

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CONSERVATION LAW FOUNDATION,
et al.,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity
as President of the United States, et al.,

Defendants.

Civil Action No. 26-1528 (JEB)

DEFENDANTS' MOTION TO DISMISS

Pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, Defendants move to dismiss the complaint for lack of jurisdiction under Article III. Plaintiffs' factual allegations fail to demonstrate actual, concrete, or particularized injury to a cognizable interest from the challenged actions. The Court should therefore dismiss the complaint.

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**MEMORANDUM IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS**

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INTRODUCTION

Plaintiffs have failed to establish Article III standing for any of the claims in their complaint because their research interests and commercial fishing activities can coexist—as they have for several decades—and they cannot claim aesthetic injury based on one visit or less to the challenged site. Plaintiffs are an individual and three organizations whose members allege their research and aesthetic interests will be harmed by the removal of a commercial fishing ban in the Northeast Canyons and Seamounts Marine National Monument (“Monument”), an approximately 5,000-square-mile-area of the Atlantic Ocean roughly 130 miles off the coast of Massachusetts. But several members of the Plaintiff organizations who allege injury from commercial fishing conducted their research within the Monument for decades during periods when commercial fishing was permitted, belying their claims of injury. And importantly, the challenged actions do not prevent any individual from visiting the Monument to continue to conduct research. Plaintiffs’ allegations that their research will be harmed by the limited commercial fishing that has historically occurred in the vast area of the Monument are speculative and refuted by past events. Furthermore, Plaintiffs have no cognizable right to use the Monument as a control or reference site for their research. The alleged loss of the Monument as a research reference point is not an injury-in-fact that can confer Article III standing.

Plaintiffs’ alleged aesthetic interests also fail to confer standing. The individual Plaintiff, R. Zack Klyver, has never visited the Monument area, despite expressing his intent to do so in a prior lawsuit. And Dr. Mary Beth Decker, a member of Plaintiff Natural Resources Defense Council (“NRDC”), has only visited the Monument area once for research and does not have a cognizable aesthetic interest in the Monument.

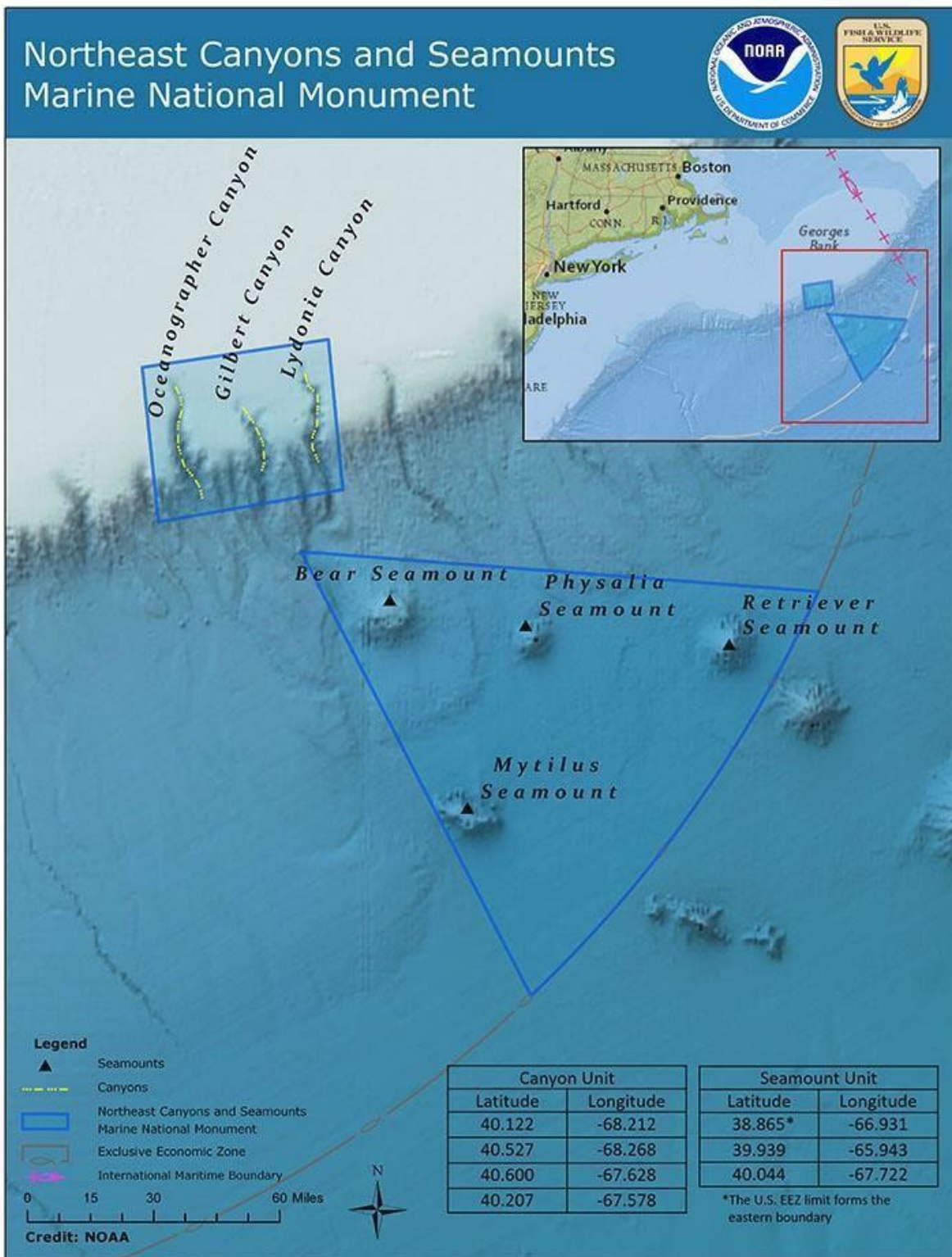
Plaintiffs’ alleged injuries are speculative, unsupported, and do not establish injuries-in-fact. As Plaintiffs have failed to pass the Article III threshold, their complaint must be dismissed.

FACTUAL BACKGROUND

A. The Northeast Canyons and Seamounts Marine National Monument

The Northeast Canyons and Seamounts Marine National Monument covers an expanse of underwater canyons and mountains situated about 130 miles off the eastern coast of the United States.¹ The Monument includes almost 5,000 square miles and is composed of two non-contiguous areas which correspond to distinct geological features. The smaller rectangular Canyons Unit includes the waters and submerged lands within and surrounding Oceanographer, Lydonia, and Gilbert Canyons. The larger Seamounts Unit includes waters and submerged lands surrounding four extinct underwater volcanoes: Bear Seamount, Mytilus Seamount, Physalia Seamount, and Retriever Seamount. The following graphic depicts both areas:

¹ Federal courts may take judicial notice of adjudicative facts that are “not subject to reasonable dispute” and that are “either (1) generally known within the territorial jurisdiction . . . or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b); *see also United States v. Burroughs*, 810 F.3d 833, 835 n.1 (D.C. Cir. 2016) (taking judicial notice of a map).



