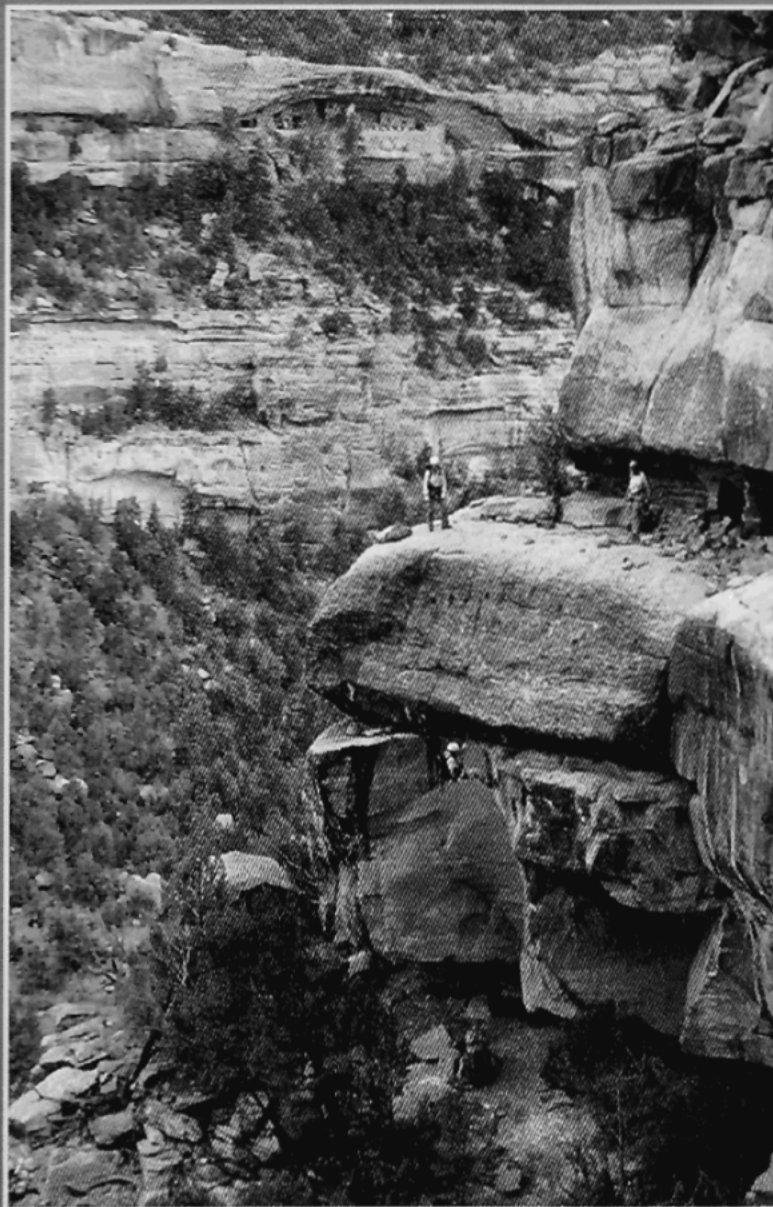
<clause id="H0BBB53007057474AB5411A1F6C691FB3"><enum>(ii)</enum><text  
display-inline="yes-display-inline">objects not made by humans, except fossils (other  
than fossil fuels) or human or animal skeletal  
remains.</text></clause></subparagraph></paragraph></subsection><after-quoted-block>.</af  
ter-quoted-block></quoted-block></paragraph></section>  
</legis-body>  
</bill>

# RANGER

The Journal of the Association of National Park Rangers

ANPR  *Stewards for parks, visitors and each other*  
The Association for All National Park Employees

Vol. 22, No. 3 • Summer 2006



The Antiquities Act • 1906 – 2006

Co-published with  
National Parks  
Conservation  
Association

DOI-2019-12-02075

# Fossils, Objects of Antiquity and the Antiquities Act

By Vincent L. Santucci  
George Washington Parkway

The Antiquities Act has served an important role in the establishment and protection of paleontological sites on federal lands. Despite conflicting interpretations of whether Congress intended the phrase “objects of antiquity” to include paleontological resources, the act served for nearly 75 years as the primary, if not only, authority for the protection and permitting of fossils on public lands. The Antiquities Act was used to protect a number of significant paleontological localities through the establishment of national monuments. Since 1906, the administrative and legislative histories of the act, combined with a number of solicitor’s opinions, changed the way federal agencies have interpreted the Antiquities Act and the phrase “objects of antiquities” as it relates to fossils.

