

Review of National Monument Designations under the Antiquities Act
Executive Order 13792
Arizona Game and Fish Department Response – Working Draft
June 1, 2017

The Arizona Game and Fish Commission (Commission) and the Arizona Game and Fish Department (Department) support the President's Executive Order (EO) 13792 expressing concerns regarding National Monument designations via the Antiquities Act (Act). Arizona has an incredibly rich heritage of hunting and angling, with yearly economic contributions of over \$1.2 billion from sportsmen and women including \$54 million for wildlife and habitat conservation, support for more than 18,000 jobs, and \$132 million in state and local taxes (State of Arizona Proclamation on Hunting and Fishing, September 16, 2016, attached). Recent monument designations in Arizona covered under the EO lacked upfront and effective coordination with the state wildlife management agency, a necessity for effective conservation of the public's wildlife resources. As a result, the state has experienced a systematic loss of diverse recreational opportunities and an erosion of the Arizona Game and Fish Department's ability to proactively manage wildlife. Project delays, elevated costs, increased man-hours, and legal challenges impact the Department's ability to carry out statutory authorities and state trust responsibilities, and threaten significant contributions to the state's economy from wildlife-related recreation. An inability to properly manage wildlife populations and their habitats results in decreased biodiversity, reduced hunter opportunities, and loss of revenues that directly support conservation and local communities. The Department offers the following comments and input in response to EO 13792.

Under Title 17 of the Arizona Revised Statutes, the Arizona Game and Fish Department, by and through the Arizona Game and Fish Commission, has jurisdictional authority and public trust responsibilities for the management of state fish and wildlife resources. It is the mission of the Department to conserve Arizona's diverse fish and wildlife resources and manage for safe, compatible outdoor recreation opportunities for current and future generations. The Commission adopted a resolution (attached) concerning the continuing and cumulative effects that special land-use designations have on multiple-use lands, including effects on access, conservation efforts and wildlife-related recreation. In addition, a recent Senate Concurrent Memorial (SCM1011, attached) was passed by the Arizona State Legislature urging Congress to amend the Antiquities Act and require congressional, state, county, and local approval prior to any national monument designation.

Reservations of land not exceed “*the smallest area compatible with the proper care and management of the objects to be protected*”

The Antiquities Act of 1906 was originally intended to protect discrete areas to prevent looting of archaeological and Native American structures and objects. It is clear that the original intent of the Act did not contemplate expansive designations of public lands, including the 2 million acres of recent national monument designations in Arizona. The Department contends that none of the five recent national monument designations in Arizona [Grand Canyon-Parashant (1,014,000 acres), Ironwood Forest (129,000 acres), Vermilion Cliffs (280,324 acres), Sonoran Desert (487,000 acres), and Agua Fria (71,000 acres)] represent the smallest area to protect discrete “*historic landmarks, historic and prehistoric structures, [or] other objects of historic or scientific interest*” as originally intended by the Act.

A glaring example of Antiquities Act overreach is the Grand Canyon-Parashant National Monument. Prior to designation, the Bureau of Land Management (BLM) was asked to provide an appropriate boundary for a possible monument on the Shivwits Plateau (Parashant). The Department, local government, and other stakeholders were specifically excluded from an opportunity to participate in this process. The BLM provided a mapped area encompassing approximately 570,000 acres. However, when the Grand Canyon Parashant National Monument was designated, the size almost doubled to 1,048,325 acres. This significant increase, which occurred without public input or coordination with BLM, strongly suggests the monument does not conform to the “*smallest area compatible with proper care and management of the objects to be protected*” and provides evidence that coordination with affected state and local management agencies was severely lacking.

