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

PATRICK FEHILY and DAVID T. MALLEY,

Plaintiffs,

v.

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

Defendants,

and

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

Defendant-Intervenors.

Case No. 3:22-cv-02120

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

**ANSWER OF
DEFENDANT-
INTERVENORS**

ANSWER OF DEFENDANT INTERVENORS

Defendant-Intervenors Conservation Law Foundation (62 Summer Street, Boston, Massachusetts 02110), Natural Resources Defense Council (40 West 20th Street, Floor 11, New York, New York 10011), Center for Biological Diversity (378 North Main Avenue, Tucson, Arizona 85701), and R. Zack Klyver (120 French Street, Bangor, Maine 04401) (collectively, Intervenors), through their undersigned counsel, say as follows by way of answer to Plaintiffs' Complaint, dated April 12, 2022 (ECF No. 1):

INTRODUCTION¹

1. Paragraph 1 contains Plaintiffs' characterization of their claims, to which no response is required. To the extent a response is required, Intervenors admit.
2. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 2, and therefore deny them.
3. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 3, and therefore deny them.
4. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 4, and therefore deny them.

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

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

6. Intervenor s admit that the Monument is located in the United States’ Exclusive Economic Zone (EEZ); that the EEZ is an area located from 12 to 200 nautical miles from the United States’ coastline; and that Proclamation No. 10287 defines the Monument as encompassing approximately 4,913 square miles of waters and submerged lands. Intervenor s further state that the Proclamation speaks for itself and is the best evidence of its contents; Intervenor s therefore deny any allegations in Paragraph 6 inconsistent with the text of the Proclamation.

7. Paragraph 7 contains partial quotations from Proclamation No. 10287. Intervenor s admit that the quoted words appear in Proclamation No. 10287, but state that Proclamation No. 10287 speaks for itself and is the best evidence of its contents; Intervenor s therefore deny any allegations inconsistent with the text of the Proclamation.

8. Intervenor's admit that Proclamation No. 10287 bans some forms of commercial fishing within the Monument and phases out others, but otherwise deny the allegations of Paragraph 8. Intervenor's specifically deny Plaintiffs' allegations that the Monument's "waters ... have been an important commercial fishery for decades," and further deny the suggestion that the Proclamation alone has "prevent[ed]" Mr. Malley and Mr. Fehily from fishing there. On information and belief, at the time of the Monument's designation (2016), the Obama administration estimated that there were six lobster vessels operating in the Monument area, and few other commercial fishing vessels.

9. Paragraph 9 contains Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor's deny.

10. The first sentence of Paragraph 10 contains a partial quotation from the Antiquities Act. Intervenor's admit that the quoted word appears in the Act, but state that the Act speaks for itself and is the best evidence of its contents; Intervenor's therefore deny any allegations inconsistent with the text of the Act. The remainder of Paragraph 10 contains Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor's deny.

11. The first sentence of Paragraph 11 contains partial quotations from the Antiquities Act. Intervenor's admit that the quoted words appear in the Act, but state that the Act speaks for itself and is the best evidence of its contents;

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

12. The first and third sentences of Paragraph 12 (not counting citations) contain partial quotations from the Antiquities Act. Intervenors admit that the quoted words appear in the Act, but state that the Act speaks for itself and is the best evidence of its contents; Intervenors therefore deny any allegations inconsistent with the text of the Act. The remainder of Paragraph 12 contains Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenors deny.

13. The first sentence of Paragraph 13 contains partial quotations from the Antiquities Act. Intervenors admit that the quoted words appear in the Act, but state that the Act speaks for itself and is the best evidence of its contents; Intervenors therefore deny any allegations inconsistent with the text of the Act. The remainder of Paragraph 13 contains Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenors deny.

14. Paragraph 14 contains Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenors deny, and state that the Act speaks for itself and is the best evidence of its contents.

15. Paragraph 15 contains Plaintiffs' characterization of their case, not factual allegations requiring a response.

JURISDICTION AND VENUE

16. Paragraph 16 contains Plaintiffs' legal characterizations and legal conclusions to which no response is required. To the extent a response is required, Intervenor admits that Plaintiffs purport to state claims raising "federal questions" under 28 U.S.C. § 1331, and that this Court generally has authority to issue injunctive and/or declaratory relief in appropriate cases. Intervenor denies that Plaintiffs have standing to invoke this Court's jurisdiction, and further denies that Plaintiffs are entitled to declaratory or injunctive relief.

