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National Monuments and the Antiquities Act

name redacted
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Summary

The Antiquities Act of 1906 authorizes the President to proclaim national monuments on federal lands that contain historic landmarks, historic and prehistoric structures, or other objects of historic or scientific interest. The President is to reserve "the smallest area compatible with the proper care and management of the objects to be protected." The act was designed to protect federal lands and resources quickly, and Presidents have proclaimed a total of 151 monuments. Congress has modified many of these proclamations and has abolished some monuments. Congress also has created monuments under its own authority.

Presidential establishment of monuments sometimes has been contentious—for example, President Franklin Roosevelt's creation of the Jackson Hole National Monument in Wyoming (1943) and President Clinton's establishment of 19 monuments and expansion of 3 others (1996-2001). President Obama's designation of 23 new monuments and enlargement of 3 others have renewed controversy over the Antiquities Act. However, the President cited support for his designations, many of which had been proposed for protective designations by legislation.

Issues have included the size of the areas and types of resources protected; the effects of monument designation on land uses; the level and types of threats to the areas; the inclusion of nonfederal lands within monument boundaries; the lack of public participation and environmental review requirements in the act; and selection of the managing agency.

On occasion, presidential monument designations prompted changes in law to restrict the President's authority to proclaim monuments. Critics of the existing authority continue to seek to limit or revoke the President's authority. The 114th Congress is considering proposals to limit the President's authority. Among their other provisions, some of these bills seek to

- bar the President from declaring monuments in particular states or counties—H.R. 488 and S. 232 (Nevada); H.R. 3946, H.R. 5538, and H.R. 5781 (counties);
- require approval by the pertinent state legislature (H.R. 900, H.R. 2258, H.R. 4132, S. 228, S. 437, S. 2004) or governor (H.R. 3946, H.R. 4132);
- make the President's authority subject to congressional approval—H.R. 2258, H.R. 3668, (Section 905) (areas in CA), H.R. 3389, S. 2004—and also to the National Environmental Policy Act (NEPA)—H.R. 330, H.R. 900, S. 228, S. 437;
- restrict monument proclamations to 5,000 acres or less (H.R. 3946);
- limit or prohibit designations from affecting particular activities or rights (H.R. 3946, S. 972, S. 1416);
- prohibit the President from designating monuments in areas of the exclusive economic zone unless certain conditions are met (H.R. 330, S. 437);
- create requirements for advance notice of proclamations and for public hearings, comment, and report following proclamations (H.R. 3389);
- require approval of local governing bodies and land and wildlife management authorities (H.R. 3946); and
- bar the Administration from implementing restrictions on public use of a national monument until certain conditions are met (H.R. 330, H.R. 900, S. 228, S. 437).

Monument advocates favor the Antiquities Act in its present form. They assert that the public has supported and courts have upheld designations and that many past designations that initially were controversial have come to be supported. They contend that the President needs continued authority to act promptly to protect valuable resources on federal lands from potential threats.

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Introduction

Presidential establishment of national monuments under the Antiquities Act of 1906 (54 U.S.C. §§320301-320303)[1] has protected valuable sites, but also has been contentious. Litigation and legislation related to the law have been pursued throughout its history. To give one historical example, displeasure with President Franklin Roosevelt's proclaiming of the Jackson Hole National Monument in Wyoming in 1943 (which became Grand Teton National Park) prompted litigation on the extent of presidential authority under the Antiquities Act, and led to a 1950 law prohibiting future establishment of national monuments in Wyoming unless Congress made the designation.[2] As another example, President Carter's establishment of monuments in Alaska in 1978 also was challenged in the courts and led to a statutory requirement for congressional approval of land withdrawals[3] in Alaska larger than 5,000 acres.[4] President Clinton's proclamation of the Grand Staircase-Escalante National Monument in 1996 triggered several lawsuits, a law authorizing land exchanges,[5] and proposals to amend or revoke presidential authority under the Antiquities Act.[6] President George W. Bush's designation of a marine national monument led to a legal challenge claiming that fishing rights had been lost.[7] To date, no court challenges have succeeded in undoing a presidential designation.

Additionally, initial opposition to some monument designations has turned to support over time. Some controversial monuments later were enlarged and redesignated as national parks by Congress and today are popular parks with substantial economic benefit to the surrounding communities. For instance, the Grand Canyon National Monument, proclaimed in 1908 and the subject of a legal challenge, is now a world-famous national park.

Various issues regarding presidentially created monuments have generated controversy, lawsuits, enacted changes, and legislative proposals to limit the President's authority. Issues include the size of the areas and types of protected resources, the level and types of threats to the areas, the inclusion of nonfederal lands within monument boundaries, restrictions on land uses that may result, the manner in which the monuments were created, and the selection of the managing agency. Recent Congresses have considered but not enacted bills to restrict the President's authority to create monuments and to establish a process for input into monument decisions. Monument supporters assert that changes to the Antiquities Act are neither warranted nor desirable. They believe that the act serves an important purpose in preserving resources for future generations. The Obama Administration's exploration of areas for national monument designation, including designation of 23 new monuments and enlargement of 3 others, have renewed interest in, and legislative efforts to restrict, the President's authority to proclaim national monuments.

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[1] The text of the law had been codified at 16 U.S.C. §§431-433. It was recodified under P.L. 113-287 to 54 U.S.C §§320301-320303.

[2] 54 U.S.C. §320301(d).

[3] A withdrawal is an action that restricts the use or disposition of public lands.

[4] This provision was enacted as part of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), P.L. 96-487; see 16 U.S.C. §3213.

[5] P.L. 105-335.

[6] For instance, legislative proposals in the 104th Congress (1995-1996) included H.R. 4118, H.R. 4214, H.R. 4242, and S. 2150.

[7] Dettling v. United States, 983 F. Supp. 2d 1184 (D. Haw. 2013). The case pertained to the Papahanaumokuakea Marine National Monument, which was established in 2006 as the Northwestern Hawaiian Islands National Monument then redesignated in 2007 as the Papahanaumokuakea Marine National Monument.

The Antiquities Act of 1906

The Antiquities Act of 1906 authorizes the President to proclaim national monuments on federal lands that contain "historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest." The President is to reserve "the smallest area compatible with the proper care and management of the objects to be protected."[8] Congress subsequently limited the President's authority by requiring congressional authorization for extensions or establishment of monuments in Wyoming,[9] and by making withdrawals in Alaska exceeding 5,000 acres subject to congressional approval.[10]

The Antiquities Act was a response to concerns over theft from and destruction of archaeological sites and was designed to provide an expeditious means to protect federal lands and resources. President Theodore Roosevelt used the authority in 1906 to establish Devil's Tower in Wyoming as the first national monument. Sixteen of the 19 Presidents[11] since 1906 created 151 monuments, including the Grand Canyon, Grand Teton, Zion, Olympic, the Statue of Liberty, and the Chesapeake and Ohio Canal.[12] President Franklin Roosevelt used his authority the most often (36 times), while President Obama has proclaimed the most monument acreage (about 549 million, primarily in two expanded marine monuments).[13]

Monuments vary widely in size. While roughly half of the presidential monument proclamations involved fewer than 5,000 acres, they have ranged from less than 1 acre to about 283 million acres.[14]

Through the authority in the Antiquities Act, Presidents have modified national monuments established by earlier presidential proclamation. Such modifications included enlargement or diminishment of monument boundaries. For instance, four Presidents enlarged the Muir Woods National Monument following its establishment in 1908, and three Presidents diminished Mount Olympus National Monument following its establishment in 1909.[15] The Antiquities Act does not expressly authorize a President to abolish a national monument established by an earlier

[8] 54 U.S.C. §320301.

