

III. PURPOSE OF THE PARK/LEGISLATIVE HISTORY

Purpose

The August 1916 Act (39 Stat. 432) establishing the park stated that it "...shall be perpetually dedicated and set apart as a public park or pleasure ground for the benefit and enjoyment of the people of the United States..."

The Congressional report (House Committee on the Public Lands, February 7, 1916, H.R. 9525) which accompanied the authorizing legislation stated:

Strong reasons for creating a national park...are that the craters in question are among the most remarkable of natural wonders. Kilauea is the most continuously active volcano, Mauna Loa the largest volcano...in the world. There is urgent need for the protection of curiosities now being damaged. Scientific studies in inaccessible parts of the area, of importance for public safety, will be furthered by Federal control and public improvement. Scientifically and popularly, the volcanoes are national rather than a local asset.

The purpose of Hawaii Volcanoes National Park, as stated in the master plan "is to conserve the volcanic features, endemic Hawaiian ecosystems, Hawaiian cultural and archeological remains, and inherent scenic values for visitor enjoyment and appreciation and for their scientific and historic values with minimum impairment to the resources." The master plan adds that Hawaii Volcanoes

"preserves for public interest and scientific research significant features of Hawaii's natural history and cultural background, enabling people to understand the powerful volcanic forces, fragile biota and way of life which characterizes the Hawaiian Islands."

Legislative History, Administrative Directives

The park was originally authorized in 1916 as Hawaii National Park and consisted of lands on both the islands of Hawaii and Maui. In 1961, Congress changed the name to Hawaii Volcanoes (75 Stat. 577), the previous year having eliminated lands on Maui from the park by designating Haleakala National Park as a separate unit.

The park's boundaries on the Island of Hawaii have been extended by a series of Congressional actions, beginning with the 1916 Act. That Act delineated two separate areas for the park, the Kilauea section and the Mauna Loa section and called for a third section to be added which would connect the two. That Act also placed the park under the control of the Secretary of the Interior charging that individual with responsibility to make regulations to "provide for the preservation from injury of all timber, birds, mineral deposits, and natural curiosities or wonders within such park, and their retention in their natural condition as nearly as possible."

The Act of 1920 (41 Stat. 452) authorized the Governor of the Territory of Hawaii to acquire, at the expense of the Territory, all private lands within the boundaries of the park. By this act, Congress placed the responsibility (and the expense) of land acquisition for the park on the Territory of Hawaii.

In 1922, by Act of Congress (42 Stat. 503), a large area located in the adjacent Kau Desert was added to the park. Years later, in 1940, a tract of land was withdrawn from the Kau Desert addition and transferred to the then War Department for use as an aerial bombing range. In 1950, after being cleared of explosive materials, the tract was transferred back to the park.

The Mauna Loa section was deeded to the park in 1921. The Kilauea section was deeded over in four separate tracts in 1921, 1927, 1928, and 1939. The tract of land to connect the two was deeded to the park in 1927. The Kau Desert tract was deeded over in 1928. These lands had been either territorial or privately owned. The privately owned lands were acquired by the Territory under the authority of the 1920 Act, then donated to the park.

In 1928, Congress (45 Stat. 424) revised the boundary of the Kilauea section eliminating some lands and adding a small parcel so as to include the Thurston Lava Tube, an important geologic feature. The net result was a reduction in the overall size of the Kilauea section. This act also extended the provisions of the 1920 Act authorizing the governor to acquire privately owned lands for the park to cover the lands now included in the revised boundary of the Kilauea tract.

Exclusive jurisdiction for lands within the park was assumed by the Federal government in 1930 by Act of Congress (46 Stat. 227).

Exclusive jurisdiction in the park continued after 1959 under a

specific section of the Act of Congress (73 Stat. 4,11) which granted statehood to Hawaii. This provision applies to future additions to the park as well.

In 1938, Congress passed another law for adding lands to Hawaii National Park. Two areas were proposed, the Kalapana extension and the Footprint extension. The 1938 Act (52 Stat. 781), however, differed fundamentally from previous acts. An important difference was the provision that "when title to all or any of the... lands...shall be vested in the United States, such lands shall be...added to and made a part of Hawaii National Park." Consequently, lands included within these two extensions could be a part of the park only when title became vested in the United States. Thus, the areas delimited by the 1938 Act; i.e., the Kalapana and Footprint extensions, did not constitute legal park boundaries until title to the lands within was vested with the Federal government.

