

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

PATRICK FEHILY and David T. MALLEY,)	
)	
)	No. 3:22-cv-02120-GC-TJB
Plaintiffs,)	
)	Hon. Georgette Castner
v.)	Magistrate Judge
)	Tonianna J. Bongiovanni
JOSEPH R. BIDEN, JR., ET AL.)	
)	<i>Filed Electronically August 22, 2022</i>
Defendants.)	
_____)	

DEFENDANTS’ ANSWER TO COMPLAINT

Joseph R. Biden, Jr., President of the United States, in his official capacity; Gina Raimondo, Secretary of the United States Department of Commerce, in her official capacity; and Debra Haaland, Secretary of the United States Department of the Interior, in her official capacity (Secretary Raimondo, with Secretary Haaland, the “Agency Defendants”) (all together, “Defendants”), hereby respond to the allegations in the Plaintiff’s Complaint for Declaratory and Injunctive Relief (hereinafter “Complaint”) (ECF No. 1). The numbered paragraphs in the Answer correspond to the numbered paragraphs in the Complaint.

1. The allegations in this paragraph provide Plaintiffs’ characterization of the Complaint to which no response is required. To the extent a response is required, Defendants deny the allegations.

2. Defendants lack knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore deny them.

3. Defendants lack knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore deny them.

4. Defendants lack knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore deny them.

5. Defendants admit that President Biden issued Proclamation No. 10287 on October 8, 2021. Defendants lack knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph and therefore deny them. Further, the remaining allegations are too vague to permit a response, and are thus also denied on that basis.

6. Defendants deny the allegations in this paragraph, and aver that Proclamation No. 9496 designated approximately 4,913 square miles of waters and submerged lands where the Atlantic Ocean meets the continental shelf as the Northeast Canyons and Seamounts Marine National Monument.

7. Defendants deny the allegations in this paragraph pertaining to the “Monument Designation,” and aver that Proclamation 9496 designated approximately 4,913 square miles of waters and submerged lands where the Atlantic Ocean meets the continental shelf as the Northeast Canyons and Seamounts Marine National Monument. The remaining allegations in this paragraph constitute Plaintiffs’ characterization of Proclamation 10287, which speaks for itself and is the best evidence of its contents. To the extent a response is required, Defendants refer the Court to Proclamation 10287 and deny the allegations to the extent they are inconsistent with Proclamation 10287.

8. This paragraph constitutes Plaintiffs’ characterization of Proclamation 10287, which speaks for itself and is the best evidence of its contents. To the extent a response is required, Defendants refer the Court to Proclamation 10287 and deny the allegations to the extent they are inconsistent with Proclamation 10287. This paragraph also contains allegations

for which the Defendants lack knowledge or information to form a belief as to their truth and therefore deny them.

9. Defendants deny the allegations in this paragraph.

10. The first sentence of this paragraph constitutes Plaintiffs' characterization of the Antiquities Act, 54 U.S.C. § 320301 et seq., which speaks for itself and is the best evidence of its contents. To the extent a response is required, Defendants refer the Court to the Antiquities Act and deny the allegations to the extent they are inconsistent with the cited provisions of the Act. The last two sentences of this paragraph assert conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

11. The first sentence of this paragraph constitutes Plaintiffs' characterization of the Antiquities Act, which speaks for itself and is the best evidence of its contents. To the extent a response is required, Defendants refer the Court to the Antiquities Act and deny the allegations to the extent they are inconsistent with the cited provisions of the Act. The remaining allegations in this paragraph assert conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

12. The first sentence of this paragraph constitutes Plaintiffs' characterization of the Antiquities Act, which speaks for itself and is the best evidence of its contents. To the extent a response is required, Defendants refer the Court to the Antiquities Act and deny the allegations to the extent they are inconsistent with the cited provisions of the Act. The remaining allegations in this paragraph assert conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

13. The first sentence of this paragraph constitutes Plaintiffs' characterization of the Antiquities Act, which speaks for itself and is the best evidence of its contents. To the extent a

response is required, Defendants refer the Court to the Antiquities Act and deny the allegations to the extent they are inconsistent with the cited provisions of the Act. The remaining allegations in this paragraph assert conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

14. The first three sentences of this paragraph constitute Plaintiffs' characterization of the Antiquities Act, which speaks for itself and is the best evidence of its contents. To the extent a response is required, Defendants refer the Court to the Antiquities Act and deny the allegations to the extent they are inconsistent with the cited provisions of the Act. The last sentence in this paragraph asserts conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

15. The allegations in this paragraph provide Plaintiff's characterization of the Complaint, to which no response is required. To the extent that a response is required, Defendants deny the allegations.