[9] 54 U.S.C. §320301(d).

[10] 16 U.S.C. §3213.

[11] Since 1906, the Presidents who have not used this authority are Richard M. Nixon, Ronald Reagan, and George H. W. Bush.

[12] Monuments created by Presidents from 1906 through September 6, 2016, are listed chronologically on the website of the National Park Service at https://www.nps.gov/archeology/sites/antiquities/MonumentsList.htm. The information includes the President that proclaimed the monument and the size of the monument. The list also denotes when Presidents have issued proclamations affecting previously designated monuments, for instance to enlarge or diminish them, and when Congress has enacted related legislation, such as to redesignate them (e.g., as national parks).

[13] In 2014, President Obama expanded the Pacific Remote Islands Marine National Monument by approximately 261.3 million acres. In 2016, President Obama expanded the Papahanaumokuakea Marine National Monument by approximately 283.4 million acres. Thus, the two areas contain about 545 million acres of the 549 million acres proclaimed by the President as of September 6, 2016.

[14] The Stonewall National Monument, established by President Obama in New York, is 0.12 acres. The Papahanaumokuakea Marine National Monument was established by President George W. Bush in 2006 with 89.5 million acres; President Obama's 2016 expansion of the monument adding approximately 283.4 million acres made the monument roughly 372.9 million acres. The largest national monument proclaimed on land was the Wrangell-St. Elias National Monument in Alaska, with 10.95 million acres. It was redesignated as a national park and national preserve in 1980, two years after it was proclaimed.

[15] Mount Olympus National Monument was later redesignated by law as Olympic National Park.

presidential proclamation, and no President has done so. There have been no court cases deciding the issue of the authority of the President to abolish a national monument.[16]

Congress has created national monuments on federal lands on numerous occasions under its constitutional authority to enact legislation regarding federal lands.[17] This authority is not defined or limited by the provisions of the Antiquities Act. For instance, Congress could enact legislation providing more land uses than are typical for national monuments created by the President, such as allowing new commercial development, or could choose to provide additional protections. Some believe that such legislation (as opposed to presidential action) is more likely to involve the input of local and other citizens.

Congress also has modified monuments (including those created by the President), for instance, by changing their boundaries. Congress has abolished some monuments outright[18] and converted others into different protective designations, such as national parks. Approximately half of the current national parks were first designated as national monuments.

Monument Issues and Controversies

Presidential authority to create monuments—and the recent application of that authority by President Obama—has generated concern among some Members of Congress, state and local officials, user groups, and others. Controversies in Congress are focused on a perceived lack of consistency between the Antiquities Act and the policies established in other laws, especially the land withdrawal provisions of the Federal Land Policy and Management Act of 1976 (FLPMA),[19] the environmental reviews required by the National Environmental Policy Act (NEPA),[20] and the public participation requirements of NEPA, FLPMA, and other laws. Criticism also has been expressed by those who oppose restrictions on land uses, both extractive (e.g., mining) and recreational (e.g., off-road vehicle use), as a result of monument proclamations. Critics also have challenged the size of the areas and types of resources that would be protected.

Among the monument measures considered during recent Congresses were bills to impose restrictions on presidential authority, such as those to limit the size or duration of withdrawals; to prohibit or restrict withdrawals in particular states; to encourage public participation in the monument designation process; to revoke the President's authority to designate monuments or require congressional and/or state approval of some or all monument designations; or to promote presidential creation of monuments in accordance with certain federal land management and environmental laws. Measures also were introduced to change land uses within monuments and to alter monument boundaries.

[16] For information on the authority of the President to modify or abolish monuments, see archived CRS Report RS20647, *Authority of a President to Modify or Eliminate a National Monument*, by (name redacted).

[17] U.S. Constitution, Article IV, Section 3: "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.... "

[18] For example, the Fossil Cycad National Monument in South Dakota was abolished by an act of August 1, 1956, and the area was transferred to the Bureau of Land Management to be administered under the public land laws. As another example, the Papago Saguaro National Monument in Arizona was abolished by an act of April 7, 1930, and the area was conveyed to the state of Arizona for park, recreational, and other public purposes.

[19] 43 U.S.C. §§1701 et seq. This law applies primarily to the lands managed by the Bureau of Land Management and actions taken by the Secretary of the Interior, although some provisions also apply to the lands managed by the Forest Service and the Secretary of Agriculture.

[20] 42 U.S.C. §§4321 et seq.

Supporters of the Antiquities Act assert that changes to the act are neither warranted nor desirable. They contend that previous Congresses that focused on this issue were correct in not repealing the Antiquities Act. They note that Presidents of both parties have used the authority for over a century to protect valuable federal lands and resources expeditiously, and they defend the President's ability to take prompt action to protect areas that may be vulnerable to looting, vandalism, commercial development, and other permanent changes. However, the Secretary of the Interior has authority to make emergency withdrawals of federal lands, which are effective when made but expire at the end of three years.[21] Defenders also note that some past designations that initially were contentious have come to be widely supported over time. They contend that large segments of the public support monument designations, for the protections they afford and the recreational, preservation, and economic benefits that such designations sometimes bring. They note that courts have supported presidential actions.

A primary objection to national monuments is that the declaration changes the property from being federal land available for multiple uses to being a national monument with possible restricted uses. A 1945 legal challenge to the Jackson Hole National Monument was premised on the state's loss of revenue from taxes and grazing fees.[22] Courts have found that, for monuments established under the Antiquities Act, agencies are afforded broad rights to protect the resources of the site, and that the loss of income is not a legal basis to reject a monument designation.[23] The broad authority to protect natural resources by creating national monuments includes establishing water rights for those protected resources.[24]

Monument Size

In establishing a national monument, the President is required by the Antiquities Act to reserve "the smallest area compatible with the proper care and management of the objects to be protected."[25] Many monuments have been quite small, but several Presidents have established large monuments, especially in Alaska and in marine areas. Examples of large monuments include Katmai, established in 1918 with 1.1 million acres; Glacier Bay, created in 1925 with 1.4 million acres; many of the Alaska monuments proclaimed in 1978,[26] the largest being Wrangell-St. Elias, with nearly 11 million acres; and Grand Staircase-Escalante, established in 1996 with 1.7 million acres. President George W. Bush established large marine monuments, namely the Papahanaumokuakea Marine National Monument, with approximately 89.5 million acres; the Marianas Trench Marine National Monument, with 60.9 million acres; the Pacific Remote Islands Marine National Monument, with 55.6 million acres; and the Rose Atoll Marine National Monument, with 8.6 million acres. At the time, the Bush Administration claimed that the latter three areas formed the largest protected ocean area in the world.[27] More recently, President

[21] 43 U.S.C. §1714(e). The lands return to their original designation unless permanent action is taken. Also, the Secretary of the Interior is authorized to make emergency withdrawals of federal lands not under DOI jurisdiction without the consent of the managing agency. 43 U.S.C. §1714(i).