NOAA Fisheries, *Commercial Fishing Allowed in Northeast Canyons and Seamounts Marine National Monument*, <https://www.fisheries.noaa.gov/new-england-mid-atlantic/ecosystems/northeast-canyons-and-seamounts-marine-national-monument#how-does-the-monument-overlap-with-the-georges-bank-deep-sea-coral-protection-area> (last visited July 13, 2026).

In 2016, President Obama issued Proclamation 9496 (the “2016 Proclamation”) that created the Northeast Canyons and Seamounts Marine National Monument. 81 Fed. Reg. 65161 (Sept. 21, 2016). The Proclamation identified these canyons and seamounts as objects of “intense scientific interest” and noted that both “government and academic oceanographic institutions have studied the canyons and seamounts using research vessels, submarines and remotely operated underwater vehicles for important deep-sea expeditions.” *Id.* at 65163. The Proclamation withdrew federal lands within the monument from all forms of entry, sale, or leasing and prohibited a variety of activities, including most, but not all, commercial fishing. *Id.* at 65163-65.

The 2016 Proclamation expressly permitted commercial fishing by red crab and lobster fisheries until 2023, recreational fishing, research, scientific exploration, and other activities that would further the educational value of the Monument or assist in its “conservation and management.” *Id.* at 65165.. Management responsibility for the Monument is shared by the Department of Commerce and the Department of the Interior. Within the Department of Commerce, the National Oceanic and Atmospheric Administration (“NOAA”) is responsible for managing activities and species in the Monument under the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1801 et seq. (“Magnuson Act”), the Endangered Species Act, and the Marine Mammal Protection Act. Within the Department of the Interior, the U.S. Fish and Wildlife Service is responsible for managing activities and species in the

Monument under the National Wildlife Refuge System Administration Act and the Endangered Species Act.

On June 5, 2020, President Trump issued Proclamation 10049 (the “2020 Proclamation”), which modified the Monument’s protections in one respect only: it lifted the prohibition on commercial fishing. The President based this modification on his finding that “appropriately managed commercial fishing would not put the objects of scientific and historic interest that the monument protects at risk.” 85 Fed. Reg. 35793 (June 5, 2020).

Plaintiffs challenged the 2020 Proclamation in an earlier case. *See Conservation Law Foundation, et al. v. Donald J. Trump, et al.*, No. 1:20-cv-01589 (D.D.C.). On October 8, 2021, while Plaintiffs’ lawsuit was pending, President Biden issued Proclamation 10287 (the “2021 Proclamation”), restoring the commercial fishing prohibition in the Monument, with an exception permitting red crab and lobster commercial fishing until September 15, 2023. 86 Fed. Reg. 57349 (Oct. 8, 2021). As a result, Plaintiffs dismissed their claims without prejudice. *See Notice of Voluntary Dismissal, Conservation Law Foundation, et al. v. Donald J. Trump, et al.*, No. 1:20-cv-01589 (D.D.C. Nov. 10, 2021), Dkt. No. 36.

On February 6, 2026, President Trump issued Proclamation 11009 (the “2026 Proclamation”), which revoked the 2021 Proclamation and directed that the Monument be managed in accordance with the 2020 Proclamation, which permits commercial fishing within the Monument. 91 Fed. Reg. 6489 (Feb. 6, 2026). The 2026 Proclamation acknowledges that Federal law, including the Magnuson Act, the Endangered Species Act, the Migratory Bird Treaty Act, the National Wildlife Refuge System Administration Act, the Refuge Recreation Act, the Marine Mammal Protection Act, the Clean Water Act, the Oil Pollution Act, the National Marine Sanctuaries Act, and the Ocean Dumping Act provides “specific protection for

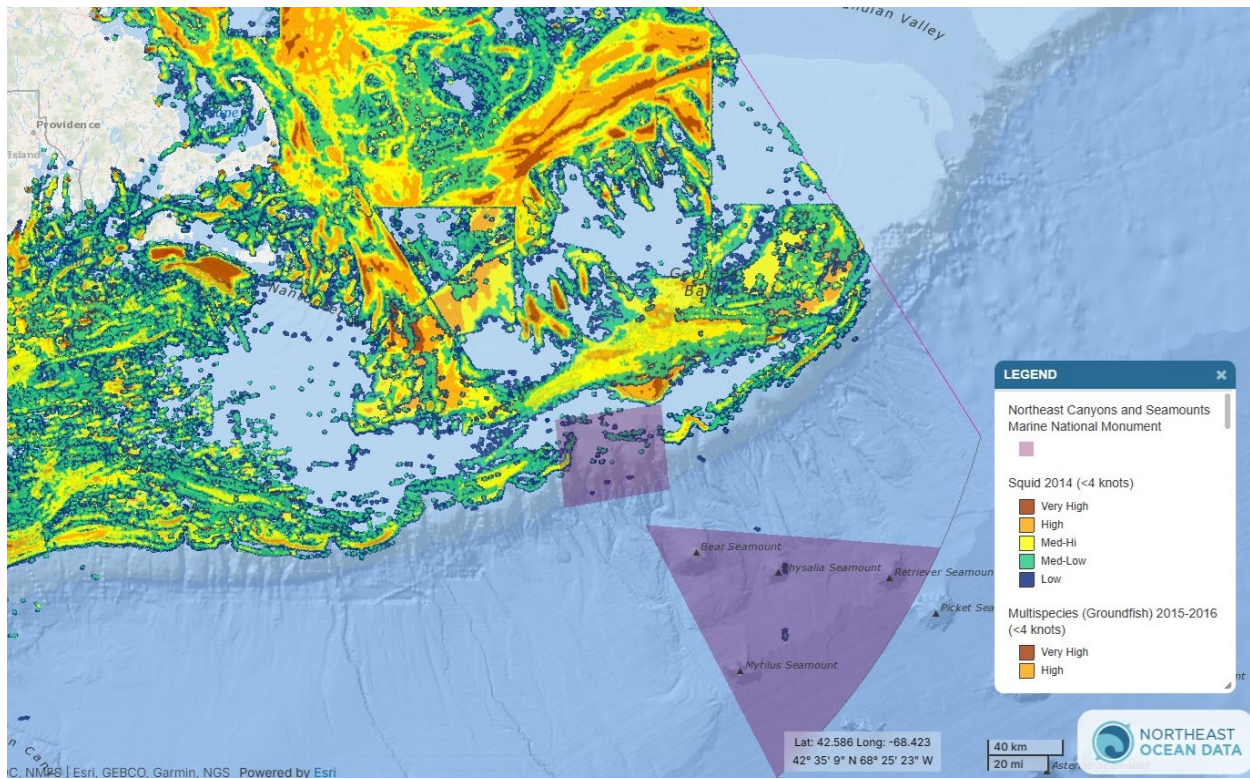
other plant and animal resources both within and outside the monument.” *Id.* at 6489-90. The Proclamation specifically notes that the Magnuson Act “regulates commercial fishing to ensure long-term biological and economic sustainability for our Nation’s marine fisheries, taking into account the protection of associated marine ecosystems” and provides that fishery management plans may include “management measures to conserve target and non-target species and habitats, including measures to protect deep-sea corals.” *Id.* at 6489.

