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To: U.S. Department of the Interior

Attention Docket ID No. DOI-2017-0002

Subject: Review of Certain National Monuments Established Since 1996

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Introduction

The Vermont Archaeological Society is pleased to submit these comments regarding the U.S. Department of Interior's Review of Certain National Monuments Established Since 1996.

The Vermont Archaeological Society is a non-profit, volunteer-run organization of professional archaeologists, academic archaeologists, avocationalists, and interested citizens committed to the protection and respectful promotion of the nation's cultural and historic resources. Our Board of Directors reflects this mixture of backgrounds and interests and includes several members with advanced graduate degrees in archaeology and professionals with experience working with (and supporting) federal legislation and regulations concerning cultural and historic resources. While our programming efforts focus on Vermont archaeology, our interests, experience, and advocacy extend beyond the state's borders to include New England's archaeological resources and beyond.

It is with these credentials and interests in mind that we comment upon the National Monuments being reviewed, especially **Katahdin Woods and Waters**, which this comment focuses upon.

Whether Adequate Public Outreach and Coordination with Relevant Stakeholders was Completed with regard to Katahdin Woods and Waters

The President's Executive Order 13792 calls for a review of National Monuments designated since 1996 that either exceed a particular size (100,000 acres) or were potentially designated without adequate public outreach and stakeholder coordination. Katahdin Woods and Waters, at 87,563 acres, is being reviewed because its public outreach and stakeholder coordination is in question.

The American Antiquities Act (54 USC 3203) grants the President authority to establish National Monuments in the public interest. As stated in the Dissenting Views to H.R. 1459 (Report 113-221, 2013):

Congress passed the Antiquities Act of 1906 to give Presidents the latitude to protect historically and culturally significant sites. Sixteen

Presidents, both Republicans and Democrats, have used the Antiquities Act to establish National Monuments. Some of the nation's most cherished and visited National Parks, ... were first designated National Monuments because past Presidents had the foresight to set them aside. Presidents have used the Antiquities Act to protect resources central to the American story and identity, including Native American sacred sites, historic battlefields, and natural treasures like the Grand Staircase Escalante. With the Cesar E. Chavez National Monument and the Harriet Tubman National Monument, among others, recent declarations by President Obama have included sites significant to an even more diverse range of American communities.

H.R. 1459 incorrectly assumes that Presidential proclamations are done in secret, without the support of local stakeholders. Earlier this year, President Obama established five new National Monuments, all with broad support from local communities and affiliated public interest groups. At the hearing for H.R. 1459, the committee heard testimony from the Mayor of Hampton, Virginia, the site of the National Monument at Fort Monroe, established in 2011 by President Obama. The Mayor highlighted the inclusiveness of the process and the importance of the monument for her community.

The Vermont Archaeological Society agrees that the authority granted to the President to designate National Monuments is critical to the protection of our nation's cultural and historic resources.

As the Dissenting Views cite above, President Obama's general process for designating National Monuments was inclusive and sought support of local stakeholders. According to local news reports, this same inclusive process was followed in the case of Katahdin Woods and Waters National Monument, and in fact, the public outreach process had begun even before President Obama sought to designate the National Monument. For instance, the *Bangor Daily News* published the following:

Maine has a long and proud tradition of public engagement...People have an expectation that they will be heard and that their questions will be answered....Beginning in 2012, ... St. Clair set out to talk with as many people as possible about the idea to create a new national park....Over the course of four years, there were hundreds of one-on-one meetings, large town hall meetings, presentations, information booths, debates, community meetings, outreach to elected officials and a real effort to get to know both proponents and opponents of the national park idea... There was a telephone town hall, which included more than 5,000 participants, with questions and answers....There was an official congressional field hearing in East Millinocket, which included Gov. Paul

LePage, and a town hall held by U.S. Rep. Bruce Poliquin....Then National Park Service Director Jonathan Jarvis held a community meeting in East Millinocket and a massive town hall in Orono, which attracted about 1,400 people....During the town hall, every question that was asked was answered. Every concern was logged....Independent economic analysis was performed. Polling was conducted....And conversations were held. Countless conversations....Over time, the proposal for a national park changed as more and more people weighed in. The size of the proposal got smaller until it reached the appropriate scale to accomplish the goals of conserving land and maintaining access for a wide range of outdoor activities....I started work on the national monument project in 2012. Through years of public outreach and comment, I watched as the proposal changed, got stronger and support grew....Today, there are former opponents who are now supporters, a growing list of businesses who want the monument preserved, and three out of four members of Maine’s congressional delegation who oppose any changes to the monument designation.¹

