

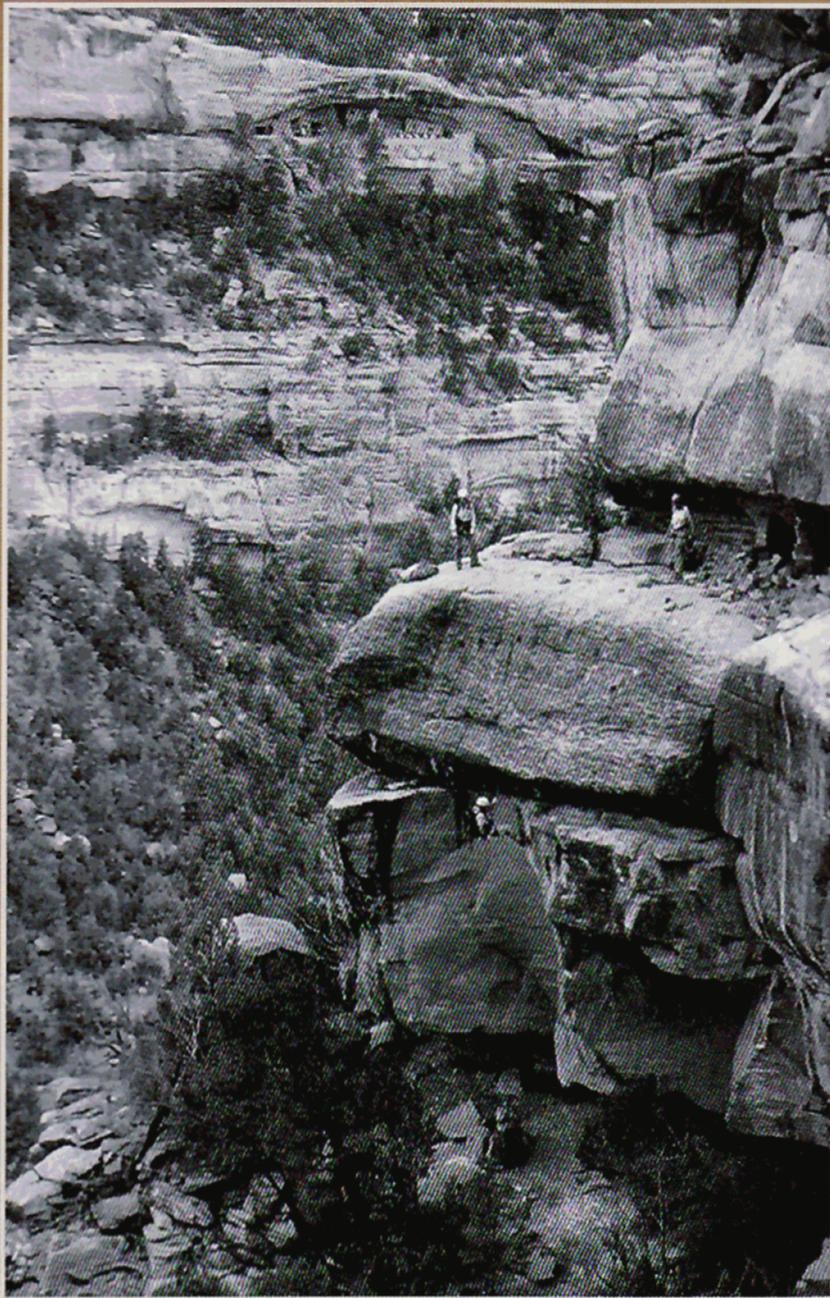
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The Antiquities Act • 1906 – 2006

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# Fossils, Objects of Antiquity and the Antiquities Act

By Vincent L. Santucci  
George Washington Parkway

The Antiquities Act has served an important role in the establishment and protection of paleontological sites on federal lands. Despite conflicting interpretations of whether Congress intended the phrase “objects of antiquity” to include paleontological resources, the act served for nearly 75 years as the primary, if not only, authority for the protection and permitting of fossils on public lands. The Antiquities Act was used to protect a number of significant paleontological localities through the establishment of national monuments. Since 1906, the administrative and legislative histories of the act, combined with a number of solicitor’s opinions, changed the way federal agencies have interpreted the Antiquities Act and the phrase “objects of antiquities” as it relates to fossils.

## History

During the late 19th and early 20th centuries, the looting of archeological sites in the American Southwest became widespread. Similarly, intensive collecting of fossils, such as petrified wood from the Painted Desert of Arizona, was a growing problem during this same period.