Effects of a designation on the available uses of designated federal lands, consideration of the multiple-use policy of the Federal Land Policy and Management Act (FLPMA), and effects on the available uses of federal lands beyond the monument boundaries

Both the Multiple-Use Sustained-Yield Act of 1960 and the Federal Land and Policy Management Act of 1976 (FLPMA) prohibit federal land management agencies from affecting the State's jurisdiction and responsibilities, and managers of public lands are mandated to provide multiple-use recreational opportunities on public lands to both present and future generations. The Department perceives the conversion of public lands to a special use status as a breach of the FLPMA mandate, with those lands designated as national monuments forever lost for multiple-use. The Department supports public land use that provides Arizona's public and resources with a net benefit, and does not support conversion of public lands from multiple-use to land use designations that will result in a net loss of wildlife resources and associated recreational opportunities and economic benefits.

The use of the Antiquities Act to unilaterally remove expansive swaths of public land from multiple-use management disenfranchises stakeholders and deprives local communities a voice in the process. Federal land management under FLPMA is driven by current resource management plans incorporating extensive public involvement, the best available science, and expertise provided by the state wildlife agency. National monument designations undermine extensive prior collaboration, agency planning, and public support for existing federal land management.

Based on testimony from Representative Bob Stump in August of 1999, Arizona was not in favor of the use of the Antiquities Act to create the Grand Canyon Parashant National Monument. It is clear that the Arizona delegation sought to provide an alternative (Shivwits Plateau National Conservation Area) that was appropriately vetted by the public and met the needs of the local community. Representative Stump sought to save existing federal land planning processes that had been forged through local cooperation and set the stage for implementing collaborative wildlife management and recreational projects and programs. A fair and publicly vetted approach for conservation of that area would have been for the Department of Interior (DOI) to withdraw the lands and provide for Congressional review of the withdrawal pursuant to FLPMA.

Effects of a designation on the use and enjoyment of non-Federal lands within or beyond monument boundaries

Hunting and Fishing

Many national monuments offer world-class hunting and fishing. For that to continue, designations need to be locally driven, transparent, incorporate science-based management and conservation of important fish and wildlife habitat, and uphold hunting and fishing opportunities. History has shown that national monument designations set the stage for future, more restrictive designations (i.e. Petrified Forest National Monument to a Designated Wilderness, Saguaro National Monument to a National Park to a Designated Wilderness, Chiricahua National Monument to Designated Wilderness, Grand Canyon National Monument to National Park, etc.) and land management, further impeding public access, hunting, and management flexibility. Unfortunately, U.S. Forest Service and BLM multiple-use lands within new monuments can be transferred to the National Park Service, in which case a narrower mission and greater restrictions on management and recreational activities would apply. A monument can be converted to a National Park; a process that occurred for the majority of national parks in Arizona. A change in administrative oversight (e.g. conversion to a National Park) is a significant concern for the Department and could eliminate hunting in these areas. For example, the Arizona Strip is world renowned for producing trophy class mule deer, and the resource is highly valued for Arizona's hunters and outdoor recreationists. Approximately \$600,000.00 in funding is derived annually from mule deer special big game tags, and utilized on a statewide basis for habitat improvement projects including vegetative restoration and water catchment projects that benefit all species of wildlife. If an administrative shift (e.g. to the National Park Service) that eliminates hunting on millions of acres of national monuments occurs, this funding source and the resultant benefit to wildlife across the state will be eliminated as well.

Recreational Shooting

National monument designations in Arizona have included significant prohibitions on dispersed recreational shooting on public lands. The Ironwood Forest National Monument and the Agua Fria National Monument have imposed complete bans on recreational shooting. The Sonoran Desert National Monument has resulted in litigation over recreational shooting with temporary and permanent restrictions. Recreational shooting is recognized as an appropriate and publicly valued activity under federal multiple-use mandates and provides an important opportunity for the next generation to get outdoors and develop the skills necessary for shooting sports and hunting in an informal and safe environment. The importance of recreational shooting as a gateway to hunting is recognized in Executive Order 13443 (attached). Implementation plans resulting from EO 13443 recommend agencies "Increase structured hunting programs and recreational shooting opportunities as a means of achieving a net increase in federal land hunting." In addition, Pittman-Robertson funding derived from firearms and ammunition sales provides a funding stream for wildlife conservation and direct benefits to public lands. Recreational shooting should be recognized as a lawful activity on all public lands.

