



U.S. Department of the Interior

REPORT ON RESTORING NATIONAL MONUMENTS

Prepared in response to Executive Order 13990

June 2021

Table of Contents

I. INTRODUCTION	3
II. ISSUE BACKGROUND.....	3
The Antiquities Act.....	3
Grand Staircase-Escalante National Monument	4
Bears Ears National Monument	6
Northeast Canyons and Seamounts Marine National Monument	8
III. EXTERNAL ENGAGEMENT.....	9
Outreach.....	10
Tribal Consultation	10
Secretary of the Interior Visit to Utah.....	10
IV. FEEDBACK	11
Bears Ears and Grand Staircase-Escalante National Monuments.....	11
Northeast Canyons and Seamounts Marine National Monument	13
V. RECOMMENDATIONS AND FUTURE ACTIONS.....	14

I. INTRODUCTION

This report responds to President Biden’s *Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis* (E.O. 13990) issued on January 20, 2021.¹ Specifically, Section 3, *Restoring National Monuments*, states that the Department of the Interior shall:

*conduct a review of the monument boundaries and conditions that were established by Proclamation 9681 of December 4, 2017 (Modifying the Bears Ears National Monument); Proclamation 9682 of December 4, 2017 (Modifying the Grand Staircase-Escalante National Monument); and Proclamation 10049 of June 5, 2020 (Modifying the Northeast Canyons and Seamounts Marine National Monument), to determine whether restoration of the monument boundaries and conditions that existed as of January 20, 2017, would be appropriate.*²

The Department of the Interior prepared this report in consultation with the Departments of Agriculture, Commerce, and Justice, and the White House Council on Environmental Quality. The White House extended the initial 60-day deadline for the report to ensure the findings and recommendations benefitted from the Secretary of the Interior’s visit to Utah in April 2021.

II. ISSUE BACKGROUND

The Antiquities Act

The Antiquities Act was the first U.S. law to provide general legal protection of historically or scientifically significant resources on Federal lands.³ After a generation-long effort by a diverse coalition of experts, President Theodore Roosevelt signed the Antiquities Act on June 8, 1906. The Antiquities Act established an important precedent by asserting a broad public interest in the preservation of these resources on Federal lands. Designations under the Act apply only to lands owned or controlled by the Federal Government; the designations are subject to valid existing rights and do not apply to private property or State and local government lands.

After signing it into law, President Roosevelt used the Antiquities Act 18 times to establish as many national monuments.⁴ Those first monuments included Federal lands within what are now known as Grand Canyon National Park, Petrified Forest National Park, Chaco Culture National Historical Park, Lassen Volcanic National Park, Tumacácori National Historical Park, and Olympic National Park.

¹ The White House Briefing Room, “Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,” 2021, available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-protecting-public-health-and-environment-and-restoring-science-to-tackle-climate-crisis/>.

² Ibid.

³ 54 U.S.C. § 320301.

⁴ National Park Service Archeology Program, “Antiquities Act 1906-2006,” last accessed May 2021, available at <https://www.nps.gov/archeology/sites/antiquities/MonumentsList.htm>.

Since President Roosevelt designated Devil’s Tower National Monument—the first national monument—in 1906, 17 of 21 Presidents, both Republican and Democrat, have designated 158 national monuments to protect objects of historic and scientific interest on America’s Federal lands and waters.⁵ Presidents have established monuments as large as the 582,578 square miles that make up the Papahānaumokuākea Marine National Monument in the Northwestern Hawaiian Islands archipelago,⁶ and as small as the 0.12-acre Stonewall National Monument in New York City.⁷

Grand Staircase-Escalante National Monument

On September 18, 1996, invoking his authority under the Antiquities Act, President Clinton issued Proclamation 6920 entitled *Establishment of the Grand Staircase-Escalante National Monument* creating the first national monument administered by the Bureau of Land Management (BLM).⁸ In the proclamation, President Clinton noted the monument’s “vast and austere landscape embraces a spectacular array of scientific and historic resources.” He referred to the monument as a “geologic treasure” that includes “world class paleontological sites.” He also referenced that archeological inventories show extensive use of places within the monument by Native Americans. President Clinton set aside approximately 1.7 million acres for the monument, deeming it the smallest area compatible with the proper care and management of the objects to be protected.

The proclamation’s reservation of lands within the monument was subject to valid existing rights and expressly provided that nothing in it shall be deemed to diminish the State of Utah’s management of fish and wildlife.⁹

President Clinton’s proclamation stated that laws, regulations, and policies followed by the BLM in issuing and administering grazing permits or leases on lands within the monument shall continue to apply, and the amount of grazing permitted within the boundaries of the monument did not appreciably change due to the designation.¹⁰

Congress also put its stamp on the monument. On three separate occasions—the 1998 Utah School and Land Exchange Act,¹¹ the 1998 Automobile National Heritage Area Act,¹² and Section 2604 of the 2009 Omnibus Public Land Management Act¹³—Congress legislated to

⁵ Congressional Research Service, “National Monuments and the Antiquities Act,” 2018, available at <https://fas.org/sgp/crs/misc/R41330.pdf>.

