

# National Park Service Legal Mandates

By Jonathan Simon

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## **Introduction**

The National Park Service administers Grand Canyon National Park under a wide range of laws, regulations, policy guidance, and the agency's interpretations of such. This page briefly discusses the major legal authorities guiding and influencing the National Park Service's management of Grand Canyon National Park.

## **Yellowstone National Park Act of 1872 (30 U.S.C. §§ 21-22, 17 Stat. 32)**

The Yellowstone National Park Act of 1872 created the nation's, and in fact the world's, first national park by setting aside more than one million acres in the Territories of Montana and Wyoming as "a public park or pleasuring-ground for the benefit and enjoyment of the people" and "for the preservation, from injury or spoliation, of all timber, mineral deposits, natural curiosities, or wonders . . . and their retention in their natural condition."

This legislation placed exclusive control over the new park with the Secretary of the Interior, who became responsible for issuing regulations to provide for the "preservation, from injury or spoliation, of all timber, mineral deposits, natural curiosities, or wonders, within the park, and their retention in their natural condition." It further authorized the Secretary to manage the development of visitor accommodations, the construction of roads and bridle trails, the removal of trespassers, and protection "against the wanton destruction of the fish and game found within the park."

## **Proclamation of November 20, 1893 (Proc. No. 45, 27 Stat. 1064)**

The Grand Canyon received its first federal protection as a National Forest and Game Preserve under a proclamation by President Benjamin Harrison in 1893.

## **American Antiquities Act of 1906 (16 U.S.C. §§ 431-33, 34 Stat. 225)**

Reflecting the growing interest in preserving the nation's scenic wonders, Congress, in 1906, enacted the Act for the Preservation of American Antiquities. The "Antiquities Act" as it is known informally today, was recently used by President Clinton during his term in office to create a number of new national monuments in Arizona and elsewhere, two of which either border or are in close proximity to Grand Canyon National Park.

The Antiquities Act authorized the President "to declare by public proclamation [as national monuments] historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest." Of more direct importance to the Grand Canyon, the Antiquities Act would be the

source of President Theodore Roosevelt's authority in 1908 to alter the Grand Canyon's federal designation from a national forest and game reserve to a national monument.

### **Proclamation of January 11, 1908 (Proc. No. 794, 35 Stat. 2175)**

On January 11, 1908, President Theodore Roosevelt, exercising his authority under the American Antiquities Act of 1906, issued a proclamation creating the Grand Canyon National Monument, the precursor of Grand Canyon National Park. The Grand Canyon, President Roosevelt stated, "is an object of unusual scientific interest, being the greatest eroded canyon in the United States, and it appears that the public interest would be promoted by reserving it as a National Monument."

### **National Park Service Organic Act of 1916 (16 U.S.C. §§ 1-18f, 39 Stat. 535)**

The National Park Service Organic Act of 1916 created today's National Park Service (NPS) within the U.S. Department of the Interior. The Organic Act charges the NPS with a dual mandate to promote and regulate the use of the national parks "by such means and measures as conform to the fundamental purpose to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment for the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations."

Within the confines of this mandate, the Organic Act otherwise gives the NPS broad authority to manage the parks, directing the Secretary of the Interior to "make and publish such rules and regulations as he may deem necessary or proper for the use and management of the parks, monuments, and reservations under the jurisdiction of the National Park Service." Pursuant to this authority, the NPS has promulgated regulations requiring a person to obtain a permit in order to conduct, lead, or guide a river trip within the Grand Canyon, and reserving to the NPS the right to limit the number of permits issued or the number of people traveling on trips authorized under those permits at any given time.

Today, the NPS manages more than 83 million acres in 384 areas of the National Park System. The largest is Wrangell-St. Elias National Park and Preserve in Alaska at 13.2 million acres. The smallest is the Thaddeus Kosciuszko National Memorial in Pennsylvania at 0.02 of an acre. Grand Canyon National Park, at 1.18 million acres, accounts for 1.4 percent of the national park system.

### **Act to Establish the Grand Canyon National Park, 1919 (16 U.S.C. §§ 221 *et seq.*, 40 Stat. 1175)**

In 1919, Congress expanded and upgraded Grand Canyon National Monument to a national park, creating Grand Canyon National Park. The Act of February 26, 1919 "reserved and withdr[ew] from settlement, occupancy, or disposal under the laws of the United States and set apart as a public park for the benefit and enjoyment of the people" land in the State of Arizona under the name of Grand Canyon National Park. The Act directed that the NPS assume the responsibility for the administration, protection, and promotion of the park, and authorized the NPS to grant commercial concessions "for the accommodation or entertainment of visitors."