The *Bangor Daily News* report is bolstered by many other articles, timelines, and op-eds that detail the public outreach and relevant stakeholder coordination that was completed in advance of the designation. For instance, a public survey conducted by Critical Insights in October 2015 indicated that Mainers supported federal protection of the Katahdin Region by a 3:1 margin.² The Penobscot Nation was vocal in its support of the original 150,000 acre national park designation.³ And a timeline published by the Natural Resources Council of Maine outlines the many public outreach activities and stakeholder actions completed ahead of the designation of Katahdin Woods and Waters National Monument.⁴ In fact, James Talbott claims that public outreach was **more than adequate** and set a new standard for the designation process.⁵

The Vermont Archaeological Society is supportive of such intense public outreach efforts, and we recognize the importance of such outreach in rural areas such as the Katahdin Region. In

¹ “Maine National Monument Built on Public Outreach”, David Farmer 2017. Accessed July 1. <http://davidfarmer.bangordailynews.com/2017/06/14/republicans/maine-national-monument-built-on-public-outreach/>.

² Critical Insights, Critical Insights on Maine Tracking Survey: Residents’ Views on Politics, the Economy & Issues Facing the State of Maine, October 2015. Accessed July 1. <https://www.nrcm.org/wp-content/uploads/2016/03/LD1600attachments.pdf>

³ Blakemore, Erin. 2017. “Maine Just Got the Nation’s Newest National Monument.” *Smithsonian*. Accessed July 1. <http://www.smithsonianmag.com/smart-news/maine-just-got-nations-newest-national-monument-180960234/>.

⁴ “National Monument Timeline.” 2017. Natural Resources Council of Maine. Accessed July 1. <https://www.nrcm.org/projects/forests-wildlife/katahdin-national-monument/national-monument-timeline/>.

⁵ Herald, James Talbott Special to the Press. 2017. “Maine Voices: LePage Misrepresented Maine Opinion on National Monument - Portland Press Herald.” *Press Herald*. June 7. Accessed July 1. <http://www.pressherald.com/2017/06/07/maine-voices-lepage-misrepresented-maine-opinion-on-national-monument/>.

fact, efforts to create national parks and other large-scale federal land protection areas have traditionally faced strong opposition in rural regions. The fact that public support for federal protection reached such high levels in Maine speaks to the effectiveness of the outreach conducted.

Finally, it should be noted that the requirement to conduct adequate public outreach and stakeholder consultation does not guarantee that all parties will be satisfied with the outcome or resulting decision. Consultation and outreach is not the same as consensus-building or support. The Executive Order does not require that a majority of residents or local stakeholders support the designation. In a democratic society, dissenting views and opponents will always persist. The public outreach and stakeholder coordination efforts are not meant to silence or even sway opponents. The fact that some opponents still remain following the extensive public outreach and stakeholder coordination efforts is not an indicator of inadequacy of process by any means.

The Vermont Archaeological Society urges the Department of the Interior to consider the well-documented public outreach and stakeholder coordination activities completed ahead of the designation of Katahdin Woods and Waters National Monument as adequate.

Whether the size of Katahdin Woods and Waters meets the original objectives of the Act

The Antiquities Act states that, “The limits of the parcels shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.”

At 87,563 acres, the Katahdin Woods and Waters National Monument is the smallest of the monuments being reviewed. The national monument comprises a tiny slice of the area known as the North Woods: in fact, its acreage covers only 2.5% of the North Woods’ 3.5 million acres.⁶

When a national park was first proposed in the North Woods region in 1994, the proposal identified 3.2 million acres to comprise parklands.⁷ Since that time, the size of the proposed park (and later, monument) shrank in relation to analysis of the feasibility of land management and local stakeholder input.⁸ As late as 2015 the proposed parkland and national recreation area consisted of 150,000 acres, until it was finally resized to its 87,563 acreage.⁹ This rate of

⁶ “In Maine, Land From Burt’s Bees Co-Founder Is Declared A National Monument.” 2017. NPR.org. Accessed July 1. <http://www.npr.org/sections/thetwo-way/2016/08/24/491206413/in-maine-land-from-burts-bees-co-founder-is-declared-a-national-monument>.

⁷ News, Bangor Daily. 2017. “A Primer on the National Monument Debate from RESTORE: The North Woods to Today.” The Bangor Daily News. Accessed July 1. <http://bangordailynews.com/2016/08/23/outdoors/a-primer-on-the-national-monument-debate-from-restore-the-north-woods-to-today/>.

⁸ *Ibid.*

⁹ *Ibid.*

shrinkage attests to the considerations made in context of the language and intent of the Antiquities Act.

Additionally, the protected plots of land within the National Monument are not contiguous, implying that consideration of ownership, management, and resources on interspersed pieces of land has been made when drawing boundaries.

The Vermont Archaeological Society believes that the size of the Katahdin Woods and Waters National is consistent with the requirements and original objectives of the Antiquities Act.

