

Antiquities Act

Agencies: National Park Service, U.S. Fish & Wildlife Service, and Bureau of Land Management (within the Department of the Interior); and National Oceanic and Atmospheric Administration (within the Department of Commerce)

Citation: [16 U.S.C. §§ 431 et seq.](#)

Enacted as: “An Act for the preservation of American antiquities”, on June 8, 1906

Where Law Applies: Land owned or controlled by the United States government, including the outer continental shelf.

Summary:

The [Antiquities Act \(AA or Act\)](#) (16 U.S.C. §§ 431 *et seq.*) of 1906 was the first United States statute to provide general protection of natural and cultural heritage and reflects the earliest national policy on historic preservation. It authorizes the President to create by Presidential Proclamation national monuments on lands that are owned or controlled by the United States in order to protect “historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest.” A 2000 opinion from the Department of Justice Office of Legal Counsel concluded that this authority can extend to the outer limit of the U.S. Exclusive Economic Zones (200 miles seaward of the baseline) in order to protect marine resources. *See* Legal Counsel opinion (September 15, 2000) (Antiquities Act authority to establish monument off the coast of Hawaii extending seaward to the territorial sea and 200 nm EEZ).

The AA has been used to protect cultural heritage as well as large natural areas. Most national monuments are administered by the National Park Service in the Department of the Interior. The Act includes: (1) a criminal enforcement component providing for the prosecution of persons who appropriate, excavate, injure, or destroy any historic or prehistoric ruin or monument, or any object of antiquity on lands owned or controlled by the United States; and (2) a component that authorizes, through the issuance of a permit, the examination of ruins, the excavation of archeological sites, and the gathering of objects of antiquity on lands owned or controlled by the United States.

Until it was challenged in 1974, the Antiquities Act was the only specific statute providing a criminal sanction for injury to historic and prehistoric sites. In [United States v. Diaz](#), 368 F. Supp. 856 (D. Ariz. 1973), *rev'd*, 499 F.2d 113 (9th Cir. 1974), the Ninth Circuit Court of Appeals held that the term “object of antiquity” was vague, and that the failure of the Antiquities Act to provide notice of what the law prohibited rendered it void. While the [Archaeological Resources Protection Act \(ARPA\)](#) was enacted in 1979, in part to address constitutional issues with the application of the Antiquities Act in *Diaz*, the Antiquities Act continues to apply and is of particular use on the outer continental shelf. The Act’s permitting provision has also been successfully used to prevent looting and unauthorized salvage conducted on federal lands in the marine environment in [Lathrop v. Unidentified, Wrecked & Abandoned Vessel](#), 817 F. Supp. 953 (M.D. Fla. 1993) (Cape Canaveral National Seashore).

Source: <http://www.fas.org/sgp/crs/misc/R41330.pdf> and the Legal Counsel opinion (September 15, 2000)

Legislative History:

The Antiquities Act of 1906, officially *An Act for the preservation of American antiquities*, was passed by the U.S. Congress and signed by President Theodore Roosevelt on June 8, 1906. The Act was developed in response to concerns for the preservation of America's archaeological sites and the artifacts and information they contained. In the last quarter of the 19th century, this interest grew as archaeological sites were looted for artifacts. The movement for the protection of American antiquities gained momentum as national and regional educators, archaeologists, societies, and institutions joined together to prevent such looting. In particular, Congressman John F. Lacey, Chairman of the House Committee on the Public Lands at the time, accompanied archaeologist Edgar Lee Hewett to the Southwest to witness first-hand the looting of archaeological sites. Hewett reported his findings to Congress detailing the antiquities problems on federal lands, which were also incorporated to earlier proposed bills. Although his report was not included in the bill that became law, it helped provide the needed impetus for Congressional action to protect American antiquities. See documents and timeline below for additional details.

