

Committee on Natural Resources

Rob Bishop, Chairman
Mark-Up Memorandum

October 10, 2017

To: All Natural Resources Committee Members

From: Majority Committee Staff – Brandon Miller
Subcommittee Federal Lands (x 6-7736)

Markup: **H.R. 3990 (Rep. Rob Bishop)**, To amend title 54, United States Code, to reform the Antiquities Act of 1906, and for other purposes.
October 11, 2017; 4:00PM; 1334 Longworth HOB

H.R. 3990 (Rep. Rob Bishop), “National Monument Creation and Protection Act”

Bill Summary

H.R. 3990, introduced by Chairman Rob Bishop (R-UT), “*National Monument Creation and Protection Act*” restores the original Congressional intent of the Antiquities Act while modernizing the law for the 21st Century. The comprehensive reform legislation includes provisions to protect endangered antiquities, prevent abuse of executive authority and the designation of excessive national monuments, and empower impacted local communities. These reforms thread the needle between balancing the protection of archeological resources with the elimination of egregious Executive overreach.

This bill retains Presidential authority to designate National Monuments up to 640 acres, allowing the President to rapidly protect objects of antiquity in imminent danger, restoring the original intent of the Antiquities Act. New monument designations between 640 acres and 10,000 acres will now require review under the National Environmental Policy Act (NEPA) prior to being finalized. Proposed new monument designations between 5,000 and 10,000 acres must be reviewed under an environmental assessment or environmental impact statement.

The bill empowers State and local voices by requiring approval of all county commissions, state legislatures, and governors impacted by a national monument for any designation between 10,000 acres and 85,000 acres. Any monument designation larger than 85,000 acres would require an act of Congress. This bill also creates a new Presidential authority to designate “Emergency National Monuments” for up to one year, to protect areas of any size in times of emergency, as determined by the President. After invoking this authority, the President may never designate any of the effected lands as a future National Monument.

The bill gives much needed clarification to the definition of “Antiquities.” It returns the Antiquities Act to its original intent of protecting specific objects of archeological value such as

Native American burial remains or pottery. This will prohibit Marine National Monuments and other sprawling national monuments with no archeological or historic sites in need of protection.

Cosponsors

Rep. Paul Gosar (R-AZ), Rep. Tom McClintock (R-CA), Rep. Doug Lamborn (R-CO), Rep. Bruce Westerman (R-AR), Rep. Doug LaMalfa (R-CA)

Background

At the beginning of the 20th century, vandals and robbers began looting sacred Native American burial grounds and archeological sites throughout the territories in the Southwest. The destruction of archeological artifacts prompted Congress to enact the Antiquities Act of 1906, which authorized the President to designate national monuments on federal lands containing “historic landmarks, historic and prehistoric structures, or other objects of historic or scientific interest.”¹ The law also specified that national monuments “be confined to the smallest area compatible with proper care and management of the objects to be protected.”² Furthermore, the President could only designate national monuments “upon the lands owned or controlled by the Government of the United States.”³

The Antiquities Act granted Presidents the flexibility to quickly protect small Native American sites in imminent danger from looting and destruction.⁴ President Theodore Roosevelt designated the first National Monument, Devils Tower, in 1906. Since that time, Presidents have broadly interpreted the Antiquities Act to expand both the size and justifications for National Monument designations, despite the 1906 Congressional Record plainly reflecting Congress’ clear intent to limit the size of the designations.⁵

Presidents have used their authority under the Antiquities Act 233 times to establish and enlarge 157 National Monuments totaling 840.4 million acres, or roughly 10 times the size of the entire National Park System.⁶ Although the National Park Service (NPS) primarily manages National Monuments, in recent decades the majority of National Monuments have been placed under the management of agencies like the Bureau of Land Management (BLM), U.S. Forest Service (FS), and the U.S. Fish and Wildlife Service (FWS). Although presidential declarations create most national monuments, Congress has also established 45 national monuments, including Appomattox (1935), Badlands (1929), and Biscayne (1968).

¹ 34 Stat. 225, 16 U.S.C. 431-433.

² Ibid.

³ Ibid.

⁴ Benderson, Judith. “The Archaeological Resources Protection Act and The Native American Graves Protection and Repatriation Act.” Offices of the United States Attorneys. <https://www.justice.gov/usao/priority-areas/indian-country/native-american-artifacts>

⁵ In their discussions of the bill, Congressmen Lacey and Stephens debated whether Presidents would eventually abuse the Antiquities Act. Congressman Lacey, the bill’s sponsor, reassured the bill provides that reservations “shall be the smallest area necessary [sic] for the care and maintenance of the objects to be preserved,” Congressional Record, 1906, https://coast.noaa.gov/data/Documents/OceanLawSearch/Congressional%20Record_House%20&%20Senate%201906.pdf?redirect=301ocm.