⁶ National Oceanic and Atmospheric Administration, “Papahānaumokuākea Marine National Monument,” last accessed May 2021, available at <https://www.papahanaumokuakea.gov/new-about/>.

⁷ Executive Office of the President, “Establishment of the Stonewall National Monument,” 2016, available at <https://www.federalregister.gov/documents/2016/06/29/2016-15536/establishment-of-the-stonewall-national-monument>.

⁸ Executive Office of the President, “Establishment of the Grand Staircase-Escalante National Monument,” 1996, available at <https://www.federalregister.gov/documents/1996/09/24/96-24716/establishment-of-the-grand-staircase-escalante-national-monument>.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Pub. L. No. 105- 355, 112 Stat. 3139 (1998).

¹² Pub. L. 105-355, 112 Stat. 3247 (1998).

¹³ 111 P.L. 11, 123 Stat. 991 (2009).

increase the acreage of lands reserved within the monument boundary in the aggregate by more than 180,000 acres. Notably, the Grand Staircase-Escalante National Monument lands exchanged as part of the Utah School and Land Exchange Act were the key piece in finalizing a broad land exchange that also included isolated State-owned parcels within the boundaries of Indian reservations, national forests, and national parks. In return, the State received more than 130,000 acres of lands and mineral interests, which included more than 150 million tons of coal, 185 billion cubic feet of coal bed methane, 2,000 acres of limestone deposits, 4,000 acres of oil and gas properties, and 2,600 acres of tar sands that were consolidated into manageable blocks that were predetermined to be suitable for development.¹⁴ It also included the Blue Mountain Telecommunications Site, the 3,000-acre Beaver Mountain Ski Resort site, and more than 47,000 acres of developable land in three counties in southern Utah.¹⁵ For example, the coal bed methane development in Drunkards Wash—one of the parcels acquired by Utah in the exchange—generated State royalties in excess of \$1.5 million per month for more than a decade.¹⁶ In addition, the State received a cash payment of \$50 million and the rights to more than \$13 million of royalty and rental income from coal development on Federal lands.¹⁷

On December 4, 2017, President Trump issued Proclamation 9682 entitled *Modifying the Grand Staircase-Escalante National Monument*.¹⁸ The proclamation stated that many of the objects identified by the 1996 proclamation occur across the Four Corners region, particularly in southern Utah, and are not unique to the monument or of significant historic or scientific interest. It also stated that many of the objects identified in the 1996 proclamation are not under threat of damage or destruction such that they require a reservation of land to protect them. In addition, it asserted that a host of laws enacted after the Antiquities Act provide specific protection for archaeological, historic, cultural, paleontological, and plant and animal resources and authorize the BLM to condition permitted activities on Federal lands, whether within or outside a monument. The proclamation reduced the boundaries of the monument to three units: Grand Staircase, Kaiparowits, and Escalante Canyons, excluding from the monument’s designation and reservation approximately 861,874 acres of land.

The reduction of nearly half the lands reserved within the monument boundary excised from the monument some of the most remote and striking slot canyons in Utah. Within the Kaiparowits Plateau, the modification eliminated protections to a variety of endemic flora and fauna, as well as for geological formations containing world class paleontological treasures that, with proper management and ongoing research, are expected to yield important new discoveries.¹⁹ In the Cottonwood Canyon and nearby Rimrocks area, the change in boundaries removed protections

¹⁴ S. Rept. 105-331, at 4 (September 14, 1998).

¹⁵ *Ibid.*

¹⁶ Trust Lands Administration, “SITLA Land Transfers, Exchanges: \$440M and 508K Acres Protected,” 2015, available at <https://trustlands.utah.gov/land-transfers-exchanges-440m-and-508k-acres-protected/>.

¹⁷ S. Rept. 105-331, at 4 (September 14, 1998).

¹⁸ Executive Office of the President, “Modifying the Grand Staircase-Escalante National Monument,” 2017, available at <https://www.federalregister.gov/documents/2017/12/08/2017-26714/modifying-the-grand-staircase-escalante-national-monument>.

¹⁹ Executive Office of the President, “Establishment of the Grand Staircase-Escalante National Monument,” 1996, available at <https://www.federalregister.gov/documents/1996/09/24/96-24716/establishment-of-the-grand-staircase-escalante-national-monument>.

for important endangered species habitat and unique geologic formations.²⁰ The modification also excluded nearly all the Circle Cliffs—a geologic amphitheater in the northeastern part of the monument—and all portions of Waterpocket Fold within the Monument.²¹ In addition, the action excluded the vast majority of the historic Hole-in-the-Rock Road corridor.²²

In December 2017, conservation groups filed a lawsuit in the U.S. District Court for the District of Columbia claiming that the Antiquities Act does not authorize the President to remove lands or objects from national monuments and, therefore, the President had neither the constitutional nor statutory authority to issue the proclamation.²³ A coalition of paleontologists and other monument supporters filed a similar lawsuit.²⁴ The District Court consolidated the two cases.²⁵ The District Court has not ruled in the consolidated cases, both of which are currently stayed. A status report is due to the court on June 3, 2021.