Legislative History Timeline:

- Feb. 5, 1900 – Rep. Jonathan Prentiss Dolliver (Iowa) introduced ***H.R. 8066***. The bill authorized the Secretary of the Interior to permit archaeological excavations to qualified institutions and made unauthorized excavations a misdemeanor subject to fine. Thomas Wilson played an integral role in organizing the drafting of this bill. He was Chairman of the American Association for the Advancement of Science's Committee on the Protection and Preservation of Objects of Archaeological Interest and the Archaeological Institute of America's Standing Committee on American Archaeology.
- Feb. 6, 1900 – Rep. John Franklin Shafroth (Colorado), a member of the House Committee on the Public Lands, introduced ***H.R. 8195***. The bill stated that any unauthorized person who harmed an aboriginal antiquity would be subject to fine, imprisonment, or both.
- March 7, 1900 – Rep. Shafroth realized ***H.R. 8195*** was too vague and subsequently introduced a more specific bill, ***H.R. 9245***. All three bills (*H.R. 8066*, *8195*, & *9245*) were then referred to the House Committee on the Public Lands, chaired by Rep. John Fletcher Lacey (Iowa). Rep. Lacey then sent the bills to Secretary of the Interior Ethan Hitchcock, who referred them to the Commissioner of the General Land Office, Binger Hermann.
- March 20, 1900 – Commissioner Hermann disapproved of all three bills then proposed a substitute bill.
- April 5, 1900 – Rep. Shafroth introduced ***H.R. 10451***, which represented the combined views of the House Committee on the Public Lands. The bill authorized the Secretary of Interior to permit excavations by qualified institutions and made unauthorized excavations/damage a misdemeanor.
- April 21, 1900 – Rep. Shafroth reported favorably on ***H.R. 10451*** to the House on behalf of the Committee on the Public Lands. Congress took no action on the bill.

- April 26, 1900 – Rep. Lacey introduced ***H.R. 11021*** at the request of the Department of the Interior. The bill gave the President broad discretionary authority to create national parks and reserve a wide range of resources. It also subjected unlawful intrusion of such parks to penalties. The House Committee on the Public Lands did not like the idea of granting broad discretionary authority to the Executive branch to create national parks.
- Feb. 5, 1904 – Senator Shelby Moore Cullom (Illinois) [introduced S. 4127](#) (page 1651), which was prepared by the Smithsonian Institution.
- Feb. 10, 1904 – Rep. Bernard Shandon Rodey (New Mexico) [introduced H.R. 12141](#) (page 1872), which was prepared by the Smithsonian Institution, received little attention, and was not reintroduced.
- Feb. 16, 1904 – Rep. Robert Roberts Hitt (Illinois) [introduced H.R. 12447](#) (page 2000), a companion bill to ***S. 4127***.
- March 2, 1904 – Rep. William August Rodenberg (Illinois) [introduced H.R. 13349](#) (page 2712) and sent hundreds of copies around the country, asking for universities, colleges, museums, and historical and archaeological societies to contact the Committee on the Public Lands in support of the bill. The bill had been drafted by Reverend Doctor Baum and his associates; Reverend Baum served as president of the new Past Exploration Society.
- March 4, 1904 – Rep. Lacey reintroduced the Department of the Interior Bill ***H.R. 13478*** (formerly H.R. 11021). Congress took no action and the bill was never reintroduced.
- April 20, 1904 – At Reverend Baum’s request, Senator Henry Cabot Lodge (MA) [introduced S.5603](#) (pages 5160-61) which was the same as ***H.R. 13349***.
- April 20, 1904 – A [hearing on S. 4127 and S. 5603](#) was held before the Subcommittee of the Committee on Public Lands. Twenty-five letters that supported ***H.R. 13349*** as Rep. Rodenberg had requested were printed in the hearing record.
- April 24, 1904 – Senator Henry Moore Teller (Colorado) [objected to the passage of S. 5603](#) (page 5501).
- April 25, 1904 – Senate Committee on the Public Lands [reported S. 5603](#) favorably, with amendments.
- April 26, 1904 – Senator Teller submitted an [amendment to S. 5603](#) (pages 5601, 5627-27), which was agreed to and passed.
- April 27, 1904 – The [Senate passed S.5603](#) (page 5775) without amendment. ***S. 5603*** was taken from the Speaker’s table and [referred to the House Committee on the Public Lands](#) (page 5778).
- April 28, 1904 – Rep. Henry Clay Hansbrough (Nevada) [moved to print 1,000 copies of the hearing](#) (page 5816) before the Subcommittee of the Committee on the Public Lands on bills ***S. 4127*** and ***S. 5603***. Motion was agreed to.
- Jan. 9, 1906 – Rep. Lacey [introduced H.R. 11016](#) (page 883). In 1902, Lacey visited the Southwest, accompanied by archaeologist Edgar Lee Hewett. Hewett drafted a memorandum reviewing the antiquities problem on federal lands, which foreshadowed the system of archaeological national monuments established in the Southwest after the passage of the Antiquities Act. In 1905, Hewett became secretary of the American Anthropological Association’s committee for antiquities legislation, which altered ***S. 5603*** and reintroduced it as ***H.R. 11016***. His [memorandum](#) (pages 2-10) was included in ***H.R. 11016***. ***H.R. 11016*** prevented any single department from holding all authority.