[22] Wyoming v. Franke, 58 F. Supp. 890 (D. Wyo. 1945).

[23] Wyoming v. Franke, 58 F. Supp. 890 (D. Wyo. 1945).

[24] Cappaert v. United States, 426 U.S. 128 (1976) (regarding Death Valley National Monument); High Country Citizens' Alliance v. Norton, 448 F. Supp. 2d 1235 (D. Colo. 2006) (referring to Black Canyon of the Gunnison National Monument).

[25] 54 U.S.C. §320301(b).

[26] In 1978, President Carter proclaimed 15 new monuments and two enlarged ones in Alaska.

[27] For background information on protection of ocean areas, see CRS Report RL32154, *Marine Protected Areas: An Overview*, by (name redacted).

Obama expanded the Pacific Remote Islands Marine National Monument by about 261 million acres.[28]

Critics assert that large monuments violate the Antiquities Act, in that the President's authority regarding size was intended to be narrow and limited. They charge that Congress intended the act to protect specific items of interest, especially archaeological sites and the small areas surrounding them. They support this view with the legislative history of the act, in which proposals to limit a withdrawal to 320 or 640 acres were mentioned although not enacted. They contend that some of the monument designations were greater than needed to protect particular objects of value, and that the law was not intended to protect large swaths of land or ocean.

Defenders observe that by not specifically capping the size of monument designations, the Antiquities Act gives the President discretion to determine the acreage necessary to ensure protection of the resources in question, which can be a particular archaeological site or larger features or resources. The Grand Canyon, for example, originally was a national monument measuring 0.8 million acres; President Theodore Roosevelt determined that this large size was necessary to protect the "object" in question—the canyon. Defenders also note that after considering the issue in the early 1900s, Congress rejected proposals to restrict the President's authority to set the size of the withdrawal. Further, they assert that preserving objects of interest may require withdrawal of sizeable tracts of surrounding land to preserve the integrity of the objects and the interactions and relationships among them.

The courts have deferred to the President's judgment as to the proper size for a monument. For example, a lawsuit challenging the Giant Sequoia National Monument was based in part on the monument's size (327,769 acres) not being "the smallest area compatible with proper care and management," as required by the act.[29] The court found no factual basis for the argument that the size did not meet the standards of the act.

Establishment Criteria

Under the Antiquities Act, the President can establish monuments on federal land containing "historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest."[30] Some proclamations have identified particular objects needing protection, while others have referred more generally to scenic, scientific, or educational features of interest.

Presidents sometimes have cited threats to resources (e.g., natural and cultural) to support establishing monuments, although imminent threat is not expressly required by the Antiquities Act. In his remarks designating the Grand Staircase-Escalante National Monument, for instance, President Clinton expressed concern about work underway for a large coal mining operation that, he asserted, could damage resources in the area. Sometimes the noted threats appear less immediate, as for the lands included in the Grand Canyon-Parashant Monument (proclaimed January 11, 2000) which "could be increasingly threatened by potential mineral development," according to the Clinton Administration.[31] In other cases, threats were reported by the press or

[28] All marine monument sizes listed are approximate. The sizes of marine monuments typically have been identified in square miles, although the proclamation expanding the Pacific Remote Islands Marine National Monument was expressed in square nautical miles. Monuments on land have been expressed in acres. A square mile is equal to 640 acres, while a square nautical mile is equal to 847.5 acres.

[29] Tulare County v. Bush, 306 F.3d 1138, 1142 (D.C. Cir. 2002).

[30] 54 U.S.C. §320301(a).

[31] The White House, Office of the Press Secretary, *Grand Canyon-Parashant National Monument*, January 11, 2000.

private organizations. For instance, the National Trust for Historic Preservation had identified the (subsequently proclaimed) President Lincoln and Soldiers' Home National Monument as one of the country's most endangered historic properties.

Presidential creation of monuments in the absence of immediate threats to resources troubles those who believe that the law is intended to protect objects that are in immediate peril of permanent harm. They contend that Presidents have established monuments to support environmental causes, limit development, and score political gains, among other reasons. Those who contest those charges note that the Antiquities Act lacks a requirement that objects be immediately threatened or endangered. Others cite the pervasive dangers of development and growth, looting, and vandalism as sufficient grounds for contemporary presidential action.

Some critics charge that, because the original purpose of the act was to protect specific objects, particularly objects of antiquity such as cliff dwellings, pueblos, and other archeological ruins (hence the name "Antiquities Act"), Presidents have used the act for excessively broad purposes. Among the broad purposes they cite are general conservation, recreation, scenic protection, or protection of living organisms. These purposes, they contend, are more appropriate for a national park or other designation established by Congress. Supporters of current presidential authority counter that the act does not limit the President to protecting ancient relics, and maintain that "other objects of historic or scientific interest" is broad wording that grants considerable discretion to the President.

Courts, including the U.S. Supreme Court, have upheld under the Antiquities Act both the designation of particular monuments and the President's authority to create monuments. In a decision addressing one of the first national monuments proclaimed—the Grand Canyon—the Supreme Court upheld the President's authority under the Antiquities Act.[32] The Court found that the act gave the President the authority to preserve lands with cultural or scientific interest.[33] Since then, courts have given deference to this presidential authority, holding that courts have only a limited review of a presidential proclamation provided that it states the natural or historic interest and that the area is the minimum amount needed to protect those interests.[34] The courts also have ruled that the act may protect natural wonders and wilderness values.[35]

Inclusion of Nonfederal Lands

It is an unresolved issue whether the Antiquities Act allows the President to declare a national monument on lands not owned by the federal government. To date, no presidential declaration of a monument has converted private property to federal property. However, some private inholdings occur within national monuments.

The Antiquities Act initially states that it applies to lands *owned or controlled* by the federal government. However, it also states that, where the objects to be preserved are on privately owned lands, the property "may be relinquished to the Federal Government."[36] Private and other nonfederal landowners have donated land under this provision, and the President subsequently designated national monuments that included the donated lands. Typically the monument

[32] Cameron v. United States, 252 U.S. 450 (1920).

[33] Ibid., at 455.

[34] Tulare County v. Bush, 306 F.3d 1138, 1142 (D.C. Cir. 2002) (regarding Giant Sequoia National Monument).

[35] Mountain States Legal Foundation v. Bush, 306 F.3d 1132, 1138 (D.C. Cir. 2002) (regarding six monuments in four states).

[36] 54 U.S.C. §320301(c).

designation occurs quickly following the land donation. Land donation has occurred for both early and more recent presidential proclamations. As an early example, Secretary of the Interior James R. Garfield accepted the private donation of a redwood forest in California on December 31, 1907, and on January 9, 1908, President Theodore Roosevelt proclaimed the area the Muir Woods National Monument. More recently, former Secretary of the Interior Ken Salazar accepted donations leading to the establishment of some monuments by President Obama, including the César E. Chávez National Monument in California.

