



**National Trust for
Historic Preservation**
Save the past. Enrich the future.

**Statement of the National Trust for Historic Preservation
Tom Cassidy, Vice President for Government Relations and Policy**

**National Monument Creation and Protection Act (H.R. 3990)
House Natural Resources Committee Markup
October 11, 2017**

Thank you for this opportunity to provide the National Trust for Historic Preservation's perspective on the National Monument Creation and Protection Act (H.R. 3990). My name is Tom Cassidy and I am the Vice President of Government Relations and Policy. For reasons outlined below, the National Trust strongly opposes this legislation, and I urge Members to vote against the bill as introduced.

The National Trust for Historic Preservation is a privately-funded charitable, educational and nonprofit organization chartered by Congress in 1949 to "facilitate public participation in historic preservation" and to further the purposes of federal historic preservation laws.¹ The intent of Congress was for the National Trust "to mobilize and coordinate public interest, participation and resources in the preservation and interpretation of sites and buildings."² With headquarters in Washington, D.C., nine field offices, 27 historic sites, more than one million members and supporters and a national network of partners in states, territories, and the District of Columbia, the National Trust works to save America's historic places and advocates for historic preservation as a fundamental value in programs and policies at all levels of government.

Background

For more than a century, the Antiquities Act has enabled Presidents to protect nationally significant examples of our shared American heritage. The Antiquities Act of 1906 is our nation's first law to protect historic, prehistoric, and scientific features on federal public lands. Under the Antiquities Act, the President has discretion to act quickly and decisively to designate national monuments on federal lands to protect historic and natural resources. Beginning with President Theodore Roosevelt in 1906, sixteen Presidents—both Republican and Democrat—have used this authority more than 150 times to protect monuments with remarkable historic, cultural and scientific values.

National Monument Creation and Protection Act (H.R. 3990)

H.R. 3990 would undermine the longstanding protections and scope of the Antiquities Act. The bill would significantly limit the types of objects that could be protected, cap the size of monuments for the first time, give local and state officials unprecedented decision-making authority on public lands that belong to all Americans, and provide the President unprecedented authority to reduce the size of national monuments. Any one of these policies would significantly undermine this key tool for protecting our nation's most historic places. As a whole, this bill would largely dismantle the Antiquities Act.

- **Limitation on Eligible Objects**

H.R. 3990 would limit the Antiquities Act to protection of an "object or objects of antiquity." The bill narrowly defines this term as relics, artifacts, human or animal skeletal

¹ 54 U.S.C. §§ 312102(a), 320101.

² S. Rep. No. 1110, 81st Cong., 1st Sess. 4 (1949).

remains, fossils, and certain buildings. The bill strikes “historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest” from the law, curtailing the Act’s ability to protect many sites, including natural features, and landscapes that reflect our diverse history.

- **Limitation on Size**

H.R. 3990 would replace the Antiquities Act’s guiding principle of designating the “smallest area compatible with the proper care and management of the objects to be protected” with an overall cap of 85,000 acres. Notably, this size restriction would have prevented President Theodore Roosevelt from designating the Grand Canyon National Monument (808,120 acres) in 1908.

For many national monuments, the historic significance of the objects being protected is best understood in the context of the landscape and setting. In many cases, isolated sites and smaller objects would be devoid of meaning if they were separated from their broader cultural context on the landscape. For example, archaeologists estimate that the Bears Ears National Monument includes more than 100,000 historic and prehistoric sites, structures, and other objects across a broad landscape, showing an enduring connection of people to the land. The area is profoundly sacred to many tribes, including the Hopi, Navajo, Ute Mountain Ute, Ute Indian Tribe of the Uintah Ouray, and Zuni peoples. Protection of the landscape connecting these sites is fundamental to the preservation of these places.

- **New Restrictions on Authority**

For all but the smallest monuments, this bill would add new restrictions before a national monument could be designated. For monuments over 640 acres, H.R. 3990 would require review under the National Environmental Policy Act (NEPA) prior to designation. NEPA requires federal agencies to evaluate environmental impacts of their actions and consider reasonable alternatives. Its application to a discretionary presidential decision, and particularly one aimed at preservation, is unprecedented. The agencies that manage the federal lands, including those designated as national monuments, are subject to the requirements of NEPA.

In addition to NEPA reviews, for national monuments between 10,000 and 85,000 acres in size, H.R. 3990 would require approval from county-level elected governments, the state legislature, and the Governor of the state within whose boundaries the monument lies prior to designation. Under the Antiquities Act as it exists today, national monument designations often follow years of consultation and engagement with a diverse range of stakeholders, including Native American tribes, state and federal elected officials, conservation and preservation organizations, and the public. The provisions in H.R. 3990 go well beyond ensuring local input—which is valuable and legally mandated in management of our public lands—to effectively providing veto-power to local and state government over management of public lands that belong to all Americans.

- **New Authority to Reduce National Monuments**

H.R. 3990 gives the President new authority to reduce the size of designated national monuments by up to 85,000 acres, or by any larger amount with local county and state-level approval. The Antiquities Act was enacted to provide permanent protections to ensure preservation of historic and prehistoric objects for future generations. This authority would undermine the long-term certainty and protections of national monument designations.

- **Removal of Authority to Designate Marine National Monuments**

H.R. 3990 defines land that can be protected under the Antiquities Act to exclude submerged lands. This would restrict presidential authority to establish marine national monuments. Without this authority to protect submerged lands, former President George W. Bush could not have designated Papahānaumokuākea Marine National Monument. This monument protects native Hawaiian sacred sites, resources from 19th century commercial whaling operations, and historic resources from the Battle of Midway. These are exactly the types of resources that the Antiquities Act was intended to protect. Resources should not be ineligible for protections simply because they are located on submerged lands.

Our national monuments tell diverse and important stories of our American heritage that should be preserved and passed along to future generations. The cultural landscapes and other places protected through the Antiquities Act help to tell the full story of this nation. Millions of Americans who visit our national monuments and other protected areas gain an appreciation and understanding of our history that cannot be adequately conveyed in a book or a classroom. I encourage you to continue the long history of this foundational preservation law by opposing H.R. 3990. The American people deserve access to the landscapes and cultural resources that tell the stories of our shared heritage now and for generations to come.