Other important and germane provisions of the 1938 Act were:

(1) that, in addition to the two areas described above, "any lands adjacent or contiguous" to the park could be added if, in the discretion of the Secretary of the Interior, they are judged to be "necessary for the proper rounding out" of the boundaries; (2) that these lands could be secured only by donation; and (3) authorized the Secretary of the Interior discretionary authority to allow leasing of homesites to Hawaiians on certain lands within the Kalapana extension and restricted fishing in waters offshore the

extension to Kalapana Hawaiians. Any of these "additional lands" would, of course, not legally be a part of the park until the Secretary of the Interior accepted title.

Since the lands comprising the Footprint extension were owned by the Territory, they became a part of the park upon passage of the 1938 Act. Similarly, a tract of territorial land, located within the Kalapana extension became a part of the park in 1938.

Other tracts within the Kalapana extension, however, were in private ownership. These were subsequently acquired by the Territory, usually through exchange for territorial lands located elsewhere. These tracts, six in all, were deeded over to the park in 1952, 1956 (2), 1960, and 1961 (2). Those deeded over after 1959 involved the State of Hawaii (Section 16a of the Statehood Act of 1959 included the following: "Upon the admission of said State all references to the Territory of Hawaii in said Act or in other laws relating to Hawaii National Park shall be deemed to refer to the State of Hawaii").

In 1979, another tract of land located within the Kalapana extension was added to the park. This particular tract, however, was purchased under the authority of a 1978 Act of Congress (92 Stat. 3467) which revised the park's boundaries and authorized an appropriation for that specific purpose. To date, this purchase, constitutes the latest addition to the park within the Kalapana extension.

Unlike previous additions, not all of the lands within the area delimited by the 1938 Act as the Kalapana extension have been added to the park. Moreover, the area proposed as an addition in 1938 was largely made up of unsurveyed lands. Many of the land descriptions had been taken from old records and when the area was subsequently surveyed by the Territory, its actual size fell short of the total area set forth in the legislation.

In 1951, using the authority of the 1938 Act, the Secretary of the Interior proposed that eight more tracts of land be added to the park. Two of these tracts were acquired by the Territory of Hawaii and donated to the park in 1953 and 1956, respectively. Two other tracts, authorized by the 1951 Secretarial Order, were purchased by the National Park Service in 1972 (the smaller of these two tracts is a portion of a much larger tract delimited by the 1951 Secretarial Order). The Endangered Species Act, as amended in 1969 (83 Stat. 282), was the authority used for these purchases. Section 12(c) of that act states:

"The Secretary is authorized to acquire by purchase, donation, exchange, or otherwise any privately owned land, water, or interests therein within the boundaries of any area administered by him, for the purpose of conserving, protecting, restoring, or propagating any selected species of native fish and wildlife that are threatened with extinction and each such acquisition shall be administered in accordance with the provisions of law

applicable to such area, and there is authorized to be appropriated annually for fiscal years 1970, 1971, and 1972 not to exceed \$1,000,000 to carry out the provisions of this sentence."

The status of the other tracts proposed as additions by the 1951 Secretarial Order is discussed later on in the section on Ownership; however, one of these has a rather complicated legal history and is discussed below.

In November 1952, the Governor of the Territory of Hawaii issued Executive Order 1540 which transferred the "possession, use and control" of two parcels of land located in the Upper Olaa Forest Reserve from the Territory to the United States (title had been vested in the United States at the time of annexation, with possession, use, and control given to the Territory under the authority of the Hawaiian Organic Act of 1900). The executive order specified that these lands were "...for a national wilderness area to be under the control and management of the National Park Service..." One of the two parcels transferred in the executive order had been included in those lands proposed as additions by the 1951 Secretarial Order. The other parcel was subsequently approved for addition by the issuance of another Secretarial Order in 1953. Neither of the two parcels transferred by Executive Order 1540, however, could legally be incorporated into the park since, according to Departmental solicitors, they did not meet the "adjacent or contiguous" proviso of the 1938 Act.

Subsequently, both parcels were formally accepted by the Secretary of the Interior, by stating to the Governor of the Territory that the National Park Service would "assume protective custody...pending their inclusion in the park." In 1978, the larger of the two parcels was designated wilderness, as part of a more extensive area so designated within the park. Consequently, though not legally within the park, most of the Upper Olaa Forest tract is administered by the Secretary of the Interior in accordance with the Wilderness Act (78 Stat 890).

As noted above, in 1978, Congress designated as wilderness a total of 123,100 acres in and adjacent to the park, along with 7,850 acres of non-Federal lands as potential wilderness additions. These roadless areas were to be designated when they were added to the park.