

Presidential Authority Under the Antiquities Act

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The Antiquities Act of 1906, codified at 54 U.S.C. §§ 320301–320303, empowers the President to create national monuments by “public proclamation.” The act provides that monuments may consist of “historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated on land owned or controlled by the Federal Government.” The President may reserve surrounding land as part of a monument, but such reservation must be “confined to the smallest area compatible with the proper care and management of the objects to be protected.” 54 U.S.C. § 320301(b). The act allows the federal government to accept land “relinquished” to it for purposes of creating a monument and was amended in the mid-twentieth century to prohibit the establishment or expansion of any monuments in Wyoming without congressional authorization. The act does not specify what protections arise from national monument status; instead, Presidents have used monument proclamations to impose particular land use restrictions on a monument-by-monument basis.

Because Congress possesses plenary power over federal lands pursuant to the Property Clause in Article I of the Constitution, courts have described the Antiquities Act as a delegation of authority from Congress to the President. Parties aggrieved by the creation of national monuments (and attendant land use restrictions) have challenged the President’s exercise of that delegated authority, requiring courts to grapple with the scope of the power conveyed. Courts have generally recognized that while the act represents a broad delegation of power to the President, the act does limit presidential discretion in certain respects. First, it limits monument status to objects of “historic or scientific interest.” Courts have interpreted the term “object” broadly and have affirmed monument proclamations on the basis of “objects” as large as an entire ecosystem. Courts have also widely deferred to presidential determinations about historic and scientific interest; no court has struck down a national monument on the basis that it lacked the requisite historical or scientific characteristics. Second, the act allows monuments to be established only on “land owned or controlled by the Federal Government.” Courts have found that the term “land” can include submerged land (allowing for marine monuments) and have authorized marine monuments beyond U.S. territorial waters based on federal authority over the United States’ Exclusive Economic Zone. Third, the act limits the size of land reservations for monuments to “the smallest area compatible” with the monument’s protection. Courts have been deferential on this score as well, with no court overturning, or even reviewing, a President’s determination of how much land was necessary to reserve.

Courts have not established with certainty what degree of judicial review, if any, is appropriate in the context of Antiquities Act monument proclamations. Supreme Court precedent limits the extent to which courts can review presidential actions taken pursuant to delegated authority from Congress. Where the law imposes no limits on a President’s discretion, no judicial review of the exercise of that discretion is available. The U.S. Court of Appeals for the District of Columbia Circuit has taken the view in a series of cases that the requirements articulated above cabin the President’s discretion sufficiently to authorize some degree of judicial review. Courts, including the Supreme Court, have evaluated whether “objects” were appropriately designated as monuments and whether “lands” qualified for monument status. No court, however, has engaged in judicial review with respect to whether a given monument proclamation meets the “smallest area compatible” requirement.

The Antiquities Act is silent with respect to a President’s authority to diminish the size of a monument or eliminate a monument altogether. Proponents of this authority point to historical examples of Presidents reducing the size of monuments without a congressional response and argue, among other things, that a grant of authority to do something includes the authority to undo it. Opponents of monument reduction and revocation authority argue, among other things, that the President could exercise such authority only if it were delegated explicitly by Congress. The scope of the President’s authority in this respect has been the subject of litigation arising from the President’s reduction of the Bears Ears and Grand Staircase-Escalante National Monuments in 2017. *See Hopi Tribe v. Trump*, No. 17-cv-02590 (D.D.C. filed Dec. 4, 2017); *Wilderness Soc’y v. Trump*, No. 17-cv-02587 (D.D.C. filed Dec. 4, 2017). That litigation is ongoing. The Department of Justice, in a 2025 opinion from the Office of Legal Counsel, has taken the position that the President has full authority both to diminish and to revoke entirely monument status granted by a prior President.

Congress has a number of options for adjusting the scope of the President’s authority under the Antiquities Act. Amendments to the act could address, among other things, the types of objects subject to designation, the quantity of land eligible for inclusion in monuments, the types of land use restrictions that can be imposed, and the scope of judicial review. Congress also has the option to specify what authority a President has to change monuments established by prior Presidents.

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The Antiquities Act was enacted in 1906 in response to the destruction of prehistoric ruins and other archaeological sites in the western United States, often by amateur archaeologists and treasure hunters.¹ Prior to enactment of the Antiquities Act, federal law did not authorize the President to make permanent and comprehensive reservations for the purpose of preservation, but instead provided more limited protections.² The Antiquities Act authorizes the President to declare as national monuments, by public proclamation, “historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest” located on federal land.³ It also authorizes the President to reserve parcels of land surrounding these objects, but limits the size of such reservations to “the smallest area compatible with the proper care and management of the objects to be protected.”⁴ Once a national monument is established, use of the federal lands and resources within the monument’s boundaries is subject to the limitations specified in the proclamation itself and other authorities, without need of congressional authorization.⁵

This report provides (1) an overview of the Antiquities Act’s provisions; (2) a review of issues that have been subject to litigation under various components of the act—including what constitutes an object subject to designation, what lands are subject to reservation, and what constitutes the “smallest area compatible with the proper care and management” of objects designated as monuments; (3) a discussion of how courts have engaged in judicial review of monument proclamations; and (4) a discussion of the ongoing debate over whether Presidents have authority to revoke or diminish prior Presidents’ monument proclamations. These issues have generated some controversy as well as regular congressional interest. Some Members have voiced support for the exercise of Antiquities Act authority,⁶ while others have introduced bills

¹ See Pub. L. No. 59-209, § 2, 34 Stat. 225, 225 (codified as amended at 54 U.S.C. §§ 320301–320303); see also *Preservation of Prehistoric Ruins on the Pub. Lands: Hearing on S. 5603, H.R. 7269, and H.R. 15986 Before the H. Comm. on the Pub. Lands*, 58th Cong. 8 (1905) [hereinafter *Hearing on S. 5603*] (statement of Charles P. Bowditch, Chairman of the Committee of the Archaeological Institute of America on American Archaeology) (“They consider it the most important thing to have legislation which will prevent the vandalism that is now prevalent in the southwestern territory in the region of the ruins of Indian antiquities, and the results being used for commercial purposes. Vast numbers—we hear of one case of two carloads—of Indian antiquities have been shipped away by private individuals”); *id.* at 9 (statement of Prof. Frederic W. Putman) (“These ruins and these old sites, mounds, and burial places are rapidly disappearing, or they are being destroyed by what can literally be termed ‘pot hunting.’ These ruins, then, are going so fast that if legislation to protect them is not enacted at once it will be impossible in a few years to read the past history of North America”). For a detailed discussion of the enactment of the Antiquities Act, see Mark Squillace, *The Monumental Legacy of the Antiquities Act of 1906*, 37 GA. L. REV. 473, 476–87 (2003).

² The General Land Office Act, ch. 68, 2 Stat. 716 (1812), created the General Land Office in the Department of the Treasury and gave the commissioner of that office the duty to “superintend, execute, and perform, all such acts and things, touching or respecting the public lands of the United States.” See also Ronald F. Lee, *The Origins of the Antiquities Act*, in *THE ANTIQUITIES ACT: A CENTURY OF AMERICAN ARCHAEOLOGY, HISTORIC PRESERVATION, AND NATURE CONSERVATION* 15, 23 (David Harmon et al. eds., 2006) (describing the General Land Office’s authority to withdraw specific tracts of land from sale or entry for a temporary period); Forest Reserve Act of 1891, ch. 561 § 24, 26 Stat. 1095, 1103 (authorizing the President to create permanent forest reserves through executive proclamation, though such lands were not protected from other forms of development, including mining).

³ 54 U.S.C. § 320301(b).

⁴ *Id.* § 320301(c).

⁵ See CRS Report R41330, *National Monuments and the Antiquities Act*, by Carol Hardy Vincent (2025) at 9; Squillace, *supra* note 1, at 517–18 (“[R]estrictions on grazing, rights-of-way, and other uses of the land, including recreational uses . . . can be imposed in the proclamation itself, but to the extent that they involve discretionary actions, such as a decision to grant a new right of way, they might simply be handled in the course of managing the monument.” (footnotes omitted)).

⁶ See Letter from 109 Democratic Members of Congress, to Sally Jewell, Sec’y, Dep’t of the Interior (Jan. 24, 2014), https://democrats-naturalresources.house.gov/imo/media/doc/2014.1.14.Antiquities%20Act.%20Jewell_2.pdf (continued...)

seeking to limit presidential authority under the act⁷ or to remove such authority entirely.⁸ The report concludes with considerations for Congress in some of these areas.

Statutory Provisions

The two main provisions of the Antiquities Act allow the President to declare and reserve lands for national monuments. Those sections state the following:

(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 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.⁹

The Antiquities Act does not require the President to produce an evidentiary record or to follow specific procedures in establishing a national monument. Moreover, because proclamations under the Antiquities Act are issued directly by the President, rather than by an executive agency, they are not subject to substantive or procedural requirements that apply to federal agency actions, such as the procedural and judicial review provisions of the Administrative Procedure Act (APA) or the procedural and administrative record requirements of the National Environmental Policy Act (NEPA).¹⁰

Creation of a national monument under the Antiquities Act does not automatically trigger any land use restrictions. Instead, any protections for lands and resources within a monument derive from a variety of other sources.¹¹ They include the authorities that generally govern lands of the managing agency, such as the National Park Service Organic Act for monuments designated on National Park Service lands.¹² They also include laws governing particular activities, such as the

[<https://perma.cc/34U2-56WX>]; Press Release, Natural Resources Committee, Defazio, Grijalva Lead 109 Democrats in Urging Interior to Conserve National Treasures Using Antiquities Act (Jan. 24, 2014), <https://democrats-naturalresources.house.gov/media/press-releases/defazio-grijalva-lead-109-democrats-in-urging-interior-to-conserve-national-treasures-using-antiquities-act> [<https://perma.cc/D65R-7EFQ>]; see also Bob Hotakainen, *Biden Urged to Create Nine New National Monuments*, E&E NEWS PM (Apr. 16, 2024, at 16:33 ET), <https://www.eenews.net/articles/biden-urged-to-create-nine-new-national-monuments/>.

⁷ See, e.g., Southern Arizona Protection Act, H.R. 5393, 119th Cong. (2025); Congressional Oversight of the Antiquities Act, H.R. 2645, 119th Cong. (2025); Antiquities Act, S. 367, 116th Cong. (2019).

⁸ See, e.g., Ending Presidential Overreach on Public Lands Act, S. 220, 119th Cong. (2025).

⁹ 54 U.S.C. § 320301(a)–(b). Other provisions of the act allow the federal government to receive land donations, *id.* § 320301(c); prohibit establishment or extension of monuments in Wyoming except by Congress, *id.* § 320301(d); and authorize certain agencies to issue regulations and grant permits for archeological activities by qualified institutions, *id.* §§ 320302–320303. Title 18 of the *U.S. Code* includes criminal penalties for stealing or otherwise disrupting antiquities on federal lands and for violating regulations issued under the act. See 18 U.S.C. § 1866.

¹⁰ See *Franklin v. Massachusetts*, 505 U.S. 788, 800–01 (1992) (holding that the President is not subject to the APA). Agency actions taken in the course of managing a national monument, however, are subject to a different analysis. See, e.g., *W. Watersheds Project v. Bureau of Land Mgmt. (BLM)*, 629 F. Supp. 2d 951 (D. Ariz. 2009) (proclamation instructing BLM to prepare management plan in reliance upon “all applicable legal authorities,” including other land use statutes, could trigger APA review of BLM plan).

¹¹ See Squillace, *supra* note 1, at 514–18 (discussing various sources of restrictions on monument land use). Examples of use restrictions can be found in the Tables to CRS Report R44886, *Monument Proclamations Under Executive Order Review: Comparison of Selected Provisions*, by Carol Hardy Vincent and Laura A. Hanson (2017).

¹² 54 U.S.C. §§ 100101–100102.

Mineral Leasing Act prohibitions on new mineral leasing within national monuments.¹³ A presidential proclamation itself may impose restrictions on uses or activities, such as mining and mineral claims, oil and gas leasing, timber harvesting, hunting, fishing, and grazing.¹⁴ Use restrictions may also be found in the policies and management plans developed by the agency or agencies responsible for monument oversight.¹⁵

The act is also silent as to which federal agency is responsible for managing a national monument once established.¹⁶ For much of the act's history, the National Park Service was most often selected for this task, though some Presidents have departed from this practice and tasked other agencies with this responsibility, particularly in recent decades.¹⁷ For instance, since 2000, more new monuments have been managed by the Bureau of Land Management than the National Park Service.¹⁸

Scope of Presidential Power Under the Act

Notwithstanding the act's grant of authority to the President to establish national monuments, Congress retains ultimate authority over federal lands pursuant to the Property Clause of the Constitution, which states that 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."¹⁹ Congress has exercised this authority to alter certain monument designations, whether by incorporating the monument (or portions thereof) into the National Park System, transferring the monument to state control, abolishing the monument outright, or taking other actions.²⁰ As one court explained, "Congress may delegate this authority as it deems appropriate," provided that Congress also establishes "standards to guide the authorized action such that one reviewing the action could recognize whether the will of Congress has been obeyed."²¹ The Antiquities Act was an appropriate delegation in this respect, the court found, because it "sets forth clear standards and limitations."²² Courts have interpreted the sparse language of the act to limit the President's discretion, for example, with the types of objects eligible to be monuments and

¹³ 30 U.S.C. § 181 (providing for the disposition of "[d]eposits of coal, phosphate, sodium, potassium, oil, oil shale, gilsonite . . . or gas, and lands containing such deposits owned by the United States" but "excluding lands . . . in national parks and monuments"); see also Squillace, *supra* note 1, at 516 & n.278.