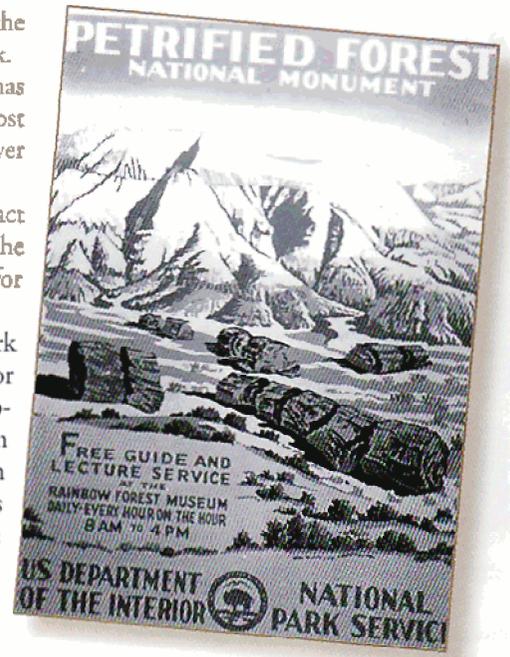
Congressman John Fletcher Lacey of Iowa had a great interest in the preservation of sites,

including a number of attempts to establish the Petrified Forest in Arizona as a federal park.

Environmental historian Hal Rothman has written that the Antiquities Act is the “...most important piece of preservation legislation ever enacted by the United States. Rothman further states, “...in practice the act became the cornerstone of preservation in the federal system.” (See articles in this issue for details on provisions of the act.)

Some of the units of the National Park Service, which are notably recognized for their fossil resources, were originally established through the presidential proclamation authority of the Antiquities Act. The term “scientific interest” in Section 2 of the act was applied to the establishment of monuments based on paleontological resources.

The first use of the Antiquities Act to preserve paleontological resources occurred six months after Congress passed the legislation. On Dec. 8, 1906, President Theodore Roosevelt proclaimed Petrified Forest National Monument as the second national monument, (Presidential Proclamation No. 697). The proclamation states: “...the mineralized remains of Mesozoic forests, commonly known as Petrified Forest, in the Territory of Arizona, situated upon the public lands owned and controlled by the United States, are of the greatest scientific interest and value and it appears that the public good would be promoted by reserving these deposits of fossilized wood



Petrified Forest National Monument was the first federal park specifically established to preserve paleontological resources.

as a national monument with as much land as may be necessary for the proper protection thereof.”

The Petrified Forest proclamation further states, “Warning is hereby expressly given to all unauthorized persons not to appropriate, excavate, injure or destroy any of the mineralized forest remains hereby declared to be a national monument or to locate or settle upon any of the lands reserved and made a part of said monument by this proclamation.”

President Woodrow Wilson invoked his Antiquities Act authority to proclaim Dinosaur National Monument on Oct. 4, 1915 (Proclamation No. 1313): “...an extraordinary deposit of Dinosaurian and other gigantic remains of the Juratrias period, which are of great scientific interest and value, and it appears that the public interest would be promoted by reserving these deposits as a national monument.”

Both Petrified Forest and Dinosaur were proclaimed prior to Congress passing the NPS Organic Act in 1916. The first national monument created after the establishment of the NPS was Fossil Cycad. On Oct. 21, 1922 (Proclamation No. 1641), President Warren Harding proclaimed the monument to preserve “...rich Mesozoic deposits of fossil cycads and other characteristic examples of paleobotany, which are of great scientific interest and value.”

The Civilian Conservation Corps assists Yale professor in 1935 in a paleontological excavation at Fossil Cycad National Monument. Photo from Yale University Archives.



During the first decade after its authorization, Fossil Cycad was not actively managed by the NPS. Unauthorized collecting of the ancient plants resulted in the site becoming essentially picked clean of any fossils. Based upon the loss of the primary resource, a bill was introduced in Congress to abolish the monument, and it was carried out in 1957.