Whether designated lands are appropriately classified as “historic landmarks, historic and prehistoric structures, [or] other objects of historic or scientific interest”

Although some references will refer to the North Woods of Maine as “wilderness” or “undeveloped,” the lands of the Katahdin Woods and Waters National Monument have been host to human settlement for at least 11,000 years. The designated lands contain the archaeological and historic resources as well as burial sites of these many generations of human habitation and land use, from the early Paleo-Indians to the contemporary descendants of timber loggers and mill workers.¹⁰ Documented paleontological resources also exist within the monument.¹¹

According to the Maine Historic Preservation Commission, the state’s pre-contact archaeological site inventory consists of 6,000 sites, 95% of which are habitation or workshop sites, and 95% of those being adjacent to canoe-navigable waters.¹² Even today, the East Branch of the Penobscot River is a popular destination for canoers. Indigenous people were canoeing the same waters through the modern-day Katahdin Woods and Waters National Monument for thousands of years. According to the Penobscot Nation, the East Branch of the Penobscot River and its associated watershed (including the lands and waters within the designated monument) served as important fishing areas for their ancestors, and today may play a critical role in the restoration of federally-endangered Atlantic salmon to the region.¹³ The Maine Highlands also held important lithic resources for Native peoples. Approximately 36.5 miles to the north lies the Munsungan-Chase Lake Thoroughfare Archeological District (listed on the National Register of Historic Places), a well-documented source of extremely high-quality chert that was transported and/or traded throughout the northeastern U.S. and Quebec. It is likely that other such lithic resource-related sites exist within the monument lands.

¹⁰ Pres. Proc. No. 9476, 81 FR 59121, 2016 WL 4493190(Pres.)

¹¹ *Ibid.*

¹² “Maine Historic Preservation Commission: Archaeology: Prehistoric Archaeology.” 2017. Accessed July 1. http://www.state.me.us/mhpc/archaeology/prehistoric_archaeology.html.

¹³ “Penobscot Waters.” 2017. Accessed July 1. <https://www.penobscotnation.org/departments/natural-resources/water-resources/penobscot-waters;> Pres. Proc. No. 9476, 81 FR 59121, 2016 WL 4493190(Pres.) 2016

Based upon professionally-accepted predictive models for pre-contact habitation, the lands adjacent to the East Branch of the Penobscot, the Seboeis River, and other navigable streams and tributaries would likely be considered highly sensitive (or having a high likelihood) of containing previously unidentified or unrecorded archaeological resources. Archaeology within the region has been conducted since the early 1900s with more recent (since mid-1960s) reconnaissance informing and refining the hypotheses that the predictive models rely upon.¹⁴

Contact-era, colonial, and post-colonial historic resources are plentiful within the region with historical documentation chronicling the many early conflicts with Penobscots and other members of the Wabanaki Confederacy, the settling of non-Indigenous peoples, and the industries that took root within the region.

Central to that history has been lumber, and the area is rich in historic resources that attest to its economic importance, including camps, dams, and mills. The East Branch served as an important thoroughfare for log driving, and the woods of the national monument continue to be used for logging. The nearby Patten Lumbermen's Museum chronicles this history and presents its associated immovable and movable cultural heritage resources to the public. The NPS has recently established an information center at the Museum, which will further inform the public about how the Katahdin Woods and Waters National Monument is part of the history of logging and lumber that the Patten Museum presents. We applaud these efforts.

There is an extremely high likelihood that the National Monument lands contains unidentified archaeological and historic resources. There is also an extremely high likelihood that traditional cultural properties exist within the Katahdin Woods and Waters National Monument boundaries. The conservation of these resources is of highest priority to the Vermont Archaeological Society and is in keeping with the letter and spirit of the Antiquities Act.

The Vermont Archaeological Society urges the Department of the Interior to consult with the Maine Historic Preservation Commission regarding the locations of identified archaeological sites and predictive models currently in use as applied to the national monument lands. The Vermont Archaeological Society also urges the Department of the Interior to consult with the Penobscot Nation's Tribal Historic Preservation Office with regard to the sensitivity of the lands within the national monument and known or potential traditional cultural properties. We expect that any future undertakings at the monument will strictly follow Sections 106 and 110 of the National Historic Preservation Act.

¹⁴ See Kelley, Alice Repsher. 2006. "Archaeological Geology and Postglacial Development of the Central Penobscot River Valley, Maine, USA." <http://digitalcommons.library.umaine.edu/etd/547/>.

Whether designation effects available uses of designated federal lands

The Federal Land Policy and Management Act section 102(a) (7) states “that management be on the basis of multiple use and sustained yield unless otherwise specified by law;....”.