¹⁴ Squillace, *supra* note 1, at 516–18; see also Vincent, *supra* note 5, at 9.

¹⁵ Squillace, *supra* note 1, at 517–18 & n.283.

¹⁶ Kelly Y. Fanizzo, *Separation of Powers and Federal Land Management: Enforcing the Direction of the President Under the Antiquities Act*, 40 ENVTL. L. 765, 781 (2010). For a more detailed discussion of the history of agency management of national monuments and related issues, see *id.* at 781–84 & Squillace, *supra* note 1, at 519–33.

¹⁷ Fanizzo, *supra* note 16, at 783–84; see also Robert Iraola, *Proclamations, National Monuments, and the Scope of Judicial Review under the Antiquities Act of 1906*, 29 WM. & MARY ENVTL. L. & POL'Y REV. 159, 167–68 (2004) ("Typically, while management of national monuments has been given to the National Park Service, such authority has also been delegated to agencies such as the Forest Service and Bureau of Land Management.").

¹⁸ See *National Monument Facts and Figures*, NAT'L PARK SERV. (Jan. 22, 2025), <https://www.nps.gov/subjects/archeology/national-monument-facts-and-figures.htm> [<https://perma.cc/M25J-U27Q>].

¹⁹ U.S. CONST. art. IV, § 3, cl. 2.

²⁰ See Vincent, *supra* note 5.

²¹ *Utah Ass'n of Cnty. v. Bush*, 316 F. Supp. 2d 1172, 1190–91 (D. Utah 2004) (citing *Yakus v. United States*, 321 U.S. 414 (1944)); see also *Mountain States Legal Found. v. Bush*, 306 F.3d 1132, 1137 (D.C. Cir. 2002) ("No Constitutional Property Clause claim is before us, as the President exercised his delegated powers under the Antiquities Act, and that statute includes intelligible principles to guide the President's action.").

²² *Utah Ass'n of Cnty.*, 316 F. Supp. 2d at 1191.

monument size.²³ This section details statutory constraints on the President’s exercise of authority under the act as interpreted by courts throughout its history.

“Objects”

The Antiquities Act allows the President to designate as monuments “historic landmarks, historic and prehistoric structures, and other *objects* of historic or scientific interest.”²⁴ Courts have taken a broad view of what “objects” can be covered under the Antiquities Act. In *Cameron v. United States*, the Supreme Court addressed President Theodore Roosevelt’s 1908 creation of Grand Canyon National Monument.²⁵ In his proclamation, Roosevelt wrote that “the Grand Canyon of the Colorado River . . . is an object of unusual scientific interest, being the greatest eroded canyon within the United States, and it appears that the public interests would be promoted by reserving it as a National Monument.”²⁶ When miners challenged the monument, they argued that the President lacked the authority to establish the monument because it was not the type of object encompassed by the act.²⁷ The Court disagreed. Recognizing the Grand Canyon as “one of the great natural wonders,” the Court noted that it “has attracted wide attention among explorers and scientists” and “affords an unexampled field for geological study.”²⁸ Thus, the Court concluded that the Grand Canyon was an “object of unusual scientific interest” for purposes of the Antiquities Act.²⁹

The Court reaffirmed that the word “objects” was not limited to “archeologic sites” in *Cappaert v. United States*.³⁰ President Truman had reserved a limestone cavern called “Devil’s Hole” and forty acres of surrounding land as a part of Death Valley National Monument.³¹ The monument proclamation specifically referred to a “remarkable underground pool” in Devil’s Hole as being of “outstanding scientific importance,” owing in part to the presence of the Devil’s Hole pupfish: “a peculiar race of desert fish” found exclusively in that pool. *Cappaert v. United States* arose when the United States sought to prevent ranchers from pumping groundwater on their ranch near Devil’s Hole because the pumping reduced the water level of the underground pool in Devil’s Hole and threatened its resident pupfish with extinction.³² The ranchers argued that the President’s reservation of land for the monument did not include any reservation of water rights for the United States, and that the Antiquities Act did not authorize the President to reserve the pool itself because it was not an archeologic site.³³ The Court held that Devil’s Hole was subject to reservation because the Antiquities Act was “not so limited,” and “the pool in Devil’s Hole and its rare inhabitants are ‘objects of historic or scientific interest.’”³⁴ The Court upheld the lower

²³ *Id.*

²⁴ 54 U.S.C. § 320301(a) (emphasis added).

²⁵ 252 U.S. 450 (1920).

²⁶ Proclamation No. 794, 35 Stat. 2175 (1908).

²⁷ 252 U.S. at 455.

²⁸ *Id.* at 456.

²⁹ *Id.* at 455 (quoting Proclamation No. 794, 35 Stat. at 2175). The Court also concluded that the plaintiffs did not have a prior valid adverse claim that would entitle them to continue their operations on the monument land. *Id.* at 456–65.

³⁰ 426 U.S. 128 (1976).

³¹ *Id.* at 131–33.

³² *Id.* at 131–35.

³³ *Id.* at 136, 142.

³⁴ *Id.* at 142 (quoting *Cameron v. United States*, 252 U.S. 450, 455 (1920); see also *Tulare County v. Bush*, 306 F.3d 1138, 1142 (D.C. Cir. 2002) (presidential authority under Antiquities Act “is not limited to protecting only archaeological sites”).

court's grant of an injunction on pumping groundwater to the extent necessary to preserve the pool as a habitat for pupfish, which the Proclamation made clear were "one of the features of scientific interest."³⁵

In *Anaconda Copper Co. v. Andrus*, mining industry plaintiffs challenged several of President Carter's monument designations in Alaska.³⁶ The U.S. District Court for the District of Alaska observed that presidential authority under the Antiquities Act was "not limited only to historic landmarks" or "historic and prehistoric structures," but extended to "other objects of historic or scientific interest."³⁷ The court opined that "the parameters of presidential authority have not yet been fully defined," suggesting that "the Supreme Court has had the opportunity to do so in the *Cameron* case and again in *Cappaert*, but did not do so," and that as such "the outer parameters" of presidential authority under the Antiquities Act "have not yet been drawn by judicial decision."³⁸ Nonetheless, relying on the legislative history of the act, historical practice, and the lack of congressional amendments to the act in light of that practice, the court found that "matters of scientific interest which involve geological formations or which may involve plant, animal or fish life are within this reach of the presidential authority under the Antiquities Act."³⁹

Covered Lands

The Antiquities Act limits the scope of the President's authority to declare monuments to objects "situated on land owned or controlled by the Federal Government."⁴⁰ Courts have addressed the meaning of "land"—specifically whether the term includes land submerged under water—and the degree of "control" required to establish monument eligibility.

Submerged Lands

Courts have consistently held that the President's authority under the Antiquities Act extends to submerged lands. In *United States v. California*, the Supreme Court addressed the issue of submerged lands in the context of the Channel Island National Monument.⁴¹ President Franklin Roosevelt had established the monument in 1938 to protect Anacapa and Santa Barbara Islands off the coast of southern California, on the basis that the islands contained fossils of scientific interest and were themselves notable examples of "ancient volcanism, deposition, and active sea erosion."⁴² President Truman enlarged the monument in 1949 to encompass "the areas within one nautical mile of the shoreline" of the two islands.⁴³ The litigation in *United States v. California* dealt primarily with the question of whether the lands and waters within that one-mile radius were

³⁵ *Cappaert*, 426 U.S. at 141.

³⁶ No. 79-161, 1980 U.S. Dist. LEXIS 17861 (D. Alaska July 1, 1980).

³⁷ *Id.* at *5.

³⁸ *Id.* at *7; *see also id.* at *6 ("I find the executive practice is consistent and long established and must be looked to, as well as the words of the statute itself. . . . I believe it is significant that in the promulgation and enactment of the 1976 [Federal Land Policy and Management Act] Congress did not curtail or restrict the exercise of presidential authority.").

³⁹ *Id.* For a similar district court holding, *see Wyoming v. Franke*, discussed *infra* note 67 and accompanying text.

⁴⁰ 54 U.S.C. § 320301(a).

⁴¹ 436 U.S. 32 (1978) ("There can be no serious question, therefore, that the President in 1949 had power under the Antiquities Act to reserve the submerged lands and waters within the one-mile belt as a national monument . . .").

⁴² Proclamation No. 2281, 52 Stat. 1541 (1938).

⁴³ Proclamation No. 2825, 63 Stat. 1258 (1949).

controlled at the time of the litigation by California or the federal government.⁴⁴ While the Court ultimately concluded that Congress had transferred title of the land to California, rendering the land beyond reach of the Antiquities Act, the Court explained in the course of its reasoning that the President had “power under the Antiquities Act to reserve the submerged lands and waters within the one-mile belts as a national monument.”⁴⁵ The Supreme Court reaffirmed this principle in *Alaska v. United States* in 2005.⁴⁶ In the course of addressing whether the United States retained title to the submerged lands in the Glacier Bay National Monument, the Court stated that “[i]t is clear, after all, that the Antiquities Act empowers the President to reserve submerged lands.”⁴⁷

The U.S. Court of Appeals for the D.C. Circuit (D.C. Circuit) analyzed the issue further in *Massachusetts Lobstermen’s Ass’n v. Ross*.⁴⁸ President Obama established the Northeast Canyons and Seamounts Marine National Monument, located exclusively in the Atlantic Ocean, in a proclamation declaring the objects constituting the monument to be “the canyons and seamounts themselves, and the natural resources and ecosystems in and around them.”⁴⁹ The plaintiffs challenging the monument—a group of commercial fishing associations—argued in part that “the Monument is invalid because it ‘is not land, as that term is ordinarily understood.’”⁵⁰ They contended that the Supreme Court’s commentary on this issue in *Cappaert, California*, and *Alaska* constituted “non-binding dicta” because “the cases concerned only whether Presidents intended to include submerged lands in their proclamations, not whether they had the authority to do so.”⁵¹ The D.C. Circuit disagreed, holding that at least in *Alaska*, the President’s authority to reserve submerged lands was a necessary and explicit predicate to its holding (and therefore its commentary on the issue was not dicta).⁵² The court concluded that, “[a]lthough the parties advanced, and the district court considered, other arguments about whether the Act reaches submerged lands—including arguments about historic practice and ordinary meaning—we need not wade into those waters, so to speak. On-point Supreme Court precedent resolves this claim.”⁵³

“Owned or Controlled”

The Antiquities Act limits the President to reserving lands “owned or controlled by the Federal Government.”⁵⁴ Plaintiffs in the *Massachusetts Lobstermen’s Ass’n* case argued that the Northeast Canyons and Seamounts Marine National Monument was not on land “owned or controlled by

⁴⁴ See *California*, 436 U.S. at 33 (“The question in this case, arising under our original jurisdiction, is whether California or the United States has dominion over the submerged lands and waters within the Channel Islands National Monument, which is situated within the three-mile marginal sea off the southern California mainland.”). The Court ultimately held that while the federal government owned and controlled the lands at the time of the monument designation and expansion, the Submerged Lands Act, 43 U.S.C. § 1301, had effectuated a transfer of that ownership to the State of California. See *infra* “Owned or Controlled” for further discussion of this component of the case.

⁴⁵ 436 U.S. at 36; see also *id.* at n.9 (“Although the Antiquities Act refers to ‘lands,’ this Court has recognized that it also authorizes the reservation of waters located on or over federal lands.”) (citing *Cappaert v. United States*, 426 U.S. 128, 138–42 (1976)).

⁴⁶ 545 U.S. 75 (2005).

⁴⁷ *Id.* at 103 (citing *California*, 436 U.S. at 36).

⁴⁸ 945 F.3d 535 (D.C. Cir. 2019). As discussed *supra* “Smallest Area Compatible” the Supreme Court declined to review this case.

⁴⁹ Proclamation No. 9496, 81 Fed. Reg. 65161 (Sep. 15, 2016).

⁵⁰ *Mass. Lobstermen’s Ass’n*, 945 F.3d at 540.

⁵¹ *Id.* at 541.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ 54 U.S.C. § 320301(a).

the federal government” because it lay entirely within a part of the ocean called the U.S. Exclusive Economic Zone (EEZ).⁵⁵ Under principles of international law, the area between 12 and 200 miles off a nation’s coast constitutes that nation’s EEZ.⁵⁶ As the D.C. Circuit recounted, President Reagan “established U.S. sovereign dominion over the EEZ” by proclamation in 1983.⁵⁷ Pursuant to that proclamation and the rules of international law, the court explained, “the federal government exerts ‘significant’ ‘authority to exercise restraining and directing influence over the EEZ.’”⁵⁸ Emphasizing that “[n]o private entity owns any portion of the EEZ, and no public entity possesses equivalent sovereign rights there,” and pointing to Supreme Court precedent holding that the federal government exercises exclusive jurisdiction over the continental shelf, the court held that the federal government “controls” the EEZ for purposes of the Antiquities Act.⁵⁹

Courts have generally yet to decide what degree of ownership the federal government must exercise to make land eligible for reservation as part of a monument. While fee-simple ownership clearly qualifies, there are other types of ownership or control—for example, a conservation easement, or ownership in trust for an Indian tribe—that remain untested. The question could arise in the context of a monument proclamation on such land or in the context of land conveyed to the government in anticipation of a monument. The Antiquities Act allows private land to be “relinquished” to the government for that purpose but does not specify whether the conveying party could lawfully retain any type of interest in the land, nor whether the analysis would differ as between states and private parties.⁶⁰

A related question courts have not widely explored is what use restrictions can be imposed for a monument on land the government owns but has leased out or otherwise made available for resource extraction. Most proclamations in recent decades have included land use restrictions with exceptions for “valid existing rights.”⁶¹ Absent such carve-outs, those with property interests in government lands could argue that a variety of use restrictions amount to takings requiring compensation under the Fifth Amendment’s Takings Clause.⁶² Even where proclamations have

⁵⁵ *Mass. Lobstermen’s Ass’n*, 945 F.3d at 539, 544.

