An Introduction to Selected Laws Important for Resources Management in the National Park Service

By Napier Shelton and Lissa Fox

Natural Resources Report NPS/NRPO/NRR-94/15

Department of the Interior
National Park Service
Natural Resources Publication Office

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Natural Resources Report NPS/NRPO/NRR-94/15

September 1994

United States Department of the Interior
National Park Service
Washington, D.C.

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Acknowledgments

The accounts of several laws were written by others than the principal authors. Special thanks are extended to: Barry Mackintosh, History Division--Historic Sites Act and National Historic Preservation Act; Brian W. Thomas, Anthropology Division--Antiquities Act and Archeological Resources Protection Act; Karen Malkin, Air Quality Division--Clean Air Act; and Gary Rosenlieb, Water Resources Division--Clean Water Act.

Many individuals reviewed parts or all of the manuscript. Substantial revisions were provided by: John Hiscock, Alaska Regional Office--Alaska National Interest Lands Conservation Act; William E. Currie, Currie Enterprizes--Federal Insecticide, Fungicide, and Rodenticide Act; Wes Henry, Ranger Activities Division, Jack Mosby, Alaska Regional Office, and Kathy Jope, Pacific Northwest Regional Office--Wilderness Act; Bruce Rodgers, Southeast Regional Office--Endangered Species Act; Sam Hall, Recreation Grants Division--Land and Water Conservation Act of 1965; and Jake Hoogland, Environmental Quality Division--National Environmental Policy Act of 1969. Carol Aten, formerly of the National Park Service Office of Policy, reviewed the entire manuscript.

Introduction

Familiarity with the laws affecting management of the National Park System is necessary both to carry out the requirements of the laws and to use them as tools in protecting parks. This publication is an introduction to some of the most important laws related to natural and cultural resources management by the National Park Service. Further knowledge can be gained from the listed references. Those who work closely with these laws will need to know still more, including recent court interpretations.

The laws were selected for their breadth or depth of impact on National Park Service activities. The selection was necessarily arbitrary, for the list of laws related to National Park Service resources management is long. (See NPS-28, *Cultural Resources Management Guideline*, and NPS-77, *Natural Resources Management Guideline*, for capsule descriptions of many of these laws.) The following accounts vary in degree of detail depending largely on the complexity of the law. The Organic Act, for instance, is only one paragraph long, whereas the Alaska National Interest Lands Conservation Act is 181 pages long in the United States Statutes at Large. Each account in this document discusses the main provisions of the law, some historic background, and relationships to National Park Service responsibilities, and lists references for further information.

NOTE: Many acts give authorities to the Secretary of the Interior. In practice, most of the authorities discussed here are delegated to the National Park Service.

Yellowstone National Park Act

16 U.S.C. 21 et seq. (1988), Mar. 1, 1872, ch. 24, 17 Stat. 32

On March 1, 1872, Ulysses S. Grant signed the Yellowstone Park Act, which preserved the watershed of the Yellowstone River "for the benefit and enjoyment of the people." For the first time, wilderness was preserved for recreational purposes and was to be administered by the federal government, paving the way for the creation of the National Park Service. Put under the "exclusive control of the Secretary of the Interior," the land was "reserved and withdrawn from settlement, occupancy, or sale under the laws of the United States, and dedicated and set apart as a public park or pleasuring-ground...."

The language of the Yellowstone Park Act also indicated an awareness on the part of Congress of the need to preserve the natural resources of the area from exploitation. The Act required that the Secretary of the Interior "make and publish such rules and regulations" that would "provide for the preservation, from injury or spoliation, of all timber, mineral deposits, natural curiosities, or wonders within said park, and their retention in their natural condition" and "provide against the wanton destruction of the fish and game found within said park, and against their capture or destruction for the purposes of merchandise or profit."

Clearly, the Congress passing the Yellowstone Park Act had the prescience to see, even in that unpopulated age, that wilderness areas would not survive settlement and commercialism. It is historically interesting, however, to note one congressman's comments during the discussion of the bill. "The natural curiosities [in Yellowstone] cannot be interfered with by anything man can do. The geysers will remain, no matter where the ownership of the land may be." As Yellowstone faces geothermal development and water rights battles, we can only be glad this opinion did not prevail.

Reference

Haines, Aubrey. 1974. *Yellowstone National Park: Its Exploration and Establishment*. U.S. Department of the Interior. Washington, D.C.

National Park Service Organic Act

16 U.S.C. 1 et seq. (1988), Aug. 25, 1916, ch. 408, 39 Stat. 535

> There is created in the Department of the Interior a service to be called the National Park Service, which shall be under the charge of a director. The Secretary of the Interior shall appoint the director, and there shall also be in said service such subordinate officers, clerks, and employees as may be appropriated for by Congress. The service thus established shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations hereinafter specified, except such as are under the jurisdiction of the Secretary of the Army, as provided by law, by such means and measures as conform to the fundamental purpose of the said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.

In 1916, the Department of the Interior was responsible for 12 national parks, 19 national monuments, and 2 reservations. The U.S. Forest Service managed the Grand Canyon and Mt. Olympus (Olympic National Park) mainly for timber harvest. The Army stationed a cavalry unit in Yellowstone year round and sent troops to Yosemite and Sequoia in the summer. The superintendents in charge of Interior lands had little or no experience managing natural areas and little or no help from the Department. Because of bad roads and scanty accommodations, comparatively few people visited the parks. Without public support, Congress would not allocate funding--parks in 1916 were run on less than a shoestring.

From 1911 to 1915, numerous bills to establish a bureau of national parks had been introduced, but none had gotten out of committee. In 1916, Stephen Mather joined the Department and with Horace Albright began an aggressive campaign to educate congressmen and the public concerning the value of the national parks. Their campaign worked. In the summer of 1916, Congress passed the Organic Act, establishing the National Park Service to manage and protect national parks, monuments, and reservations.

The authors of the Organic Act were well aware of the conflicts between use and preservation, but they also knew that Congress would never agree to exclude these areas from public use. Frederick Law Olmsted, Jr., came up with the language that defines the

Park Service today. By law, the National Park Service is mandated to "conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." This carefully-chosen language has weathered numerous lawsuits which have in general served to strengthen the National Park Service's resource protection powers.

By 1970, the National Park System included historical parks, scenic riverways, recreation areas, and a variety of other designations. Some units' enabling legislation included special provisions that permitted consumptive activities in that unit, such as fishing, hunting, trapping, and mining. To clear up any confusion of the overall mission for each unit, Congress amended the Organic Act with language that tied all units back to the purposes stated in the Organic Act. Thus, while each unit is to be administered according to its enabling legislation, each is also ultimately to be managed following the directives of the Organic Act. (Also see General Authorities Act, page 6.)

In 1974-76, the Sierra Club sued the National Park Service to take action against commercial loggers, whose activities outside the boundaries of Redwood National Park were damaging park resources. When Redwood was created, portions of the Redwood Creek watershed were left out of the original boundary for political reasons. Congress had authorized the Secretary to acquire easements and enter into management agreements with the timber companies, but the Park Service had not taken these actions, resulting in the lawsuit. The courts ruled that the Park Service had not taken the appropriate actions to protect the park, and the Park Service then asked Congress for help in taking such actions. (*Sierra Club v Department of the Interior*, 376 F. Supp. 90 (N.D.Cal. 1974); Ibid., 398 F. Supp. 284(1975); Ibid., 424 F. Supp. 172 (1976).)

In response, Congress passed an amendment in 1978 to the Organic Act that addressed the problem. It also generically strengthened the National Park Service's protective function. This amendment states that "the protection, management, and administration of these areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress." Thus, Congress' intent for each park as established in the park enabling legislation is upheld by the Organic Act, as well as Congress' option of amending that legislation if necessary. (Also see Redwood National Park Act, page 7.)

As amended, the Organic Act allows the Secretary a great deal of latitude in making management decisions, and the courts have consistently upheld this latitude, especially if it is supported by careful study and planning. The Secretary can exclude a use that is detrimental to resources, or allow a use if it is determined to be appropriate. For example, commercial fishing is prohibited in Everglades National Park. When deciding a lawsuit brought by commercial fishermen challenging the regulation, the court carefully reviewed the planning and public information process and ruled that the Park Service was well within its administrative authority. (*Organized Fishermen v. Watt*, 590 F. Supp. 805 (S.D. Fla 1984); affirmed, 77 F.2d 1544 (11th Cir. 1985).) When the National Rifle

Association challenged the Park Service's right to ban hunting and trapping (except where part of the unit's enabling legislation), the court ruled that the Organic Act clearly provided for the protection of wildlife and that the Park Service was acting within its authority. (*National Rifle Association v Potter*, 628 F. Supp. 903 (D.D.C. 1986).)

Alternatively, the Secretary can permit a use if it has been clearly proven not to threaten resources. For example, at Cape Cod the general management plan allows off-road vehicle (ORV) use under guidelines designed to protect the ecological integrity of the area. Environmental groups sued to stop ORV use altogether, on the assumption that any ORV use would permanently damage the ecosystem. The court ruled that the management plan adequately protected the ecosystem and that "Park Service decisions were the result of carefully designed, scientifically based studies and continued monitoring efforts." (*Conservation Law Foundation v Clark*, 590 F. Supp. 1467 (D. Mass. 1984).)

The Organic Act will undoubtedly continue to be tested and defined in the courts. As it stands, it provides a powerful weapon in the National Park Service's continued battle to protect the nation's natural and cultural resources.

