

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

FRANK GREEN and ROBERT CONRAD,

Plaintiffs,

v.

JOSEPH R. BIDEN, JR., *et al.*,

Defendants,

and

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

Defendant-Intervenors.

No. 2:24-cv-01975-MKB-ARL

**[PROPOSED] ANSWER OF
DEFENDANT-INTERVENORS**

[PROPOSED] ANSWER OF DEFENDANT-INTERVENORS

Defendant-Intervenors Natural Resources Defense Council, Conservation Law Foundation, Center for Biological Diversity, and R. Zack Klyver (collectively, Intervenors), through their undersigned counsel, say as follows by way of an answer to Plaintiffs' Complaint, dated March 18, 2024 (ECF No. 1):

INTRODUCTION¹

1. Paragraph 1 contains Plaintiffs' characterization of their claims, to which no response is required. To the extent Paragraph 1 characterizes Presidential Proclamation No.

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

10287, published at 86 Fed. Reg. 57,349 (Oct. 8, 2021), and National Marine Fisheries Service's (NMFS's) action, published at 89 Fed. Reg. 12,282 (Feb. 16, 2024), Intervenor aver that the text of those authorities is the best evidence of their contents, and therefore deny Plaintiffs' allegations to the extent they are inconsistent with the text of those authorities.

2. Intervenor lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 2, and therefore deny them.

3. Paragraph 3 characterizes Presidential Proclamation No. 10287, which speaks for itself and is the best evidence of its contents. Intervenor therefore deny any allegations inconsistent with the text of the Proclamation.

4. The first clause of the first sentence in Paragraph 4 sets forth legal argument and conclusions, to which no response is required. To the extent a response is required, Intervenor lacks knowledge or information sufficient to form a belief about the truth of the allegations in the first clause of the first sentence and therefore deny them. Intervenor deny the remaining allegations in Paragraph 4.

5. Paragraph 5 characterizes NMFS's action, published at 89 Fed. Reg. 12,282 (Feb. 16, 2024), which speaks for itself and is the best evidence of its contents. Intervenor therefore deny any allegations inconsistent with the text of NMFS's action.

6. Paragraph 6 sets forth legal argument and conclusions, to which no response is required. To the extent a response is required, Intervenor lacks knowledge or information sufficient to form a belief about the truth of the allegations and therefore deny them. To the extent Paragraph 6 characterizes provisions in the Magnuson-Stevens Act, 16 U.S.C. §§ 1857, 1858, the statute speaks for itself and is the best evidence of its contents. Intervenor therefore deny any allegations inconsistent with the text of the statute.

7. Paragraph 7 characterizes NMFS's action, published at 89 Fed. Reg. 12,282 (Feb. 16, 2024), and sets forth legal argument and conclusions, to which no response is required. Intervenor deny any allegations inconsistent with the text of NMFS's action.

8. Paragraph 8 sets forth legal argument and conclusions, to which no response is required. To the extent a response is required, Intervenor deny.

9. Paragraph 9 sets forth legal argument and conclusions, to which no response is required. To the extent a response is required, Intervenor deny.

10. The first sentence of Paragraph 10 contains a partial quotation from the Antiquities Act. Intervenor 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; Intervenor therefore deny any allegations inconsistent with the text of the Act. The remaining sentences in Paragraph 10 set forth Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor deny.

11. The first sentence of Paragraph 11 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 remaining sentences in Paragraph 11 set forth Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor deny.

12. The first sentence of Paragraph 12 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 remaining sentences in Paragraph 12 set

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

13. Paragraph 13 contains partial quotations 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 remaining sentences in Paragraph 13 set forth Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor deny.

14. Paragraph 14 sets forth Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor deny.

15. Paragraph 15 sets forth Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor deny.

16. Paragraph 16 sets forth Plaintiffs' characterization of the relief they seek, to which no response is required. Intervenor deny that Plaintiffs are entitled to any relief.

JURISDICTION AND VENUE

17. Paragraph 17 sets forth Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor 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. Intervenor 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 sets forth Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor admit that district courts generally have jurisdiction to review certain NMFS regulations pursuant to 16 U.S.C. § 1855(f) and

jurisdiction over criminal enforcement actions pursuant to 16 U.S.C. § 1861(d), but deny that Plaintiffs have standing to invoke that jurisdiction.

