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Policy Paper Part 2: The Wilderness Act of 1964

Introduction

The Wilderness Act of 1964 was written and enacted as a reaction against the spread of modernization, industry, and urbanization. White conservationists feared that there would be no natural landscapes left if they were not protected. Part 1 of this paper reviewed and critiqued motivations, methods of formulation, and adoption of the law. How was the Act successful in reaching its goals, and where did it fall short?

Implementation

The Act established a National Wilderness Preservation System (NWPS) that uses certain parameters and its own definition of wilderness to designate existing federal land as “wilderness areas.” These areas would keep their pre-existing organizational conditions, such as which Agency looked after them and what enterprises were already situated on the land, but would adopt more stringent restrictions for future use based on the wilderness label.

The Act is written to give the President, Secretary of Agriculture, and Secretary of the Interior main roles in implementation.¹ The Senate and House of Representatives are the last to be consulted about new wilderness designations. In 1964, Lyndon B. Johnson was president. He continued John F. Kennedy’s support for the Act following his assassination. Kennedy had appointed Orville Freeman as Secretary of Agriculture, who served from 1961 to 1969. Orville grew up enjoying recreation in National Parks and was passionate about enforcing the

¹ The Wilderness Act. Pub L. 88-577. pp. 892-93.

Wilderness Act and expanding wilderness areas.² The Secretary of Agriculture position rotated frequently after that, with new appointees every 2-5 years.³ Stewart Udall, who was very pro-environmental legislation, was the Secretary of the Interior from 1961-1969, appointed by John F. Kennedy.⁴

Within one year of enactment, the Secretary of Agriculture should have filed a map and legal description of each wilderness area (the ones classified as “wilderness”, “wild”, or “canoe” at least 30 days before enactment) with the Interior and in the Insular Affairs Committee of congress. He should have kept records public and given notice when edits were occurring. It is assumed that Mr. Freeman carried through with this because 54 new wilderness areas were designated within the year of enactment.⁵ Within ten years, The Secretary of Agriculture should review every area that the Secretary of Agriculture or the Chief of the Forest Service had labeled as “primitive” to assess their suitability or unsuitability as wilderness areas. These assessments should be reported to the President, who uses them to give recommendations to Congress. This process must be followed to judge the suitability for one-third of the “primitive” within three years. By seven years, two-thirds should be judged, and all of them by ten years. Similarly, the Secretary of the Interior (Stewart Udall) should review the suitability of every roadless area of at least five thousand contiguous acres in federal lands such as national parks, wildlife refuges, and game ranges to become wilderness areas. The President should confer with the President of the Senate and Speaker of the House about recommendations, having been informed by the Secretary of the Interior’s assessment. One third of potentially admissible wilderness areas should go through this process by three years after enactment, then two thirds by seven years,

² Untitled speech by Orville L. Freeman, Secretary of Agriculture, April 7, 1967.

³ “Former Secretaries.” *USDA*.

⁴ “Stewart Udall: Advocate for the Planet Earth.” *Special Collections*.

⁵ “Wilderness Areas Designated by Year.” *Wilderness Connect*.

and all of them by ten years. In the decade after enactment, 93 new wilderness areas had been designated across the country.⁶

Before providing reports to the President, the Secretary of Agriculture and Secretary of the Interior need to give public notice to those in the vicinity of affected land “as they deem appropriate”⁷. The *Federal Register* does include notices such as these, and some have even been published recently regarding new wilderness-eligible lands.⁸ Additionally, at least one public hearing needs to be held at locations convenient to those affected by potential wilderness designations. State Governors and governing boards of counties need to be given at least 30 days notice and opportunity to share their views before such hearings. Proposed modifications or adjustments will be included in the report to the President. In this way, the Act gives local governments an opportunity to weigh in on decisions that will be made in higher echelons of the government. And while the president has the ability to increase the size of a swath of land they want to protect as wilderness, they are limited to a certain extent, unless Congress supports the decision. The Act has attempted to put safeguards in place to make sure many actors can weigh in on decisions about wilderness areas.

Wilderness areas are managed and enforced by the National Park Service, Department of Agriculture, Fish and Wildlife Service, and Department of the Interior.⁹ Funding for the National Wilderness Preservation System comes from the federal budget.¹⁰ Since there does not seem to be extra funding for the enforcement of the Wilderness Act, that might explain why some opposition to the act came within governmental agencies, who would have more work to do.¹¹

Evaluation

⁶ “Wilderness Areas Designated by Year.” *Wilderness Connect*.

⁷ The Wilderness Act. Pub L. 88-577. pp. 892.

⁸ “The Federal Register.” *Determination of Eligibility for Consideration as Wilderness Areas*, 6 Feb. 2023.

⁹ Gallagher, Katherine. “Wilderness Act: Summary, Impact, and Current Status.” *Treehugger*, 3 Feb. 2022.

¹⁰ “Conservation Funding Frequently Asked Questions.” *The Wilderness Society*.

¹¹ “Congress Passes Wilderness Act.” In *CQ Almanac 1964*, 20th ed., 485-92. Congressional Quarterly, 1965.