17. Paragraph 17 contains Plaintiffs' legal characterizations and legal conclusions to which no response is required. To the extent a response is required, Intervenor lacks knowledge or information sufficient to form a belief about Plaintiffs' potential eligibility under the cited provision of the Equal Access to Justice Act, and therefore denies.

18. Intervenor denies the allegation in Paragraph 18 that "a substantial part of the events giving rise to Plaintiffs' claims occurred within this judicial district." Intervenor lacks knowledge or information sufficient to form a belief about Plaintiff Patrick Fehily's residence, and therefore denies that allegation. Intervenor further notes that Plaintiffs have not stated their addresses as required by Local

Civil Rule 10.1(a). The remainder of Paragraph 18 contains Plaintiffs' legal characterizations and legal conclusions to which no response is required. To the extent a response is required, Intervenor deny that venue is proper in this Court.

PARTIES

Plaintiffs

19. Intervenor lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 19, and therefore deny them.

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

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

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

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

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

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

Defendants

26. Intervenors admit the allegations in Paragraph 26.
27. Intervenors admit the allegations in Paragraph 27.
28. Intervenors admit the allegations in Paragraph 28.

LEGAL BACKGROUND

The Antiquities Act

29. Paragraph 29 contains Plaintiffs' characterization of the Antiquities Act, based on an article available on the National Park Service's website, and legal conclusions and argument to which no response is required. To the extent a response is required, Intervenors deny, and state that the Antiquities Act speaks for itself and is the best evidence of its contents and meaning.

30. Paragraph 30 contains Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenors admit that the Antiquities Act places discernible limits on the President's authority, and that courts may review the President's actions for compliance with those limits, but deny that Plaintiffs have stated a claim on which relief may be granted here.

31. The first sentence of Paragraph 31 contains a partial quotation from the Antiquities Act. Intervenors admit that the quoted words appear in the Act, but state that the Act speaks for itself and is the best evidence of its contents; Intervenors therefore deny any allegations inconsistent with the text of the Act. The

remainder of Paragraph 31 contains Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor deny.

32. The first sentence of Paragraph 32 contains a partial quotation from the Antiquities Act. Intervenor admit that the quoted words appear in the Act, but state that the Act speaks for itself and is the best evidence of its contents; Intervenor therefore deny any allegations inconsistent with the text of the Act. The remainder of Paragraph 32 contains Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor deny.

33. Paragraph 33 contains a partial quotation from the Antiquities Act. Intervenor admit that the quoted words appear in the Act, but state that the Act speaks for itself and is the best evidence of its contents; Intervenor therefore deny any allegations inconsistent with the text of the Act.

34. Paragraph 34 contains a partial quotation from the Antiquities Act. Intervenor admit that the quoted words appear in the Act, but state that the Act speaks for itself and is the best evidence of its contents; Intervenor therefore deny any allegations inconsistent with the text of the Act.

35. Paragraph 35 contains Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor deny, and state that the Antiquities Act speaks for itself and is the best evidence of its contents.

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

36. The first sentence of Paragraph 36 contains Plaintiffs' legal argument and conclusions, to which no response is required. The second sentence (and citation) of Paragraph 36 contains Plaintiffs' characterization of a decision by the U.S. Supreme Court. Intervenor's state that the decision speaks for itself and is the best evidence of its contents; Intervenor's therefore deny any allegations inconsistent with the text of the decision.

37. Intervenor's admit that on March 10, 1983, the President issued Presidential Proclamation No. 5030, titled "Exclusive Economic Zone of the United States of America," proclaiming the U.S. EEZ to 200 nautical miles from the baseline, consistent with international law. Intervenor's state that the Proclamation and Statement on United States Oceans Policy speak for themselves and are the best evidence of their contents. Intervenor's further state that Plaintiffs' characterization that the President "recognized that federal authority over this area is limited" is a legal conclusion to which no response is required, but to the extent a response is required, Intervenor's deny that Plaintiffs' characterization in Paragraph 37 is a complete and accurate one.