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General Authorities Act of 1970

16 U.S.C. 1a-1--1a-8 (1988), 84 Stat. 825, Pub. L. 91-383

The purpose of this act is to include all areas administered by the National Park Service in one National Park System and to clarify the authorities applicable to the System. It amends the Organic Act to specify that "[t]he 'National Park System' shall include any area of land and water now or hereafter administered by the Secretary of the Interior through the National Park Service for park, monument, historic, parkway, recreational, or other purposes." This amendment was needed because new types of areas, such as national seashores, national recreation areas, and parkways, had been established which earlier laws did not specifically identify; i.e., earlier laws said "parks and monuments" but did not include these other types of areas in the list.

Areas of the National Park System, the act states, "though distinct in character, are united through their inter-related purposes and resources into one national park system as cumulative expressions of a single national heritage; that, individually and collectively, these areas derive increased national dignity and recognition of their superb environmental quality through their inclusion jointly with each other in one national park system preserved and managed for the benefit and inspiration of all the people of the United States...."

The act also clarified that each area within the National Park System shall be administered in accordance with the provisions of any statute made specifically applicable to the area and that the 1916 Organic Act would also apply to the extent it was not in conflict with such statutes.

Among other provisions, many subsequently amended, the act authorized the Secretary of the Interior to establish advisory committees regarding functions of the National Park Service and specified details of such appointments.

Reference

Mantell, Michael A., and Philip C. Metzger. 1990. The Organic Act and the Stewardship of Resources Within Park Boundaries. Chapter 2 in *Managing National Park System Resources: A Handbook on Legal Duties, Opportunities and Tools.* The Conservation Foundation, Washington, D.C.

Redwood National Park Act

16 U.S.C. 79a-79q (1988), 82 Stat. 931, Pub. L. 90-545

The purposes of this act, as amended in 1978, included both park-specific and Systemwide provisions. For Redwood National Park, it added land to protect a watershed, authorized acquisition of a right-of-way for a bypass highway around a portion of the park, gave the Secretary regulatory authority to reduce upstream sedimentation impacts on the park and authorization to rehabilitate areas subject to past timber harvesting, and provided for a program of increased economic assistance for the local area and local workers affected by the land acquisition.

By amending the General Authorities Act of 1970, the act reasserted Systemwide the high standard of protection prescribed by Congress in the original Organic Act. "Congress further reaffirms, declares, and directs that the promotion and regulation of the various areas of the National Park System...shall be consistent with and founded in the purpose established by the first section of the Act of August 25, 1916, to the common benefit of all the people of the United States. The authorization of activities shall be construed and the protection, management, and administration of these areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress."

External activities at Redwood, namely logging, were the catalyst for this legislation. Congress wanted to strengthen the ability of the Secretary of the Interior to protect park resources from such threats. Part of the amendment's legislative history stated, "The Secretary has an absolute duty, which is not to be compromised, to fulfill the mandate of the 1916 Act to take whatever actions and seek whatever relief as will safeguard the units of the National Park System."

Nevertheless, the Redwood Act qualifies the provision that park protection and management "shall not be exercised in derogation of the values and purposes for which these various areas have been established," by adding "except as may have been or shall be directly and specifically provided for by Congress." Thus, specific provisions in a park's enabling legislation allow park managers to permit activities such as hunting and grazing. While the qualification can clearly be interpreted narrowly (i.e., in those situations and within those parks where Congress explicitly authorizes an activity that threatens park resources), because the direction is to the Secretary, it arguably could be interpreted more broadly to include, for example, the multiple-use management on

adjacent federal lands that can affect park resources. Further court cases or legislation may be needed to clarify this important point.

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Mantell, Michael A., and Philip C. Metzger. 1990. The Organic Act and the Stewardship of Resources within Park Boundaries. Chapter 2 in *Managing National Park System Resources: A Handbook on Legal Duties, Opportunities and Tools.* The Conservation Foundation, Washington, D.C.

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Antiquities Act of 1906

16 U.S.C. 431-433 (1988), June 8, 1904, ch. 3060, 34 Stat. 225

The "act for the preservation of american antiquities," better known as the Antiquities Act of 1906, established for the first time a federal policy for the protection and preservation of historic and prehistoric ruins, archeological sites, and other scientific resources located on land owned or controlled by the federal government.

The act has three major provisions: (1) it establishes criminal penalties for illegally looting archeological sites located on federally owned or controlled land; (2) it establishes a permitting requirement to monitor and control the excavation and gathering of objects of antiquity on federally owned or controlled land; and (3) it authorizes the President to establish national monuments for lands that are of historic or scientific interest.

The first of the major provisions of the act establishes criminal misdemeanor penalties for those who "appropriate, excavate, injure or destroy any historic or prehistoric ruin or monument, or any object of antiquity, situated on lands owned or controlled" by the federal government without the approval of the departmental secretary having jurisdiction over that land. The penalties to be imposed include a maximum of five hundred dollars in fines or 90 days imprisonment, or a combination of both.

The act allows for scientific research on archeological resources by establishing a permitting system for the "examination of ruins, the excavation of archaeological sites, and the gathering of objects of antiquity." Such activities, however, only are to be "undertaken for the benefit of reputable museums, universities, colleges, or other recognized scientific or educational institutions, with a view to increasing the knowledge of such objects, and that the gathering shall be made for permanent preservation in public museums." The authority to grant permits is given to the respective secretaries managing the lands.

The act also authorizes the President to declare as national monuments "historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest" located on lands owned or controlled by the federal government. It further authorizes the Secretary of the Interior to accept lands relinquished by private owners for the care and maintenance of areas of historic or scientific value. It is interesting to note that nearly a quarter of the units in today's National Park System came into the System in whole or in part through this authority in the act.

Along with these major provisions, the secretaries of the Interior, Agriculture, and War departments developed uniform rules and regulations to carry out the provisions

of the act, which they signed on December 28, 1906. Today these rules appear in the Code of Federal Regulations as 43 CFR Part 3.

The Antiquities Act came about as a result of several factors. The late nineteenth and early twentieth centuries saw an increased public and scholarly interest in American Indian antiquities and ruins. This awareness was combined with deep concern, especially as leading scientific figures such as Frederick W. Putnam (Curator of the Peabody Museum of American Archaeology and Ethnology at Harvard), Adolph Bandelier (commissioned by the Archaeological Institute of America), and Frank H. Cushing (Bureau of Ethnology, Smithsonian Institution) documented large-scale, unrestricted looting of prehistoric sites. Their accounts of looting and vandalism, particularly in the U.S. Southwest, led to a call for active government measures to protect such sites. Professional organizations such as the American Association for the Advancement of Science, the Archaeological Institute of America, and the American Anthropological Association became actively involved in drafting petitions and bills for Congressional action, and were the driving force behind the passage of the Antiquities Act. As early as 1882, Congress had entered into debate on protecting sites on federal land. In 1889 Congress authorized the Casa Grande Ruin Reservation, placing the ruins under federal protection, but did not offer protection to other ruins on federal land. After repeated attempts at seeing a more comprehensive bill through Congress, a bill authored primarily by Edgar Lee Hewett, an archeologist and former university president, was adopted and passed by Congress in 1906.

The Antiquities Act was the first major piece of legislation designed to protect cultural (and, to a certain extent, natural) resources in the U.S. However, some of the provisions of the act are of limited value today, particularly those designed to deter the illegal looting of sites. For example, the criminal penalties for the unlawful removal or destruction of objects of antiquity are not adequate to deter illegal removal of objects. In many cases, the profit gained through the sale of illegally acquired objects of antiquity is much greater than the stiffest penalties allowed for under the Antiquities Act.

Problems also have developed in the use of the act as a tool to prosecute violators. The definition for "object of antiquity" became a source of challenge to the law in the courts. (*United States v Diaz*, 1973, 368 F. Supp. 856.) In 1974, the Ninth Circuit Court of Appeals overturned the conviction of Diaz under the provisions of the Antiquities Act and declared the act unconstitutional because of the vagueness of the term "object of antiquity." (499 F. 2d 113) However, the law has been successfully challenged within the jurisdiction of the Ninth Circuit Court (Washington, Oregon, Idaho, Montana, California, Nevada, Arizona, Alaska, Hawaii); its constitutionality was upheld later in the Tenth Circuit Court of Appeals. (*United States v Smyer*, 1979, 596 F. 2d 939.)

Many of the weaknesses in the Antiquities Act were addressed through the passage of the Archaeological Resources Protection Act (ARPA) of 1979 and its subsequent amendments in 1988. The permitting process of the Antiquities Act also has largely been replaced by ARPA within the National Park System, as with most federal agencies, although permits occasionally are issued under the Antiquities Act for resources less than 100 years in age.

Despite its flaws, the Antiquities Act remains a valuable piece of legislation today. It established federal responsibility for the protection of federally owned or controlled archeological resources, and functions as an extremely valuable conservation tool through its authority to create national monuments on federally owned or controlled land. It continues to offer protection to resources such as paleontological objects that are not covered in other resource protection laws, and adds protection to archeological resources that are younger than 100 years of age, which are not covered under ARPA.

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Rothman, Hal. 1989. *Preserving Different Pasts: The American National Monuments*. University of Illinois Press, Urbana.

Historic Sites, Buildings and Antiquities Act

16 U.S.C. 461 et seq. (1988), Aug. 21, 1935, ch. 593, 49 Stat. 666

The Historic Sites Act declared "a national policy to preserve for public use historic sites, buildings and objects of national significance...." To carry out this policy, the act assigned broad powers and duties to the Secretary of the Interior acting through the National Park Service. The Secretary was directed to "secure, collate, and preserve drawings, plans, photographs, and other data of historic and archaeologic sites, buildings, and objects." The Secretary was to survey historic properties "for the purpose of determining which possess exceptional value as commemorating or illustrating the history of the United States." The Secretary was authorized to conduct historical and archeological research; to "restore, reconstruct, rehabilitate, preserve, and maintain" historic properties directly or through cooperative agreements with other parties; to mark historic properties with tablets; to establish and maintain museums in connection with historic properties and develop an educational program to inform the public about them; and to acquire historic properties provided that no federal funds were obligated ahead of congressional appropriations.