Instead, whichever department held jurisdiction over the area where archaeological land was proposed would make the decision to grant permission.

- Jan. 19, 1905 – Rep. Lacey, for the House Committee on the Public Lands, [submitted report No. 3704](#) to accompany *S. 5603*, amending all language after the enacting clause so that bill reflected *H.R. 11016*. The bill and accompanying report were [referred to the House calendar](#).
- Feb. 26, 1906 – At Rep. Lacey’s request, Senator Thomas MacDonald Patterson (Colorado) [introduced companion bill S. 4698](#) (page 2972), which was referred to the Senate Committee on the Public Lands.
- March 12, 1906 – The House Committee on the Public Lands [reported favorably on H.R. 11016](#) (page 3709) and accompanying [report No. 2224](#).
- May 24, 1906 – The Senate Committee on the Public Lands [reported favorably on S.4698](#). Bill [S. 4698 passed the Senate](#) (page 7331).
- May 25, 1906 – The Senate requested concurrence of the House and [S. 4698 was referred](#) (page 7434) to the House Committee on the Public Lands.
- June 5, 1906 – Bill [S. 4698 passed the House](#) (page 7888).
- June 7, 1906 – [S. 4698 was signed by the Senate](#) (page 8038).
- June 8, 1906 – [S. 4698 was signed by the House](#) (page 8042), which was then [signed into law by President Theodore Roosevelt](#).
- June 11, 1906 – A message from President Roosevelt announced that he had approved and signed *S. 4698* into [Public Law 59-209](#).

Cases:

While almost every legal case implicating the Antiquities Act has been brought under its criminal enforcement provision, the Act’s permitting provision has been litigated and upheld in the marine environment in *Lathrop v. Unidentified, Wrecked & Abandoned Vessel*, [817 F. Supp. 953 \(M.D. Fla. 1993\)](#). *Lathrop* upholds the rule that where the United States has ownership or control of the lands in or on which heritage resources are located, the Antiquities Act permitting provision can be used to regulate excavation of heritage resources. In addition, *United States v. Fisher*, [977 F. Supp. 1193](#) (S.D. Fla. 1997) involved a Summary Judgment Order (unpublished) in which the Court stated, “Common law principles do not automatically bar Congress from exercising its legislative prerogative to protect federal lands from potentially damaging activity.” The Court cited the Antiquities Act as prohibiting the appropriation of historic artifacts on federal land without a permit. [Fisher Summary Judgment Order](#) (unpublished) at pages 11-12 (Case No. 92-10027 Civ.-Davis (S.D. Fla. Filed April 21, 1992)).

Landmark Cases:

- *Lathrop v. Unidentified, Wrecked & Abandoned Vessel*, [817 F. Supp. 953 \(M.D. Fla. 1993\)](#). (See [case summary](#)).
- *Treasure Salvors, Inc. v. Unidentified, Wrecked & Abandoned Vessel*, [569 F.2d 330 \(5th Cir. 1978\)](#), *modifying* [408 F. Supp. 907 \(S.D. Fla. 1976\)](#). (See [case summary](#)).
- *United States v. Diaz*, [499 F.2d 113 \(9th Cir. 1974\)](#), *rev’g* [368 F. Supp. 856 \(D. Ariz. 1973\)](#). (See [case summary](#)).
- *United States v. Fisher*, [977 F. Supp. 1193](#) (S.D. Fla. 1997). (See [case summary](#)).
 - Fisher, [Findings of Fact and Conclusions of Law](#) (S.D. Fla. 1997).