16. This paragraph asserts a conclusion of law as to jurisdiction to which no response is required. To the extent a response is required, Defendants deny the allegations.

17. This paragraph asserts a conclusion of law as to which no response is required. To the extent a response is required, Defendants deny the allegations.

18. This paragraph asserts a conclusion of law as to venue to which no response is required. To the extent a response is required, Defendants deny the allegations.

19. Defendants lack knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore deny them.

20. Defendants lack knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore deny them.

21. Defendants lack knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore deny them.

22. Defendants lack knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore deny them.

23. Defendants lack knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore deny them.

24. Defendants lack knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore deny them.

25. Defendants lack knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore deny them.

26. Defendants admit the allegations in this paragraph.

27. Defendants admit the allegations in this paragraph.

28. Defendants admit the allegations in this paragraph.

29. This paragraph contains legal conclusions and Plaintiff's characterization of the Antiquities Act, which speaks for itself and is the best evidence of its contents. To the extent a response is required, Defendants refer the Court to the text of the Antiquities Act and deny the allegations in this paragraph to the extent they are inconsistent with the Antiquities Act.

30. This paragraph contains legal conclusions and Plaintiff's characterization of the Antiquities Act, which speaks for itself and is the best evidence of its contents. To the extent a response is required, Defendants refer the Court to the text of the Antiquities Act and deny the allegations in this paragraph to the extent they are inconsistent with the Act. This paragraph also constitutes Plaintiffs' characterization of an opinion by the United States Court of Appeals for the D.C. Circuit, which speaks for itself and is the best evidence of its contents. To the extent a

response is required, Defendants refer the Court to the referenced D.C. Circuit's opinion and deny the allegations in this paragraph to the extent they are inconsistent with that opinion.

31. This paragraph contains legal conclusions and Plaintiff's characterization of the Antiquities Act, which speaks for itself and is the best evidence of its contents. To the extent a response is required, Defendants refer the Court to the text of the Antiquities Act and deny the allegations in this paragraph to the extent they are inconsistent with the cited provisions of the Antiquities Act. The last sentence of this paragraph also constitutes a legal conclusion to which no response is required. In addition, Defendants lack knowledge or information to form a belief as to the truth of the allegations in the last sentence of this paragraph and therefore deny them.

32. This paragraph contains legal conclusions and Plaintiff's characterization of the Antiquities Act, which speaks for itself and is the best evidence of its contents. To the extent a response is required, Defendants refer the Court to the text of the Antiquities Act and deny the allegations in this paragraph to the extent they are inconsistent with the cited provisions of the Antiquities Act. This paragraph also contains Plaintiffs' characterization of an opinion by the United States Court of Appeals for the Fifth Circuit, which speaks for itself and is the best evidence of its contents. To the extent a response is required, Defendants refer the Court to the referenced Fifth Circuit's opinion and deny the allegations in this paragraph to the extent they are inconsistent with that opinion.

33. This paragraph contains a legal conclusion and Plaintiff's characterization of the Antiquities Act, which speaks for itself and is the best evidence of its contents. To the extent a response is required, Defendants refer the Court to the text of the Antiquities Act and deny the allegations in this paragraph to the extent they are inconsistent with the cited provisions of the Antiquities Act.

34. This paragraph contains legal conclusions and Plaintiff's characterization of the Antiquities Act, which speaks for itself and is the best evidence of its contents. To the extent a response is required, Defendants refer the Court to the text of the Antiquities Act and deny the allegations in this paragraph to the extent they are inconsistent with the cited provisions of the Antiquities Act.

35. This paragraph contains legal conclusions and Plaintiff's characterization of the Antiquities Act, which speaks for itself and is the best evidence of its contents. To the extent a response is required, Defendants refer the Court to the text of the Antiquities Act and deny the allegations in this paragraph to the extent they are inconsistent with the cited provisions of the Antiquities Act.

36. This paragraph contains legal conclusions, to which no response is required. To the extent that a response is required, Defendants deny the allegations. This paragraph also contains Plaintiffs' characterization of an opinion by the United States Supreme Court, which speaks for itself and is the best evidence of its contents. To the extent a response is required, Defendants refer the Court to the referenced opinion and deny the allegations in this paragraph to the extent they are inconsistent with that opinion.