The act also established an Advisory Board on National Parks, Historic Sites, Buildings, and Monuments. It was to consist of up to 11 persons appointed by the Secretary and include people with expertise in history, archeology, architecture, and "human geography" (later amended to replace "human geography" with "anthropology, biology, geology, and related disciplines"). It was to advise the Secretary on matters relating to the parks and the treatment and general administration of historic properties.

The Historic Sites Act was as much a legal ratification of existing activities as a prescription for new ones. In the early 1930s the Park Service had moved dramatically into the historic sites field, especially with its acquisition of the War Department's historic battlefields and forts and the national capital parks in a 1933 government reorganization. That same year the Service obtained Depression relief funds to hire unemployed architects and launch the Historic American Buildings Survey (HABS). Several of the authorities in the act sanctioned what the Service was already doing at its new historic properties and in the HABS program, lending congressional support to the perpetuation of this work. The language underpinning HABS was used in 1969 to justify a companion program, the Historic American Engineering Record.

New activity also resulted from the act. In 1936 the National Park Service inaugurated the National Survey of Historic Sites and Buildings, which examined properties representing various themes of American history and prehistory to identify those possessing national significance. Initially it was expected that most places so identified

would be brought into the National Park System. Some of these had cooperative agreements negotiated with their owners, were designated "national historic sites" by the Secretary, and ultimately came under National Park Service administration; a few remained national historic sites outside the National Park System. By far the most remained unaffiliated with the Park Service, however, and a new designation--national historic landmark--was adopted in 1960 to recognize these sites. As of 1992, secretaries of the Interior had designated more than 2,000 national historic landmarks. The National Historic Landmarks Survey, as the program is now called, continues to identify nationally significant historic properties in all forms of ownership (including properties of discrete historical identity within parks) and to identify and review the national significance of candidates for the National Park System.

In 1962 the Park Service used the act's authority to launch a comparable survey for natural areas. This has resulted in secretarial designation of almost 600 properties as national natural landmarks.

The advisory board appointed under the act played an important role in formulating the Park Service's historic preservation policies, evaluating properties for historic landmark designation, and considering proposed parks. Public Law 94-458 of October 7, 1976, changed the board's name to National Park System Advisory Board, set four-year terms for its members, and provided for its termination in 1990. Public Law 101-628 of November 28, 1990, extended the board until 1995, expanded its membership to 16, and charged it with recommending natural as well as historic landmark designations to the Secretary.

Among the more consequential provisions of the Historic Sites Act has been Section 2(e), which authorizes the Secretary to contract and make cooperative agreements with public and private bodies and persons to "protect, preserve, maintain, or operate" historic properties in public or private ownership. This general authority has served valuable preservation purposes. When Bess Truman died in 1982, for example, it allowed Secretary Watt to enter into a cooperative agreement with her estate to protect the Truman house until it could be brought into the National Park System by a specific act of Congress the following year.

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Historic Sites, Buildings and Antiquities Act of 1935. 1980. Department of the Interior Law Library, Washington, D.C. (A legislative history compilation.)

Mackintosh, Barry. 1985. *The Historic Sites Survey and National Historic Landmarks Program: A History*. National Park Service, History Division, Washington, D.C.

National Historic Preservation Act of 1966

16 U.S.C. 470 et seq. (1966), 80 Stat. 915, Pub. L. 89-665

In the preamble to the National Historic Preservation Act, Congress found it "necessary and appropriate for the Federal Government to accelerate its historic preservation programs and activities, to give maximum encouragement to agencies and individuals undertaking preservation by private means, and to assist State and local governments and the National Trust for Historic Preservation...to expand and accelerate their historic preservation programs and activities."

The act authorized the Secretary of the Interior to "expand and maintain a national register of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, and culture" and to dispense matching grants-in-aid to the states for historical surveys, preservation plans, and the acquisition and development of historic properties. Section 106 of the act ordered federal agencies to consider the effects of their undertakings on National Register properties and to allow the Advisory Council on Historic Preservation "a reasonable opportunity to comment" on such undertakings. The Advisory Council, established by the act, included the heads of specified federal agencies and non-federal members appointed by the President.

The primary impetus for the act was the increasing destruction of historic properties wrought by federally funded highways, dams, urban renewal, and other projects in the postwar period. The National Register of Historic Places was to be expanded from the existing roster of national historic landmarks and historical areas of the National Park System to a comprehensive inventory of historic properties at all levels of significance--national, state, and local. As a result of the act and Executive Order 11593 of 1971, historic properties throughout the National Park System were nominated to the National Register, and Park Service actions affecting them became subject to review by state historic preservation officers as well as the Advisory Council. One effect was to increase the Park Service's concern for the cultural resources in its "natural" and "recreational" parks.

Public Law 94-422 of September 28, 1976, made the Advisory Council an independent agency (it was initially affiliated with the Park Service) and amended Section 106 to make it apply to properties "eligible for," as well as "listed in," the National Register. Register listing carried tax implications for commercial properties beginning with the Tax Reform Act of 1976 (P.L. 94-455), which contained incentives for the rehabilitation of income producing properties, (i.e., commercial or rental residential historic buildings, including those owned by park concessioners). The Park Service was required to certify that

buildings whose owners were seeking rehabilitation tax credits were included in or eligible for the National Register and that the work met applicable standards.

P.L. 96-515 of December 12, 1980, the National Historic Preservation Act Amendments of 1980, significantly strengthened the act. Section 101 gave legal sanction to the state historic preservation programs that had been established administratively and provided for the certification of local governments to participate officially in the property nomination process and grants program. State historic preservation officers were made responsible for preparing and implementing comprehensive state historic preservation plans and for cooperating with public and private entities to ensure that historic properties are taken into consideration at all levels of planning and development. This had important implications for cultural resources both in and adjacent to national parklands: states could become partners with the National Park Service in protecting parks and resources outside parks.

Section 101 also authorized a program of direct grants for the preservation of endangered national historic landmarks, preservation training and technical assistance programs, and other specified activities; and aid to Native American tribes and nonprofit organizations representing ethnic groups for preservation purposes. Tribal assistance has the potential to benefit parks like Mesa Verde and Glacier bordering Native American reservations.

Section 110, incorporating much of Executive Order 11593, required all federal agencies--including the Park Service--to "assume responsibility for the preservation of historic properties" under their ownership or control. It directed them to identify historic properties and nominate them to the National Register, to use available historic buildings when feasible before acquiring, constructing, or leasing others, to carry out their programs in accordance with the purposes of the act, and to undertake "such planning and actions as may be necessary to minimize harm" to national historic landmarks. The head of each agency was directed to designate a "preservation officer" to coordinate its activities under the act.

Section 111 enabled federal agencies to lease out historic properties for purposes consistent with their preservation and retain the proceeds for maintaining them and other National Register properties under their jurisdictions. This has had useful application for many park historic properties not needed for administrative or interpretive purposes. Section 401 provided for the Secretary to nominate properties believed to possess international significance to the World Heritage List.

A provision of the 1980 Amendments that preservationists had generally resisted was that enabling private owners to "veto" the listing of their properties in the National Register. This was stimulated by a penalty for demolishing Register properties in the Tax Reform Act of 1976. While the "owner consent" provision did address some private owner concerns, properties can still be found "eligible for" the Register and thereby made subject to the Advisory Council's review process under Section 106, so that federal agencies may be deterred from undertakings impairing the historic character of properties.

The National Historic Preservation Act Amendments of 1992 (Title 40 of P.L. 102-575) significantly strengthened and expanded the National Historic Preservation Act, as amended. These amendments are the most comprehensive revision to the act since 1980.

The 1980 amendments made explicit the historic preservation roles of federal agencies, state historic preservation officers, and local governments. In the 1992 amendments, Indian tribes, Native Alaskans, and Native Hawaiians are recognized throughout the act as important partners in historic preservation. The Secretary is directed in Section 101(d) to establish procedures for recognizing tribal historic preservation programs; and, when there is a federal undertaking, federal agencies must consult with Indian tribes and Native Hawaiian organizations that attach religious and cultural significance to a National Register eligible or listed property.

Section 101(b) gives state historic preservation officers more explicit responsibilities to work with federal agencies. Federal agency responsibilities have been strengthened, made more explicit, and expanded in Sections 110 and 111. Section 112 directs all federal employees and contractors to meet procedural standards set in the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation*. Section 112 also directs the Federal Office of Personnel Management to revise or establish professional qualification standards for employees and contractors, and establishes direction for historic preservation databases. Section 112 also directs federal agencies to provide education and technical assistance to property owners about historic and archeological resources subject to (revised) Section 304 procedures when it is inappropriate to release information about the significance or location of particular resources.

The Secretary is directed by Section 113 to prepare a study on ways to control illegal interstate and international trafficking in antiquities.

Title IV of the act establishes a National Center for Preservation Technology and Training to, among other things, facilitate the development of preservation skills and technologies and training for federal, state, and local resource preservation professionals, cultural resource managers, maintenance personnel, and others working in the historic preservation field.

The most important consequences of the National Historic Preservation Act and its amendments have been the broadening of preservation concern to properties at all levels of significance and in all kinds of use, the establishment of a mechanism to ensure that historic property values are duly considered in federal planning, and the creation of a broad federal-state-local-tribal-private partnership for identifying, assisting, and protecting historic properties. Seeking both to respond to and advance the decentralization of the national preservation program fostered by the act, the National Park Service has developed and widely disseminated standards, guidelines, and technical information addressing the full array of preservation activities.

