

Bradley Campbell
Bradley M. Campbell, LLC, 226 Swan Street, Lambertville, New Jersey 08530
(617) 850-1786
Counsel for Defendant-Intervenors

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

PATRICK FEHILY and DAVID T. MALLEY,

Plaintiffs,

v.

JOSEPH R. BIDEN, JR., in his official capacity as
President of the United States; GINA
RAIMONDO, in her official capacity as Secretary
of the United States Department of Commerce;
and DEB HAALAND, in her official capacity as
Secretary of the United States Department of the
Interior,

Defendants,

and

CONSERVATION LAW FOUNDATION;
NATURAL RESOURCES DEFENSE COUNCIL,
INC.; CENTER FOR BIOLOGICAL
DIVERSITY; and R. ZACK KLYVER,

Defendant-Intervenors.

Case No. 3:22-cv-02120

**Judge Georgette Castner
Magistrate Judge
Tonianne J. Bongiovanni**

**DEFENDANT-
INTERVENORS'
ANSWER TO
PLAINTIFFS' FIRST
AMENDED
COMPLAINT**

**DEFENDANT INTERVENORS' ANSWER
TO PLAINTIFFS' FIRST AMENDED COMPLAINT**

Defendant-Intervenors Conservation Law Foundation (62 Summer Street, Boston, Massachusetts 02110), Natural Resources Defense Council (40 West 20th Street, Floor 11, New York, New York 10011), Center for Biological Diversity (378 North Main Avenue, Tucson, Arizona 85701), and R. Zack Klyver (120 French Street, Bangor, Maine 04401) (collectively, Intervenors), through their undersigned counsel, say as follows by way of answer to Plaintiffs' First Amended Complaint, dated September 12, 2022 (ECF No. 34):

INTRODUCTION¹

1. Paragraph 1 contains Plaintiffs' characterization of their claims, to which no response is required. To the extent a response is required, Intervenors admit.
2. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 2, and therefore deny them.
3. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 3, and therefore deny them.

¹ For ease of reference, Intervenors reproduce the section headings as they appear in Plaintiffs' First Amended Complaint. To the extent those headings contain factual allegations to which a response is required, those allegations are denied.

4. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 4, and therefore deny them.

5. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 5, and therefore deny them.

6. Intervenors admit only that on October 8, 2021, the President issued Presidential Proclamation No. 10287, titled “Northeast Canyons and Seamounts Marine National Monument,” pursuant to his authority under the Antiquities Act of 1906. Plaintiffs’ characterization of the Monument as “closing off a vast area of the Atlantic Ocean” is an opinion and legal conclusion to which no response is required, but to the extent a response is required, Intervenors deny it. Intervenors further deny Plaintiffs’ allegation that the Monument “threaten[s] these fishermen’s way of life.”

7. Intervenors admit that the Monument is located in the United States’ Exclusive Economic Zone (EEZ); that the EEZ is an area located from 12 to 200 nautical miles from the United States’ coastline; and that Proclamation No. 10287 describes the Monument as encompassing approximately 4,913 square miles of waters and submerged lands. Intervenors further state that the Proclamation speaks for itself and is the best evidence of its contents; Intervenors therefore deny any allegations in Paragraph 7 inconsistent with the text of the Proclamation.

8. Paragraph 8 contains partial quotations from Proclamation No. 10287. Intervenor admits that the quoted words appear in Proclamation No. 10287, but states that Proclamation No. 10287 speaks for itself and is the best evidence of its contents; Intervenor therefore denies any allegations inconsistent with the text of the Proclamation.

9. Paragraph 9 contains Plaintiff's characterization of Proclamation No. 10287. Intervenor states that the Proclamation speaks for itself and is the best evidence of its contents; Intervenor therefore denies any allegations in Paragraph 9 inconsistent with the text of the Proclamation. Intervenor further denies Plaintiff's allegation that the Monument's "waters ... have been an important commercial fishery for decades," and denies the suggestion that the Proclamation alone has "prevent[ed]" Mr. Malley and Mr. Fehily from fishing there. On information and belief, at the time of the Monument's designation in 2016, the Obama administration estimated that there were six lobster vessels operating in the Monument area, and few other commercial fishing vessels.

10. Paragraph 10 contains Plaintiff's legal conclusions, to which no response is required. To the extent a response is required, Intervenor denies.

