

Late last night, the [Washington Post reported](#) that Secretary Ryan Zinke had recommended making changes—by downsizing and/or by loosening restrictions—to a total of 10 national monuments. The list of monuments goes beyond what had been reported last month. The Post released a leaked [copy of Zinke's recommendations](#) that were submitted to President Trump on August 24 upon conclusion of the Department of the Interior's 120-day review ([see earlier post](#)).

At the end of the review, the Interior Department released only a short, one-and-a-half page report summary to the public. The full 19-page report does not provide specifics on proposed new/adjusted monument boundaries and does not include exact conditions about what uses would be prohibited or permitted inside the monuments. However, it lists background information about each monument targeted for change, recommendations for each one, and overall statements for reshifting priorities in management of the monuments.

Below is a quick and non-exhaustive summary of Zinke's key recommendations for the 10 national monuments in question. The heart of the recommendation is this paragraph (Section III.A., on p. 9 of the report), which calls for amending the Presidential Proclamations that designated each monument:

"It is recommended that you exercise your discretion to modify certain existing proclamations and boundaries. In doing so, each proclamation would continue to identify particular objects or sites of historic or scientific interest and recite grounds for the designation thereby comporting with the Act's policies and requirements. However, this can be done in a manner that prioritizes public access, infrastructure, traditional use, tribal cultural use, and hunting and fishing rights. These recommendations have been submitted to you with the concurrence of the Secretary of Agriculture and the Secretary of Commerce. These recommended modifications are intended to ensure that the monuments meet the purposes of the Act, including that the area reserved be limited to the smallest area compatible with the acre [sic] and management of the objects to be protected."

In other words, the plan seems to be to redefine the list of objects to be protected (in an attempt to supersede the designation made by the president issuing the original proclamation), restrict the boundaries of some monuments in line with the new list of protected objects, and reshape management of the monuments by prioritizing a set of uses or opening the monuments up to uses currently prohibited.

For the seven terrestrial monuments, the report recommends amending the Presidential Proclamations in order to “prioritize public access; infrastructure upgrades, repair, and maintenance; traditional use; tribal cultural use; and hunting and fishing rights” and also revising each monument’s management plan to prioritize these same uses. (Note: for the Katahdin National Monument, the quoted language is only listed for the recommendation to revise the management plan, and not the proclamation.)

For the three marine monuments, Zinke’s report recommends changing the Proclamations “to allow commercial fishing” as regulated by existing fisheries management law. Boundary changes are contemplated for two of the three.

Here is the run-down for the terrestrial monuments:

- Bears Ears, Utah (designated by Obama in 2016)
 - amend proclamation; revise boundary; revise management plan; request congressional authority for tribal comanagement
- Cascade-Siskiyou, Oregon (designated by Clinton in 2000 and expanded by Obama in 2017)
 - amend proclamation; revise boundary in order to allow for timber production on BLM lands; revise management plan
- Gold Butte, Nevada (designated by Obama in 2016)
 - amend proclamation; revise boundary; revise management plan; request authority for tribal comanagement
- Grand Staircase-Escalante, Utah (designated by Clinton in 1996)
 - amend proclamation; revise boundary; revise management plan
- Katahdin Woods and Waters, Maine (designated by Obama in 2016)
 - amend proclamation to permit “active timber management”; revise management plan
- Organ Mountains-Desert Peaks, New Mexico (designated by Obama in 2014)
 - amend proclamation; revise management plan; work with other agencies to address border safety/military issues; request congressional authority for tribal comanagement
- Rio Grande del Norte, New Mexico (designated by Obama in 2013)
 - amend proclamation; revise management plan; request congressional authority for tribal comanagement

And three marine monuments:

- Northeast Canyons and Seamounts (Atlantic Ocean; designated by Obama in 2016)

- amend proclamation to allow commercial fishing
- Pacific Remote Islands (designated by George W. Bush in 2009 and expanded by Obama in 2014)
 - amend proclamation or revise boundary to allow commercial fishing
- Rose Atoll (Pacific Ocean; designated by George W. Bush in 2009)
 - amend proclamation or revise boundary to allow commercial fishing

As Mark Squillace, Eric Biber, Sean Hecht, and I [have written](#), our analysis of the law indicates that the President does not have the authority to undo or modify a prior national monument designation made under the Antiquities Act. Thus, any proclamation by the President to carry out Zinke's recommendations—including changes in a proclamation to open up an existing monument to uses currently prohibited—would be unlawful.

The full report tracks quite a bit of the same language and reasoning that was in the brief summary made public last month. My thoughts on those points are [here in my post from Aug. 28](#).

It does, though, flesh out a couple of additional arguments. Specifically, the beginning of the report highlights the way in which the Administration views the Antiquities Act—a view that is inconsistent with 111 years of practice in the designation and management of national monuments.

The Antiquities Act is a statute with a purpose—to protect valuable natural, historic, scientific, and cultural resources. To meet that purpose, it gives the President strong authority to act quickly, without needing to wait for Congress to act, in order to prevent damage to those resources.

This report frames the Act in an entirely different way. The report refers first to the Antiquities Act as delegating to the President “the power to designate a monument”—as though the power were devoid of context or purpose. The Antiquities Act, Zinke says, grants “singular authority” to the President. But instead of noting the purpose behind the strong power given to the President in this one instance—the narrow circumstance of acting to designate federal public lands in need of protection—the report casts the Antiquities Act as a statutory *limitation* on Presidential authority:

Congress wisely placed limits on the President by defining the objects that may be included within a monument as being “historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest,” by

restricting the authority to Federal lands, and by limiting the size of the monument to the “smallest area compatible with proper care and management of the objects.”

The difference in approach may seem subtle but is not coincidental. Monument opponents have often relied on rhetoric rooted in process-based concerns—that is, they have been sharply critical of what they argue are deficiencies in outreach and stakeholder consultation in communities near the monuments. However, the heart of the argument in Zinke's report for changing the monuments is different—it focuses on whether the Act allows the President to protect the “objects” or types of objects that Presidents Clinton, Bush, and Obama deemed worthy of protection.

The report claims that recent national monuments are “politically motivated” and cannot be “supported by science or reasons of practical resource management.” Because many of the monument areas have also been proposed or discussed at one time for various preservation proposals in Congress, Zinke argues that these monuments are not about protecting particular objects, but rather a series of moves by the President to step in when the legislative process has failed to deliver a result that the President wants.

This argument runs up against not only the historical practice of the Antiquities Act since its inception, but also the weight of Supreme Court opinions interpreting Antiquities Act designations. First, the main point of giving the President the authority to create national monuments was precisely to allow the President to act when Congress could or would not do so in a timely manner. Designating a national monument changes the status quo to preservation—but is always subject to whatever Congress decides to do. Second, any designation can be criticized as “politically motivated” from the perspective of those whose use of the land is restricted. In *Cameron v. United States*, the Supreme Court upheld the designation of the Grand Canyon as a national monument—in part, a politically motivated choice (and, most would say, a wise political choice) to prevent mining claims in the area that would have had the potential to take the canyon out of public ownership and put it in private hands (restricting public access). Most importantly, courts have always been deferential to Presidents' determination of what objects merit protection under the Antiquities Act. No court has ever struck down a national monument designation on the theory that the objects protected were not envisioned in the Act—nor has a court ever found that any monument was too large by the standards of the Act.

For now, the debate on exactly how much the Administration plans to cut the boundaries of each monument seems to be ongoing. But it may be dramatic: the [Salt Lake Tribune](#)

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[reported yesterday](#) that the Governor's Office in Utah is pushing the Interior Department for a 90% reduction in the size of Bears Ears National Monument.