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Special Congressional Conservation Designations in Oregon

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Abstract

Besides the “routine” congressional conservation designations such as Wilderness, Wild & Scenic River and National Wildlife Refuge, Congress has seen fit to also extend special recognition and/or protection to other or overlapping areas of federal public lands (and sometimes the associated non-federal lands) by generally them as a National “[Something]”. These designations are rated using a 10-point subjective rating system for the level of conservation protection. Some designations are very good and some have loopholes that negate the supposed intent of the conservation designation. These special designations are often used to address policy and/or political difficulties associated with the more routine designations.

Introduction

Twenty one times so far, Congress (or the President by authority delegated by Congress under the Antiquities Act of 1906) has seen fit to extend special recognition and/or protection to specific areas in Oregon by designating them generally a “National [Something]” and providing special statutory language directing their “conservation” and management.

There is federal protection and then there is *federal protection*. Sometimes Congress has purportedly “protected” an area, but the designation comes with such loopholes that a lot of log trucks, dump trucks, cattle trucks, drilling rigs, off-road vehicles and or floating suction dredges can be driven through.

The “protections” afforded by Congress to these special management area ranges from mere recognition of the Pacific Crest National Scenic Trail to the very-strong-protection/few-exceptions of the Opal Creek Scenic Recreation Area. Sadly, in drawing the final boundaries for the Opal Creek SRA and the adjacent Opal Creek Wilderness, Congress left room for a proposed copper mine in between. In this case, the threat was not the management or loopholes within, but

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an external threat to the area that was specifically excluded from the protective designations. The rating system described below does not consider external threats.



Figure 1. *Looking east over Wizard Island in Crater Lake toward Mount Scott, both in Crater Lake National Park. The National Park Service has proposed most of the park's backcountry to be designated as Wilderness, but not the lake itself. There is the matter of those gasoline-powered, and therefore polluting, tour boats.* Ellen Morris Bishop.

The Larch Company developed a 10-point rating system (Table 1) that can be used to rank each congressional special management area as to its actual level of conservation (Table 2), called the Larch Scale).

Conservation Defined

By “conservation” of an area, we generally use a standard dictionary definition: “the action of conserving something, in particular; preservation, protection, or restoration of the natural environment, natural ecosystems, vegetation, and wildlife.”²

A particular rating is based on analyzing the relevant statutory (or presidential proclamation³) language and considering the:

- the stated purposes for an area;
- expressed and implicit protections;
- expressed and implicit directions;

² New Oxford American Dictionary as found in Apple Dictionary Version 2.1.3 (80.4)

³ National Monuments, though often proclaimed by the President, are congressional designations nonetheless. Congress, through the Antiquities Act of 1906, delegated to the President its power to establish national monuments. In proclaiming a national monument, the President is not using executive powers granted under the Constitution.

- explicit exceptions to protections; and
- implicit loopholes for harmful activities.

In reviewing congressional intent, we generally took Congress (or in the case of the proclaimed national monument [Oregon Caves and Cascade-Siskiyou] the President) at its (his) word as set down in statutory (or proclamation) language. However, careful reading can often reveal intentional loopholes. Further, it is can be as revelatory to consider what was not written down as to what was.

In the end, however, the Larch Scale is a judgment call. In some cases, a ranking could have been one lower, but I sought to give the benefit of the doubt to conservation. In many cases there is no doubt as to what Congress intended—good *or* bad.

Table 1. <i>The Larch Conservation Scale</i>	
Larch Conservation Rating	Evaluative Criteria
1	Conservation in name only —recognition by Congress does not equate to protection by Congress.
2	Better than nothing—but not by much in that the designation name suggests more protection than is afforded.
3	The purposes for protection and the values to be protected are somewhat worthy , but there are several explicit or implicit statutory exceptions and/or excessive deference to agency discretion can allow for harmful actions.
4	The purposes for protection and the values to be protected are generally worthy , but there are some explicit or implicit statutory exceptions and/or excessive deference to agency discretion can allow for harmful actions.
5	The purposes for protection and the values to be protected are worthy , but there may be one significant explicit or implicit statutory exception, and excessive deference to agency discretion can allow for harmful actions.
6	The purposes for protection and the values to be protected are very worthy , but there may be one significant explicit or implicit statutory exception, and excessive deference to agency discretion can allow for harmful actions.
7	The purposes for protection and the values to be protected are generally strong , but there may be one significant explicit or implicit statutory exception, and excessive deference to agency discretion can allow for harmful actions.
8	The purposes for protection and the values to be protected are very strong , but there may be one significant explicit or implicit statutory exception, and excessive deference to agency discretion can allow for harmful actions.
9	The purposes for protection and the values to be protected are very strong , though a few harmful exceptions may exist, and deference to the agency is not undue.
10	The best possible protection for this and future generations, where nature comes first, no exceptions.