11. The first sentence of Paragraph 11 contains a partial quotation from the Antiquities Act. Intervenor admits that the quoted word appears in the Act, but states that the Act speaks for itself and is the best evidence of its contents;

Intervenors therefore deny any allegations inconsistent with the text of the Act. The remainder of Paragraph 11 contains Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenors deny.

12. The first sentence of Paragraph 12 contains partial quotations from the Antiquities Act. Intervenors admit that the quoted words appear in the Act, but state that the Act speaks for itself and is the best evidence of its contents; Intervenors therefore deny any allegations inconsistent with the text of the Act. The remainder of Paragraph 12 contains Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenors deny.

13. The first and third sentences of Paragraph 13 (not counting citations) contain partial quotations from the Antiquities Act. Intervenors admit that the quoted words appear in the Act, but state that the Act speaks for itself and is the best evidence of its contents; Intervenors therefore deny any allegations inconsistent with the text of the Act. The remainder of Paragraph 13 contains Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenors deny.

14. The first sentence of Paragraph 14 contains partial quotations from the Antiquities Act. Intervenors admit that the quoted words appear in the Act, but state that the Act speaks for itself and is the best evidence of its contents; Intervenors therefore deny any allegations inconsistent with the text of the Act. The

remainder of Paragraph 14 contains Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenors deny.

15. Paragraph 15 contains Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenors deny, and state that the Act speaks for itself and is the best evidence of its contents.

16. Paragraph 16 contains Plaintiffs' characterization of their case, not factual allegations requiring a response.

JURISDICTION AND VENUE

17. Paragraph 17 contains Plaintiffs' legal characterizations and legal conclusions to which no response is required. To the extent a response is required, Intervenors admit that Plaintiffs purport to state claims raising federal questions under 28 U.S.C. § 1331, and that this Court generally has authority to issue injunctive and/or declaratory relief in appropriate cases. Intervenors deny that Plaintiffs have standing to invoke this Court's jurisdiction, and further deny that Plaintiffs are entitled to declaratory or injunctive relief.

18. Paragraph 18 contains Plaintiffs' legal characterizations and legal conclusions to which no response is required. To the extent a response is required, Intervenors lack knowledge or information sufficient to form a belief about Plaintiffs' potential eligibility under the cited provision of the Equal Access to Justice Act, and therefore deny.

19. Intervenors deny the allegation in the first sentence of Paragraph 19 that “a substantial part of the events giving rise to the claim occurred within this judicial district.” Intervenors lack knowledge or information sufficient to form a belief about the allegations in the second sentence, and therefore deny them. The remainder of Paragraph 19 contains Plaintiffs’ legal characterizations and legal conclusions to which no response is required. To the extent a response is required, Intervenors deny that venue is proper in this Court.

PARTIES

Plaintiffs

20. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 20, and therefore deny them.

21. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 21, and therefore deny them.

22. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 22, and therefore deny them.

23. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 23, and therefore deny them.

24. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 24, and therefore deny them.

25. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 25, and therefore deny them.

26. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 26, and therefore deny them.

27. Intervenors admit that a prior lawsuit challenging the Monument, brought by the Massachusetts Lobstermen's Association and other members of the commercial fishing industry, was dismissed for failure to state a claim upon which relief could be granted. *Mass. Lobstermen's Ass'n v. Ross*, 349 F. Supp. 3d 48 (D.D.C. 2018), *aff'd as modified* 945 F.3d 535 (D.C. Cir. 2019). Intervenors deny Plaintiffs' characterization of that lawsuit as pertaining to "a previous iteration" of the Monument as vague and inconsistent with the text of the Proclamations. Intervenors lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 27, and therefore deny them.

Defendants

28. Intervenors admit the allegations in Paragraph 28.

29. Intervenors admit the allegations in Paragraph 29.

30. Intervenors admit the allegations in Paragraph 30.

LEGAL BACKGROUND

The Antiquities Act

31. Paragraph 31 contains Plaintiffs' characterization of the Antiquities Act, based on an article available on the National Park Service's website, and legal conclusions and argument to which no response is required. To the extent a response is required, Intervenor deny, and state that the Antiquities Act speaks for itself and is the best evidence of its contents and meaning.

