

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

FRANK GREEN and ROBERT CONRAD,

Plaintiffs,

v.

JOSEPH R. BIDEN JR., in his official
capacity as President of the United States;
GINA M. RAIMONDO, in her official
capacity as Secretary of Commerce;
DEB HAALAND, in her official capacity as
Secretary of Interior; and RICHARD W.
SPINRAD, in his official capacity as Under
Secretary of Commerce for Oceans and
Atmosphere and NOAA Administrator,

Defendants.

No. 1:24-cv-1975

**PLAINTIFFS' COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF AND
PETITION FOR REVIEW**

INTRODUCTION

1. Plaintiffs Frank Green and Robert Conrad bring this action challenging the Presidential Proclamation of Defendant Joseph R. Biden, Jr., designating the Northeast Canyons and Seamounts Marine National Monument (Monument Designation) under the Antiquities Act of 1906 (Antiquities Act or Act) and, in the alternative, challenging National Marine Fisheries Service's (Service) Prohibition of Commercial Fishing in the Northeast Canyons and Seamounts Marine National Monument (Seamounts Regulation). *See* Presidential Proclamation No. 10287, 86 Fed. Reg. 57,349 (Oct. 8, 2021); Magnuson-Stevens Act Provisions, 89 Fed. Reg. 12,282 (Feb. 16, 2024).

2. Plaintiffs are commercial fishermen with over 90 years combined experience fishing in the northeast Atlantic. They have spent their entire adult lives earning their living from the water.

3. But on October 8, 2021, the President issued Proclamation 10287 under the Antiquities Act, which relied on and incorporated Proclamation 9496's designation of 5,000 square miles (3.2 million acres) of the Atlantic Ocean's "Exclusive Economic Zone" (EEZ)—an ocean belt beyond the territorial seas between 12 and 200 nautical miles off the Nation's coasts. The Monument Designation banned most commercial fishing within the monument area's waters.

4. Under the Proclamation, Plaintiffs will be subject to criminal fines and jail time if they fish within the designated area, and the Proclamation eliminates valuable fishing grounds that Plaintiffs have fished for decades. By reducing the areas open to fishing, the prohibition also requires Plaintiffs to expend additional fuel costs to travel to other fishing locations, cutting deep into Plaintiffs' narrow profit margins.

5. Relying on the President's commercial fishing ban within the Monument Designation as "existing law," the Service (which is under the National Oceanic and Atmospheric Administration (NOAA) within the Department of Commerce) issued the Seamounts Regulation seeking to incorporate the commercial fishing ban into the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSA).

6. This agency action triggers civil penalties for violations, including fines up to \$100,000 per day, loss of fishing permits, forfeiture of vessels, and liens on the boats of fishermen who violate the ban. *See* 16 U.S.C. §§ 1857, 1858.

7. The Service relied solely on Proclamation 10287 as its source of law to ban all fishing within the Monument Designation, ignoring the MSA requirements that the Service must satisfy before banning fishing. 16 U.S.C. § 1853(b)(2)(C).

8. Both the President's Monument Designation and the Seamount Regulation are unlawful.

9. Proclamation 10287 exceeds the President's authority under the Antiquities Act and violates the Constitution's separation of powers.

10. First, the Act delegates to the President limited authority to designate national monuments on "land" owned or controlled by the Federal Government. 54 U.S.C. § 320301(a). But Proclamation 9496, incorporated by Proclamation 10287, designated a national monument in an area of the Atlantic Ocean that is not on "land" under the Act. When Congress enacted the Antiquities Act in 1906, an ocean's seabed or floor was not understood to be "land" as that term is used within the statute.

11. Second, the Act also limits the President's authority to declare national monuments on lands "owned or controlled by the Federal Government." *Id.* Yet the portion of the Atlantic Ocean within the EEZ is not "owned or controlled by the Federal Government" under the Act's ordinary meaning. The Federal Government enjoys limited authority to regulate within the EEZ, which is not "control" under the Act.

12. Third, the President may only designate as national monuments “historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest[.]” *Id.* But “ecosystems” and the “biodiversity” contained within them are not “objects” that he can designate as, or as part of, a national monument.

13. Fourth, the Act delegates to the President the authority to reserve “parcels of land” as part of a national monument only where those lands are the “smallest area compatible with the proper care and management of the objects to be protected.” *Id.* § 320301(b). Because “ecosystems” and the “biodiversity” contained within them are not “objects” protectable under the Antiquities Act, the Monument Designation’s area is not, and cannot be, “confined to the smallest area compatible with the proper care and management of the objects to be protected.”

14. Fifth, even if Proclamation 10287’s Monument Designation is within the President’s authority, Congress did not delegate to the President the power to ban commercial fishing under the Antiquities Act. The Act’s delegation limits the President’s authority to declare a national monument and to reserve parcels of lands to be part of a monument; it does not give the President authority to make legislative rules for the “proper care and management” of a national monument.

15. The Service also cannot ban commercial fishing within the area covered by Proclamation 10287 as it has attempted to do here. The Service’s sole rationale for implementing the commercial fishing ban into the MSA relies on an ultra vires presidential action, what it terms an existing “law.” Moreover, before the Service may ban commercial fishing, it must follow the legislatively prescribed procedures

Congress mandated under the MSA, and the agency possesses no authority to ban fishing under the Proclamation itself.

16. For these reasons, Plaintiffs seek a declaration that Proclamation 10287's Monument Designation (and the incorporated Proclamation 9496) are ultra vires and violate the Constitution's separation of powers and an injunction preventing Defendants from enforcing these unlawful actions. They also seek a declaration that the Seamounts Regulation exceeds the Service's authority, is ultra vires, and request the Seamounts Regulation be set aside.

JURISDICTION AND VENUE

17. This Court has jurisdiction under 28 U.S.C. § 1331 (subject matter); § 2201 (declaratory relief); and § 2202 (injunctive relief).

18. This Court has jurisdiction under 16 U.S.C. §§ 1855(f), 1861(d), to review the Service's Seamounts Regulation.

19. This Court can award costs and attorneys' fees under 28 U.S.C. § 2412.

20. Venue is proper in this Court under 28 U.S.C. § 1391(e)(1) because Mr. Green resides in this judicial district, a substantial part of the events giving rise to the claim occurred within this judicial district, and no property is involved in the action.

PARTIES

Plaintiffs

21. Plaintiff Frank Green is a commercial fisherman who resides in the State of New York and has plied his trade in the Atlantic Ocean's waters for 46 years.

22. He owns two commercial permitted fishing vessels, the *Bookie* and the *Hookie*. He fishes for golden tilefish with the *Bookie*, while the *Hookie* is a Downeast-style boat mostly used for recreational fishing. Mr. Green hopes to commercial fish with the *Hookie* as well this year.

23. He fishes in the Atlantic Ocean fisheries including—before Proclamation 9496's ban on commercial fishing—within the Monument Designation's waters.

24. Proclamation 10287's ban on commercial fishing within these waters has limited, and will continue to limit, Mr. Green's ability to participate in the fishery within the Monument Designation's waters.

25. He would fish within the Monument Designation's waters if it were not forbidden by law.

26. Plaintiff Robert Conrad is a commercial fisherman who resides in the State of Vermont and has commercially fished for 45 years.

27. He owns one commercial permitted fishing vessel, the *Gabby G*, and he trawl fishes for whiting, squid, butterfish, and mackerel.

28. He fishes in the Atlantic Ocean fisheries including—before Proclamation 9496 and 10287’s ban on commercial fishing—within the Monument Designation’s waters.

29. He currently fishes up to and around the monument.

30. He would fish within the Monument Designation’s waters if it were not forbidden by law.

31. Proclamation 10287’s ban on commercial fishing within these waters has limited, and will continue to limit, Mr. Conrad’s ability to participate in the fishery within the Monument Designation’s waters.

Defendants

32. Defendant Joseph R. Biden Jr. is the President of the United States. He is sued solely in his official capacity. In that capacity, he issued Proclamation 10287, which is one of the federal actions challenged in this suit.

33. Defendant Gina Raimondo is the Secretary of the United States Department of Commerce and is charged with administering Proclamation 10287. She is sued solely in her official capacity.

34. Defendant Deb Haaland is the Secretary of the United States Department of Interior and is charged with administering Proclamation 10287. She is sued solely in her official capacity.

35. Defendant Richard Spinrad is the Under Secretary of Commerce for Oceans and Atmosphere and the NOAA Administrator. In that capacity he issued the Service’s Prohibition of Commercial Fishing in the Northeast Canyons and

Seamounts Marine National Monument, which is one of the federal actions challenged in this suit. He is sued solely in his official capacity.

LEGAL BACKGROUND

The Antiquities Act

36. Congress's goal in enacting the Antiquities Act was to establish a method for protecting ancient Native American archeological sites on federal lands from theft and destruction. See Ronald F. Lee, *The Antiquities Act, 1900-06, in The Story of the Antiquities Act* (1970), <https://www.nps.gov/articles/lee-story-antiquities.htm>. Congress thus delegated to the President limited authority to establish national monuments on certain lands owned or controlled by the Federal Government.

37. The Antiquities Act's text can be broken down, as relevant here, into a delegation with five distinct limits on the President's power to declare monuments.

38. First, these objects must be "situated on land" as that term is used under the Antiquities Act. 54 U.S.C. § 320301(a). Consistent with Congress's purpose of protecting historic Native American artifacts, this phrase includes Native American lands and federal territories. Most of the Southwest in 1906, where many objects of antiquity were located, was Native American land or federal territory.

39. Second, this "land" must be "owned or controlled by the Federal Government." *Id.* The Antiquities Act thus does not authorize the President to designate monuments on privately owned land. Nor may a monument be designated beyond the Nation's territory, including the high seas.

40. Third, the President can declare as national monuments only “historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest.” 54 U.S.C. § 320301(a).

41. Fourth, the President has the authority to reserve public lands as a national monument, but those lands must be “confined to the smallest area compatible with the proper care and management of the objects to be protected.” *Id.* § 320301(b).