Bears Ears National Monument

On December 28, 2016, President Obama issued Proclamation 9558 entitled *Establishment of the Bears Ears National Monument* creating the first national monument designated at the request of Tribal Nations.²⁶ In the proclamation, President Obama stated that:

*Protection of the Bears Ears area will preserve its cultural, prehistoric, and historic legacy and maintain its diverse array of natural and scientific resources, ensuring that the prehistoric, historic, and scientific values of this area remain for the benefit of all Americans . . . The area contains numerous objects of historic and of scientific interest, and it provides world class outdoor recreation opportunities, including rock climbing, hunting, hiking, backpacking, canyoneering, whitewater rafting, mountain biking, and horseback riding. Because visitors travel from near and far, these lands support a growing travel and tourism sector that is a source of economic opportunity for the region.*²⁷

Accordingly, President Obama reserved approximately 1.35 million acres of Federal land managed by the BLM and U.S. Forest Service (USFS).²⁸ The proclamation required the Secretaries of the Interior and Agriculture to manage the monument through the BLM and USFS, pursuant to each agency’s respective legal authorities. Further, the proclamation required the establishment of an advisory committee under the Federal Advisory Committee Act, and it established the Bears Ears Commission—made up of elected members of the Hopi Tribe, Navajo

²⁰ Ibid.

²¹ Ibid.

²² Ibid.

²³ *The Wilderness Society et al. v. Donald J. Trump et al.*, No. 1:17-cv-02587, (D.D.C. 2017).

²⁴ *Grand Staircase Escalante Partners et al. v. Donald J. Trump et al.*, No. 1:17-cv-02591-ESG, (D.D.C. 2017).

²⁵ *The Wilderness Society et al. v. Donald J. Trump et al.*, No. 1:17-cv-2587-TSC (D.D.C. Dec. 4, 2017) (consolidating the two cases).

²⁶ Executive Office of the President, “Establishment of the Bears Ears National Monument,” 2016, available at <https://www.federalregister.gov/documents/2017/01/05/2017-00038/establishment-of-the-bears-ears-national-monument>.

²⁷ Ibid.

²⁸ Ibid.

Nation, Ute Mountain Ute Tribe, Ute Indian Tribe of the Uintah and Ouray Reservation, and Zuni Tribe—in recognition of the value of Tribal knowledge of the area and the importance of Tribal participation in the management of the monument. The proclamation addressed the potential for a memorandum of understanding with the State of Utah relating to a potential exchange of land owned by the State of Utah and encompassed by the monument boundaries for Federal land outside the boundaries, similar to the land exchange in the Grand Staircase-Escalante National Monument discussed above. The proclamation also addressed additional administrative and planning needs required for the proper care and management of the objects identified in Bears Ears National Monument as well as the land itself.

President Obama’s proclamation stated that laws, regulations, and policies followed by the USFS and BLM in issuing and administering grazing permits or leases on lands under their jurisdiction shall continue to apply, consistent with the protection of objects that were identified in the proclamation.²⁹ Additionally, the proclamation stated that the establishment of the monument was subject to valid existing rights and that nothing in the proclamation shall be deemed to diminish the State of Utah’s management of fish and wildlife; preclude low-level overflights of military aircraft or military flight training routes; or alter the authority or responsibility of any party with respect to emergency response activities.

Within the year, on December 4, 2017, President Trump issued Proclamation 9681 entitled *Modifying the Bears Ears National Monument*.³⁰ This proclamation stated that “some of the objects Proclamation 9558 identifies are not unique to the monument, and some of the particular examples of these objects within the monument are not of significant scientific or historic interest.” It also stated that objects identified by Proclamation 9558 were not under threat of damage or destruction before the designation and asserted that there already exists “a host of laws enacted after the Antiquities Act [that] provide specific protection for archaeological, historic, cultural, paleontological, and plant and animal resources and give authority to the BLM and USFS to condition permitted activities on Federal lands, whether within or outside a monument.” Ultimately, the revised boundaries included approximately 12,000 acres of Federal land that were not contained within the original monument, but excluded approximately 1.15 million acres of Federal land from the monument, a reduction of nearly 85 percent.

The change in boundaries excluded significant areas such as White Canyon, which contains cultural resources and important bighorn sheep habitat.³¹ It further excluded Lockhart Basin, Dark Canyon, Elk Ridge, the Abajo Mountains, Cedar Mesa, Grand Gulch, Beef Basin, and Valley of the Gods—sensitive landscapes of significant cultural and scientific interest that are home to rare and endemic species, some of which are found nowhere else on Earth.³²

²⁹ Ibid.