19. Paragraph 19 cites to 28 U.S.C. § 2412, which speaks for itself and is the best evidence of its contents. Intervenorors therefore deny any allegations inconsistent with the text of the statute.

20. Intervenorors deny the allegation in Paragraph 20 that “a substantial part of the events giving rise to the claim occurred within this judicial district.” Intervenorors lack knowledge or information sufficient to form a belief about Plaintiff Green’s residence, and therefore deny the remaining allegations in Paragraph 20.

PARTIES

Plaintiffs

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

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

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

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

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

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

27. Intervenor lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 27, and therefore deny them.

28. Intervenor lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 28, and therefore deny them.

29. Intervenor lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 29, and therefore deny them.

30. Intervenor lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 30, and therefore deny them.

31. Intervenor lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 31, and therefore deny them.

Defendants

32. Intervenor admit the allegations in Paragraph 32.

33. Intervenor admit the allegations in Paragraph 33.

34. Intervenor admit the allegations in Paragraph 34.

35. Intervenor admit the allegations in Paragraph 35.

LEGAL BACKGROUND

The Antiquities Act

36. Paragraph 36 sets forth Plaintiffs' characterization of the Antiquities Act, and it constitutes legal 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.

37. Paragraph 37 sets forth Plaintiffs' characterization of the Antiquities Act, and it constitutes legal argument 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 and meaning.

38. Paragraph 38 sets forth Plaintiffs' characterization of the Antiquities Act, and it constitutes legal argument 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 and meaning.

39. Paragraph 39 sets forth Plaintiffs' characterization of the Antiquities Act, and it constitutes legal argument 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 and meaning.

40. Paragraph 40 sets forth Plaintiffs' characterization of the Antiquities Act, and it constitutes legal argument 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 and meaning.

41. Paragraph 41 sets forth Plaintiffs' characterization of the Antiquities Act, and it constitutes legal argument 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 and meaning.

42. Paragraph 42 sets forth Plaintiffs' characterization of the Antiquities Act, and it constitutes legal argument 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 and meaning.

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

43. Paragraph 43 sets forth Plaintiffs' legal conclusions, to which no response is required. Intervenor's admit that the federal government has extensive regulatory authority over the U.S. territorial sea. To the extent Paragraph 43 characterizes Presidential Proclamation 5928, Intervenor's state that the Proclamation speaks for itself and is the best evidence of its contents, and deny any allegations inconsistent with the text of the Proclamation.

44. Paragraph 44 sets forth Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor's 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. Exclusive Economic Zone to 200 nautical miles from the baseline, consistent with international law. Intervenor's state that the Proclamation and other authorities cited in Paragraph 44 speak for themselves and are the best evidence of their contents, and therefore deny any allegations inconsistent with the text of those authorities. Intervenor's further deny that Plaintiffs' characterization of limits on the federal government's authority over the Exclusive Economic Zone is a complete and accurate one.

Federal Regulation of Ocean Fisheries

45. Paragraph 45 sets forth 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.

46. Paragraph 46 sets forth Plaintiffs' characterization of the Magnuson-Stevens 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.

47. Paragraph 47 sets forth Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor state that the text of the Antiquities Act, National Marine Sanctuaries Act, and Magnuson-Stevens Act speak for themselves and are the best evidence of their contents, and therefore deny any allegations that are inconsistent with the text of those statutes.

48. Paragraph 48 sets forth Plaintiffs' characterizations of the regional fishery management councils' authority under the Magnuson-Stevens Act, which are legal conclusions to which no response is required. To the extent a response is required, Intervenor state that the text of the Magnuson-Stevens Act speaks for itself and is the best evidence of its contents, and therefore deny any allegations that are inconsistent with the text of the statute.

49. Paragraph 49 sets forth Plaintiffs' characterization of a provision of the Magnuson-Stevens Act, which is a legal conclusion to which no response is required. To the extent a response is required, Intervenor state that the text of the Magnuson-Stevens Act speaks for itself and is the best evidence of its contents, and therefore deny any allegations that are inconsistent with the text of the statute.