37. This paragraph contains legal conclusions and Plaintiff's characterization of Proclamation 5030, 48 Fed. Reg. 10,605, which speaks for itself and is the best evidence of its contents. To the extent a response is required, Defendants refer the Court to the text of Proclamation 5030 and deny the allegations in this paragraph to the extent they are inconsistent with Proclamation 5030.

38. This paragraph contains legal conclusions, to which no response is required. To the extent that a response is required, Defendants deny the allegations. In addition, this

paragraph contains Plaintiff's characterization of the Magnuson-Stevens Fishery Conservation and Management Act (the "Magnuson-Stevens Act"), 16 U.S.C. §§ 1801 et seq., which speaks for itself and is the best evidence of its contents. To the extent a response is required, Defendants refer the Court to the text of the Magnuson-Stevens Act and deny the allegations in this paragraph to the extent they are inconsistent with the cited provisions of the Magnuson-Stevens Act.

39. This paragraph contains legal conclusions, to which no response is required. To the extent that a response is required, Defendants deny the allegations. In addition, this paragraph contains Plaintiffs' characterization of the National Marine Sanctuaries Act ("NMSA"), 16 U.S.C. §§ 1431 et seq., which speaks for itself and is the best evidence of its contents. To the extent a response is required, Defendants refer the Court to the text of the NMSA and deny the allegations in this paragraph to the extent they are inconsistent with the cited provisions of the NMSA.

40. This paragraph contains legal conclusions, to which no response is required. To the extent that a response is required, Defendants deny the allegations. In addition, this paragraph contains Plaintiffs' characterization of the Restatement (Third) of Foreign Relations Law § 514 cmt. c (1987), and the United Nations Convention on the Law of the Sea art. 58 § 2. These authorities speak for themselves and are the best evidence of their contents. To the extent a response is required, Defendants refer the Court to the text of the cited authorities and deny allegations in this paragraph to the extent they are inconsistent with the cited provisions.

41. This paragraph contains legal conclusions, to which no response is required. To the extent that a response is required, Defendants deny the allegations in this paragraph.

42. This paragraph contains legal conclusions and Plaintiffs' characterization of the NMSA, which speaks for itself and is the best evidence of its contents. To the extent a response is required, Defendants refer the Court to the text of the NMSA and deny the allegations in this paragraph to the extent they are inconsistent with the cited provisions of the NMSA.

43. The first two sentences of this paragraph contains legal conclusions and Plaintiffs' characterization of the Magnuson-Stevens Act, which speaks for itself and is the best evidence of its contents. To the extent a response is required, Defendants refer the Court to the text of the Magnuson-Stevens Act and deny the allegations in this paragraph to the extent they are inconsistent with the cited provisions of the Magnuson-Stevens Act. With respect to the third sentence, Defendants aver that the National Marine Fisheries Service—and not the regional councils—prepares stock assessments; not necessarily on an annual basis. Regarding the fourth sentence in this paragraph, Defendants aver that annual catch limits are required for all stock, regardless of whether they are overfished. Defendants deny the last sentence of this paragraph, and aver that the 2021 Status of Stocks Report to Congress, which covers data through 2020, reported that 92% of stock were not subject to overfishing.

44. The allegations in this paragraph are too vague and ambiguous to permit a response and on that basis are denied.

45. This paragraph contains legal conclusions and Plaintiffs' characterization of the Antiquities Act, NMSA and the Magnuson-Stevens Act, all of which speak for themselves and are the best evidence of their contents. To the extent a response is required, Defendants refer the Court to the text of the Antiquities Act, NMSA and the Magnuson-Stevens Act and deny the allegations in this paragraph to the extent they are inconsistent with the cited provisions of these authorities.

46. Defendants admit the allegations in this paragraph.

47. Defendants admit that the Georges Bank is pockmarked by underwater canyons, but aver that the allegations in the first part of paragraph 47, pertaining to “much of the continental shelf off the United States’ East Coast,” are too vague and ambiguous to permit a response and on that basis are denied.

48. Defendants lack knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore deny them.

49. Defendants lack knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore deny them.

50. Defendants admit the allegations in this paragraph.

51. Defendants aver that the allegations in this paragraph are too vague or ambiguous to permit a response, and on that basis are denied.

