

The Antiquities Act of 1906 at Its Centennial

by Richard Waldbauer and Sherry Hutt

This year marks the centennial of the Antiquities Act, the first law in the United States to establish federal management authority over cultural and scientific resources.¹ Formalized notions of “conservation” and “environment” had already existed prior to the Antiquities Act, but there was no legislative or institutional framework for implementing or sustaining those ideas. The passage of the Act in 1906 was a decisive step in that direction—a direction that culminated, in many respects, a decade later in the passage of the Organic Act creating the National Park Service.

The simplicity and brevity of the Act belies the magnitude of its effect. Over the past 100 years, the Act has shaped many subsequent laws, including the National Historic Preservation Act of 1966 (NHPA), the National Environmental Policy Act of 1969 (NEPA), and the Archaeological Resources Protection Act of 1979 (ARPA).² Former National Park Service chief historian Ronald Lee thoroughly documented the historical context, legislative history, and early accomplishments of the Antiquities Act in *The Antiquities Act of 1906*.³ Hal Rothman followed up with a thoughtful analysis of the Act in *America's National Monuments*, and Raymond Thompson offered additional insight and commentary in the 2000 issue of the *Journal of the Southwest*.⁴ The Act has been the subject of many other articles and commentaries. This brief essay offers a summary of the early efforts and sentiments that culminated in the passage of the Act and its legacy of resource stewardship. Although several other cultural resource laws have appeared on the books since 1906, the Antiquities Act continues to guide resource management. Its concepts of conservation and protection form the basis of public lands management policy and operations in the United States.

Knowledge is Power

Known officially as the Corps of Discovery, the 1804 Lewis and Clark expedition was the first federally funded scientific expedition in the United States charged with the collection of natural and cultural data for eventual use in the formulation of public policy. Traveling from St. Louis on the Mississippi River to the mouth of the Columbia River on the Pacific coast, Meriwether Lewis and William Clark mapped the northern frontier, gathering information on biota and the lifeways of Indian tribes while surveying a practicable route for commerce. The man behind the Corps of Discovery, President Thomas

Jefferson, believed that knowledge of Indian cultures and tribal organization would help in establishing trade and peaceful relations with Indian tribes and thereby facilitate the territorial expansion of the United States westward across the continent.

The idea that natural and cultural data could be used to achieve policy objectives received a boost in 1831 from John Marshall, Chief Justice of the U.S. Supreme Court. In *Cherokee Nation v. Georgia*, a case concerning the legal control of commerce with Indian tribes, Marshall articulated the doctrine of “dependent domestic nations” based on a clause in the Constitution that created the government-to-government relationship of mutual respect for sovereignty between the United States and Indian tribes. One of the implications of the doctrine was a re-emphasis on data collection as an important step in the creation and implementation of public policy.⁵

The Moundbuilder Controversy of the late 19th century underscored the importance of data collection. The extraordinary earthen mounds scattered throughout the Midwest were well known, and people had long speculated about their origins. By 1875, many had accepted the opinion of historian Hubert Bancroft that the ancestors of the Indian tribes could not have produced them.⁶ The controversy eventually caught the attention of Congress, which authorized funding in 1881 for the Smithsonian Institution’s Bureau of Ethnology to carry out excavations across the eastern United States and thereby resolve the matter.⁷ The final report by archeologist and entomologist Cyrus Thomas, published in 1894, concluded that the ancestors of modern Indian tribes—not some lost race—had, in fact, built the mounds.⁸