## History

During the late 19th and early 20th centuries, the looting of archeological sites in the American Southwest became widespread. Similarly, intensive collecting of fossils, such as petrified wood from the Painted Desert of Arizona, was a growing problem during this same period.

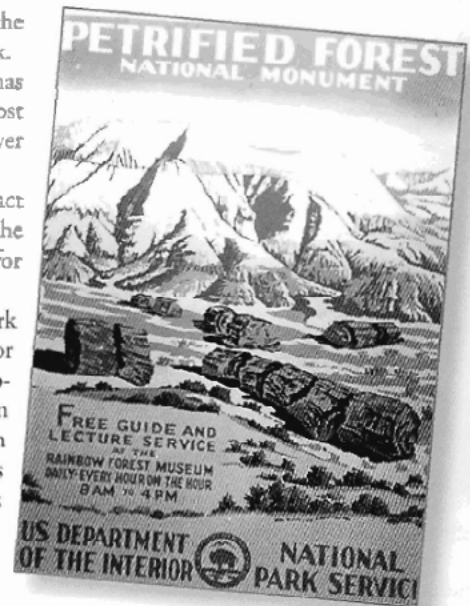
Congressman John Fletcher Lacey of Iowa had a great interest in the preservation of sites,

including a number of attempts to establish the Petrified Forest in Arizona as a federal park.

Environmental historian Hal Rothman has written that the Antiquities Act is the “...most important piece of preservation legislation ever enacted by the United States. Rothman further states, “...in practice the act became the cornerstone of preservation in the federal system.” (See articles in this issue for details on provisions of the act.)

Some of the units of the National Park Service, which are notably recognized for their fossil resources, were originally established through the presidential proclamation authority of the Antiquities Act. The term “scientific interest” in Section 2 of the act was applied to the establishment of monuments based on paleontological resources.

The first use of the Antiquities Act to preserve paleontological resources occurred six months after Congress passed the legislation. On Dec. 8, 1906, President Theodore Roosevelt proclaimed Petrified Forest National Monument as the second national monument, (Presidential Proclamation No. 697). The proclamation states: “...the mineralized remains of Mesozoic forests, commonly known as Petrified Forest, in the Territory of Arizona, situated upon the public lands owned and controlled by the United States, are of the greatest scientific interest and value and it appears that the public good would be promoted by reserving these deposits of fossilized wood



Petrified Forest National Monument was the first federal park specifically established to preserve paleontological resources.

as a national monument with as much land as may be necessary for the proper protection thereof.”

The Petrified Forest proclamation further states, “Warning is hereby expressly given to all unauthorized persons not to appropriate, excavate, injure or destroy any of the mineralized forest remains hereby declared to be a national monument or to locate or settle upon any of the lands reserved and made a part of said monument by this proclamation.”

President Woodrow Wilson invoked his Antiquities Act authority to proclaim Dinosaur National Monument on Oct. 4, 1915 (Proclamation No. 1313): “...an extraordinary deposit of Dinosaurian and other gigantic remains of the Juratrias period, which are of great scientific interest and value, and it appears that the public interest would be promoted by reserving these deposits as a national monument.”

Both Petrified Forest and Dinosaur were proclaimed prior to Congress passing the NPS Organic Act in 1916. The first national monument created after the establishment of the NPS was Fossil Cycad. On Oct. 21, 1922 (Proclamation No. 1641), President Warren Harding proclaimed the monument to preserve “...rich Mesozoic deposits of fossil cycads and other characteristic examples of paleobotany, which are of great scientific interest and value.”

The Civilian Conservation Corps assists Yale professor in 1935 in a paleontological excavation at Fossil Cycad National Monument. Photo from Yale University Archives.



During the first decade after its authorization, Fossil Cycad was not actively managed by the NPS. Unauthorized collecting of the ancient plants resulted in the site becoming essentially picked clean of any fossils. Based upon the loss of the primary resource, a bill was introduced in Congress to abolish the monument, and it was carried out in 1957.

