

National Monuments, by Land and by Sea

Article By:

Richard D. Bertram

Stanley A. Millan

In 2016, President Obama established an offshore national monument (the Northeast Canyons and Seamounts Marine National Monument) on submerged lands and associated waters in the Exclusive Economic Zone (EEZ) of the United States, i.e., between 12 and 200 miles from the coastline. This preserve covers nearly 5,000 square miles, about 130 miles off Cape Cod. The designation protects deep marine ecosystems, corals, whales, and sea turtles, and prohibits crab and lobster fishing until 2023.

A fishing group challenged the monument designation made under the Antiquities Act, 54 U.S.C. § 320301, which was enacted in 1906 and authorizes the president to declare national monuments by public proclamation. To date, 158 national monuments have been created. In a case of first impression, a panel of the DC Circuit upheld the designation and recognized that the Antiquities Act does not render redundant or nullify the National Marine Sanctuaries Act, which has more procedural hurdles and differing standards in protecting marine sanctuaries than does the Antiquities Act. The court also reiterated that the Antiquities Act protects both surface and submerged lands and that the United States has significant control under domestic and international law over the EEZ to make the designation. *Massachusetts Lobstermen's Association v. Ross*, No. 18-5353 (DC Cir. Dec. 27, 2019).

Other pending litigation concerns the authority of the president to remove a monument designation. In 2017, President Trump withdrew monument designations over millions of acres of sacred tribal lands, which opened the areas to mineral leasing and resulted in a lawsuit to challenge the removal of the designation. President Trump's 85% reduction of the monument designation at the National Monument of Bears Ears in Utah was challenged in US district court. See *Wilderness Society v. Trump*, No. 1:17-cv-02587. *Wilderness Society* was consolidated with several similar cases. See *Hopi Tribe v. Trump*, another DC District Court case, No. 17-cv-02590. These cases are still pending. It is anticipated that the court will address whether the president or the Congress has the authority to withdraw monument designations under the Antiquities Act.

© 2025 Jones Walker LLP

Source URL: <https://natlawreview.com/article/national-monuments-land-and-sea>