42. Finally, the statute directs the agencies that manage a monument, not the President, to issue uniform rules and regulations to carry out the Act’s purposes. *Id.* § 320303. In other words, the Act limits the President’s authority to declare only what will be a national monument and what land is required for the proper care and management of the objects to be protected. *See id.* § 320301(a)-(b). Congress authorized certain agency heads to determine how the objects are to be protected through regulations. *See id.* § 320303.

Federal Authority Over the Exclusive Economic Zone (EEZ)

43. The Federal Government enjoys extensive regulatory authority over the territorial seas—the waters from the coastline out 12 miles from the coast. *See* Presidential Proclamation 5928, Territorial Sea of the United States of America, 54 Fed. Reg. 777 (Dec. 27, 1988).

44. Beyond the territorial seas, the Federal Government has limited authority up to 200 miles from the coast, in the EEZ. *See* 48 Fed. Reg. 10,605 (Mar. 10, 1983). Included in this limited authority is the power to “take limited additional steps

to protect the marine environment,” but this power does not give the Federal Government new authority over “the continental shelf, marine mammals, and fisheries.” Statement on United States Oceans Policy, 1 Pub. Papers of Ronald Reagan at 380 (Mar. 10, 1983). Limits on this power have been recognized by the President, Congress, and international law. *See id.*; 16 U.S.C. § 1801(c)(1); Restatement (Third) of Foreign Relations Law § 514 cmt. c (1987); The United Nations Convention on Law of the Sea art. 58 § 2.

Federal Regulation of Ocean Fisheries

45. In 1972, Congress adopted the National Marine Sanctuaries Act, which aims to protect sensitive areas in the EEZ’s waters when the United States has the power to do so. *See* 16 U.S.C. §§ 1431-1445b. This statute permits the Secretary of Commerce to designate marine sanctuaries within the EEZ, which are governed by Regional Fishery Management Councils under the MSA and can regulate fishing within the sanctuaries. 16 U.S.C. §§ 1433-1434. The statute encourages all public and private uses of the resources in a marine sanctuary that are compatible with the sanctuary’s protection. But the Federal Government’s regulatory authority under the statute is limited, because it covers waters beyond the territorial seas. *See* 16 U.S.C. § 1435(a).

46. In 1976, Congress enacted the MSA. 16 U.S.C. § 1801, *et seq.* This is the primary law governing fisheries management in the EEZ. The statute is administered by eight regional fishery management councils, which must include representatives of federal and state agencies as well as the fishing industry.

47. Unlike the Antiquities Act, the National Marine Sanctuaries Act and the MSA refer to the “territorial seas” and the “EEZ,” rather than “lands owned or controlled” by the Federal Government. *See* 16 U.S.C. § 1437(k); 16 U.S.C. § 1801, *et seq.* Together, these statutes tailor the amount of limited regulatory authority the Federal Government enjoys over the environment within the EEZ.

48. Under the MSA, the regional councils work with the Service to assess fisheries’ stock, set catch limits if necessary, regulate fishing gear, and produce fishery management plans, which include the regulations for each fishery, “based upon the best scientific information available.” *Id.* § 1851(a); § 1852(h). These plans are then promulgated by the Service as final rules after notice and comment. *Id.* § 1854.

49. These plans, and then the Service’s regulations, *may* ban all commercial fishing in specific areas for a limited time, after satisfying certain requirements. 16 U.S.C. § 1853(b)(2)(A). The regional councils and the Service must ensure that any fishing ban

- (i) is based on the best scientific information available;
- (ii) includes criteria to assess the conservation benefit of the closed area;
- (iii) establishes a timetable for review of the closed area’s performance that is consistent with the purposes of the closed area; and
- (iv) is based on an assessment of the benefits and impacts of the closure, including its size, in relation to other management measures (either alone or in combination with such measures), including the benefits and impacts of limiting access to: users of the area, overall fishing activity, fishery science, and fishery and marine conservation[.]”

Id. § 1853(b)(2)(C).

50. Since Congress has explicitly given the Service legislatively prescribed duties over how to ban commercial fishing and the Service possesses no other

authority to ban fishing, it thus cannot execute a ban without following the MSA's legislatively mandated procedures.

FACTUAL ALLEGATIONS

Georges Bank Fishery

51. The Georges Bank is an elevated area of sea floor off the eastern seaboard that separates the Gulf of Maine from the Atlantic Ocean.

52. For centuries, the Georges Bank has supported lucrative fisheries. The iconic fishing communities of New England and throughout the East Coast sprang up because of the value of these fisheries. Today, this area still supports significant fisheries for various species of fish and shellfish. Before Proclamation 10287's ban on commercial fishing, these fisheries provided an important, and primary, source of income and employment for fishermen throughout the northeast, including Plaintiffs Mr. Green and Mr. Conrad.

53. Like much of the continental shelf off the United States' East Coast, the Georges Bank's edge is pockmarked by underwater canyons, and beyond the Bank lie several seamounts.

54. Deep-sea coral grows in and on the canyons and seamounts. Fishermen are careful to avoid areas where coral is present because it severely damages their gear, costing the fishermen more than any benefit that could be obtained from fishing in the area.

55. The New England Fishery Management Council manages the Georges Bank fishery, along with the Service, under the MSA, while the Atlantic States Marine Fisheries Commission similarly manages lobster fishing in the fishery. Since the MSA was enacted, the Councils have worked with industry, state and Federal Government, and nongovernmental organizations to improve sustainability of the fishery, including regulation of equipment and catch limits.

**President Obama Establishes the Northeast
Canyons and Seamounts Marine National Monument:
Presidential Proclamation 9496**

56. In 2016, President Obama issued a proclamation declaring the designation of the Northeast Canyons and Seamounts Marine National Monument. *See* Presidential Proclamation No. 9496, 81 Fed. Reg. 65,161 (Sept. 15, 2016) (Ex. A).

57. The proclamation described the monument as consisting of two units: a Canyons Unit that included three large and two small underwater canyons covering nearly 1,000 square miles (around 640,000 acres) of ocean, and a Seamounts Unit that included four seamounts (underwater mountains) covering nearly 4,000 square miles (around 2.56 million acres) of ocean. 81 Fed. Reg. at 65,161–62.

58. The below image depicts the Monument Designation.

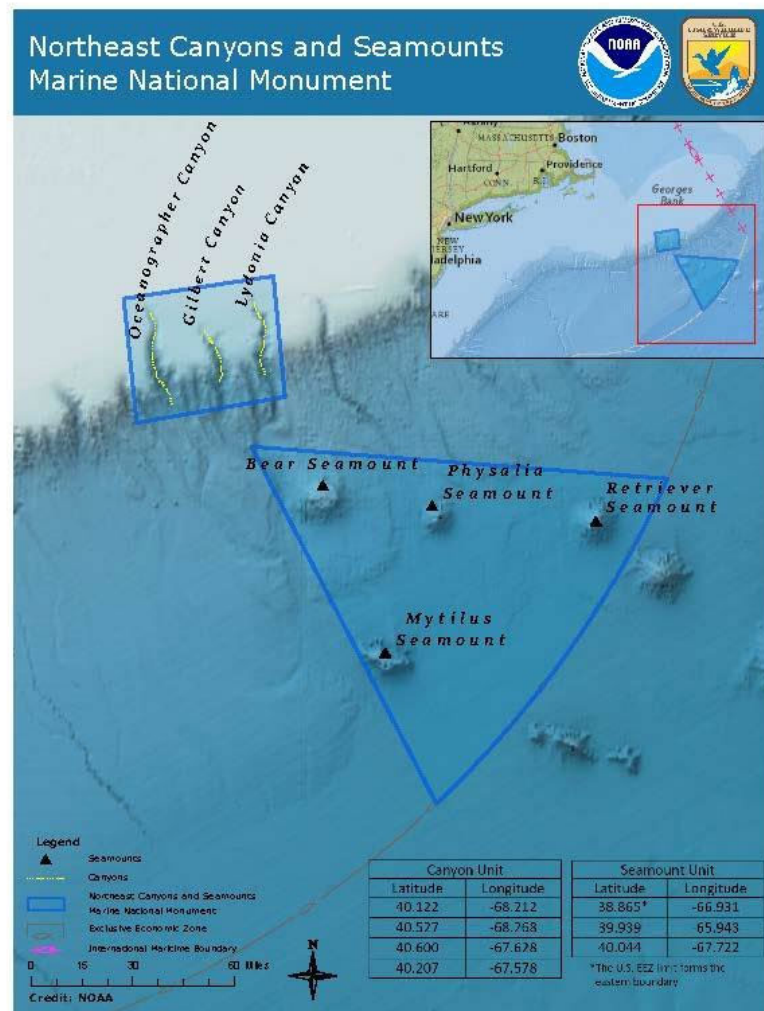


Fig. 1: Map of Northeast Canyons and Seamounts Marine National Monument
Credit: NOAA, <https://www.fisheries.noaa.gov/new-england-mid-atlantic/habitat-conservation/northeast-canyons-and-seamounts-marine-national>.

59. The proclamation asserted that the canyons and seamounts, and the natural resources and ecosystems in and around them, are “objects of historic and scientific interest” justifying the monument’s designation. 81 Fed. Reg. at 65,161.

60. The proclamation noted that deep-sea corals live in the canyon and on the seamounts and form the foundation of a deep-sea ecosystem, which is home to

many types of fish, sharks, whales, turtles, and many highly migratory fish. 81 Fed. Reg. at 65,162–63.

61. The proclamation gave no factual justification for why this huge section of the ocean is “land owned or controlled” by the Federal Government. Instead, it simply asserted that protecting the marine environment is in the public interest. 81 Fed. Reg. at 65,163.

62. The proclamation likewise failed to explain why this roughly 5,000 square mile (3.2 million acre) area is the smallest area compatible with protecting the monument. *See* 81 Fed. Reg. at 65,163.

63. Nor did the proclamation provide any factual justification, other than conclusory statements, to show how commercial fishing will degrade the canyons and seamounts or the ecosystems within the monument’s boundaries. *See* 81 Fed. Reg. at 65,162-63.

64. The proclamation divided the authority to manage the monument between the Secretaries of Commerce and Interior. The Secretary of Commerce, through the Service, was tasked with managing activities and species within the monument. The Secretary of Interior was tasked with managing the area under her department’s statutory authorities. Together, the Secretaries were directed to prepare a joint management plan within three years and promulgate regulations to protect the monument. 81 Fed. Reg. at 65,164.