- Fisher, [Judgment Case No. 92-10027 and 95-10051](#) (S.D. Fla. 1997).
- Fisher, [Order Denying Defendants' Motions](#) (S.D. Fla. 1997).
- Fisher, [Order on Summary Judgment](#) (S.D. Fla. 1997).
- *Court Records, Briefs, or Filings:*
 - Fisher, [United States' Notice of Filing Expert Report](#) (S.D. Fla. 1997).
 - Fisher, [Testimony by Dr. Robert Baer, Contract Archaeologist](#) (1997).
 - Fisher, [United States' Motion for Summary Judgment](#) (S.D. Fla. 1997).
 - Fisher, [Response in Opposition to United States' Summary Judgment Motion](#) (S.D. Fla. 1997).
 - Fisher, Defendants' Motion for New Trial and/or Alternative Relief (S.D. Fla. 1997).
 - Fisher, [Defendants' Memorandum of Law in Support of Motion for New Trial](#) (S.D. Fla. 1997).
 - Fisher, Defendants' Reply to Government's Opposition for New Trial (S.D. Fla. 1997).
 - Fisher, Defendants' Supplemental Objection to Plaintiffs' Proposed Order (S.D. Fla. 1997).
 - Fisher, [Initial Brief for Appellants](#) (11th Cir. 1998).
 - Fisher, [Reply Brief for Appellants](#) (11th Cir. 1998).
 - Fisher, [Petition for Rehearing of Appellants](#) (11th Cir. 1999).
 - Fisher, [Appellants' Petition for Rehearing Denied](#) (11th Cir. 1999).
 - Fisher, [Petitioners' Petition for Writ of Certiorari to 11th Cir. Ct of Appeals](#).
- *United States v. Smyer*, [596 F.2d 939 \(10th Cir. 1979\)](#), *cert. denied*, 444 U.S. 843 (1979). (See [case summary](#)).
- *Klein v. Unidentified Wrecked & Abandoned Sailing Vessel*, [758 F.2d 1511 \(11th Cir. 1985\)](#) (Kravitch, J., concurring in part, dissenting in part), *aff'g* [568 F. Supp. 1562 \(S.D. Fla. 1983\)](#). (See case summary).

Other Relevant Cases:

- *United States v. Jones*, [607 F.2d 269 \(9th Cir. 1979\)](#), *rev'g* 449 F. Supp. 42 (D. Ariz. 1978), *cert. denied*, 444 U.S. 1085 (1980). (See [case summary](#)).

Law Articles:

Raymond Thompson, [An Old and Reliable Authority: An Act for the Preservation of American Antiquities](#), 42 J. Southwest 191 (2000).

- *An Old and Reliable Authority* is largely a reproduction of a 1970 study of the history of the Antiquities Act conducted by Ronald Freeman Lee, Chief Historian of the Park Service from 1938 to 1951. Lee's study was an in-house publication of the National Park Service and thus was not widely distributed. Part I includes Lee's history of the Antiquities Act of 1906 while Part 2 is Thompson's reconstruction of how archaeologist Edgar Lee Hewett influenced the political process leading up to the adoption of the Antiquities Act. Part 3 of *An Old and Reliable Authority* contains photographs by George Alexander Grant of national monuments and parks in the American Southwest.

Sanjay Ranchod, *Clinton National Monuments: Protecting Ecosystems with the Antiquities Act*, 25 Harv. Env't'l L. Rev. 535 (2001).

- Provides an overview of the legislative history of the Antiquities Act, challenges to and the permanency of monument designation, and the Act's use to protect marine areas.

Jennifer C. White, *Conserving the United States' Coral Reefs: National Monument Designation to Afford Greater Protection for Coral Reefs in Four National Marine Sanctuaries*, 32 Wm. & Mary Ent'l. L. & Pol'y Rev. 901 (2007-2008).

- After an overview of the Antiquities Act of 1906, this Note discusses how national monument designation can afford greater protection than a national marine sanctuary designation alone.

Other Relevant Sources:

National Park Service:

- [About the Antiquities Act](#)
- [Archeology Program](#)

U.S. Fish & Wildlife Service:

- [Antiquities Act Centennial Overview](#)