

## TAG / ANTIQUITIES ACT

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# A Monumental Moment: President Obama's Expanded Protections in the Pacific Ocean



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PRESIDENT



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BLUE DAMSELFISH CHRYSIPTERA CYANEA BY: BRIAN GRATWICKE

By: Jeb Harmon

With the stroke of a pen, President Obama expanded United States presence and influence in the central Pacific Ocean by designating the world's largest marine reserve. Through a proclamation, President Obama expanded the existing Pacific Remote Islands Marine National Monument to now protect over 490,000 square miles of atolls and islands between Hawaii and American Samoa in the Pacific. Specifically, the proclamation extends the geographical area that President Bush first set aside as a maritime reserve in 2009 and bans deep-sea mining, resources extraction, and commercial fishing in order to protect the unique marine biology in an area that is roughly three times the size of California. Yet, the designation of the world's largest marine reserve has been accompanied by criticism and many have expressed concern over President Obama's unilateral action to set aside such a large area under the Antiquities Act. The Antiquities Act allows a president to designate national monuments without

congressional approval, and since the act's inception some members of Congress and state legislatures have questioned its powers.

In 1906, President Theodore Roosevelt signed into law the Antiquities Act (16 U.S.C.A. § 431), a law which allows the President to bypass congressional land policies and set aside public land as natural monuments and parks in order to preserve historic lands, protecting them from excavation. There are three elements necessary for preservation under the act: (1) the monument must be historic or of scientific interest, (2) the land must be owned or controlled by the U.S. Government, and (3) the designation must be limited to the smallest area necessary to manage the monument effectively. However, the first proclamation for a national monument under the act, Devil's Tower in Wyoming by President Theodore Roosevelt, proved that there was no limit to the geographic size or location of such monuments. In fact, it illustrated that the President's power was just as expansive as the amount of land one could designate under the act.

President Theodore Roosevelt created 1.2 million acres of designated land during his time in office, and 16 presidents have followed suit by acting to protect national treasures, including Western wonders like the Grand Canyon and Eastern marvels like Acadia National Park. President Obama's expansion of the existing Pacific Remote Islands Marine National Monument marks the largest marine monument ever created under the Antiquities Act. Since Congress first passed the Antiquities Act, some members of Congress and various groups have challenged presidents' use of the act to set aside vast swaths of land under federal protection.

Congress and state legislators have little power in limiting a president's use of the Antiquities Act. For example, when President Franklin D. Roosevelt used the act to proclaim the wildlife reserve at Jackson Hole, Wyoming as a national monument under the Antiquities Act, Congress passed a bill to abolish the monument. President Roosevelt then vetoed the bill. The State of Wyoming later challenged the proclamation in federal court by arguing that there was no evidence to support a claim that the monument contained historic landmarks or items of scientific interest; however, the federal district court found that it had no

authority to review the President's action, unless such an action was arbitrary and capricious.

Even 70 years after the fight over Jackson Hole, members of Congress and some industry stakeholders are still speaking out against the President's use of the Antiquities Act. President Obama's latest marine monument has generated some backlash from members on Capitol Hill. House Natural Resources Committee Chairman Doc Hastings called President Obama's action an example of an "Imperial Presidency," warning that such an act would harm the economic well being of both the U.S. seafood industry and the U.S. territories. On this harm, the Western Pacific Regional Fishery Management Council—one of eight councils established by the Magnuson Fishery Conservation and Management Act of 1976 to protect fish stocks—explained that the expansion bans fishing in 65 percent of the U.S. Exclusive Economic Zone in the U.S. Pacific Remote Islands. The council and other industry members expressed frustration that the White House did not consult locally with the very people who live and work in an area that makes up 76 percent of the marine-protected areas in the entire United States. The council claims that President Obama's expansion will further restrict fishermen's activities in an area that is already heavily restricted.

In response to the President Obama's proclamation, members of Congress have introduced legislation to preserve fisheries in marine sanctuaries and to push back against the President's use of the Antiquities Act. In June, Rep. Steve Southerland introduced H.R. 4988, *the Marine Access and State Transparency (MAST) Act*, which would amend the Antiquities Act to require Congressional approval for declarations of marine national monuments. In a press release, Rep. Southerland stated that, "[the] administration has blatantly disregarded the concerns of our coastal states and territories." In addition to this proposed legislation to limit unilateral maritime preservation, Chairman Hastings of the House Committee on Natural Resources introduced H.R. 4742, *the Magnuson-Stevens Fishery Conservation and Management Act*. This bill would renew the expired Magnuson-Stevens Act to improve fishery management and would allow for this type of management within a maritime monumental sanctuary to fall under the Magnuson-Stevens Act as well. After the mid-term election, perhaps

other members of Congress will react to the President's plan by co-sponsoring or introducing new legislation.

While some members of Congress have denounced President Obama's action in the Pacific, green groups and scientific institutes across the country have celebrated the President's expansion as a monumental moment. For instance, Elliott Norse, the chief scientist at the Marine Conservation Institute who worked on the original maritime monument designation under President Bush, saluted President Obama as a conservationist and "Rooseveltian." The Pew Charitable Trust's Global Ocean Legacy Project leader Matt Rand praised President Obama's action in more than doubling the protected amount of U.S. marine reserves by calling it "an important day for ocean conservation." A White House fact sheet points out that the expansion will now protect over 130 sea mounts, which are underwater mountains that are home to unique aquatic life. Above the sea as well, President Obama's action will protect the millions of seabirds that play a key role as transporters bringing nutrients from the sea to the island atolls. Even though commercial fishing is banned in the area, traditional and recreational fishing is still permitted within the monument.

The world's largest marine sanctuary may provide a wealth of new scientific information and may improve the local ecosystem and the Pacific Ocean's ecological well being at large. Yet it remains to be seen whether Congress will vote on any of the proposed pieces of legislation to oppose the President Obama's expansion in the central Pacific as permitted under the Antiquities Act.