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Archaeological Resources Protection Act of 1979

16 U.S.C. 470aa (1988), 93 Stat. 721, Pub. L. 96-95

The Archaeological Resources Protection Act (ARPA) is a wide-ranging piece of legislation designed primarily for the protection of archeological resources on public and Native American lands. In this regard, it goes well beyond the Antiquities Act of 1906 by offering increased protection for historic and prehistoric archeological resources that are at least 100 years of age. It dramatically stiffens criminal penalties and introduces civil penalties for violations of provisions of the act. ARPA also authorizes a number of activities designed to protect and preserve archeological resources that go beyond law enforcement activities. Along with resource protection, the stated purpose of ARPA is "to foster increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private individuals having collections of archaeological resources and data which were obtained before the date of the enactment of Act."

The provisions of the act that address the protection of archeological resources include a permitting system that builds on that found in the Antiquities Act. The permitting provisions of ARPA require that the applicant be qualified to carry out the permitted activity, that permitted activity is undertaken to further archeological knowledge, and sets forth the requirement to preserve the material and data recovered. The act also calls for notification of Native Americans when a permit may result in harm or destruction of religious or cultural sites on federal land. For resources located on Native American lands, permits may be granted only with the consent of the appropriate Native American individual or tribe.

The act authorizes the secretaries of the Interior, Agriculture and Defense and the Chairman of the Board of the Tennessee Valley Authority to promulgate uniform rules and regulations to carry out the act. These regulations were issued in final form in 1988 (for the Department of the Interior, 43 CFR Part 7), and include details covering the permitting process and the assessment of civil penalties. Also, rules for the Curation of Federally Owned or Administered Archeological Collections (36 CFR Part 79) were published in 1990 by the Secretary of the Interior, in part under the authority established in Section 5 of ARPA and Section 101 of the National Historic Preservation Act.

The primary impetus to ARPA was the failure of the Antiquities Act of 1906 to deter looting and vandalism of archeological resources and to act as a vehicle for successful prosecution of offenders. The Antiquities Act suffered from a vague definition of "objects of antiquity"; objects protected under ARPA are defined in the act and further defined in the Uniform Regulations. ARPA significantly increases criminal penalties from those authorized in the Antiquities Act, from a maximum of $500 or 90 days imprisonment (or

both) to not more than $10,000 or one year in prison (or both) for first-time offenders. In the act's original form, these ARPA limits could be doubled for offenses where the commercial value or cost of restoration or repair of resources exceeds $5,000. Under a 1988 amendment (P.L. 100-588), the threshold for this section of the law was lowered to $500. The lower threshold has made it easier for the federal government to obtain felony convictions for violations of the act. In the case of a second or subsequent offense, the penalty can be up to $100,000 in fines or five years imprisonment (or both).

Along with criminal penalty provisions, ARPA also authorizes the assessment of civil penalties based on the commercial value of the resources and the cost of restoration and repair of the resources. The act further subjects to forfeiture all vehicles and equipment used in connection with ARPA violations.

With the passage of two separate amendments in 1988, the ability and authority of ARPA to protect archeological resources was expanded even further. Public Law 100-555 (October 28, 1988) requires federal land managers, including the National Park Service, to "develop plans for surveying lands under their control to determine the nature and extent of archeological resources on those lands," and to "prepare a schedule for surveying lands that are likely to contain the most scientifically valuable archaeological resources." The law recognizes the need to locate and identify sites in order to effectively protect them. The protection of archeological resources also has been enhanced by P.L. 100-588 (November 3, 1988), which requires that "[e]ach Federal land manager establish a program to increase public awareness of the significance of archaeological resources located on public lands and Indian lands and the need to protect such resources." Through public education programs, it is hoped that public appreciation for the value and uniqueness of archeological resources will be fostered and that the resources will not be carelessly destroyed.

Another key protective provision found in ARPA is Section 9, Confidentiality. The act specifically exempts information about the nature and location of archeological sites from public requests under the provisions of the Freedom of Information Act (5 USC 551). ARPA prohibits such information being made available unless such a disclosure would further the purposes of the act or would "not create a risk of harm to such resources or to the site at which such resources are located."

ARPA, strengthened by its 1988 amendments, has become the principal protection and enforcement authority for archeological resources in the National Park System. The act is unique in its approach, blending cooperative efforts, educational activities, and reporting requirements for acts of looting and vandalism with an improved enforcement authority. Along with the Antiquities Act of 1906, ARPA complements and enhances other federal laws and regulations designed to protect archeological resources on federal lands, including units of the National Park System.

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Land and Water Conservation Act of 1965

16 U.S.C. 4601-4 et seq. (1988), 78 Stat. 897, Pub. L. 88-578

The Land and Water Conservation Fund Act was passed to establish a fund "to assist the States and federal agencies in meeting present and future outdoor recreation demands and needs of the American people." The fund is supplied from three main sources: sales of federal surplus real properties, a small part of federal motorboat fuel taxes, and Outer Continental Shelf (OCS) revenues from leasing of oil and gas sites in coastal waters.

The act guarantees sufficient OCS revenues to ensure that $900 million in deposits are available each year, although no minimum appropriation is specified. This deposit provision of the act was originally set to expire after 1989 but was extended in 1987 through 2015. The original act also provided for revenues to the fund from entrance and user fees on various federal recreational lands, including National Park Service areas, but this source was subsequently deleted from the act in 1987. However, one section of the act as amended remains devoted to establishment and regulations on admission and user fees in National Park System units.

The act stipulates that not less than 40% of every annual appropriation from the Land and Water Conservation Fund goes toward acquisition of recreation and conservation lands specifically authorized by Congress within national parks, wildlife refuges, national forests, and Bureau of Land Management (BLM) areas. Additional funds are made available to the states, based on criteria and formulas listed in the act, for 50% matching grants. Grants may be made available to the states, and through states to their local governments, to acquire, develop, or rehabilitate outdoor recreation areas. The Act prohibits conversion of sites assisted with Land and Water Conservation Fund grants to non-recreational use except where approved by the National Park Service and replaced with lands of equal market value and usefulness for recreation.

To be eligible for grant assistance, each state must prepare and regularly update a state-wide plan that identifies needs for conservation and development of outdoor recreation resources, defines state objectives for meeting identified needs, and sets forth an action program to meet the goals defined. The state plan must be comprehensive in scope and must take into account all state, local, and federal resources and programs that affect the availability of recreation opportunities to its citizens, including resources in adjacent states and private sector programs. Authority for payment to the states is given to the Secretary of the Interior. The National Park Service administers the Land and Water Conservation Fund program through regional offices and the cooperating states.

The Land and Water Conservation Fund Act had its origins in the work of the Outdoor Recreation Resources Review Commission in the late 1950s. The Commission recommended, among other measures, long-range state recreation plans and federal funding for state and federal outdoor recreation needs. Funding legislation was introduced in 1962, but no action was taken by that Congress. In February 1963 the President again proposed legislation that would establish a Land and Water Conservation Fund, and on September 3, 1964, the bill was passed and signed into law.

Since the first funding of Land and Water Conservation Fund grants in 1965, $3.2 billion have been appropriated and allocated to states, for more than 36,600 projects ranging in location from intensely used urban sites to remote natural areas. Matching state and local contributions have raised the total investment to $6.4 billion. Almost 2,300,000 acres of land have been acquired for outdoor recreation in state and local parks.

Over $5 billion have been appropriated from the fund for federal recreation land acquisitions. The 4,000,000 acres of new federal lands include the cores of more than 50 new National Park Service areas, as well as additional recreation areas in national forests, some 1,000,000 acres for the national wildlife refuge system, and smaller acquisitions on the Bureau of Land Management's national resource lands.

Funding over the life of the grants program has averaged about $120 million per year, with a peak of $369 million in FY 1979. Recent annual appropriations have been below this average: FY 1991--$29.8 million; FY 1992--$19.8 million; FY 1993--$24.9 million; FY 1994--$24.8 million.

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National Environmental Policy Act of 1969

42 U.S.C. 4321 et seq. (1988), 83 Stat. 852, Pub. L. 91-190

The National Environmental Policy Act (NEPA) declared a national environmental policy, created a formal, legal process for integrating environmental values into federal decision-making, and provided an umbrella under which compliance with several environmental laws can be integrated. It has been described as the Magna Carta of environmental law.

NEPA states as policy that the federal government will "use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic and other requirements of present and future generations of Americans." It specifically directs federal agencies to "include in every recommendation or report on proposals for legislation and other major federal actions significantly affecting the quality of the human environment, a detailed statement...on" the environmental impact of the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, and alternatives to the proposed action.

The act also requires the federal government to use all practicable means to preserve important historic, cultural, and natural aspects of our national heritage and "to maintain, whenever possible, an environment which supports diversity and variety of individual choice." It promotes efforts that will "enrich the understanding of ecological systems and ecological resources of the nation" and discusses the role of research in forming the information base from which the cause and effect of environmental changes can be analyzed and monitored.

Title II established the Council on Environmental Quality, charged with the implementation and oversight of NEPA. The Council on Environmental Quality subsequently developed the legal procedures (40 CFR 1500-1508) that all federal agencies must follow in examining the environmental effects of proposed actions. These procedures involve three levels of documentation: (1) categorical exclusions; (2) environmental assessments; and (3) environmental impact statements.

Categorical exclusions are types of actions that do not individually or cumulatively have a significant effect on the human environment. Examples of National Park Service categorical exclusions include commercial use licenses involving no construction; installation of signs, displays, kiosks, etc.; and upgrading or adding new overhead utility facilities to existing poles, or replacement poles that do not change existing pole line configurations. If an action falls within a categorical exclusion, it must be reviewed to see

if it is a departmental exception to categorical exclusions (nine types of actions). If it is a departmental exception, an environmental assessment, at a minimum, must be prepared. If not, documentation to that effect should be placed in the park files.