32. Paragraph 32 contains Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor admit that the Antiquities Act places discernible limits on the President's authority, and that courts may review the President's actions for compliance with those limits, but deny the suggestion that Plaintiffs have stated a claim on which relief may be granted here.

33. The first sentence of Paragraph 33 contains a partial quotation from the Antiquities Act. Intervenor admit that the quoted words appear in the Act, but state that the Act speaks for itself and is the best evidence of its contents; Intervenor therefore deny any allegations inconsistent with the text of the Act. The remainder of Paragraph 33 contains Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor deny.

34. The first sentence of Paragraph 34 contains a partial quotation from the Antiquities Act. Intervenors admit that the quoted words appear in the Act, but state that the Act speaks for itself and is the best evidence of its contents; Intervenors therefore deny any allegations inconsistent with the text of the Act. The remainder of Paragraph 34 contains Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenors deny.

35. Paragraph 35 contains a partial quotation from the Antiquities Act. Intervenors admit that the quoted words appear in the Act, but state that the Act speaks for itself and is the best evidence of its contents; Intervenors therefore deny any allegations inconsistent with the text of the Act.

36. Paragraph 36 contains a partial quotation from the Antiquities Act. Intervenors admit that the quoted words appear in the Act, but state that the Act speaks for itself and is the best evidence of its contents; Intervenors therefore deny any allegations inconsistent with the text of the Act.

37. Paragraph 37 contains Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenors deny, and state that the Antiquities Act speaks for itself and is the best evidence of its contents.

**Federal Authority Over
the Exclusive Economic Zone (EEZ)**

38. The first sentence of Paragraph 38 contains Plaintiffs' legal argument and conclusions, to which no response is required. The second sentence (and citation) of Paragraph 38 contains Plaintiffs' characterization of a decision by the U.S. Supreme Court. Intervenor state that the decision speaks for itself and is the best evidence of its contents; Intervenor therefore deny any allegations inconsistent with the text of the decision.

39. Intervenor admit that on March 10, 1983, the President issued Presidential Proclamation No. 5030, titled "Exclusive Economic Zone of the United States of America," proclaiming the U.S. EEZ to 200 nautical miles from the baseline, consistent with international law. Intervenor state that the Proclamation and Statement on United States Oceans Policy speak for themselves and are the best evidence of their contents. Intervenor further state that Plaintiffs' characterization that the President "recognized that federal authority over this area is limited" is a legal conclusion to which no response is required, but to the extent a response is required, Intervenor deny as vague and ambiguous.

40. Paragraph 40 contains Plaintiffs' characterization of the Magnuson-Stevens Act. Intervenor state that the Act speaks for itself and is the best evidence of its contents; Intervenor therefore deny any allegations inconsistent with the text of the Act. Intervenor further state that Plaintiffs' characterization of the federal

government’s “limited authority” is a legal conclusion to which no response is required.

41. Paragraph 41 contains Plaintiffs’ characterization of the National Marine Sanctuaries Act. Intervenor’s state that the Act speaks for itself and is the best evidence of its contents; Intervenor’s therefore deny any allegations inconsistent with the text of the Act. Intervenor’s further state that Plaintiffs’ characterization of the federal government’s “limited authority” is a legal conclusion to which no response is required.

42. Paragraph 42 contains Plaintiffs’ characterization of the United Nations Convention on the Law of the Sea and the Third Restatement of Foreign Relations Law of the United States. Intervenor’s state that those sources speak for themselves and are the best evidence of their contents; Intervenor’s therefore deny any allegations inconsistent with the text those sources. Intervenor’s further state that Plaintiffs’ characterization of the federal government’s “limited regulatory authority over the EEZ” is a legal conclusion to which no response is required.

Federal Regulation of Ocean Fisheries

43. Intervenor’s admit that Congress has enacted statutes that apply in and to the EEZ. Plaintiffs’ statement in Paragraph 43 that Congress has “establish[ed] procedures to protect against excessive limitations on ... sustainable and productive use” is a legal conclusion to which no response is required.

44. Paragraph 44 contains Plaintiffs' characterizations of the National Marine Sanctuaries Act. Intervenor state that the Act speaks for itself and is the best evidence of its contents; Intervenor therefore deny any allegations inconsistent with the text of the Act. Intervenor further state that Plaintiffs' characterizations of the Act are legal conclusions to which no response is required.