The Wilderness Act does not specify a certain target of acres to be preserved. It instead aims to designate however much it could as wilderness over time. If the intent was to prevent industrialization from reaching into every corner of the country, the Act has been successful. Basic and uncritical success of the Act can generally be measured by the amount of land that has been added under the wilderness area designation. The NWPS protects nearly 112 million acres of wilderness areas in the U.S. today.¹² In 2009, President Obama passed the Omnibus Public Land Management Act, which added over 2 million acres to the NWPS. In December 2022, President Biden signed a bill that designated more than 182,000 acres of new wilderness area in Nevada.¹³ The Wilderness Society continues to keep tabs on the Act, and it is still active in the lobbying process for legislation concerning public lands.¹⁴

Court cases brought up about implementation of the Wilderness Act have been about commercial services, cultural resources, fish and wildlife, access, minerals, motor vehicles, and resource protection.¹⁵ Court cases have concerned themselves with the definition of wilderness, scope of protection brought on by the Act, and management questions.¹⁶ One example, *Parker v. United States*, took up the definition of wilderness, finding that an area could still qualify even though a road led into the space. This shows that the definition of wilderness can be based on the Act's requirements but still flexible. Anthony Ruckel summarizes in the *Denver Law Review*, "the courts have adopted a practical definition, recognizing the primitive, untrammelled nature of wilderness, but acknowledging the often unavoidable presence of conflicting circumstances or uses"¹⁷. As preservation conflicted with commodity interests, the breadth of the Wilderness Act's

¹² "The Wilderness Act," *The Wilderness Society*.

¹³ DuPre, Pam. "Friends Celebrates 1st Designation of New Nevada Wilderness Areas in Eight Years." *Friends of Nevada Wilderness*, 23 Dec. 2022.

¹⁴ "About Us." *The Wilderness Society*.

¹⁵ "Wilderness Case Law." *University of Montana*.

¹⁶ Ruckel, Anthony. "The Wilderness Act and the Courts." *Denver Law Review*, vol. 76, University of Denver Sturm College of Law, Denver, CO, 1998, pp. 611–618.

¹⁷ "The Wilderness Act and the Courts," pp. 613.

protection was called into question. In *Izaak Walton League of America v. St. Clair*, the court ruled against mineral extraction even though a section of the act protects pre-existing private rights in subsurface mineral estate.¹⁸ But many other court cases are resolved by giving favor to miners who have valid pre-existing claims. The interpretation of land management and use restrictions outlined in the Act is also a key aspect of court activity. *Stupak-Thrall v. United States* reinforced stringent land use restrictions such as discouraging the use of electronic fish finders and other electronic devices in the Sylvania Wilderness Area.¹⁹ At least until the early 2000s, courts were willing to take the side of conservationists at least some of the time.

Policy Changes

The Wilderness Act was amended in 1978 and 2014.²⁰ Public Law 95-495 repealed paragraph 5 of section 4d of the Act. The paragraph initially said that the Boundary Waters Canoe Area (BWCA) would have the minimum restrictions on activity possible. But this paragraph was repealed because Orville Freeman wanted to preserve the area further by banning logging in certain zones.²¹ Public Law 113-287 amended Section 4a3 of the Wilderness Act. This section initially includes references to a 1916 Act and 1906 Act as items that would not be modified by the Wilderness Act, and these were replaced by references to the Federal Power Act and a 1935 Act. These changes do not seem to be major and did not affect the overall goal of the Act.

Conclusion

The Act technically did what it had set out to do. It created a system for preserving federal lands. The makers of the Wilderness Act and its zealous enforcers find solace in knowing

¹⁸ “The Wilderness Act and the Courts,” pp. 615.

¹⁹ “The Wilderness Act and the Courts,” pp. 618.

²⁰ “Wilderness Connect.” *University Of Montana*.

²¹ Heinselman, Miron L. *The Boundary Waters Wilderness Ecosystem*.

that some semblance of pre-colonial landscapes still exist in the country. Hypothetically, people with time and resources to travel to wilderness areas can enjoy the benefits that come with being in nature. However, the Act displays a limited approach to environmentalism. Now, there is no such thing as “untouched” land. Human impacts of pollution and industrialization are atmospheric and systemic. The Wilderness Act is almost reaching towards a big idea: it almost critiques colonial land stewardship by recognizing that something is wrong with how the landscape was being treated after World War II. However, rather than addressing what specifically about urbanization and industrialization was destroying ecosystems and causing policymakers discomfort, the Wilderness Act attempts to freeze landscapes in time. I like mountain vistas as much as the next person, but conservation without attempting to dismantle harmful colonial land uses (including letting forests continue to overgrow without controlled fires) or regulate industry and polluters only creates a larger disparity between the quality of our landscapes. While wilderness areas will remain “wild,” other areas will only become more polluted, mined, and developed. Furthermore, The Wilderness Act embraces the Anthropocene and the idea that humans and environments cannot live symbiotically. I am a believer that people can embrace the ecosystems in which we evolved if we change our beliefs and practices. The Act could have done more to challenge the structure of industrialization and large-scale production fueled by the free market and capitalism if it wanted to address the root causes of environmental degradation. I hope that conservation lobbying groups and agencies begin to measure success not by how many acres exclude people in order to preserve pristine conditions but instead our ability to enmesh our families and communities into thriving ecosystems.

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