Restrictions on Motorized Access and Big Game Retrieval

Following Arizona monument designations and completion of new management plans, motorized access for hunting and big game retrieval were limited. This impacts the Department's ability to distribute hunting pressure, optimize big game harvest objectives, and meet game management goals. Route closures on the Sonoran Desert National Monument provide just one example of post-designation access restrictions. In 2008, BLM closed 88 miles of routes to protect monument objects on the Sonoran Desert National Monument. The Department expressed concern regarding this significant loss of historical public and Department access, but was assured closures would be temporary and roads would be reopened within 2-3 years. As of June 2017, the routes have not been reopened (BLM cites lack of funding for this decade-long delay). This experience

demonstrates not only unnecessary access restrictions, but also the federal agency's inability to effectively manage designations.

Concerns of State, tribal, and local governments affected by a designation, including the economic development and fiscal condition of affected States, tribes, and localities

Sales of hunting and fishing licenses, stamps, permits, and the U.S. federal excise tax on firearms and ammunition paid by the hunting and shooting public provide the most important funding sources for state wildlife conservation and management, benefitting both game and non-game species.

Based on Department records as well as interviews of both state and federal agency employees, the Department did not have an opportunity to provide meaningful input on wildlife values or management implications prior to any of the 5 recent Arizona monument designations. After the 2000/2001 designations, the Department was forced to expend (and continues to expend) an inordinate amount of time and effort to ensure the necessary state wildlife authorities, expertise, data, and public interests are appropriately incorporated into monument land use planning documents and guidance. Much of this effort and time could have been saved had concerns been addressed through a transparent and collaborative pre-designation process.

Impediments to Wildlife Management Projects and Activities

Wildlife management activities within national monuments require more complex planning and face compliance hurdles posed by understaffed federal land management agencies. The federal agencies and the Department also face increased legal challenges from segments of the public advocating for 'wilderness-like' management of public lands. Wildlife captures/translocations, maintenance/development of water sources, and habitat restoration projects have been delayed or prohibited, impeding the state's ability to meet its public trust responsibilities and diminishing state wildlife management authorities. Based upon its long history of wildlife management in special land use designation areas (including national monuments), the Department has experienced challenges, complications, or obstruction of its ability to implement the following management activities, including but not limited to:

- Motorized retrieval for legally taken and tagged big game (elk, mule deer, bear, and bison)
- Use of aircraft for animal translocation, monitoring, capture, surveys, and research (including overflights, landings, and drones)
- Research, surveys, scientific sampling, capturing and marking animals, including the use of radio telemetry
- Aquatic species management and monitoring including stocking, stream renovations using electrofishing equipment, and barrier construction and repair
- Construction, redevelopment, and maintenance of wildlife water catchments
- Wildlife water catchment monitoring and water delivery
- Habitat enhancement, creation and/or restoration projects
- Angling, hunting, trapping
- Emergency translocations and/or removal of fish and wildlife
- Fencing to protect wildlife habitats and/or restrict wildlife and fence removal
- Removal and/or control of nonnative animal species
- Introduction, supplementation and/or translocations of native and/or naturalized species
- Predator control
- Access to existing roads and trails to meet harvest objectives and distribute hunters

- Law Enforcement wildlife investigations and response to illegal wildlife activities
- Creation of alternate access routes when existing designated access routes are closed

The following examples represent specific impacts to the Department's statutory authorities and ability to effectively manage and conserve wildlife populations for present and future generations resulting from national monument designations:

Sonoran Desert National Monument – The Department and BLM worked cooperatively to develop a programmatic Environmental Assessment (EA) allowing Department maintenance of 16 existing wildlife water catchments within the monument. The Proposed Action would allow for increasing storage capacity, replacement of worn or malfunctioning parts, provide for dependable year-round water, and eliminate regular water hauling trips to wildlife water catchments in an area where access to water can be critical for wildlife. BLM signed the EA, but the decision was appealed by external parties claiming conflicts with protection of monument objects and wilderness characteristics. Over the 4 years awaiting the court's decision on this case, the situation with regard to wildlife on the Monument grew more serious, as an ongoing drought continued. Increased water-hauling as a result of this delay strained the Department's human and financial resources, unnecessarily diverting resources from other important wildlife and habitat management projects.

Vermillion Cliffs National Monument – The Department has been working with the BLM to develop an EA for construction of four wildlife catchments in the Vermillion Cliffs National Monument. Monument designation and included areas managed for wilderness character have increased the administrative burden on this process, and after 5 years the EA is still not complete. The wildlife catchments as proposed are in the most appropriate and effective location for wildlife, but the monument designation has lead the BLM to analyze less suitable/effective alternative locations.

Impacts to Ecosystem Health and Watershed Management

National monument designations may prevent timely and effective implementation of projects designed to restore ecosystem/watershed health and wildlife habitat, including practices such as mechanical thinning, prescribed fire, streambank renovations, and soil stabilization/erosion control. Forested areas of Arizona are of particular concern. Catastrophic wildfires have already degraded watersheds severely impact Arizona's wildlife populations. Failure to complete thinning of vegetation in high fire risk areas (including forests), or the potential to conduct prescribed burns, thereby increasing the possibility of catastrophic wild fires and degradation of watershed health.

Availability of Federal resources to properly manage designated areas

The Commission and Department are steadfast that no new designation be placed on Arizona lands until federal obligations to maintain current designations are met including habitat restoration projects and all pending wildlife management and access projects with pending compliance processes. America's largest land holder, the Department of the Interior (DOI), has a maintenance backlog of \$13.5 billion to \$20 billion for the land it already manages. The National Park Service's maintenance backlog alone is \$12 billion and rising. The Grand Canyon ranked 5th highest in the nation with backlogged projects of approximately \$330 million in roads, water systems, and other infrastructure needs. These funding deficits lead to reduced public access, environmental degradation, and land mismanagement. While the Antiquities Act does not take more acreage into federal possession, designating a national monument places additional administrative burdens on

an overstretched DOI. Funding deficits can be offset by collaboration with state and local governments in the planning of public land use. The parties closest to land use planning issues can more effectively prioritize and solve problems, while properly weighing the needs and desires of local communities.

Whether the issue is forest management, recreation, wildlife conservation, or energy extraction, such land use decisions are most effectively made at the state and local level. State regulators have the local knowledge and the proper incentives to promote economic growth while protecting the environment. State and local governments have the most to gain from proper management of natural resources and economic activity and the most to lose (including tax revenue) from mismanagement or mishandling of the environment. Congress should recognize that states, local governments, and private citizens are the best arbiters of how to manage land and limit the President's power by requiring congressional and state approval for any national monument designation. This would prevent the President from unilaterally restricting land use in states, often with arbitrary boundaries and with little or no input from the states and local citizens.

Include the Agua Fria National Monument

The Department recommends including the Agua Fria National Monument in response to the EO's direction to review designations '*where the Secretary determines that the designation or expansion was made without adequate public outreach and coordination with relevant stakeholders*'. The Department firmly believes the Agua Fria National Monument is an excellent example of the overreach of Antiquities Act authorities and the complete lack of coordination with relevant stakeholders, specifically with those agencies having statutory and regulatory authorities for the management of Monument objects. The lack of an open and public process prior to designation, coupled with federal agency perception that monuments must be managed for "wilderness-like characteristics", resulted in the ban of recreational shooting, significantly reduced public access, and the inability to effectively implement management activities and wildlife related programs and projects.