

**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.

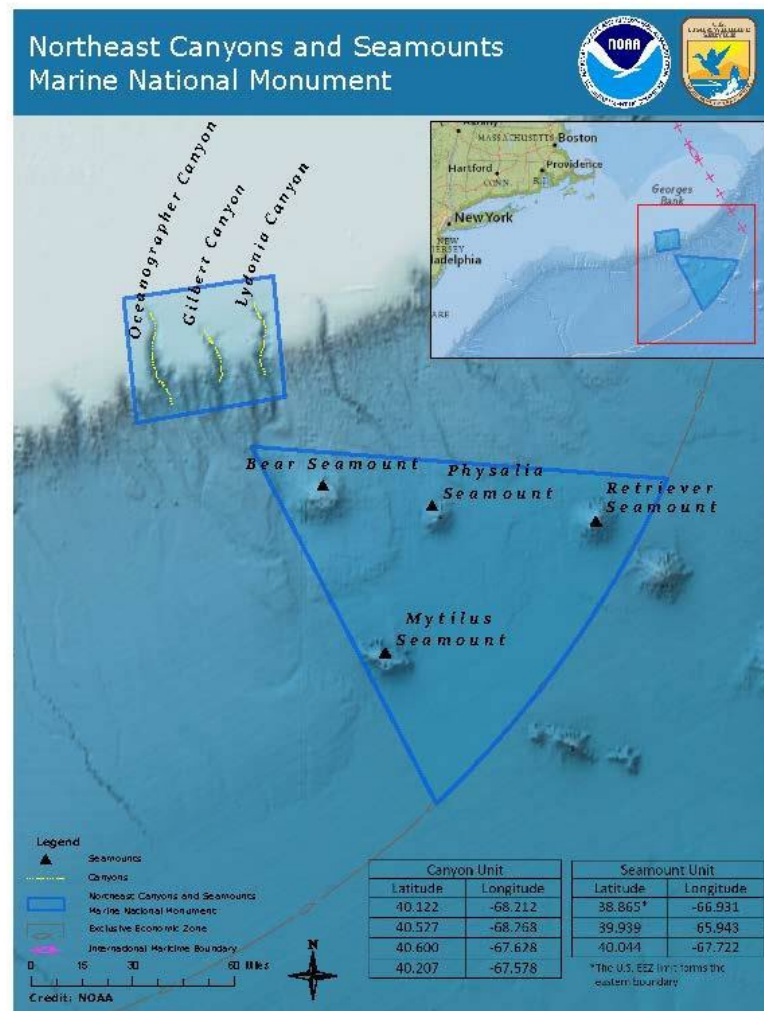


Fig. 1: Map of Northeast Canyons and Seamounts Marine National Monument
Credit: NOAA, <https://www.fisheries.noaa.gov/new-england-mid-atlantic/habitat-conservation/northeast-canyons-and-seamounts-marine-national>.

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