The Katahdin Woods and Waters National Monument is quite permissive in usage of the site and its resources. For instance, hunting is allowed west of the East Branch, snowmobiling (an important recreation for locals in particular) is permitted on 22 miles of managed trails, and other recreational activities are encouraged such as fishing and ice fishing (subject to state laws), biking, canoeing, hiking, skiing, and camping.

Logging continues to contribute to Maine’s economy and living cultural heritage of the region. The Vermont Archaeological Society recognizes the importance of maintaining connections between living populations and the historic usage of lands in order to foster a sense of stewardship for archaeological and cultural resources. Currently the National Monument does not allow commercial logging operations within its lands; however, rights of ways have been maintained for timber companies on logging roads.¹⁵ Extending permissible usage of the National Monument lands for logging is one of many issues currently being considered by the Department of Interior in developing the monument’s Management Plan.¹⁶ Additionally, as the management plan is currently being developed (and not due until 2019), it is premature to issue any further judgement on the multiple-use clause of the FLPMA.

The Vermont Archaeological Society urges the DOI to carefully balance the interests of contemporary logging stakeholders with the protection of archaeological and historic resources in the management plan and to carry out a thorough environmental impact review and Section 106 review within the tracts that may host commercial logging activity. We also expect that the DOI provide for the timely identification of historic resources within the monument pursuant Section 110 of the National Historic Preservation Act, to aid in the development of the management plan and its future implementation.

Whether designation effects available uses of non-Federal lands within or beyond the monument

Designation of a national monument does not automatically trigger any permanent restrictions on use of land within or beyond a monument. Such restrictions on available uses are subject to land management plans and permitting processes. Furthermore, state laws, such as those regarding recreational snowmobiling and fishing, already affect available use. There are several competing interests of available use at stake within and in the surrounding region, especially between conservationists and recreationists who may favor tourism-related economic

¹⁵ Personal communication, Katahdin Woods and Waters National Monument office, 2 July 2017.

¹⁶ *Ibid.*

development and logging and timber companies who may favor logging-related economic activities.

Since the management plan of the monument is still being developed, it is premature to issue any judgement on this matter.

The Vermont Archaeological Society does recognize, however, that the monument, especially the parcels contiguous to Baxter State Park (containing the northern terminus of the Appalachian Trail), does extend, rather than restrict, the recreational lands and opportunities within the region in a way that can benefit visitors and local communities.

Whether other factors should be considered

As identified in 50 C.F.R. § 226.217, the Katahdin Woods and Waters National Monument contains critical habitat and spawning sites for the federally endangered Gulf of Maine Distinct Population Segment of Atlantic Salmon. The partnership between state and federal agencies, the Penobscot Nation, and non-governmental organizations has proven to be an effective, and laudable, organizational model for restoring the salmon population. Critical to the success of this partnership, however, is the conservation and management of the watershed itself. The Katahdin Woods and Waters National Monument provides an effective conservation mechanism to this end.

The Vermont Archaeological Society recognizes the environmental, cultural, and socio-economic importance of the restoration of Atlantic salmon to the Penobscot Nation, the State of Maine, and the nation itself. We urge the Department of Interior to consider these broader factors in relation to such restoration efforts when reviewing the national monument.

Concluding Remarks

The Vermont Archaeological Society recognizes the unique authority granted to the President to designate national monuments in the interest of protecting the nation's historic and cultural resources. We also recognize the longstanding legal analysis that the authority granted by the Antiquities Act does not permit the President to abolish national monuments.¹⁷ Only Congress has such power.

In the case of Katahdin Woods and Waters National Monument, several questions identified in the call for public comments were considered. Our findings are as follows:

¹⁷ 39 Op.Atty.Gen. 185 (1938); Wyatt, Alexandra. 2016. Antiquities Act: Scope of Authority for Modification of National Monuments. Congressional Research Service.

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The Vermont Archaeological Society believes that the size of the Katahdin Woods and Waters National is consistent with the requirements and original objectives of the Antiquities Act.

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Since the management plan of the monument is still being developed, it is premature to issue any judgement on the matter of available use within and beyond the monument.

The Vermont Archaeological Society does recognize, however, that the monument, especially the parcels contiguous to Baxter State Park (containing the northern terminus of the Appalachian Trail), does extend, rather than restrict, the recreational lands and opportunities within the region in a way that can benefit visitors and local communities.

The Vermont Archaeological Society recognizes the environmental, cultural, and socio-economic importance of the restoration of Atlantic salmon to the Penobscot Nation, the State of Maine, and the nation itself. We urge the Department of Interior to consider these broader factors in relation to such restoration efforts when reviewing the national monument.

Although the Vermont Archaeological Society finds that the Executive Order 13792 is unnecessary, we welcome this opportunity to comment upon the review of the Katahdin Woods and Waters National Monument and its importance to the protection and promotion of our nation's distinctive and irreplaceable archaeological and historic resources.