38. Paragraph 38 contains Plaintiffs' characterization of the Magnuson-Stevens Act. Intervenor's state that the Act speaks for itself and is the best evidence of its contents; Intervenor's therefore deny any allegations inconsistent with the text

of the Act. Intervenors further state that Plaintiffs' characterization of the federal government's "limited authority" is a legal conclusion to which no response is required.

39. Paragraph 39 contains Plaintiffs' characterization of the National Marine Sanctuaries Act. Intervenors state that the Act speaks for itself and is the best evidence of its contents; Intervenors therefore deny any allegations inconsistent with the text of the Act. Intervenors further state that Plaintiffs' characterization of the federal government's "limited authority" is a legal conclusion to which no response is required.

40. Paragraph 40 contains Plaintiffs' characterization of the United Nations Convention on the Law of the Sea and the Third Restatement of Foreign Relations Law. Intervenors state that those sources speak for themselves and are the best evidence of their contents; Intervenors therefore deny any allegations inconsistent with the text those sources. Intervenors further state that Plaintiffs' characterization of the federal government's "limited regulatory authority over the EEZ" is a legal conclusion to which no response is required.

Federal Regulation of Ocean Fisheries

41. Intervenors admit that Congress has enacted statutes that apply in and to the EEZ. Plaintiffs' statement in Paragraph 41 that Congress has "establish[ed]

procedures to protect against excessive limitations on ... sustainable and productive use” is a legal conclusion to which no response is required.

42. Paragraph 42 contains Plaintiffs’ characterizations of the National Marine Sanctuaries Act. Intervenor state that the Act speaks for itself and is the best evidence of its contents; Intervenor therefore deny any allegations inconsistent with the text of the Act. Intervenor further state that Plaintiffs’ characterizations of the Act are legal conclusions to which no response is required.

43. Paragraph 43 contains Plaintiffs’ characterizations of the Magnuson-Stevens Act, to which no response is required. Intervenor state that the Act speaks for itself and is the best evidence of its contents; Intervenor therefore deny any allegations inconsistent with the text of the Act. To the extent Paragraph 43 is deemed to contain factual allegations, Intervenor deny them.

44. Paragraph 44 contains Plaintiffs’ characterizations of the regional fishery management councils’ authority under the Magnuson-Stevens Act, which is a legal characterization to which no response is required. To the extent Paragraph 44 is deemed a factual allegation that the regional fishery management councils have certain authority to minimize to the extent practicable the adverse effects of fishing on designated essential fish habitats or to minimize to the extent practicable bycatch in a fishery, Intervenor admit. To the extent Paragraph 44 is deemed a

factual allegation concerning the adequacy or effectiveness of the councils' measures, Intervenor deny.

45. The first sentence of Paragraph 45 contains Plaintiffs' characterizations of the National Marine Sanctuaries Act. Intervenor admit that the Act applies to "the territorial sea of the United States, ... which is subject to the sovereignty of the United States, and the United States exclusive economic zone, consistent with international law." 16 U.S.C. § 1437(k). The remainder of the first sentence of Paragraph 45 is Plaintiffs' legal characterization and argument, to which no response is required; to the extent a response is required, Intervenor deny. The second sentence of Paragraph 45 (not counting citations) is Plaintiffs' characterization of the Magnuson-Stevens Act. Intervenor state that the Act speaks for itself and is the best evidence of its contents; to the extent a response is required, Intervenor admit that the phrase "lands owned or controlled" does not appear in the Magnuson-Stevens Act, but state that is irrelevant. The third sentence of Paragraph 45 (not counting citations) is Plaintiffs' legal characterization of the National Marine Sanctuaries Act and Magnuson-Stevens Act. Intervenor state that those statutes speak for themselves and are the best evidence of their contents; Intervenor therefore deny any allegations inconsistent with the text of those statutes. Intervenor further state that Plaintiffs' characterizations of the statutes are legal conclusions to which no response is required.

FACTUAL ALLEGATIONS

Georges Bank Fishery

46. Intervenors deny the allegation in Paragraph 46 as vague and ambiguous.

47. Intervenors deny the allegation in Paragraph 47 as vague and ambiguous.

48. Intervenors admit that parts of the Georges Bank have supported lucrative fisheries. As to the second sentence of Paragraph 48, Intervenors deny.