65. The proclamation specifically directed the Secretaries to prohibit, among other things, the taking or harvesting of any living or nonliving resources

within the monument and commercial fishing or the possession of commercial fishing gear. 81 Fed. Reg. at 65,164–65.

66. The proclamation also allowed the Secretaries, according to their unconstrained discretion, to permit certain activities. These included research and scientific exploration; recreational fishing; commercial fishing with some gear types for red crab, Jonah crab, and lobster, but only for the next seven years; other activities that have no effect of any resource within the monument; and the construction and maintenance of underwater cables. 81 Fed. Reg. at 65,165.

67. Proclamation 9496’s prohibition against all commercial fishing except for lobster and red crab was to be effective in November 2016.

**President Trump Modifies the Northeast Canyons and Seamounts
Marine National Monument and Lifts the Commercial Fishing Ban:
Proclamation 10049**

68. Reversing course and giving fishermen some relief, in 2020 President Trump issued a proclamation, “Modifying the Northeast Canyons and Seamounts Marine National Monument,” rescinding the commercial fishing ban within the 2016 proclamation. *See* Presidential Proclamation No. 10049, 85 Fed. Reg. 35,793 (June 5, 2020) (Ex. B).

69. Proclamation 10049 declared that some of the marine resources identified in Proclamation 9496 are not unique to the monument, are not of such scientific interest they merit additional protection, and are protected by other federal laws regulating commercial fishing. 85 Fed. Reg. at 35,794.

70. Proclamation 10049 also specifically found that the “highly migratory” species are “not unique to the monument,” and that these species are already

regulated by a “host of other laws enacted after the Antiquities Act . . . both within and outside the monument.” 86 Fed. Reg. at 35,794.

President Biden Redesignates the Northeast Canyons and Seamounts Marine National Monument and Reinstates the Commercial Fishing Ban: Proclamation 10287

71. A little over a year later, President Biden issued Proclamation 10287, which incorporated Proclamation 9496’s designation of the Northeast Canyons and Seamounts Marine National Monument and reinstated the commercial fishing ban within the Monument Designation. *See* Presidential Proclamation No. 10287, 86 Fed. Reg. 57,349 (Oct. 8, 2021) (Ex. C).

72. Like Proclamation 9496, Proclamation 10287 provided no factual justification for why this huge section of the Atlantic Ocean is on “land owned or controlled” by the Federal Government.

73. Like Proclamation 9496, Proclamation 10287 asserted that the canyons and seamounts, and the “deep-sea, pelagic, and other marine ecosystems they support, and the biodiversity they contain,” are “objects of historic and scientific interest” justifying the Monument Designation and its area. 86 Fed. Reg. at 57,349.

74. Proclamation 10287 specifically cited the “need to protect the canyons, seamounts, and the attendant deep-sea, pelagic, and other marine ecosystems” as justification for the Monument Designation’s size as the “smallest area compatible with the proper care and management of the objects of historic and scientific interest designated for protection[.]” 86 Fed. Reg. at 57,351.

75. The Proclamation’s factual justifications, however, did not include an analysis or any other supporting evidence, other than conclusory statements, for why

the Monument Designation's boundaries require approximately 5,000 square miles of Atlantic Ocean to protect the canyons, seamounts, and ecosystems as part of the national monument.

76. The Proclamation's factual justifications also do not include an analysis or any other supporting evidence, other than conclusory statements, for how commercial fishing will degrade the canyons and seamounts or the ecosystems within the Monument Designation's boundaries. *See* 86 Fed. Reg. at 57,351.

77. Proclamation 10287 divides the authority to manage the monument between the Secretaries of Commerce and Interior. The Secretary of Commerce, through the Service, is tasked with managing activities and species within the monument. The Secretary of Interior is tasked with managing the area under its statutory authorities. Together, the Secretaries were directed to prepare a joint management plan by September 15, 2023, and to promulgate regulations for the proper care and management of the monument. 86 Fed. Reg. at 57,352.

78. Proclamation 10287 prohibits or phases out commercial fishing within the Monument Designation's waters. 86 Fed. Reg. at 57,351–52.

79. The Proclamation gives warning to “all unauthorized persons not to appropriate, excavate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any lands thereof.” 86 Fed. Reg. at 57,353.

80. The Proclamation also includes a severability clause: “If any provision of this proclamation, including its application to a particular parcel of land, is held to

be invalid, the remainder of this proclamation and its application to other parcels of land shall not be affected thereby.” 86 Fed. Reg. at 57,353.

81. Proclamation 10287’s ban against all commercial fishing in the area except for lobster and red crab was to be effective on October 18, 2021.

**The Service Issues a Regulation Under the MSA Banning
All Commercial Fishing Within the Monument Designation**

82. On February 16, 2024, the Service issued the Seamounts Regulation. 89 Fed. Reg. 12,282. The Service, however, did not follow the procedures under Section 1853(b)(2)(C) of the MSA, but relied solely on Proclamation 10287 as its purported authority to ban commercial fishing. 89 Fed. Reg. at 12,284, 12,286.

83. The Service claimed that it “ha[d] no discretion” in deciding to ban commercial fishing because, under Section 1853(a)(1)(C) of the MSA, the Service had to follow “existing law,” which included but was not limited to, Proclamation 10287 and President Biden’s commercial fishing ban. *Id.* at 12,284-85. Since the “President established the Monument and prohibited fishing in the Monument,” the Service claimed it was required to ban fishing in the Monument. *Id.*

84. The Service did not discuss its authority under Section 1853(b)(2)(A) of the MSA to ban commercial fishing, nor did the agency analyze any of the Section 1853(b)(2)(C) factors.

DECLARATORY AND INJUNCTIVE RELIEF ALLEGATIONS

85. Both Plaintiffs Mr. Green and Mr. Conrad have a significant interest in whether Proclamation 10287 or the commercial fishing ban within the Proclamation is illegal.

86. Plaintiffs Mr. Green and Mr. Conrad's fishing vessels currently cannot legally commercially fish within the Monument Designation's waters.

87. Plaintiffs Mr. Green and Mr. Conrad both hold fishing permits that would permit them to fish within the Monument Designation's waters, but now they are prohibited from fishing in over five million acres of available fishing grounds.

88. Both Mr. Green and Mr. Conrad would fish within the Monument Designation's waters if it were lawful.

89. A decision declaring Proclamation 10287, or the Proclamation's commercial fishing ban, and the Service's Seamounts Regulation unlawful and the issuance of an injunction preventing Defendants from enforcing the fishing ban will thus remedy Plaintiffs' injuries by restoring their ability to fish within the Monument Designation's waters.

90. Unless a permanent injunction is issued to forbid the implementation of Proclamation 10287's fishing ban, Plaintiffs will be irreparably harmed.

91. Mr. Green is suffering and will continue to suffer reduced fishing opportunities.

92. Mr. Conrad is suffering and will continue to suffer reduced fishing opportunities.

93. Plaintiffs have no plain, speedy, and adequate remedy at law.

94. If not enjoined by this Court, Defendants will continue to enforce Proclamation 10287's commercial fishing ban and will adopt regulations further

restricting fishing within the Monument Designation's waters, like the Service's Seamounts Regulation.

95. An actual and substantial controversy exists between Plaintiffs and Defendants over the scope of the President's power to declare national monuments under the Antiquities Act and the President's power to issue legislative rules under the Antiquities Act.

96. This case is justiciable because Proclamation 10287 purports to be self-executing and immediately forbids Plaintiffs from fishing within the Monument Designation's waters and requires the Secretaries to enforce the Proclamation's ban on commercial fishing.

97. This case is also justiciable because the Service's Seamounts Regulation implements and relies on Proclamation 10287's fishing ban to ban all commercial fishing within the Monument Designation's waters. The Service's Seamounts Regulation also adds new civil penalties, including monetary fines, loss of permits, and liens on fishing vessels, and it immediately goes into effect.

98. Declaratory and injunctive relief are thus appropriate to resolve this controversy.

CLAIMS FOR RELIEF

Count I:

***Ultra Vires Executive Action: Proclamation 10287's Designation of a
National Monument Within an Area That Is Not on "Land"
(Antiquities Act, 54 U.S.C. § 320301(a))***

99. All preceding paragraphs are incorporated by reference.

100. The Antiquities Act places distinct limits on the President’s power to declare monuments.

101. Under the Antiquities Act, the President has the authority to declare national monuments only on “land” owned or controlled by the Federal Government. *See* 54 U.S.C. § 320301(a).

102. Proclamation 10287, by incorporating Proclamation 9496’s designation, declares as, or as part of the Monument Designation, the Atlantic Ocean’s seabed or floor, beyond the territorial seas, which is not “land” under the Act. It would be unreasonable and contrary to common usage to describe the ocean seabed or ocean floor as “land” under the Act.

103. Proclamation 10287, by incorporating Proclamation 9496’s designation, thus designates a national monument that exceeds the President’s authority under the Antiquities Act and is ultra vires.

Count II:

***Ultra Vires Executive Action: Proclamation 10287’s
Designation of a National Monument on Land Not
“Owned or Controlled by the Federal Government”
(Antiquities Act, 54 U.S.C. § 320301(a))***

104. All preceding paragraphs are incorporated by reference.

105. Under the Antiquities Act, the President has the authority to declare national monuments only on land “owned or controlled by the Federal Government.” 54 U.S.C. § 320301(a).

106. The ordinary meaning of the term “controlled” under the Act means more than limited regulatory authority and does not extend to ocean areas where the

United States has authority of “limited scope”—including beyond the territorial sea. To conclude that mere limited control is sufficient would produce the absurd result of allowing designation of any land, including private land, within the regulatory jurisdiction of the United States, thereby rendering idle the statute’s limitation to land “owned or controlled” by the Federal Government.

107. Accordingly, the only reasonable interpretation of “owned or controlled,” as that phrase is used in the Act, is that the phrase requires the Federal Government to exercise pervasive authority over lands like the authority it enjoys over the lands it owns. This does not require absolute authority but does require the Federal Government to exercise general regulatory authority over the land that is not limited by, for example, other sovereigns’ authority, such as the authority that the Federal Government possesses in the territories and in federal enclaves. *Cf.* U.S. Const. art. I, § 8, cl. 17; art. IV, § 3, cl. 2.