### Fossil Parks Established by Congress

In addition to the monuments established by presidential proclamation, several fossil parks were established by congressional action. Included were:

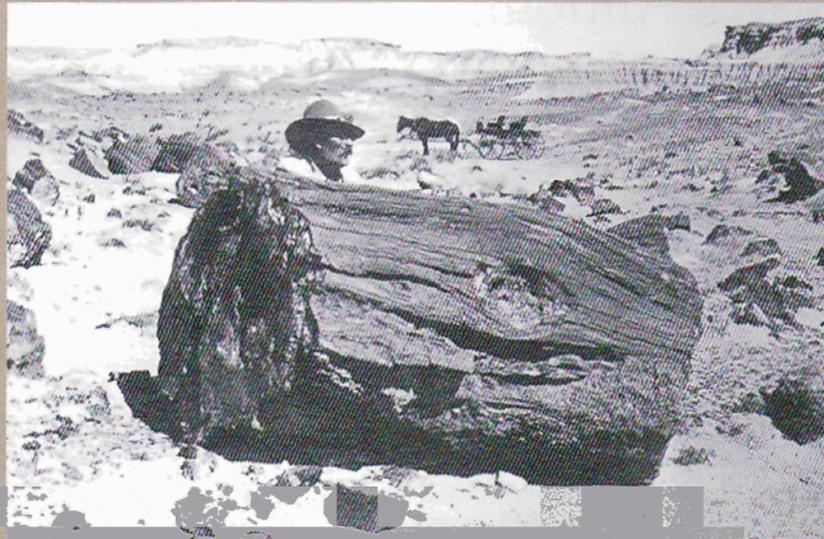
**Badlands National Monument**, originally authorized by Congress in 1929. However, the monument was not officially proclaimed until specific lands were acquired. Upon acquisition of the lands, President Franklin D. Roosevelt established the monument through Proclamation No. 2320 in 1939. The proclamation included the following paragraph: "Warning is hereby expressly given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of this monument, and not to locate or settle upon any of the lands thereof." The site was redesignated a national park in 1978.

**Agate Fossil Beds National Monument**, established in 1965, to provide a center for continuing paleontological research and for the display and interpretation of the scientific specimens uncovered at such sites.

**Florissant Fossil Beds National Monument**, established in 1969, to preserve and interpret the excellently preserved insect and leaf fossils.

■ **Fossil Butte National Monument**, established in 1972, to preserve outstanding paleontological sites and related geological phenomena.

**John Day Fossil Beds National Monument**, established in 1974, provided that "the national monument shall not be established unless and until the state of Oregon donates or agrees to donate the Thomas Condon–John Day Fossil Beds,



Historical photo from Petrified Forest.

Clarno and Painted Hills State Parks."

■ **Hagerman Fossil Beds National Monument**, established in 1988, to provide a center for continuing paleontological research, and to provide for the display and interpretation of the scientific specimens uncovered at such sites.

### Fossil Collecting Permits

Section 3 of the Antiquities Act authorizes the secretaries of the Interior, Agriculture and Army to issue permits for the gathering of objects of antiquity upon the lands of their respective jurisdiction. Further, this section provided, "That the examinations, excavations and gatherings are undertaken 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, and that the gatherings shall be made for permanent preservation in public museums." For nearly 75 years this provision of the act was used administratively by the departments as the primary authority for issuing permits for the collection of fossils.

In 1908, the Carnegie Museum in Pittsburgh applied for and was granted an permit to prospect and collect fossils from federal lands in Uintah County, Utah. This was the first such permit issued for fossils under the authority of the Antiquities Act. There is no documentation indicating any objection or challenge to the Department of the Interior's interpretation and application of the phrase "objects of antiquity" in issuing a fossil collecting permit.

The work of Carnegie Museum led to the discovery of an important dinosaur quarry

on Aug. 17, 1909. The scientific importance of the Utah dinosaur locality soon led to the protection of the site as a national monument in 1915. The act thus served a dual role in the establishment of Dinosaur National Monument. First, it provided authority for issuance of the permit under which the quarry was discovered, then authority for the president to proclaim the monument to protect this important site. After the establishment of Dinosaur National Monument, Andrius A. Jones, first assistant

secretary for the Department of the Interior, wrote to Carnegie Museum offering the opportunity for the institution to continue to apply for a permit stating, "such application will be given considerable consideration by the Department."

With the passage of the Antiquities Act, oversight of the national monument was relegated to the Bureau of Ethnology. All papers, including permit applications, were forwarded to this bureau. In late December 1915, William J. Holland of Carnegie Museum traveled to Washington to meet with the Interior secretary regarding future permits for fossil collecting. The men agreed that dinosaurs were not archeological objects, and the permit applications were forwarded to the Geological Survey and Dr. Charles Walcott at the Smithsonian Institution. On Jan. 8, 1916, an Antiquities Act permit was approved for Carnegie Museum to continue work at Dinosaur National Monument.

### Objects Of Antiquity

The use and interpretation of the phrase "objects of antiquity" within the Antiquities Act has generated considerable scholarly and legal debate. Some of the confusion may arise from the frequent difficulty of the public in differentiating the disciplines of archeology and paleontology. The lack of definition for the phrase "objects of antiquity" in the act and the legislative history has sparked the debate.

