

## NATIONAL MONUMENT REVIEW PUBLIC COMMENT PROCESS

On April 26, 2017, the President issued Executive Order 13792, directing the Secretary of the Interior to conduct a review of National Monuments meeting certain criteria and setting forth elements to be included in the review. On May 5, 2017, the Department of the Interior issued a press release, and, on May 11, 2017, published a Federal Register notice, both soliciting public comments on the review. Each notice listed the national monuments that met the criteria found in the Executive Order and thus were subject to the review. Those commenting were requested to address the factors set forth in the Executive Order.

The Department established a docket on the government wide regulations.gov site to receive comments electronically and a mail address for mailed in comments. Comments were not accepted by telephone or email. Because the Secretary was required by the Executive Order to provide an interim report to the President on the Bears Ears National Monument no later than June 11, the initial comment period for comments on that monument was open through May 26, to provide an opportunity to review the comments prior to submitting the interim report. Following submission of the interim report, the Bears Ears comment period was reopened.

The final report was due to the President no later than August 24. The comment period for the final report, including the reopened opportunity for Bears Ears comments, extended through July 10.

The Department established a comment review team, composed of mid level staff from a variety of bureaus, to categorize the comments. Early plans to place the comments into a variety of subject matter categories tracking the Executive Order criteria were abandoned as it became clear that the overwhelming majority of the comments were expressions of individual opinion for or against the review. ~~A category of “uncodable” was added, as a small but increasing number of the comments were such things as “test”, random letters or numbers, or comments on unrelated issues.~~ Ultimately, comments were categorized as “support[ing the review or changes at individual monuments]” “oppose[ing the review or changes at individual monuments]”. A secondary category of “[provides] new information [relative to the review or individual monuments]” was also established, to distinguish such comments from the expressions of personal or group opinion. *A category of “uncodable” was added, as a small but increasing number of the comments were such things as “test”, random letters or numbers, or comments on unrelated issues.*

Comments in the ~~latter~~ “new information” category could be either in support or opposition to the review or of changes at individual monuments. These were set aside for further review so as to determine the applicability of the information provided to the review. Responses to the types of comments placed into this category are in the attached document. The comment review team completed its review of the comments on August 11.

When a comment is received by regulations.gov with one or more attachments submitting the views of others in letters, petitions, or postcards, regulations.gov registers the communication as a single comment, no matter how many letters, postcards, or petition signatures might be in the attachment. ~~For these types of communications~~ *Although there is no requirement to do so,*

each of the ~~submissions~~ *comments with attachments* stated how many individuals were represented in the attachments, and the DOI review accepted that figure as accurate and adjusted the number associated with each such comment on regulations.gov from one to the stated number in the attachments. In addition to the comments received electronically, all of the approximately 112,000 comments received by mail prior to the close of the comment period were electronically scanned and transferred to the regulations.gov site to ensure that all comments received were available for public inspection. The regulations.gov site reflects the number of individual and stated attachment comments received by the end of the comment period: 2,838,046.

Of the total comments, approximately 2,000,000 were received as attachments to communications emailed to regulations.gov. All of ~~these the communications that included the views of individuals~~ were submitted by organizations opposed to the review. Of the individual comments received on the monument review (i.e. those not in attachments), approximately 86% of those individual comments were form letters.

## **SUMMARY OF COMMENTS ON REVIEW OF NATIONAL MONUMENTS**

The majority of the comments submitted fell into two general categories: 1) statements for or against the review, or 2) statements that the commenter was for or against changes at some or all of the national monuments under review. As discussed above, over 2 million comments were provided as attachments (i.e., signatures to petitions, letters, postcards) to comments from organizations, all opposed to any changes, and of the individually submitted comments, 86% were form letters. These general comments did not provide detailed information but can be characterized as simple for or against statements.

Many of the other comments expressed the view that the purpose or the results of the review would be to transfer some or all of the lands within the reviewed monuments out of federal ownership. These comments highlight an area of confusion regarding the monument review. The Executive Order made no reference to such a purpose and the Secretary has publicly stated his intent that no such transfers would result from the review.

Other individual comments mistakenly assumed that the National Park System or individual parks were under review. National Parks were never part of the review process.

Some comments highlighted the importance of the outdoor recreation economy nationally and some comments referenced selected state specific figures for the outdoor recreation economy. Some of the individual comments also referenced two studies by Headwaters Economics (2011 and 2014), which commenters noted concluded that national monuments are consistent with economic growth. As part of the review process, economic analyses were undertaken by Departmental economists for each monument under review.

Individual comments were also received that highlighted the importance of public lands for outdoor recreation, the positive impact of outdoor activities on a personal and spiritual level, as well as the positive impacts to physical and mental health. These are important components that were considered by the Department during the review process to ensure continued access for outdoor recreation and the ability to enjoy the public lands.

Comments were also received that focused on legal interpretations of the Antiquities Act. One submission signed by 121 law professors expressed concerns with the process initiated by EO 13792 and questioned whether the President has the power to abolish or diminish a national monument, commenting that the Act provides only limited delegation to the President to identify and reserve a monument, not to diminish or abolish one. The submission focused its comments to legal issues implicated in the review, but also noted that evidence suggests that the creation of national monuments enhances local economies by attracting visitors. The submission also attached essays, op eds, and other comment letters that raised similar legal comments and were also supportive of the Katahdin Woods and Waters National Monument.