45. Paragraph 45 contains Plaintiffs' characterizations of the Magnuson-Stevens Act, which are legal characterizations to which no response is required. Intervenor state that the Act speaks for itself and is the best evidence of its contents; Intervenor therefore deny any allegations inconsistent with the text of the Act. To the extent Paragraph 45 is deemed to contain factual allegations, Intervenor deny them.

46. Paragraph 46 contains Plaintiffs' characterization of the regional fishery management councils' authority under the Magnuson-Stevens Act, which is a legal characterization to which no response is required. To the extent Paragraph 46 is deemed to be a factual allegation that the regional fishery management councils have certain authority to minimize to the extent practicable the adverse effects of fishing on designated essential fish habitats or to minimize to the extent practicable bycatch in a fishery, Intervenor admit. To the extent Paragraph 46 is deemed to be a factual allegation concerning the adequacy or effectiveness of the councils' measures, Intervenor deny.

47. The first sentence of Paragraph 47 contains Plaintiffs' characterizations of the National Marine Sanctuaries Act. Intervenor's admit that the Act applies to "the territorial sea of the United States, ... which is subject to the sovereignty of the United States, and the United States exclusive economic zone, consistent with international law." 16 U.S.C. § 1437(k). The remainder of the first sentence of Paragraph 47 is Plaintiffs' legal characterization and argument, to which no response is required; to the extent a response is required, Intervenor's deny. The second sentence of Paragraph 47 (not counting citations) is Plaintiffs' characterization of the Magnuson-Stevens Act. Intervenor's state that the Act speaks for itself and is the best evidence of its contents; to the extent a response is required, Intervenor's admit that the phrase "lands owned or controlled" does not appear in the Magnuson-Stevens Act, but state that is irrelevant. The third sentence of Paragraph 47 (not counting citations) is Plaintiffs' legal characterization of the National Marine Sanctuaries Act and the Magnuson-Stevens Act. Intervenor's state that those statutes speak for themselves and are the best evidence of their contents; Intervenor's therefore deny any allegations inconsistent with the text of those statutes. Intervenor's further state that Plaintiffs' characterizations of the statutes are legal conclusions to which no response is required.

FACTUAL ALLEGATIONS

Georges Bank Fishery

48. Intervenors deny the allegation in Paragraph 48 as vague and ambiguous.

49. Intervenors deny the allegation in Paragraph 49 as vague and ambiguous.

50. Intervenors admit that parts of the Georges Bank have supported lucrative fisheries. As to the second sentence of Paragraph 50, Intervenors deny as vague and ambiguous.

51. Intervenors state that the phrases “this area” and “these fisheries” are vague and ambiguous, and therefore deny the allegations in Paragraph 51. To the extent Paragraph 51 alleges that the Monument area specifically “supports significant fisheries for various species of fish and shellfish” or “provide[s] an important, and primary, source of income and employment for fishermen throughout the northeast, including Plaintiffs Mr. Fehily and Mr. Malley,” Intervenors deny.

52. Intervenors admit the allegation in Paragraph 52.

53. Intervenors admit the allegation in Paragraph 53.

54. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 54, and therefore deny them.

Intervenors further state that bottom-contact gear and pelagic long-line gear can crush, entangle, and/or kill marine creatures (including corals, whales, dolphins, sea birds, and sea turtles), both when in use and if lost (i.e., derelict or “ghost” gear). Extractive commercial fishing also reduces fish abundance, including selectively by species, size, sex and age, and disrupts fish behavior, resulting in a range of adverse ecological effects, such as altering the balance of predator and prey species with ripple effects up and down the food chain.

Existing Management of the Georges Bank

55. Paragraph 55 contains Plaintiffs’ characterizations of the responsibilities of the New England Fishery Management Council and the National Marine Fisheries Service under the Magnuson-Stevens Act, which are legal characterizations and conclusions to which no response is required. To the extent Paragraph 55 is deemed to include factual allegations, Intervenors deny them.

56. Paragraph 56 contains Plaintiffs’ characterizations of the authority of the Atlantic States Marine Fisheries Commission, which are legal characterizations and conclusions to which no response is required. To the extent Paragraph 56 is deemed to be a factual allegation that the Commission has a role in the management of the American lobster fishery, Intervenors admit. Intervenors deny the remainder of Paragraph 56.