⁵⁶ See U.N. Convention on the Law of the Sea, arts. 55, 57, Dec. 10, 1982, 1833 U.N.T.S. 397, 418, 419 (defining the EEZ as “an area beyond and adjacent to the territorial sea” that “shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured,” “under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention”); see also 33 C.F.R. § 2.30 (2026) (EEZ).

⁵⁷ *Mass. Lobstermen’s Ass’n*, 945 F.3d at 539, 544; see also Proclamation No. 5030, 3 C.F.R. §§ 22, 23 (1984).

⁵⁸ *Mass. Lobstermen’s Ass’n*, 945 F.3d at 543 (quoting Admin. of Coral Reef Res. in the Nw. Hawaiian Islands, 24 Op. O.L.C. 183, 196–97 (2000)).

⁵⁹ *Mass. Lobstermen’s Ass’n*, 945 F.3d at 544; see also *Parker Drilling Mgmt. Servs., Ltd. v. Newton*, 587 U.S. 601, 606 (2019) (“[T]he Federal Government has exclusive jurisdiction over the entire continental shelf.”).

⁶⁰ 54 U.S.C. § 320301(c) (“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.”).

⁶¹ See Vincent, *supra* note 5, at 9 (“At least over the past 50 years, monument proclamations typically have had explicit protections for valid existing rights for land uses, but the extent to which designations may affect existing rights is not always clear.”). See also CRS Report R46657, *Withdrawal of Federal Lands: Analysis of a Common Legislated Withdrawal Provision*, by Carol Hardy Vincent and Erin H. Ward at 12–17 (2021) (interpreting the phrase “subject to valid existing rights”).

⁶² The Takings Clause of the Fifth Amendment to the Constitution prohibits the taking of private property “for public use, without just compensation.” U.S. CONST. amend. V. Courts have held in the past that mineral leases on public land can give rise to a property right for Takings Clause purposes. See, e.g., *Skaw v. United States*, 740 F.2d 932, 935–36 (continued...)

made monument land reservations “subject to valid existing rights,” attendant land use restrictions have the potential to reduce the value of property interests on monument land.⁶³ Where use restrictions deny a user “any economically viable use of his land,” a court could find a compensable taking has occurred.⁶⁴

“Smallest Area Compatible”

The Antiquities Act requires that land reserved for a monument be “confined to the smallest area compatible with the proper care and management of the objects to be protected.”⁶⁵ Courts have largely declined to review claims that monument reservations are larger than this provision allows.⁶⁶ In an early example, the U.S. District Court for the District of Wyoming in *Wyoming v. Franke* considered claims that the Jackson Hole National Monument “contain[ed] no objects of an historic or scientific interest” and was “not confined to the smallest area compatible” with the preservation of the objects designated.⁶⁷ The court found the Antiquities Act granted the President substantial discretion, holding that “evidence in the case of a substantial character upon which the President may have acted” would suffice to justify selecting objects for designation as monuments and determining the smallest area compatible with preserving them.⁶⁸ The court reasoned that the Antiquities Act delegated congressional authority over lands to the President, and that Congress bore the burden of correcting for any unintended executive overreach by passing new legislation.⁶⁹ The court described this as “a controversy between the Legislative and Executive Branches of the Government in which, under the evidence presented here, the Court cannot interfere.”⁷⁰

(Fed. Cir. 1984) (locator of mineral deposit has “property right in the full sense, unaffected by the fact that paramount title to the land is in the United States” . . . *A fortiori* it is a property right which is within the protection of the Fifth Amendment’s prohibition against the taking of private property for public use without just compensation” (quoting *Union Oil Co. v. Smith*, 249 U.S. 337, 349 (1919))).

⁶³ Although the issue ultimately was not litigated, questions regarding use restrictions arose in the context of the creation of the Grand Staircase-Escalante National Monument in Utah. While the proclamation made the reservation “subject to valid existing rights,” Proclamation No. 6920, 61 Fed. Reg. 50223, 50225 (1996), various tangential use restrictions reportedly made certain coal leases unprofitable; the matter was resolved without litigation when the government paid \$14 million to the leaseholder. See Associated Press, *\$14 Million Swap for Andalex Leases*, DESERET NEWS (Oct. 3, 1999, at 12:00 MT), <https://www.deseret.com/1999/10/3/19468770/14-million-swap-for-andalex-leases/> [<https://perma.cc/8K8V-SSVV>].

⁶⁴ *Agins v. City of Tiburon*, 447 U.S. 255, 260 (1980), *abrogated by* *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528 (2005); see also CRS Report R47562, *The Takings Clause of the Constitution: Overview of Supreme Court Jurisprudence on Key Topics*, by Adam Vann (2023).

⁶⁵ 54 U.S.C. § 320301(b).

⁶⁶ See *infra* “Judicial Review.”

⁶⁷ *Wyoming v. Franke*, 58 F. Supp. 890, 892 (D. Wyo. 1945).

⁶⁸ *Id.* at 895.

⁶⁹ *Id.* at 896.

⁷⁰ *Id.*

Later courts have also eschewed second-guessing the amount of land reserved for monuments, generally deferring to the President's broad discretion under the act.⁷¹ These cases are discussed below in relation to the scope of judicial review.⁷²

Restrictions Specific to Wyoming and Alaska

Congress has also enacted legislation limiting the President's authority to establish national monuments in two states. First, after the court in *Wyoming v. Franke* upheld the Jackson Hole National Monument, Congress undertook to pass the "remedial legislation" the court hypothesized. Even prior to the ruling in *Franke*, committees in both chambers held hearings on the Jackson Hole National Monument.⁷³ The then-House Committee on the Public Lands emphasized the potential economic injury that the reservation of land would inflict on local communities, including by reducing the tax base for local governments and "destroying the cattle business."⁷⁴ The then-Senate Committee on Public Lands and Surveys went further, concluding that the Jackson Hole proclamation "disregarded" the Antiquities Act's requirement that reserved lands be "confined to the smallest area" necessary for preservation.⁷⁵ In this committee's judgment, the authority given the President in the Antiquities Act "was not broad enough to cover the establishment of the Jackson Hole Monument," and so it sought to "disestablish[]" that monument in order to eliminate "a dangerous precedent."⁷⁶

The fate of Jackson Hole National Monument was resolved when President Truman signed legislation to consolidate it with the existing Grand Teton National Park.⁷⁷ This same legislation amended the Antiquities Act to prohibit the President from establishing or extending national monuments within Wyoming "except by express authorization of Congress."⁷⁸

Second, legislation outside the Antiquities Act itself, namely the Alaska National Interest Lands Conservation Act (ANILCA), restricts the President's ability to establish national monuments in Alaska.⁷⁹ On December 1, 1978, President Carter established or expanded seventeen monuments in Alaska, totaling approximately fifty-six million acres.⁸⁰ These monument proclamations

⁷¹ The Supreme Court has not addressed this question. In *Cappaert*, one of the ranchers' arguments was that inclusion of thousands of square miles of groundwater for the preservation of the 40-acre Devil's Hole violated the "smallest area compatible" requirement. Brief for the Petitioners at 64, 66–67, *Cappaert v. United States*, 426 U.S. 128 (1976) (No. 74-1107), 1975 WL 173691. The Court did not take up the issue, holding only that the pool and its pupfish were eligible "objects" for preservation, and that pursuant to the "implied-reservation-of-water-rights doctrine," "the level of the pool may be permitted to drop to the extent that the drop does not impair the scientific value of the pool as the natural habitat of the species sought to be preserved." *Cappaert*, 426 U.S. at 141.

⁷² See *infra* "Judicial Review."

⁷³ See *A Bill to Abolish the Jackson Hole National Monument: Hearing Before the H. Comm. on the Pub. Lands on H.R. 2241*, 78th Cong. (1943); *Jackson Hole National Monument, Wyoming: Hearing Before the S. Comm. on Pub. Lands and Surveys*, 78th Cong. (1943).

⁷⁴ H.R. REP. NO. 78-1303, at 5–6 (1944).

⁷⁵ S. REP. NO. 78-1388, at 2 (1944).

⁷⁶ *Id.*

⁷⁷ Act of Sep. 14, 1950, ch. 950, 64 Stat. 849 (codified at 16 U.S.C. § 406d-1).

⁷⁸ *Id.* § 1, 64 Stat. at 849 (codified at 54 U.S.C. § 320301(d)).

⁷⁹ Pub. L. No. 96-487, 94 Stat. 2371 (1980) (codified at 16 U.S.C. §§ 3101–3233).

⁸⁰ Squillace, *supra* note 1, at 504; see Proclamation No. 4611, 93 Stat. 1446 (1978) (Admiralty Island National Monument); Proclamation No. 4612, 93 Stat. 1448 (1978) (Aniakchak National Monument); Proclamation No. 4613, 93 Stat. 1450 (1978) (Becharof National Monument); Proclamation No. 4614, 93 Stat. 1451 (1978) (Bering Land Bridge National Monument); Proclamation No. 4615, 93 Stat. 1453 (1978) (Cape Krusenstern National Monument); (continued...)

“sparked bitter opposition in Alaska.”⁸¹ In 1980, Congress passed and the President signed ANILCA.⁸² This law rescinded President Carter’s monument designations but simultaneously set aside over 100 million acres of land for conservation, much of which consisted of the same lands that had been included in monuments proclaimed by President Carter.⁸³

ANILCA provided that “future executive branch action which withdraws more than five thousand acres, in the aggregate, of public lands within the State of Alaska” would not be not “effective until notice is provided in the Federal Register and to both Houses of Congress” and that each “withdrawal shall terminate unless Congress passes a joint resolution of approval within one year after the notice of such withdrawal has been submitted to Congress.”⁸⁴ The term “withdrawal” generally refers to an act precluding specified uses of federal land that could otherwise be authorized under various laws.⁸⁵ This provision of ANILCA, without explicitly mentioning the Antiquities Act, nonetheless effectively limits the President’s authority with respect to national monuments in Alaska. The President could still “declare” a national monument and “reserve” lands for its care and management, per the verbiage of the Antiquities Act, but ANILCA’s prohibition on “withdrawal” of more than an aggregate five thousand acres of public lands means the President could only preclude otherwise lawful land uses in up to five thousand acres of such lands. In other words, while the President could still declare monuments larger than five thousand acres in Alaska, ANILCA significantly limits presidential discretion with respect to any land use restrictions within such monuments.⁸⁶

Proclamation No. 4616, 93 Stat. 1455 (1978) (Denali National Monument); Proclamation No. 4617, 93 Stat. 1457 (1978) (Gates of the Arctic National Monument); Proclamation No. 4618, 93 Stat. 1458 (1978) (Enlarging the Glacier Bay National Monument); Proclamation No. 4619, 93 Stat. 1460 (1978) (Enlarging the Katmai National Monument); Proclamation No. 4620, 93 Stat. 1462 (1978) (Kenai Fjords National Monument); Proclamation No. 4621, 93 Stat. 1463 (1978) (Kobuk Valley National Monument); Proclamation No. 4622, 93 Stat. 1465 (1978) (Lake Clark National Monument); Proclamation No. 4623, 93 Stat. 1466 (1978) (Misty Fjords National Monument); Proclamation No. 4624, 93 Stat. 1468 (1978) (Noatak National Monument); Proclamation No. 4625, 93 Stat. 1470 (1978) (Wrangell-St. Elias National Monument); Proclamation No. 4626, 93 Stat. 1472 (1978) (Yukon-Charley National Monument); Proclamation No. 4627, 93 Stat. 1473 (1978) (Yukon Flats National Monument).

⁸¹ Squillace, *supra* note 1, at 504.

⁸² Pub. L. No. 96-487, 94 Stat. 2371 (1980) (codified at 16 U.S.C. §§ 3101–3233).

⁸³ Squillace, *supra* note 1, at 504; *see also* Sturgeon v. Frost, 587 U.S. 28, 34–35 (2019).

⁸⁴ 16 U.S.C. § 3213(a).

⁸⁵ *See* CRS In Focus IF13009, *Secretary of the Interior’s Federal Land Withdrawal Authority Under the Federal Land Policy and Management Act (FLPMA)*, by Carol Hardy Vincent, Erin H. Ward, and Christopher M. Davis (2025) (“Withdrawals preclude specified uses of federal land and are made for a variety of purposes. . . . Federal land may be withdrawn from the applicability of one or more laws in various ways. Congress may enact laws to make specific land withdrawals, or the executive branch may withdraw land under various statutory authorities.”). *Cf.* Vincent & Ward, *supra* note 61 (explaining, with respect to legislated withdrawals, that such withdrawals “typically withdraw the land from one or more of three general categories of laws: (1) public land laws, (2) mining laws, and (3) mineral leasing laws”).