On Aug. 15, 1949, with the Smithsonian Act Congress provided some clarification and support to the Department of Interior's interpretation of "antiquity" to include fossils.

On Aug. 27, 1958, once again Congress

provided further evidence to support that paleontological resources were specifically intended within the Antiquities Act. In the legislation authorizing the Interstate Highway System, the general provisions state, "Funds authorized . . . to carry out this title . . . may be used for archeological and paleontological salvage in that state in compliance with the act entitled 'An Act for the preservation of American antiquities', approved June 8, 1906..."

### Court Decisions And Solicitors' Opinions

The first memorandum produced by the Department of Interior Solicitor's Office that addresses the issue of fossils and the Antiquities Act was dated Oct. 12, 1956. The opinion, prepared by the assistant solicitor for national parks, supported that fossils were covered by the Antiquities Act. The opinion recited the long history of the department in interpreting the act to include fossils and referenced two court cases: *United States vs. Midwest Oil Co.* (1915) and *Sioux Band of Indians vs. United States* (1942).

On Jan. 19, 1959, a solicitor's memorandum was prepared regarding the applicability of the act toward petrified wood. The opinion indicated that most petrified wood deposits were not of sufficient historic or scientific interest to qualify under the act.

The regional solicitor in Salt Lake City issued a memorandum to the Utah state director of the Bureau of Land Management on July 10, 1963. The memorandum stated that the Antiquities Act authority included fossils, however, this explicitly applied to fossils of an actual or real historic or scientific interest or of some unusual significance.

In a memorandum dated Sept. 21, 1971, Rex Wilson, Office of the Secretary, Depart-



Dinosaur bones at Dinosaur National Monument. NPS photo.

ment of Interior, provided clarification regarding previous solicitors' opinions regarding fossils and the Antiquities Act. Wilson's memo stated, "Although it is not specifically indicated in the memorandum, fossils or paleontological remains protected within the scope of the Antiquities Act are only vertebrate remains."

In the case of *United States vs. Diaz* in 1974, the Ninth Circuit Court of Appeals held that the phrase "objects of antiquity" within the Antiquities Act was unconstitutionally vague and unenforceable. This decision led to the dismissal of *United States vs. Jenkins* in 1975, in which a university professor was charged with a violation of 16 U.S. Code § 551 in the alleged removal of fossils from BLM land upon which he claimed to have mistakenly entered.

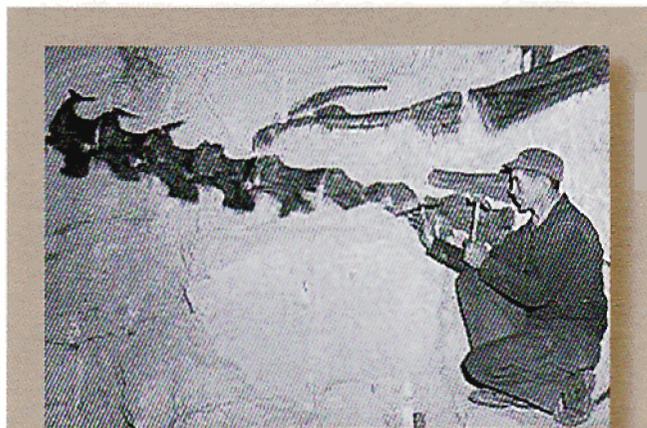
The most recent solicitor's opinion on the applicability of the Antiquities Act to paleontological resources was issued Jan. 19, 1977. The solicitor takes the position that paleontological resources are protected under the act, but advises that federal agencies would be better protected under other authorities such as the Federal Land Policy and Management Act of 1976. The solicitor concluded that "until new regulations are developed, paleontological resources will continue to be regulated under the Antiquities Act."

In a comprehensive legal review of this discussion in 1994, Dorna Sakurai concluded, "Although it is obvious that a fossil would qualify as an 'antiquity,' it is unclear whether Congress intended to cover paleontological objects under this act."

### 100 Years Of Protection

Since the passage of the Antiquities Act, the American public continues to experience and enjoy the important fossil heritage preserved through this legislation. Millions of visitors have been afforded the opportunity to walk among the giant fossil logs at Petrified Forest, to scan the wall of dinosaur bones in the quarry at Dinosaur National Monument, and to be inspired by these "objects of antiquity" however they are interpreted. 🏞️

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Carnegie Museum excavations that led to establishment of Dinosaur National Monument. NPS photo.