### Fossil Parks Established by Congress

In addition to the monuments established by presidential proclamation, several fossil parks were established by congressional action. Included were:

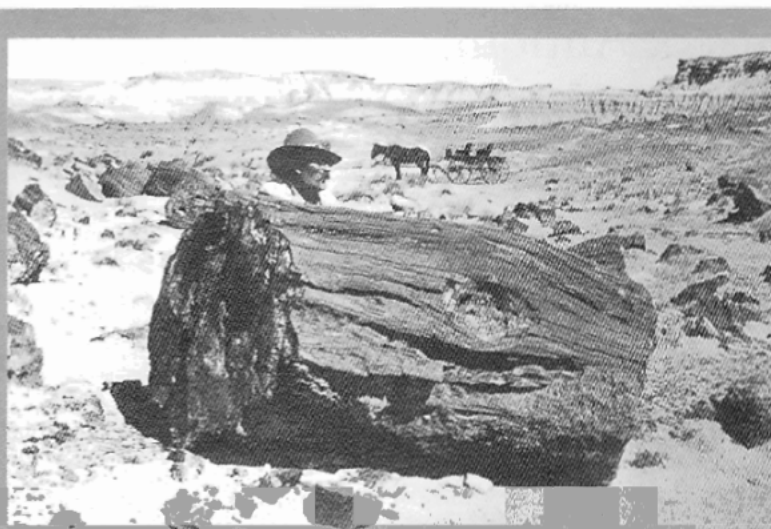
**Badlands National Monument**, originally authorized by Congress in 1929. However, the monument was not officially proclaimed until specific lands were acquired. Upon acquisition of the lands, President Franklin D. Roosevelt established the monument through Proclamation No. 2320 in 1939. The proclamation included the following paragraph: "Warning is hereby expressly given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of this monument, and not to locate or settle upon any of the lands thereof." The site was redesignated a national park in 1978.

**Agate Fossil Beds National Monument**, established in 1965, to provide a center for continuing paleontological research and for the display and interpretation of the scientific specimens uncovered at such sites.

**Florissant Fossil Beds National Monument**, established in 1969, to preserve and interpret the excellently preserved insect and leaf fossils.

**Fossil Butte National Monument**, established in 1972, to preserve outstanding paleontological sites and related geological phenomena.

**John Day Fossil Beds National Monument**, established in 1974, provided that "the national monument shall not be established unless and until the state of Oregon donates or agrees to donate the Thomas Condon-John Day Fossil Beds,



Historical photo from Petrified Forest.

Clarno and Painted Hills State Parks."

**Hagerman Fossil Beds National Monument**, established in 1988, to provide a center for continuing paleontological research, and to provide for the display and interpretation of the scientific specimens uncovered at such sites.

### Fossil Collecting Permits

Section 3 of the Antiquities Act authorizes the secretaries of the Interior, Agriculture and Army to issue permits for the gathering of objects of antiquity upon the lands of their respective jurisdiction. Further, this section 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." For nearly 75 years this provision of the act was used administratively by the departments as the primary authority for issuing permits for the collection of fossils.

In 1908, the Carnegie Museum in Pittsburgh applied for and was granted an permit to prospect and collect fossils from federal lands in Uintah County, Utah. This was the first such permit issued for fossils under the authority of the Antiquities Act. There is no documentation indicating any objection or challenge to the Department of the Interior's interpretation and application of the phrase "objects of antiquity" in issuing a fossil collecting permit.

The work of Carnegie Museum led to the discovery of an important dinosaur quarry

on Aug. 17, 1909. The scientific importance of the Utah dinosaur locality soon led to the protection of the site as a national monument in 1915. The act thus served a dual role in the establishment of Dinosaur National Monument. First, it provided authority for issuance of the permit under which the quarry was discovered, then authority for the president to proclaim the monument to protect this important site. After the establishment of Dinosaur National Monument, Andrew A. Jones, first assistant

secretary for the Department of the Interior, wrote to Carnegie Museum offering the opportunity for the institution to continue to apply for a permit stating, "such application will be given considerable consideration by the Department."