B. Fishing Protections in the Monument

The Magnuson Act establishes a national program for conservation and management of fishery resources with federal jurisdiction over such resources within the U.S. exclusive economic zone (“EEZ”). 16 U.S.C. §§ 1801(a)(6), 1811(a). Management authority generally extends from the seaward boundary of each coastal State to the outer boundary of the EEZ (generally, 200 nautical miles). *Id.* § 1802(11). Key purposes of the Magnuson Act are to “take immediate action to conserve and manage the fishery resources found off the coasts of the United States . . .” and “to assure that the national fishery conservation and management program utilizes, and is based upon, the best scientific information available.” *Id.* § 1801(b)(1), (3). The National Marine Fisheries Service (“NMFS”), a branch of NOAA, is responsible for managing fisheries pursuant to the Magnuson Act. Regulation of fisheries is accomplished through fishery management plans and plan amendments and implementing regulations. *Id.* §§ 1852(h)(1), 1853, 1854(a)-(c). To assist in fishery management, the Magnuson Act established eight regional fishery management councils (“Councils”). 16 U.S.C. § 1852(a).

Prior to the Monument’s establishment in 2016, there was no commercial fishing prohibition in the ocean surrounding the canyons and seamounts. A heat map of available vessel monitoring system activity (VMS) between 2011-2016 shows limited commercial fishing

activity in the shallower canyons area of the Monument and even less fishing within most of the deeper area covered by the Monument:

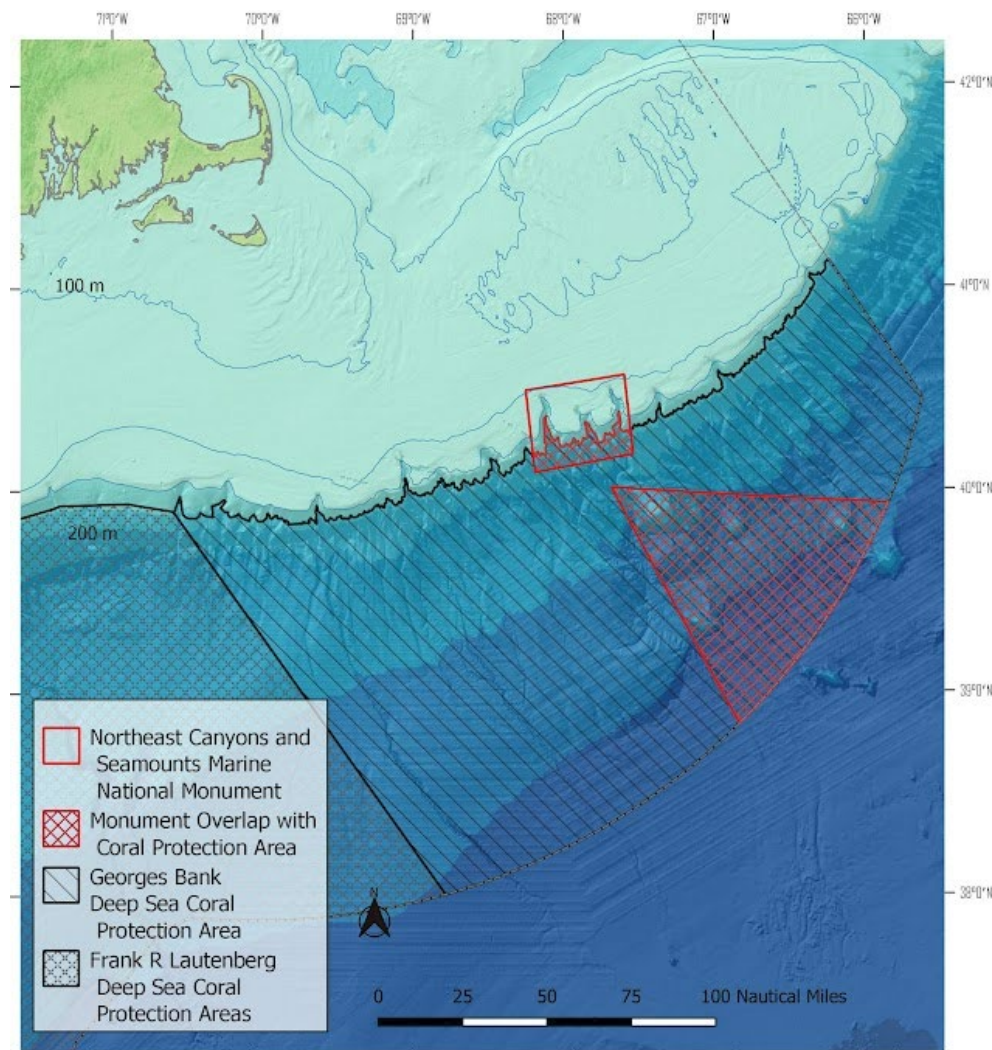


Decl. of Allison Murphy (“Murphy Decl.”), Ex. 1.

In 2020, the New England Fishery Management Council recommended an amendment to six of its fishery management plans to include the Omnibus Deep-Sea Coral Amendment, which NOAA ultimately approved. This amendment established a deep-sea coral protection area that provides sweeping protections to over 25,000 square miles of deep-sea canyons, including 82% of the Northeast Canyons and Seamounts Marine National Monument. NOAA Fisheries, *Northeast Canyons and Seamounts Marine National Monuments Frequently Asked Questions* <https://www.fisheries.noaa.gov/new-england-mid-atlantic/ecosystems/northeast-canyons-and-seamounts-marine-national-monument#how-does-the-monument-overlap-with-the-georges-bank-deep-sea-coral-protection-area> (last visited July 13, 2026). The final rule implementing the

amendment prohibits the use of bottom-tending commercial fishing gear (with an exception for the small-scale deep-sea red crab fishery) in the deep-sea coral protection area to protect the fragile deep-sea coral ecosystems. 50 C.F.R. § 648.373(a)(1). Generally, fisheries that do not make contact with the bottom will not impact sensitive Monument resources such as deep-sea corals, sponges, and soft corals that provide critical habitat for fished species. *See* NEFMC, *Omnibus Deep-Sea Coral Amendment Including Final Environmental Assessment* § 6.6 (Jan. 2, 2020), available at https://d23h0vhs26o6d.cloudfront.net/200102_Coral_Amendment-final-with-IRFA-edits.pdf.