108. Proclamation 10287, relying on and incorporating Proclamation 9496, designates as a national monument an area of the Atlantic Ocean within the EEZ, which is beyond the territorial seas and where the Federal Government only exercises regulatory authority of a limited scope. The Monument Designation is therefore not in an area “owned or controlled by the Federal Government” within the Act’s ordinary meaning.

109. Proclamation 10287 thus designates a national monument that exceeds the President’s authority under the Antiquities Act and is *ultra vires*.

Count III:

Ultra Vires Executive Action: Proclamation 10287's Designation of "Objects" Not Protectable Under the Antiquities Act (Antiquities Act, 54 U.S.C. § 320301(a))

110. All preceding paragraphs are incorporated by reference.

111. Under the Antiquities Act, the President has the authority to declare only "historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest" as national monuments. 54 U.S.C. § 320301(a).

112. Neither "ecosystems" nor the "biodiversity" contained within them is a historic landmark, historic or prehistoric structure, or object of historic or scientific interest under the Antiquities Act. Rather, regulable "objects" must be physical "objects of antiquity" that have historic or scientific interest.

113. Proclamation 10287, relying on and incorporating Proclamation 9496, designates "objects" as, or as part of, a national monument, thereby exceeding the President's authority under the Antiquities Act. Proclamation 10287 is thus ultra vires.

Count IV:

Ultra Vires Executive Action: Proclamation 10287's Designation of Land as Part of a National Monument That Is Not the Smallest Area Compatible with the Care and Management of the Objects To Be Protected (Antiquities Act, 54 U.S.C. § 320301(b))

114. All preceding paragraphs are incorporated by reference.

115. Under the Antiquities Act, the President has only the authority to reserve parcels of land as part of a national monument if that land is "the smallest

area compatible with the proper care and management of the objects to be protected.”
54 U.S.C. § 320301(b).

116. Proclamation 10287 cites “ecosystems” and the “biodiversity” contained within them as the factual justification for the Monument Designation’s expansive size. But “ecosystems” and “biodiversity” are not objects of historic and scientific interest under the Antiquities Act and thus cannot be used as a factual justification for the Monument Designation’s size as “the smallest area compatible with the proper care and management of the objects to be protected.”

117. Thus, because Proclamation 10287, relying on and incorporating Proclamation 9496, uses “objects” that cannot be declared as, or as part of, a national monument under the Act as justification for the Monument Designation’s size, the Monument Designation necessarily cannot satisfy the Antiquities Act’s “smallest area compatible” requirement.

118. Proclamation 10287, relying on and incorporating Proclamation 9496, also provides no reasoned factual justification, based on any analysis or any other supporting evidence, for why the Monument Designation’s boundaries require approximately 5,000 square miles of Atlantic Ocean to protect the canyons, seamounts, and ecosystems as part of the national monument. Thus, even if “ecosystems” and the “biodiversity” within them are “objects of historic and scientific interest” under the Antiquities Act, the Proclamation is still *ultra vires*.

Count V:

Violation of the Major Questions Doctrine
(Antiquities Act, 54 U.S.C. § 320301(a)–(b))

119. All preceding paragraphs are incorporated by reference.

120. The President’s asserted authority to designate, under the Act’s sparse language, an ecosystem, and many objects that do not conform to the Antiquities Act’s ordinary meaning, as a vast ocean-monument, violates the major questions doctrine.

121. The major questions doctrine requires the Executive Branch to show “clear congressional authorization” when it claims highly consequential authority through a delegation over politically and economically significant issues.

122. The Monument Designation and the presidential regulatory power to ban commercial fishing is a significant political issue.

123. The Monument Designation and the presidential regulatory power to ban commercial fishing is a significant economic issue.

124. There is no clear statement in the Antiquities Act that the President may assert power to declare five million acres of the Ocean as a national monument; no clear statement that he can declare entire “ecosystems” and other unprotectable “objects” as national monuments; and no clear statement that the President may ban commercial fishing or any other land use activity within a national monument. Thus, Proclamation 10287, on its own and as incorporating Proclamation 9496, violates the major questions doctrine and is thus ultra vires.

Count VI:

***Ultra Vires Executive Action and Violation
of the Constitution's Separation of Powers:
Proclamation 10287's Ban on Commercial Fishing
(U.S. Const. art. I)***

125. All preceding paragraphs are incorporated by reference.

126. Under Article I of the Constitution, only Congress may exercise legislative power. *See* U.S. Const. art. I (“All legislative Powers herein granted shall be vested in a Congress of the United States.”).

127. Under Article II of the Constitution, the Executive Branch is vested with the power to execute the law as Congress has prescribed by statute.

128. Under the Antiquities Act, the President has only the authority to declare national monuments and the authority to reserve public land to protect a national monument. *See* 54 U.S.C. § 320301(a)-(b).

129. Under the Antiquities Act, the President has no power to issue binding rules of private conduct, such as the power to ban commercial fishing within a national monument’s designated area.

130. Proclamation 10287’s ban on commercial fishing thus is outside the President’s authority under the Antiquities Act, is ultra vires, and is unconstitutional.

Count VII:

***Ultra Vires Executive Action: The Service's
Seamounts Regulation's Ban on Commercial Fishing
(16 U.S.C. § 1855(f); 5 U.S.C. § 706(2)(C))***

131. All preceding paragraphs are incorporated by reference.

132. Under Article I of the Constitution, only Congress may exercise legislative power. *See* U.S. Const. art. I (“All legislative Powers herein granted shall be vested in a Congress of the United States.”).

133. Agencies can only exercise authority that they have been lawfully delegated by Congress. Without a proper delegation of power to an agency, the agency is powerless to act.

134. Proclamation 10287's fishing ban is not authorized by the Antiquities Act and is unlawful, so the Service cannot not rely on Proclamation 10287 as its authority to ban commercial fishing.

135. The Service claimed that it was required to ban commercial fishing under Proclamation 10287, but since Proclamation 10287's fishing ban is ultra vires, the Service's fishing ban is unauthorized.

136. Under the Antiquities Act, the President has only the authority to declare national monuments and the authority to reserve public land to protect a national monument. *See* 54 U.S.C. § 320301(a)-(b).

137. The President can direct agencies to regulate in the manner that Congress has prescribed, but the President cannot command agencies to regulate contrary to Congress's clear directions.

138. Although the Antiquities Act does not give the President authority to ban commercial fishing, Congress, in the MSA, did give the Service authority to ban commercial fishing if certain requirements are met. *See* 16 U.S.C. § 1853(b)(2)(A), (C). These statutory requirements account for conservation goals, the fishermen's interests, the length of the ban, and the size of the closed area. *Id.*

139. Because Congress has expressly stated how and when the Service can ban commercial fishing, the Service cannot legally ban commercial fishing in the Monument's area without satisfying those congressionally prescribed requirements in the MSA. The Service cannot rely on the Proclamation as an end-run around following the MSA's procedures for banning commercial fishing, nor does it have discretion to disregard congressionally mandated requirements under the MSA. Thus, NFMS's Seamounts regulation is in excess of statutory jurisdiction, authority, or limitations, or short of statutory right, 5 U.S.C. § 706(2)(C); 16 U.S.C. § 1855(f)(1)(B).

REQUESTED RELIEF

Plaintiffs Mr. Green and Mr. Conrad request the following relief:

1. Entry of a declaratory judgment that Presidential Proclamation 10287, relying on and incorporating Proclamation 9496, is an ultra vires executive action under the Antiquities Act, 54 U.S.C. § 320301, *et seq.*, because:

- a. the Monument Designation is not on "land" under the Act;
- b. the Monument Designation is not on land "owned or controlled" by the Federal Government;

c. “ecosystems” and “biodiversity” are not “objects of scientific or historical interest” that can be designated as, or as part of, a national monument;

d. the Monument Designation’s area is not “the smallest area compatible with the proper care and management of the objects to be protected”; and

e. the Monument Designation violates the major questions doctrine;

2. Entry of a declaratory judgment that the portion of Presidential Proclamation 10287 banning commercial fishing within the Monument Designation’s area is an ultra vires executive action and violates the Constitution’s Separation of Powers because Congress did not delegate the President the power to proscribe private rights or conduct, including commercial fishing, under the Antiquities Act;

3. Entry of a permanent injunction against Defendants, their agents, representatives, and employees from enforcing or giving effect to Presidential Proclamation 10287, relying on and incorporating Proclamation 9496;

4. Entry of a permanent injunction against Defendants, their agents, representatives, and employees, from enforcing or giving effect to Presidential Proclamation 10287’s commercial fishing ban, which relied on and incorporated Proclamation 9496;

5. That, pursuant to 16 U.S.C. § 1855(f)(1)(B), the Court set aside the Service’s Seamounts Regulation banning commercial fishing as ultra vires and not otherwise in accordance with law because:

a. It relies on an ultra vires presidential proclamation as its sole source of authority; and

b. It attempts to ban commercial fishing without following Congress's clear directives on how to ban commercial fishing;

6. An award of Mr. Green's and Mr. Conrad's reasonable attorneys' fees, costs, and expenses under 28 U.S.C. § 2412, or any other authority; and

7. An award of any further relief this Court deems just and proper.

DATED: March 18, 2024.

Respectfully submitted,

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**Pro Hac Vice*

Counsel for Plaintiffs

CERTIFICATION UNDER LOCAL CIVIL RULE 11.2

I, Molly Nixon, hereby certify that, to the best of my knowledge, the matter in controversy is not the subject of any other action pending in any court or of any pending arbitration or administrative proceeding.

Dated: March 18, 2024.