### **Wilderness Act of 1964 (16 U.S.C. §§ 1131-36, Public Law No. 88-577)**

The Wilderness Act of 1964 established the National Wilderness Preservation System, to include federal lands designated as "wilderness" by Congress. The Act defines wilderness, "in contrast with those areas where man and his own works dominate the landscape, . . . as an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain." Agencies can recommend areas for designation as wilderness, but only Congress can designate them as part of the National Wilderness Preservation System by passing legislation that must be signed into law by the President.

In 1964, the Wilderness Act directed the Secretary of the Interior to review all roadless areas of five thousand contiguous acres or more in the national parks and to report to the President as to the suitability of each area for preservation as wilderness, within ten years. Today, the National Wilderness Preservation System consists of 643 wilderness areas encompassing more than 105 million acres of land, approximately 43 million acres of which are administered by the NPS.

The Wilderness Act defines the purpose of wilderness as "devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use." The Act generally prohibits activities such as timber harvesting, as well as permanent roads, structures, and facilities, in wilderness areas. Cattle grazing is not prohibited. Although public use of motorized vehicles also generally is prohibited in wilderness areas, the Act contains an exception that specifically allows for the continuation of motorboat or aircraft use if those uses were established prior to an area's designation as wilderness by Congress.

In certain wilderness areas, Congress also has specified additional exceptions in the various laws designating those specific areas. Therefore, wilderness designation does not always mean the same thing in each designated area.

### **National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321-61, Public Law No. 91-190)**

The National Environmental Policy Act of 1969, or NEPA as it's commonly referred to, requires all federal agencies, before taking any "major federal action" that may significantly affect "the quality of the human environment," to prepare "a detailed statement" evaluating the environmental impact of, and reasonable alternatives to, the proposed action. NEPA reflects "a broad national commitment to protecting and promoting environmental quality" by ensuring that the agency has adequately considered and disclosed the environmental impacts of its actions. Thus, before approving a proposed action that could have an impact on the resources of the park, the NPS may be required to undertake an environmental assessment or environmental impact statement to identify ways to mitigate that impact.

### **General Authorities Act of 1970 (16 U.S.C. §§ 1a-1 *et seq.*, Public Law No. 91-383)**

The 1970 General Authorities Act supplemented and clarified the National Park Service's mandate with respect to the management of the National Park System. The Act reaffirmed, declared, and directed that "the promotion and regulation of the various areas of the National Park System . . . be consistent with and founded in the purpose established by [the Organic Act], to the common benefit of all the people of the United States."

The Act further provided that: "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." Although the General Authorities Act, as amended by the Redwoods amendment (discussed below), uses different wording—"derogation"—than the Organic Act—"unimpaired"—in specifying what the National Park Service must avoid, both terms define a single standard for the management of the national park system.

### **Grand Canyon Enlargement Act of 1975 (16 U.S.C. §§ 228a-j, Public Law Nos. 93-620 and 94-31)**

The Grand Canyon Enlargement Act, enacted in 1975, provided for the further protection of the Grand Canyon, doubling the size of Grand Canyon National Park to approximately 1.18 million acres (1,904 square miles). The Act consolidated several contiguous federally-owned areas, some of which already

were designated as units of the national park system, into a single national park to be administered under common administrative guidelines.

In addition, the Enlargement Act modified the deadlines for wilderness suitability review set forth in the Wilderness Act, requiring the Secretary of the Interior to report to the President, within two years, his recommendations as to the suitability or non-suitability of any area within Grand Canyon National Park for preservation as wilderness.

**Redwoods Act of 1978 (16 U.S.C. §§ 1, 1a-1, Public Law No. 95-250)**

The Redwoods Act reasserted the system-wide standard of protection established by Congress in the original Organic Act. It stated:

Congress further reaffirms, declares, and directs 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.

**National Park Service Concessions Management Improvement Act of 1998 (16 U.S.C. §§ 5951-66, Public Law No. 105-391)**

The National Park Service Concessions Management Improvement Act of 1998, together with the National Park Service's regulations promulgated thereunder, governs the provision of commercial visitor services, called concessions, in the national parks. This law replaced the original National Park System Concessions Policy Act of 1965.

The 1998 Act, like the 1965 Act before it, states that, as a matter of policy, concessions are to be limited to those that are "necessary and appropriate for public use and enjoyment" and are "consistent to the highest practicable degree with the preservation and conservation of the resources and values" of the park. Among other provisions, the new law governs NPS contracting for concession services in the parks, payments from concessioners to the NPS in return for the privilege to do business within a unit of the National Park System, and the transfer of concessions contracts or permits.

It is pursuant to this authority, and contracts and permits issued thereunder, that professionally-outfitted whitewater river trips are provided within Grand Canyon National Park.