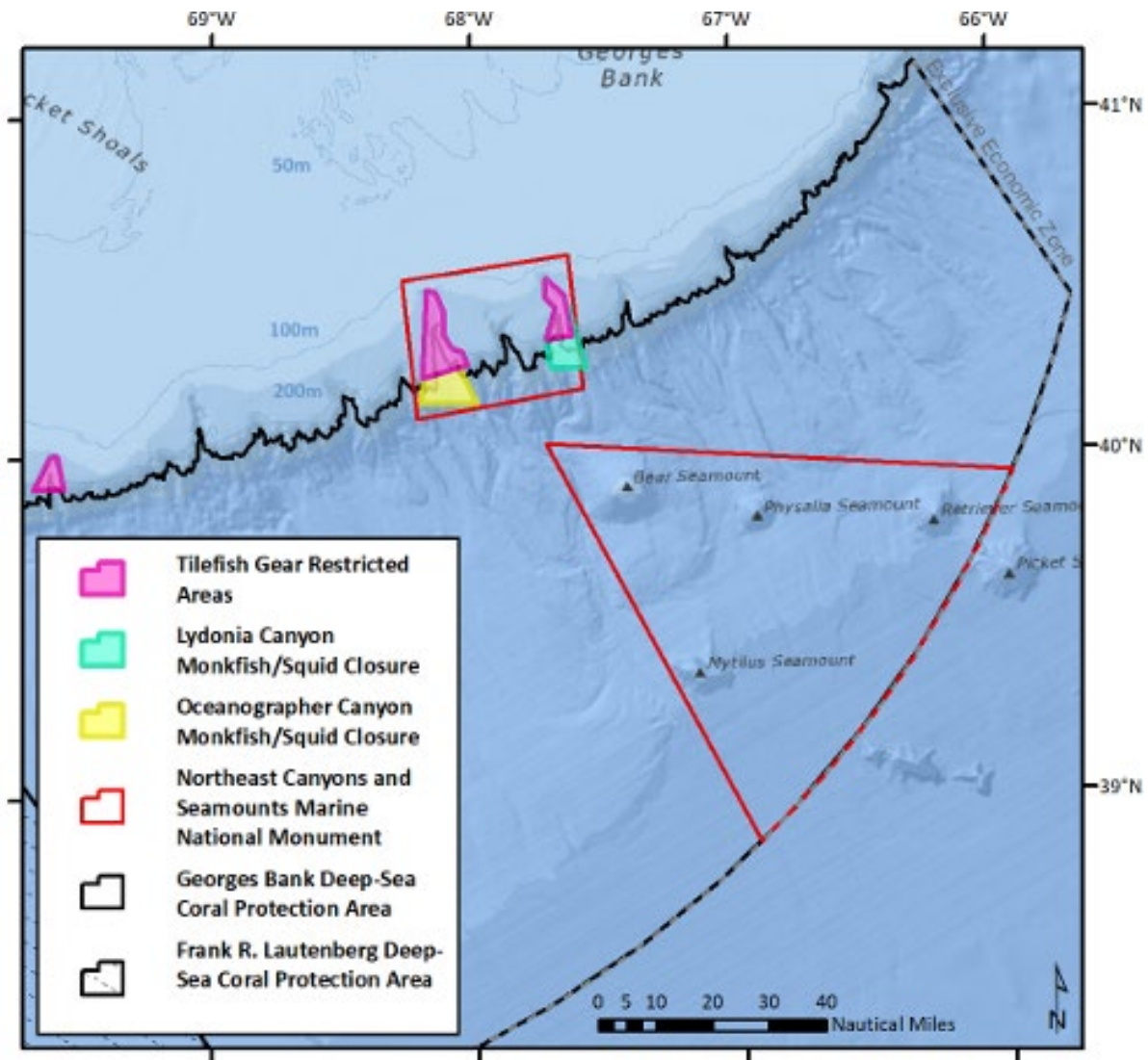
The below map depicts the deep-sea coral protection area in the Monument:



NOAA Fisheries, *Commercial Fishing Allowed in Northeast Canyons and Seamounts Marine National Monument*, <https://www.fisheries.noaa.gov/new-england-mid-atlantic/ecosystems/northeast-canyons-and-seamounts-marine-national-monument#how-does-the-monument-overlap-with-the-georges-bank-deep-sea-coral-protection-area> (last visited July 13, 2026).

In addition, Monkfish and Squid closures and Tilefish Gear restricted areas have been in place in a portion of the canyons area of the Monument for more than a decade and provide additional protections. Monkfish vessels are prohibited from fishing with any gear type while on a monkfish Day-at-Sea (“DAS”) in Lydonia and Oceanographer Canyons, 50 C.F.R. § 648.97, and no permitted mackerel, squid, or butterfish vessel may fish with bottom trawl gear, 50 C.F.R. § 648.23(a)(6). Similarly, both Oceanographer and Lydonia Canyons are closed to fishing for tilefish with bottom-tending mobile gear. 50 C.F.R. § 648.297. Given all the existing restrictions, “only 10% of the Northeast Canyons and Seamounts Marine National Monument [is] open to commercial fishing.” New England Fishery Management Council, *Deep-Sea Coral Amendment to Provide Sweeping Habitat Protection, Including in Canyons and Seamounts Monument*, <https://d23h0vhsm26o6d.cloudfront.net/NEFMC-Deep-Sea-Coral-Amendment-Provides-Sweeping-Protections.pdf> (last visited July 13, 2026).

The figure below shows the monkfish and tilefish restricted areas within the Monument.



Id.

C. Plaintiffs' Alleged Injuries

a. Conservation Law Foundation

Conservation Law Foundation (“CLF”) alleges its members include scientists who have been studying the habitats and species within the Monument. Dkt. No. 1, Compl. ¶ 147.

Plaintiffs’ Complaint identifies two such scientists: Dr. Peter Auster and Dr. Rhian Waller.

The Complaint alleges that Dr. Auster, a marine ecology scientist, has participated in research expeditions to the Monument over the last forty years. Compl. ¶ 150. Dr. Auster studies “the interactions of species and habitats, the ecological interactions between species, and how diversity is distributed within these precipitous and dynamic landscapes” within the Monument. Compl. ¶ 151. The Complaint alleges that opening the Monument to commercial fishing will jeopardize Dr. Auster’s ability “to conduct longitudinal studies of how an ecosystem functions unimpacted by local disturbances caused by human uses” and eliminate his ability to compare and contrast areas closed and open to commercial fishing. Compl. ¶ 158. The Complaint further alleges his research into ecological interactions between species “will be reduced depending upon the extent of commercial fishing ultimately permitted in the Monument.” *Id.*

Plaintiffs allege that Dr. Waller studies the reproduction and development of cold water, deep-sea invertebrates and has visited the Monument for research purposes dating back to 2003. Compl. ¶¶ 160, 162. The Complaint alleges commercial fishing in the Monument will threaten Dr. Waller’s ability to study deep-sea coral communities. Compl. ¶ 166.

b. The Natural Resources Defense Council

Similarly, NRDC alleges its members include scientists who use the Monument area for research, in addition to individuals who “use the area in and around the Monument for education, wildlife viewing, aesthetic appreciation and recreation.” Compl. ¶ 168. The Complaint presents

two members alleged to be injured by commercial fishing within the Monument: Dr. Mary Beth Decker and Dr. Scott D. Kraus.