⁸⁶ The full extent of that limitation could depend on how courts interpret the terms “executive action” and “in the aggregate.” In one potential scenario, for example, the President could establish multiple 5,000-acre monuments on the theory that each such declaration constituted a single “executive action” and that the 5,000-acre limit was with respect to *each* such action. A court could then be faced with the question of whether the phrase “in the aggregate” applied to each separate executive action, or whether it applied to *all* executive actions collectively (the latter of which would cap the entirety of withdrawn acreage at 5,000 regardless of how many separate declarations the President made). While an analysis of congressional intent might weigh in favor of the latter interpretation, a court might determine that the plain text of the statute was controlling, and that the use of the singular “executive action” unambiguously applies the aggregate acreage limitation to each separate declaration.

Judicial Review

Open questions under the Antiquities Act include to what degree and under what circumstances presidential monument proclamations are subject to judicial review. The Supreme Court has not specified how and to what extent courts should evaluate whether Presidents have complied with the Antiquities Act in issuing monument proclamations. While the Court in *Cameron, Cappaert*, and *California* engaged in review of monument designations, establishing by example that judicial review is available, the Court did not articulate the scope of appropriate judicial review or a standard by which courts should determine the lawfulness of monument proclamations.

Availability of Judicial Review

The Antiquities Act does not contain a provision authorizing legal challenges to executive actions taken pursuant to its statutory authority. The APA sometimes authorizes lawsuits challenging certain executive “agency” actions even where a statute does not explicitly authorize judicial review.⁸⁷ The President, however, is not an “agency” as that term is defined in the APA, meaning that law does not authorize legal challenges to actions taken directly by the President.⁸⁸ Nonetheless, the Supreme Court has suggested that “some claims that the President has violated a statutory mandate are judicially reviewable outside the framework of the APA.”⁸⁹ Lawsuits arguing that the President acted *ultra vires*—meaning that the actions were without authority or exceeded a relevant limit on authority—may therefore proceed under certain circumstances.⁹⁰ Certain Antiquities Act claims can fall within this category, as courts have explained in cases addressing challenges to presidential monument proclamations.⁹¹

As a baseline matter, where a statute grants authority to the President and does not create a cause of action authorizing judicial review, courts generally cannot review the President’s discretionary

⁸⁷ See 5 U.S.C. §§ 701–706; CRS Legal Sidebar LSB10558, *Judicial Review Under the Administrative Procedure Act (APA)*, by Jonathan M. Gaffney (2024) at 1-2.

⁸⁸ See *Franklin v. Massachusetts*, 505 U.S. 788 (1992).

⁸⁹ *Dalton v. Specter*, 511 U.S. 462, 474 (1994).

⁹⁰ *Ultra vires* is an exception to the doctrine of sovereign immunity. As the Supreme Court explained,

[W]here the officer’s powers are limited by statute, his actions beyond those limitations are considered individual and not sovereign actions. The officer is not doing the business which the sovereign has empowered him to do or he is doing it in a way which the sovereign has forbidden. His actions are *ultra vires* his authority and therefore may be made the object of specific relief. It is important to note that in such cases the relief can be granted, without impleading the sovereign, only because of the officer’s lack of delegated power. A claim of error in the exercise of that power is therefore not sufficient.

Larson v. Domestic & Foreign Com. Corp., 337 U.S. 682, 689–90 (1949). The U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) noted in a 2023 opinion upholding a monument proclamation that “neither the Supreme Court nor the Ninth Circuit has directly addressed whether the *Larson* exception applies to actions by the President, apart from the actions of subordinate Executive Branch officials,” but concluded that “precedent and principle point in favor of jurisdiction here.” *Murphy Co. v. Biden*, 65 F.4th 1122, 1129 (9th Cir. 2023).

⁹¹ See, e.g., *Am. Forest Res. Council v. United States*, 77 F.4th 787, 796 (D.C. Cir. 2023) (“Although the Government correctly notes that the O & C Act and the Antiquities Act are silent regarding judicial review and the APA’s general review provision does not permit review of presidential action because the President is not an agency within the meaning of that statute, the absence of a statutory review provision does not necessarily preclude judicial review of presidential action altogether. We have previously said that a claim alleging that the President acted in excess of his statutory authority is judicially reviewable even absent an applicable statutory review provision.” (citation omitted)).

exercise of that authority.⁹² As the D.C. Circuit noted in one monument case, the Supreme Court has “highlighted the separation of powers concerns that inhere in such circumstances and has cautioned that these concerns bar review for abuse of discretion altogether.”⁹³ In the event “the authorizing statute or another statute places discernible limits on the President’s discretion,” however, courts’ exercise of nonstatutory judicial review “does not implicate separation of powers concerns to the same degree as where the statute did ‘not at all limit’ the discretion of the President.”⁹⁴ Consequently, courts may entertain some claims that the President exceeded the scope of the authority granted by statute because “Congress can and often does cabin the discretion it grants the President and it remains the responsibility of the judiciary to ensure that the President act within those limits.”⁹⁵

The Antiquities Act grants legal authority to the President but places limits on the exercise of that authority, such as the requirements that monuments contain objects of historic or scientific value and be located on land owned or controlled by the federal government.⁹⁶ Claims that the President acted *ultra vires* when issuing a proclamation under the Antiquities Act may therefore be subject to review, whether the claim is that the monument proclamation exceeded presidential authority under the Antiquities Act or that it exceeded limitations on presidential discretion imposed by another statute.⁹⁷

Most recently, the U.S. Court of Appeals for the Tenth Circuit (Tenth Circuit) analyzed the applicability of *ultra vires* review to monument proclamations in *Garfield County v. Trump*.⁹⁸ In that case, the plaintiffs challenged President Joe Biden’s expansion of the Bears Ears and Grand Staircase-Escalante Monuments. As summarized by the court, the plaintiffs “claimed that the President lacked statutory authority to designate many of the things named in the proclamations as monuments and that he lacked authority to set aside over two million additional acres of land.”⁹⁹ Specifically, the plaintiffs argued that “even though President Biden declared over 500 things to be ‘objects of historic or scientific interest,’ only nine objects the President protected

⁹² *United States v. George S. Bush & Co.*, 310 U.S. 371, 380 (1940); *Dalton v. Specter*, 511 U.S. 462, 474 (1994) (noting that “where a claim ‘concerns not a want of [Presidential] power, but a mere excess or abuse of discretion in exerting a power given, it is clear that it involves considerations which are beyond the reach of judicial power’” (alteration in original) (quoting *Dakota Cen. Tel. Co. v. South Dakota ex rel. Payne*, 250 U.S. 163, 184 (1919)); *Chamber of Com. v. Reich*, 74 F.3d 1322, 1331 (D.C. Cir. 1996) (“[W]hen a statute entrusts a discrete specific decision to the President and contains no limitations on the President’s exercise of that authority, judicial review of an abuse of discretion claim is not available.”).

⁹³ *Mountain States*, 306 F.3d at 1135 (citing *George S. Bush*, 310 U.S. at 376–77; *Dalton*, 511 U.S. at 476).

⁹⁴ *Id.* at 1336 (quoting *Dalton*, 511 U.S. at 476); see also *Am. Forest Res. Council*, 77 F.4th at 797 (“Even when the Congress gives substantial discretion to the President by statute, we presume it intends that the President heed the directives contained in other enactments.”).

⁹⁵ *Am. Forest Res. Council*, 77 F.4th at 797; cf. *Bowen v. Mich. Acad. Fam. Physicians*, 476 U.S. 667, 681 (1986) (with respect to administrative action, “We ordinarily presume that Congress intends the executive to obey its statutory commands and, accordingly, that it expects the courts to grant relief when an executive agency violates such a command.”). See also *Garfield County v. Trump*, No. 23-4106, 2026 WL 1801091, at *5 n.6 (10th Cir. June 23, 2026) (distinguishing between allegations that the President “lacked authority to reserve the land under the ‘smallest area compatible’ limitation rather than that he misused his discretion to do so”); *id.* at *5 (“Plaintiffs argue that the President exercised authority Congress never gave him, not that he abused his discretion.”).

⁹⁶ See 54 U.S.C. § 320301(a)–(b).

⁹⁷ See *Am. Forest Res. Council*, 77 F.4th at 798 (noting “plaintiffs here argue that the President’s exercise of authority under the Antiquities Act was *ultra vires* because it was inconsistent with an independent statute” and holding claims to be reviewable).

⁹⁸ *Garfield County v. Trump*, No. 23-4106, 2026 WL 1801091 (10th Cir. June 23, 2026). When filed, the listed defendant in the case was President Biden; however, because the decision was issued after the conclusion of President Biden’s term, President Trump was substituted as the defendant given that the challenge was to a presidential action.

⁹⁹ *Id.* at *2.

within the Bears Ears and Grand Staircase reservations were within the Antiquities Act's three permissible groups," namely historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest.¹⁰⁰ They further argued that the sheer size of the land reservations for those monuments exceeded the President's authority "because of the Antiquities Act's smallest area proviso."¹⁰¹

The district court dismissed the plaintiffs' suit, holding that the plaintiffs' challenges to the monument proclamations were unreviewable because they were statutory rather than constitutional challenges, the APA did not waive sovereign immunity for the President, and the plaintiffs did not invoke the ultra vires exception because they did not assert that the President lacked authority to withdraw federal land as national monuments.¹⁰² A divided panel of the Tenth Circuit reversed, remanding to the district court to decide whether the plaintiffs had plausibly alleged that the proclamations exceeded the scope of the limitations imposed by the Antiquities Act.¹⁰³ The argument for ultra vires review, the court explained, was that "President Biden only had the power to designate x, y, and z, but instead designated a, b, and c," such that the suit "turns on whether Congress gave the President the authority to act as he did rather than how he used that authority."¹⁰⁴ The court found that "the Act gives the President discretion to decide *whether* to designate things falling within the specifically enumerated categories as national monuments," but does not give the President "unfettered discretion to *define* the scope of the enumerated categories."¹⁰⁵ It was within courts' authority to decide whether the objects designated were within the scope of the categories specified in the act, the court held, because the President "lacks sole discretion to determine what counts as historic or scientific."¹⁰⁶ Similarly, because the act states that reserved lands "*shall* be confined to the smallest area compatible" with the care and management of monuments, the court found that the determination of size compatibility is "not committed to the President's discretion."¹⁰⁷

Consequently, the court found abstaining entirely from judicial review of the plaintiffs' allegations would "undermine rather than honor congressional intent by refusing to enforce Congress's statutory limits,"¹⁰⁸ and it was both proper for and incumbent upon courts to "determine what counts as historic or scientific in the context of the Antiquities Act within their usual function of interpreting the law."¹⁰⁹

¹⁰⁰ *Id.* at *3.

¹⁰¹ *Id.*

¹⁰² *Garfield County v. Biden*, No. 22-cv-00059, 2023 WL 5180375 (D. Utah Aug. 11, 2023), *aff'd in part, vacated in part, remanded sub nom.*, *Garfield County v. Trump*, No. 23-4106, 2026 WL 1801091 (10th Cir. June 23, 2026).

¹⁰³ *Garfield*, 2026 WL 1801091.

¹⁰⁴ *Id.* at *5.

¹⁰⁵ *Id.* at *9 (emphasis added). The dissent in *Garfield* took the opposite view, reasoning that "[t]here is nothing in the Antiquities Act that guides the determination as to whether a thing declared by the President is a landmark, structure, or object, nor what it means for an object to be of 'historic or scientific interest,'" and that "the statutory text says it is the President who gets to decide." *Id.* at *16.

¹⁰⁶ *Id.* at *8.

¹⁰⁷ *Id.* (quoting 54 U.S.C. § 32031(b)).

¹⁰⁸ *Id.* at *6.

¹⁰⁹ *Id.* at *8.

Considerations in Ultra Vires Review

Courts' substantive review of ultra vires claims under the Antiquities Act has been sparing, but a series of D.C. Circuit opinions articulate a framework for analyzing legal challenges to monument proclamations. In *Mountain States Legal Foundation v. Bush*,¹¹⁰ the plaintiffs argued among other things that President Bill Clinton exceeded his authority under the Antiquities Act in several monument designations because the act authorizes only designations of "man-made objects, such as prehistoric ruins and ancient artifacts," not natural phenomena, and because the monuments were not limited to the smallest area necessary for protecting the designated objects.¹¹¹ The D.C. Circuit rejected the first argument "as a matter of law" based on the Supreme Court's holding in *Cameron* upholding the Grand Canyon National Monument.¹¹² As to the second argument—that the reserved land was not the smallest area compatible with the preservation of the objects—the court held there was no occasion "to engage in ultra vires review of the Proclamations because Mountain States fails to allege any facts sufficient to support its ultra vires claim."¹¹³

The court found that the proclamations at issue facially complied with the Antiquities Act because the object designations and descriptions "comport with the Act's policies and requirements," and because the proclamation stated that the lands set aside constituted the smallest area compatible with care and management of the monument.¹¹⁴ "To warrant further review of the President's actions," the court wrote, "Mountain States would have to allege facts to support the claim that the President acted beyond his authority under the Antiquities Act."¹¹⁵ The court found that the plaintiffs failed to meet their burden of "identify[ing] the improperly designated lands with sufficient particularity to state a claim."¹¹⁶

The court drew similar conclusions in the companion case *Tulare County v. Bush*, holding that the complaint in that case "contained insufficient factual allegations . . . to trigger ultra vires review," and failed "as a matter of law insofar as it alleged" that the challenged proclamation violated the Antiquities Act or other federal laws.¹¹⁷ The plaintiffs in *Tulare County* case sought *en banc* review of the panel's decision, which the D.C. Circuit denied.¹¹⁸ The court issued a brief statement accompanying its denial of the *en banc* petition, in which the court opined that the

¹¹⁰ 306 F.3d 1132 (D.C. Cir. 2002) (addressing challenges to six monuments in Arizona, Colorado, Oregon, and Washington).

