

# CONSERVATION

## THE ORIGIN OF THE NATIONAL FOREST SYSTEM: A Long and Winding Road of Laws

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The National Forests, managed by the U. S. Forest Service, represent much of the remaining prime habitats for wildlife in the United States—particularly for big-game species. These lands are open to hunting under

regulations of the individual states where they are located. These hunting grounds, collectively owned by the citizens of the United States, become ever more valuable to hunters as private lands are further subdivided, given over to development for human occupancy, and in that process, become less suitable as wildlife habitat for big game and increasingly inaccessible to hunters.

How the National Forests came into being, and how the direction for their management evolved, is a fascinating and improbable story. Three federal laws, passed over a 63-year period, yield much of the answer to the puzzle.

The Public Domain (lands owned by the government) had been dramatically changed by human settlement since the middle of the 19<sup>th</sup> century. The Preemption Act of 1841 provided that a settler could claim not more than 160 acres of “nonmineral” land with the provision that it must be lived upon and purchased for \$1.50 per acre.

The Homestead Act of 1862 has been called “the most important land law ever passed.” Its purpose was to encourage settlement as opposed to raising revenue. Any citizen could “earn” 160 acres of the Public Domain by paying a one-time fee of some \$16.00 and living on that land for five years. Or, title could be obtained by paying a minimum payment of \$1.25 per acre after a period of 14 months of occupancy.

The Mineral Land Act of 1866 allowed exploration and development of Public Domain lands for mineral extraction. This was followed by the U.S. Mining Laws (Public Domain Lands) in 1897 that facilitated claims for lands deemed valuable for extraction of minerals on terms that

could be described as exceedingly generous. This Act has been subject to serious abuse.

In 1878, the Timber and Stone Act was passed, which allowed the sale of 160 acres of Public Domain Lands described as “nonmineral land chiefly valuable for timber and stone.” This sale had to be to “a single purchaser” and the price was \$2.50 per acre. Purchasers had to swear that the land would not be passed to another person.

Most historians have concluded these laws, in their various combinations, were open to abuse and resulted in raids on the Public Domain carried out through various innovative and nefarious means and methods while, in general, the Department of Interior turned a blind eye. Enforcement of laws was sadly lacking. An example of such chicanery was the “Yard Group” claims made in California under the Mineral Land Act of 1866. A quarter of a million acres of Public Domain Lands in California were successfully claimed that, supposedly just by chance, that stretched along the exact line of the Western Pacific Railroad Survey across the Sierras.

In spite of such abuses, as the 19<sup>th</sup> century came to an end, most of the lands in the western territories of the United States remained in federal ownership. Most of the lands were judged to be of less than marginal value for agriculture, or were in the process of being settled by homesteaders. In general, forested uplands and drier grasslands were not attracting homesteaders—at least not yet. The idea of applied forestry, aimed at a sustainable production of wood products, was in its infancy or conceptual stages in the United States. Forests in the Public Domain were, in general, being cut without regulation to provide wood products for an expanding nation with little thought to the future of those lands.

In the early 1870s, several bills were introduced in Congress with the intent of preserving some of the forest lands in the Public Domain in public ownership. Those early efforts failed. In 1899, Carl Schurz, a German immigrant and Civil War hero, was Secretary of the Interior and a champion for forestry and protection of forest lands in the Public Domain. In looking back, he saw “...a public opinion, looking with indifference on this wanton, barbarous, disgraceful vandalism; a spendthrift people recklessly wasting its heritage; a Government careless of the future and unmindful of a pressing duty.” He seemed dismayed when he said,

“But, I find myself standing almost solitary and alone. Deaf was Congress, and deaf the people seemed to be.”

Then, in 1891, things began to change with the passage of the Creative Act. It was described as being “For the Repeal of the Timber and Stone Act and for Other Purposes.” It authorized the creation of “Forest Reserves” by proclamation of the president. That power granted to the president slipped by without notice of Congress.

The giants of the building forestry movement in the United States quickly grasped the opportunity provided by the amendment. That story was well related by Gifford Pinchot, who would emerge (mostly through his own efforts) as the recognized leader of the forestry movement in the United States. The story was detailed in his biography titled, *Breaking New Ground*.