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

57. Paragraph 57 is Plaintiffs' characterization of the contents of Proclamation No. 9496. Intervenors state that the Proclamation speaks for itself and is the best evidence of its contents; Intervenors therefore deny any allegations inconsistent with the text of the Proclamation. Intervenors further deny Plaintiffs' characterization of the "the first iteration" of the Monument as vague and inconsistent with the text of the Proclamation.

58. Paragraph 58 is Plaintiffs' characterization of the contents of Proclamation No. 9496. Intervenors state that the Proclamation speaks for itself and is the best evidence of its contents; Intervenors therefore deny any allegations inconsistent with the text of the Proclamation.

59. Paragraph 59 is Plaintiffs' characterization of the contents of Proclamation No. 9496. Intervenors state that the Proclamation speaks for itself and is the best evidence of its contents. To the extent an answer is required, Intervenors admit.

60. Paragraph 60 is Plaintiffs' characterization of the contents of Proclamation No. 9496. Intervenors state that the Proclamation speaks for itself and is the best evidence of its contents; Intervenors therefore deny any allegations inconsistent with the text of the Proclamation.

61. Paragraph 61 is Plaintiffs' characterization of the contents of Proclamation No. 9496. Intervenors state that the Proclamation speaks for itself and is the best evidence of its contents; Intervenors therefore deny any allegations inconsistent with the text of the Proclamation.

62. Paragraph 62 is Plaintiffs' characterization of the contents of Proclamation No. 9496. Intervenors state that the Proclamation speaks for itself and is the best evidence of its contents; Intervenors therefore deny any allegations inconsistent with the text of the Proclamation. Intervenors further deny Plaintiffs' characterization of the "area around the canyons and seamounts" as "huge" as vague and inconsistent with the language of the Proclamation.

63. Paragraph 63 is Plaintiffs' characterization of the contents of Proclamation No. 9496 and contains legal conclusions and argument to which no response is required. Intervenors further state that the Proclamation speaks for itself and is the best evidence of its contents. To the extent an answer is required, Intervenors deny.

64. Paragraph 64 is Plaintiffs' characterization of the contents of Proclamation No. 9496 and contains legal conclusions and argument to which no response is required. Intervenors further state that the Proclamation speaks for itself and is the best evidence of its contents. To the extent an answer is required, Intervenors deny.

65. Paragraph 65 is Plaintiffs' characterization of the contents of Proclamation No. 9496 and contains legal conclusions and argument to which no response is required. Intervenors further state that the Proclamation speaks for itself and is the best evidence of its contents. To the extent an answer is required, Intervenors deny.

66. Paragraph 66 is Plaintiffs' characterization of the contents of Proclamation No. 9496. Intervenors state that the Proclamation speaks for itself and is the best evidence of its contents. To the extent an answer is required, Intervenors state that Proclamation No. 9496 directed the Secretary of the Interior (through the U.S. Fish and Wildlife Service) and the Secretary of Commerce (through the National Oceanic and Atmospheric Administration) to share management responsibility for the Monument and to prepare a joint management plan within three years; Intervenors deny the remaining allegations as inconsistent with the language of the Proclamation.

67. Paragraph 67 is Plaintiffs' characterization of the contents of Proclamation No. 9496. Intervenors state that the Proclamation speaks for itself and is the best evidence of its contents. To the extent an answer is required, Intervenors state that the Proclamation directed the Secretaries to act in accordance with international law and not to "unlawfully restrict" certain recognized lawful uses. The remainder of Paragraph 67 is Plaintiffs' legal characterization and

argument, to which no response is required; to the extent a response is required, Intervenor deny.

68. Paragraph 68 is Plaintiffs' characterization of the contents of Proclamation No. 9496. Intervenor state that the Proclamation speaks for itself and is the best evidence of its contents; to the extent an answer is required, Intervenor deny the allegations as inconsistent with the text of the Proclamation.

69. Paragraph 69 paraphrases the contents of Proclamation No. 9496. Intervenor state that the Proclamation speaks for itself and is the best evidence of its contents; to the extent an answer is required, Intervenor deny Paragraph 69 as inconsistent with the text of the Proclamation.

70. Intervenor deny the allegation in Paragraph 70.

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

71. Paragraph 71 is Plaintiffs' characterization of the contents of Proclamation No. 10049. Intervenor state that the Proclamation speaks for itself and is the best evidence of its contents. To the extent Paragraph 71 is deemed a factual allegation that fishermen needed "relief" from the 2016 Proclamation, Intervenor lack knowledge or information sufficient to form a belief about the truth of such allegation, and therefore deny it.