Wilderness, Wild & Scenic Rivers and National Wildlife Refuges

This paper concentrates on congressional conservation designations other than the “routine” Wilderness, Wild & Scenic River and National Wildlife Refuge. However, for comparison purposes, we have assigned a Larch Scale rating to Wilderness and Wild & Scenic Rivers, which are part of the National Wilderness Preservation System and National Wild and Scenic Rivers System respectively and generally are managed under uniform congressional direction. A Larch Scale ranking for units of the National Wildlife Refuge System⁴ has not been similarly compared

⁴ 16 U.S.C. §§ 668dd et seq.

as the specific purposes and guidance for each refuge unit can vary so greatly that a consistent system-wide ranking for a National Wildlife Refuge is not possible.

For comparison purposes, the congressional designation of Wilderness⁵ gets a 8 on The Larch Scale. The congressional designation of a Wild and Scenic River⁶ rates either a 8 (those segments classified as either "Scenic" or "Recreational") or an 9 (those segments classified as "Wild") respectively on The Larch Scale.

In many cases, these special “overarching” congressional conservation designations have Wilderness and/or Wild and Scenic Rivers designated within them.

Table 2. Congressional Special Management Areas in Oregon (not including Wilderness, Wild & Scenic Rivers or National Wildlife Refuges)					
Area	Federal Administrative Unit	Established	Federal Acreage	Ecoregion	Larch Conservation Rating
Bull Run Watershed Management Unit ⁷	Mount Hood National Forest	1996	98,272	Cascades	7
Cascade Head Scenic-Research Area ⁸	Siuslaw National Forest	1974	6,600	Coast Range	7
Cascade-Siskiyou National Monument * ⁹	Medford Bureau of Land Management	2000	52,947	Klamath Mountains	8
Columbia River Gorge National Scenic Area ** ¹⁰	Mount Hood National Forest	1986	43,058	Cascades	6
Crystal Springs Watershed Special Resources Management Unit ¹¹	Mount Hood National Forest	2009	2,859	Cascades	7
Cultus Creek *** ¹²	Mount Hood National Forest	2009	280	Cascades	7
Crater Lake National Park ¹³	Crater Lake NP	1902	183,244	Cascades	9
Hells Canyon National Recreation Area **** ¹⁴	Wallowa-Whitman National Forest	1975	498,888	Blue Mountains	7
John Day Fossil Beds National Monument * ¹⁵	John Day Fossil Beds NM	1974	14,000	Blue Mountains	8
Mount Hood National Recreation Area ¹⁶	Mount Hood National Forest	2009	34,550	Cascades, East Cascades Slope and	5

⁵ 16 U.S.C. 1131-1136

⁶ 16 U.S.C. §§ 1271 et seq.

⁷ 16 U.S.C.A. § 482b nt. In 1892, the "Bull Run Forest Reserve" is established by presidential proclamation. In 1904, Congress prohibited human trespass and livestock grazing and strengthened penalties in 1909. In 1977, Congress shrunk the reserve to the Bull Run Watershed Management Unit and weakened protections to legalize previously illegal Forest Service logging. In 1996, Congress ended logging. In 2001, Congress added Little Sandy Watershed.

⁸ 16 U.S.C. §§ 541 et seq.

⁹ Establishment of the Cascade-Siskiyou National Monument, Proclamation No. 7318, 16 U.S.C. § 431 nt. (65 Fed. Reg. 37249, June 9, 2000) (President Clinton).

¹⁰ 16 U.S.C. §§ 544 et seq.

¹¹ 16 U.S.C. § 539n.