⁶ Information provided by the Congressional Research Service.

In its 111-year history, Congress amended the Antiquities Act only twice to enact statutory restrictions on the President’s authority to designate National Monuments. The first, passed in 1950, prohibits the designation of National Monuments in the State of Wyoming. The second restriction, passed in 1986, requires prior Congressional approval of executive land withdrawals in the State of Alaska exceeding 5,000 acres.⁷ These actions followed the controversial declarations of Jackson Hole National Monument by President Franklin Roosevelt and President Carter’s establishment of several monuments in Alaska, respectively.

The Antiquities Act pre-dates the establishment of 5 states, including New Mexico and Arizona, the establishment of the National Park Service, and the creation of major environmental and archeological resources protection laws. Since the creation of the Antiquities Act, Congress and the executive branch enacted over one dozen new statutes and regulations rendering protections under the Act outdated.⁸

Section by Section

SECTION 1. Short Title

SECTION 2. Limitation on Size; Clarification of Eligible Objects

- (1) Removes the original Antiquities Act definition of “Antiquities”
- (2) Removes original Antiquities “smallest area compatible” limitation.
- (3) Replaces “smallest area compatible” with
 - (e) Limitation on size of monuments
 - (1) 640-acre limitation to the size of monument that the President can designate without any restrictions.
 - (2) Mandates a 50-mile barrier between monuments to prevent a patchwork loophole.
 - (f) Creates an exception for monuments designations that are:
 - (1) less than 5000 acres
 - (2) 50 miles or more from other monuments
 - (3) Must be reviewed under the National Environmental Policy Act
 - (g) Creates an exception for monuments designations that are:

⁷ Hardy Vincent, Carol. “National Monuments and the Antiquities Act.” Congressional Research Service. P. 1.

⁸Some of the major statutes created to protect archeological resources include: *Historic Sites Act (1935)* – establishing the National Historic Landmarks Program; *National Stolen Property Act (1948)* – established fines and penalties for transporting or transferring stolen property; *Reservoir Salvage Act (1960)* – required study and protection of archeological objects that may be destroyed during the construction of a dam or reservoir; *National Historic Preservation Act (1966)* – established the National Register of Historic Places and State Historic Preservation Offices; *Archeological and Historic Preservation Act (1974)* – preserved archeological objects that might otherwise be destroyed during any federally licensed activity or program (such as a federal construction project); *Archeological Resources Protection Act (1979)* – strengthened fines and penalties for unauthorized excavation of archeological sites on federal land; *Abandoned Shipwreck Act (1987)* – established federal ownership and a management structure of abandoned shipwrecks in submerged waters of the United States; *Native American Graves Protection and Repatriation Act (1990)* – required consultation with Native American groups before archeological excavation of culturally sensitive sites; *National Maritime Heritage Act (1994)* – established the National Maritime Heritage Grants Program; *American Battlefield Protection Program Act (1996)* – provided assistance to private and public individuals and institutions to protect historic battlefields in the United States; *National Historic Lighthouse Preservation Act (2000)* – allowed the transfer of deteriorating historic lighthouses to other government entities or non-profit, educational, or community development organizations with the capacity to maintain the lighthouse; *Sunken Military Craft Act (2004)* – codified the sovereign status and permanent U.S. ownership of sunken military aircraft and vessels and preserved sunken military aircraft and vessels in U.S. waters.

- (1) Between 5,000 and 10,000 acres
- (2) 50 miles or more from other monuments
- (3) Must be reviewed under an environmental assessment of environmental impact statement.

(h) Creates an exception for monuments designations that are:

- (1) Between 10,000 and 85,000 acres
- (2) 50 miles or more from other monuments
- (3) Must be approved by the state and local government of each State whose boundaries the monument is located.

(i) Creates One Year Emergency Monument Designation for Presidential use:

- (1) No acreage limitation
- (2) One year limitation
- (3) One time designation. The land can never be part of another monument designation
- (4) Land is still subject to valid existing rights and uses under applicable Resource Management Plan or Forest plan.

(j) Clarifies Presidential Authority to Reduce Size of Declared Monuments

- (1) Allows Presidents to reduce any national monument by 85,000 acres without any limitation.

- (2) Allows Presidents to reduce any national monument by more than 85,000 acres:
 - (A) Must be approved by the state and local government of each State whose boundaries the monument is located.

- (B) Must be reviewed under the National Environmental Policy Act.

- (3) Must be reviewed under an environmental assessment or environmental impact statement.

(k) Private Property Protections requiring prior written consent of impacted state and private landowners before private property is included in a national monument.