Dr. Decker is a biological oceanographer and marine ecologist who visited the Monument once before for research in 2024. Compl. ¶ 171. Plaintiffs allege that Dr. Decker derives aesthetic enjoyment from seeing an abundance of species in the Monument area. *Id.* ¶ 173. The Complaint alleges commercial fishing will harm Dr. Decker’s research by altering food-web structure and eliminating her use of the Monument as a reference site and will undermine her ability to educate students about pelagic ecosystems and marine conservation. *Id.* ¶ 17. Additionally, the complaint alleges Dr. Decker’s aesthetic and recreational interests in the Monument will be harmed by commercial fishing. *Id.* ¶ 180.

Dr. Kraus is a marine biologist who alleges he has flown over the Monument and directs individuals to collect data within Monument boundaries. *Id.* ¶ 182. The Complaint alleges Dr. Kraus intends to return to the Monument but does not allege any specific plan. *Id.* ¶ 185. Plaintiffs allege commercial fishing will injure Dr. Kraus by impairing his ability to use the Monument area as a reference site and assess how the absence of commercial fishing impacts animal behavior within the Monument. *Id.* ¶¶ 188-89.

c. R. Zack Klyver

The individual plaintiff is R. Zack Klyver, who “regularly uses the waters of the northwest Atlantic Ocean to view, study, and educate others about marine wildlife,” but does not allege he has ever been to the Monument. *Id.* ¶ 190. He alleges that the marine wildlife he observes uses the Monument as habitat and feeding grounds. *Id.* He alleges an intent to visit the Monument in 2026. *Id.* ¶ 192. Mr. Klyver previously alleged an intent to visit the Monument in 2020 or 2021, in the prior lawsuit, but apparently did not do so. *See* Compl. ¶ 154, *Conservation*

Law Foundation, et al. v. Donald J. Trump, et al., No. 1:20-cv-01589 (D.D.C. June 17, 2020) (Case No. 1:20-cv-01589), Dkt. No. 1.

d. Center for Biological Diversity

Center for Biological Diversity (“CBD”) presents two of its members to establish standing: Mr. Klyver, the individual Plaintiff addressed above, and an unnamed member who allegedly recreates “in and near the Atlantic Ocean off Massachusetts each summer.” Compl. ¶ 195. The Complaint does not allege that this member has ever visited the Monument. Instead, the Complaint alleges she “enjoys seeing migratory species like sharks, dolphins, and fin whales that travel to and from the Monument area; as well as gulls and other seabirds and whale species, like humpback whales.” *Id.*

STANDARD OF REVIEW

A challenge to a party’s standing, when raised as a motion to dismiss, proceeds under Rule 12(b)(1). *Haase v. Sessions*, 835 F.2d 902, 906 (D.C. Cir. 1987). The plaintiff “bears the burden of proving by a preponderance of the evidence that the Court has subject-matter jurisdiction over her claims.” *Schmidt v. U.S. Capitol Police Bd.*, 826 F. Supp. 2d 59, 69 (D.D.C. 2011) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)). Because the Court has “an affirmative obligation to ensure that it is acting within the scope of its jurisdictional authority,” the complaint’s factual allegations “will bear closer scrutiny in resolving a 12(b)(1) motion than in resolving a 12(b)(6) motion for failure to state a claim.” *Massachusetts Lobstermen’s Ass’n v. Ross*, 349 F. Supp. 3d 48, 53 (D.D.C. 2018), *aff’d as modified*, 945 F.3d 535 (D.C. Cir. 2019); *Gammill v. U.S. Dep’t of Educ.*, 989 F. Supp. 2d 118, 119 (D.D.C. 2013) (same). A court may consider materials outside the pleadings to resolve the question of its jurisdiction. *Fludd v. Mitchell*, 181 F. Supp. 3d 132, 137 (D.D.C. 2016).

LEGAL STANDARD

As a threshold matter, Federal courts must “satisfy themselves that ‘the plaintiff has alleged such a personal stake in the outcome of the controversy’ as to warrant *his* invocation of federal-court jurisdiction.” *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009) (emphasis in original) (citation omitted). “A citizen may not sue based only on an ‘asserted right to have the Government act in accordance with law.’” *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 381 (2024) (citations omitted). Instead, a plaintiff must have: “(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016).

To establish an injury-in-fact, it is not enough to show merely “a general legal, moral, ideological, or policy objection to a particular government action.” *Food & Drug Admin.*, 602 U.S. at 381. The requirement to show an injury-in-fact precludes plaintiffs from using federal courts as a “vehicle for the vindication of the value interests of concerned bystanders.” *United States v. SCRAP*, 412 U.S. 669, 687 (1973). Instead, a plaintiff must show “an invasion of a legally protected interest.” *Lujan*, 504 U.S. at 560. Congress established Article III courts to “adjudicate cases and controversies as to claims of infringement of individual rights.” *Stark v. Wickard*, 321 U.S. 288, 309-10 (1944). These “legally protected interests” may arise from the Constitution, common law, or “solely by virtue of ‘statutes creating legal rights, the invasion of which creates standing.’” *Lujan*, 504 U.S. at 576-78 (quoting *Warth v. Seldin*, 422 U.S. 490, 500 (1975)).

Courts have recognized injuries without a source in positive law, like reputational harm (see *TransUnion LLC v. Ramirez*, 594 U.S. 413, 425 (2021)) and harm to recreational and

aesthetic interests (*see Sierra Club v. Morton*, 405 U.S. 727, 734 (1972)), among others. Courts have found injuries to research to confer standing in limited circumstances, often when there are additional injuries to other cognizable interests. *See, e.g., Sherley v. Sebelius*, 610 F.3d 69, 74 (D.C. Cir. 2010) (finding an injury to research when the plaintiffs established competitor standing due to increased competition for research grants); *Thakur v. Trump*, 787 F. Supp. 3d 955, 922 (N.D. Cal. 2025) (finding career and reputational harm due to the abrupt termination of research grants conferred standing to researchers); and *cf. Union of Concerned Scientists v. United States Dep't of Energy*, 998 F.3d 926, 928 (D.C. Cir. 2021) (finding scientists' alleged informational injury to research too speculative to satisfy injury-in-fact requirement for Article III standing).