³⁰ Executive Office of the President, “Modifying the Bears Ears National Monument,” 2017, available at <https://www.federalregister.gov/documents/2017/12/08/2017-26709/modifying-the-bears-ears-national-monument>.

³¹ Executive Office of the President, “Modifying the Bears Ears National Monument,” 2017, available at <https://www.federalregister.gov/documents/2017/12/08/2017-26709/modifying-the-bears-ears-national-monument> and Executive Office of the President, “Establishment of the Bears Ears National Monument,” 2016, available at <https://www.federalregister.gov/documents/2017/01/05/2017-00038/establishment-of-the-bears-ears-national-monument>.

³² Ibid.

In December 2017, the five Tribes that originally came together to seek the national monument designation, Utah Diné Bikéyah, a coalition of environmental groups, a group of archaeology and paleontology organizations, a climbing advocacy group, and Patagonia Works filed three lawsuits challenging President Trump’s action.³³ The lawsuits, filed in the U.S. District Court for the District of Columbia, argue that the President lacked authority to issue the proclamation and, even if that authority existed, it was exercised inappropriately.³⁴ The District Court, which consolidated the three cases, has not ruled in any of the three matters, all of which are currently stayed. A status report is due to the court on June 3, 2021.

Northeast Canyons and Seamounts Marine National Monument

On September 15, 2016, President Obama issued Proclamation 9496 entitled *Northeast Canyons and Seamounts Marine National Monument* establishing the Northeast Canyons and Seamounts Marine National Monument.³⁵ President Obama stated that:

*The canyons and seamounts area, which will constitute the monument as set forth in this proclamation, is composed of two units, which showcase two distinct geological features that support vulnerable ecological communities. The Canyons Unit includes three underwater canyons—Oceanographer, Gilbert and Lydonia—and covers approximately 941 square miles. The Seamounts Unit includes four seamounts—Bear, Mytilus, Physalia, and Retriever—and encompasses approximately 3,972 square miles . . . The canyon and seamount area contains objects of historic and scientific interest that are situated upon lands owned or controlled by the Federal Government. These objects are the canyons and seamounts themselves, and the natural resources and ecosystems in and around them.*³⁶

In establishing the monument, the proclamation reserved approximately 4,913 square miles for the purpose of protecting the objects within that area and assigned shared management responsibility for the monument to the Secretaries of Commerce and the Interior.³⁷ The proclamation found that this area was “the smallest area compatible with the proper care and management of the objects to be protected.” Northeast Canyons and Seamounts Marine National Monument was the first marine national monument established in the U.S. Atlantic Ocean. As one condition of the designation, President Obama prohibited commercial fishing within the monument’s boundaries, with a phase-out period for American lobster and red crab fisheries, to protect the resources therein.

In March 2017, the Massachusetts Lobstermen’s Association and other commercial fishing industry groups challenged President Obama’s designation, on grounds that the President exceeded his authority under the Antiquities Act by designating a monument (1) located in the

³³ *Hopi Tribe et al. v. Donald J. Trump et al.*, No. 1:17-cv-2590-TSC (D.D.C. Dec. 4, 2017) (consolidating the three cases).

³⁴ *Ibid.*

³⁵ Executive Office of the President, “Northeast Canyons and Seamounts Marine National Monument,” 2016, available at <https://www.federalregister.gov/documents/2016/09/21/2016-22921/northeast-canyons-and-seamounts-marine-national-monument>.

³⁶ *Ibid.*

³⁷ *Ibid.*

ocean and, (2) on an area that exceeds the smallest area compatible with the care and management of antiquities and similar objects of historic or scientific interest.³⁸ In October 2018, the U.S. District Court for the District of Columbia dismissed the challenge, upholding President Obama’s designation.³⁹ In 2019, the U.S. Court of Appeals for the District of Columbia Circuit affirmed the District Court’s dismissal.⁴⁰ In March 2021, the U.S. Supreme Court denied the plaintiffs’ petition for a writ of certiorari, ending the litigation over President Obama’s designation of the monument.⁴¹

On June 5, 2020, President Trump issued Proclamation 10049 entitled *Modifying the Northeast Canyons and Seamounts Marine National Monument*.⁴² In it, President Trump lifted the prohibition on commercial fishing in the monument, stating that the fisheries did not “merit additional protection beyond that already provided by other law.”⁴³ President Trump’s proclamation did not modify the boundaries of the monument.

In June 2020, conservation groups challenged President Trump’s proclamation in the U.S. District Court for the District of Columbia on the grounds that the proclamation (1) exceeded his legal power because the Antiquities Act authorizes the President to “designate” national monuments and “reserve” lands and waters for the protection of objects of historic and scientific interest only, and does not authorize undoing or abolishing such designations or reservations in whole or in part, (2) violates the separation of powers doctrine because Congress has not delegated authority to the President to revoke protections for the proper care and management of monument objects, but instead reserved that authority to itself, and (3) is based on considerations outside the Antiquities Act and lacks legal and factual support.⁴⁴ The litigation is stayed and a status report is due to the court on June 4, 2021.