The next level of NEPA compliance documentation is the environmental assessment. This must contain an explanation of the need for the proposal, environmental impacts of the alternatives, and a listing of persons and agencies consulted. Public notice of the availability of the assessment must be provided. If, from the assessment and any public review, a determination is made that all potentially significant effects can be mitigated, then a "Finding of No Significant Impact" can be issued. If the effects cannot be mitigated, an environmental impact statement is required.

Environmental impact statements have a more detailed format and public review requirements. The scoping process, which is optional under an environmental assessment, is required for an environmental impact statement. Comments from federal, state, and local agencies and Native American tribes, along with substantive comments from the public, are answered in the final document, and any necessary changes resulting from the public review are made. At the conclusion of the process, a "record of decision" is issued that states the decision, the alternatives considered, the factors involved in the final selection, and any mitigation measures required. With issuance of the record of decision, the action may be taken, unless challenged in court. NPS-12, the *NEPA Compliance Guideline*, provides detailed guidance on the NEPA process.

In the National Park Service, construction activities, natural or cultural resource management projects, actions on proposals such as mining plans of operation, and park plans trigger the majority of NEPA documents.

NEPA provides the National Park Service with many benefits. It enables the Park Service to integrate compliance with other legal mandates such as the Endangered Species Act, floodplain and wetland requirements, and Section 106 of the National Historic Preservation Act. It provides a format for public involvement and considering the viewpoints of outsiders. It enables the Park Service to build a record in defense of park resources and policies and clear up confusion about policies in a public forum. NEPA also provides the National Park Service an opportunity to participate in the development and review of other agencies' NEPA documents when lands adjacent to parks are involved or when the National Park Service has review responsibilities as an agency with "jurisdiction" or expertise in recreation, land management, and historic preservation. This type of involvement is an important but underused avenue for addressing external problems that affect parks.

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Clean Air Act

42 U.S.C. 7401-7671q (as amended in 1990), 91 Stat. 685, Pub. L. 101-549

Introduction

The National Park Service Organic Act directs that national park units be administered "to conserve the scenery and the natural and historic objects and wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." (16 U.S.C. 1.) The Clean Air Act provides a legal framework for the National Park Service to preserve and protect parks' air quality related values (AQRVs) from pollution sources emanating from within and outside park boundaries.

Because of a perceived need for national and regional air quality research to support state programs, Congress passed its first federal air quality initiative in 1955. (Air Pollution Control Act of 1955, ch. 360, 69 Stat. 322.) In response to increasing harm to public health and welfare and to inadequate controls and enforcement, Congress has slowly but steadily expanded and refined the law, now known as the Clean Air Act, to cover more types of pollutants and emitters; i.e., stationary and mobile sources of pollution. These efforts have culminated in the 1990 amendments to the Clean Air Act, which represent the most comprehensive and detailed set of measures to date to both prevent and curtail air pollution. The declaration of purpose as revised in 1990 states, "A primary goal of this Act is to encourage or otherwise promote reasonable Federal, State, and local government actions, consistent with the provisions of this Act, for pollution prevention." (42 U.S.C. Sec. 7401(c).)

Major Provisions

NAAQS and SIPS The Clean Air Act establishes a regulatory program with the goal of achieving and maintaining "national ambient air quality standards" (NAAQS) through state or, if necessary, federal implementation plans (SIPs or FIPs).[1] The Environmental Protection Agency is charged with promulgating "primary" NAAQS for "criteria" pollutants "to protect the public health," "allowing an adequate margin of safety," and

[1]SIPs are based on emissions inventories and models that attempt to predict whether air quality violations will occur under various scenarios. The Environmental Protection Agency has review authority over SIPs and may promulgate a FIP, if the state fails to gain approval for its own plan.

"secondary" NAAQS "to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air."[2] The secondary standards help protect park AQRVs.[3] To date, the Environmental Protection Agency has promulgated NAAQS for six criteria pollutants: sulfur dioxide, particulate matter, nitrogen dioxide, carbon monoxide, ozone, and lead.

NSPS The Environmental Protection Agency is authorized to establish technology-based new source performance standards (NSPS) for stationary sources of pollution whose construction or modification is commenced subsequent to publication of a regulation applicable to the source's particular industry category. Under the 1990 amendments, NSPS must "reflect[] the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated." (42 U.S.C. Sec. 7411.)

NESHAP The 1970 amendments authorized the Environmental Protection Agency to establish health-based national emission standards for hazardous air pollutants (NESHAP). The 1990 amendments direct the Environmental Protection Agency to establish technology-based standards using the "maximum achievable control technology" (MACT) for 189 hazardous substances, and authorize the Environmental Protection Agency to establish a program for the prevention of accidental releases. (42 U.S.C. Sec. 7412.)

PSD The 1977 amendments added a "prevention of significant deterioration" (PSD) section. One of its major purposes is "to preserve, protect, and enhance the air quality in national parks, national wilderness areas, national monuments, national seashores, and other areas of special national or regional natural, recreational, scenic, or historic value." (42 U.S.C. Sec. 7470.) The PSD section addresses park resource protection through establishment of ceilings on additional amounts of air pollution over baseline levels in clean air areas (increments) and through a provision charging the federal land manager (at the Department of the Interior, the Assistant Secretary for Fish and Wildlife and Parks) and the federal official charged with direct responsibility for management of such lands (the superintendent) with "an affirmative responsibility to protect the air quality related values (including visibility) of any such lands within a class I area and to consider, in consultation with the Administrator, whether a proposed major emitting facility will have an adverse impact on such values." (42 U.S.C. Sec. 7475(d).) Class I areas

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[2] Under 42 U.S.C. Sec. 7409, the "criteria" for establishing NAAQS for air pollutants are public health and welfare.

[3] 42 U.S.C. Sec. 7602(h), as revised in 1990, specifically provides that "effects on welfare includes, but is not limited to, effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being, whether caused by transformation, conversion, or combination with other air pollutants."

include national parks larger than 6,000 acres and national wilderness areas larger than 5,000 acres, in existence on August 7, 1977. The 1990 amendments provided that the subsequent additions to the boundaries of such areas are also Class I areas. Forty-eight areas in the National Park System are designated Class I.

Under the PSD provisions and implementing regulations for Class I areas, once baseline concentrations come under review by submission of a PSD preconstruction permit application for a major new or modified emissions source, only the smallest increment of certain pollutants--sulfur dioxide, nitrogen oxide and particulate matter--may be added to the air by the proposed new source. A state shall not issue a permit to allow construction or modification of the source when the federal land manager makes an adverse impact determination based on a projected violation of an increment--an exceedance of the "maximum allowable increases for a class I area." (42 U.S.C. Sec. 7475(d)(2)(C)(i).)

Even if no increment violation is predicted, the state may not issue the preconstruction permit, if the federal land manager "demonstrates to the satisfaction of the State that the emissions from such facility will have an adverse impact on the air quality-related values (including visibility) of such lands." (42 U.S.C. Sec. 7475(d)(2)(C)(ii).) The act does not specify criteria for the federal land manager to "satisfy" state permitting agencies.

Consequently, some states have taken a liberal view of their discretion to reject an federal land manager's adverse impact determination. This provision of the Clean Air Act and the proper role of the federal land manager in the PSD permit process are being interpreted in several pending state administrative proceedings. These issues also are under discussion in the context of ongoing new source review simplification workshops hosted by the Environmental Protection Agency.

The PSD part of the Clean Air Act "declares as a national goal the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollutants." (42 U.S.C. Sec. 7492.) To help carry out this goal, the Secretary of the Interior is charged with identifying Class I areas where visibility is an important value. The Environmental Protection Agency is charged with reporting to Congress on methods to implement the national goal and with promulgating regulations to ensure reasonable progress toward meeting the goal. To date, the Environmental Protection Agency has issued enforceable regulations for impairment caused by visible plumes (applicable to major stationary sources emitting any pollutant which may "reasonably be anticipated to cause or contribute to any impairment of visibility"), but has not issued regulations addressing regional haze.

The 1990 amendments added a new section on visibility, which authorizes the Environmental Protection Agency in conjunction with the National Park Service and other federal agencies, to conduct visibility research and to evaluate clean air corridors and emissions sources and source regions causing visibility impairment in Class I areas. In this regard, the Environmental Protection Agency was required to establish the Grand Canyon Visibility Transport Commission by 1991. (42 U.S.C. Sec. 7492.) The National Park Service plays a vital role in the work of the Commission and its established

committees in an effort to improve air quality in the Grand Canyon and other parks in the "Golden Circle," also known as the Colorado Plateau.

Nonattainment Areas Areas that have failed to meet NAAQS for one or more criteria pollutants are designated as "nonattainment" areas. Under the 1990 amendments, Congress provides for further classification of nonattainment areas based on severity of the nonattainment and availability and feasibility of appropriate pollution control measures and for a compliance schedule ranging from 1993 in marginal nonattainment areas to 2010 for Los Angeles.

The 1990 amendments authorize the Environmental Protection Agency to issue control technique guidance documents (CTGs) covering a variety of topics, such as control of idling vehicles and voluntary removal of pre-1980 model year light duty vehicles (cash for clunker programs). (42 U.S.C. Sec. 7408.) The Environmental Protection Agency is authorized to issue CTGs, in lieu of regulations, to reduce volatile organic compound (VOC) emissions from any consumer or commercial product. (42 U.S.C. Sec. 7511b.)

Proposed new or modified major stationary sources within nonattainment areas are required to meet emissions limits based on "reasonably available control technology" (RACT) and may be constructed only if their emissions are sufficiently offset by reductions in emissions from other sources. The 1990 amendments also require analysis of alternative sites, sizes, production processes, and control techniques and a finding that the benefits of the source outweigh its environmental and social costs. (42 U.S.C. Secs. 7501-15.)