It is not clear whether relinquishment must be voluntary (via donation, purchase, or exchange) or may include condemnation. Courts have only discussed the issue as a side matter to the dispute they were resolving. In two such cases, the courts have indicated that relinquishment should be interpreted as a voluntary surrender of property. The more recent decision, in 2008, stated that the Antiquities Act "does not authorize government officials forcibly to take private property to provide such care or to enter private land."[37] In 1978, the Supreme Court described the Antiquities Act as applying solely to federal property: "A reservation under the Antiquities Act thus means no more than that the land is shifted from one federal use, and perhaps from one federal managing agency, to another."[38]

In some cases, nonfederal lands are contained within the outer boundaries of a monument, although the ownership does not change by the monument designation. This inclusion is a source of controversy. The Clinton Administration indicated that the monument designation does not apply to nonfederal lands. The Solicitor of the Department of the Interior (DOI) asserted this view in 1999 testimony before Congress, stating that the Antiquities Act applies only to federal lands and that monument designations cannot bring state or private lands into federal ownership.[39] Some monument proclamations have stated that nonfederal lands will become part of the monument if the federal government acquires title to the lands from the current owners.[40]

Some, however, note that while private or state-owned lands are technically not part of the monument, development of such land located within monuments is difficult because such development might be incompatible with the purposes for which the monument was created or constrained by management of the surrounding federal lands.[41] Monument supporters note that if state or private landowners within a monument fear or experience difficulties, they can pursue land exchanges with the federal government. Some monument proclamations have authorized land exchanges to further the protective purposes of the monument.[42]

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[37] Buono v. Kempthorne, 527 F.3d 758 (9th Cir. 2008).

[38] California v. United States, 436 U.S. 32, 40 (1978) (regarding Channel Islands National Monument).

[39] Testimony of John D. Leshy, at House Committee on Resources, Subcommittee on National Parks and Public Lands, hearings on H.R. 1487, *The National Monument NEPA Compliance Act*, 106th Cong., 1st sess., June 17, 1999, p. 53 and p. 55.

[40] For instance, nearly all of President Clinton's monument proclamations had such a provision, including the monument proclamations for the Agua Fria, Canyons of the Ancients, Sonoran Desert, and Upper Missouri River Breaks National Monuments. These monument proclamations are on the BLM website under the respective monument listings, at http://www.blm.gov/wo/st/en/prog/blm_special_areas/NLCS/monuments.html.

[41] See, e.g., Wilkenson v. Department of the Interior, 634 F. Supp. 1265 (D. Col. 1986) (federal government could not completely restrict travel on a preexisting right of way through a national monument).

[42] For instance, President Clinton's monument proclamations typically contained such a provision, including the monument proclamations for the Agua Fria, Canyons of the Ancients, Sonoran Desert, and Upper Missouri River Breaks National Monuments. These monument proclamations are on the BLM website under the respective monument listings, at http://www.blm.gov/wo/st/en/prog/blm_special_areas/NLCS/monuments.html.

Effects on Land Use

The overriding management goal for all monuments is protection of the objects described in the proclamations. Monument designation can limit or prohibit land uses, such as development or recreational uses. Limitations or prohibitions may be included in the proclamations themselves, accompanying administration statements, management plans developed by the agencies to govern monument lands, agency policies, or other sources. Some use issues may not arise for particular monuments given their distinctive characteristics, for instance, their small size or water-based nature. In general, existing uses of the land that are not precluded by the proclamations and do not conflict with the purposes of the monument may continue.

At least since 1996,[43] monument proclamations typically have had explicit protections for valid existing rights[44] for land uses, but the extent to which designations may affect existing rights is not always clear. A common concern is that monument designation potentially could result in new constraints on development of existing mineral and energy leases, claims, and permits. Some fear that mineral exploration and extraction activities may have to adhere to a higher standard of environmental review, and will have a higher cost of mitigation, to ensure compatibility with the monument designation.

Most of these monument proclamations have barred new mineral leases, mining claims, prospecting or exploration activities, and oil, gas, and geothermal leases, subject to valid existing rights. This has been accomplished by language to withdraw the lands within the monuments from entry, location, selection, sale, leasing, or other disposition under the public land laws, mining laws, and mineral and geothermal leasing laws.

Another concern is whether commercial timber cutting will be restricted as a result of designation. For instance, future timber production was expressly precluded in the Giant Sequoia National Monument proclaimed by President Clinton in 2000, although certain then-current logging contracts could be completed. In many other cases, the proclamations have implied, through a general prohibition against removing any "feature" of the monuments, that timber cutting is precluded.[45] Some assert that restrictions are needed to protect the environmental, scenic, and recreational attributes of forests preserved under the Antiquities Act. Logging supporters assert that forests can be used sustainably and that concerns raised by environmentalists as grounds for limiting commercial timber operations do not reflect modern forestry practices.

Motorized and mechanized vehicles off-road are prohibited (except for emergency or authorized purposes) under the proclamations for many newer monuments. Otherwise, the management plans for monuments typically address whether to allow vehicular travel on designated routes or in designated areas, or to close routes or areas to vehicular use in those monuments where such use is not expressly prohibited. In some areas that have become monuments, off-road vehicles have been allowed, at least in some places.

[43] No comprehensive examination was made of earlier monument proclamations.

[44] The term *valid* has been interpreted by the Supreme Court in the context of a mine within a national monument as meaning there were valuable, workable deposits of ore present. Cameron v. United States, 252 U.S. 450 (1920).

[45] For instance, President Clinton's monument proclamations typically contained such a provision, including the monument proclamations for the Agua Fria, Canyons of the Ancients, Sonoran Desert, and Upper Missouri River Breaks National Monuments. These monument proclamations are on the BLM website under the respective monument listings, at http://www.blm.gov/wo/st/en/prog/blm_special_areas/NLCS/monuments.html.

Other concerns have included the possible effects of monument designation on hunting, fishing, and grazing. Some proclamations have restricted such activities to protect monument resources, and monument management plans may impose additional restrictions. For instance, proclamations for some marine monuments established by President George W. Bush have restricted or prohibited commercial and recreational fishing. President Obama's June 17, 2014, announcement that he would use his authority to protect marine areas, and his subsequent expansion of the Pacific Remote Islands Marine National Monument,[46] appear to have enhanced focus on the potential effect of monument designations on fishing. In addition, provisions on grazing have been controversial in some cases, with some asserting that grazing has been unnecessarily curtailed while others claim that grazing has not been sufficiently limited to prevent ecological damage.

States and counties frequently have viewed restrictions on federal lands in their jurisdictions as threats to economic development. They maintain that local communities are hurt by the loss of jobs and tax revenues that results from prohibiting or restricting future mineral exploration, timber development, or other activities. Some contend that limitations on energy exploration could leave the United States more dependent on foreign oil.

Advocates of creating monuments claim that economic benefits resulting from designation, including increased tourism, recreation, and attracting new businesses and residents, may exceed the benefits of traditional economic development.[47] Others allege that the public interest value of continued environmental protection outweighs any temporary economic benefit that could result from development. Some want more restrictions on development.