III. EXTERNAL ENGAGEMENT

For the purposes of conducting the review outlined in E.O. 13990, Biden-Harris administration officials from the Departments of the Interior, Commerce, and Agriculture convened meetings with elected Federal, State, local, and Tribal officials; conducted formal Tribal consultations; and met with external stakeholders to seek their individual input. The Departments also reviewed letters, resolutions, and other materials submitted during the review period. In addition, Secretary of the Interior Haaland spent three days in Utah visiting lands in the Bears Ears and Grand Staircase-Escalante areas and meeting with a variety of stakeholders.

It is worth noting that the engagement conducted as part of the review builds upon years of dialogue with local, State, and Federal elected leaders, Tribal governments and representatives,

³⁸ *Mass. Lobstermen's Association et al. v. Ross et al.*, 349 F. Supp. 3d 48 (D.D.C. 2018).

³⁹ *Ibid.*

⁴⁰ *Mass. Lobstermen's Association et al. v. Ross et al.*, 945 F.3d 535 (D.C. Cir. 2019).

⁴¹ *Mass. Lobstermen's Association et al. v. Raimondo et al.*, 141 S. Ct. 979 (2021).

⁴² Executive Office of the President, “Modifying the Northeast Canyons and Seamounts Marine National Monument,” 2020, available at <https://www.federalregister.gov/documents/2020/06/11/2020-12823/modifying-the-northeast-canyons-and-seamounts-marine-national-monument>.

⁴³ *Ibid.*

⁴⁴ *Conservation Law Foundation et al. v. Donald J. Trump et al.*, No. 1:20-cv-01589 (D.D.C. 2020).

and stakeholders that informed the original national monument boundaries and management conditions.

The Trump-Pence administration also provided an online forum for public comment as part of the national monument review conducted in 2017. Members of the public submitted approximately 2.8 million comments, which the Trump-Pence administration described as “overwhelmingly in favor of maintaining existing monuments” in its report.⁴⁵

The external engagement and travel conducted during the review outlined in E.O. 13990 are described below.

Outreach

Biden-Harris administration officials from the Departments of the Interior, Commerce, and Agriculture held several meetings with the elected leaders from Utah, including Governor Spencer Cox and his staff; members of Congress and their staff; and representatives from Kane, Garfield, San Juan, and Grand Counties.

In addition, the administration met with numerous interested parties, including: Indigenous-led organizations; scientific and nonprofit organizations; small business owners; fishing industry representatives; New England and Mid-Atlantic Fishery Management Councils and the Atlantic States and Marine Fishery Commissions; and conservation organizations.

Tribal Consultation

The Departments of the Interior, Commerce, and Agriculture engaged in Tribal consultation on February 26, 2021 and on March 1, 2021. The consultation notice went to Tribes in the geographic areas of the three monuments under review. Consultation participants included representatives of the Hopi Tribe, Kaibab Band of Paiute Indians, Moapa Band of Paiute Indians, Navajo Nation, Paiute Indian Tribe of Utah, Pueblo of Acoma, Pueblo of San Felipe, Pueblo of Santa Clara, Ute Indian Tribe, Ute Mountain Ute Tribe, and Zuni Tribe. The federally recognized Tribes in the geographic areas near Northeast Canyons and Seamounts Marine National Monument, none of which have Federal treaty fishing rights, did not participate in the scheduled consultations.

Secretary of the Interior Visit to Utah

In addition to the meetings outlined above, Secretary of the Interior Haaland visited Utah from April 7, 2021 through April 9, 2021 to meet with elected officials, Tribal leaders, and stakeholders invested in the management of the Bears Ears and Grand Staircase-Escalante National Monuments.

⁴⁵ Department of the Interior, “Final Report Summarizing Findings of the Review of Designations Under the Antiquities Act,” 2017, available at https://www.doi.gov/sites/doi.gov/files/uploads/revised_final_report.pdf.

Over the course of the three days, Secretary Haaland met with dozens of people representing a broad array of backgrounds and viewpoints on public lands. Her visit—which involved time in Bluff, Blanding, and Kanab—included meetings with:

- Leaders from the five Tribes in the Bears Ears Inter-Tribal Coalition, including Hopi Tribe Vice Chairman Clark Tenakhongva, Pueblo of Zuni Lieutenant Governor Carleton Bowekaty, Navajo Nation President Jonathan Nez, Ute Mountain Ute Tribe Chairman Manuel Heart, and Ute Tribal Business Committee Member Shaun Chapoose;
- Utah Governor Spencer Cox, Lieutenant Governor Deidre Henderson, Department of Natural Resources Executive Director Brian Steed, and Public Lands Policy Coordinating Office Executive Director Redge Johnson;
- The entire Utah Congressional Delegation and their staffs: U.S. Senators Mike Lee and Mitt Romney, and U.S. Representatives John Curtis, Blake Moore, Burgess Owens, and Chris Stewart;
- Staff from the BLM and USFS; and
- State legislators, county commissioners, mayors, local sheriffs, local ranchers, conservation organizations, local business owners, mining companies and associations, outdoor recreation permit holders, Indigenous-led organizations, paleontologists, archaeologists, and other people.