An action that eliminates or significantly diminishes the object of research can also confer standing. *See Lujan*, 504 U.S. at 566 (“[T]he person who observes or works with a particular animal threatened by a federal decision is facing perceptible harm, since the very subject of his interest will no longer exist.”); *Animal Welfare Inst. v. Kreps*, 561 F.2d 1002, 1007 (D.C. Cir. 1977) (finding impairment of the ability to observe the Cape fur seal constituted a cognizable injury to the plaintiffs’ scientific interests). But when the challenged conduct does not “diminish or deplete the *overall* supply of endangered animals available for observation and study” there is no such injury-in-fact. *Humane Soc. of U.S. v. Babbitt*, 46 F.3d 93, 97 (D.C. Cir. 1995) (emphasis in original). In *Humane Society*, the court found the lost opportunity to study a particular elephant at a zoo did not establish an injury-in-fact when there were at least three other elephants of the same species at the zoo. *Id.*

An organizational plaintiff must show either that it has “associational standing,” which is contingent on the ability of at least one of its members to sue, or that it has “organizational standing,” which turns on whether the organization itself suffered an injury-in-fact. *See Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378–79 (1982). As for organizational standing, “[a]n organization may not establish standing simply based on the ‘intensity of the litigant’s interest’ or because of strong opposition to the government’s conduct.” *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 394 (2024) (citing *Valley Forge Christian Coll. v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 486 (1982)). Rather, to have standing on its own, an organization must show that the defendant’s conduct “is more than simply a setback to the organization’s abstract social interests.” *Am. Soc. for Prevention of Cruelty to Animals v. Feld Ent., Inc.*, 659 F.3d 13, 25 (D.C. Cir. 2011) (internal quotations omitted). The organization must show the challenged conduct “directly affected and interfered with [its] core business activities.” *Food & Drug Admin.*, 602 U.S. at 395.

Alternatively, an organization may assert standing on behalf of its members when: “(1) at least one of their members has standing to sue in her or his own right, (2) the interests the association seeks to protect are germane to its purpose, and (3) neither the claim asserted nor the relief requested requires the participation of an individual member in the lawsuit.” *Am. Library Ass’n v. FCC*, 401 F.3d 489, 492 (D.C. Cir. 2005).

ARGUMENT

Plaintiffs’ alleged injuries to their research or aesthetic interests are either not cognizable or are too conjectural and do not confer standing. The organizational Plaintiffs do not allege any injuries to the organizations themselves, nor do they allege any impact on the funding, reputation, or career of its researcher members. Instead, Plaintiffs allege various injuries to their

members' research from "diminishing the Monument's value as a scientific reference site," Compl. ¶ 177, damaging cold-water, deep sea-species, *id.* ¶ 200, and affecting the "web of interactions between species," *id.* ¶ 151. But Plaintiffs' alleged harms are speculative.

Commercial fishing may do none of the things about which Plaintiffs are concerned—the separate prohibition on the use of bottom-tending gear types in most of the Monument provides substantial protection for deep-sea coral and, considering this prohibition and other existing regulations, only 10% of the Monument will even be open to commercial fishing. It is pure conjecture that limited commercial fishing in the Monument's vast area would affect the research of ecosystems or deep-sea species like coral that are specifically protected from commercial fishing gear.

What's more, an interest in preserving the Monument area as a "reference site" is not a legally protected interest. The right to a pristine environment shielded from all interference is simply not a cognizable interest. Plaintiffs' desire to use the Monument as a reference site cannot form the basis of an injury-in-fact for Article III standing.

Importantly, Plaintiffs are free to continue to pursue their research interests in the Monument, which will not be diminished by commercial fishing. Nor will Plaintiffs' alleged aesthetic interests be diminished by remote commercial fishing. In any event, Plaintiffs have failed to establish an aesthetic interest in the Monument itself because these individuals have either never visited the Monument or have only visited the Monument for research purposes.

As none of the four Plaintiffs have established standing, this Court must dismiss the complaint.

A. CLF and NRDC cannot establish an injury-in-fact to its members' research.

a. Plaintiffs' alleged injuries to deep-sea coral and ecosystem research are too speculative and generalized to confer standing.

The harms Plaintiffs allege to their deep-sea coral and ecosystem research do not establish standing because their research will not be diminished by the resumption of commercial fishing in the Monument. Plaintiffs' allegations that allowing commercial fishing in 10% of the Monument's 5,000 square miles will harm their research are unsupported conjecture. They fail to allege a concrete, particularized, and imminent injury.

No credible evidence supports that commercial fishing will impair deep-sea coral research in the Monument area. The Omnibus Deep-Sea Coral Amendment prohibits the use of bottom-tending commercial fishing gear (with an exception for red crab pots) within the designated Georges Bank Deep-Sea Coral Protection Area, which covers 82% of the Monument. Dr. Waller, a member of CLF who Plaintiffs claim studies deep-sea coral in the Monument, has allegedly conducted research expeditions on "Bear, Physalia, Mytilus, and Retriever Seamounts and in Oceanographer Canyon within the Monument." Compl. ¶ 161. But each of those areas is protected from bottom trawling by the Omnibus Deep-Sea Coral Amendment. *See* NOAA Fisheries, *Northeast Canyons and Seamounts Marine National Monuments Frequently Asked Questions* <https://www.fisheries.noaa.gov/new-england-mid-atlantic/ecosystems/northeast-canyons-and-seamounts-marine-national-monument#how-does-the-monument-overlap-with-the-georges-bank-deep-sea-coral-protection-area> (last visited July 13, 2026). Oceanographer Canyon is also protected by the Monkfish and Squid enclosures and Tilefish Gear restrictions that prohibit vessels from using bottom trawl gear. *See* 50 C.F.R. §§ 648.97, 648.23(a)(6) , 648.297. With these protections in place, CLF fails to show any injury-in-fact to Dr. Waller's deep-sea coral research from the lifting of commercial fishing restrictions.

Even if Plaintiffs could establish that some damage to deep-sea coral might occur from commercial fishing, that would not be enough to establish an injury-in-fact to deep-sea coral research. As long as Dr. Waller can continue her research of deep-sea coral in the Monument area, she has not suffered an injury-in-fact. *See Humane Soc.*, 46 F.3d at 97 (finding the loss of one elephant for study at a zoo did not constitute an injury-in-fact when there were three other elephants available to study). And Dr. Waller has apparently been visiting the Monument to research deep-sea coral since 2003. *See* Compl. ¶ 162. Yet for almost all that time, commercial fishing was occurring in the Monument. President Obama did not issue the first proclamation which imposed commercial fishing restrictions until 2016. Because Dr. Waller was apparently able to research deep-sea corals in the Monument long before any commercial fishing ban, her claim of harm now is implausible and no facts support that her allegations are anything but speculative. Dr. Waller will be able to continue her research, which coexisted with commercial fishing for most of the past two decades. Any alleged harm to the coral is insufficient to establish an injury-in-fact. *See Humane Soc.*, 46 F.3d at 97.

Other than coral, Plaintiffs do not claim injury to a specific Monument flora or fauna but generally allege “commercial fishing can harm ocean ecosystems.” Compl. ¶ 4. This vague allegation is “purely speculative” and “too generalized to support standing.” *Californians for Renewable Energy v. U.S. Dep’t of Energy*, 860 F. Supp. 2d 44, 50 (D.D.C. 2012). That commercial fishing “can” harm ecosystems says nothing about whether the limited commercial fishing here will harm any cognizable interest Plaintiffs may possess in the Monument. It fails to support an imminent, concrete, and particularized injury. And of course, the evidence supports the opposite: research and commercial fishing in the Monument area have long been compatible.