Mobile Sources The 1970 amendments authorized the Environmental Protection Agency to establish allowable levels of auto emissions and to control fuels and fuel additives. The 1990 amendments establish lower emission standards for vehicles and contain new provisions for alternative fuels and "clean fuel" vehicles. (42 U.S.C. Secs. 7521-54.) These amendments also authorize the Environmental Protection Agency to issue emissions standards for nonroad engines. (42 U.S.C. Sec. 7547.)

General Title III contains definitions, requirements for reports to Congress, authorizations for appropriations, and procedures for the Environmental Protection Agency rulemaking and judicial review. Citizen suits are authorized 1) against the Environmental Protection Agency for failure to perform a nondiscretionary duty under the Clean Air Act, or 2) against others for alleged violations of an emission limitation, standard, or order. (42 U.S.C. Secs. 7601-27.)

Acid Deposition The 1990 amendments add Title IV, which contains requirements for electric utilities to reduce emissions associated with acid rain. To reduce the adverse effects of acid deposition, Title IV requires a reduction in annual emissions of sulfur dioxide of ten million tons from 1980 emission levels and a reduction of nitrogen oxides emissions of approximately two million tons from 1980 emission levels, in the 48 contiguous states and the District of Columbia. (42 U.S.C. Sec. 7651) The Title creates a system of market-based emission allowances that can be traded among sources. (See 42 U.S.C. Secs. 7651a-o.)

Operating Permits The 1990 amendments add Title V, which establishes a nationwide permit program for existing stationary sources. Permit requirements will

include emission limitations. The Environmental Protection Agency may veto state permits, which do not comply with provisions of the Clean Air Act. (42 U.S.C. Secs. 7661a-f.)

Stratospheric Ozone The 1990 amendments also add Title VI, which deals with depletion of the ozone layer and orders the phase-out of ozone-depleting substances. The title also provides for the Environmental Protection Agency to regulate substitutes. (42 U.S.C. Secs. 7671a-q.)

Impact on National Park Service

The Clean Air Act reinforces the National Park Service's Organic Act role as a protector of natural and cultural resources within park unit boundaries. The act also imposes on the National Park Service an obligation to comply with the act's many provisions.

Thus, under the Clean Air Act, the National Park Service is responsible for protecting air quality within park unit boundaries, and for taking appropriate action to do so, when reviewing emission sources both within parks and in proximity to park boundaries. Because of the uncertainty involved in "satisfying" state permitting agencies, the existing framework may provide an inadequate means for the National Park Service to fully carry out its mission with respect to adverse air quality impacts caused by sources outside park boundaries.

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Clean Water Act

(Federal Water Pollution Control Act)
33 U.S.C. 1251-1376 (1988), June 30, 1948, ch. 758, 62 Stat. 1155

The Clean Water Act was one of the first comprehensive statutes oriented to a single environmental medium. Originally titled the Federal Water Pollution Control Act of 1972, and significantly amended in 1977 and 1987, the Clean Water Act was enacted to..." restore and maintain the chemical, physical, and biological integrity of the Nation's waters" by attaining the goals of providing for the protection of fish, shellfish, wildlife, and recreation by 1983; eliminating the discharge of pollutants into navigable waters by 1985; and prohibiting the discharge of pollutants to the waters of the United States. (33 U.S.C. 1251.) The Clean Water Act has spawned one of the most aggressive and complex environmental regulatory programs in the United States. It has survived and evolved through extensive litigation and has served as a model for other environmental statutes.

As with most environmental programs, Congress established with the Clean Water Act a federal system with the intent that the administration and enforcement of most of its requirements would be passed on to the states, albeit with an appropriate level of federal oversight. Through the standards promulgated by the individual states, the Clean Water Act provides a valuable tool to the National Park Service for protecting its water resources from the influences of external point (single location) and nonpoint (dispersed, multiple) sources of pollution. At the same time, Section 313 requires the National Park Service, in implementing its management activities, to "...comply with all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of water pollution in the same manner and to the same extent as any non-government entity including the payment of reasonable service charges." (33 U.S.C. 1323.)

The water quality standards that are developed and implemented by the states are composed of three separate but interrelated components: (1) the designated beneficial uses of a water body such as contact recreation, drinking water supply, or a cold water fishery; (2) the numerical or narrative criteria that establish the limits of physical, chemical, and biological characteristics of water that are sufficient to protect the beneficial uses; and (3) an antidegradation provision to protect the existing uses of water.

A state's antidegradation policy is a three-tiered approach to maintaining and protecting various levels of water quality. Minimally, the existing uses of a water segment and the quality level necessary to protect the uses must be maintained. The second level provides protection of existing water quality in segments where quality

exceeds the "fishable/swimmable" goals of the Clean Water Act. The third level provides protection for the state's highest quality waters where ordinary use classifications may not suffice; these are classified as Outstanding National Resources Waters (ONRW).

ONRW status, in most cases, is a desirable designation to acquire for National Park Service units with significant water resources management responsibilities. For waters designated as ONRW, water quality must be maintained and protected and only short-term changes may be permitted. ONRW designations for waters outside park boundaries, which parks can apply for, can also ensure the protection of water that flows into a park, and may discourage development proposals for a given area if a designated ONRW would be affected (West 1990). However, in states where ONRW's must be nominated and the designation conferred by the state, the state may be reluctant to give the designation where there are many extractive resource uses within the watershed. ONWR designation may also preclude building or expanding National Park Service visitor facilities.

To attain the Clean Water Act's goal of eliminating the discharge of pollutants into the nation's water, two broad sources of water pollution, point and nonpoint, have been targeted for control, management, and regulation. Point sources of pollution are those that generally result from a discharge from a specific, single location such as a pipe or other conduit. Nonpoint pollution is caused by diffuse sources that are not regulated as point sources and normally is associated with agricultural and silvicultural runoff. These definitions are general, and legal and regulatory decisions have sometimes resulted in certain sources being assigned to either point or nonpoint source categories because of considerations other than their manner of discharge. For example, irrigation return flows are designated as nonpoint sources by section 402 of the Clean Water Act, even though the discharge is usually through a discreet conveyance (USEPA 1985).

The backbone of the Clean Water Act's effort to eliminate point sources of pollutants into the nation's waters is the National Pollutant Discharge Elimination System (NPDES) created by section 402 of the act. The NPDES program is in itself an interesting regulatory conundrum in that it authorizes by permit what otherwise would be illegal under the act--the discharge of pollutants into the waters of the United States. Thus, the program has become known in some quarters as the "permission to pollute" system (Laws 1990). The program has, however, been successful in significantly improving the quality of the nation's surface waters by requiring industrial and municipal dischargers to meet stringent effluent standards for conventional and toxic pollutants. National Park Service facilities that include a discharging wastewater treatment plant must meet the requirements of the NPDES program. The 1977 amendments added best management practices for the control of toxic pollutants at point sources handling hazardous substances.

The management and control of nonpoint sources of pollution have posed a much more difficult problem to resolve through the Clean Water Act. Original scientific uncertainty on the relative significance of nonpoint pollution as a major source of water quality degradation, political and economic difficulties in developing a regulatory program, and, until the 1987 amendments, the lack of clear statutory policy for regulating

nonpoint source pollution have resulted in a poorly focused program to address this category of pollution, which is now recognized as the major source of sediment, nutrient, and bacterial water pollution.

The 1972 act sought to address nonpoint source pollution primarily through Section 208, which provided for area wide waste treatment planning. However, this planning program resulted in the adoption of few actual controls on nonpoint source pollution, and funding for the program was terminated in 1980.

It was not until the 1987 amendments that a stringent nonpoint source control mandate emerged in the act, beginning with amendments to Section 101. These stated that "[i]t is the national policy that programs for the control of nonpoint sources of pollutants, be developed and implemented in an expeditious manner so as to enable the goals of this Act to be met through the control of both point and nonpoint sources of pollution." Three other amendments punctuated this policy, leaving little doubt that Congress wanted action on nonpoint sources of pollution: (1) amendments to Section 319 required the states to develop regulatory controls over nonpoint sources of pollution; (2) special planning mechanisms for estuaries under Section 320 emphasized the development of nonpoint source controls for areas engaged in those planning activities; and (3) stormwater runoff from industrial, municipal, and construction activities was brought under the control of the NPDES program (Section 402) (Randall 1990). Depending on individual state regulations, many of the National Park Service's construction activities will be regulated by the Clean Water Act under the stormwater permitting requirements.

Assuming that these programs are successful in the long-term, many parks should experience improvement in water quality, especially in areas where sediments, nutrients, and bacteria are significant pollutants.

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Endangered Species Act of 1973

16 U.S.C. 1531 et seq. (1988), 87 Stat. 884, Pub. L. 93-205

Congressional efforts to develop effective legislation to protect declining species spanned nearly a decade, beginning in 1966 with the Endangered Species Protection Act. That law addressed only native vertebrate animal species and provided limited legal protection, directing the departments of Agriculture, Interior, and Defense to protect listed species and preserve habitat for those species as long as such activity did not interfere with the primary missions of the departments. In 1969 the Endangered Species Conservation Act extended protection to most animal species in danger of worldwide extinction, thereby giving the U.S. some authority in addressing problems of nonnative species. The 1973 Convention on International Trade in Endangered Species restricted international commerce in species whose survival might be threatened by such activities, and represented the first successful international effort to deal with the global problem of species decline and extinction.

These laws generally lacked the scope and authority to provide effective, long-term protection for threatened and endangered species. When Congress passed the Endangered Species Act of 1973, it created a powerful and effective tool for preservation and recovery of declining species worldwide by strengthening provisions of earlier laws and addressing some critical new areas. Some of the most important provisions of the 1973 act as amended in 1978, 1982, and 1988 are:

Section 3 gives legal definition to the terms "threatened" and "endangered," and extends protection to plants and invertebrates. "Endangered species" means "any species which is in danger of extinction throughout all or a significant portion of its range." "Threatened species" means "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." (See 50 CFR Parts 17, 402, and 424, for all definitions.)