52. Defendants lack knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore deny them.

53. With respect to the first sentence in this paragraph, Defendants aver that the New England Fishery Management Council prepares and submits to the National Marine Fisheries Service fishery management plans and amendments to those plans for fisheries occurring in the Georges Bank area under the Magnuson-Stevens Act, and that the National Marine Fisheries Service implements those plans through regulations. With respect to the second sentence in this paragraph, Defendants aver that the National Marine Fisheries Service engages with various stakeholders to improve the sustainability of fisheries. Defendants lack knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph and therefore deny them.

54. Defendants admit that the Atlantic States Marine Fisheries Commission was created under an interstate compact. Defendants aver that the Atlantic States Marine Fisheries Commission's Lobster Board creates the management plan that is the foundation of lobster fishing management in the Georges Bank, and that the Atlantic States Marine Fisheries Commission has worked with industry, state and federal government, and nongovernmental organizations to improve sustainability. The allegations in the third sentence in this paragraph are too vague and ambiguous to permit a response and are denied on the basis. Defendants lack knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph and therefore deny them.

55. Defendants admit that President Obama issued Proclamation 9496, 81 Fed. Reg. 65,161, on Sept. 15, 2016, which designated approximately 4,913 square miles of waters and submerged lands where the Atlantic Ocean meets the continental shelf as the Northeast Canyons and Seamounts Marine National Monument. Defendants deny the allegations in this paragraph pertaining to the "first iteration" of the Northeast Canyons and Seamounts Marine National Monument.

56. This paragraph constitutes Plaintiffs' characterization of Proclamation 9496, which speaks for itself and is the best evidence of its contents. To the extent a response is required, Defendants refer the Court to Proclamation 9496 and deny the allegations to the extent they are inconsistent with Proclamation 9496.

57. This paragraph constitutes Plaintiffs' characterization of Proclamation 9496, which speaks for itself and is the best evidence of its contents. To the extent a response is required, Defendants refer the Court to Proclamation 9496 and deny the allegations to the extent they are inconsistent with Proclamation 9496.

58. Defendants admit that Proclamation 9496 described the three underwater canyons as starting at the edge of the continental shelf and dropping thousands of meters deep.

Defendants admit that Proclamation 9496 noted that deep-sea corals are present within the canyons, and that these corals, along with other structure-forming fauna, create a foundation for deep-sea ecosystems. With respect to the third sentence in this paragraph, Defendants aver that Proclamation 9496 noted that the steep slopes of both the canyons and the seamounts allow oceanographic currents to lift nutrients critical to the growth of phytoplankton, forming an eruption of phytoplankton and zooplankton and a basis of the food chain.

59. Defendants admit that Proclamation 9496 described the four seamounts—Bear, Physalia, Retriever, and Mytilus—as part of the New England Seamount Chain, which is composed of more than 30 extinct undersea volcanoes, running like a curved spine from the southern side of Georges Bank to midway across the western Atlantic Ocean. Defendants admit that Proclamation 9496 noted the four seamounts support highly diverse ecological communities with deep-sea corals.

60. Defendants admit that Proclamation 9496 stated that the canyons and seamounts, and the ecosystems they compose, have generated intense scientific interest. Defendants aver that the assertion in this paragraph pertaining to the “huge area around the canyons and seamounts” constitutes Plaintiffs’ characterization of Proclamation 9496, which speaks for itself and is the best evidence of its contents. To the extent a response is required, Defendants refer the Court to Proclamation 9496 and deny the allegations to the extent they are inconsistent with Proclamation 9496.

61. This paragraph constitutes Plaintiffs’ characterization of Proclamation 9496, which speaks for itself and is the best evidence of its contents. To the extent a response is

required, Defendants refer the Court to Proclamation 9496 and deny the allegations to the extent they are inconsistent with Proclamation 9496.

62. This paragraph constitutes Plaintiffs' characterization of Proclamation 9496, which speaks for itself and is the best evidence of its contents. To the extent a response is required, Defendants refer the Court to Proclamation 9496 and deny the allegations to the extent they are inconsistent with Proclamation 9496.

63. This paragraph constitutes Plaintiffs' characterization of Proclamation 9496, which speaks for itself and is the best evidence of its contents. To the extent a response is required, Defendants refer the Court to Proclamation 9496 and deny the allegations to the extent they are inconsistent with Proclamation 9496.