¹¹¹ *Id.* at 1137; *Tulare County v. Bush*, 306 F.3d 1138, 1141–42 (D.C. Cir. 2002). The plaintiffs also unsuccessfully argued that the challenged proclamations (1) violated the Property Clause of the U.S. Constitution, (2) constituted unlawful delegations of legislative power, and (3) conflicted with other federal statutes. *See Mountain States Legal Found.*, 306 F.3d at 1136–38; *Tulare County*, 306 F.3d at 1143–44.

¹¹² *Mountain States Legal Found.*, 306 F.3d at 1137; *Tulare County*, 306 F.3d at 1142.

¹¹³ *Mountain States Legal Found.*, 306 F.3d at 1136.

¹¹⁴ *Id.* at 1137.

¹¹⁵ *Id.*

¹¹⁶ *Tulare County*, 306 F.3d at 1142; *Mountain States Legal Found.*, 306 F.3d at 1137 ("Mountain States' arguments contain only the bald assertion that the President acted outside the bounds of his constitutional and statutory authority."); *see also* *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) ("To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." (quoting *Bell Atl. v. Twombly*, 550 U.S. 544, 570 (2007))).

¹¹⁷ 306 F.3d 1138, 1140 (D.C. Cir. 2002) (rejecting challenges to Giant Sequoia National Monument).

¹¹⁸ *See Tulare County v. Bush*, 317 F.3d 227 (D.C. Cir. 2003) (per curiam). Appeals in federal cases are typically heard by a panel of three judges, but parties can request that a panel's ruling be reviewed "en banc," that is, by the full slate of appellate judges in a particular federal circuit. *See* 28 U.S.C. § 46(c).

panel correctly upheld the dismissal of the complaint “because it contained no factual allegations that any part of the Monument lacked scientific or historical value.”¹¹⁹ Nonetheless, the court observed that the plaintiffs’ “allegation that Sequoia groves comprise only six percent of the Monument might well have been sufficient if the President had identified only Sequoia groves for protection, but he did not; the Proclamation covered natural resources present throughout the Monument area.”¹²⁰ The breadth of the proclamation made it “incumbent upon Tulare County to allege that some part of the Monument did not, in fact, contain natural resources that the President sought to protect,” and the court suggested that had Tulare County done so, the complaint could potentially have survived dismissal.¹²¹

Sixteen years later, in *Massachusetts Lobstermen’s Ass’n v. Ross*, the D.C. Circuit summarized *Mountain States* and *Tulare County* as drawing “a distinction between two types of claims: those justiciable on the face of the proclamation and those requiring factual development.”¹²² The court explained that claims justiciable on the face of the proclamation “are resolved ‘as a matter of law’ because they turn on questions of statutory interpretation.”¹²³ For example, the plaintiffs argued that the Northeast Canyons and Seamounts Marine National Monument was invalid because the Antiquities Act did not extend to submerged lands; the court found this argument could “be judged on the face of the proclamation and resolved as a matter of law.”¹²⁴ By contrast, a claim that the proclamation set aside more than the smallest amount of land compatible with care and management of the monument requires factual analysis. The court noted that “although the precise ‘scope of judicial review’” in such cases “remains an open question, at a minimum, plaintiffs’ pleadings must contain plausible factual allegations identifying an aspect of the designation that exceeds the President’s statutory authority.”¹²⁵ As in *Tulare County*, the court found that the breadth of the monument proclamation—protecting not just underwater canyons and seamounts, but the surrounding resources and ecosystems as well—meant that the plaintiffs’ complaint included “no factual allegations identifying a portion of the Monument that lacks the natural resources and ecosystems the President sought to protect.”¹²⁶

Massachusetts Lobstermen’s Ass’n v. Raimondo: A Shot Across the Bow

No court has ruled against a presidential monument designation on the basis that the “object” is not eligible for designation or that a land reservation is too large, and large land reservations to preserve natural phenomena have become a regular occurrence.¹²⁷ Justice Roberts, however, has indicated that such large reservations may warrant additional scrutiny.¹²⁸ In a case involving a challenge to the Northeast Canyons and Seamounts Marine National Monument, the Supreme Court declined to hear an appeal of a lower court decision upholding the monument designation. In a statement accompanying the denial of certiorari, Justice Roberts commented that the 3.2-million acres of submerged land constituting the monument at issue “demonstrates how far we have come from indigenous pottery.”¹²⁹ Writing that “the ‘objects’ to be ‘protected’ are the ‘canyons and seamounts themselves,’”

¹¹⁹ *Tulare County*, 317 F.3d at 227.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² 945 F.3d 535, 540 (D.C. Cir. 2019).

¹²³ *Id.* (quoting *Tulare County*, 306 F.3d at 1140).

¹²⁴ *Id.*

¹²⁵ *Id.* (quoting *Mountain States Legal Found. v. Bush*, 306 F.3d 1132, 1133 (D.C. Cir. 2002)).

¹²⁶ *Id.* at 545.

¹²⁷ See Christine A. Klein, Preserving Monumental Landscapes Under the Antiquities Act, 87 CORNELL L. REV. 1333, 1385 (2002) (“Over the past century, all three branches of government have implicitly supported an interpretation of the Act that allows protection of large landscapes as antiquities.”)

¹²⁸ See *Mass. Lobstermen’s Ass’n v. Raimondo*, 141 S. Ct. 979, 980 (2021).

¹²⁹ *Id.* at 981.

Justice Roberts observed that the Court had not articulated how the act's "corresponding 'smallest area compatible' limitation interacts with the protection of such an imprecisely demarcated concept as an ecosystem."¹³⁰ He suggested that, while the Court was declining to hear the case for several reasons, "the scope of the objects that can be designated under the Act, and how to measure the area necessary for their proper care and management, may warrant consideration."¹³¹ What such consideration might look like, and whether it would involve overturning Supreme Court precedent on the scope of the term "objects" or lower court rulings on judicial review of monument size, remain to be seen.

Statutory Interactions

Challenges to monument proclamations have claimed not just that Presidents have exceeded their authority under the Antiquities Act, but that proclamations violate other applicable statutes that allegedly cabin the discretion otherwise granted to the President under the act.¹³² In *American Forest Resource Council v. United States*, the D.C. Circuit considered such a challenge to a monument proclamation expanding the Cascade-Siskiyou National Monument.¹³³ The plaintiffs argued, among other things, that the monument designation contravened another statute, the Oregon and California Railroad and Coos Bay Wagon Road Land Grant Act of 1937 (O&C Act).¹³⁴ That law established a complex management scheme for land in western Oregon that had been granted to a railroad company in 1866 but returned to the federal government in 1916 when the railroad violated the terms of the grant.¹³⁵ The O&C Act required among other things that lands "classified as timberland" be managed for "permanent forest production," with an attendant requirement that timber be sold "in conformity with the princip[le] . . . of sustained yield."¹³⁶ The proclamation establishing the Cascade-Siskiyou National Monument, which included O&C lands, prohibited commercial timber harvesting within monument boundaries.¹³⁷ The plaintiffs in *American Forest Resources Council* argued that the O&C Act required that the land at issue be permanently available for timber production, and that the President's withdrawal of the land from that use pursuant to the Antiquities Act—with the attendant prohibition on timber harvesting—constituted a violation of the O&C Act.¹³⁸

With respect to judicial review, the government argued that the claim was not subject to review because "there is no applicable statutory cause of action and because non-statutory review is unavailable where, as here, a plaintiff challenges a discretionary exercise of presidential authority

¹³⁰ *Id.* (quoting Proclamation No. 9496, 81 Fed. Reg. 65161 (Sep. 15, 2016)).

¹³¹ *Id.*; see also *id.* at 980 ("Which of the following is not like the others: (a) a monument, (b) an antiquity (defined as a 'relic or monument of ancient times,' Webster's International Dictionary of the English Language 66 (1902)), or (c) 5,000 square miles of land beneath the ocean? If you answered (c), you are not only correct but also a speaker of ordinary English.").

¹³² See, e.g., *Tulare County*, 185 F. Supp. 2d at 27 (rejecting plaintiffs' argument that Giant Sequoia National Monument illegally withdrew land from National Forest System under National Forest Management Act); *Mountain States*, 306 F.3d at 1138 (rejecting plaintiffs' arguments that monument proclamations "defy congressional intent with regard to the scope and purpose of a 'a host' of other statutes" because laws can provide "overlapping sources of protection"); *Mass. Lobstermen's Ass'n.*, 945 F.3d at 541–42 (rejecting plaintiffs' argument that the National Marine Sanctuaries Act implicitly repealed Antiquities Act with respect to ocean monuments).

¹³³ *Am. Forest Res. Council v. United States*, 77 F.4th 787, 796 (D.C. Cir. 2023); see also Proclamation No. 9564, 82 Fed. Reg. 6145 (Jan. 18, 2017).

¹³⁴ Ch. 876, 50 Stat. 874 (codified as amended at 43 U.S.C. §§ 2601–2634). See also CRS Report R42951, *The Oregon and California Railroad Lands (O&C Lands): In Brief*, by Anne A. Riddle (2023).

¹³⁵ *Am. Forest Res. Council*, 77 F.4th at 791.

¹³⁶ *Id.*

¹³⁷ *Id.* at 794.

¹³⁸ *Id.* at 795.

based on an ‘at-most ambiguous limitation’ from a separate statute.”¹³⁹ The court rejected this argument, noting by reference to *Dalton* and *Mountain States* that “the absence of a statutory review provision does not necessarily preclude judicial review of presidential action altogether,” and that “[e]ven when the Congress gives substantial discretion to the President by statute, we presume it intends that the President heed the directives contained in other enactments.”¹⁴⁰

Having established the availability of review, the court addressed the question of whether the O&C Act and the Antiquities Act were reconcilable as applied to the overlapping lands, in light of Supreme Court precedent instructing that “[w]hen confronted with two Acts of Congress allegedly touching on the same topic, [we are] not at ‘liberty to pick and choose among congressional enactments’ and must instead strive to give effect to both.”¹⁴¹ Citing the “strong presumption” against implied repeals, the court rejected the idea that Congress intended the later-in-time O&C Act to abrogate or implicitly repeal the Antiquities Act.¹⁴² The court relied in part on the fact that the O&C Act required timber production only on lands “classified as timberland,” and that the act was not explicit regarding who was to make such classifications nor how that decision should be made.¹⁴³ The court found that these “ambiguities” granted the Secretary of the Interior “considerable discretion” in making classification decisions. The proclamation establishing the monument, the court found, implicitly reclassified overlapping lands as nontimberland, thereby exempting them from the O&C Act’s “‘permanent forest production’” requirement.¹⁴⁴ Read as such, O&C Act could be reconciled with the monument proclamation. “Because it can be so read,” the court held, “it must be.”¹⁴⁵

Reduction and Elimination of Monuments

There is legal uncertainty surrounding the extent of the President’s authority to reduce the size of national monuments or revoke prior Presidents’ monument designations altogether. No President has purported to abolish a national monument, but some Presidents have reduced the size of monuments.¹⁴⁶ In some instances, Presidents have simultaneously removed lands from a monument reservation while adding others.¹⁴⁷

¹³⁹ *Id.* at 796.

¹⁴⁰ *Id.* at 796–97; *see also* *Chamber of Com. v. Reich*, 74 F.3d 1322, 1331 (D.C. Cir. 1996) (noting that where statute contains limitations on presidential discretion, *Dalton* does not preclude “review of executive action for conformity with that statute—let alone review to determine whether that action violates another statute”).

¹⁴¹ *Am. Forest Res. Council*, 77 F.4th at 799 (alterations in original) (quoting *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 510 (2018)).

¹⁴² *Id.* (quoting *United States v. Fausto*, 484 U.S. 439, 452–53 (D.C. Cir. 2023)).

¹⁴³ *Id.* at 799–800.

¹⁴⁴ *Id.* at 800–01. The court explained that this was a reasonable reading of the act for several reasons: The area at issue was “modest,” such that its removal from timber production would not interfere with the “principal objective of the O&C Act.” *Id.* at 800. Further, the O&C Act contemplated multiple land management objectives beyond timber production, including “‘protecting watersheds’” and “‘providing recreational facil[i]ties,’” and afforded the Secretary of the Interior discretion with regard to balancing those objectives. *Id.* at 799 (quoting 43 U.S.C. §§ 2601–2634). The court also found the expansion of the monument, insofar as it promoted various conservation interests, was consistent with the O&C Act’s guiding principle of “sustained yield.” *Id.* at 802.

¹⁴⁵ *Id.* at 799. The Ninth Circuit, considering a similar challenge, likewise concluded that the claims were justiciable and that the O&C Act allowed for conservation uses (including land withdrawal for a national monument). *See* *Murphy Co. v. Biden*, 65 F.4th 1122, 1131 (9th Cir. 2023); *id.* at 1135.

¹⁴⁶ *See* Vincent, *supra* note 5, at app. B. The justifications for these reductions have varied. *See* Richard H. Seamon, *Dismantling Monuments*, 70 FLA. L. REV. 553, 575–77 (2018).

¹⁴⁷ Seamon, *supra* note 146, at 577.