/s/ Molly E. Nixon
MOLLY E. NIXON

Exhibit A
Proclamation 9496



FEDERAL REGISTER

Vol. 81

Wednesday,

No. 183

September 21, 2016

Part III

The President

Proclamation 9496—Northeast Canyons and Seamounts Marine National Monument

Federal Register

Vol. 81, No. 183

Wednesday, September 21, 2016

Presidential Documents

Title 3—

Proclamation 9496 of September 15, 2016

The President

Northeast Canyons and Seamounts Marine National Monument

By the President of the United States of America

A Proclamation

For generations, communities and families have relied on the waters of the northwest Atlantic Ocean and have told of their wonders. Throughout New England, the maritime trades, and especially fishing, have supported a vibrant way of life, with deep cultural roots and a strong connection to the health of the ocean and the bounty it provides. Over the past several decades, the Nation has made great strides in its stewardship of the ocean, but the ocean faces new threats from varied uses, climate change, and related impacts. Through exploration, we continue to make new discoveries and improve our understanding of ocean ecosystems. In these waters, the Atlantic Ocean meets the continental shelf in a region of great abundance and diversity as well as stark geological relief. The waters are home to many species of deep-sea corals, fish, whales and other marine mammals. Three submarine canyons and, beyond them, four undersea mountains lie in the waters approximately 130 miles southeast of Cape Cod. This area (the canyon and seamount area) includes unique ecological resources that have long been the subject of scientific interest.

The canyon and seamount area, which will constitute the monument as set forth in this proclamation, is composed of two units, which showcase two distinct geological features that support vulnerable ecological communities. The Canyons Unit includes three underwater canyons—Oceanographer, Gilbert, and Lydonia—and covers approximately 941 square miles. The Seamounts Unit includes four seamounts—Bear, Mytilus, Physalia, and Retriever—and encompasses 3,972 square miles. The canyon and seamount area includes the waters and submerged lands within the coordinates included in the accompanying map. The canyon and seamount area contains objects of historic and scientific interest that are situated upon lands owned or controlled by the Federal Government. These objects are the canyons and seamounts themselves, and the natural resources and ecosystems in and around them.

The canyons start at the edge of the geological continental shelf and drop from 200 meters to thousands of meters deep. The seamounts are farther off shore, at the start of the New England Seamount chain, rising thousands of meters from the ocean floor. These canyons and seamounts are home to at least 54 species of deep-sea corals, which live at depths of at least 3,900 meters below the sea surface. The corals, together with other structure-forming fauna such as sponges and anemones, create a foundation for vibrant deep-sea ecosystems, providing food, spawning habitat, and shelter for an array of fish and invertebrate species. These habitats are extremely sensitive to disturbance from extractive activities.

Because of the steep slopes of the canyons and seamounts, oceanographic currents that encounter them create localized eddies and result in upwelling. Currents lift nutrients, like nitrates and phosphates, critical to the growth of phytoplankton from the deep to sunlit surface waters. These nutrients fuel an eruption of phytoplankton and zooplankton that form the base of the food chain. Aggregations of plankton draw large schools of small fish

and then larger animals that prey on these fish, such as whales, sharks, tunas, and seabirds. Together the geology, currents, and productivity create diverse and vibrant ecosystems.

The Canyons

Canyons cut deep into the geological continental shelf and slope throughout the mid-Atlantic and New England regions. They are susceptible to active erosion and powerful ocean currents that transport sediments and organic carbon from the shelf through the canyons to the deep ocean floor. In Oceanographer, Gilbert, and Lydonia canyons, the hard canyon walls provide habitats for sponges, corals, and other invertebrates that filter food from the water to flourish, and for larger species including squid, octopus, skates, flounders, and crabs. Major oceanographic features, such as currents, temperature gradients, eddies, and fronts, occur on a large scale and influence the distribution patterns of such highly migratory oceanic species as tuna, billfish, and sharks. They provide feeding grounds for these and many other marine species.

Toothed whales, such as the endangered sperm whale, and many species of beaked whales are strongly attracted to the environments created by submarine canyons. Surveys of the area show significantly higher numbers of beaked whales present in canyon regions than in non-canyon shelf-edge regions. Endangered sperm whales, iconic in the region due to the historic importance of the species to New England's whaling communities, preferentially inhabit the U.S. Atlantic continental margin. Two additional species of endangered whales (fin whales and sei whales) have also been observed in the canyon and seamount area.

The Seamounts

The New England Seamount Chain was formed as the Earth's crust passed over a stationary hot spot that pushed magma up through the seafloor, and is now composed of more than 30 extinct undersea volcanoes, running like a curved spine from the southern side of Georges Bank to midway across the western Atlantic Ocean. Many of them have characteristic flat tops that were created by erosion by ocean waves and subsidence as the magma cooled. Four of these seamounts—Bear, Physalia, Retriever, and Mytilus—are in the United States Exclusive Economic Zone. Bear Seamount is approximately 100 million years old and the largest of the four; it rises approximately 2,500 meters from the seafloor to within 1,000 meters of the sea surface. Its summit is over 12 miles in diameter. The three smaller seamounts reach to within 2,000 meters of the surface. All four of these seamounts have steep and complex topography that interrupts existing currents, providing a constant supply of plankton and nutrients to the animals that inhabit their sides. They also cause upwelling of nutrient-rich waters toward the ocean surface.

Geographically isolated from the continental platform, these seamounts support highly diverse ecological communities with deep-sea corals that are hundreds or thousands of years old and a wide array of other benthic marine organisms not found on the surrounding deep-sea floor. They provide shelter from predators, increased food, nurseries, and spawning areas. The New England seamounts have many rare and endemic species, several of which are new to science and are not known to live anywhere else on Earth.

The Ecosystem

The submarine canyons and seamounts create dynamic currents and eddies that enhance biological productivity and provide feeding grounds for seabirds; pelagic species, including whales, dolphins, and turtles; and highly migratory fish, such as tunas, billfish, and sharks. More than ten species of shark, including great white sharks, are known to utilize the feeding grounds of the canyon and seamount area. Additionally, surveys of leatherback and loggerhead turtles in the area have revealed increased numbers above and immediately adjacent to the canyons and Bear Seamount.

Marine birds concentrate in upwelling areas near the canyons and seamounts. Several species of gulls, shearwaters, storm petrels, gannets, skuas, and terns, among others, are regularly observed in the region, sometimes in large aggregations. Recent analysis of geolocation data found that Maine's vulnerable Atlantic puffin frequents the canyon and seamount area between September and March, indicating a previously unknown wintering habitat for those birds.

These canyons and seamounts, and the ecosystem they compose, have long been of intense scientific interest. Scientists from government and academic oceanographic institutions have studied the canyons and seamounts using research vessels, submarines, and remotely operated underwater vehicles for important deep-sea expeditions that have yielded new information about living marine resources. Much remains to be discovered about these unique, isolated environments and their geological, ecological, and biological resources.

WHEREAS, the waters and submerged lands in and around the deep-sea canyons Oceanographer, Lydonia, and Gilbert, and the seamounts Bear, Physalia, Retriever, and Mytilus, contain objects of scientific and historic interest that are situated upon lands owned or controlled by the Federal Government;

WHEREAS, section 320301 of title 54, United States Code (the "Antiquities Act"), authorizes the President, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Federal Government to be national monuments, and to reserve as a part thereof parcels of land, the limits of which shall be confined to the smallest area compatible with the proper care and management of the objects to be protected;

WHEREAS, it is in the public interest to preserve the marine environment, including the waters and submerged lands, in the area to be known as the Northeast Canyons and Seamounts Marine National Monument, for the care and management of the objects of historic and scientific interest therein;

WHEREAS, the well-being of the United States, the prosperity of its citizens and the protection of the ocean environment are complementary and reinforcing priorities; and the United States continues to act with due regard for the rights, freedoms, and lawful uses of the sea enjoyed by other nations under the law of the sea in managing the canyon and seamount area and does not compromise the readiness, training, and global mobility of the U.S. Armed Forces when establishing marine protected areas;

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by the authority vested in me by section 320301 of title 54, United States Code, hereby proclaim the objects identified above that are situated upon lands and interests in lands owned or controlled by the Federal Government to be the Northeast Canyons and Seamounts Marine National Monument (monument) and, for the purpose of protecting those objects, reserve as a part thereof all lands and interests in lands owned or controlled by the Federal Government within the boundaries described on the accompanying map entitled "Northeast Canyons and Seamounts Marine National Monument," which is attached hereto, and forms a part of this proclamation. The Federal lands and interests in lands reserved consist of approximately 4,913 square miles, which is the smallest area compatible with the proper care and management of the objects to be protected.

The establishment of the monument is subject to valid existing rights. All Federal lands and interests in lands within the boundaries of the monument are hereby appropriated and withdrawn from all forms of entry, location, selection, sale, leasing, or other disposition under the public land laws to the extent that those laws apply, including but not limited to, withdrawal from location, entry and patent under mining laws, and from disposition under all laws relating to development of oil and gas, minerals, geothermal,

or renewable energy. Lands and interest in lands within the monument not owned or controlled by the United States shall be reserved as part of the monument upon acquisition of title or control by the United States.

Management of the Marine National Monument

The Secretaries of Commerce and the Interior (Secretaries) shall share management responsibility for the monument. The Secretary of Commerce, through the National Oceanic and Atmospheric Administration (NOAA), and in consultation with the Secretary of the Interior, shall have responsibility for management of activities and species within the monument under the Magnuson-Stevens Fishery Conservation and Management Act, the Endangered Species Act (for species regulated by NOAA), the Marine Mammal Protection Act, and any other applicable Department of Commerce legal authorities. The Secretary of the Interior, through the United States Fish and Wildlife Service (FWS), and in consultation with the Secretary of Commerce, shall have responsibility for management of activities and species within the monument under its applicable legal authorities, including the National Wildlife Refuge System Administration Act, the Refuge Recreation Act, and the Endangered Species Act (for species regulated by FWS), and Public Law 98–532 and Executive Order 6166 of June 10, 1933.

The Secretaries shall prepare a joint management plan, within their respective authorities, for the monument within 3 years of the date of this proclamation, and shall promulgate as appropriate implementing regulations, within their respective authorities, that address any further specific actions necessary for the proper care and management of the objects and area identified in this proclamation. The Secretaries shall revise and update the management plan as necessary. In developing and implementing any management plans and any management rules and regulations, the Secretaries shall consult, designate, and involve as cooperating agencies the agencies with jurisdiction or special expertise, including the Department of Defense and Department of State, in accordance with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations. In addition, the Secretaries shall work to continue advances in resource protection in the Monument area that have resulted from a strong culture of collaboration and enhanced stewardship of marine resources.