72. Paragraph 72 is Plaintiffs' characterization of the contents of Proclamation No. 10049. Intervenors state that the Proclamation speaks for itself and is the best evidence of its contents; to the extent an answer is required, Intervenors deny the allegations to the extent they are inconsistent with Proclamation No. 10049.

73. Paragraph 73 is Plaintiffs' characterization of the contents of Proclamation No. 10049. Intervenors state that the Proclamation speaks for itself and is the best evidence of its contents; to the extent an answer is required, Intervenors admit that the quoted phrase appears in Proclamation No. 10049 and otherwise deny.

74. Paragraph 74 is Plaintiffs' characterization of the contents of Proclamation No. 10049. Intervenors state that the Proclamation speaks for itself and is the best evidence of its contents; to the extent an answer is required, Intervenors admit that the quoted phrases appear in Proclamation No. 10049 and otherwise deny.

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

75. Paragraph 75 is Plaintiffs' characterization of the contents of Proclamation No. 10287. Intervenors state that the Proclamation speaks for itself

and is the best evidence of its contents; to the extent an answer is required, Intervenor admits.

76. Paragraph 76 is Plaintiffs' characterization of the contents of Proclamation No. 9496 and Proclamation No. 10287. Intervenor states that the Proclamations speak for themselves and are the best evidence of their contents, and deny the allegations to the extent they are inconsistent with the Proclamations.

77. Paragraph 77 is Plaintiffs' characterization of the contents of Proclamation No. 10287 and contains legal conclusions and argument to which no response is required. Intervenor states that the Proclamation speaks for itself and is the best evidence of its contents; to the extent an answer is required, Intervenor denies.

78. Paragraph 78 is Plaintiffs' characterization of the contents of Proclamation No. 10287. Intervenor states that the Proclamation speaks for itself and is the best evidence of its contents; to the extent an answer is required, Intervenor admits that the quoted phrases appear in Proclamation No. 10287.

79. Paragraph 79 is Plaintiffs' characterization of the contents of Proclamation No. 10287. Intervenor states that the Proclamation speaks for itself and is the best evidence of its contents; to the extent an answer is required, Intervenor admits that the quoted phrases appear in Proclamation No. 10287.

80. Paragraph 80 is Plaintiffs' characterization of the contents of Proclamation No. 10287 and contains legal conclusions and argument to which no response is required. Intervenor further state that the Proclamation speaks for itself and is the best evidence of its contents. To the extent an answer is required, Intervenor deny.

81. Paragraph 81 is Plaintiffs' characterization of the contents of Proclamation No. 10287 and contains legal conclusions and argument to which no response is required. Intervenor further state that the Proclamation speaks for itself and is the best evidence of its contents. To the extent an answer is required, Intervenor deny.

82. Paragraph 82 is Plaintiffs' characterization of the contents of Proclamation No. 10287. Intervenor state that the Proclamation speaks for itself and is the best evidence of its contents. To the extent an answer is required, Intervenor state that Proclamation No. 10287 directed the Secretary of the Interior (through the U.S. Fish and Wildlife Service) and the Secretary of Commerce (through the National Oceanic and Atmospheric Administration) to share management responsibility for the Monument, to prepare a joint management plan by September 15, 2023, and to promulgate implementing regulations that address any further specific actions necessary for the proper care and management of the

Monument and its objects as appropriate; Intervenors deny the remaining allegations as inconsistent with the language of the Proclamation.

83. Paragraph 83 is Plaintiffs' characterization of the contents of Proclamation No. 10287. Intervenors state that the Proclamation speaks for itself and is the best evidence of its contents and deny the allegations to the extent they are inconsistent with the Proclamation.

84. Paragraph 84 quotes Proclamation No. 10287. Intervenors state that the Proclamation speaks for itself and is the best evidence of its contents; to the extent an answer is required, Intervenors admit that the quoted phrase appears in Proclamation No. 10287.

85. Paragraph 85 quotes Proclamation No. 10287. Intervenors state that the Proclamation speaks for itself and is the best evidence of its contents; to the extent an answer is required, Intervenors admit that the quoted phrase appears in Proclamation No. 10287.