In December 2017, President Donald Trump issued two proclamations diminishing the Grand Staircase-Escalante National Monument and the Bears Ears National Monument.¹⁴⁸ These proclamations spurred litigation [hereinafter 2017 monument litigation]¹⁴⁹ and renewed scholarly interest in the scope of presidential authority to diminish and eliminate monuments.¹⁵⁰

President Trump’s proclamations stated that each of the monuments contained objects that were “not . . . of any unique or distinctive scientific or historic significance”¹⁵¹ and were not in danger of being damaged or destroyed.¹⁵² The proclamations explained that other federal laws enacted after the Antiquities Act’s passage, such as the Archaeological Resources Protection Act and the Endangered Species Act, protected many of these objects.¹⁵³ On these grounds, the proclamations concluded that the lands reserved for these monuments were “greater than the smallest area compatible with the protection of the objects for which the lands were reserved.”¹⁵⁴ President Trump’s proclamations reduced both monuments by hundreds of thousands of acres.¹⁵⁵ President

¹⁴⁸ See Proclamation No. 9682, 82 Fed. Reg. 58089, 58093 (Dec. 4, 2017) (Modifying the Grand Staircase-Escalante National Monument); Proclamation No. 9681, 82 Fed. Reg. 58081, 58084–85 (Dec. 4, 2017) (Modifying the Bears Ears National Monument).

¹⁴⁹ See *Wilderness Soc’y v. Trump*, No. 17-cv-02587 (D.D.C. filed Dec. 4, 2017) (consolidating two cases challenging President Trump’s modification of the Grand Staircase-Escalante National Monument); *Hopi Tribe v. Trump*, No. 17-cv-02590 (D.D.C. filed Dec. 4, 2017) (consolidating three cases challenging President Trump’s modification of the Bears Ears National Monument). These cases were stayed in March 2021 when President Biden took action to reverse the Trump proclamations. See Memorandum Opinion at 1–2, *Wilderness Soc’y*, No. 17-cv-02587 (D.D.C. Nov. 25, 2024), Dkt. No. 210. That executive action spurred another lawsuit in a federal district court in Utah (*Garfield County v. Biden*, No. 22-cv-0059 (D. Utah filed Aug. 15, 2023)), which was dismissed for failure to state a claim. The plaintiffs in that case appealed the dismissal and the Tenth Circuit issued a ruling in June 2026 affirming in part, vacating in part, and remanding several issues to the district court. See *Garfield County v. Trump*, No. 23-4106, 2026 WL 1801091 (10th Cir. June 23, 2026). Because that case had the potential to invalidate the Biden proclamations and restore the monuments to the boundaries established by the 2017 Trump proclamations, the court in the 2017 monument litigation declined to lift the stay on that litigation pending the Tenth Circuit’s decision. See Memorandum Opinion at 7, *Wilderness Soc’y*, No. 17-cv-02587 (D.D.C. Nov. 25, 2024), Dkt. No. 210. Given the Biden proclamations challenged in *Garfield County* reversed actions by the first Trump Administration, it is unclear whether the Trump Administration will defend the *Garfield County* case at the district court level. At the time of this report’s publication, the stay in the 2017 monument litigation remains in place.

¹⁵⁰ Compare, e.g., Squillace, *supra* note 1, at 566, 582–83 (arguing that Presidents lack authority under the Antiquities Act to abolish or diminish existing monuments), and Mark Squillace, et al., *Presidents Lack the Authority to Abolish or Diminish National Monuments*, 103 VA. L. REV. ONLINE 55, 71 (2017) (same), with John Yoo & Todd Gaziano, *Presidential Authority to Revoke or Reduce National Monument Designations*, 35 YALE J. ON REG. 617, 665 (2018) (arguing that Presidents have authority under the Antiquities Act to modify or abolish existing monuments), and Seamon, *supra* note 146, at 575–600 (same). See also John Murdock, *Monumental Power: Can Past Proclamations Under the Antiquities Act Be Trumped?*, 22 TEX. REV. L. & POL., 349, 354 (2018) (concluding that “both [sides] have overestimated their chances of success”).

¹⁵¹ Proclamation No. 9682, 82 Fed. Reg. at 58090; Proclamation No. 9681, 82 Fed. Reg. at 58081 (“Some of the objects [in the Bears Ears National Monument] are not unique to the monument, and . . . are not of significant scientific or historic interest.”).

¹⁵² Proclamation No. 9681, 82 Fed. Reg. at 58082 (noting “the lack of a threat of damage or destruction to many of those objects”).

¹⁵³ Proclamation No. 9682, 82 Fed. Reg. at 58090–91; Proclamation No. 9681, 82 Fed. Reg. at 58082.

¹⁵⁴ Proclamation No. 9682, 82 Fed. Reg. at 58091; Proclamation No. 9681, 82 Fed. Reg. at 58081 (“I find that the area of Federal land reserved in the Bears Ears National Monument . . . is not confined to the smallest area compatible with the proper care and management of those objects.”).

¹⁵⁵ Proclamation No. 9682, 82 Fed. Reg. at 58093 (Grand Staircase-Escalante National Monument); Proclamation No. 9681, 82 Fed. Reg. at 58084–85 (Bears Ears National Monument). For additional information regarding the process leading to these proclamations, see Murdock *supra* note 150, at 365–68.

Biden reversed these actions in 2021,¹⁵⁶ spurring additional litigation.¹⁵⁷ President Trump, in his second term, again reduced the size of the monuments, this time by more acreage than in 2017.¹⁵⁸ This will likely affect the course of the 2017 monument litigation and could moot any ongoing litigation surrounding President Biden's 2021 monument expansions.

The law surrounding diminishment and elimination of national monuments is unsettled. Because no President has revoked a monument designation, arguments in the 2017 monument litigation focused on the issue of reduction (though certain plaintiffs cast President Trump's first reduction of Bears Ears as so significant as to constitute a revocation).¹⁵⁹ Scholars have articulated arguments for and against presidential authority to eliminate monuments, but these arguments remain untested in courts.¹⁶⁰ As discussed below, the U.S. Department of Justice (DOJ) has taken both positions: The Attorney General opined in 1938 that the President lacked the authority to eliminate monuments,¹⁶¹ and the United States conceded in the 2017 monument litigation that the President does not have the authority to revoke monuments,¹⁶² but the DOJ Office of Legal Counsel (OLC) revisited the question in 2025 and determined that the President has such authority.¹⁶³ As one scholar has concluded, "[r]isk is present all around," as "the legal authorities are mixed and none are clearly controlling."¹⁶⁴ Litigation surrounding the Grand Staircase-

¹⁵⁶ Proclamation No. 10285, 86 Fed. Reg. 57321 (Oct. 8, 2021) (Bear's Ears National Monument); Proclamation No. 10286, 86 Fed. Reg. 57335 (Oct. 8, 2021) (Grand Staircase-Escalante National Monument).

¹⁵⁷ See *Garfield County v. Biden*, No. 22-cv-0059 (D. Utah filed Aug. 15, 2023). This case was dismissed for failure to state a claim. The plaintiffs appealed the dismissal, and the Tenth Circuit issued a ruling in June 2026 affirming in part, vacating in part, and remanding several issues to the district court. See *Garfield*, 2026 WL 1801091. Because that case had the potential to invalidate the Biden proclamations and restore the monuments to the boundaries established by the 2017 Trump proclamations, the court in the 2017 monument litigation declined to lift the stay on that litigation pending the Tenth Circuit's decision. Memorandum Opinion at 7, *Wilderness Soc'y*, No. 17-cv-02587 (D.D.C. Nov. 25, 2024), Dkt. No. 210.

¹⁵⁸ See Proclamation No. 11043, 91 Fed. Reg. 45169 (July 13, 2026) (Modifying the Bears Ears National Monument); Proclamation No. 11014, 91 Fed. Reg. 45179 (July 13, 2026) (Modifying the Grand Staircase-Escalante National Monument).

¹⁵⁹ Some of the plaintiffs argued that President Trump's proclamations constitute revocations, rather than only modifications, of the monuments because those proclamations exclude certain objects from the monuments that were protected under the original proclamations. See, e.g., Tribal Plaintiffs' Memorandum in Support of Motion for Partial Summary Judgment at 9, No. 17-cv-250, 2020 WL 755070 (D.D.C. Jan. 9, 2020), Dkt. No. 163-1 (describing Bears Ears proclamation as "purporting to revoke" the monument). See also Proclamation No. 9682, 82 Fed. Reg. at 58090 (noting that certain "artifacts that are known to generally occur" in that area "may be excluded from the monument's boundaries"); Proclamation No. 9681, 82 Fed. Reg. at 58084 ("Some of the existing monument's objects, or certain examples of those objects, are not within the monument's revised boundaries.").

¹⁶⁰ Compare Squillace, *supra* note 1, at 583 (the Antiquities Act "works simply and in one direction, authorizing the President to protect land, and leaving it to the Congress to decide whether to lessen, or perhaps strengthen, those protections"), and Mark Squillace, et al., *supra* note 150, at 71 (arguing against revocation authority), with Seamon, *supra* note 146, at 562–63 ("The Antiquities Act does not expressly authorize the President to reduce a national monument established by a prior President. But it is hard to imagine stronger circumstances supporting the conclusion that it impliedly does so.") and Yoo & Gaziano, *supra* note 150, at 665 (arguing that Presidents have authority under the Antiquities Act to modify or abolish existing monuments). See also Murdock, *supra* note 150, at 354 (summarizing arguments and averring that both sides have "overestimated their chances of success").

¹⁶¹ Proposed Abolishment of Castle Pinkney National Monument, 39 Op. Att'y's Gen. 185, 187 (1938).

¹⁶² See Federal Defendants' Reply in Support of Motion to Dismiss at 27 n.23, 34–35, *Wilderness Soc'y v. Trump*, No. 17-cv-2587 (D.D.C. Dec. 13, 2018), Dkt. No. 81 [hereinafter Government Reply Brief (2587)]; Federal Defendants' Reply in Support of Motion to Dismiss at 25–26, 39–41, *Wilderness Soc'y v. Trump*, No. 17-cv-2590 (Dec. 13, 2018), Dkt. No. 101 [hereinafter Government Reply Brief (2590)].

¹⁶³ Revocation of Prior Monument Designations, 49 Op. O.L.C. 36 (2025).

¹⁶⁴ Murdock, *supra* note 150, at 409, 412.

Escalante and Bears Ears national monuments may result in judicial decisions addressing the President's authority to reduce or revoke monument designations.

Shifting Perspectives at the DOJ

In a 1938 opinion, Attorney General Homer Cummings considered whether the Antiquities Act granted the President authority to abolish the Castle Pinckney National Monument and concluded it did not.¹⁶⁵ In support of this conclusion, Attorney General Cummings noted that his “predecessors have held that if public lands are reserved by the President for a particular purpose under express authority of an act of Congress, the President is thereafter without authority to abolish such reservation.”¹⁶⁶ He referred specifically to a previous Attorney General opinion from 1862, which concluded that the President lacked implied authority to undo a military reservation made by executive order where the statute authorizing the initial reservation did not also authorize its reversal.¹⁶⁷ Cummings quoted the premise from that opinion that “[t]he grant of power to execute a trust, even discretionally, by no means implies the further power to undo it when it has been completed.”¹⁶⁸ Applying this premise to the Antiquities Act, he wrote the following:

While the President from time to time has diminished the area of national monuments established under the Antiquities Act by removing or excluding lands therefrom, under that part of the act which provides that the limits of the monuments “in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected,” it does not follow from his power so to confine that area that he has the power to abolish a monument entirely.¹⁶⁹

The opinion therefore appeared to take as a given that the “smallest area compatible” provision of the Antiquities Act authorized Presidents to reduce the acreage of monuments. In the 2017 monument litigation, the United States cited the Castle Pinckney opinion in support of this same position; in keeping with the opinion's conclusion, however, the government conceded that Presidents could not abolish national monuments altogether.¹⁷⁰

In May 2025, the OLC published a memorandum opining that the Antiquities Act “permits a President to alter a prior declaration of a national monument, including by finding that the ‘landmarks,’ ‘structures,’ or ‘objects’ identified in the prior declaration either never were or no longer are deserving of the Act’s protections.”¹⁷¹ Such a finding, the memorandum continued, “can have the effect of eliminating entirely the reservation of the parcel of land previously associated with a national monument.”¹⁷² The opinion argued that “the President has discretion to reconsider a past President’s discretionary act,” including executive orders and presidential memoranda and directives, and that “courts have recognized that, for executive agencies, [t]he power to reconsider is inherent in the power to decide.”¹⁷³ The memorandum further relied on the historical practice of Presidents changing

¹⁶⁵ Proposed Abolishment of Castle Pinkney National Monument, 39 Op. Att’y Gen. at 190.

¹⁶⁶ *Id.* at 186–87.

¹⁶⁷ *Id.* at 187; Rock Island Military Reservation, 10 Op. Att’y Gen. 359, 363 (1862) (“But, in my opinion, [the President] had no power to take them out of the class of reserved lands, and restore them to the general body of public lands. It is certain that no such power is conferred on the President in the act under which the selection of a site for Fort Armstrong was made.”).

¹⁶⁸ Rock Island Military Reservation, 10 Op. Att’y Gen. at 364 (“When the President, in the exercise of the discretion vested in him by the act of 1809, selected Rock Island as the site of a fort, and expended the money appropriated therefor in erecting the fort, and occupied it as a military station, thus setting it aside as a reservation for military purposes, the power conferred by the act was exhausted, and he had no more authority to recall that reservation, and restore the land to the condition of other portions of the public lands not so appropriated, than he would have had to expend the public money in erecting the fort without an appropriation by Congress for that purpose.”).