This proclamation shall be applied in accordance with international law, and the Secretaries shall coordinate with the Department of State to that end. The management plans and their implementing regulations shall not unlawfully restrict navigation and overflight and other internationally recognized lawful uses of the sea in the monument and shall incorporate the provisions of this proclamation regarding U.S. Armed Forces actions and compliance with international law. No restrictions shall apply to or be enforced against a person who is not a citizen, national, or resident alien of the United States (including foreign flag vessels) unless in accordance with international law. Also, in accordance with international law, no restrictions shall apply to foreign warships, naval auxiliaries, and other vessels owned or operated by a state and used, for the time being, only on government non-commercial service, in order to fully respect the sovereign immunity of such vessels under international law.

Restrictions

Prohibited Activities

The Secretaries shall prohibit, to the extent consistent with international law, any person from conducting or causing to be conducted the following activities:

1. Exploring for, developing, or producing oil and gas or minerals, or undertaking any other energy exploration or development activities within the monument.
2. Using or attempting to use poisons, electrical charges, or explosives in the collection or harvest of a monument resource.

3. Introducing or otherwise releasing an introduced species from within or into the monument.

4. Removing, moving, taking, harvesting, possessing, injuring, disturbing, or damaging, or attempting to remove, move, take, harvest, possess, injure, disturb, or damage, any living or nonliving monument resource, except as provided under regulated activities below.

5. Drilling into, anchoring, dredging, or otherwise altering the submerged lands; or constructing, placing, or abandoning any structure, material, or other matter on the submerged lands, except for scientific instruments and constructing or maintaining submarine cables.

6. Fishing commercially or possessing commercial fishing gear except when stowed and not available for immediate use during passage without interruption through the monument, except for the red crab fishery and the American lobster fishery as regulated below.

Regulated Activities

Subject to such terms and conditions as the Secretaries deem appropriate, the Secretaries, pursuant to their respective authorities, to the extent consistent with international law, may permit any of the following activities regulated by this proclamation if such activity is consistent with the care and management of the objects within the monument and is not prohibited as specified above:

1. Research and scientific exploration designed to further understanding of monument resources and qualities or knowledge of the North Atlantic Ocean ecosystem and resources.

2. Activities that will further the educational value of the monument or will assist in the conservation and management of the monument.

3. Anchoring scientific instruments.

4. Recreational fishing in accordance with applicable fishery management plans and other applicable laws and other requirements.

5. Commercial fishing for red crab and American lobster for a period of not more than 7 years from the date of this proclamation, in accordance with applicable fishery management plans and other regulations, and under permits in effect on the date of this proclamation. After 7 years, red crab and American lobster commercial fishing is prohibited in the monument.

6. Other activities that do not impact monument resources, such as sailing or bird and marine mammal watching so long as those activities are conducted in accordance with applicable laws and regulations, including the Marine Mammal Protection Act. Nothing in this proclamation is intended to require that the Secretaries issue individual permits in order to allow such activities.

7. Construction and maintenance of submarine cables.

Regulation of Scientific Exploration and Research

The prohibitions required by this proclamation shall not restrict scientific exploration or research activities by or for the Secretaries, and nothing in this proclamation shall be construed to require a permit or other authorization from the other Secretary for their respective scientific activities.

Emergencies and Law Enforcement Activities

The prohibitions required by this proclamation shall not apply to activities necessary to respond to emergencies threatening life, property, or the environment, or to activities necessary for law enforcement purposes.

U.S. Armed Forces

1. The prohibitions required by this proclamation shall not apply to activities and exercises of the U.S. Armed Forces, including those carried out by the United States Coast Guard.

2. The U.S. Armed Forces shall ensure, by the adoption of appropriate measures not impairing operations or operation capabilities, that its vessels and aircraft act in a manner consistent so far as is practicable, with this proclamation.

3. In the event of threatened or actual destruction of, loss of, or injury to a monument resource or quality resulting from an incident, including but not limited to spills and groundings, caused by a component of the Department of Defense or the United States Coast Guard, the cognizant component shall promptly coordinate with the Secretaries for the purpose of taking appropriate action to respond to and mitigate any harm and, if possible, restore or replace the monument resource or quality.

4. Nothing in this proclamation or any regulation implementing it shall limit or otherwise affect the U.S. Armed Forces' discretion to use, maintain, improve, manage or control any property under the administrative control of a Military Department or otherwise limit the availability of such property for military mission purposes, including, but not limited to, defensive areas and airspace reservations.

Other Provisions

Nothing in this proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation; however, the monument shall be the dominant reservation.

Warning is hereby given to all unauthorized persons not to appropriate, excavate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any lands thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of September, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and forty-first.

A handwritten signature in black ink, appearing to be Barack Obama's, with a large circular flourish and a horizontal line extending to the right.

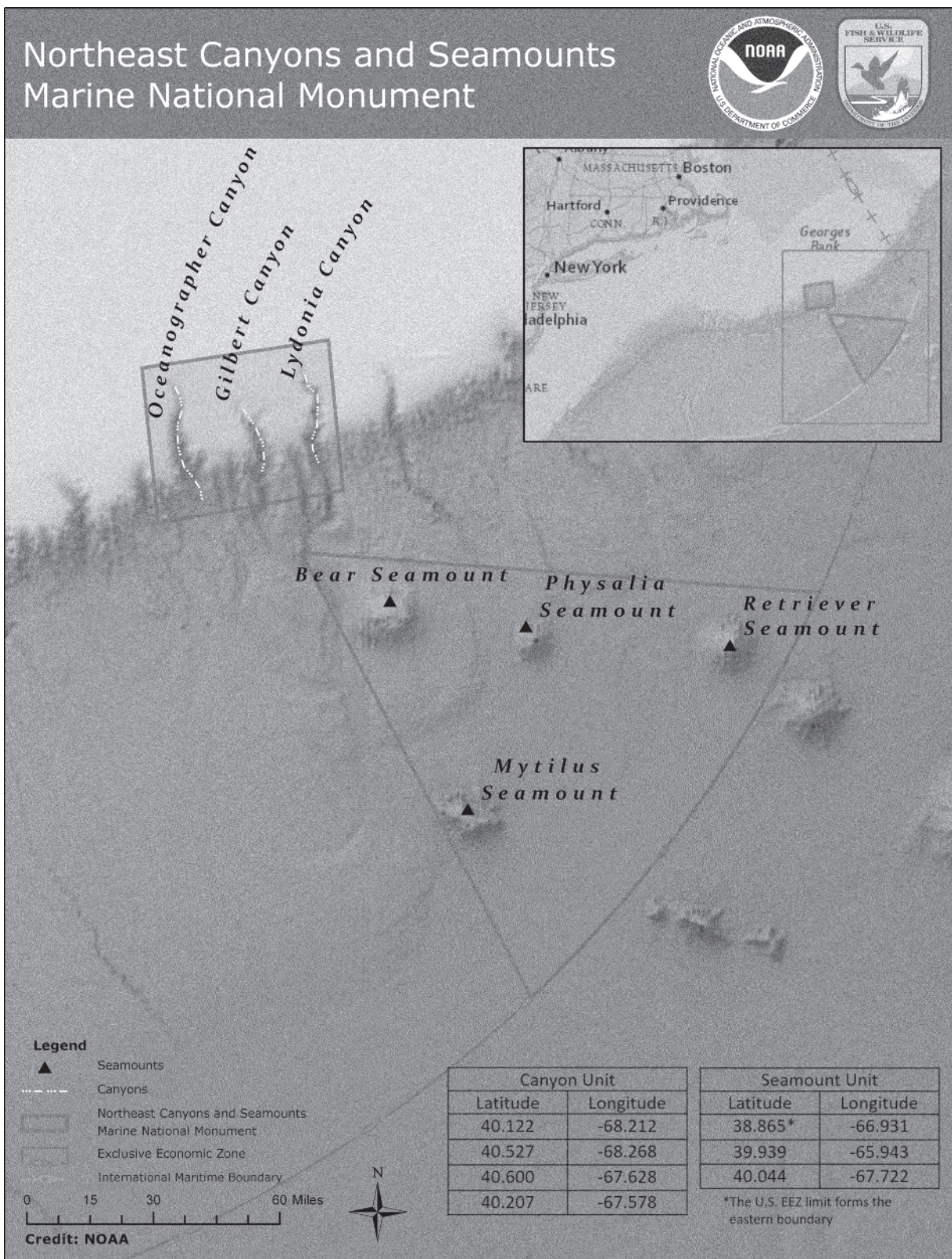


Exhibit B
Proclamation 10049

Federal Register

Vol. 85, No. 113

Thursday, June 11, 2020

Presidential Documents

Title 3—

Proclamation 10049 of June 5, 2020

The President

Modifying the Northeast Canyons and Seamounts Marine National Monument

By the President of the United States of America

A Proclamation

In Proclamation 9496 of September 15, 2016, and exercising his authority under section 320301 of title 54, United States Code (the “Antiquities Act”), the President established the Northeast Canyons and Seamounts Marine National Monument, reserving for the care and management of objects of historic and scientific interest approximately 4,913 square miles of water and submerged lands in and around certain deep-sea canyons and seamounts situated upon lands and interests in lands owned or controlled by the Federal Government. The President prohibited commercial fishing, with a phase-out period for American lobster and red crab fisheries, within the monument’s boundaries. This proclamation lifts the prohibition on commercial fishing, an activity that is subject to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens), 16 U.S.C. 1801 *et seq.*, and other applicable laws, regulations, and requirements. This proclamation does not modify the monument in any other respect.