The collection of natural and cultural data for use was, in fact, the major purpose of several prominent expeditions and surveys throughout the 19th century. The Federal Government sponsored a number of geological and geographical surveys of the western territories after 1865. Some of the most prominent ones were conducted by Ferdinand V. Hayden between 1867 and 1878.⁹ Hayden’s team included William Henry Holmes, an archeologist, artist, and geologist who would later become the director of the National Gallery of Art in Washington, DC, and the artists William Henry Jackson and Thomas Moran.¹⁰ John Wesley Powell’s daring explorations of the Rockies, the Colorado River, and the Green River spurred federally funded scientific projects that would encourage Western settlement and the conservation of arid lands otherwise unsuitable for habitation. In one of his reports, Powell developed a standardized land classification system for homesteads.¹¹ He appreciated the connections between geology, ethnology, botany, literature, and philosophy, and he included information about Indian tribes in his reports. In 1881, he became director of the U.S. Geological Survey, joining the Bureau of American Ethnology (previously the Bureau of Ethnology) in 1894.

Among the noteworthy privately financed expeditions was the Jessup North Pacific Expedition of 1897, the purpose of which was the study of prehistoric human passage across the Bering Strait from Asia to North America.¹² Sponsored by the American Museum of Natural History in New York, funded by its director, Morris K. Jessup, and organized under the direction of anthropologist Franz Boas, the expedition included ethnographers, archeologists, and linguists, along with two Russian revolutionaries who had made social observations during their exiles in Siberia. Whereas the purpose of the Harriman Alaska Expedition of 1899—another privately funded expedition of the era—has been a matter of considerable debate, its methodology and interdisciplinary focus was equally of solid benefit.¹³ Scientists, philosophers, and artists interacted with each other on a daily basis while they pursued their respective studies. Participants included Edward S. Curtis, for whom the expedition launched his remarkable career as a photographer of American Indians; Louis Agassiz Fuertes, then just at the beginning of his career as an ornithological painter; pioneering forester Bernhard E. Fernow, who collected data on the region's indigenous trees; wildlife conservationist George B. Grinnell; nature essayist John Burroughs; and naturalist and philosopher, John Muir.¹⁴

These and other surveys and expeditions generated vast amounts of natural and cultural information about places previously “undiscovered.” If they did not contribute directly, they dovetailed nicely with parallel scientific and intellectual explorations of the interrelationship of the natural and cultural realms that helped shape the emerging concept of “environment.”

Conserve the Environment

The first American publication to describe environment as a complex system was George Perkins Marsh's *Man and Nature; or Physical Geography, as Modified by Human Action*.¹⁵ Marsh himself was not a professional scientist. Over the course of his life he had been a lawyer, farmer, manufacturer, Congressman, diplomat, and a master of 20 languages.¹⁶ In *Man and Nature*, he synthesized a vast amount of scientific and cultural information into a coherent interdisciplinary interpretation of human history and its impacts. His concept of ecology encompassed the twinned dynamics of nature and culture and their tendencies towards equilibrium and change respectively.¹⁷ He observed that the widespread removal of trees and other vegetation from areas of substantial and sustained human habitation had resulted in catastrophic flooding, extensive soil erosion, and massive fluctuations in stream flow. Based on these observations, he concluded that humans had created environmental problems for themselves by exerting too much pressure on nature.

Published in a new edition in 1874, Marsh's book served to ignite action on the public policy front.¹⁸ In 1876, for example, the U.S. Department of Agriculture

launched an investigation into the environmental situation of the national forests, commissioning Franklin B. Hough, the first chief of the agency's forestry division, to assess what might be needed for their renewal. In 1886, the Federal Government began an evaluation of environmental impacts on birds and fish, the result of which was the creation of the Fish Commission, a forerunner of the U.S. Fish and Wildlife Service.¹⁹

Gifford Pinchot was among those most influenced by Marsh's book. A Yale graduate, Pinchot had studied forestry in Europe and was among the scientific foresters in the National Academy of Sciences who sought to prevent the over-exploitation of the national forest reserves then under the control of the U.S. Department of the Interior. When he became chief forester in the Department of Agriculture in 1898, he advanced the role of natural science in the management of timber resources. He quickly became one of President Theodore Roosevelt's most trusted advisors.