With the passage of the Antiquities Act, oversight of the national monument was relegated to the Bureau of Ethnology. All papers, including permit applications, were forwarded to this bureau. In late December 1915, William J. Holland of Carnegie Museum traveled to Washington to meet with the Interior secretary regarding future permits for fossil collecting. The men agreed that dinosaurs were not archeological objects, and the permit applications were forwarded to the Geological Survey and Dr. Charles Walcott at the Smithsonian Institution. On Jan. 8, 1916, an Antiquities Act permit was approved for Carnegie Museum to continue work at Dinosaur National Monument.

### Objects Of Antiquity

The use and interpretation of the phrase "objects of antiquity" within the Antiquities Act has generated considerable scholarly and legal debate. Some of the confusion may arise from the frequent difficulty of the public in differentiating the disciplines of archeology and paleontology. The lack of definition for the phrase "objects of antiquity" in the act and the legislative history has sparked the debate.

On Aug. 15, 1949, with the Smithsonian Act Congress provided some clarification and support to the Department of Interior's interpretation of "antiquity" to include fossils.

On Aug. 27, 1958, once again Congress

provided further evidence to support that paleontological resources were specifically intended within the Antiquities Act. In the legislation authorizing the Interstate Highway System, the general provisions state, "Funds authorized . . . to carry out this title . . . may be used for archeological and paleontological salvage in that state in compliance with the act entitled 'An Act for the preservation of American antiquities', approved June 8, 1906..."

#### Court Decisions And Solicitors' Opinions

The first memorandum produced by the Department of Interior Solicitor's Office that addresses the issue of fossils and the Antiquities Act was dated Oct. 12, 1956. The opinion, prepared by the assistant solicitor for national parks, supported that fossils were covered by the Antiquities Act. The opinion recited the long history of the department in interpreting the act to include fossils and referenced two court cases: *United States vs. Midwest Oil Co.* (1915) and *Sioux Band of Indians vs. United States* (1942).

On Jan. 19, 1959, a solicitor's memorandum was prepared regarding the applicability of the act toward petrified wood. The opinion indicated that most petrified wood deposits were not of sufficient historic or scientific interest to qualify under the act.

The regional solicitor in Salt Lake City issued a memorandum to the Utah state director of the Bureau of Land Management on July 10, 1963. The memorandum stated that the Antiquities Act authority included fossils, however, this explicitly applied to fossils of an actual or real historic or scientific interest or of some unusual significance.

In a memorandum dated Sept. 21, 1971, Rex Wilson, Office of the Secretary, Depart-

ment of Interior, provided clarification regarding previous solicitors' opinions regarding fossils and the Antiquities Act. Wilson's memo stated, "Although it is not specifically indicated in the memorandum, fossils or paleontological remains protected within the scope of the Antiquities Act are only vertebrate remains."

In the case of *United States vs. Diaz* in 1974, the Ninth Circuit Court of Appeals held that the phrase "objects of antiquity" within the Antiquities Act was unconstitutionally vague and unenforceable. This decision led to the dismissal of *United States vs. Jenkins* in 1975, in which a university professor was charged with a violation of 16 U.S. Code § 551 in the alleged removal of fossils from BLM land upon which he claimed to have mistakenly entered.


The most recent solicitor's opinion on the applicability of the Antiquities Act to paleontological resources was issued Jan. 19, 1977. The solicitor takes the position that paleontological resources are protected under the act, but advises that federal agencies would be better protected under other authorities such as the Federal Land Policy and Management Act of 1976. The solicitor concluded that "until new regulations are developed, paleontological resources will continue to be regulated under the Antiquities Act."



Dinosaur bones at Dinosaur National Monument. NPS photo.

In a comprehensive legal review of this discussion in 1994, Dorna Sakurai concluded, "Although it is obvious that a fossil would qualify as an 'antiquity,' it is unclear whether Congress intended to cover paleontological objects under this act."

#### 100 Years Of Protection

Since the passage of the Antiquities Act, the American public continues to experience and enjoy the important fossil heritage preserved through this legislation. Millions of visitors have been afforded the opportunity to walk among the giant fossil logs at Petrified Forest, to scan the wall of dinosaur bones in the quarry at Dinosaur National Monument, and to be inspired by these "objects of antiquity" however they are interpreted. 

Vincent L. Santucci is chief ranger at George Washington Memorial Parkway.



Carnegie Museum excavations that led to establishment of Dinosaur National Monument. NPS photo.