Proclamation 9496 identifies a number of canyons and seamounts as objects of historic and scientific interest. The monument is designated in two units, which correspond to two distinct geological features. The Canyons Unit comprises three underwater canyons that start at the edge of the continental shelf, whereas the Seamounts Unit consists of four undersea mountains. Both units are located in the United States Exclusive Economic Zone. In addition to the geological features, Proclamation 9496 designates the natural resources and ecosystems in and around the Canyons and Seamounts Units as objects of historic and scientific interest. Proclamation 9496 describes diverse ecological communities in the canyon and seamount areas, which include seabirds, whales, dolphins, turtles, and highly migratory fish species, such as tunas, billfish, and sharks. Proclamation 9496 observes that some of these species have appeared in the canyon and seamount areas in large aggregations and increased numbers. In support of the monument designation, Proclamation 9496 notes that “[t]hese canyons and seamounts, and the ecosystem they compose, have long been of intense scientific interest,” with “[s]cientists from government and academic oceanographic institutions” studying “the canyons and seamounts using research vessels, submarines, and remotely operated underwater vehicles for important deep-sea expeditions.”

As part of the management of the monument, Proclamation 9496 prohibited, subject to the phase-out period previously noted, all commercial fishing within the monument’s boundaries. As explained herein, following further consideration of the nature of the objects identified in Proclamation 9496 and the protection of those objects already provided by relevant law, I find that appropriately managed commercial fishing would not put the objects of scientific and historic interest that the monument protects at risk. Indeed, Proclamation 9496 allows for recreational fishing and further acknowledges that “[t]hroughout New England, the maritime trades, and especially fishing, have supported a vibrant way of life, with deep cultural roots and a strong connection to the health of the ocean and the bounty it provides.”

With respect to fish in particular, many of the fish species that Proclamation 9496 identifies are highly migratory and not unique to the monument. Some of the examples of fish species that Proclamation 9496 identifies are not of such significant scientific interest that they merit additional protection beyond that already provided by other law. Moreover, the fish species described in Proclamation 9496 are subject to Federal protections under existing laws and agency management designations. For example, Magnuson-Stevens regulates commercial fishing to ensure long-term biological and economic sustainability for our Nation's marine fisheries, taking into account the protection of associated marine ecosystems. Magnuson-Stevens establishes regional fishery management councils, supervised by the Secretary of Commerce in coordination with the States and affected stakeholders, that develop fishery management plans to regulate our Nation's fisheries, using the best available science and observing strict conservation and management requirements. Magnuson-Stevens requires a similar process of science-based fisheries management for highly migratory species, including the tunas referenced in Proclamation 9496. In addition, Magnuson-Stevens provides that fishery management plans may include, among other measures, management measures to conserve target and non-target species and habitats, including measures to protect deep-sea corals.

A host of other laws enacted after the Antiquities Act provide specific protection for other plant and animal resources (including coral species) both within and outside the monument. These laws include the Endangered Species Act, 16 U.S.C. 1531 *et seq.*, the Migratory Bird Treaty Act, 16 U.S.C. 703–712, the National Wildlife Refuge System Administration Act, 16 U.S.C. 668dd–668ee, the Refuge Recreation Act, 16 U.S.C. 460k *et seq.*, the Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.*, the Clean Water Act, 33 U.S.C. 1251 *et seq.*, the Oil Pollution Act, 33 U.S.C. 2701 *et seq.*, the National Marine Sanctuaries Act, 16 U.S.C. 1431 *et seq.*, and Title I of the Marine Protection, Research and Sanctuaries Act (Ocean Dumping Act), 33 U.S.C. 1401 *et seq.* For example, the Endangered Species Act generally prohibits the taking of fish and wildlife species listed as endangered, and also generally ensures that Federal actions, including fisheries management, are not likely to jeopardize the existence of any such species. The Marine Mammal Protection Act provides protections for marine mammals, and prohibits their take, subject to some exceptions. Numerous other statutes, including the Clean Water Act, Oil Pollution Act, and Ocean Dumping Act, address both land-based and ocean-based sources of pollution and help ensure that water quality continues to support plankton and other pelagic organisms.

After further consideration of the nature of the objects identified in Proclamation 9496 and the protection of those objects already provided by Magnuson-Stevens and other relevant law, I find that a prohibition on commercial fishing is not, at this time, necessary for the proper care and management of the Northeast Canyons and Seamounts Marine National Monument, or the objects of historic or scientific interest therein.

WHEREAS, Proclamation 9496 of September 15, 2016, designated the Northeast Canyons and Seamounts Marine National Monument in the Atlantic Ocean and reserved approximately 4,913 square miles in the United States Exclusive Economic Zone for the care and management of objects of historic and scientific interest identified therein;

WHEREAS, I find that removing the restrictions on commercial fishing set forth in Proclamation 9496 to allow for well-regulated commercial fishing use is in the public interest and that the objects in the monument can be, and are currently, protected pursuant to carefully tailored regulation and management under existing Federal law:

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by the authority vested in me by the Constitution and the laws of the United States, including section 320301 of title 54, United States Code, hereby proclaim that Proclamation 9496, which established

the Northeast Canyons and Seamounts Marine National Monument, is amended as follows:

(1) in the section entitled “Prohibited Activities,” by deleting paragraph 6; and

(2) in the section entitled “Regulated Activities,” by deleting paragraph 5 and by re-designating paragraphs 6 and 7 as paragraphs 5 and 6, respectively.

Furthermore, nothing in paragraph 4 in the section entitled “Prohibited Activities” in Proclamation 9496 shall be deemed to apply to commercial fishing that is carried out in accordance with Magnuson-Stevens and other applicable laws, regulations, and requirements.

Nothing in this proclamation shall be construed to revoke, modify, or affect any withdrawal, reservation, or appropriation, other than the one created by Proclamation 9496.

Nothing in this proclamation shall change the management of the areas designated and reserved by Proclamation 9496, except as explicitly provided in this proclamation.

If any provision of this proclamation, including its application to a particular parcel of land, is held to be invalid, the remainder of this proclamation and its application to other parcels of land shall not be affected thereby.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of June, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fourth.




Exhibit C
Proclamation 10287

Presidential Documents

Proclamation 10287 of October 8, 2021

Northeast Canyons and Seamounts Marine National Monument

By the President of the United States of America

A Proclamation

On September 15, 2016, President Barack Obama issued Proclamation 9496 (Northeast Canyons and Seamounts Marine National Monument), which designated approximately 4,913 square miles of waters and submerged lands where the Atlantic Ocean meets the continental shelf as the Northeast Canyons and Seamounts Marine National Monument. This designation represented the culmination of nearly a half-century of conservation efforts to preserve the vulnerable deep marine ecosystems of the Atlantic canyons and seamounts, which are widely known as natural laboratories for the long-term study of benthic ecology due to their rich biodiversity of important deep-sea corals, endangered whales, endangered and threatened sea turtles, other marine mammals, and numerous fish and invertebrate species.

The monument is composed of two units, the Canyons Unit and the Seamounts Unit, each of which showcases unique geological features that anchor vulnerable ecological communities threatened by varied uses, climate change, and related impacts. As described by Proclamation 9496, the Canyons Unit includes three underwater canyons: Oceanographer, Gilbert, and Lydonia. The canyons' hard walls, which range from 200 meters to thousands of meters deep, provide important habitats for, and support the life cycles of, a diversity of ocean life, including sponges, corals, and other invertebrates; larger species such as squid, octopuses, skates, flounders, and crabs; and highly migratory oceanic species, including tuna, billfish, sharks, toothed whales (such as the endangered sperm whale), and many species of beaked whales. The larger Seamounts Unit is home to four extinct undersea volcanoes—Bear, Physalia, Retriever, and Mytilus—that form a portion of an underwater chain of more than 30 extinct volcanoes that runs from the southern side of the Georges Bank to midway across the western Atlantic Ocean. These extinct volcanoes were formed as the Earth's crust passed over a stationary hot spot that pushed magma up through the seafloor, and many of them have flat tops that were created as ocean waves eroded the cooling magma. Geographically isolated from the continental platform and characterized by steep and complex submarine topography that interrupts existing ocean currents and provides a constant supply of plankton and nutrients, the seamounts are biological islands with various substrates that form ocean oases and act as incubators for new life. All four seamounts support highly diverse ecological communities, including many rare and endemic species that are new to science and are not known to live anywhere else on Earth. Together, the monument's submarine canyons and seamounts create the unique ecological conditions necessary to support one of the Atlantic Ocean's most biologically productive and important marine environments and one of science's greatest oceanic laboratories. Proclamation 9496 recognized the undersea canyons and seamounts, the deep-sea, pelagic, and other marine ecosystems they support, and the biodiversity they contain as objects of historic and scientific interest and dedicated the Federal lands and waters within the monuments' boundaries to their protection.

To provide for the proper care and management of the monument's objects of historic and scientific interest, Proclamation 9496 directed the Secretary

of Commerce and the Secretary of the Interior (Secretaries) to prepare a joint management plan and promulgate implementing regulations, as appropriate. To the extent consistent with domestic and international law, Proclamation 9496 also directed the Secretaries to prohibit certain activities within the monument, including mineral exploration and development; the use of poisons, electrical charges, or explosives to collect or harvest monument resources; and drilling into, anchoring, dredging, or otherwise altering submerged lands. Proclamation 9496 also directed the Secretaries to prohibit all commercial fishing within the monument, but allowed the Secretaries to permit a 7-year phase-out for red crab and American lobster commercial fishing.

Despite the monument's ecological importance, wealth of objects of historic and scientific interest, and potential for additional scientific discovery, President Donald Trump issued Proclamation 10049 (Modifying the Northeast Canyons and Seamounts Marine National Monument) on June 5, 2020, to remove the restrictions on commercial fishing. Multiple parties challenged Proclamation 10049 in Federal court, asserting that it exceeded the President's authority under the Antiquities Act. Restoring the prohibition on commercial fishing will ensure that the unique, fragile, and largely pristine canyons and seamounts, and the dynamic ocean systems and marine life they support, identified in Proclamation 9496 as objects of historic or scientific interest requiring protection under the Antiquities Act, will be safeguarded and will continue to provide an important venue for scientific study and research.

The Canyons Unit and Seamounts Unit each contain interconnected oceanographic, geologic, and biologic features that create a unique oceanic system that supports an abundant concentration of biodiversity. These features' close proximity to each other results in an interdependent whole that exceeds the sum of its constituent parts.