64. Defendants admit that the Secretaries of Commerce and Interior share management responsibilities for the Monument. With respect to the allegations in the second sentence of this paragraph, Defendants aver that Proclamation 9496 provides that the Secretary of Commerce, through the National Oceanic and Atmospheric Administration (NOAA), and in consultation with the Secretary of the Interior, shall have responsibility for management of activities and species within the monument under the Magnuson-Stevens Fishery Conservation and Management Act, the Endangered Species Act (for species regulated by NOAA), the Marine Mammal Protection Act, and any other applicable Department of Commerce legal authorities. With respect to the allegations in the third sentence of this paragraph, Defendants aver that Proclamations 9496 provides that the Secretary of the Interior, through the United States Fish and Wildlife Service (FWS), and in consultation with the Secretary of Commerce, shall have responsibility for management of activities and species within the monument under its applicable legal authorities, including the National Wildlife Refuge System Administration Act, the Refuge

Recreation Act, and the Endangered Species Act (for species regulated by FWS), and Public Law 98–532 and Executive Order 6166 of June 10, 1933. With respect to the allegations in the last sentence of this paragraph, Defendants admit that within their respective authorities, the Secretaries are directed to prepare a joint management plan within three years, and aver that the Proclamation that the Secretaries shall promulgate, as appropriate, implementing regulations that address any further specific actions necessary for the proper care and management of the objects and area identified.

65. This paragraph constitutes Plaintiffs’ characterization of Proclamation 9496, which speaks for itself and is the best evidence of its contents. To the extent a response is required, Defendants refer the Court to Proclamation 9496 and deny the allegations to the extent they are inconsistent with Proclamation 9496.

66. Defendants deny that Proclamation 9496 directed the Secretaries to specifically prohibit the taking or harvesting of any living or nonliving resource within the monument. In addition, this paragraph constitutes Plaintiffs’ characterization of Proclamation 9496, which speaks for itself and is the best evidence of its contents. To the extent a response is required, Defendants refer the Court to Proclamation 9496 and deny the allegations to the extent they are inconsistent with Proclamation 9496.

67. With respect to the allegations in the first sentence of this paragraph, Defendants aver that Proclamation 9496 allowed the Secretaries, pursuant to their respective authorities, to the extent consistent with international law, to permit certain activities regulated by the proclamation, provided that such activities are consistent with the care and management of the objects within the monument and are not otherwise prohibited as specified by Proclamation

9496. Defendants aver that the second sentence of this paragraph contains an incomplete list of permitted activities listed in Proclamation 9496.

68. Defendants aver that Proclamation 9496's prohibition of *commercial* fishing, with the exception of lobster and red crab, took effect in November 2016, but deny that Proclamation 9496 prohibited "all fishing."

69. Defendants admit that President Trump issued Proclamation No. 10049, 85 Fed. Reg. 35,793, on June 5, 2020. The remaining allegations in this paragraph constitute Plaintiffs' characterization of Proclamation 10049, which speaks for itself and is the best evidence of its contents. To the extent a response is required, Defendants refer the Court to Proclamation 10049 and deny the allegations to the extent they are inconsistent with Proclamation 10049.

70. This paragraph constitutes Plaintiffs' characterization of Proclamation 10049, which speaks for itself and is the best evidence of its contents. To the extent a response is required, Defendants refer the Court to Proclamation 10049 and deny the allegations to the extent they are inconsistent with Proclamation 10049.

71. This paragraph constitutes Plaintiffs' characterization of Proclamation 10049, which speaks for itself and is the best evidence of its contents. To the extent a response is required, Defendants refer the Court to Proclamation 10049 and deny the allegations to the extent they are inconsistent with Proclamation 10049.

72. This paragraph constitutes Plaintiffs' characterization of Proclamation 10049, which speaks for itself and is the best evidence of its contents. To the extent a response is required, Defendants refer the Court to Proclamation 10049 and deny the allegations to the extent they are inconsistent with Proclamation 10049.

73. Defendants admit that President Biden issued Proclamation No. 10287, 86 Fed. Reg. 57,349, on Oct. 8, 2021. The remaining allegations in this paragraph constitute Plaintiffs' characterization of Proclamation 10287, which speaks for itself and is the best evidence of its contents. To the extent a response is required, Defendants refer the Court to Proclamation 10287 and deny the allegations to the extent they are inconsistent with Proclamation 10287.