In 1896, Secretary of Interior Hoke Smith wrote to Dr. Wolcott Gibbs, head of the National Academy of Sciences, requesting that the Academy establish a National Forest Commission. Dr. Gibbs agreed and gave the newly established group the following questions to answer:

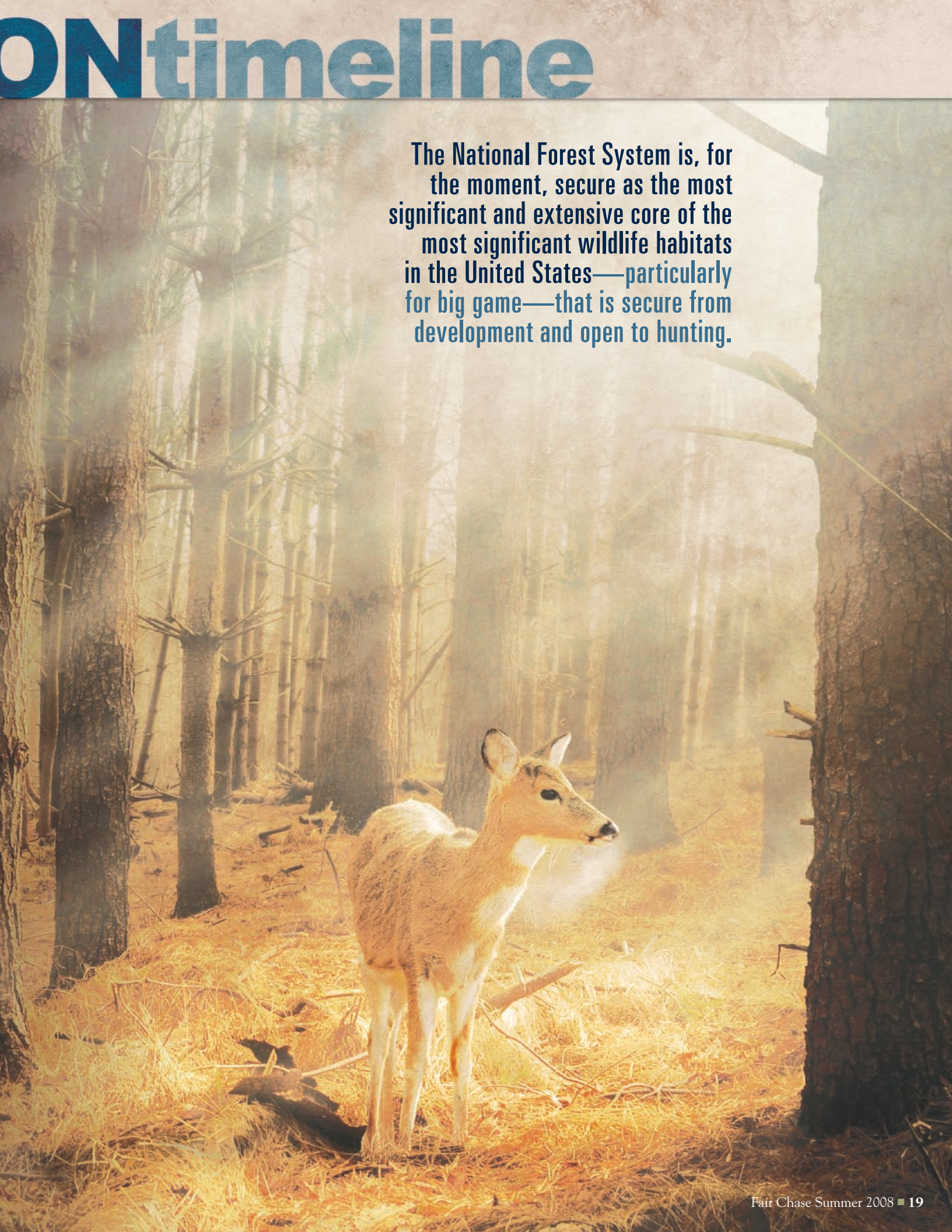
- What should be the ultimate of ownership of the Public Domain?
- How should government-owned forests be administered?
- How would the government provide for and secure a “continuous, intelligent, and management of the Public Domain?”

Charles S. Sargent, professor of Arboriculture at Harvard, was chairman. Other members included Alexander Agassiz, curator of the Harvard Museum of Comparative Zoology; Professor William Brewer of Yale; Wolcott Gibbs, physicist and Member ex-officio; Arnold Hague, geologist; and Gifford Pinchot, forester. Pinchot was to carry out the primary work of the commission relative to field work. He hired, out of his own pocket, another trained forester, Harry Graves.