In the case of the Canyons Unit, the monument boundary closely corresponds to a contiguous continental shelf break area around the heads of the three canyons, which extend seaward from features that have not yet fully taken on the distinctive canyon shape, to the walls and valleys of the canyons themselves, and out to the start of the outer shelf thousands of meters below. Within this transitional region, the walls of the three closely situated canyons combine with ocean currents, temperature gradients, eddies, and fronts to create significant and complex nutrient cycling and other processes that result in a biologically rich and distinct oceanic system. The Canyons Unit is sized to correspond to and protect these large-scale oceanic processes that provide the foundation for the distinct habitat that supports numerous objects of scientific interest. For example, the shallower depths of the canyons include ecologically significant and vulnerable habitat for tilefish, which function as ecosystem engineers by creating "pueblo" habitat at depths of 100 to 300 meters in the monument's canyons, which in turn supports a diversity of fish and invertebrate species. The Canyons Unit also supports a great abundance of marine mammals and other upper-trophic level predators attracted to the prey abundance fostered by the Canyons Unit's unique marine landscape. Due to the close proximity of the three canyons to one another, congregating marine mammals and pelagic fish species routinely transit the inter-canyon areas while foraging among the biologic abundance found there. This is an example of the important ecological linkages that connect the monument's various topographies, the surrounding shelf, and the water column above them, which necessitate protection of the entire interrelated system.

In the case of the Seamounts Unit, the boundary encompasses the four seamounts and the areas between the edges of Bear and Retriever Seamounts on the north side, Bear and Mytilus Seamounts on the south side, and out to the boundary line of the Exclusive Economic Zone on the east side. These four seamounts, rising thousands of feet from the surrounding seafloor, are the only seamounts located within U.S. Atlantic waters. As with the Canyons Unit, the proximity of these important geologic features to each

other influences the currents, upwelling, stratification, and mixing that make the species and habitat within the monument so diverse, abundant, and unique. The seamounts function as oases in the open ocean environment and feature distinct ecological communities as they grade down from the relatively shallow seamount peaks to the abyss below. They are critical to protecting the ecosystem linkages that transport nutrients to the surface through predator-prey interactions and temperature-driven upwelling, and transport organic carbon to deep-sea ecosystems (corals and benthic communities) through plankton and fecal detritus, downwelling materials, down-slope currents, and animal migration and mortality.

The boundaries of the monument reflect the need to protect the canyons, seamounts, and the attendant deep-sea, pelagic, and other marine ecosystems, which are themselves objects of historic and scientific interest, as well as the complex geologic, oceanographic, and biologic characteristics in the Canyons Unit and Seamounts Unit. The monument ensures these vulnerable marine ecosystems are safeguarded and will remain the great ocean laboratories recognized in Proclamation 9496. The boundaries are closely hewn to prominent geologic objects that form the foundation of closely linked habitats, which support the monument's great abundance and diversity of life. The boundaries are scaled to avoid cascading negative effects from failing to protect parts of these complex and interconnected marine environments and their unique oceanographic processes. In order to ensure effective management and protection of the objects of historic and scientific interest, straight-line coordinates are used where possible to provide clear and enforceable demarcation of this open-ocean monument. For these reasons, Proclamation 9496 found that the lands owned or controlled by the Federal Government within the monument's boundaries were the smallest area compatible with the proper care and management of the objects of historic and scientific interest designated for protection.

Commercial fishing activity has the potential to significantly degrade the monument's objects of historic and scientific interest. Bottom-contact fishing gear and fixed fishing gear (for example, traps, gillnets, and bottom and pelagic long-line gear) with buoys, submerged lines, and associated traps, mesh, or hooks, all pose threats to the canyons and seamounts, the ecosystem, and the deep-sea, pelagic, and other marine life they support, as well as the additional objects of historic and scientific interest contained therein. Although statutes such as the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, the Endangered Species Act, 16 U.S.C. 1531 *et seq.*, the Migratory Bird Treaty Act, 16 U.S.C. 703–712, the National Wildlife Refuge System Administration Act, 16 U.S.C. 668dd–668ee, the Refuge Recreation Act, 16 U.S.C. 460k *et seq.*, the Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.*, the Clean Water Act, 33 U.S.C. 1251 *et seq.*, the Oil Pollution Act, 33 U.S.C. 2701 *et seq.*, the National Marine Sanctuaries Act, 16 U.S.C. 1431 *et seq.*, and Title I of the Marine Protection, Research and Sanctuaries Act (Ocean Dumping Act), 33 U.S.C. 1401 *et seq.*, provide important safeguards that did not exist prior to the Antiquities Act's passage, these laws do not adequately address the threats facing the canyons and seamounts and their surrounding ecosystem. The prohibition on commercial fishing confers necessary, additional, and lasting protections for the objects of historic and scientific interest in the Northeast Canyons and Seamounts Marine National Monument for current and future generations.

Protection of the Northeast Canyons and Seamounts as a marine national monument preserves significant geological features, marine biota, and deep-sea, pelagic, and other marine ecosystems that the canyons and seamounts create and support as they interact with ocean currents, ensuring that the natural and scientific values of this area are maintained for the benefit of all Americans and for the discovery of new information about living marine resources for years to come.

WHEREAS, section 320301 of title 54, United States Code (the “Antiquities Act”) authorizes the President, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Federal Government to be national monuments, and to reserve as a part thereof parcels of land, the limits of which shall be confined to the smallest area compatible with the proper care and management of the objects to be protected; and

WHEREAS, Proclamation 9496 designated the Northeast Canyons and Seamounts Marine National Monument in the Atlantic Ocean and reserved approximately 4,913 square miles of water and submerged lands in and around certain deep-sea canyons and seamounts situated upon lands and interests in lands owned or controlled by the Federal Government as the smallest area compatible with the proper care and management of objects of historic and scientific interest; and

WHEREAS, Proclamation 10049 modified the conditions of the Northeast Canyons and Seamounts Marine National Monument to allow commercial fishing activities, which could impact monument objects; and

WHEREAS, I find that the resources identified above and in Proclamation 9496 are objects of historic or scientific interest in need of protection under the Antiquities Act; and

WHEREAS, I find that the unique nature of the waters and submerged lands that make up the marine environment in the Northeast Canyons and Seamounts area and the collection of objects and resources therein make the entire area within the boundaries of the monument an object of historic and scientific interest in need of protection under the Antiquities Act; and

WHEREAS, I find that there are documented threats to the objects identified above and in Proclamation 9496; and

WHEREAS, I find that the objects identified above and in Proclamation 9496 are not adequately protected by applicable law and other administrative designations; and

WHEREAS, I find that the boundaries of the monument reserved by Proclamation 9496 represent the smallest area compatible with the proper care and management of the objects of historic or scientific interest; and

WHEREAS, it is in the public interest to ensure the preservation and protection of the objects of historic and scientific interest in the Northeast Canyons and Seamounts Marine National Monument;

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by the authority vested in me by section 320301 of title 54, United States Code, hereby proclaim that, in order to provide for the proper care and management of the objects identified above and in Proclamation 9496, management of lands and interests in lands owned or controlled by the Federal Government within the Northeast Canyons and Seamounts Marine National Monument shall be governed by the management provisions of Proclamation 9496. Such provisions include paragraph 6 in the section entitled “Prohibited Activities” and paragraph 5 in the section entitled “Regulated Activities,” which provide for the prohibition of all commercial fishing in the monument, except for red crab and American lobster commercial fishing, which may be permitted until September 15, 2023.

The Secretary of Commerce, through the National Oceanic and Atmospheric Administration, and the Secretary of the Interior, through the United States Fish and Wildlife Service, share management responsibility for the monument, as prescribed in Proclamation 9496. Within their respective authorities, the Secretaries shall prepare a joint management plan for the monument by September 15, 2023, and, as appropriate, shall promulgate implementing regulations that address any further specific actions necessary for the proper care and management of the objects and area identified above and in Proclamation 9496.

To the extent any provision of Proclamation 10049 is inconsistent with this proclamation or Proclamation 9496, the terms of this proclamation and Proclamation 9496 shall govern.

Warning is hereby given to all unauthorized persons not to appropriate, excavate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any lands thereof.

If any provision of this proclamation, including its application to a particular parcel of land, is held to be invalid, the remainder of this proclamation and its application to other parcels of land shall not be affected thereby.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of October, in the year of our Lord two thousand twenty-one, and of the Independence of the United States of America the two hundred and forty-sixth.

A handwritten signature in dark ink, appearing to read "D. Trump", is written over a light blue horizontal line.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Frank Green and Robert Conrad

(b) County of Residence of First Listed Plaintiff Suffolk
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Molly E. Nixon, Pacific Legal Foundation 202.888.6881
3100 Clarendon Blvd., Suite 1000, Arlington, VA 22201

DEFENDANTS

Joseph R. Biden Jr., et al. (see attachment)

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

Does this action include a motion for temporary restraining order or order to show cause? Yes ☐ No ☒

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input checked="" type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
54 U.S.C. § 320301, et seq; 16 U.S.C. § 1855(f); 5 U.S.C. § 706(2)(C))
Brief description of cause:
Ultra vires/unconstitutional executive action.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

March 18, 2024

Molly E. Nixon

Digitally signed by Molly E. Nixon
Date: 2024.03.18 08:24:08 -0700

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.7 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

Case is Eligible for Arbitration ☐

I, Molly E. Nixon, counsel for Plaintiffs Frank Green, et al., do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

☐
☒
☐

monetary damages sought are in excess of \$150,000, exclusive of interest and costs,

the complaint seeks injunctive relief,

the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

N/A

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that "A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 1(c)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? ☐ Yes ☒ No
- 2.) If you answered "no" above:
- a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? ☒ Yes ☐ No
- b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? ☒ Yes ☐ No
- c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received: _____

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? ☐ Yes ☐ No

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

☒

Yes

☐

No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

☐

Yes

(If yes, please explain

☒

No

I certify the accuracy of all information provided above.

Signature: /s/ Molly E. Nixon

Attachment to Civil Cover Sheet

DEFENDANTS

Joseph R. Biden Jr., in his official capacity as President of the United States;
Gina M. Raimondo, in her official capacity as Secretary of Commerce;
Deb Haaland, in her official capacity as Secretary of Interior; and
Richard W. Spinrad, in his official capacity as Under Secretary of Commerce
for Oceans and Atmosphere & NOAA Administrator