Pinchot's conservation philosophy involved the application of science to maintain resource profitability, ensure sustainable timber yields, and improve the conditions of forests.²⁰ One of his closest colleagues was W. J. McGee, an anthropologist, geologist, and topographer who had served with Powell in the U.S. Geological Survey and the Bureau of American Ethnology. The Pinchot-McGee partnership played an important role in shaping the practical side of conservation that led to the Antiquities Act and other legislation. Their work in the Roosevelt administration solidified the interdisciplinary nature of the conservation movement.

In 1893, historian Frederick Jackson Turner sent shockwaves through the intellectual community with his announcement of the "closing" of the American frontier.²¹ In a presentation to members of the American Historical Association, Turner implied that public lands were not an endless source of wealth for exploitation; rather, the lands and the economic resources they contained were finite.

Through their words and actions, Marsh, Pinchot, and Turner provided important theoretical foundations for environmental conservation. In their view, conservation was something dynamic: it did not imply non-intervention in the natural or cultural realms. At least with regard to public lands, it implied the active collection of data using the latest technology and according to the latest theories. Moreover, it was based on the presumptions that the "nation's pristine base was both finite and fragile," and that scientists were in a race against time in terms of collecting natural and cultural information for use.²² Their concept of conservation was also inherently interdisciplinary: Whereas scientists and other experts could collect and collate information, others had to be on hand to interpret the information to interested individuals and the public.

One of the pivotal events that helped define conservationist legislation on the nature side was the 1905 American Forest Conference led by Pinchot.²³ The conference succeeded in getting Congress to transfer the national forest reserves from the Department of the Interior to the Department of Agriculture. Although the move privileged scientific forestry management over preservation, it nevertheless confirmed resource stewardship as a function of the Federal Government.

Even before the 1905 Forest Conference, the proponents of scientific management had sparred with those in favor of preservation. The creation of Mount Rainier National Park in Washington in 1899 was said by some ultimately to benefit the railroad companies for whom access to virgin timberlands was destined to improve elsewhere because of the designation.²⁴ Even so, the enabling legislation required the Secretary of the Interior to "provide for the preservation from injury or spoliation of all timber, mineral deposits, natural curiosities, or wonders...and their retention in their natural condition" within the boundaries of the new park itself.²⁵

Following the law creating Mount Rainier National Park was the Lacey Act, which prohibited interstate transport of birds and animals taken in violation of state laws.²⁶ The first comprehensive law to protect wildlife, the Lacey Act remains one of the most durable pieces of conservation legislation. It was the work of Representative John Fletcher Lacey of Iowa, who would later figure prominently in the passage of the Antiquities Act.²⁷

The creation of forest reserves and the implementation of boundary revisions by presidential proclamation involved the redesignation of Indian lands, including lands belonging to the Chippewa in Minnesota, the Hoopa Valley and Tule River in California, and the Mescalero Apache, Jicarilla Apache, White Mountain Apache, Zuni, and Navajo in Arizona and New Mexico.²⁸ Pursuant to presidential proclamation, forests on other remaining Indian lands were to be managed to meet the growing domestic demand for timber. These proclamations were authorized by the Forest Management Act of 1897, which expressly addressed the managed use of resources in the public domain.²⁹ Although preservationists scored a victory in 1904 with the creation of Sully's Hill National Park in North Dakota as part of an agreement with the Sioux peoples living on the Devil's Lake Reservation, the victory was small by comparison.³⁰

Cultural Heritage Can Be Managed

Meanwhile, thoughts of archeological preservation and historic preservation were being galvanized into a similar call for federal action.³¹ Pothunters on remote landscapes had long considered themselves beyond the reach of the law. Concerned that notorious relic hunters, such as Richard Wetherill in

Utah, would clear the deserts of sites ripe for scientific exploration, anthropologists at American universities and other institutions organized an appeal for legislative action beginning in the late 1890s.³²