Between 1891 and 1897, several “Forest Reserves” were created out of the Public Domain by presidential proclamation. But proponents for an enlarged system of such reserves were hard at work on much bigger plans. Then, using existing authorities, President Grover Cleveland, in celebration of Washington’s Birthday in 1897, created thirteen new Forest Reserves scattered within 17 states across the West

# ON timeline

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which totaled 21,279,840 acres and more than doubled the acreage in Forest Reserves. This was done upon the recommendation of the National Forest Commission.

That act by President Cleveland set off a tirade among Western senators. Those senators quickly put a bill on the president's desk that would allow presidents to retain or cancel any part of any Forest Reserve. The upshot was that what was done by one president relative to Forest Reserves could be undone by a subsequent president. Evidently, President Cleveland was insulted and, as result, vetoed the bill. That veto was upheld. Cleveland was shortly thereafter succeeded by President McKinley (with Theodore Roosevelt as vice-president).

Attacks on the Forest Reserves continued, and it seemed inevitable that Congress, led by senators from Western states, would renew their attacks. Clever compromise saved the day. Senator Richard Pettigrew of South Dakota introduced an amendment to the Sundry Civil Bill that would delay the establishment of Cleveland's reserves for a year and allow claims under the auspices to continue during that period. Cleveland pocket vetoed the bill.

The National Forest Commission submitted, six months late, its final report on May 1, 1897. It said, in part, "These great bodies of reserved lands cannot be withdrawn from all occupation and use. They must be made to perform their part in the economy of the Nation..."

An amendment to developing legislation (the Organic Administration Act of 1897) allowed for surveying the Forest Reserves, delaying the active date of establishment of the Forest Reserves established by Cleveland to March 1, 1898, and gave the Secretary of Interior responsibility to protect and administer the Reserves. The delay in foreclosing claims in the proposed reserves was a necessary standard operating procedure to placate western Senators. The punch line was clear authorization for the president, through simple proclamation, to create Forest Reserves out of Public Domain lands "...in any part of public land, wholly or in part covered with timber or undergrowth, whether of commercial value or not..."

And further, it finally, clearly described the purposes of the Forest Reserves.

"...No national forest shall be established, except to improve and protect the forest within the boundaries, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber..."

Now, the champions of the "national forests" quickly moved to exploit their victory. The May 1897 report from the National Forest Commission relative to "a rational forest policy for the forested lands of the United States" was submitted to Secretary of Interior Hoke Smith. It recommended that reserved lands should be managed so as to contribute to the "wealth and prosperity" of the nation. They also recommended that protection and management be placed in the hands of the U. S. Army. The National Forest Commission, having completed its work, disbanded.

There was a very small Division of Forestry established in the Department of Agriculture in 1880. It was largely ineffective, limiting its activities to the publication of various bulletins for the use of private landowners, until the appointment of Gifford Pinchot as director on July 1, 1898. Oddly, the government's foresters were located in the Department of Agriculture

year in office (September 14, 1901) and was succeeded by Roosevelt. Roosevelt, in his first message to Congress, strongly supported forestry and what would come to be known as "conservation." He said, in his first address to Congress, "The Forest Reserves will, inevitably, be of still greater use in the future... Additions should be ... whenever practicable, and their usefulness increased by ... businesslike management."

In the meantime, Pinchot was working steadily to have the Forest Reserves placed under his direction in an expanded Bureau of Forestry to be shifted from the Department of Interior to the Department of Agriculture. He believed the Interior's management to be inept, corrupt, and careless. He remarked that, "...the Interior Department's field force...was enough to make the angels weep." In the meantime he managed to arrange assignments to study the management, such as it was, of the Forest Reserves. And, simultaneously, he was methodically building up a staff in the Bureau of Forestry that would be ready to manage the Forest Reserves when the time would come that he was in charge. That staff, in large measure, was to be the product of the School of Forestry recently established by his family at Yale.

Roosevelt and Pinchot agreed upon what would come. But internal wrangling between the secretaries of Agriculture and Interior Departments delayed achievement of their plans. Roosevelt, prompted by Pinchot, asked for help from Congressman John Lacey, chair of the House Committee on Public Lands, and Dr. C. Hart Merriam, chief of Biological Survey in the Department of Agriculture. Roosevelt, Pinchot, Lacey, and Merriam were well acquainted through membership in the Boone and Crockett Club.