86. Intervenors deny the allegation in Paragraph 86.

DECLARATORY AND INJUNCTIVE RELIEF ALLEGATIONS

87. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 87, and therefore deny them.

88. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 88, and therefore deny them.

89. Intervenor's lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 89, and therefore deny them.

90. Intervenor's lack knowledge or information sufficient to form a belief about the truth of the allegation in Paragraph 90, and therefore deny it.

91. Intervenor's lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 91, and therefore deny them.

92. Intervenor's lack knowledge or information sufficient to form a belief about the existence of Plaintiffs' alleged injuries, and therefore deny the allegation in Paragraph 92.

93. Paragraph 93 contains Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor's deny.

94. Intervenor's lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 94, and therefore deny them.

95. Intervenor's lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 95, and therefore deny them.

96. Intervenor's lack knowledge or information sufficient to admit or deny the allegation in Paragraph 96, and therefore deny it.

97. Intervenor's lack knowledge or information sufficient to admit or deny the allegation in Paragraph 97, and therefore deny it.

98. Paragraph 98 contains Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor deny.

99. Paragraph 99 contains Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor state that Proclamation No. 10287 has the effect of prohibiting some forms of commercial fishing within the Monument and phasing out others, and requires the Secretaries to enforce its terms. Intervenor lack knowledge or information sufficient to admit or deny the allegation that Proclamation No. 10287 immediately forbids Plaintiffs from fishing in the Monument or that it is the reason why Plaintiffs are not fishing in the Monument, and therefore deny it.

100. Intervenor deny that Plaintiffs are entitled to declaratory or injunctive relief.

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))

101. Paragraph 101 is a statement incorporating Plaintiffs' allegations in the preceding paragraphs, to which no response is required. To the extent a response is required, Intervenor incorporate their preceding responses.

102. Paragraph 102 contains Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenors admit that the Antiquities Act places discernible limits on the President's authority, and that courts may review the President's actions for compliance with those limits, but deny that Plaintiffs have stated a claim on which relief may be granted here. Intervenors further state that the cited court decisions speak for themselves and are the best evidence of their contents; Intervenors therefore deny any characterizations inconsistent with the text of those decisions.

103. Paragraph 103 contains a partial quotation from the Antiquities Act. Intervenors admit that the quoted word appears in the Act, but state that the Act speaks for itself and is the best evidence of its contents.

104. Paragraph 104 contains Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenors deny.

105. Paragraph 105 contains Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenors deny.

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))

106. Paragraph 106 is a statement incorporating Plaintiffs' allegations in the preceding paragraphs, to which no response is required. To the extent a response is required, Intervenor's incorporate their preceding responses.

107. Paragraph 107 contains a partial quotation from the Antiquities Act. Intervenor's admit that the quoted words appear in the Act, but state that the Act speaks for itself and is the best evidence of its contents.

108. Paragraph 108 contains Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor's deny. Intervenor's further state that the cited court decision speaks for itself and is the best evidence of its contents; Intervenor's therefore deny Plaintiffs' characterization as inconsistent with the text of that decision.

109. Paragraph 109 contains Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor's deny.

110. Paragraph 110 contains Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor's deny.

111. Paragraph 111 contains Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor's deny.

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))

112. Paragraph 112 is a statement incorporating Plaintiffs' allegations in the preceding paragraphs, to which no response is required. To the extent a response is required, Intervenor's incorporate their preceding responses.

113. Paragraph 113 contains a partial quotation from the Antiquities Act. Intervenor's admit that the quoted words appear in the Act, but state that the Act speaks for itself and is the best evidence of its contents.

114. Paragraph 114 contains Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor's deny.

115. Paragraph 115 contains Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor's deny. Intervenor's further state that the cited court decision speaks for itself and is the best evidence of its contents; Intervenor's therefore deny any characterizations inconsistent with the text of that decision.

116. Paragraph 116 contains Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor's deny.

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))

117. Paragraph 117 is a statement incorporating Plaintiffs' allegations in the preceding paragraphs, to which no response is required. To the extent a response is required, Intervenors incorporate their preceding responses.

118. Paragraph 118 contains a partial quotation from the Antiquities Act. Intervenors admit that the quoted words appear in the Act, but state that the Act speaks for itself and is the best evidence of its contents.