¹⁶⁹ Proposed Abolishment of Castle Pinkney National Monument, 39 Op. Att’y Gen. at 188.

¹⁷⁰ Government Reply Brief (2590), *supra* note 159, at 25–26 (“[I]t remains the United States’ position that, consistent with a 1938 Attorney General opinion, the President cannot completely *abolish* a national monument, [but] this same opinion *supports* the [United States’] position here” that the President can diminish the area of national monuments.)

¹⁷¹ Revocation of Prior Monument Designations, 49 Op. O.L.C. at 1 (2025).

¹⁷² *Id.*

¹⁷³ *Id.* at 16–17 (quoting *Albertson v. FCC*, 182 F.2d 397, 399 (D.C. Cir. 1950)). The opinion also cited *Macktal v. Chao*, 286 F.3d 822, 825–26 (5th Cir. 2002) and *Belville Mining Co. v. United States*, 999 F.2d 989, 998 (6th Cir. 1993), in which the U.S. Courts of Appeals for the Fifth and Sixth Circuits recognized inherent agency authority to reconsider adjudicative decisions with respect to an attorney’s fee award and strip mining rights, respectively.

monument boundaries without congressional response¹⁷⁴ and reasoned that courts' deferential posture with respect to presidential monument declarations would apply equally to subsequent reconsiderations thereof (with respect to both the designation of the object to be protected and the reservation of land surrounding it).¹⁷⁵ Based on these and other arguments, OLC concluded that the 1938 opinion from Attorney General Cummings was "incorrect" and could "no longer be relied upon."¹⁷⁶

Arguments regarding the scope of the President's authority to modify or eliminate national monuments are generally rooted in some combination of the text of the Antiquities Act, consideration of inherent presidential authorities, historical sources and practice, and the role of other natural resources statutes. Arguments related to reduction and revocation proceed along similar, but not identical, paths. One distinction relates to historical practice: while Presidents have diminished national monuments, no President has eliminated a monument altogether. Another potential distinction relates to the "smallest area compatible" requirement of the Antiquities Act: while a reduction in size could be argued to be justified by this provision, a full revocation of monument status likely could not (because the phrase refers to the reservation of lands surrounding the object of historical or scientific interest, rather than to the object itself).¹⁷⁷ Nonetheless, due to their substantial overlap, this report treats the arguments relating to reduction and elimination as coextensive except where relevant distinctions exist.

Statutory Language and Authority to Reduce or Eliminate Monuments

By its plain terms, the Antiquities Act gives the President the power to "declare" monuments and "reserve" lands, and is silent as to the power to reverse those actions.¹⁷⁸ Proponents of the "one-way" view of the act argue that that silence means that Congress did not delegate the power to reverse a declaration or reservation and thus retained that power for itself.¹⁷⁹ Proponents have bolstered this argument by reference to the act's goal of granting the President an expedient means of protecting threatened objects of historical and scientific interest; undoing such protection or revising its parameters would arguably not be as urgent a matter and as such would be more amenable to the legislative process.¹⁸⁰

¹⁷⁴ *Id.* at 18.

¹⁷⁵ *Id.* at 21.

¹⁷⁶ *Id.* at 1, 26–43.

¹⁷⁷ *See, e.g.*, Tribal Plaintiffs' Memorandum in Opposition to Cross-Motion for Partial Summary Judgment and Reply in Support of Motion for Partial Summary Judgment at 23, *Hopi Tribe v. Trump*, No. 17-cv-02590 (D.D.C. Apr. 10, 2020), Dkt. No. 178 ("Because those two powers are distinct, the President would need distinct powers to revoke the declaration of monument objects *and* to unreserve lands.").

¹⁷⁸ 54 U.S.C. § 32031(a), (b).

¹⁷⁹ *See, e.g.*, Squillace et al., *supra* note 160, at 56; Memorandum in Support of Plaintiffs' Motion for Partial Summary Judgment, *Wilderness Soc'y v. Trump*, No. 17-cv-02587 (D.D.C. Jan. 9, 2020), Dkt. No. 133.

¹⁸⁰ *See* Squillace, *supra* note 1, at 553–54; *see also* Letter from 121 Law Professors, to Ryan Zinke, Sec'y, U.S. Dep't of Interior & Wilbur Ross, Sec'y, U.S. Dep't of Com., at 2 (July 6, 2017), https://legal-planet.org/wp-content/uploads/2017/07/national-monuments-comment-letter-from-law-professors_as-filed.pdf#page=2 [<https://perma.cc/PL5X-J2NE>] ("Congress was neither nimble enough to identify all of the resources needing protection, nor to craft appropriate protections for the lands containing those resources. Recognizing these limitations, Congress endowed the President with broad authority to set aside national monuments to protect areas with scientific, cultural, or historic value to the entire nation, authorizing him to act with an expediency that Congress could not muster. No similar need existed for rapid revisions to national monuments, and therefore, there was no need to empower the President to take such action.").

On the other side, proponents of presidential authority to modify and eliminate monuments argue that the absence of explicit authority in the language of the act does not reflect congressional intent to deny the President such authority. With respect to the text of the act, they argue that the requirement that the area of land reserved “shall be confined to the smallest area compatible” with preserving the monument imposes a continuing obligation that cannot be met without the accompanying authority to reduce a monument when circumstances change, or when it is later determined that excess lands were included in the reservation.¹⁸¹

Inherent Authority to Reduce or Eliminate Monuments

Those who argue on behalf of the President’s authority to reduce or revoke monuments posit that a grant of authority to do something inherently includes the authority to undo it.¹⁸² For example, in its briefing in the 2017 monument litigation, the United States argued that the Antiquities Act was akin to other statutes that “authorize various Executive Branch officers to regulate, administer, and make decisions, without expressly saying that those decisions can be repealed or modified.”¹⁸³ In this view, the President possesses authority to diminish existing monuments—even absent express statutory authorization—based on “the general principle that reconsideration ‘is inherent in the power to decide.’”¹⁸⁴ The plaintiffs in the 2017 monument litigation, on the other hand, argued that “there is no such principle”—pointing out, for example, that a President cannot undo a pardon or take back a signature on legislation.¹⁸⁵ Commentators have also distinguished presidential authority under the Antiquities Act from any inherent reconsideration authority in executive branch agencies; they argue that while agencies generally do have authority

¹⁸¹ See, e.g., Federal Defendants’ Memorandum in Support of Cross-Motion for Partial Summary Judgment and Opposition to Plaintiffs’ Motions for Partial Summary Judgment at 4, 42, *Hopi Tribe*, No. 17-cv-02590 (D.D.C. Feb. 19, 2020), Dkt. No. 169-1 (“Congress’ express instruction to limit the size of monument reservations is consistent with the idea that Monument reservations can be modified.”); *id.* at 29, 42 (modification power necessary “to ensure compliance with the statutory directive to confine the reservation to the ‘smallest area compatible with the proper care and management of the objects to be protected’” (quoting 54 U.S.C. § 320301(b)); see also Yoo & Gaziano, *supra* note 160, at 660–61 (concluding that this language from the Antiquities Act is “[o]ne textual signal in support of boundary adjustments” by Presidents and that “[t]here is nothing in the Act that privileges the original designation . . . over a later presidential proclamation”). One critique of this reading responds that the act’s requirement that the reservation of land be the smallest area compatible with managing the monument is a one-time determination rather than an ongoing obligation. See, e.g., Grand Staircase-Escalante Partners Plaintiffs’ Memorandum in Opposition to Federal Defendants’ Motion to Dismiss at 40, *Wilderness Soc’y*, No. 17-cv-02587 (D.D.C. Nov. 15, 2018), Dkt. No. 63 (requirement that the lands reserved be the “smallest area compatible” “conditions and limits the *initial* exercise of the establishment power, and is not a separate grant of power that gives rise to an ongoing test of a monument’s proper size”) (emphasis added).

¹⁸² See, e.g., Yoo & Gaziano, *supra* note 160, at 639–47.

¹⁸³ Government Reply Brief (2587), *supra* note 159, at 20; see also Yoo & Gaziano, *supra* note 150, at 639 (“There are scores of congressional statutes authorizing or requiring the executive branch to issue regulations and take other actions to protect the environment, worker safety, consumer product safety, highway safety, airline safety, consumer financial protections, food and drug protections, and many others. When Congress gives an agency the authority to issue regulations, particularly discretionary authority, it is presumed that the agency also has the authority to repeal those regulations.”).

¹⁸⁴ Government Reply Brief (2587), *supra* note 159, at 28–29 (quoting *Albertson v. FCC*, 182 F.2d 397, 399 (D.C. Cir. 1950) and citing *Sierra Club v. Van Antwerp*, 560 F. Supp. 2d 21, 23 (D.D.C. 2008)). See also Yoo & Gaziano, *supra* note 150, at 639 (“A background principle of American law . . . is that the authority to execute a discretionary government power usually includes the power to revoke it—unless the original grant expressly limits the power of revocation.”).

¹⁸⁵ See UDB Plaintiffs’ Memorandum of Points and Authorities in Opposition to Federal Defendants’ Motion to Dismiss at 32, *Hopi Tribe*, No. 17-cv-02590 (D.D.C. Nov. 15, 2018), Dkt. No. 71 (“The Government next adverts to ‘the general principle that reconsideration is inherent in the power to decide.’ There is no such principle.” (quoting Memorandum in Support of Federal Defendants’ Motion to Dismiss at 31, *Hopi Tribe*, No. 17-cv-02590 (D.D.C. Oct. 1, 2018), Dkt. No. 49-1)).

to reverse course on regulations, that authority derives from the definition of “rulemaking” under the APA, which includes “formulating, amending, or repealing a rule.”¹⁸⁶

Comparing the Antiquities Act to Other Natural Resources Statutes

Both sides of the debate draw on other natural resources statutes in support of their positions. Opponents of reduction and revocation authority point to natural resource statutes contemporaneous to the Antiquities Act in which Congress did include explicit revocation authority, suggesting that where Congress was inclined to delegate that authority, it did so explicitly.¹⁸⁷ The Antiquities Act, they conclude, should therefore not be read to contain an implied authority to reverse course.¹⁸⁸ Proponents of reduction and revocation authority have articulated counterarguments distinguishing these statutes from the Antiquities Act.¹⁸⁹

For example, both sides in the 2017 monument litigation drew support from the Pickett Act of 1910, which allowed the President to reserve lands for various purposes.¹⁹⁰ The plaintiffs argued that the Pickett Act explicitly provided that “such withdrawals or reservations shall remain in force *until revoked by him* or by an Act of Congress,” and that the Antiquities Act by contrast included no similar provision.¹⁹¹ The United States responded that the Property Clause of the Constitution clearly gives Congress the authority to revoke any executive land withdrawal; the fact that the Pickett Act mentioned it anyway, the government argued, indicated that “the President’s revocation authority, mentioned in the same clause, was likewise undisputed.”¹⁹²

¹⁸⁶ Squillace et al., *supra* note 150, at 67 n.56 (citing 5 U.S.C. § 551(5) (2012)).

¹⁸⁷ See, e.g., *id.*, at 58 (“The narrow authority granted to the President to reserve land under the Antiquities Act stands in marked contrast to contemporaneous laws that delegated much broader executive authority to designate, repeal, or modify other types of federal reservations of public lands.”). Such statutes include the Organic Administration Act, ch. 2, 30 Stat. 11, 34 (1897) (codified as amended at 16 U.S.C. §§ 473–482, 551) (authorizing President to “revoke, modify, or suspend” existing forest reservations in order to “remove any doubt” regarding such authority); the Reclamation Act, ch. 1093 § 3, 32 Stat. 388, 388 (1902) (codified as amended at 43 U.S.C. § 416 (authorizing the Secretary of the Interior to “withdraw . . . lands” and “restore to public entry any of the lands so withdrawn”); and the Pickett Act, ch. 421 § 1, 36 Stat. 847, 847 (1910) (codified at 43 U.S.C. §§ 141–143 (repealed 1976)) (providing that lands withdrawn by the President will remain reserved “until revoked by him or by an Act of Congress”).

¹⁸⁸ Squillace et al., *supra* note 150, at 58 (“Unlike the Pickett Act and the Forest Service Organic Administration Act, the Antiquities Act withholds authority from the President to change or revoke a national monument designation. That authority remains with Congress under the Property Clause.”).

¹⁸⁹ See, e.g., Federal Defendants’ Memorandum in Support of Cross-Motion for Partial Summary Judgment and Opposition to Plaintiffs’ Motions for Partial Summary Judgment, *supra* note 178, at 38 (“Contemporaneous statutes do not indicate that modification authority must be express”); Revocation of Prior Monument Designations, 49 Op. O.L.C. slip op. at 36 (May 27, 2025) (arguing “none of these statutes compares to the Antiquities Act in text, structure, purpose, or history”). Similar arguments have arisen in the course of litigation over the President’s authority to walk back prior Presidents’ actions under the Outer Continental Shelf Lands Act. See CRS Legal Sidebar LSB11388, *The Scope of Offshore Energy Withdrawals*, by Adam Vann (2026); CRS Report R48901, *Offshore Oil and Gas Development: Legal Framework*, by Adam Vann at 4–7 (2026).

¹⁹⁰ Pickett Act, ch. 421 § 1, 36 Stat. 847, 847 (1910).