"Consistency" of Antiquities Act with NEPA and FLPMA

The Federal Land Policy and Management Act of 1976 (FLPMA) authorizes the Secretary of the Interior to make certain land withdrawals under specified procedures. In enacting FLPMA, Congress not only limited the ability of the Interior Secretary to make withdrawals, but repealed much of the express and implied withdrawal authority previously granted to the President by several earlier laws.

Critics of the Antiquities Act maintain that the act is inconsistent with FLPMA's intent of restoring control of public land withdrawals to Congress. They assert that Congress is the appropriate body to make and implement land withdrawal policy and that Congress intended to review and retain veto control over all executive withdrawals exceeding 5,000 acres. On the other hand, in enacting FLPMA, Congress did not explicitly repeal or amend the Antiquities Act, despite extensive consideration of executive withdrawal authorities. Supporters of the act assert

[46] The White House, Office of the Press Secretary, *FACT SHEET: Leading at Home and Internationally to Protect Our Ocean and Coasts*, June 17, 2014, on the White House website at http://www.whitehouse.gov/the-press-office/2014/06/17/fact-sheet-leading-home-and-internationally-protect-our-ocean-and-coasts, and *Presidential Proclamation—Pacific Remote Islands Marine National Monument Expansion*, September 25, 2014, on the White House website at http://www.whitehouse.gov/the-press-office/2014/09/25/presidential-proclamation-pacific-remote-islands-marine-national-monumen.The proclamation prohibited commercial fishing within the boundaries of the monument expansion while permitting other types of fishing, such as for non-commercial, recreational, and scientific and research purposes.

[47] The potential economic benefits to local communities of national monument designation were discussed at a House subcommittee hearing on September 13, 2011. For testimony asserting beneficial economic impacts, see Ray Rasker, Executive Director, Headwaters Economics, at http://naturalresources.house.gov/uploadedfiles/raskertestimony09.13.11.pdf. For testimony asserting adverse impacts on communities, see Jerry Taylor, Mayor, Escalante City, Utah, at http://naturalresources.house.gov/uploadedfiles/taylortestimony09.13.11.pdf.

that it was the clear intent of Congress to retain presidential withdrawal authority under the Antiquities Act.

Similarly, critics note that monuments have been proclaimed without the environmental studies required of agencies for "major federal actions" under NEPA, or the review of a public purpose and opportunity for public participation that FLPMA provides.[48] However, neither NEPA[49] nor FLPMA applies to the actions of a President (as opposed to an action of an agency), and the Antiquities Act is silent as to the procedures a President must follow to proclaim a new monument. Some want to add procedures for environmental review and public participation to the monument designation process so that significant withdrawals (with resulting effects on existing uses) would not be made without scientific, economic, and public input.

Others counter that such changes would impair the ability of the President to take action quickly to protect objects and lands, thereby avoiding possible damage to the resources. They assert that participation requirements are not needed in law because Presidents typically consult with government officials and the public before establishing monuments. Some believe that NEPA requirements are unnecessary for monument designation because once monuments are created, detailed management plans are developed in accordance with NEPA.

Monument Management

Although most monuments are managed by the National Park Service (NPS), both Congress and the President have created monuments managed by other agencies. For example, in 1996 President Clinton created the Grand Staircase-Escalante National Monument and assigned its management to BLM, the first such area administered by BLM. Also, President George W. Bush selected the Fish and Wildlife Service (FWS), the National Oceanic and Atmospheric Administration in the Department of Commerce, and other agencies to manage marine monuments. On September 21, 2012, President Obama established the Chimney Rock National Monument with the Forest Service as the managing agency. In most cases, the monuments were assigned to be managed by the agency that had responsibility for the area before the designation, although that was not always the case. For example, although the area within the Minidoka Internment National Monument was managed by the Bureau of Reclamation before designation, the proclamation designating the monument changed the management authority to the NPS.

The President's authority to choose a management agency other than NPS has been questioned. Before 1933, monuments were managed by different agencies, but in that year President Franklin Roosevelt consolidated management of national monuments in the NPS. Following the 1933 consolidation, it was not until 1978 that a presidentially created monument was managed by an agency other than the NPS. In 1978, two of the Alaska monuments created by President Carter were directed to be managed by the Forest Service, part of the U.S. Department of Agriculture, and two were managed by FWS. Assigning management to the Forest Service was controversial, and the two monuments were ultimately given statutory direction for Forest Service management.[50]

[48] For an overview and background on NEPA, see CRS Report RL33152, *The National Environmental Policy Act (NEPA): Background and Implementation*, by (name redacted)

[49] See Alaska v. Carter, 462 F. Supp. 1155 (D. Alaska 1978) (NEPA does not apply to presidential proclamation under the Antiquities Act).

[50] The two monuments were given statutory approval as part of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), P.L. 96-487.

The Supreme Court has suggested that it is proper to switch management of federal lands among federal agencies. As noted earlier, in its decision regarding the Channel Islands National Monument, the Court said that the Antiquities Act could mean that the "land is shifted from one federal use, and perhaps from one federal managing agency, to another."[51] A 1980 opinion from the Office of Legal Counsel (Department of Justice) appears to indicate that the President may have some flexibility in choosing the managers of post-1933 monuments.[52] Others also assert that the authority of the President under the Antiquities Act carries with it discretion to choose the managing agency.

Some critics contend that management by an agency other than the NPS is an illegal transfer of the current functions of the NPS. Others counter that establishing a new monument under another agency would not constitute a reorganization because management of current NPS units, and the general authority of the NPS to manage monuments, would be unaffected. Even if placing management authority under a department other than the DOI might constitute a reorganization, the President nevertheless might be able to move a function of the NPS to other DOI agencies under congressionally approved authority allowing transfers of functions within DOI.[53]

Administration Activity

Most Presidents since 1906 have used the authority in the Antiquities Act to establish or expand national monuments. President Obama has designated 23 new national monuments in 14 states and the District of Columbia, ranging in size from 0.12 acres to 1.6 million acres. The President also enlarged three monuments, one in California (by 1,665 acres) and two marine monuments (by 261.3 million acres and 283.4 million acres). Brief information on each monument is listed below.[54]

- Fort Monroe National Monument in Virginia was designated on November 1, 2011. In establishing the 325-acre monument, the President stated that "Fort Monroe on Old Point Comfort in Virginia has a storied history in the defense of our Nation and the struggle for freedom."[55]
- Fort Ord National Monument in California was designated on April 20, 2012. The purpose of the 14,651-acre Fort Ord National Monument is to maintain its historical and cultural significance, as well as attract tourists and recreationists and enhance the area's unique natural resources, according to the President.[56]
- Chimney Rock National Monument in Colorado was designated on September 21, 2012. The President cited the "spiritual, historic, and scientific resources of great value and significance" in proclaiming the 4,726-acre monument.[57]

[51] California v. United States, 436 U.S. 32, 40 (1978).

[52] 4B Op. Off. Legal Counsel 396 (February 8, 1980).

[53] Reorganization Plan No. 3 of 1950.