Historic data shows that, before President Obama designated the Monument in 2016, there was only moderate fishing in certain shallower areas of the Canyons unit and little within the Seamounts area in the Monument. *See* Murphy Decl., Ex. 1. No fishing took place in most of the Monument area. Plaintiffs point to no evidence that commercial fishing will deviate from historic patterns, nor do they allege that this limited fishing will occur in the specific areas in which they conduct research. A mere general interest in a vast area does not establish injury relating to a specific and relatively small part of the area. *See Pollack v. U.S. Dept. Of Justice*, 577 F.3d 736 (7th Cir. 2009), *cert. denied*, 559 U.S. 1006 (2010) (finding no standing “when a vast environmental area is involved” and the challenged conduct effects “one discrete area while a plaintiff intends to visit a different discrete area”).

Plaintiffs’ conclusory position that harm to ecosystems caused by commercial fishing will impair their research does not pass Article III muster. And, casting further doubt on their claims, Drs. Waller (member of CLF) and Auster (member of NRDC) have conducted research in the Monument area for years—during periods when commercial fishing was permitted. *See* Compl. ¶¶ 150, 162. Plaintiffs’ speculation that commercial fishing will impact their research is belied by history and does not establish a concrete injury.

b. There is no cognizable right to a control or reference site.

Plaintiffs CLF and NRDC allege its members (Drs. Auster, Decker, and Kraus) suffer injury from the loss of the Monument as an “an unimpacted reference site.” *See, e.g.*, Compl. ¶ 154. This alleged injury cannot form the basis for standing for three reasons. First, Plaintiffs’ description of the Monument as “an unimpacted reference site” is dubious because recreational fishing is permitted, and so, the Monument is not fully protected from human interference. Second, it is speculative that commercial fishing will diminish the Monument’s value as a

“reference site” due to the Monument’s large area and the historically sparse commercial fishing in the region. Finally, and importantly, the right to a reference site is not a cognizable interest. There exists no right to a reference site in common law or positive law, nor has a court recognized an interference with a reference site as a cognizable injury.

Plaintiffs allege that “[h]aving fully protected reference areas such as the Monument is essential to [Dr. Decker’s] ability to distinguish climate-driven changes from changes caused by fishing pressure and other human activities.” Compl. ¶ 175. However, the Monument is not fully protected from fishing and other human activities: neither the Proclamation nor any regulation prohibits recreational fishing in the Monument area. Additionally, the Monument is not contiguous. Commercial fishing is permitted around the Monument borders and between its noncontiguous areas. Plaintiffs’ allegations that some of its members are suffering an injury due to the loss of an unimpacted reference site is not factually supported.

Additionally, even if the Monument were protected from all human interference, it is speculative that commercial fishing would destroy or diminish the Monument’s research value. Plaintiffs tacitly acknowledge this when alleging that Dr. Auster’s research “will be reduced *depending upon the extent of commercial fishing* ultimately permitted in the Monument.” Compl. ¶ 158 (emphasis added). Their alleged loss of a reference site is thus premised on the unsupportable assumption that commercial fishing will immediately blanket the Monument’s 5,000-square-mile area and permeate the Monument to such a degree that no area can be used as a reference site for research. Plaintiffs’ general claim that “fishing can significantly affect the web of interactions between species” ignores the reality that commercial fishing has always been permitted in the ocean surrounding the Monument’s boundaries, has been permitted in the Monument in the past, and that the scale of commercial fishing in the Monument has historically

been small. It is implausible that lifting the commercial fishing ban will tarnish the entire Monument's value as a reference site.

In any event, Plaintiffs are not injured by the alleged loss of a reference or control site because this is not a cognizable injury. A control site is not the subject of research, like the fur seals in *Animal Welfare* or the elephants in *Humane Society*, but is a condition of research. The loss of a control site does not impair Plaintiffs' members' ability to observe their research subjects. Researchers remain free to use the Monument area to study the variation in underwater landscapes, Compl. ¶ 149, develop survey methods for animals in spatially complex habitat, *id.*, study the reproduction and development of deep-sea invertebrates, *id.* ¶ 160, research open-ocean ecosystems, *id.* ¶ 169, and study marine mammal distribution, abundance, and behavior in the Monument, *id.* ¶ 188.

What Plaintiffs are really complaining about is the alleged loss of specific ocean conditions. But there is no cognizable right to certain research conditions. In *Gettman v. Drug Enforcement Administration*, a plaintiff alleged the federal criminalization of marijuana use and possession constrained his "ability to research economic development in this area and to sell his services as a policy analyst and/or professor." 290 F.3d 430, 434 (D.C. Cir. 2002) (quotations omitted). Even though the challenged action would stymie the plaintiff's ability to legally conduct research on marijuana, the D.C. Circuit found his "interest and the injury to it fall far short of establishing a judicially protected interest or a judicially remediable injury." *Id.* Likewise, the loss of a reference site does not establish a cognizable injury to research. There is no legally protected right to the maintenance of regulatory and background conditions for research purposes.

Loss of a control site protected from all manner of interference is far too broad to be a cognizable injury for Article III standing. Under Plaintiffs’ theory, any action alleged to change an environment—no matter how insignificant—could give rise to standing. The Supreme Court has rejected similar theories of standing as “startlingly broad.” *Murthy v. Missouri*, 603 U.S. 43, 74–75 (2024). In *Murthy*, the Court rejected a “right to listen” theory under which anyone interested in certain speech would have standing to challenge the censorship of that speech. Despite implicating the First Amendment right to “receive information and ideas,” the Court required a more specific connection to the speaker for censorship to constitute a cognizable injury to a third party. *Id.* (quoting *Kleindienst v. Mandel*, 408 U.S. 753, 762 (1972)). And in *Already, LLC v. Nike, Inc.*, the Court also rejected a theory that a market participant is injured whenever a competitor benefits from something allegedly unlawful, noting “this Court has never accepted such a boundless theory of standing.” 568 U.S. 85, 99 (2013).

Plaintiffs’ theory of standing here is similarly boundless. When the claim is the alleged loss of an unimpacted reference site, any minute change in an environment—regardless of whether the object of study is impacted—could confer standing. But Plaintiffs have no right to control the conditions of the ocean for purposes of their research. Plaintiffs are free to continue accessing the Monument area for research and to study their particular objects of research. The President’s proclamation does not deprive them of research funding or information. The action does not regulate them at all. Plaintiffs CLF and NRDC have failed to allege a cognizable injury to its members’ research.