74. This paragraph constitutes Plaintiffs' characterization of Proclamation 10287, which speaks for itself and is the best evidence of its contents. To the extent a response is required, Defendants refer the Court to Proclamation 10287 and deny the allegations to the extent they are inconsistent with Proclamation 10287.

75. This paragraph constitutes Plaintiffs' characterization of Proclamation 10287, which speaks for itself and is the best evidence of its contents. To the extent a response is required, Defendants refer the Court to Proclamation 10287 and deny the allegations to the extent they are inconsistent with Proclamation 10287.

76. This paragraph constitutes Plaintiffs' characterization of Proclamation 10287, which speaks for itself and is the best evidence of its contents. To the extent a response is required, Defendants refer the Court to Proclamation 10287 and deny the allegations to the extent they are inconsistent with Proclamation 10287.

77. This paragraph constitutes Plaintiffs' characterization of Proclamation 10287, which speaks for itself and is the best evidence of its contents. To the extent a response is required, Defendants refer the Court to Proclamation 10287 and deny the allegations to the extent they are inconsistent with Proclamation 10287.

78. This paragraph constitutes Plaintiffs' characterization of Proclamation 10287, which speaks for itself and is the best evidence of its contents. To the extent a response is

required, Defendants refer the Court to Proclamation 10287 and deny the allegations to the extent they are inconsistent with Proclamation 10287.

79. Defendants deny the allegations in this paragraph.

80. Defendants admit that the Secretaries of Commerce and Interior share management responsibilities for the Monument. With respect to the allegations in the second sentence of this paragraph, Defendants aver that Proclamations 9496 and 10287 provide that the Secretary of Commerce, through the National Oceanic and Atmospheric Administration (NOAA), and in consultation with the Secretary of the Interior, shall have responsibility for management of activities and species within the monument under the Magnuson-Stevens Fishery Conservation and Management Act, the Endangered Species Act (for species regulated by NOAA), the Marine Mammal Protection Act, and any other applicable Department of Commerce legal authorities. With respect to the allegations in the third sentence of this paragraph, Defendants further aver that Proclamations 9496 and 10287 provide that The Secretary of the Interior, through the United States Fish and Wildlife Service (FWS), and in consultation with the Secretary of Commerce, shall have responsibility for management of activities and species within the monument under its applicable legal authorities, including the National Wildlife Refuge System Administration Act, the Refuge Recreation Act, and the Endangered Species Act (for species regulated by FWS), and Public Law 98–532 and Executive Order 6166 of June 10, 1933. With respect to the last sentence of this paragraph, Defendants admit that within their respective authorities, the Secretaries are directed to prepare a joint management plan by September 15, 2023, and aver that the Secretaries as appropriate, shall promulgate implementing regulations that address any further specific actions necessary for the proper care and management of the objects and area identified.

81. Defendants admit that Proclamation 10287 reinstates the prohibition on commercial fishing within the Monument Designation's waters, except for red crab and American lobster commercial fishing, which may be permitted until September 15, 2023.

82. Defendants admit the allegations in this paragraph.

83. Defendants admit the allegations in this paragraph.

84. Defendants aver that Proclamation 10287's prohibition of *commercial* fishing in the Monument designation area, with the exception of lobster and red crab, took effect on October 8, 2021, but deny that Proclamation 10287 prohibited "all fishing."

85. Defendants lack knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore deny them.

86. This paragraph consists of legal conclusions to which no response is required. To the extent responses are required, Defendants deny the allegations.

87. This paragraph consists of legal conclusions to which no response is required. To the extent responses are required, Defendants deny the allegations.

88. Defendants lack knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore deny them.

89. This paragraph consists of legal conclusions to which no response is required. To the extent responses are required, Defendants deny the allegations.

90. This paragraph consists of legal conclusions to which no response is required. To the extent responses are required, Defendants deny the allegations. In addition, Defendants lack knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore deny them.

91. This paragraph consists of legal conclusions to which no response is required. To the extent responses are required, Defendants deny the allegations.

92. This paragraph consists of legal conclusions to which no response is required. To the extent responses are required, Defendants deny the allegations.

93. This paragraph consists of legal conclusions to which no response is required. To the extent responses are required, Defendants deny the allegations.

94. This paragraph consists of legal conclusions to which no response is required. To the extent responses are required, Defendants deny the allegations.

95. This paragraph consists of legal conclusions to which no response is required. To the extent responses are required, Defendants deny the allegations.

