



by the Center for Biological Diversity

Bears Ears National Monument courtesy Bob Wick / BLM

NATIONAL MONUMENTS UNDER ATTACK

In 1906, using power granted to him by Congress under the newly passed Antiquities Act, Teddy Roosevelt declared Devil's Tower in eastern Wyoming as America's first national monument. Over the following 110 years, 16 of 19 presidents used the Act to designate national monuments, many of which went on to become iconic national parks — including Grand Canyon, Bryce, Acadia, Olympic and Zion. President George W. Bush used the Act to designate the first large marine monuments, protecting vast swaths of ocean to save marine life in coral reefs, whales, sea turtles and hundreds of species of fish. But the Act is now under attack as the Trump administration seeks to rescind or reduce protections for dozens of national monuments established over the past 20 years — as well as potentially recommending changes to the Act, severely curtailing or eliminating presidents' authority to designate national monuments.

The Antiquities Act of 1906

The Antiquities Act is one of America's oldest, most important conservation laws, allowing presidents to quickly protect natural and cultural resources when Congress could or would not act in order to preserve objects of "historic and scientific importance."¹ Within monument areas special sites and objects are protected; they may be exempted from mining, logging or oil and gas development, though some monument designations "grandfather in" existing land uses.

Legislative history clearly demonstrates that presidents have the authority to designate, but not abolish, national monuments.² Legal scholars believe presidents lack the authority to reduce, or weaken protections for, existing monuments.³ Congress has reserved these powers to itself.

With continued population growth and rising threats, we should be protecting more places under the Antiquities Act to inspire present and future generations, not rolling back protections.

Executive Order to Review National Monuments

On April 26, 2017, President Trump signed Executive Order 13792 directing the Interior Department to review every monument designated since 1996 that is larger than 100,000 acres⁴ as well as any monument the secretary deems should be reviewed. Under the terms of the order, 27 national monuments are being reviewed. Bears Ears National Monument in Utah has been singled out for expedited review for the president's consideration and potential rescission or reduction in size.

On May 5, 2017, the Interior Department started a public-comment process on the 27 national monuments. Although the Antiquities Act does not require formal public comment, President Obama's administration engaged in public discussions that often resulted in changes to proposed designations. Trump's executive order is widely expected to trigger dramatic changes in monument protections or boundaries to accommodate interests like coal, oil, gas and logging. Secretary Zinke will make recommendations on Bears Ears by June 10 and for the remaining 26 monuments on August 24.

¹ 16 U.S.C. § 431 *et. seq.*

² https://www.washingtonpost.com/opinions/no-president-trump-cant-revoke-national-monuments/2017/03/29/35e53336-10cd-11e7-ab07-07d9f521f6b5_story.html?utm_term=.d7495f9d5ab2, <http://democrats-naturalresources.house.gov/imo/media/doc/Arnold%20&%20Porter%20Legal%20Memo%20on%20Revocation%20of%20National%20Monuments.pdf>

³ <https://ssrn.com/abstract=2967807>

⁴ 82 Fed. Reg. 20,429 (May 1, 2017)