Secretary Haaland also spent time in the Bears Ears region with Tribal leaders, members of the Congressional Delegation, the Governor, and their teams. Together, they saw ancient cliff dwellings, pictographs, and other sacred sites that are located inside and outside the original national monument boundaries.

Secretary Haaland visited the nonprofit Bears Ears Education Center in Bluff, where visitors can learn about the national monument and how to respectfully visit important natural and cultural landscapes. She also toured the Edge of the Cedars State Park Museum in Blanding, where she saw cultural artifacts and Ancestral Puebloan pottery. In Kanab, Secretary Haaland visited with paleontologist Dr. Alan Titus in the BLM fossil lab, where she saw fossils discovered in Grand Staircase-Escalante National Monument.

IV. FEEDBACK

Although received individually, the feedback over the course of the review was, in many ways, consistent. Most individuals expressed a deep connection with and appreciation for the lands and waters, and a shared desire to ensure that future generations have the opportunity to enjoy the special places as they do now. Differing views centered around how the lands and waters should be managed for the benefit of current and future generations, and the venue in which those decisions should be made.

Bears Ears and Grand Staircase-Escalante National Monuments

Proponents of the Utah national monuments urged the Biden-Harris administration to immediately restore—and, in the case of Bears Ears National Monument, expand—the boundaries. Individuals cited the vast historic and scientific significance of the areas and the

objects contained therein. Comments focused on the world-class paleontological resources; irreplaceable cultural and sacred sites; and recreational values, among other things.

Individuals who spoke against the restoration of the monument boundaries expressed concern about the perceived overreach of the Federal Government in Utah. More specifically, those individuals were apprehensive that certain activities may be restricted in the future, such as building or maintaining roads, motorized recreation, mineral extraction and development, grazing, and active forest management. Some individuals acknowledged the economic opportunities resulting from a rise in visitation to the areas, but suggested the jobs created by outdoor recreation and tourism industries do not pay as well as those in some other industries, such as mining.

During Tribal consultation, all Tribal leaders and representatives who provided input expressed support for the restoration of the pre-modified boundaries and conditions of Bears Ears and Grand Staircase-Escalante National Monuments. The Tribal representatives consistently emphasized the unique nature of the Bears Ears National Monument being the first national monument in the United States to be established at the request of federally recognized Tribes. Most Tribal representatives expressed broad support for expanding the Bears Ears National Monument to match the Tribes' original request to protect 1.9 million acres and a desire for conferral of co-management responsibilities to the Tribes.⁴⁶

Throughout the review, Tribal leaders and Indigenous representatives emphasized that the Bears Ears landscape maintains cultural significance to this day, as members of several Tribes regularly participate in religious ceremonies and cultural activities within the monument. According to those representatives, the Bears Ears area remains closely associated with the Tribal identity and lifeways of Tribal members and is important to efforts to pass down cultural knowledge to coming generations. Tribal leaders and representatives explained that the entire Bears Ears area is a "living landscape," rather than a collection of unrelated points of interest.

Some Tribal leaders characterized the Trump-Pence administration's action to dramatically reduce the monument boundaries as yet another broken promise by the Federal Government, adding to the generational trauma that Tribes have endured from hundreds of years of policies and efforts to exterminate Native Americans and remove them from their lands. Tribes expressed frustration that the Biden-Harris administration had not acted immediately to restore the monument boundaries.

Offering another perspective, the Utah Governor and the Congressional Delegation described the "whiplash" that they believe many in Utah feel regarding the establishment and subsequent reductions of Grand Staircase-Escalante and Bears Ears National Monuments.⁴⁷ They stated that decisions about the management of these public lands belong in the halls of Congress, and they

⁴⁶ Bears Ears Inter-Tribal Coalition, "To Secretary Haaland: Restoration Should Not Wait on Legislation," 2021, available at <https://bearscoalition.org/to-madame-secretary-haaland-restoration-of-bears-ears-should-not-wait-for-legislation/>.

⁴⁷ Utah Congressional Delegation, "On management of Utah public lands, Biden should pursue an accountable legislative process," 2021, available at <https://www.romney.senate.gov/management-utah-public-lands-biden-should-pursue-accountable-legislative-process>.

collectively encouraged the Biden-Harris administration to create space to develop a “legislative solution” that would provide certainty for all parties.⁴⁸ In the case of Bears Ears National Monument, they suggested that a legislative approach could provide enduring protections for an area smaller than the original monument, as well as additional appropriations for proper management of the lands; authority for Tribal co-management of the monument; establishment of local museums or interpretive sites; and clarification of where mineral development is appropriate, among other benefits.