¹² 16 U.S.C. § 539n.

¹³ 16 U.S.C. §§ 121 et seq.

¹⁴ 16 U.S.C. §§ 460gg et seq. (as amended).

¹⁵ 16 U.S.C. § 431 nt. (Pub. L. 93-486, title I, sec. 101(a)(2), 88 Stat. 1461).

				Foothills	
Newberry National Volcanic Monument ¹⁷	Deschutes National Forest	1990	55,500	East Cascades Slopes and Foothills	4
Opal Creek Scenic-Recreation Area ***** ¹⁸	Willamette National Forest	1996	13,048	Cascades	8
Oregon Cascades Recreation Area ¹⁹	Deschutes, Fremont-Winema, Umpqua and Willamette National Forests	1984	156,900	Cascades, East Cascades Slope and Foothills	2
Oregon Caves National Monument * ²⁰	Oregon Caves National Monument	1909	484	Klamath Mountains	9
Oregon Dunes National Recreation Area ²¹	Siuslaw National Forest	1972	31,000	Coast Range	3
Pacific Crest National Scenic Trail ²²	Mount Hood, Willamette, Deschutes, Umpqua, Fremont-Winema, Rogue River-Siskiyou National Forests and Medford District Bureau of Land Management	1968	not applicable	Cascades	1
Steens Mountain Cooperative Management and Protection Area ²³	Burns District Bureau of Land Management	2000	496,135	Northern Basin and Range	5
Upper Big Bottom *** ²⁴	Mount Hood National Forest	2009	1,580	Cascades	7
Yaquina Head Outstanding Natural Area ²⁵	Salem District Bureau of Land Management	1980	100	Coast Range	4
TOTAL			1,689,445		
<i>Abbreviations:</i> Bureau of Land Management, National Forest, National Monument, National Park.					

¹⁶ 16 U.S.C. §460uuu. In three Units: Shellrock Mountain, 2,887 acres' Mount Hood, 27,037 acres (more accurately this should be called the "Twin Lakes-Bonney Butte-Barlow Butte NRA") and Fifteenmile Creek, 4,617 acres.

¹⁷ 16 U.S.C. § 431 nt. (Pub. L. 101-522, 104 Stat. 2288).

¹⁸ 16 U.S.C. § 545b.

¹⁹ 16 USC § 460oo.

²⁰ Oregon Caves National Monument, Oregon, Proclamation No. 876, 16 U.S.C. § 431 nt. (36 Stat. 2497) (July 12, 1909) (President Taft).

²¹ 16 U.S.C. §§ 460z et seq. (as amended).

²² 16 U.S.C. §§ 1244 et seq. (While designation as a national scenic trail affords no formal protection to the trail corridor, it does tend to discourage (but has not always prevented) federal bureaucrats from logging along the route.) The Oregon section of the trail is 369 miles (out of 2,350 total miles), from the California border to the Bridge of the Gods in the Columbia River Gorge. See Schafer, J. P. and A Selters. 2000. PACIFIC CREST TRAIL OREGON AND WASHINGTON. Vol. 2. Wilderness Press. Berkeley, CA.

²³ 16 U.S.C. § 460nnn.

²⁴ 16 U.S.C. § 539n.

²⁵ 43 U.S.C. § 1783.

* Most national monuments have been proclaimed by the President pursuant to the Antiquities Act of 1906 (16 U.S.C. § 431). Monuments can also be legislated. In Oregon, only the John Day Fossil Beds National Monument was Congressionally designated. Presidents have created the rest.
** Acreage only includes federal land in Oregon within the “Special Management Area.” An additional 80,187 acres of non-federal land in Oregon are included in the “General Management Area,” which usually provides inadequate protection from development. Total Oregon acreage in the CRGNSA is 123,245 acres. Total size of the NSA, including lands in Washington, is 292,500 acres.
*** While protected by statute, Congress did not even call this an “Area” as National [Something] Area.
**** Acreage for federal land in Oregon. The total acreage including Idaho is 652,488, with an additional ~ 3,000 acres of privately owned land within the HCNRA.
***** The area gets a very high rating despite a loophole in the congressional language that would have facilitated a highly destructive copper mine. The biggest loophole was to leave out the area of the proposed mine, but the mining company could build roads and powerlines within the Opal Creek Scenic Recreation Area. At the time the legislation was under congressional consideration, the proposed mine faced many obstacles in the state, federal, economic and public relations arenas and was very likely to die before earth was moved. It later did. In politics, it is wise to not kill someone’s pet project in front of them if you pretty sure someone else is going to kill it soon enough.