Section 4 of the act combines U.S. and foreign species lists and applies uniform provisions. (See 50 CFR Part 424 for listing process.)

Section 6 authorizes transfer of federal funds to the states for management and recovery of listed species after a cooperative agreement has been signed.

Section 7 requires federal agencies to consult with the U.S. Fish and Wildlife Service if their activities may affect listed species, and requires the agencies to develop programs for the conservation of listed species. (See 50 CFR Part 402 for detailed description of the consultation process.)

Section 9 contains strong "taking" prohibitions for endangered animal species. The term "take" means "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." (See 50 CFR Part 17 for restrictions.)

The Endangered Species Act also requires the lead agencies (U.S. Fish and Wildlife Service and the National Marine Fisheries Service) to develop recovery plans designed to increase the populations of threatened and endangered species to the point where they could be removed from the list.

National Park System units are among the most secure bastions for numerous threatened and endangered species, and many National Park Service resources are devoted to protection and recovery efforts. The National Park Service's *Management Policies* directs park managers to identify and promote the conservation of all federally listed species, candidate species, and their critical habitat within park boundaries. Policy further directs park managers to identify in the park resource management plan all actions and needs for protection and perpetuation of threatened and endangered species.

The National Park Service's *Natural Resources Management Guideline* (NPS-77) provides clear threatened and endangered species program objectives, some of which follow.

- Inventory and monitor sensitive, candidate, and listed species. This includes mapping species distributions in the park, identifying critical habitats (if any), and determining numbers of individuals, threats to the species, condition, and population trends.

- Manage endangered, threatened, and candidate species, and their critical habitats, in conformance with the Endangered Species Act, recovery plans, and other pertinent documents.

- Ensure that park operations do not adversely impact endangered, threatened, candidate, or sensitive species and their critical habitats, within or outside the park.

- Integrate to the fullest extent possible park management actions with other federal, state, and private recovery efforts.

- Encourage National Park Service involvement on recovery teams as appropriate.

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50 CFR Parts 17, 402, 424

Wilderness Act of 1964

16 U.S.C. 1131 et seq. (1988), 78 Stat. 890, Pub. L. 88-577

The U.S. Forest Service was the first agency to make an attempt to protect wilderness. In 1919 in Colorado, Forest Service planners made the decision to protect the "mood" of Trappers Lake in White River National Forest by not building roads, forcing visitors to walk to the lake. In 1924, the Forest Service set aside the Gila Wilderness in New Mexico at the instigation of Aldo Leopold. Regulation L-20, issued in 1929, authorized the Forest Service to designate "primitive areas," which had rough roads and shelters and allowed minimal cutting of wood. The Forest Service created 73 primitive areas from 1931 to 1939. At this point the public and politicians began to take notice. To better preserve these popular areas, L-20 was revised to eliminate roads, motorized traffic, and timber cutting.

In 1949, a survey conducted by the Library of Congress for the House of Representatives indicated that wilderness areas were disappearing fast, and if there was a "reason for preserving substantial portions of the remaining wilderness, it must be decided upon before it is too late." Since the Forest Service did not have the statutory authority to keep mining or construction projects (e.g., dams) out of the primitive areas, advocates drafted a bill that would make wilderness areas official.

In June 1956, Hubert Humphrey and eight other senators introduced the bill. After eight years of fighting opponents, including the Forest Service, the Department of Agriculture, and lumber, mining, power, and irrigation interests, the Wilderness Act was passed, and signed in September 1964.

Wilderness Area Management

The Wilderness Act established the National Wilderness Preservation System, composed of federal lands designated as Wilderness Areas. Wilderness Areas are to be administered "...for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness, so as to provide for the...preservation of their wilderness character...."

> A wilderness, in contrast with those areas where man and his own works dominate the landscape, is...an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain, ...an area of undeveloped federal land retaining its primeval character and influence,

without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which:

(1) Generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable;

(2) Has outstanding opportunities for solitude or a primitive and unconfined type of recreation; and

(3) Has at least 5,000 acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition. (The subsequent Eastern Wilderness Act allowed smaller areas to be designated as wilderness.)

When an area is designated as wilderness, it continues to be managed by the agency that previously had jurisdiction, or by the agency specified by Congress. The area is to be administered for the purpose for which it was originally established, but in a way that also preserves its wilderness character. The law states that "[t]he designation of any area of any park, monument, or other unit of the National Park System as a wilderness area...shall in no manner lower the standards evolved for the use and preservation of such park, monument, or other unit of the National Park System...." Except as specifically provided by law, there are to be no permanent roads within any wilderness area. Except as needed for administrative purposes, there are to be no temporary roads or use of motorized vehicles or motorized equipment, no landing of aircraft, no other form of mechanical transport, and no structure or installation within any wilderness area. The following exceptions are permitted:

- Where the use of aircraft or motorboats is already established, it may be permitted to continue subject to management restrictions.

- All wheelchairs, including motorized wheelchairs, are allowed in National Park Service wilderness areas.

- Measures necessary and desirable to control fire, insects, and diseases may be taken.

- Previously permitted mineral prospecting may continue in a manner compatible with the preservation of the wilderness environment.

- Certain mining activities are permitted. However, after January 1, 1984, no mineral claims may be made.

Only commercial services necessary for the recreational and wilderness purposes of an area may be permitted.

Special Alaska Provisions

In 1980, the Alaska National Interest Lands Conservation Act (ANILCA) added several modifications that apply specifically to the management of wilderness in Alaska. The Congress recognized the unique Alaskan conditions and provided for these modifications, subject to reasonable regulations, to protect the natural and other values of the various conservation system units. The modifications affect both the overall management as well as the administrative and visitor use of designated wilderness areas. The modifications apply to all the conservation system units in Alaska, including the National Park System, the National Wildlife Refuge System, the National Wild and Scenic River System, the National Trails System, the National Wilderness Preservation System, and national forest monuments. The Alaska modifications affect all wilderness managing agencies and include the following:

- Minor boundary adjustment may not increase or decrease the amount of land within any unit by more than 23,000 acres (Section 103).

- Nonfederal lands within a conservation system unit are not subject to the federal regulations applicable to such units (Section 103).

- Nonrecreational commercial structures are allowed in two park units for commercial fishing purposes (Section 205).

- Nine wild rivers were designated under the Wild and Scenic Rivers System within existing wilderness units (Section 601).

- Subsistence activities such as hunting, fishing, trapping, and gathering are permitted in portions of 13 parks (Sections 201 and 801).

- Subsistence forest resource use, including the cutting of firewood and houselogs, is allowed by permit (36 CFR 13.42).

- Section 804 states "the taking on public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes."

- Section 810 requires an evaluation to determine whether to withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition of public lands.

- Rural residents are ensured of reasonable access for subsistence purposes including snowmobiles, motorboats, and other means of surface transportation traditionally employed, subject to reasonable regulations (Section 811).

- The Alaska Mineral Resource Assessment Program (assessment of oil, gas, and other mineral potential) is to be allowed to the fullest extent within the conservation system units (Section 1010), including access by air, but subject to the regulations in 36 CFR, Part 9, subpart D.

- Title XI provides for a process to locate transportation and utility systems in and across, and access into, conservation system units.

- Use of motorboats, snowmachines, and airplanes (fixed wing) for access to and through conservation system units is permitted for travel to villages and homesites for traditional activities (Section 1110).

- Section 1111 permits temporary access by the state or private landowner to or across any conservation system unit, subject to stipulations and conditions to protect the values for which the public lands were reserved.

- Section 1301 gives direction for completion and content of management plans for each National Park Service unit in Alaska established, redesignated, or expanded by ANILCA.

- Section 1306 gives direction, to the extent practicable and desirable, to attempt to locate administrative and visitor facilities on native lands in the vicinity of the unit.

- Preference shall be given to Native corporations and local rural residents, except for sport fishing and hunting guide activities, for the provision of visitor services (Section 1307).

- The establishment, operation, and maintenance within any conservation system unit of new air and water navigation aids and related facilities; facilities for national defense purposes and related air and water navigation aids; and facilities for weather, climate, and fisheries research and monitoring shall be permitted subject to mutually agreeable terms and conditions to minimize the adverse effects of such activities (Section 1310).

- Construction of new public use cabins is permitted only for reasons of public health and safety (Section 1315(d)).

- Temporary structures are permitted related to the taking of fish and game in preserves only (Section 1316). The number of temporary facilities is generally limited to those in existence in 1978 or 1985, whichever is greater.

The National Park Service will review the suitability or nonsuitability of all nonwilderness National Park Service lands not designated as wilderness by ANILCA (Section 1317).

The regulations to guide National Park Service wilderness management in Alaska are addressed under 36 CFR Part 13 and 43 CFR Part 36. There are also several other modifications in ANILCA that apply only to U.S. Forest Service wilderness lands.

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Alaska National Interest Lands Conservation Act, P.L. 96-487 (16 U.S.C. 3101), December 2, 1980.

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Federal Insecticide, Fungicide, and Rodenticide Act

7 U.S.C. 136 et seq. (1988), 86 Stat. 973, Pub. L. 92-516

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) is the comprehensive legislation for regulation of the manufacture, labeling, sale, and use of pesticides. The National Park Service must comply with several provisions of FIFRA. First, parks are prohibited from using any pesticide in a manner inconsistent with the label. The National Park Service pesticide approval process, as described in NPS-77, the *Natural Resources Management Guideline*, was designed to ensure compliance with this provision.

Second, FIFRA directs the Environmental Protection Agency to designate certain dangerous pesticides as restricted use pesticides, which can be applied only by persons who have been certified as pesticide applicators or by persons under their direct supervision. The certification requirement also is described in NPS-77.