A common theme throughout the conversations regarding the Utah national monuments was the need for additional administrative capacity and funding to protect the monuments’ unique resources and ensure visitor safety. As more people discover the wonders of southern Utah, search and rescue operations for visitors ill-equipped for the terrain are draining local counties’ coffers.⁴⁹ Looting and vandalism of cultural sites remains a troubling issue that commenters suggested could be mitigated through better visitor education and a stronger law enforcement presence.⁵⁰

Northeast Canyons and Seamounts Marine National Monument

Proponents of the Northeast Canyons and Seamounts Marine National Monument urged the Biden-Harris administration to fully restore the prohibition on commercial fishing. Individuals, representatives of conservation and scientific organizations, and some fishing interests stated that the monument contains rich biodiversity and important habitats for marine wildlife, which has been reinforced by research conducted before and since monument designation. Several commented that monument protections would be permanent and complement other management authorities.

Comments against re-establishing the original conditions came principally from commercial fishers, including those who harvest lobster and crab, and industry organizations. These groups asserted that their activities have no adverse impact on monument resources, and that the closures would negatively impact their businesses and nearby communities. Representatives of the fishery management councils and the fishing industry stated that the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and the council process provide science-based, adaptive management of marine fisheries in U.S. waters, including within the monument boundaries. Specifically, they noted recent action by the New England Fishery Management Council through its Omnibus Deep-Sea Coral Amendment that would, they believe, protect the most valuable habitats within the monument.⁵¹

⁴⁸ Governor Spencer Cox and others, “Utah Monuments Letter to President Biden,” 2021, available at <https://www.documentcloud.org/documents/20490657-utah-monuments-letter-to-president-biden-feb-17-2021>.

⁴⁹ M. Kessler, “Washington County Search and Rescue sees all-time high in calls for 2020,” *St. George News*, 2021, available at <https://www.stgeorgeutah.com/news/archive/2021/01/22/mgk-washington-county-search-and-rescue-sees-all-time-high-in-calls-for-2020/#.YJyoiLVKiUk>.

⁵⁰ M. Marcello, “A ‘Crisis in Destructive Behavior’ as Petroglyphs Near Moab Vandalized,” KSUT Public Radio, 2021, available at <https://www.ksut.org/post/crisis-destructive-behavior-petroglyphs-near-moab-vandalized>.

⁵¹ In 2019, pursuant to the MSA, the National Marine Fisheries Service approved the Omnibus Deep-Sea Coral Amendment in its entirety as recommended by the New England Fishery Management Council. The final rule (RIN 0648-BH67) implementing that amendment is currently undergoing interagency review at OIRA.

V. RECOMMENDATIONS AND FUTURE ACTIONS

President Trump’s actions in 2017 to modify the boundaries of Bears Ears and Grand Staircase-Escalante National Monuments were the two largest reductions in size of national monument designations in U.S. history.⁵² President Trump’s action to revoke the prohibition on commercial fishing in the Northeast Canyons and Seamounts Marine National Monument was likewise unprecedented.

The longstanding position of the United States, articulated by Attorney General Homer S. Cummings in a 1938 legal opinion,⁵³ is that the President lacks the authority to revoke or abolish a national monument. Multiple pending lawsuits challenging President Trump’s modifications to the three national monuments raise serious and fundamental questions as to whether a President has authority to reduce boundaries or reduce core protections in a way that is tantamount to revocation of the monument.

Questions about the legality of President Trump’s actions aside, this report finds that the boundaries and conditions in place on January 20, 2017 for Bears Ears, Grand Staircase-Escalante, and Northeast Canyons and Seamounts Marine National Monuments were appropriate. Indeed, if anything, the last four years have showcased the significant historic and scientific values of the designated areas, as well as the pressing threats to them. From world-class fossil discoveries in Grand Staircase-Escalante National Monument;⁵⁴ to some of the most intact and well-preserved sites evincing thousands of years of human history in Bears Ears National Monument that are under increased threat due to a renewed interest in mineral development;⁵⁵ to recent research suggesting that the Northeast Canyons and Seamounts Marine National Monument possesses an extraordinarily high potential for scientific discoveries of new species, genetic variability, and hidden genetic structure within species,⁵⁶ the national monument designations, as they existed on January 20, 2017, are proving to be prudent and prescient.

The report recommends that, to ensure the protection of the integrity of objects identified in the three national monuments as well as to honor the Federal trust responsibility to Tribal Nations,

⁵² J. Turkewitz, “Trump Slashes Size of Bears Ears and Grand Staircase Monuments,” *The New York Times*, 2017, available at <https://www.nytimes.com/2017/12/04/us/trump-bears-ears.html>.

⁵³ In general, legal opinions authored by the Attorney General are binding on Executive Branch offices that request them until they are overruled or withdrawn. To date, Attorney General Cummings’ 1938 legal opinion has not been overruled or withdrawn.