Lacey introduced two bills aimed at transfer of the Forest Reserves and their management to the Forestry Bureau in the Department of Agriculture. Provisions were made for "game and fish protection." When the bills came out of committee conferences, a poison pill had somehow been inserted. "Hereafter no forest reserve... shall be created, enlarged, or extended, without... approval of the Governor of such State(s)..." Most governors of the Western public land states opposed both the existence of Forest Reserves already established and the creation of any additional Forest Reserves. Fortunately, the bills failed in the House.

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dealing with private landowners, while the Forest Reserves were in the Department of Interior and overseen by men with no forestry training whatsoever.

During this period, Pinchot cultivated a growing friendship with Vice-President Theodore Roosevelt who, as governor of New York, had exhibited a fascination with and strong support for forestry in the state's forest and watershed reserves. Pinchot attributed his highly prized membership in the Boone and Crockett Club to Theodore Roosevelt, who sponsored him. President McKinley was assassinated during his first

Then, on February 1, 1905, the long sustained political maneuvering of Roosevelt, Pinchot, Lacey, and Merriam paid off. The Transfer Act, only one-and-a-half pages long, was signed into law. Forest Reserves became National Forests to be managed by a new agency—the U. S. Forest Service in the Department of Agriculture. The text of the Act quoted from a letter from Secretary of Agriculture James Wilson to the new Chief of the Forest Service Gifford Pinchot. Pinchot had composed the letter. It read in part:

“In the administration of forest reserves ... all land is to be devoted to its most productive use for the permanent good of the whole people.... All... resources... are for use... in a... businesslike manner... The permanence of the resources... is... indispensable to continued prosperity... (P)olicy... will... be guided by... bearing in mind that... conservative use... in no way conflicts with their permanent value... Questions will be decided upon local grounds... (W)here conflicting interests must be reconciled, the question will... be decided from the standpoint of the greatest good for the greatest number in the long run.”

The newly minted U. S. Forest Service began a 103-year-long journey to date.

In 1905, the National Forests were located entirely in the “public land states” in the West. In 1911, the Weeks Law, passed during the administration of President William Howard Taft, provided authority for the Forest Service to purchase lands east of the Mississippi River to be included in National Forests. The intent was to restore forests to areas laid bare and, commonly and ill-advisedly converted to agriculture to protect critical watersheds and, ultimately, to increase timber supplies for the nation. By the early 1930s, boundaries of 24 National Forests had been mapped and land purchases within those boundaries were well underway. National Forests now existed across the length and breadth of the United States.

As the U. S. Forest Service and the conservation movement matured, conflicts reemerged and festered between the Departments of Interior and Agriculture. Agencies in the Department of the Interior coveted lands under the jurisdiction of the Forest Service. The Park Service made successful raids to convert National Forests to National Parks. The Fish and Wildlife Service made similar raids to attain National Wildlife Refuges. The Forest

Service’s mission laid out in the Organic Administration Act was limited to forest protection, watershed protection, and production of a sustained supply of timber. Recreation and fish and wildlife (though obvious ongoing responsibilities) were not specifically mentioned.

Those circumstances led the Forest Service to seek legislation that would clearly legitimize management of National Forests for recreation, fish and wildlife, and range (livestock grazing). That was accomplished with the passage of the, one page, Multiple Use-Sustained Yield Act of 1960.

“Multiple-Use” was defined as “... (T)he management of all of the various renewable surface resources of the National Forests so that they are utilized in the combination that will best meet the needs of the American people ... not necessarily in combination of uses that will give the greatest dollar return or the greatest unit output.” Authority to cooperate with “interested State and local governments” was included. In the case of fish and wildlife matters, this merely blessed in law standard and ongoing procedures and established “budget line items” that legitimized expenditures.

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States—particularly for big game—that is secure from development and open to hunting. This story describes the laws that led the Forest Service and the National Forests to this point. It is a story of the ultimately successful persistence of a handful of early heroes in the conservation movement who struggled successfully against the coarse political grain. The 154 National Forests that exist today are a tribute to their dedication and persistence, lands of all the people where hunting, for all the people, remains part of the fabric.

And we can be proud that early members of the Boone and Crockett Club—Gifford Pinchot, Theodore Roosevelt, John Lacey, C. Hart Merriam, Harry Graves, and Arnold Hague—played key roles. ■

**Primary sources include:**

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