

The Wilderness Act at 50: The Golden Anniversaries Begin

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On September 3, the Wilderness Act turns 50 years old. This milestone marks the beginning of the golden anniversaries for the golden age of environmental statutes. During the next dozen years we will celebrate the 50th anniversary of the National Environmental Policy Act (1970), the Clean Air Act (1970), the Clean Water Act (1972), the Endangered Species Act (1973), the Resource Conservation and Recovery Act (1976), the National Forest Management Act (1976), the Federal Lands Policy and Management Act (1976), and soon after, the Superfund statute (1980). These 50th anniversaries are a time to reflect on the success and failures of each statute, as well as their capabilities to adapt to environmental issues that were hardly contemplated a half century ago. Although the Wilderness Act does not receive the air time as its media-specific cousins, it still is a useful model to evaluate an environmental statute as it reaches this vintage.

Today it seems almost incomprehensible that any federal statute of significance could pass a house of Congress with only one dissenting vote. Yet that's what occurred when the House passed the bill in 1964 after eight years of debate and countless revisions. The Act probably never would have reached its current form were it not for the tireless work of Howard Zahniser and the decades of support dating back to legendary figures such as Bob Marshall and Aldo Leopold and others. With this legacy, it's not surprising that Act's language defining "wilderness" borders on prose:

A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and community of life are untrammelled by man, where man himself is a visitor who does not remain.

The Wilderness Act is elegant in its simplicity, yet enormous in geographic scope. On the day of its enactment, the Act immediately designated 9.1 million acres, mostly in National Forests that already were managed as primitive areas. Since 1964, formal wilderness designation has grown to nearly 110 million acres in more than 750 different named areas.

Structurally the Act sets criteria for wilderness, reserves to Congress the authority to designate wilderness, and sets guidelines for management. The guidelines take the form of rigid categories of what can and cannot occur in a wilderness area. Generally that means no roads, few structures and no forms of mechanical transportation. The Act's guidelines do not contain numeric standards, detailed permitting, or stringent enforcement regimes. This is not surprising because, unlike the media specific statutes like the Clean Air Act and Clean Water Act, the Wilderness Act was not intended to correct problems of the past, but instead is designed to preserve for the future a resource that was perceived to be vanishing.

Over its 50 year life, the Wilderness Act has demonstrated remarkable staying power. The Act itself never has been significantly amended so its basic structure remains the same. The amendments have been in the form of specific conditions applicable to new areas added to the system. Not surprisingly, the Act has influence other environmental statutes. Thus, wilderness is relevant in NEPA analysis, National Forest and BLM land planning, Clean Air Act regional haze, Clean Water Act water quality standards, and reserved water rights.

In contrast to other environmental statutes, the Act has seen relatively little litigation. The main areas of dispute have been over whether more land should be added to the wilderness system, not over the operation of the Act itself. The statute has never been litigated in the Supreme Court, the closest case being the Supreme Court's 2003 decision in Norton v. Southern Utah Wilderness Alliance, involving a dispute over the Bureau of Land Management's

management of activities in wilderness study areas, areas that are candidates, but not formally designated. The relatively rare litigation arising out designated wilderness areas involves issues such as treating diseased timber, relocating fire lookouts, and providing supplemental water sources for wild sheep. In these cases, courts have been quite consistent in finding activities inconsistent with the Act.

As an environmental statute reaches its fiftieth birthday, how do we measure its success? Even though the Wilderness Act is significantly different than other statutes, there are lessons to learn as other laws approach a similar age. First, is the question of whether Congress got it right when it enacted the statute. The lack of substantive amendments, the relative lack of litigation, and the ongoing efforts to add more land to the wilderness system suggest it did. But on the other hand one might argue that controversies in adding more land to the system means that the Act is too successful.

Second is the question of whether the statute has ongoing relevance in its current form. Again, the Wilderness Act seems to meet this test, especially as it has been interpreted by courts. No land ever has been removed from the wilderness system once designated. Unlike the Endangered Species Act and other statutes, there have not been strong efforts to amend the statute to ease its restrictions. As it moves forward into its second half century, it seems that the Act is well-designed to continue to operate according to its original purposes.

In many respects the Wilderness Act is a fairly easy statute to evaluate on its half century mark. The questions of success or failure as other statutes reach this point will be much less clear because they have much broader scope and touch far more activities. In any case, the next dozen years will be an interesting time of reflection both as to individual statutes, and as to the

collective work of Congress during the flurry of environmental legislation that largely began in 1964.