FIFRA allows the Environmental Protection Agency to delegate to the states the authority to write and enforce pesticides regulations, and these may be more stringent than the federal regulations. Many states have requirements for record keeping and criteria for pesticide storage facilities that parks also must meet.

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Alaska National Interest Lands Conservation Act of 1980

16 U.S.C. 3101 et seq (1988), Dec. 2, 1980, 94 Stat. 2371, Pub. L. 96-487

The Alaska National Interest Lands Conservation Act (ANILCA), passed December 2, 1980, is remarkable among acts related to National Park Service resources management for its degree of detail. Whereas the landmark National Environmental Policy Act is only five pages long, ANILCA runs to 181 pages in the U.S. Statutes at Large. It establishes large conservation units in Alaska, provides for certain consumptive uses, including continued subsistence uses, on many of these lands, and, deals extensively with transportation and utility systems, federal-state cooperation, and administrative provisions on federal lands. It describes itself as the final word on creation of federal conservation areas in the state: "Congress believes that the need for future legislation designating new conservation system units, new national conservation areas, or new national recreation areas [in Alaska], has been obviated [by this act]."

Historical Background

The Alaska National Interest Lands Conservation Act was intended to address the uncertainty of Alaskans about disposition of Alaska's lands, a subject which had been under study and legislative attention since the granting of statehood in 1959. The Statehood Act granted the State of Alaska the right to select over 104 million acres of public land. The Alaska Native Claims Settlement Act of 1971 (ANCSA) granted Native American corporations the right to select about 44 million acres of public land and directed the Secretary of the Interior to withdraw up to 80 million acres of federal lands and make recommendations to Congress for administering them as national parks, national wildlife refuges, and other conservation units. On December 1, 1978, seeing that Congress would not meet the deadline for making this land disposition, President Carter designated 17 national monuments totalling some 56 million acres under his authority conveyed by the Antiquities Act of 1906. ANILCA finalized the disposition of federal lands in Alaska on December 2, 1980.

Major Provisions

ANILCA established some 50 million acres of new parkland, more than doubling the area of the National Park System. It established Aniakchak National Monument and Aniakchak National Preserve, Bering Land Bridge National Preserve, Cape Krusenstern

National Monument, Gates of the Arctic National Park and National Preserve, Kenai Fjords National Park, Kobuk Valley National Park, Lake Clark National Park and National Preserve, Noatak National Preserve, Wrangell-Saint Elias National Park and National Preserve, and Yukon-Charley Rivers National Preserve. The act also added area to Glacier Bay National Monument and redesignated it Glacier Bay National Park; established Glacier Bay National Preserve; added area to Katmai National Monument and redesignated it Katmai National Park; established Katmai National Preserve; and added area to Mount McKinley National Park, established Denali National Preserve, and redesignated this complex Denali National Park and Preserve.

The act established 13 wild and scenic rivers in 9 National Park System units and designated wilderness areas in Denali, Gates of the Arctic, Glacier Bay, Katmai, Kobuk Valley, Lake Clark, Noatak, and Wrangell-St. Elias. It called for review within five years of all lands within the National Park System (and National Wildlife Refuge System) in Alaska not designated as wilderness by the act for suitability as wilderness. Subject to valid existing rights, lands established or expanded by the act were withdrawn from new mineral entry.

"Subsistence uses" is defined as "the customary and traditional uses of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; and for customary trade." It applies to both native and non-native individuals. Subsistence eligibility distinctions are generally based upon rural residency and customary and traditional use of a particular wildlife population or fish stock. In National Park Service areas eligibility is further confined to local rural residents--congressionally intended to include individuals and or communities with a history of customary and traditional use of the lands encompassed within the park area at the time of its establishment. ANILCA provided that consumptive subsistence resource uses by local rural residents with a past history of use would be allowed in Cape Krusenstern National Monument, Kobuk Valley National Park, all the national preserves in Alaska, and where such uses are traditional, in Aniakchak National Monument, Gates of the Arctic National Park, Lake Clark National Park, Wrangell-St. Elias National Park, and the Denali National Park addition.

ANILCA also provided that "the taking on public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes" (such as sport hunting). Subsistence users may use snowmobiles, motor boats, and other means of surface transportation traditionally employed for such purposes by local residents.

To recommend appropriate subsistence fish and wildlife management, ANILCA called for the creation of regional advisory councils and local advisory committees if the state fish and game advisory committees did not adequately perform the committee functions set forth in the act. And for each national park or national monument where the act permitted subsistence use, a subsistence resource commission was to be appointed to specifically develop a subsistence hunting program. The Secretary of the Interior must implement commission recommendations unless he finds in writing that the recommen-

dations violate recognized principles of fish and wildlife conservation, threaten the conservation of healthy populations of wildlife, are contrary to the purposes for which the park or park monument was established, or are detrimental to satisfying subsistence needs. The Secretary may temporarily close any public lands "to subsistence uses of a particular fish or wildlife population only if necessary for reasons of public safety, administration, or to assure the continued viability of such populations."

The act provided the opportunity for the State of Alaska to manage season and bag limits, and methods and means for subsistence taking of fish and wildlife. The National Park Service developed a regulatory program to manage subsistence related eligibility, access, and cabin use issues concerning National Park Service areas. The act also provided that if the state were unable to comply with the subsistence fish and game management provisions of ANILCA, the Secretary was to assume control of the regulation of taking of fish and wildlife on federal public lands. Such a transfer of authority took place in 1990. Subsistence seasons and bag limits, and methods and means regulations are now managed by a federal Subsistence Board consisting of representatives of the Department of the Interior--Secretary's Office, U.S. Fish and Wildlife Service, National Park Service, Bureau of Land Management, Bureau of Indian Affairs, and U.S. Forest Service.

Among its other provisions, ANILCA:

- allowed the continuation of valid commercial fishing rights and privileges, including related use of lands for campsites, cabins, motorized vehicles, and aircraft landings in Cape Krusenstern National Monument, the Malaspina Forelands Area of Wrangell-St. Elias National Preserve, and the Dry Bay Area of Glacier Bay National Preserve;

- allowed sport hunting and trapping in national preserves;

- specifically authorized sport fishing in all National Park Service areas in Alaska;

- provided for federal agency review and approval of proposed transportation and utility systems on its lands;

- guaranteed reasonable access to inholdings;

- authorized general use of snowmachines, motorboats, airplanes, and nonmotorized surface transportation methods for traditional activities;

- established an Alaskan Land Use Council with federal and state representatives to make recommendations on land and resource use, proposed regulations, management plans, and studies;

- required a management plan for each National Park Service unit established or enlarged by the act, within five years;

- specified conditions under which cabins could be maintained, built, and used on National Park Service lands, including wilderness, established or enlarged by the act;

- allowed designation and addition of archeological and paleontological sites adjacent to certain new National Park Service units;

- authorized plans for federal information and education centers at Anchorage and Fairbanks;

- allowed the Secretary under specified conditions to designate zones where, and periods when, no hunting, fishing, trapping, or entry could be permitted; and,

- allowed the Secretary to permit establishment and use of temporary facilities, such as tent platforms, related to taking of fish and wildlife on federal public lands.

Relations to National Park Service Management

ANILCA included vast, awesome new resources in the National Park System. The inclusion of many remote areas presented the opportunity to protect those areas and their resources in comparatively pristine condition.

ANILCA also included a complicated array of allowances and special management considerations for the new and expanded National Park Service units in Alaska. Each of these special provisions is problematic, and taken together they constitute the intricate challenge for National Park Service management in Alaska posed by the act.

The issue of land ownership, and the related issue of National Park Service jurisdiction, are inherently complicated by substantial state and Native American land claims. The provisions of ANILCA and its predecessor ANCSA, which provide for state and Native American land selections from federal public lands including National Park Service lands, and the Submerged Lands Act, guaranteeing state ownership of large tracts of land underlying navigable rivers, streams, and lakes, have resulted in major jurisdictional problems in managing park resources comprehensively.

ANILCA's allowances for consumptive use of fish and wildlife resources, including sport fishing in all units, subsistence hunting, fishing, and trapping in most units, sport hunting and trapping in preserves, and commercial fishing in some units, pose difficult management questions for the National Park Service. ANILCA limits these various uses under concepts of "conservation of healthy populations, "conservation of healthy and natural populations," assurance of "continued viability" of populations, and measuring "significant expansion" of uses. In addition, the concepts of managing resources without derogation in an "unimpaired" state as mandated by the National Park Service Organic Act and its amendments also apply to guiding resource management decisions under

ANILCA. Further complicating these issues is the congressionally expressed concept that long-standing cultural subsistence practices should to some degree be considered an integral aspect of natural ecosystems.

ANILCA's allowances for valid mining rights and privileges predating 1980, various access allowances, and allowances for structures also create unusual management challenges for the National Park Service.

The various provisions of ANILCA calling for the allowance of activities in National Park Service areas in Alaska different than in the older National Park Service units in the lower forty-eight states require new approaches to park management to nevertheless ensure the protection of park resources, values, and purposes. The approaches developed to the resource protection issues created by ANILCA carry the potential not only to guide the management of the Alaska parks, but to influence National Park Service resources protection efforts nationwide.

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☆U.S. GOVERNMENT PRINTING OFFICE: 1994—841-073

As the nation's principal conservation agency, the Department of the Interior has responsibility for most of our nationally owned public lands and natural resources. This includes fostering sound use of our land and water resources; protecting our fish, wildlife, and biological diversity; preserving the environmental and cultural values of our national parks and historical places; and providing for the enjoyment of life through outdoor recreation. The department assesses our energy and mineral resources and works to ensure that their development is in the best interests of all our people by encouraging stewardship and citizen participation in their care. The department also has a major responsibility for American Indian reservation communities and for people who live in island territories under U.S. administration.

NPS D-985 August/1994