50. Paragraph 50 sets forth Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor deny.

FACTUAL ALLEGATIONS

Georges Bank Fishery

51. Intervenor deny the allegation in Paragraph 51 as vague and ambiguous.

52. Intervenor state that the allegations in Paragraph 52 are vague and ambiguous, and therefore deny them.

53. Intervenor admit the allegation in Paragraph 53.

54. Intervenor admits the allegations in the first sentence of Paragraph 54. Intervenor states that the allegations in the second sentence are vague and ambiguous, and therefore deny them. Intervenor further states that bottom-contact fishing gear—like the weighted traps used to catch lobster and red crabs and trawl nets used to catch tilefish and whiting—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.

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. Intervenor denies any allegations inconsistent with the text of the Magnuson-Stevens Act. To the extent Paragraph 55 is deemed to include factual allegations, Intervenor denies them.

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

56. Paragraph 56 sets forth Plaintiffs’ characterization of the contents of Proclamation No. 9496. Intervenor states that the Proclamation speaks for itself and is the best evidence of its contents, and therefore deny any allegations inconsistent with the text of the Proclamation.

57. Paragraph 57 sets forth Plaintiffs’ characterization of the contents of Proclamation No. 9496. Intervenor states that the Proclamation speaks for itself and is the best evidence of its contents, and therefore deny any allegations inconsistent with the text of the Proclamation.

58. Intervenor's admit that the map shown in Paragraph 58 can be found on NOAA's website.

59. Paragraph 59 sets forth Plaintiffs' characterization of the contents of Proclamation No. 9496. Intervenor's state that the Proclamation speaks for itself and is the best evidence of its contents, and therefore deny any allegations inconsistent with the text of the Proclamation.

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

61. Paragraph 61 sets forth Plaintiffs' characterization of the contents of Proclamation No. 9496 and contains legal conclusions and argument to which no response is required. Intervenor's further state that the Proclamation speaks for itself and is the best evidence of its contents. To the extent an answer is required, Intervenor's deny.

62. Paragraph 62 sets forth Plaintiffs' characterization of the contents of Proclamation No. 9496 and contains legal conclusions and argument to which no response is required. Intervenor's further state that the Proclamation speaks for itself and is the best evidence of its contents. To the extent an answer is required, Intervenor's deny.

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

64. Paragraph 64 sets forth Plaintiffs' characterization of the contents of Proclamation No. 9496. Intervenor's state that the Proclamation speaks for itself and is the best evidence of its contents, and therefore deny any allegations inconsistent with the text of the Proclamation.

65. Paragraph 65 sets forth 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, and therefore deny any allegations inconsistent with the text of the Proclamation.

66. Paragraph 66 sets forth Plaintiffs' characterization of the contents of Proclamation No. 9496 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.

67. Paragraph 67 sets forth Plaintiffs' characterization of the contents of Proclamation No. 9496 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 admit, and further aver that the Proclamation's prohibition went into effect in November 2016.

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

68. Paragraph 68 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 68 is deemed a factual allegation that unnamed fishermen needed or obtained "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.

69. Paragraph 69 sets forth 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, and therefore deny any allegations inconsistent with the text of the Proclamation.

70. Paragraph 70 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, and therefore deny any allegations inconsistent with the text of the Proclamation.

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

71. Paragraph 71 sets forth 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 admit.

72. Paragraph 72 sets forth Plaintiffs' characterization of the contents of Proclamation No. 10287 and contains legal conclusions to which no response is required. Intervenor state that the Proclamation speaks for itself and is the best evidence of its contents. To the extent a response is required, Intervenor deny.

73. Paragraph 73 sets forth Plaintiffs' characterization of the contents of Proclamation No. 10287 and contains legal conclusions to which no response is required. Intervenor state that the Proclamation speaks for itself and is the best evidence of its contents; to the extent an answer is required, Intervenor admit that the quoted phrases appear in Proclamation No. 10287.

74. Paragraph 74 sets forth 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 admit that the quoted phrases appear in Proclamation No. 10287.

75. Paragraph 75 sets forth Plaintiffs' characterization of the contents of Proclamation No. 10287 and contains legal conclusions 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.

76. Paragraph 76 sets forth Plaintiffs' characterization of the contents of Proclamation No. 10287 and contains legal conclusions 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.

77. Paragraph 77 sets forth 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, and therefore deny any allegations inconsistent with the text of the Proclamation.

78. Paragraph 78 sets forth 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 admit. To the extent that Plaintiffs' characterization differs from the text of the Proclamation, Intervenor deny.