(l) Prohibits any designation from being construed to increase the amount of Federal Funds authorized to be appropriated.

(m) Prohibits water rights from being acquired by a monument designation.

(n) Definitions

- (1) Clarifies that “declaration” includes creation and expansion of a national monument.

- (2) Prohibits submerged land and water from being included in a monument designation.

- (3) Clarifies the previously vague “Antiquity” definition:

- (A) Eligible objects include:

- (i) Relics
- (ii) Artifacts
- (iii) Human or animal skeletal remains
- (iv) Fossils (other than fossil fuels)
- (v) Certain building constructed before the date of the enactment of this

subsection.

(B) Specifically does not include:

- (i) Natural geographic features
- (ii) Objects not made by humans, except fossils (other than fossil fuels) or human or animal skeletal remains.

Cost:

The Congressional Budget Office has not completed a cost estimate of this bill at this time.

Administration Position:

The Administration's position is unknown at this time.

Effect on Current Law (Ramseyer):

Showing Current Law as Amended by H.R. 3990

[new text highlighted in yellow; text to be deleted bracketed and highlighted in blue]

Title 54 United States Code §320301

§320301. National monuments

(a) Presidential Declaration.-The President may, in the President's discretion, declare by public proclamation [historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest] object or objects of antiquity that are situated on land owned or controlled by the Federal Government to be national monuments.

(b) Reservation of Land.-The President may reserve parcels of land as a part of the national monuments. The limits of the parcels shall be [confined to the smallest area compatible with the proper care and management of the objects to be protected] in accordance with the limitations outlined in subsections (e), (f), (g), and (h).

(c) Relinquishment to Federal Government.-When an object is situated on a parcel covered by a bona fide unperfected claim or held in private ownership, the parcel, or so much of the parcel as may be necessary for the proper care and management of the object, may be relinquished to the Federal Government and the Secretary may accept the relinquishment of the parcel on behalf of the Federal Government.

(d) Limitation on Extension or Establishment of National Monuments in Wyoming.—No extension or establishment of national monuments in Wyoming may be undertaken except by express authorization of Congress.

(e) LIMITATION ON SIZE OF NATIONAL MONUMENTS.— 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—

- (1) that is more than 640 acres; and
- (2) whose exterior boundary is less than 50 miles from the closest exterior boundary of another national monument declared under this section.

(f) EXCEPTION FOR MONUMENTS OF LESS THAN 5000 ACRES.— Subsection (e) shall not apply to the creation of a national monument under this section if the national monument so created—

- (1) would be 5000 acres and up to 10,000 acres;
- (2) would have all exterior boundaries 50 miles or more from the closest exterior boundary of another national monument declared under this section; and
- (3) 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.

(g) EXCEPTION FOR MONUMENTS OF 5000 ACRES AND UP TO 10,000 ACRES.— Subsection (e) shall not apply to the designation of a national monument under this section if the national monument so designated—

- (1) would be 5000 acres and up to 10,000 acres;
- (2) would have all exterior boundaries 50 miles or more from the closest exterior boundary of another national monument declaration under this section; and
- (3) 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.

(h) EXCEPTION FOR MONUMENTS 10,000 ACRES AND UP TO 85,000 ACRES.— Subsection (e) shall not apply to the designation of a national monument under this section if the national monument so designated—

- (1) would be 10,000 acres and up to 85,000 acres;
- (2) would have all exterior boundaries 50 miles or more from the closest exterior boundary of another national monument declaration under this section; and
- (3) 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).

(i) EXCEPTION FOR EMERGENCY DESIGNATION.—

(1) IN GENERAL.—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.

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

(3) ONE TIME DESIGNATION.—Land designated as a national monument under this subsection—

- (A) may only be so designated one time; and

(B) may not also be permanently designated as a national monument under this section.

(4) RIGHTS AND USES.—Land designated as a national monument under this subsection shall remain subject to—

(A) valid existing rights; and

(B) uses allowed on the day before such designation under an applicable Resources Management Plan or Forest Plan.

(j) PRESIDENTIAL AUTHORITY TO REDUCE SIZE OF DECLARED MONUMENTS.—The President may—

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

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

(A) 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

(B) 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.

(k) NON-FEDERALLY OWNED PROPERTY.—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.

(l) EFFECT OF DECLARATION ON FEDERAL FUNDS.—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.

(m) WATER RIGHTS ASSOCIATED WITH A DECLARATION.—Water rights associated with a declaration under this section—

(1) may not be reserved expressly or by implication by a declaration under this section; and

(2) 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.”.

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

(1) DECLARATION; DECLARED.—The term “declaration” or “declared” shall only include the creation or expansion of a national monument under this section.

(2) LAND.—The term “land” shall not include submerged land or water.

(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.