One of the principal authors of the Antiquities Act, Edgar Lee Hewitt, stated in 1905 that “for a quarter of a century certain thoughtful people have been calling attention to the matter” of protecting archeological resources on federal land.³³ Hewitt’s interest in anthropology and archeology began in the 1890s when he and his wife moved to New Mexico. He eventually became involved in efforts to preserve archeological sites and developed a relationship with Lacey. Hewitt appreciated the close connection between scientific knowledge and conservation management of forests and archeological resources. By 1904, he could authoritatively write: “A system of governmental protection of archeological remains is manifestly an accomplished fact, as much so and after the same manner as the protection of timber on public lands.”³⁴

The ultimate push to legislation to protect cultural resources specifically came in three focused efforts between 1900 and 1906. In the first phase, the Committee on the Protection and Preservation of Objects of Archaeological Interest, formed by the American Association for the Advancement of Science in 1899, promoted a bill for the preservation of aboriginal antiquities on federal lands. As drafted, the bill would have protected existing “monuments, cliff-dwellings, cemeteries, graves, mounds, forts, or any other work of prehistoric, primitive, or aboriginal man, and also any natural formation of scientific or scenic value or interest, or natural wonder or curiosity.”³⁵ It also would have authorized the Secretary of the Interior to issue permits to qualified institutions for lawful archeological excavations and granted the President of the United States the authority to set apart tracts of land in reserves for the protection of “natural wonders or curiosities, ancient ruins or relics, or other objects of scientific or historic interest, or springs of medicinal or other properties.”³⁶ While the Public Lands Committee of the House of Representatives received a favorable report on the proposed legislation, Congress took no action.

The second round of legislative activity began in 1902 with a bill drafted by the Reverend Henry Mason Baum of the Records of the Past Exploration Society and introduced by Senator Henry Cabot Lodge in 1904. The “Lodge bill” competed with a bill, known as the “Smithsonian bill,” drafted by Holmes of the Bureau of American Ethnology. Whereas the Lodge bill resembled the earlier bill, the Smithsonian bill gave the Smithsonian Institution “supervision of all aboriginal monuments, ruins, and other antiquities” but stopped short of extending protection to historic, scenic, or scientific resources on the public lands.³⁷ The Lodge bill cleared the Senate but Congress took no final action on either it or the Smithsonian bill.

In 1905, Hewett led the third and successful attempt on behalf of the legislative committee of the American Anthropological Association. He reconciled the competing interests of the archeological groups and took the interests of various federal agencies into account.³⁸ Representative Lacey introduced the bill in the House on January 9, 1906, and Senator Thomas MacDonald Patterson of Colorado followed with a bill in the Senate on February 26. The final version of the bill became law on June 8, 1906.

As passed, the Act granted the President of the United States the authority to protect areas of public land by designating national monuments. This type of authority had existed prior to 1906, but passage of the Act meant that the President could exercise this authority systematically to protect historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest provided there was sufficient scientific evidence to support the designations.³⁹

President Theodore Roosevelt invoked the Antiquities Act soon after its passage to declare national monuments, thus setting the precedent for using the Act as a vehicle for protecting both natural and cultural heritage. Mindful of the Act's intellectual and practical origins in the conservation movement, Roosevelt designated Devil's Tower in Wyoming—a "natural wonder and an object of historic and great scientific interest"—on September 24, 1906, making it the first designated national monument under the new legislation.⁴⁰ He designated the Petrified Forest in Arizona on December 8, 1906, citing the fossil deposits of Mesozoic wood as being "of the greatest scientific interest and value."⁴¹ He also designated Platt National Park (now the Chickasaw National Recreation Area) in Oklahoma, which consisted of sulfur springs bought in 1902 from the Choctaw and Chickasaw Nations.⁴²

Second, the Act included an enforcement provision with penalties for criminal actions. It prohibited the injury to or the appropriation, excavation, or destruction of any "historic or prehistoric ruin or monument, or any object of antiquity."⁴³ The records on convictions under the Act itself are sketchy, but the regulations promulgated under its authority continue to serve as the basis for issuing citations and collecting fines today. From 1906 to 1979, the Act also provided the first and only federal sanction for prosecuting crimes against domestic terrestrial and submerged cultural resources on federal and tribal lands controlled by the United States.