[54] For additional information on a particular monument, see the pertinent proclamation identified in the footnote.

[55] See *Presidential Proclamation—Establishment of the Fort Monroe National Monument*, November 1, 2011, on the White House website at http://www.whitehouse.gov/the-press-office/2011/11/01/presidential-proclamation-establishment-fort-monroe-national-monument.

[56] See *Presidential Proclamation—Establishment of the Fort Ord National Monument*, April 20, 2012, on the White House website at http://www.whitehouse.gov/the-press-office/2012/04/20/presidential-proclamation-establishment-fort-ord-national-monument.

[57] See *Presidential Proclamation—Establishment of the Chimney Rock National Monument*, September 21, 2012, on (continued...)

- César E. Chávez National Monument in California was designated on October 8, 2012. The 10.5-acre monument "marks the extraordinary achievements and contributions to the history of the United States made by César Chávez and the farm worker movement that he led with great vision and fortitude," according to the President.[58]
- First State National Monument in Delaware was designated on March 25, 2013. The 1,108 acres of the monument contain objects and areas of historic interest related to the settlement of Delaware and the role of Delaware as the first state to ratify the Constitution, according to the President.[59]
- Charles Young Buffalo Soldiers National Monument in Ohio was designated on March 25, 2013. The 60-acre monument was established to commemorate the life and accomplishments of Colonel Charles Young, the highest ranking African American commanding officer in the U.S. Army from 1894 until his death in 1922, the commander of a troop of Buffalo Soldiers, and the first African American superintendent of a national park, as described in the proclamation.[60]
- Río Grande del Norte National Monument in New Mexico was designated on March 25, 2013. In proclaiming the monument, the President stated that protecting the 242,555-acre monument "will preserve its cultural, prehistoric, and historic legacy and maintain its diverse array of national and scientific resources, ensuring that the historic and scientific values of this area remain for the benefit of all Americans."[61]
- San Juan Islands National Monument in Washington was designated on March 25, 2013.[62] This 970-acre monument contains an archipelago of over 450 islands, rocks, and pinnacles in Washington's Puget Sound. According to the President, the area contains an "unmatched landscape," numerous wildlife species in diverse habitats, archaeological sites, and historic lighthouses and is a "refuge of scientific and historic treasures and a classroom for generations of Americans."
- Harriet Tubman–Underground Railroad National Monument in Maryland was designated on March 25, 2013. This 11,750-acre monument commemorates the life of Harriet Tubman, a leader of the Underground Railroad, and protects the

(...continued)

the White House website at http://www.whitehouse.gov/the-press-office/2012/09/21/presidential-proclamation-establishment-chimney-rock-national-monument.

[58] See *Presidential Proclamation—Establishment of the César E. Chávez National Monument*, October 8, 2012, on the White House website at http://www.whitehouse.gov/the-press-office/2012/10/08/presidential-proclamation-establishment-cesar-e-chavez-national-monument.

[59] See *Presidential Proclamation—Establishment of the First State National Monument*, March 25, 2013, on the White House website at http://www.whitehouse.gov/the-press-office/2013/03/25/presidential-proclamation-first-state-national-monument.

[60] See *Presidential Proclamation—Establishment of the Charles Young Buffalo Soldiers National Monument*, March 25, 2013, on the White House website at http://www.whitehouse.gov/the-press-office/2013/03/25/presidential-proclamation-charles-young-buffalo-soldiers-national-monume.

[61] See *Presidential Proclamation—Establishment of the Río Grande del Norte National Monument*, March 25, 2013, on the White House website at http://www.whitehouse.gov/the-press-office/2013/03/25/presidential-proclamation-r-o-grande-del-norte-national-monument.

[62] See *Presidential Proclamation—Establishment of the San Juan Islands National Monument*, March 25, 2013, on the White House website at http://www.whitehouse.gov/the-press-office/2013/03/25/presidential-proclamation-san-juan-islands-national-monument.

landscape and historic features of the area in which she lived, worked, and later led enslaved African Americans to freedom, according to the proclamation.[63]

- California Coastal National Monument was enlarged on March 11, 2014. President Obama added 1,665 onshore acres to this offshore monument, and named the expanded area the "Point Arena-Stornetta Unit." According to the proclamation, the area is of "significant scientific importance," and contains archeological and cultural sites and artifacts, a landscape shaped by "powerful geologic forces," and "spectacular wildlife," among other resources and values.[64]
- Organ Mountains-Desert Peaks National Monument in New Mexico was designated on May 21, 2014. Among other attributes, the 496,330-acre monument includes mountain ranges and lowlands with archaeological resources; paleontological research areas; geologic features; historically significant areas; and diverse animals, vegetative communities, and ecosystems, according to the President.[65]
- Pacific Remote Islands Marine National Monument was expanded on September 25, 2014, by approximately 261.3 million acres. The proclamation indicates that the expansion area includes opportunities for scientific study and research. It also identifies diverse species and habitats, such as deep-sea coral species, habitat and range for protected turtles, foraging habitat for seabird species, and an abundance of manta rays.[66]
- San Gabriel Mountains National Monument in California was designated on October 10, 2014. In establishing the 346,177-acre monument, the President noted cultural, historic, and geologic features; recreational and scientific opportunities; and ecological diversity, among other distinctive elements.[67]
- Browns Canyon National Monument in Colorado was designated on February 19, 2015. The 21,586-acre monument is described as an "iconic" landscape with diverse plants and wildlife and scientifically significant geological, ecological, riparian, cultural, and historic resources. It is also important for studying paleoecology, mineralogy, archaeology, and climate change, according to the President.[68]

[63] See *Presidential Proclamation—Establishment of the Harriet Tubman–Underground Railroad National Monument*, March 25, 2013, on the White House website at http://www.whitehouse.gov/the-press-office/2013/03/25/presidential-proclamation-harriet-tubman-underground-railroad-national-m.

[64] See *Presidential Proclamation—Boundary Enlargement of the California Coastal National Monument*, March 11, 2014, on the White House website at http://www.whitehouse.gov/the-press-office/2014/03/11/presidential-proclamation-boundary-enlargement-california-coastal-nation.

[65] See *Presidential Proclamation—Organ Mountains-Desert Peaks National Monument*, May 21, 2014, on the White House website at http://www.whitehouse.gov/the-press-office/2014/05/21/presidential-proclamation-organ-mountains-desert-peaks-national-monument.

[66] See *Presidential Proclamation—Pacific Remote Islands Marine National Monument Expansion*, September 25, 2014, on the White House website at http://www.whitehouse.gov/the-press-office/2014/09/25/presidential-proclamation-pacific-remote-islands-marine-national-monumen.

[67] See *Presidential Proclamation—San Gabriel Mountains National Monument*, October 10, 2014, on the White House website at http://www.whitehouse.gov/the-press-office/2014/10/10/presidential-proclamation-san-gabriel-mountains-national-monument.

[68] See *Presidential Proclamation—Browns Canyon National Monument*, February 19, 2015, on the White House website at https://www.whitehouse.gov/the-press-office/2015/02/19/presidential-proclamation-browns-canyon-national-monument.