In another submission that focused on legal interpretations of the Antiquities Act, the Mountain States Legal Foundation provided comments that summarized designations of National Monuments since 1996, focusing especially on the designation of The Grand Staircase Escalante National Monument and the Northeast Canyons and Seamounts Marine National Monument. The commenter also discussed the President's authority to revoke or diminish national monuments, concluding that the President has such authority. Other comments questioned the lawfulness of the use of the Antiquities Act on particular Federal lands, for example, commenters questioned the authority of the President to designate a monument on lands covered by the 1937 Oregon & California Lands Act.

Information presented in these submissions highlighted a number of articles, legal analysis, and views that have been developed over the years on the President's authority under the Antiquities Act. This analysis was considered in the review process and in the development of the Secretary's recommendations.

Comments were also received from a number of sportsmen and women. Many of these comments were associated with use of federal land by sportsmen and women focusing on continued access for hunting, fishing and recreational shooting. For example, comments by the Congressional Sportsmen's Foundation noted that: reasonable public access should be retained to enable continued hunting, fishing and recreational target shooting opportunities; proclamations should clearly stipulate that existing state management authority over fish and wildlife will be retained by state fish and wildlife agencies; lands managed by the BLM and USFS should remain under the authority of these agencies subsequent to any monument designation; sporting opportunities should be upheld and historical and cultural significance of hunting and fishing explicitly acknowledged in the proclamation; and, where in places historic and existing use allow, recreational shooting should be recognized as consistent with the purposes of a monument when compatible with protection of the objects. Additional comments noted that several proclamations have failed to include prescriptive language the sporting public assurances regarding continued availability of hunting in the monument and that several BLM managed national monuments have used monument status as justification to restrict target shooting. Consideration of both limiting and ensuring access for hunting, fishing and recreational shooting was part of the review process. As part of this process, existing proclamations and management plans were reviewed.

Many of the comments regarding the Bears Ears National Monument highlighted archeological sites and traditional cultural resources and emphasized concerns regarding the preservation of

such sites. In addition, some commenters noted that there would be no change to existing oil, gas and mining leases or operations and that livestock grazing would continue in the Bears Ears National Monument. Commenters also noted that public interest in the monuments, including Bears Ears National Monument, can be expected to result in camping, hiking, backpacking, climbing, mountain biking, horseback riding, and ATV use resulting in increasing financial gains in the leisure and hospitality industries. There were also comments that noted that the boundary of Bears Ears National Monument is largely based on the Utah Public Lands Initiative. Commenters also summarized the ancient carving sites and painting sites and known archaeological sites within the monument. There were also comments that highlighted looting and sale of archaeological objects as well as other desecrations of sites. The review process included consideration of objects of historic or scientific interest as well as consideration of the smallest area compatible with protection of those objects, as well as other Federal laws and land use designations that provide protection as well.

Comments were also received that noted that the question of using the Antiquities Act to protect the Bears Ears is more complicated than simply applying monument status to the land. One commenter noted that all federal lands already are safeguarded by the Archaeological Resources Protection Act of 1979 that specifically addresses inadequacies in the original Antiquities Act. The commenter also noted that while some warned that energy development was imminent without designation, studies showed a low potential for commercially recoverable oil beneath the monument and that it is recognized that a uranium boom in southeast Utah is long since passed. The commenter also noted that an unspoken threat for the monument is massive tourism and recreation and, citing Moab as an example, asserted that a tourism industry creates an economy driven by low wages and expensive homes, thus making it hard for working poor to afford a decent place to live. Among other things, the commenter recommended that the archaeological protection law be strictly enforced, that Congress should take action to empower Native Americans to help manage the lands and not just have them serve on advisory panels, withdraw all oil and gas leases that are marginal in the monument, and that there should be a recognition of the impact of “Industrial Strength Recreation.”

Comments were received on all monuments under review. All comments are available on [regulations.gov](https://www.regulations.gov). Also, a summary of “Tribal Comments on Monument Designations Review under E.O. 13792” was prepared by the Office of Regulatory Affairs & Collaborative Action Indian Affairs, July 17, 2017. This summary is posted on [regulations.gov](https://www.regulations.gov).

Comments were submitted that discussed archeological, paleontological, and cultural sites in specific monuments, as well as the various species of plants and/or animals found on national monument lands. The rich variety of resources found on the Federal lands were considered during the review. Information regarding these resources was available during the review process, including inventory information collected by Federal agencies.

For example, comments on Hanford Reach National Monument noted that the area was home to cultural resources, hundreds of bird and wildlife species, and mainstem salmon spawning habitat in the Columbia River basin. Comments received on the Giant Sequoia National Monument were received from a number of commenters. For example, a California State agency noted its support for the Giant Sequoia National Monument, while another commenter

noted that with the reduction of timbering resulting from establishment of the monument there has been deterioration of forest roads and a build up of forest fuels and recommended that the monument should be abolished and the lands returned to National Forest designation. The same commenter noted that lands covered by Federal land management plans should rarely be included within Antiquities Act protection.

December 4, 2017