¹⁹¹ Tribal Plaintiffs’ Memorandum in Support of Motion for Partial Summary Judgment, *Hopi Tribe*, No. 17-cv-02590 (D.D.C. Jan. 9, 2020), Dkt. No. 163 (quoting Pickett Act, ch. 421, 36 Stat. at 847).

¹⁹² Federal Defendants’ Memorandum in Support of Cross-Motion for Partial Summary Judgment and Opposition to Plaintiffs’ Motions for Partial Summary Judgment, *supra* note 178, at 39; see also Yoo & Gaziano, *supra* note 150, at 640 (discussing the Pickett Act and Forest Service Organic Act and concluding that “[o]n balance, these two examples suggest a congressional awareness that the President is generally able to reverse executive directives”).

“Congressional Acquiescence,” *United States v. Midwest Oil Co.*, and the Federal Land Policy and Management Act

Proponents of presidential authority to diminish monuments argue that Presidents have done so in the past, without congressional response—and that such lack of response indicates implicit congressional approval of the practice.¹⁹³ The Supreme Court ratified a similar argument in *United States v. Midwest Oil Co.*, in which the Court sustained President Wilson’s withdrawal of certain public lands from mineral exploration.¹⁹⁴ First documenting the “long-continued practice” involving “[s]cores and hundreds” of similar orders, the Court found that such acts, “being subject to disaffirmance by Congress, could occasion no harm to the interest of the public at large,” and that “Congress did not repudiate the power claimed or the withdrawal orders made.”¹⁹⁵ Because Congress had “uniformly and repeatedly acquiesced in the practice,” and because “officers, lawmakers, and citizens naturally adjust themselves to any long-continued action of the Executive Department, on the presumption that unauthorized acts would not have been allowed to be so often repeated as to crystallize into a regular practice,” the Court held the withdrawal was authorized by “an implied grant of power” from Congress.¹⁹⁶

In 1976, Congress passed the Federal Land Policy and Management Act of 1976 (FLPMA), which established new authority for the Secretary of the Interior to make land withdrawals, consolidated land management authority, and established a general policy of multiple-use land management.¹⁹⁷ FLPMA explicitly repealed “the implied authority of the President to make withdrawals and reservations resulting from acquiescence of the Congress (*U.S. v. Midwest Oil Co.*, 236 U.S. 459).”¹⁹⁸

While FLPMA also repealed a number of preexisting statutory land withdrawal authorities, it did not repeal the Antiquities Act.¹⁹⁹ FLPMA expressly prohibits the Secretary of the Interior from modifying or revoking any withdrawal creating national monuments under the Antiquities Act, but is silent as to the President’s authority to do so.²⁰⁰ This provision came from H.R. 13777, as introduced and as reported by the 94th Congress. The relevant committee report stated that the bill “would also specifically reserve to the Congress the authority to modify and revoke withdrawals for national monuments created under the Antiquities Act. . . . These provisions will insure that the integrity of the great national resource management systems will remain under the control of the Congress.”²⁰¹ Some commentators have taken this as evidence that Congress intended this provision of FLPMA to prohibit *any* executive modifications or reversals of monument proclamations, notwithstanding the law’s reference only to the Secretary of the Interior.²⁰² Other commentators argue that, had Congress intended to limit presidential authority, it would have done so explicitly.²⁰³

Alternative Approach: Lifting Land Use Restrictions

Reducing or eliminating monuments may not be the only option for expanding the available uses of reserved lands. For example, rather than reducing or eliminating the monuments themselves,

¹⁹³ See Federal Defendants’ Memorandum in Support of Cross-Motion for Partial Summary Judgment and Opposition to Plaintiffs’ Motions for Partial Summary Judgment, *supra* note 178, at 42 (arguing that presidential modification authority is “cemented by decades of presidential practice in modifying monument designations and congressional acquiescence to that practice despite numerous opportunities to curtail it”).

¹⁹⁴ *United States v. Midwest Oil Co.*, 236 U.S. 459 (1915).

¹⁹⁵ *Id.* at 469–71.

¹⁹⁶ *Id.* at 471–75.

¹⁹⁷ See *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 876 (1990) (prior to FLPMA, management of public lands under “miscellaneous laws” “became chaotic,” resulting in passage of FLPMA to establish “a policy in favor of retaining public lands for multiple use management”). See also STAFF OF S. COMM ON ENERGY & NAT. RES., 95th Cong., LEGISLATIVE HISTORY OF THE FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976 (PUBLIC LAW 94-579), at vi (Comm. Print 1978) (“The Federal Land Policy and Management Act of 1976 represents a landmark achievement in the management of the public lands of the United States. For the first time in the long history of the public lands, one law provides comprehensive authority and guidelines for the administration and protection of the Federal lands and their resources under the jurisdiction of the Bureau of Land Management. This law enunciates a federal policy of retention of these lands for multiple-use management and repeals many obsolete public land laws which heretofore hindered effective land use planning for and management of public lands.” (memorandum of Chairman Henry M. Jackson)).

(continued...)

President Trump took a different tack by issuing proclamations authorizing commercial fishing in two national marine monuments. The April 17, 2025, proclamation *Unleashing American Commercial Fishing in the Pacific* lifted a ban on commercial fishing in the Pacific Islands Heritage Marine National Monument.²⁰⁴ The February 6, 2026, proclamation *Unleashing American Commercial Fishing in the Atlantic* did the same for the Northeast Canyons and Seamounts Marine National Monument.²⁰⁵ Both proclamations were subject to legal challenges alleging the lifting of prior proclamations' commercial fishing bans exceeded the President's authority under the Antiquities Act, among other claims.²⁰⁶ The court in the Pacific Islands Heritage case entered an administrative stay in January 2026 at the request of the parties following a confidential settlement conference.²⁰⁷ The government filed a motion to dismiss the Northeast Canyons and Seamounts case in July 2026, arguing that the plaintiffs lacked standing to sue.²⁰⁸

Considerations for Congress

The Antiquities Act represents a broad delegation of land management authority from Congress to the President, allowing for swift and unilateral preservation action. In interpreting the constraints within the act described above—that objects must be of “historic or scientific interest,” that they be on land “owned or controlled” by the federal government, and that land reservations must be of “the smallest area compatible with proper care and management” of the objects being protected—courts have been largely deferential to presidential authority. Courts have never struck

¹⁹⁸ Pub. L. No. 94–579, § 704(a), 90 Stat. 2744, 2792.

¹⁹⁹ *Id.*

²⁰⁰ *Id.* § 204(j), 90 Stat. at 2754 (codified at 43 U.S.C. §1714(j)) (“The Secretary shall not . . . modify or revoke any withdrawal creating national monuments under [the Antiquities Act] . . .”).

²⁰¹ H. REP. NO. 94–1163, at 9 (1976). The conference report did not change this provision.

²⁰² See, e.g., Squillace et al., *supra* note 150, at 61–64 (analyzing legislative activity surrounding FLPMA and concluding that sec. 204(j) reflects congressional intent “to constrain all executive branch power to modify or revoke national monuments, not just Secretarial authority”); see also Revised Amicus Curiae Brief of Law Professors Supporting Plaintiffs’ Opposition to Motion to Dismiss at 14 n.4, *Hopi Tribe v. Trump*, No. 17-cv-02590 (D.D.C. Mar. 27, 2019), Dkt. No. 124 (“This provision makes little sense as the Secretary of the Interior never was delegated authority to establish national monuments—much less alter their boundaries. A review of the legislative history reveals that this was either a drafting error on the part of Congress, or an attempt to clarify that Congress reserved the authority to alter monument boundaries to itself.”).

²⁰³ See, e.g., Yoo & Gaziano, *supra* note 150, at 652–53 (arguing with respect to sec. 204(j) that “[t]he text creates no ambiguity or inference that Congress modified the President’s authority in the Antiquities Act. The opposite reading of the text is much stronger, i.e., that Congress knew how to write express limitations and that it would have listed the President if its restriction on the Secretary of Interior’s power was intended to bind the President”).

²⁰⁴ Proclamation No. 10918, 90 Fed. Reg. 16987 (Apr. 17, 2025).

²⁰⁵ Proclamation No. 11009, 91 Fed. Reg. 6489 (Feb. 6, 2026).

²⁰⁶ See Complaint for Injunctive and Declaratory Relief at 31, *Conservation Law Found. v. Trump*, No. 26-cv-01528 (D.D.C. May 4, 2026), Dkt. No. 1 (alleging among other things that the President lacks authority under the Antiquities Act to revoke the commercial fishing prohibition because that prohibition is “fundamental to the proper care and management of the Monument objects”); Complaint for Declaratory & Injunctive Relief at 6, *Kāpa’a v. Trump* at 6, No. 25-cv-00209 (D. Haw. May 22, 2025), Dkt. No. 1 (“The Trump Proclamation deprives the Monument Expansion’s scientific objects of the protections they had under the 2014 Proclamation, leaving them vulnerable to the very damage that the Monument reservation was designed to avoid.”).

²⁰⁷ Stipulation re: Administrative Stay at 3, *Kāpa’a*, No. 25-cv-00209 (D. Haw. Jan. 28, 2026), Dkt. No. 48; Electronic Order, *Kāpa’a*, No. 25-cv-00209 (D. Haw. Jan. 28, 2026), Dkt. No. 49.

²⁰⁸ Motion to Dismiss for Lack of Jurisdiction, *Conservation Law Found.*, No. 26-cv-01528 (D.D.C. May 6, 2026), Dkt. No. 24.

down a monument declaration on the basis that an object was inappropriate or the land ineligible for monument designation, nor on the basis that the area of land reserved for the monument was too big. The extent of courts' authority to review such determinations at all remains unsettled. Chief Justice Roberts has suggested that these issues may warrant scrutiny from the Court, and such scrutiny may or may not ultimately contract the President's heretofore expansive authority under the act. Congress has the option to await any further judicial reckoning with the scope of presidential authority, or to amend the act to expand, contract, or further articulate the bounds of that authority.

Bills in recent Congresses have proposed various restrictions on presidential authority but have not been enacted. For example, H.R. 2645 in the 119th Congress would place a default time limit on monument designations (the earlier of six months or the last day of the pertinent Congress) and prohibit Presidents (for a period of twenty-five years) from redesignating areas that expired under that time limit or were otherwise rejected by Congress. As additional examples, several bills from the 116th Congress included a finding that only Congress possessed authority to reduce, diminish, or revoke a national monument²⁰⁹ or otherwise sought to limit presidential authority to reduce monument size.²¹⁰ Two of these bills would also have established a "National Monument Enhancement Fund" and authorized appropriations of \$100,000,000 for that fund.²¹¹ By contrast, amendments to various appropriations bills would have limited spending for the creation of national monuments generally²¹² or in particular areas.²¹³ Legislative changes to the Antiquities Act have also targeted particular terms that have generated controversy, such as "objects" or "lands." For example, H.R. 1664 in the 116th Congress would have limited the "objects" subject to designation to "objects of antiquity," specifically excluding "natural geographic features" and most "objects not made by humans," and would have specifically excluded "submerged land or water" from the definition of "lands" under the act.²¹⁴ If Congress sought to preserve the current judicial approach to the act, by contrast, it could make explicit that the act applied to naturally occurring phenomena or entire ecosystems, whether on dry land or underwater. Congress could also adjust presidential discretion with respect to monument size by eliminating the "smallest area compatible" requirement on the one hand or imposing an acreage limit on the other.

The Antiquities Act does not currently address what restrictions come with national monument status, such that monument proclamations have largely established acceptable land uses (or have instructed managing agencies to develop plans for land management within certain parameters). Congress has the option to standardize some or all land use restrictions on monument land by statute or to impose procedural requirements for the President in establishing or modifying such limits (such as public notice and comment, consultation with local and state governments, or others).

As described above, courts have been generally deferential in their review of presidential monument declarations.²¹⁵ While courts have been willing to evaluate whether "objects" or "lands" qualify for protection "as a matter of law," they have largely not engaged in the fact-

²⁰⁹ See S. 367, 116th Cong. (2019), H.R. 1050, 116th Cong (2019).

²¹⁰ See H.R. 1664, 116th Cong. (2019).

²¹¹ See S. 367, 116th Cong. (2019), H.R. 1050, 116th Cong (2019).

²¹² H. Amdt. 596, 118th Cong. (2023).

²¹³ H. Amdt. 1126, 118th Cong. (2024); H. Amdt. 1137, 118th Cong. (2024).

²¹⁴ H.R. 1664, 116th Cong. (2019).

²¹⁵ See *supra* "Judicial Review."

intensive inquiry of what constitutes the “smallest area compatible” with monument protection.²¹⁶ By articulating standards for calculating that area and specifying a standard of judicial review, Congress could more fully empower courts to decide whether a given monument proclamation is consistent with the law.

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²¹⁶ *Mass. Lobstermen’s Ass’n v. Ross*, 945 F.3d 535, 540 (D.C. Cir. 2019). The D.C. Circuit has suggested that the determination is reviewable but would require “plausible factual allegations” that the President had exceeded his considerable authority under the act. *Id.* One federal district court found that the President’s exercise of discretion under the act was wholly unreviewable. *See Utah Ass’n of Cnty. v. Bush*, 316 F. Supp. 2d 1172, 1183 (D. Utah 2004) (“Clearly established Supreme Court precedent instructs that the Court’s judicial review in these circumstances is at best limited to ascertaining that the President in fact invoked his powers under the Antiquities Act. Beyond such a facial review the Court is not permitted to go. When the President is given such a broad grant of discretion as in the Antiquities Act, the courts have no authority to determine whether the President abused his discretion.” (citations omitted)).