Third, the Act established permitting provisions under which qualified individuals or groups could conduct research in the public interest on public lands, subject to comment from the Smithsonian Institution. Lacking uniform guidance from the Act, the Secretaries of the Interior, Agriculture, and War (now, Defense) were on their own when it came to the substantive and procedural aspects of permitting; however, the law stipulated that permits were only

to be issued to qualified institutions and that the information gathered was to be “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.” Moreover, any and all items retrieved were considered government property and were to be preserved in public museums.

Finally, the Act required each agency that exercised jurisdiction over federal lands to maintain a program for carrying out the Antiquities Act. This provision not only preserved departmental authority over the application of the Act, it also protected against the creation of one centralized agency having full control over certain types of resources across all agencies of the Federal Government.

Since 1906, a number of court cases, commissions, and one Congressional amendment have further refined the provisions of the Antiquities Act.

In response to a federal court decision that upheld President Franklin D. Roosevelt’s designation of Jackson Hole National Monument, Congress amended the Act in 1945 to restrict the designation of national monuments in Wyoming except by express Congressional authorization; eventually, the monument became part of Grand Teton National Park.⁴⁴

In 1974, the U.S. Court of Appeals for the Ninth Circuit struck down the criminal portion of the Antiquities Act, making it void in the western states, Alaska, and Hawaii. The pivotal case arose from the theft of five masks and other ceremonial objects from an Apache medicine man that were used in a centuries-old sacred ceremony. The defendant in the case was charged with having appropriated “objects of antiquity” and convicted in district court, but the Ninth Circuit overturned the decision on the grounds that a law classifying certain 5- to 7-year-old masks as “antiquities” was unconstitutionally vague, and, therefore, void.⁴⁵

Subsequently, the neighboring Tenth Circuit affirmed the constitutionality of the Act and upheld the convictions of two men charged with taking antiquities from federal and tribal land.⁴⁶ Lacking judicial consensus on the legality of the Act’s criminal provision, federal prosecutors charged the looters with theft and destruction of government property.⁴⁷ The passage of ARPA in 1979 filled this gap by providing the specific criminal law with express definitions.⁴⁸

The permitting provision of the Antiquities Act was tested and upheld in 1993 in *Lathrop v. Unidentified, Wrecked and Abandoned Vessel*, a case involving the excavation of a shipwreck in submerged lands within Canaveral National Seashore that are legally owned by the State of Florida but controlled by the National Park Service.⁴⁹ In that case, the district court used the Act’s territorial jurisdiction to halt a treasure hunter from removing marine resources within

the park. The Act's subject matter jurisdiction over natural resources had already been affirmed earlier in 1980 in *People of the State of California v. Mead*, in which California sought to prevent the Smithsonian Institution from removing a meteorite from the state.⁵⁰ In that case, the Ninth Circuit held that the Antiquities Act gave the Secretary of the Interior the authority to issue the Smithsonian permit in the interests of science.

While the affected agencies exercised their jurisdictional authority over cultural heritage, no such approach was taken immediately with regard to natural heritage. Instead, a centralized, government-wide approach to policy-making held sway. One noteworthy attempt came in 1908 in the form of the National Conservation Commission, the objective of which was to inventory the nation's natural resources.⁵¹ Eventually, however, environmental legislation embraced the resource management model of the Antiquities Act.