79. Paragraph 79 sets forth 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 admit. To the extent that Plaintiffs' characterization differs from the text of the Proclamation, Intervenor deny.

80. Paragraph 80 sets forth 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 admit. To the extent that Plaintiffs' characterization differs from the text of the Proclamation, Intervenor deny.

81. Paragraph 81 sets forth Plaintiffs' characterization of the contents of Proclamation No. 10287. Intervenor deny that Proclamation 10287's prohibition on commercial fishing in the

Monument except for lobster and red crab was to be effective on October 18, 2021; Intervenor aver that the Proclamation was signed on October 8, 2021, and was effective as of that date. Further, the Proclamation speaks for itself and is the best evidence of its contents, and therefore deny any allegations inconsistent with the text of the Proclamation.

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

82. As to the first sentence of Paragraph 82, Intervenor admit that on February 16, 2024, the National Marine Fisheries Service published a rule incorporating the Monument's boundary coordinates and reflecting Proclamation No. 10287's prohibition on commercial fishing within the Monument. The remainder of Paragraph 82 sets forth Plaintiffs' legal conclusions and characterization of the contents of the final rule. Intervenor state that the final rule speaks for itself and is the best evidence of its contents, and therefore deny any allegations inconsistent with the text of the final rule.

83. Paragraph 83 sets forth Plaintiffs' legal conclusions and characterization of the contents of the final rule. Intervenor state that the final rule speaks for itself and is the best evidence of its contents, and therefore deny any allegations inconsistent with the text of the rule.

84. Paragraph 84 sets forth Plaintiffs' legal conclusions and characterization of the contents of the final rule. Intervenor state that the final rule speaks for itself and is the best evidence of its contents, and therefore deny any allegations inconsistent with the text of the rule. Intervenor further aver, on information and belief, that neither Mr. Green nor Mr. Conrad submitted comments to the agency during the notice and comment process, and no other commenters advanced the argument Plaintiffs appear to make here.

DECLARATORY AND INJUNCTIVE RELIEF ALLEGATIONS

85. Intervenor lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 85, and therefore deny them.

86. Paragraph 86 sets forth Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor state that Proclamation No. 10287 reinstated the prohibition on all commercial fishing within the Monument with a phase-out for the lobster and crab fishing, and required the Secretaries to enforce its terms. Intervenor lack knowledge or information sufficient to admit or deny the allegation that Proclamation No. 10287 is the reason why Plaintiffs are not fishing in the Monument, and therefore deny it.

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

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

89. Paragraph 89 sets forth Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor lack knowledge or information sufficient to form a belief as to whether the relief Plaintiffs request would "restore" Plaintiffs' "ability to fish" in the Monument, and therefore deny.

90. Paragraph 90 sets forth Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor deny.

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

92. Intervenor lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 92, and therefore deny them.

93. Paragraph 93 sets forth Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor deny that Plaintiffs are entitled to any remedy.

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

95. Paragraph 95 sets forth Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor deny that Plaintiffs have standing to sue.

96. Paragraph 96 sets forth Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor admit that courts may review the President's actions for compliance with legal limits in appropriate cases where plaintiffs establish standing, clear other threshold hurdles, and state arguable claims for relief, but deny that this is such a case.

97. The first sentence of Paragraph 97 sets forth Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor admit that courts may review agency rules for compliance with legal limits in appropriate cases where plaintiffs establish standing and clear other threshold hurdles, but deny that this is such a case. The second sentence sets forth Plaintiffs' legal conclusions and characterization of the contents of NMFS's rule. Intervenor state that the rule speaks for itself and is the best evidence of its contents, and therefore deny any allegations inconsistent with the text of the rule.

98. 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))***

99. Paragraph 99 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.

100. Paragraph 100 contains Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor admit that the Antiquities Act places limits on the President's authority.

101. Paragraph 101 contains a partial quotation from the Antiquities Act. Intervenor 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. Intervenor deny any allegations that are inconsistent with the text of the statute.

102. Paragraph 102 contains Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor deny.

103. Paragraph 103 contains Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor 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))***

104. Paragraph 104 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.

105. Paragraph 105 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 deny any allegations that are inconsistent with the text of the statute.