- Pullman National Monument in Illinois was designated on February 19, 2015. In proclaiming the 0.24-acre monument, the President cited the national significance and contemporary relevance of the Pullman Historic District, including its architecture, urban planning, transportation, labor relations, and social history.[69]
- Honouliuli National Monument in Hawaii was designated on February 24, 2015. The 123-acre Honouliuli Internment Camp was used during World War II as a prisoner-of-war camp and an internment camp, with most of the internees of Japanese descent. The President called the area "a powerful reminder of the need to protect civil liberties in times of conflict, and the effects of martial law on civil society."[70]
- Basin and Range National Monument in Nevada was designated on July 10, 2015. In preserving the cultural, prehistoric, and historic legacy of the 704,000-acre Great Basin area, the President noted the area's topography, geology, ecologically intact landscape, species diversity, archaeological resources, and a recent work of land art, among other features.[71]
- Berryessa Snow Mountain National Monument in California was designated on July 10, 2015. The significance of the 330,780-acre site stems from its historic and prehistoric importance as well as its diversity of geologic, natural, cultural, plant and animal, scientific, and other resources, according to the proclamation. [72]
- Waco Mammoth National Monument in Texas was designated on July 10, 2015. With 7.11 acres, the excavation site contains the remains of Columbian mammoths and other animals of the Pleistocene Epoch. The President cited the value of the area for further exploration and research.[73]
- Mojave Trails National Monument in California was designated on February 12, 2016. Its 1.6 million acres are used for geological, ecological, and entomological research and contain paleontological resources, habitat for rare plant species and the threatened desert tortoise, and archeological records. The monument is also important for both transportation and military history, according to the proclamation.[74]

[69] See *Presidential Proclamation—Pullman National Monument*, February 19, 2015, on the White House website at https://www.whitehouse.gov/the-press-office/2015/02/19/presidential-proclamation-pullman-national-monument.

[70] See *Presidential Proclamation—Establishment of the Honouliuli National Monument*, February 24, 2015, on the White House website at https://www.whitehouse.gov/the-press-office/2015/02/24/presidential-proclamation-establishment-honouliuli-national-monument.

[71] See *Presidential Proclamation—Establishment of the Basin and Range National Monument*, July 10, 2015, on the White House website at https://www.whitehouse.gov/the-press-office/2015/07/10/presidential-proclamation-establishment-basin-and-range-national.

[72] See *Presidential Proclamation—Establishment of the Berryessa Snow Mountain National Monument*, July 10, 2015, on the White House website at https://www.whitehouse.gov/the-press-office/2015/07/10/presidential-proclamation-establishment-berryessa-snow-mountain-national.

[73] See *Presidential Proclamation—Establishment of the Waco Mammoth National Monument*, July 10, 2015, on the White House website at https://www.whitehouse.gov/the-press-office/2015/07/10/presidential-proclamation-establishment-waco-mammoth-national-monument.

[74] See *Presidential Proclamation—Establishment of the Mojave Trails National Monument*, February 12, 2016, on the White House website at https://www.whitehouse.gov/the-press-office/2016/02/12/presidential-proclamation-establishment-mojave-trails-national-monument.

- Sand to Snow National Monument in California was designated on February 12, 2016. The President called the 154,000 acre area an "ecological and cultural treasure" and noted its geologic and other geographic diversity, archaeological attributes, historic remains of communities, range of ecosystems and species, and scientific value.[75]
- Castle Mountains National Monument in California was designated on February 12, 2016. The "outstanding natural, cultural, and historical values" of the 20,920 acres were highlighted in the proclamation, including its geology; relatively intact habitat and ecosystems; priority for scientific research; prehistoric rock art and archeological sites; and historic mining, ranching, and railroad uses.[76]
- Belmont-Paul Women's Equality National Monument was designated in Washington, DC, on April 12, 2016. The President noted the role of the House at this 0.34 acre monument for its role in women's history, including as the home of the National Woman's Party and the staging area for legislation and other actions on behalf of women's political, social, and economic equality.[77]
- Stonewall National Monument was designated on June 24, 2016 in New York. The significance of the 0.12-acre park (Christopher Park) stems from its role in the lesbian, gay, bisexual, and transgender (LGBT) civil rights movement. It forms part of a "historic landscape" that includes the Stonewall Inn, scene of the "uprising" that galvanized a movement for LGBT equality, according to the President.[78]
- Katahdin Woods and Waters National Monument in Maine was designated on August 24, 2016. In establishing the 87,500 acre monument, the President noted its archaeological records of Native people, logging and other historic industrial infrastructure, significant biodiversity, ecosystems of scientific interest, and defining geologic and natural features.[79]
- Papahanaumokuakea Marine National Monument was expanded on August 26, 2016, by 283.4 million acres. The President highlighted the geological and biological resources of the expansion area that are sacred to Native Hawaiians and that constitute "part of a highly pristine deep sea and open ocean ecosystem with unique biodiversity."[80]

[75] See *Presidential Proclamation—Establishment of the Sand to Snow National Monument*, February 12, 2016, on the White House website at https://www.whitehouse.gov/the-press-office/2016/02/12/presidential-proclamation-establishment-sand-snow-national-monument.

[76] See *Presidential Proclamation—Establishment of the Castle Mountains National Monument*, February 12, 2016, on the White House website at https://www.whitehouse.gov/the-press-office/2016/02/12/presidential-proclamation-establishment-castle-mountains-national.

[77] See *Presidential Proclamation—Establishment of the Belmont-Paul Women's Equality National Monument*, April 12, 2016, on the White House website at https://www.whitehouse.gov/the-press-office/2016/04/12/presidential-proclamation-establishment-belmont-paul-womens-equality.

[78] See *Presidential Proclamation—Establishment of the Stonewall National Monument*, June 24, 2016, on the White House website at https://www.whitehouse.gov/the-press-office/2016/06/24/presidential-proclamation-establishment-stonewall-national-monument.

[79] See *Presidential Proclamation—Establishment of the Katahdin Woods and Waters National Monument*, August 24, 2016, on the White House website at https://www.whitehouse.gov/the-press-office/2016/08/24/presidential-proclamation-establishment-katahdin-woods-and-waters.

[80] See *Presidential Proclamation—Papahanaumokuakea Marine National Monument Expansion*, August 26, 2016, on the White House website at https://www.whitehouse.gov/the-press-office/2016/08/26/presidential-proclamation-(continued...)

The Administration usually cited support for the establishment of the monuments—for instance, from government officials, businesses and local communities, and/or other stakeholders. Most of the monuments first had been proposed for some sort of protective designation in legislation. In addition, some Members and segments of the public have advocated for additional monument designations in their states.[81]

However, other government officials, communities, and stakeholders have expressed opposition to monuments established by the President and/or concerns about additional monument designations.[82] Concerns center on the process used to create monuments, particularly whether there is sufficient consultation with Congress, local and state governments, residents of the affected areas, and the general public.[83] Other concerns relate to the costs of managing monuments, restrictions on land uses in new monuments, and other issues.

