



July 7, 2017

VIA ELECTRONIC SUBMISSION

The Honorable Ryan Zinke  
Secretary, U.S. Department of the Interior  
Monument Review, MS-1530  
U.S. Department of the Interior  
1849 C St. NW  
Washington, D.C. 20240

**Re: Review of Certain National Monuments Established Since 1996 (RIN: DOI-2017-002)<sup>1</sup>**

Dear Secretary Zinke:

The U.S. Small Business Administration's Office of Advocacy (Advocacy) applauds the United States Department of the Interior's (DOI) efforts to engage the public on the issue of national monument review, and respectfully submits the following comments on DOI's notice of opportunity for public comment. Advocacy encourages DOI to consider the impacts to small entities when making decisions regarding the National Monuments under review.

**The Office of Advocacy**

Congress established Advocacy under Pub. L. 94-305 to represent the views of small entities before Federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA); as such the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration.

**Background**

The Antiquities Act of 1906, recodified in 2014, outlines the procedure for the use, designation, and regulation of historic landmarks to be controlled by the Federal Government.<sup>2</sup> Section

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<sup>1</sup> Review of Certain National Monuments Established Since 1996; Notice of Opportunity for Public Comment, 82 Fed. Reg. 22016 (May 11, 2017).

<sup>2</sup> 54 U.S.C. §320301 (previously P.L. 59-209, 34 Stat. 225 (1906) (codified at 16 U.S.C. §431) (recodified by P.L. 113-287, §3, 128 Stat. 3259 (2014))).



320301 (a) of the Act designates specific powers to the President of the United States, to declare by public proclamation lands that are to be designated national monuments.<sup>3</sup> Section 320302 (a) grants the Secretaries of the Interior, Agriculture and Army the authority to review permits for various activities on the land, as well as the authority to publish regulations in order to carry out the provisions of the Act.<sup>4</sup> Monuments are designated through Presidential Proclamation, and they are not subject to notice and comment rulemaking, and therefore do not require a public comment period.

On April 26, 2017, President Trump issued Executive Order 13792<sup>5</sup> directing the Secretary of the Interior to conduct a review of certain national monument designations made since January 1, 1996 in situations where the designation (1) covers more than 100,000 acres; (2) where the designation after expansion covers more than 100,000 acres; (3) or where the Secretary determines that the designation or expansion was made without adequate public outreach and coordination with relevant stakeholders. On May 11, 2017 DOI published a notice of opportunity for public comment on its review of monument designations under the Antiquities Act of 1906.<sup>6</sup> While a public comment period is not required for the designation of national monuments under the Antiquities Act, DOI has chosen to accept and consider public input on this issue.

DOI will review 27 national monuments, including five marine monuments pursuant to the executive order.<sup>7</sup>

### **Small Businesses are Affected by Monument Designations**

Advocacy conducted an extensive outreach effort to speak with small businesses from various industries that operate on or near several of the monuments under review. In speaking with these businesses, Advocacy learned about the impact a monument designation can have on various entities including outfitters, tour operators, lodging facilities, grocery stores and restaurants.

Advocacy spoke with a small business owner that operates a restaurant and lodge near the Katahdin Woods and Waters who stated that in the two months after the designation alone, the restaurant saw an increase in business of nearly thirty three percent. Similarly the lodge saw an increase in bookings in May and June of thirty percent, and the owner mentioned that they did not have the capacity to handle more bookings in July and August because they were already at capacity. The business owner stated that in speaking with guests at the restaurant and lodge, the monument was their main reason for traveling to the region.

Advocacy also spoke with a small business owner that offers canoe tours who stated that he has seen an increase in business due to people hearing about the national monument and visiting the region. Small business owners near the Organ Mountains-Desert Peaks, and the Rio Grande del Norte shared similar experiences. Many of the small business owners further stated that before

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<sup>3</sup> 54 U.S.C. § 320301 (a) (2014).

<sup>4</sup> 54 U.S.C. § 320302 (a) (2014).

<sup>5</sup> Exec. Order No. 13792, 82 Fed. Reg. 20429 (April 26, 2017).

<sup>6</sup> Review of Certain National Monuments Established Since 1996, 82 Fed. Reg. 22016, (May 11, 2017).

<sup>7</sup> Id.

the monuments designations the regions had seen a decline in population growth, and industry growth.

Advocacy also heard from one small business owner in the Grand Staircase Escalante area whose business had an adverse effect from the monument designations. He stated that while he has seen an increase in bookings, due to a party size restriction on tours and recreational activities that was put in place after the monument designation he is not able to take as many customers at a time as previously, which overall has impacted business. He suggested that in reviewing the monuments, the Bureau of Land Management (BLM) should consider increasing the allowable size of parties, as well as updating the BLM's Monument Management Manual to be region specific and include guidance on recreational activities.

### **Advocacy Comments**

Advocacy once again applauds DOI's efforts to engage the public in conducting its review of several national monuments. Given the information Advocacy received from various small business owners across a wide range of industries, Advocacy suggests that DOI consider the economic impacts on small entities when evaluating these designations. Altering the designations may have both positive and negative effects on different small entities, including both communities and businesses. Advocacy suggests that in order to conduct a thorough review, DOI must consider the economic impacts changing the designations would have on small entities.

In the Agency's evaluation, these impacts should be carefully considered to ensure any negative impact on small entities is minimized. In addition, Advocacy encourages DOI to consider feasible alternatives that may minimize the impact to small entities while still achieving the Agency's mission. Such alternatives may include designating a smaller portion of land, increasing the number of permits for tour and recreational sports operators and increasing party sizes for such operations. In addition, DOI should evaluate how the land is being used and whether certain portions may be opened up for recreational and/or hunting activities.

Advocacy suggests that DOI use the Regulatory Flexibility Act (RFA)<sup>8</sup> as a framework for its small business economic analysis. The RFA, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),<sup>9</sup> gives small entities a voice in the rulemaking process. While the RFA does not specifically apply in this instance, the factors set forth in section 603(b) on creating an Initial Regulatory Flexibility Analysis (IRFA) may be a useful tool for DOI to consider when conducting its review.<sup>10</sup> Specifically, DOI may wish to consider the following factors:

1. A description of reasons why action is being considered;
2. The objectives of, and legal basis for the action;
3. A description of, and estimated number of small entities affected;
4. A description of, and estimate of compliance requirements including differences in cost, if any, for different groups of small entities;

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<sup>8</sup> 5 U.S.C. §601 et seq.

<sup>9</sup> Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. §601 et seq.).

<sup>10</sup> 5 U.S.C. § 603 (b).

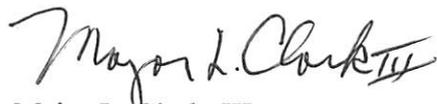
5. Identification of duplication, overlap, and conflict with other rules and regulations; and
6. A description of significant alternatives to the action.

Performing this analysis may help DOI to reach decisions regarding monument designations that are not overly burdensome to small entities. Advocacy is also available to assist with such analysis.

### **Conclusions and Recommendations**

Advocacy appreciates the opportunity to comment publicly on this issue, and encourages DOI to give full consideration to the above recommendations. If you have any questions or require additional information please contact me or Assistant Chief Counsel Prianka Sharma at (202) 205-6938 or by email at prianka.sharma@sba.gov.

Sincerely,



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