B. Plaintiffs R. Zack Klyver and CBD members have failed to allege a concrete and imminent injury.

Plaintiffs R. Zack Klyver and CBD through its members² propose an ecosystem nexus theory of standing that has been rejected by the Supreme Court. *See Lujan*, 504 U.S. at 565–66. Mr. Klyver alleges he “regularly uses the waters of the northwest Atlantic Ocean”—but not specifically the Monument—“to view, study, and educate others about marine wildlife, including wildlife that use the Monument as habitat and feeding ground.” Compl. ¶ 190. He additionally alleges that his company is planning a 2026 tour to the Monument, but does not allege he has ever in fact visited the Monument himself. *Id.* ¶ 191. Similarly, an unnamed member of CBD alleges she “recreates in and near the Atlantic Ocean off Massachusetts each summer,” but not in the Monument itself, and “enjoys seeing migratory species like sharks, dolphins, and fin whales that travel to and from the Monument area.” *Id.* ¶ 195.

Plaintiffs’ general allegations of using waters in the vicinity of the Monument are not sufficient to confer standing. *See Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 889 (1990) (finding no standing because plaintiffs alleged use of “unspecified portions of an immense tract of territory,” rather than alleging use of the smaller area of land that was allegedly threatened); *see also Pollack*, 577 F.3d at 742 (finding a plaintiff who sought to challenge lead pollution in Lake Michigan lacked standing because he alleged a mere general interest in a vast area). In *Lujan*, the Supreme Court rejected the plaintiffs’ theory of standing that proposed “any person who uses any part of a contiguous ecosystem adversely affected by a funded activity has standing even if the activity is located a great distance away.” *Lujan*, 504 U.S. at 565–66 (internal quotations omitted). Here, the waters of the northwest Atlantic that these Plaintiffs allegedly use are far more expansive than the Monument. And their theory that commercial fishing in the

² Zack Klyver is also a member of CBD.

Monument is certain to affect the wildlife they view in the Atlantic Ocean is unsupported by concrete facts. It is entirely speculative. Plaintiffs' vague allegations provide no detail regarding how commercial fishing in the Monument is likely to impact the specific wildlife they enjoy seeing *outside* of the Monument. Like Plaintiffs' contention that commercial fishing generally impacts ecosystems, these allegations are too general and insufficient to support a finding of the actual or imminent injury required to establish standing. *See Californians for Renewable Energy*, 860 F. Supp. 2d at 50.

What's more, these Plaintiffs have never visited the Monument. CBD's anonymous member does not even allege an intent to ever visit the Monument. While Mr. Kyver alleges he plans to visit the Monument in 2026, this fails to establish standing for three reasons. First, there is no evidence that the limited commercial fishing that can be expected in the Monument will in fact impact the wildlife Mr. Klyver observes. Second, Mr. Klyver's stated intention to visit the Monument is dubious and the Court should not credit this non-detailed assertion. In a 2020 lawsuit, Mr. Klyver alleged he was planning research trips to the Monument in 2020 and 2021. Compl. ¶ 154, *Conservation Law Foundation v. Donald J. Trump*, No. 1:20-cv-01589 (D.D.C.), Dkt. No. 1. Yet in this lawsuit, he does not claim to have ever visited the Monument at all. This Court should thus not give weight to Mr. Klyver's repeated claim that he intends to visit the Monument now. Mr. Klyver's expressed intent is, at most, a "some day" intention, which "is simply not enough" to "support a finding of the actual or imminent injury." *Lujan*, 504 U.S. at 564 (internal quotations omitted). Finally, Mr. Klyver alleges an intent to some day visit the Monument with his "his ecotourism company," Compl. ¶ 25, thus alleging an apparent economic interest, but he fails to allege how this interest will be plausibly impaired by limited commercial fishing in the Monument.

As neither Mr. Klyver nor CBD's members have suffered a concrete injury-in-fact to any cognizable legal interest, they should be dismissed as Plaintiffs.

C. NRDC member Dr. Mary Beth Decker's alleged aesthetic and recreational injury is speculative and derivative of research.

Dr. Mary Beth Decker, member of Plaintiff NRDC and a scientist who alleges she visited the Monument in 2024 for research and plans to do so again in 2026, unconvincingly alleges she will suffer an aesthetic injury due to reduced ability "to observe and experience the Monument's rich marine biodiversity in its natural state." Compl. ¶ 180. As discussed above, however, there is no evidence to support any perceptible impact to the Monument's overall biodiversity from the resumption of commercial fishing. Before 2016, when commercial fishing occurred in this area, the Monument was recognized as a feeding ground for seabirds, whales, dolphins, turtles, tuna, billfish, and more than ten species of shark. *See* 81 Fed. Reg. 65161. There was an established biodiversity in the Monument simultaneously with commercial fishing and there will continue to be biodiversity under the same conditions. Any contrary allegation is unsupported and ultimately speculative.

Notably, Dr. Decker does not visit the Monument for its recreational or aesthetic value; she alleges she visits the Monument for research. Dr. Decker does not allege an independent interest in visiting the Monument area for recreation or aesthetic enjoyment. She does not have a pure aesthetic or recreational interest in the Monument, but instead has an interest in conducting research in an environment that is aesthetically pleasing to her. Like the alleged interest in the Monument as a control site, there is no right to research under aesthetically pleasing conditions.

To establish an aesthetic or recreational injury, the individual must necessarily "use the affected area" for recreational or aesthetic purposes, in addition to alleging that the "the aesthetic and recreational values of the area will be lessened by the challenged activity." *Friends of the*

Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc., 528 U.S. 167, 183 (2000) (citation modified).

Even if commercial fishing might lessen the aesthetic and recreational values of the area—which is unsupported and speculative—this would still not establish an injury-in-fact to confer standing because Dr. Decker does not use the Monument for recreation or aesthetic enjoyment. NRDC fails to establish standing based on alleged recreational or aesthetic injury.

CONCLUSION

Plaintiffs have failed to establish standing. Plaintiffs CLF and NRDC have not carried their burden to establish injury to their members' research caused by the lifting of a commercial fishing ban in the Monument. History shows that research will not be diminished: scientists conducted valuable research in the Monument while commercial fishing was permitted in the past. The many restrictions that protect marine habitat in the Monument will allow unimpeded research of deep-sea corals. Plaintiffs' allegations of inevitable harm to deep-sea corals and Monument ecosystems are speculative and unsupported. Furthermore, Plaintiffs have no right to maintain the Monument as an unimpacted reference or control site and do not suffer an injury-in-fact based on the alleged loss of such a control (which loss is speculative in any event). Also, Mr. Klyver and other CBD members who have never visited the Monument cannot establish standing to challenge actions within the Monument. And Dr. Decker of NRDC cannot establish an aesthetic or recreational injury when she does not visit the Monument for the purpose of recreation or aesthetic enjoyment.

Plaintiffs cannot use this litigation as a vehicle to vindicate their general ideological opposition to commercial fishing in the Monument. *See Food & Drug Admin.*, 602 U.S. at 381 and *SCRAP*, 412 U.S. at 687. As no Plaintiff has crossed the Article III threshold, this Court must dismiss the Complaint.

Respectfully submitted this 13th day of July, 2026,

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