Legislative Activity[84]

Given the recurring controversies over presidential establishment of national monuments, recent Congresses have evaluated whether to abolish, limit, or retain unchanged the President's authority to establish monuments under the Antiquities Act. Currently, in the context of President Obama's use of the authority, bills to restrict the President's authority to proclaim national monuments have been introduced in the 114th Congress. Some of the bills would prohibit the President from establishing or expanding national monuments in particular states, counties, or other locations. Other bills focus on the authority for monument designation. Among others, some provisions of these bills would make the President's authority to designate monuments subject to approval of Congress or the pertinent state legislature, governor, or local governing bodies. Other bills would make the President's authority subject to NEPA or impose requirements for consultation,

(...continued)

papahanaumokuakea-marine-national-monument.

[81] For instance, in a letter of January 24, 2014, some Members of Congress expressed support to the Secretary of the Interior for additional monument designations under the Antiquities Act. The letter is available on the website of Democratic Members of the House Committee on Natural Resources at http://democrats.naturalresources.house.gov/sites/democrats.naturalresources.house.gov/files/2014.1.14.Antiquities%20Act.%20Jewell_1.pdf. In addition, on December 12, 2013, a coalition of groups asked the President to designate additional monuments that "conserve our diverse culture and heritage." The letter is available through the Environment and Energy News PM website at http://www.eenews.net/assets/2013/12/12/document_pm_02.pdf.

[82] For instance, in a letter of June 13, 2013, several Senators expressed to the President opposition to "unilateral" designation of national monuments. The letter is on the website of the Senate Committee on Environment and Public Works at http://www.epw.senate.gov/public/index.cfm/2013/6/post-43def03b-eb2d-28a3-e162-0da18ed75af1. In addition, on April 16, 2013, a witness representing the Public Lands Council, National Cattlemen's Beef Association, and Utah Cattlemen's association testified in favor of limiting the President's authority to proclaim monuments. See testimony of David Eliason before the House Committee on Natural Resources, Subcommittee on Public Lands and Environmental Regulation at http://www.gpo.gov/fdsys/pkg/CHRG-113hhrg80524/pdf/CHRG-113hhrg80524.pdf.

[83] These concerns developed in part from an earlier Obama Administration evaluation of whether to designate or expand national monuments. In February 2010, an Administration internal draft document regarding possible national monuments was obtained by some Members of Congress. The internal draft document identified 13 sites for possible new monument designations and one monument for possible expansion. See *Prospective Conservation Designation: National Monument Designations Under the Antiquities Act* (undated), internal draft, at http://robbishop.house.gov/UploadedFiles/states_for_designation.pdf. At the time, some noted that the Administration's intent to collaborate had been expressed on the internal draft itself, and the Administration subsequently expressed intent to use a collaborative process in evaluating areas for monument status. See E&E News PM, *Obama Admin Has 'No Secret Agenda' on Monuments—Salazar*, February 22, 2010.

[84] In addition to the bills discussed in this section, amendments pertaining to the President's authority have been considered in the 114th Congress.

comment, and public hearings. Still others would limit the size of monument proclamations or impose conditions on agency implementation of restrictions on monument use.

The Obama Administration, as well as some Members and segments of the public, opposes restrictions on the President's authority to establish national monuments. For instance, in a written statement on several legislative proposals in the 112th Congress, the Administration asserted that the authority has contributed significantly to the protection of special qualities on federal lands and that the proposals "would undermine this vital authority." The Administration further observed that the Antiquities Act "provided much of the legal foundation for cultural preservation and natural resource conservation in the nation" and serves as the basis for current federal protection of archeological sites from looting and vandalism.[85]

Table 1, below, identifies selected provisions of pending bills and lists bills with the indicated provisions. Three of the measures have had legislative action following introduction. H.R. 1335 passed the House and was referred in the Senate to the Committee on Commerce, Science, and Transportation. The House Committee on Natural Resources held hearings on H.R. 3668. H.R. 5538 was passed by the House.

Table 1. Bills to Restrict the President's Authority to Proclaim National Monuments: Selected Provisions

(114th Congress as of September 6, 2016)

Provisions	Bills
Prohibit the President from establishing or expanding national monuments in particular states or counties	H.R. 488 and S. 232 (Nevada); H.R. 3946 and H.R. 5538 §453 (specified counties); H.R. 5781 (specified counties)[a]
Prohibit the President from designating monuments in areas of the exclusive economic zone unless certain conditions are met	H.R. 330, S. 437
Make the President's authority to designate monuments subject to congressional approval	H.R. 330, H.R. 900, H.R. 3389,[b] S. 228, S. 437; H.R. 3668 §905 (areas in CA)
Require the pertinent state legislature's consent for a presidentially proposed national monument	H.R. 900, H.R. 4132, S. 228, S. 437
Make the President's authority to designate monuments subject to congressional and state approval within three years following monument designation	H.R. 2258, S. 2004
Require the pertinent governor's consent for a presidentially proposed national monument	H.R. 3946, H.R. 4132
Require approval of local governing bodies and land and wildlife management authorities	H.R. 3946
Make the President's authority to designate monuments subject to NEPA	H.R. 330, H.R. 900, S. 228, S. 437

[85] See *Statement for the Record*, on six monument bills, of the Department of the Interior before the Subcommittee on National Parks, Forests, and Public Lands of the House Committee on Natural Resources, September 13, 2011, at http://www.blm.gov/pgdata/etc/medialib/blm/wo/Communications_Directorate/2011_congressional.Par.96244.File.dat/Antiquities%20Act%20amendments%20-%206%20bills%20-%20%20Department%20of%20the%20Interior%20Statement.pdf.

Provisions	Bills
Require advance notice before proclamation and public hearings, comment, and report on monument impact following proclamation	H.R. 3389
Limit proclamations to 5,000 acres or less	H.R. 3946
Prohibit private property inclusion in monument without owner's written consent	H.R. 3946
Restrict the impact of a monument designation on the Arkansas Headwaters Recreation Area in Colorado	S. 972
Prohibit the President from reserving water rights in monument proclamations and specify that acquisition of water rights must be in accordance with state law	H.R. 3946, S. 1416
Bar the Secretary of the Interior from implementing restrictions on public use of a national monument until after "an appropriate review period" for public input and congressional approval[c]	H.R. 330, H.R. 900, S. 228, S. 437
Clarify that in conflicts between the Antiquities Act and the Magnuson Stevens Fishery Conservation and Management Act, the latter law would take precedence	H.R. 1335

Source: Created by CRS from the Legislative Information System (LIS), 114th Congress, as of September 6, 2016.

Notes: This table briefly describes selected provisions of bills, typically at the latest stage of congressional action. For the complete provisions of the referenced bills, see the bill text at Congress.gov.

a. H.R. 5781 applies to monument designations and expansions.

b. H.R. 3389 would require congressional approval of a monument proclamation within two years; otherwise the proclamation would be ineffective, barring the President from issuing a monument proclamation that was "substantially similar" to it.

c. H.R. 330 and S. 437 apply to monuments designated in the exclusive economic zone and also to the Secretary of Commerce.

Author Contact Information

(name redacted)
Specialist in Natural Resources Policy
[redacted]@crs.loc.gov , 7-....