96. Defendants adopt and incorporate herein by reference each and every response as set forth above.

97. The allegations in this paragraph provide Plaintiffs' legal conclusions to which no response is required. To the extent that a response is required, Defendants deny the allegations. In addition, the allegations in this paragraph characterize several court opinions, which speak for themselves and are the best evidence of their contents. To the extent that a response is required, Defendants refer the Court to the referenced opinions, and deny the allegations in this paragraph to the extent they are inconsistent with those opinions.

98. The allegations in this paragraph consist of legal conclusions and Plaintiffs' characterization of the Antiquities Act, which speaks for itself and is the best evidence of its contents. To the extent that a response is required, Defendants refer the Court to the Antiquities Act, and deny the allegations in this paragraph to the extent they are inconsistent with the cited provisions of the Act.

99. The allegations in this paragraph consist of legal conclusions and Plaintiffs' characterization of the Complaint and Proclamation 10287, which speaks for itself and is the best evidence of its contents. To the extent that a response is required, Defendants deny the allegations.

100. Defendants deny that the President's actions in issuing Proclamation 10287 were ultra vires or in excess of authority under the Antiquities Act.

101. Defendants adopt and incorporate herein by reference each and every response as set forth above.

102. The allegations in this paragraph consist of legal conclusions and Plaintiffs' characterization of the Antiquities Act, which speaks for itself and is the best evidence of its contents. To the extent that a response is required, Defendants refer the Court to the Antiquities Act, and deny the allegations in this paragraph to the extent they are inconsistent with the cited provisions of the Act.

103. The allegations in this paragraph consist of Plaintiffs' legal conclusions to which no response is required. To the extent that a response is required, Defendants deny the allegations. In addition, the allegations in this paragraph characterize a court opinion, which speaks for itself and is the best evidence of their contents. To the extent that a response is required, Defendants refer the Court to the referenced opinion, and deny the allegations in this paragraph to the extent they are inconsistent with that opinion.

104. The allegations in this paragraph consist of Plaintiffs' legal conclusions to which no response is required. To the extent that a response is required, Defendants deny the allegations.

105. The allegations in this paragraph consist of legal conclusions and Plaintiffs' characterization of Proclamation 10287, which speaks for itself and is the best evidence of its contents. To the extent that a response is required, Defendants deny the allegations.

106. Defendants deny that the President's actions in issuing Proclamation 10287 were ultra vires or in excess of authority under the Antiquities Act.

107. Defendants adopt and incorporate herein by reference each and every response as set forth above.

108. The allegations in this paragraph consist of legal conclusions and Plaintiffs' characterization of the Antiquities Act, which speaks for itself and is the best evidence of its contents. To the extent that a response is required, Defendants refer the Court to the Antiquities Act, and deny the allegations in this paragraph to the extent they are inconsistent with the cited provisions of the Act.

109. The allegations in this paragraph consist of Plaintiffs' legal conclusions to which no response is required. To the extent that a response is required, Defendants deny the allegations.

110. The allegations in this paragraph consist of Plaintiffs' legal conclusions to which no response is required. To the extent that a response is required, Defendants deny the allegations. In addition, the allegations in this paragraph characterize a court opinion, which speaks for itself and is the best evidence of their contents. To the extent that a response is required, Defendants refer the Court to the referenced opinion, and deny the allegations in this paragraph to the extent they are inconsistent with that opinion.

111. Defendants deny that the President's actions in issuing Proclamation 10287 were ultra vires or in excess of authority under the Antiquities Act.

112. Defendants adopt and incorporate herein by reference each and every response as set forth above.

113. The allegations in this paragraph consist of legal conclusions and Plaintiffs' characterization of the Antiquities Act, which speaks for itself and is the best evidence of its contents. To the extent that a response is required, Defendants refer the Court to the Antiquities Act, and deny the allegations in this paragraph to the extent they are inconsistent with the cited provisions of the Act.

114. The allegations in this paragraph consist of legal conclusions and Plaintiffs' characterization of Proclamation 10287, which speaks for itself and is the best evidence of its contents. To the extent that a response is required, Defendants deny the allegations.

115. Defendants deny that the President's actions in issuing Proclamation 10287 were ultra vires or in excess of authority under the Antiquities Act. In addition, the allegations in this paragraph consist of Plaintiffs' legal conclusions and characterization of Proclamation 10287, which speaks for itself and is the best evidence of its contents. To the extent that a response is required, Defendants deny the allegations.