A Century of Resource Stewardship

The Antiquities Act established federal preservation policy that would eventually shape subsequent legislation and the designation of new national monuments. The Act itself has not been substantively amended; rather, Congress has determined at various times since the passage of the Act that new legislation was necessary for the advancement of the objectives set forth in 1906. The subsequent statutes, regulations, and resultant executive actions did not necessarily refer directly to the Antiquities Act, but they all bear its distinctive imprint.

The creation of the National Park Service in 1916 reinforced the ideas of 1906. The Organic Act that created the Service also determined its mode of stewardship and effectively ended the debate over scientific management versus preservation. While utilitarians like Pinchot felt that parks should be open to sustainable development, preservationists felt they should be maintained unimpaired. The Organic Act sided with the latter, stating, in part, that parks, monuments, and reservations shall be managed "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."⁵²

One of the indirect impacts of the Antiquities Act was the creation of official positions. In 1927, the Secretary of the Interior, finding that advice on archeological matters and coordinated approaches to governmental archeological work was beneficial, created the position of Departmental Consulting Archeologist to further the purposes of the Act.

The chain of legislation that followed the passage of the Antiquities Act is perhaps a more meaningful measure of the magnitude of its effect. In 1935,

Congress formalized the interdisciplinary approach to cultural resources management with passage of the Historic Sites Act, which gave the Secretary of the Interior government-wide responsibilities for leadership and guidance in historic preservation through record keeping, contracts, property acquisition, management, and education.⁵³ The Act also authorized the National Park Service to collect and preserve documentation on historic and archeological sites and to make a survey of sites of exceptional value in commemorating and illustrating the history of the United States, the basis of the Historic American Buildings Survey and the National Historic Landmarks program respectively. At the same time, this law created the National Park System Advisory Board, thus ensuring a role for the public in conserving the national cultural heritage.

The impact of the Antiquities Act since 1935 has been equally profound. Its permitting requirements and criminal enforcement provisions have been incorporated into ARPA; its protection provisions have been expanded and reaffirmed in NHPA and NEPA respectively; the National Marine Sanctuaries Act (1972), the Coastal Zone Management Act (1972), and the Abandoned Shipwreck Act (1987) provide comparable protections for resources in marine environments; and cultural resources from federal and Indian lands are now controlled and cared for according to curatorial regulations promulgated under ARPA and the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA).⁵⁴

Despite the more detailed cultural resource management legislation that has followed in the intervening 100 years, the Act continues to play a central role in heritage stewardship in the United States. It alone grants the U.S. President the authority to designate national monuments. Except within the jurisdiction of the Ninth Circuit, it alone provides criminal prosecutors the option of extracting a moderate penalty for damage to resources and asserting protective authority over areas controlled but not necessarily owned by the United States. It has recently been suggested that the Antiquities Act be used to designate marine sites as national monuments as a way of protecting them from looting and degradation.⁵⁵

The Antiquities Act is a unique statement, set in law, about how the nation should manage its natural and cultural heritage. The Act preserves the intellectual perspectives of conservationists—both utilitarians and preservationists—of previous generations who meant for heritage stewardship to be skilled, significant, inclusive, and participatory. It remains the legal foundation of federal historic preservation programs. Simply stated, the Antiquities Act was the opening statement in an on-going national conversation about the nation's shared heritage.