106. Paragraph 106 sets forth Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor deny.

107. Paragraph 107 sets forth Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor deny.

108. Paragraph 108 sets forth Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor deny.

109. Paragraph 109 sets forth Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor 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))***

110. Paragraph 110 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.

111. Paragraph 111 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 deny any allegations that are inconsistent with the text of the statute.

112. Paragraph 112 sets forth Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor deny.

113. Paragraph 113 sets forth Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor 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))***

114. Paragraph 114 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.

115. Paragraph 115 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 deny any allegations that are inconsistent with the text of the statute.

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

117. Paragraph 117 contains Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor deny.

118. Paragraph 118 contains Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor deny.

Count V:

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

119. Paragraph 119 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.

120. Paragraph 120 sets forth Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor deny.

121. Paragraph 121 sets forth Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor deny.

122. Paragraph 122 contains Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor deny.

123. Paragraph 123 contains Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor deny.

124. Paragraph 124 contains Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor deny.

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. Paragraph 125 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.

126. Paragraph 126 contains a partial quotation from the Article I of the U.S. Constitution and sets forth Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor admit that the quoted words appear in Article I, but state that Article I speaks for itself and is the best evidence of its contents, and deny any allegations inconsistent with the text of the Article.

127. Paragraph 127 is Plaintiffs' characterization of Article II of the U.S. Constitution and sets forth Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor state that the Article speaks for itself and is the best evidence of its contents.

128. Paragraph 128 sets forth Plaintiffs' characterization of the Antiquities Act, to which no response is required. Intervenor further state that the statute speaks for itself and is the best evidence of its contents. Intervenor deny any allegations that are inconsistent with the text of the statute.

129. Paragraph 129 sets forth Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor deny.

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

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. Paragraph 131 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.

132. Paragraph 132 contains a partial quotation from the Article I of the U.S. Constitution and sets forth Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor admit that the quoted words appear in Article I, but state that Article I speaks for itself and is the best evidence of its contents, and deny any allegations inconsistent with the text of the Article.

133. Paragraph 133 sets forth Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor admit that agencies generally may not act without a proper delegation of authority, but deny that this is such a case.

134. Paragraph 134 sets forth Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor deny.

135. Paragraph 135 sets forth Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor deny.

136. Paragraph 136 sets forth Plaintiffs' characterization of the Antiquities Act, to which no response is required. Intervenor further state that the statute speaks for itself and is the

best evidence of its contents. Intervenor deny any allegations that are inconsistent with the text of the statute.

137. Paragraph 137 sets forth Plaintiffs' characterization of the Antiquities Act, to which no response is required. To the extent a response is required, Intervenor admit that the President generally cannot command agencies to regulate contrary to Congress's clear directions, but deny that this is such a case.

138. Paragraph 138 sets forth 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.

139. Paragraph 139 sets forth Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor deny.

REQUESTED RELIEF

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

* * *

INTERVENORS' DEFENSES AND REQUESTED RELIEF

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

FIRST DEFENSE

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

SECOND DEFENSE

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

THIRD DEFENSE

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

FOURTH DEFENSE

4. Plaintiffs waived or failed to exhaust their claim under the Magnuson-Stevens Act.

FIFTH DEFENSE

5. 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 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: May 29, 2024

Respectfully submitted,

s/ Lauren P. Phillips

Lauren P. Phillips

NATURAL RESOURCES DEFENSE COUNCIL

40 W. 20th Street, 11th Floor

New York, NY 10011

Tel.: (212) 727-2700

E-mail: lphillips@nrdc.org

Counsel for NRDC

Katherine Desormeau*
NATURAL RESOURCES DEFENSE COUNCIL
111 Sutter Street, 21st Floor
San Francisco, CA 94104
Tel.: (415) 875-6100
E-mail: kdesormeau@nrdc.org
Counsel for NRDC

s/ Erica Fuller
Erica Fuller*
Chloe Fross*
CONSERVATION LAW FOUNDATION
62 Summer Street
Boston, MA 02110
Tel.: (617) 850-1727
E-mail: efuller@clf.org
E-mail: cfross@clf.org
Counsel for CLF

s/ Kristen Monsell
Kristen Monsell*
CENTER FOR BIOLOGICAL DIVERSITY
1212 Broadway, Suite 800
Oakland, CA 94612
Tel.: (510) 844-7137
E-mail: kmonsell@biologicaldiversity.org
Counsel for CBD and R. Zack Klyver

** Applications to appear pro hac vice forthcoming*