119. Paragraph 119 contains Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenors deny.

120. Paragraph 120 contains Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenors deny.

121. Paragraph 121 contains Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenors deny.

Count V:

***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)***

122. Paragraph 122 is a statement incorporating Plaintiffs' allegations in the preceding paragraphs, to which no response is required. To the extent a response is required, Intervenors incorporate their preceding responses.

123. Paragraph 123 contains Plaintiffs' legal conclusions, to which no response is required.

124. Paragraph 124 contains Plaintiffs' legal conclusions, to which no response is required. Intervenors further state that the cited court decision speaks for itself and is the best evidence of its contents.

125. Paragraph 125 contains Plaintiffs' legal conclusions, to which no response is required. Intervenors further state that the cited court opinions speak for themselves and are the best evidence of their contents.

126. Paragraph 126 contains Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenors deny.

127. Paragraph 127 contains Plaintiffs' legal conclusions to which no response is required. To the extent a response is required, Intervenors deny.

128. Paragraph 128 is Plaintiffs' characterization of the contents of the Antiquities Act. Intervenor's state that the Act speaks for itself and is the best evidence of its contents.

129. Paragraph 129 contains Plaintiffs' legal conclusions, to which no response is required. Intervenor's further state that the cited statute speaks for itself and is the best evidence of its contents.

130. Paragraph 130 contains Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor's deny.

REQUESTED RELIEF

The remaining paragraphs in Plaintiffs' First Amended Complaint constitute Plaintiffs' prayer for relief, to which no response is required. To the extent a response is required, Intervenor's deny the allegations in Plaintiffs' prayer for relief, and further deny that Plaintiffs are entitled to any relief in this case.

* * *

INTERVENORS' AFFIRMATIVE DEFENSES AND REQUESTED RELIEF

Intervenor's state the following affirmative defenses. In support of the following affirmative defenses, Intervenor's incorporate their answers to the First Amended Complaint's allegations as set forth above.

FIRST AFFIRMATIVE DEFENSE

1. Plaintiffs lack standing to invoke this Court's jurisdiction.

SECOND AFFIRMATIVE DEFENSE

2. Plaintiffs have failed to establish that venue is proper in this District.

THIRD AFFIRMATIVE DEFENSE

3. Plaintiffs' claims are barred by the doctrine of collateral estoppel.

FOURTH AFFIRMATIVE DEFENSE

4. Plaintiffs fail to state a claim upon which relief can be granted.

Intervenors reserve the right prior to, at, or after trial to amend their answer or add any additional defenses or objections to Plaintiffs' claims that may become known and available as this action proceeds.

WHEREFORE, Intervenors respectfully request that the Court:

- (A) Dismiss the First Amended Complaint with prejudice;
- (B) Enter judgment in favor of Defendants and Intervenors;
- (C) Decline to grant any relief to Plaintiffs; and
- (D) Grant such further relief as the Court deems just and proper.

Dated: September 26, 2022

Respectfully submitted,

s/ Bradley Campbell

Bradley Campbell (NJ Bar No. 025212005)

226 Swan Street

Lambertville, New Jersey 08530

Tel.: (617) 850-1786

E-mail: brad@bradcampbell.us

Counsel for CLF, NRDC, CBD, and R. Zack Klyver

Erica Fuller (admitted PHV)
Conservation Law Foundation
62 Summer Street
Boston, Massachusetts 02110
Tel.: (617) 850-1727
E-mail: efuller@clf.org
Counsel for CLF

Katherine Desormeau (admitted PHV)
Natural Resources Defense Council
111 Sutter Street, 21st Floor
San Francisco, California 94104
Tel.: (415) 875-6100
E-mail: kdesormeau@nrdc.org
Counsel for NRDC

Charles R. Corbett (admitted PHV)
Natural Resources Defense Council
1152 15th Street NW, Suite 300
Washington, DC 20005
Tel.: (202) 289-6868
E-mail: ccorbett@nrdc.org
Counsel for NRDC

Kristen Monsell (admitted PHV)
Center for Biological Diversity
1212 Broadway, Ste. 800
Oakland, California 94612
Tel.: (510) 844-7137
E-mail: kmonsell@biological
diversity.org
Counsel for CBD and R. Zack Klyver

CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 11.2

I 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.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 26, 2022

s/ Bradley Campbell
Bradley Campbell (NJ Bar No. 025212005)
Counsel for Defendant-Intervenors