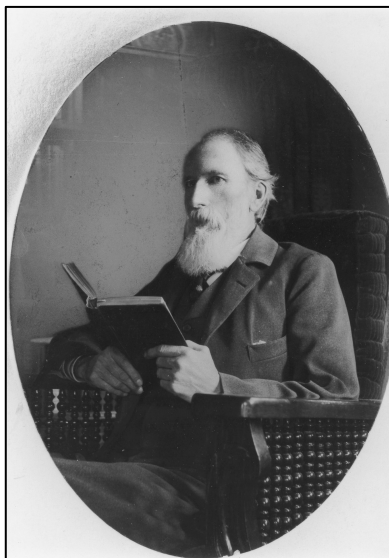
Waldo’s Vision²⁶

Oregon’s Judge John B. Waldo was Oregon’s John Muir. In 1889, Rep. John Waldo convinced the Oregon House of Representatives to petition Congress to:

...set aside and forever preserve, for the uses herein specified, all that portion of the Cascade Range throughout the State extending twelve miles on each side, substantially, of the summit of the range.

The resolution further stated:

That the altitude of said strip of land, its wildness, game, fish, water and other fowl, its scenery, the beauty of its flora, and the purity of its atmosphere, and healthfulness, and other attractions, render it most desirable that it be set aside and kept free and open forever as a public reserve, park, and resort for the people of Oregon and of the United States.



The resolution urged the proscription of many commercial uses, including grazing, hunting and logging, except for railroads. Resorts would be limited to being no closer than five miles apart.

The Oregon House approved the measure, though it omitted the southernmost Cascades to appease local livestock interests. Unfortunately, the Oregon Senate, at the behest of sheepmen, killed the measure by bottling it up in committee.

In 1893, President Grover Cleveland established the Cascade Forest Reserve anyway, which today would be most or all of the Mount Hood, Willamette, Deschutes, Umpqua, Rogue River and Winema National Forests.

²⁶ Adapted from “Judge John B. Waldo: Oregon’s John Muir” in Kerr, Andy. 2004. Oregon Wild: Endangered Forest Wilderness. Timber Press, Portland, OR. Page 50. Citations for quotations may be found therein.

Later, over the objections of the likes of John Waldo and John Muir, Gifford Pinchot, the first Chief of the Forest Service opened up the national forests to first grazing and then timbering. Had these two great Johns prevailed, many later congressional actions (Table 2) protecting portions of what was the Cascade Forest Reserve would not have been necessary.

Figure 2. *Judge John B. Waldo*
(1844-1907). Oregon Historical
Society

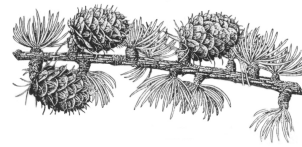
Acknowledgements

I am extremely indebted to Erik Fernandez of Oregon Wild who reviewed drafts and is one of the few people that can go as deep into this subject as I am inclined to.

Additional Resources

- National Park Service (www.nps.gov)
- National Landscape Conservation System (BLM: http://www.blm.gov/wo/st/en/prog/blm_special_areas/NLCS.html)
- [National Landscape] Conservation System Alliance (<http://www.conservationssystem.org/>)
- Special Congressional Designations on the National Forest System (www.fs.fed.us/land/staff/lar/).
- National Wilderness Preservation System (www.wilderness.net)
- National Wild and Scenic Rivers System (www.rivers.gov).

Larch Occasional Papers



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7	2008	Overlapping Wilderness and Wild & Scenic River Designations: Optimal Conservation Protection for Federal Public Lands
6	2008	Establishing a System of and a Service for U.S. Deserts and Grasslands (co authored w/ Mark Salvo)
5	2007	Eliminating Forest Service Regional Offices: Replacing Middle Management with More On-the-Ground Restoration
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