116. Defendants deny that the President's actions in issuing Proclamation 10287 were ultra vires or in excess of authority under the Antiquities Act. In addition, the allegations in this paragraph consist of Plaintiffs' legal conclusions and characterization of Proclamation 10287, which speaks for itself and is the best evidence of its contents. To the extent that a response is required, Defendants deny the allegations.

117. Defendants adopt and incorporate herein by reference each and every response as set forth above.

118. The allegations in this paragraph consist of Plaintiffs' legal conclusions to which no response is required. In addition, this paragraph contains Plaintiffs' characterization of Article I of the U.S. Constitution, which speaks for itself and is the best evidence of its contents. To the extent that a response is required, Defendants refer the Court to the referenced provision, and deny the allegations in this paragraph to the extent they are inconsistent with that provision.

119. The allegations in this paragraph consist of Plaintiffs' legal conclusions to which no response is required. To the extent that a response is required, Defendants deny the allegations. In addition, the allegations in this paragraph characterize a court opinion, which speaks for itself and is the best evidence of its contents. To the extent that a response is required, Defendants refer the Court to the referenced opinion, and deny the allegations in this paragraph to the extent they are inconsistent with that opinion.

120. The allegations in this paragraph consist of Plaintiffs' legal conclusions to which no response is required. To the extent that a response is required, Defendants deny the allegations. In addition, the allegations in this paragraph characterize several court opinions, which speak for themselves and are the best evidence of their contents. To the extent that a response is required, Defendants refer the Court to the referenced opinions, and deny the allegations in this paragraph to the extent they are inconsistent with that opinions.

121. The allegations in this paragraph consist of legal conclusions and Plaintiffs' characterization of the Antiquities Act, which speaks for itself and is the best evidence of its contents. To the extent that a response is required, Defendants refer the Court to the Antiquities Act, and deny the allegations in this paragraph to the extent they are inconsistent with the cited provisions of the Act.

122. The allegations in this paragraph consist of legal conclusions and Plaintiffs' characterization of the Antiquities Act, which speaks for itself and is the best evidence of its contents. To the extent that a response is required, Defendants refer the Court to the Antiquities Act, and deny the allegations in this paragraph to the extent they are inconsistent with the cited provisions of the Act.

123. The allegations in this paragraph consist of legal conclusions and Plaintiffs' characterization of the Antiquities Act, which speaks for itself and is the best evidence of its contents. To the extent that a response is required, Defendants refer the Court to the Antiquities Act, and deny the allegations in this paragraph to the extent they are inconsistent with the cited provisions of the Act.

124. The allegations in this paragraph consist of legal conclusions and Plaintiffs' characterization of the NMSA, which speaks for itself and is the best evidence of its contents. To the extent that a response is required, Defendants refer the Court to the NMSA, and deny the allegations in this paragraph to the extent they are inconsistent with the cited provisions of the NMSA.

125. Defendants deny that the President's actions in issuing Proclamation 10287 were ultra vires or in excess of authority under the Antiquities Act or the U.S. Constitution.

GENERAL DENIAL

Defendants deny any allegations in the Complaint, express or implied, that are not expressly admitted, denied, or qualified in the foregoing paragraphs.

DEFENSES

1. The Court lacks jurisdiction because Plaintiffs lack standing to bring some or all of the claims for relief.

2. The Court lacks jurisdiction because the Proclamation is not subject to judicial review.

3. The Court lacks jurisdiction because Plaintiffs' claims against the Agency Defendants are not ripe for adjudication.

4. The Complaint fails in whole or in part to state a claim upon which relief may be granted.

Dated this 22nd day of August 2022.

Respectfully submitted,

TODD KIM, Assistant Attorney General
United States Department of Justice
Environment and Natural Resources Division

/s/ Frances B. Morris

FRANCES B. MORRIS
Trial Attorney (DC Bar No. 1016833)
United States Department of Justice
Environment & Natural Resources Division
Natural Resources Section
P.O. Box 7611
Washington, DC 20044-7611
Tel: (202) 514-2855
Fax: (202) 305-0506
Email: frances.morris@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the following with the Clerk of the Court for the United States District Court for the District of New Jersey by using the CM/ECF system:

Defendants' Answer

Those participants in this case that are registered CM/ECF users will be served by the CM/ECF system.

August 22, 2022

s/ Frances B. Morris
Frances B Morris