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Notes

1. *American Antiquities Act, U.S. Code*, vol. 16, sec. 431-433 (1906).
2. *National Historic Preservation Act, U.S. Code*, vol. 16, sec. 470 (1966); *National Environmental Policy Act, U.S. Code*, vol. 42, sec. 4321, 4331-4335 (1969); *Archaeological Resources Protection Act, U.S. Code*, vol. 16, sec. 470aa-mm (1979).
3. See Ronald F. Lee, *The Antiquities Act of 1906* (Washington, DC: National Park Service, 1970).
4. See Hal Rothman, *America's National Monuments: The Politics of Preservation* (Lawrence: University Press of Kansas, 1989), and Raymond Harris Thompson, "An Old and Reliable Authority: An Act for the Preservation of American Antiquities," *Journal of the Southwest*, special edition (2000).
5. *Cherokee Nation v. Georgia*, 30 US 1 (1831).
6. David Hurst Thomas, *Skull Wars: Kennewick Man, Archaeology, and the Battle for Native American Identity* (New York, NY: Neveraumont, 2000), 125-132.
7. Congress created the Bureau of Ethnology (later called the Bureau of American Ethnology) in 1879 as a permanent anthropological survey.
8. Cyrus Thomas, "Report on the Mound Explorations of the Bureau of Ethnology," *Twelfth Annual Report of the Bureau of Ethnology, 1890-1891* (Washington, DC: Government Printing Office, 1894).
9. Trained in medicine, Hayden had served as a doctor during the Civil War but shifted his focus to geology. He became the first federal geologist and an ardent proponent of Congressional support for projects that furthered the understanding of the relationships between natural history and economic science. In his surveys and extensive reports, Hayden paid particular attention to potential railroad routes.
10. Curtis M. Hinsley, Jr., *Savages and Scientists: The Smithsonian Institution and the Development of American Anthropology, 1846-1910* (Washington, DC: Smithsonian Institution, 1981), 101.
11. Douglas H. Strong, *Dreamers and Defenders: American Conservationists* (Lincoln: University of Nebraska Press, 1971), 39-51.
12. Melville Herskovits, *Franz Boas: The Science of Man in the Making* (1953; Clifton, NJ: Augustus M. Kelley, 1973), 18-19, 58-59.
13. Harriman conceived, planned, and organized the expedition, especially with C. Hart Merriam, a scientist with the Department of Agriculture who pioneered concepts of ecological "zones." Though he spoke of philanthropic notions, it is possible that he had railroad investment interests in mind or simply wanted to have a grand vacation such as only a magnate of his stature could achieve. If it was a whim, he gave Merriam only two months to assemble the extraordinary members of the expedition.
14. Library of Congress, "The Evolution of the Conservation Movement," <http://memory.loc.gov/ammem/amrvhtml/conshome.html>, accessed December 5, 2005.
15. George Perkins Marsh, *Man and Nature; or Physical Geography, as Modified by Human Action*. 8 vols. (New York, NY: C. Scribner, 1864).

16. During his time in Congress, he helped establish the Smithsonian Institution.
17. David Lowenthal, *George Perkins Marsh: Prophet of Conservation* (Seattle: University of Washington Press, 2000), 292-312.
18. George Perkins Marsh, *Man and Nature; The Earth as Modified by Human Action* (New York, NY: Scribner, Armstrong & Company, 1874).
19. Richard H. Stroud, *National Leaders of American Conservation* (Washington, DC: Smithsonian Institution, 1985), 15-16.
20. Gifford Pinchot, *Breaking New Ground*, commemorative edition (1947; reprint, Washington, DC: Island Press, 1998), xv. Pinchot expanded on his views about conservation in this autobiography, which was published posthumously in 1947. In it, he clarified his utilitarian concepts with direct statements about the protection and preservation of human society.
21. Frederick Jackson Turner, "The Significance of the American Frontier," a paper presented at the meeting of the American Historical Association, Chicago, IL, 1893, as reproduced online at <http://www.learner.org/channel/workshops/primarysources/corporations/docs/turner.html>, accessed December 1, 2005.
22. Stroud, 15.
23. Harold T. Pinkett, *Gifford Pinchot: Private and Public Forester* (Urbana: University of Illinois Press, 1970), 56-65.
24. *U.S. Statutes at Large* 30 (1899): 993-995.
25. *U.S. Statutes at Large* 31 (1900): 187-189.
26. *U.S. Statutes at Large* 30 (1899): 993-995.
27. "Senate concurrent resolution 108 recognizing the accomplishments of John Fletcher Lacey and commemorating the one-hundredth-year anniversary of the Lacey Act," *Iowa Senate Journal* (2000): 1435.
28. There was a complex array of numerous and frequent presidential proclamations and executive orders after 1897, when the Forest Management Act was passed, that had major impacts on Indian tribes and their lands. Congress rescinded some of this presidential authority in 1907.
29. *U.S. Statutes at Large* 30 (1898): 32-36.
30. *U.S. Statutes at Large* 33 (1904): 2368-2372. In 1931, Congress transferred Sullys Hill to the National Wildlife Refuge System. It is now Sullys Hill National Game Preserve.
31. Rothman, 6.
32. *Ibid.*, 20.
33. Thompson, "An Old and Reliable Authority: An Act for the Preservation of American Antiquities," 273.
34. *Ibid.*, 222.
35. *Ibid.*, 224. The Committee was able to raise concern in Congress over the connection between railroad expansion in the West and the removal of antiquities from federal lands to Russia and Sweden.
36. *Ibid.*, 227.
37. *Ibid.*, 230-233.