⁵⁴ Executive Office of the President, “Establishment of the Grand Staircase-Escalante National Monument,” 1996, available at <https://www.federalregister.gov/documents/1996/09/24/96-24716/establishment-of-the-grand-staircase-escalante-national-monument>.

⁵⁵ Executive Office of the President, “Establishment of the Bears Ears National Monument,” 2016, available at <https://www.federalregister.gov/documents/2017/01/05/2017-00038/establishment-of-the-bears-ears-national-monument>.

⁵⁶ Executive Office of the President, “Northeast Canyons and Seamounts Marine National Monument,” 2016, available at <https://www.federalregister.gov/documents/2016/09/21/2016-22921/northeast-canyons-and-seamounts-marine-national-monument> and P. Auster and others, “A Scientific Basis for Designation of the Northeast Canyons and Seamounts Marine National Monument,” *Frontiers in Marine Science*, 2020, available at [Frontiers | A Scientific Basis for Designation of the Northeast Canyons and Seamounts Marine National Monument | Marine Science \(frontiersin.org\)](https://www.frontiersin.org/articles/10.3389/fmars.2020.00001/full).

President Biden should exercise his authority under the Antiquities Act to restore the boundaries and conditions through proclamations as follows:

- Restore the Grand Staircase-Escalante National Monument to the boundaries and conditions that were in place on January 20, 2017;
- Restore the Bears Ears National Monument to the boundaries and conditions originally established by President Obama in 2016, and retain the approximately 12,000 acres of Federal lands that President Trump added to the monument in 2017; and
- Restore the conditions of the Northeast Canyons and Seamounts Marine National Monument established by President Obama in 2016, with appropriate consideration for commercial fishing interests.

Action by President Biden to restore the national monuments would not have any impact on Congress's ability to pursue a legislative path for protections. Indeed, there are many examples where Congress has passed legislation following a President's designation of a national monument. The new proclamation would be subject to any valid existing property rights within the monuments. This report offers support for efforts to develop and implement bipartisan legislation that could protect the national monuments, provide authorization of resources for preservation of the objects of historic and scientific interest therein, and guarantee a stronger Tribal role in the management of the Utah monuments, in particular.

In Utah, former Congressman Rob Bishop's efforts to pass the "Public Lands Initiative"—which would have designated as National Conservation Areas the vast majority of land that was originally designated as the Bears Ears National Monument—offer a cautionary tale that legislative action could take years and ultimately might not succeed.⁵⁷ This report recommends that President Biden restore the baseline protections for the Utah monuments, and embark upon good-faith negotiations with the Tribes, the Utah Governor, the Utah Congressional Delegation, local communities, and interested stakeholders to explore legislative opportunities for the national monuments.

For the national monuments in Utah, many of the substantive concerns raised about the monument designations could be worked through with careful and collaborative development of land management plans with maximum participation from the State, Tribes, and local communities. For example, the proclamations—and any subsequent land management planning processes they require—should ensure that the monuments are subject to valid, existing rights, and do not affect ongoing, permitted livestock grazing. Consistent with the care and management of the objects, the proclamations and land management plans could also provide for appropriate road maintenance, active forest management, subsistence uses including firewood gathering, and other activities. The proclamations should be explicit that they will not diminish the State of Utah's jurisdiction with respect to fish and wildlife management.

There are additional actions that the administration should pursue to manage the national monuments for the benefit of current and future generations, including:

⁵⁷ T. Burr, "Public Lands Initiative, meant to block Bears Ears monument, passes House committee," *The Salt Lake Tribune*, 2016, available at <https://archive.slttrib.com/article.php?id=4386530&itype=CMSID>.

- Explore how to provide for meaningful engagement by the Bears Ears Commission in the management of that national monument and for interested Tribes to have such engagement in the management of Grand Staircase-Escalante National Monument, as well as opportunities for fiscal support for Tribes to participate in Departments of the Interior and Agriculture planning processes and implementation of monument management plans;
- Conduct outreach on economic development opportunities in cooperation with the State of Utah and relevant counties, including local, bipartisan proposals for visitor centers or museums to support responsible travel and tourism, measures to keep working lands working, and support for the Payment in Lieu of Taxes program;⁵⁸
- Explore exchanging Utah school and institutional trust lands located within the Bears Ears National Monument with Federal lands of equal value outside the monument boundaries; and
- Prepare a monument management plan for Northeast Canyons and Seamounts Marine National Monument and promulgate appropriate implementing regulations within the authorities of the Departments of the Interior and Commerce.

The Departments stand ready to implement the decisions made by the President.

⁵⁸ Department of the Interior, “Payments in Lieu of Taxes,” last accessed May 2021, available at <https://www.doi.gov/pilt#:~:text=%22Payments%20in%20Lieu%20of%20Taxes,Federal%20lands%20within%20the%20boundaries.&text=PILT%20payments%20are%20one%20of,good%20neighbor%20to%20local%20communities>.