38. *Ibid.*, 236-242.
39. This provision of the law satisfied the conservationist interest in incorporating scientific knowledge into the process of creating and implementing federal policy.
40. *U.S. Statutes at Large* 34 (1906): 3236-3237.
41. *Ibid.*
42. *U.S. Statutes at Large* 34 (1906): 837. The precedent of federal ownership of medicinal springs goes back to 1832, when the Hot Springs Reservation was created in Arkansas.
43. The maximum penalty of \$500 and a 90-day prison term may not seem substantial today, but in 1906, \$500 was equal to an average yearly income.
44. *Wyoming v. Franke*, 58 F. Supp. 890 (D. Wyo. 1945).
45. *United States v. Diaz*, 368 F. Supp. 856 (D. Ariz. 1973), rev'd, 499 F.2d 113 (9th Cir. 1974).
46. *United States v. Smyer*, 596 F.2d 939 (10th Cir.), cert denied, 4444 US 843 (1979).
47. *United States v. Jones*, 449 F. Supp. 42 (D. Ariz. 1978), rev'd, 607 F.2d 269 (9th Cir. 1979), cert denied, 444 US 1085 (1980).
48. *U.S. Code*, vol. 16, sec. 470aa.
49. *Lathrop v. Unidentified, Wrecked & Abandoned Vessel*, 817 F. Supp. 953 (M.D. Fla. 1993).
50. *California ex rel. Younger v. Mead*, 618 F.2d 618 (9th Cir. 1980).
51. Stroud, 17. Gifford Pinchot served as chair of the commission. Coincidentally, the third edition of Marsh's *Man and Nature* had appeared in print in 1907 in advance of the White House conference that called for the Commission.
52. *U.S. Code*, vol. 16, sec. 1 (1916). The Act that created the National Park Service has no official short title but is commonly called "The National Park Service Organic Act."
53. *Historic Sites, Buildings, Objects and Antiquities Act*, *U.S. Code*, vol. 16, sec. 461-467 (1935).
54. *National Marine Sanctuaries Act*, *U.S. Code*, vol. 16, sec. 1431 (1972); *Coastal Zone Management Act*, *U.S. Code*, vol. 16, sec. 1451-1456 (1972); *Abandoned Shipwreck Act*, *U.S. Code*, vol. 43, sec. 2101-2106 (1987); "Curation of Federally-Owned and Administered Archaeological Collections" (36CFR79), *Code of Federal Regulations*, vol. 36, part 79 (1990); *Native American Graves Protection and Repatriation Act*, *U.S. Code*, vol. 25, sec. 3001 (1990).
55. See Jeff Brax, "Zoning the Oceans: Using the National Marine Sanctuaries Act and the Antiquities Act to Establish Marine Protection Areas and Marine Reserves in America," *Ecology Law Quarterly* 29 (2002):125. See note 2 (above) for bibliographical information on NHPA, NEPA, and ARPA.

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