49. Intervenors state that the phrases “this area” and “[t]hese fisheries” are vague and ambiguous, and therefore deny the allegations in Paragraph 49. To the extent Paragraph 49 alleges that the Monument area specifically “supports significant fisheries for various species of fish and shellfish” or “provide[s] an important source of income and employment for fishermen throughout the northeast, including Plaintiffs Mr. Fehily and Mr. Malley,” Intervenors deny.

50. Intervenors admit the allegation in Paragraph 50.

51. Intervenors admit the allegation in Paragraph 51.

52. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 52, and therefore deny them.

Intervenors further state that bottom-contact gear and pelagic long-line gear can crush, entangle, and/or kill marine creatures (including corals, whales, dolphins,

sea birds, and sea turtles), both when in use and if lost (i.e., derelict or “ghost” gear). Extractive commercial fishing also reduces fish abundance, including selectively by species, size, sex and age, and disrupts fish behavior, resulting in a range of adverse ecological effects, such as altering the balance of predator and prey species with ripple effects up and down the food chain.

Existing Management of the Georges Bank

53. Paragraph 53 contains Plaintiffs’ characterizations of the responsibilities of the New England Fishery Management Council and the National Marine Fisheries Service under the Magnuson-Stevens Act, which are legal characterizations and conclusions to which no response is required. To the extent Paragraph 53 is deemed to include factual allegations, Intervenors deny them.

54. Paragraph 54 contains Plaintiffs’ characterizations of the authority of the Atlantic States Marine Fisheries Commission, which are legal characterizations and conclusions to which no response is required. To the extent Paragraph 54 is deemed a factual allegation that the Commission has a role in the management of the American lobster fishery, Intervenors admit. Intervenors deny the remainder of Paragraph 54.

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

55. Paragraph 55 is Plaintiffs' characterization of the contents of Proclamation No. 9496. Intervenors state that the Proclamation speaks for itself and is the best evidence of its contents. Intervenors deny Plaintiffs' characterization of the "the first iteration" of the Monument as vague and inconsistent with the text of the Proclamation.

56. Paragraph 56 is Plaintiffs' characterization of the contents of Proclamation No. 9496. Intervenors state that the Proclamation speaks for itself and is the best evidence of its contents; Intervenors therefore deny any allegations inconsistent with the text of the Proclamation.

57. Paragraph 57 is Plaintiffs' characterization of the contents of Proclamation No. 9496. Intervenors state that the Proclamation speaks for itself and is the best evidence of its contents. To the extent an answer is required, Intervenors admit.

58. Paragraph 58 is Plaintiffs' characterization of the contents of Proclamation No. 9496. Intervenors state that the Proclamation speaks for itself and is the best evidence of its contents.

59. Paragraph 59 is Plaintiffs' characterization of the contents of Proclamation No. 9496. Intervenor states that the Proclamation speaks for itself and is the best evidence of its contents.

60. Paragraph 60 is Plaintiffs' characterization of the contents of Proclamation No. 9496. Intervenor states that the Proclamation speaks for itself and is the best evidence of its contents; to the extent an answer is required, Intervenor denies Plaintiffs' characterization of the "area around the canyons and seamounts" as "huge" as vague and inconsistent with the language of the Proclamation, and otherwise admits.

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

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

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

64. Paragraph 64 is Plaintiffs' characterization of the contents of Proclamation No. 9496. Intervenors state that the Proclamation speaks for itself and is the best evidence of its contents. To the extent an answer is required, Intervenors state that Proclamation No. 9496 directed the Secretary of the Interior (through the U.S. Fish and Wildlife Service) and the Secretary of Commerce (through the National Oceanic and Atmospheric Administration) to share management responsibility for the Monument and to prepare a joint management plan within three years; Intervenors deny the remaining allegations as inconsistent with the language of the Proclamation.

65. Paragraph 65 is Plaintiffs' characterization of the contents of Proclamation No. 9496. Intervenors state that the Proclamation speaks for itself and is the best evidence of its contents. To the extent an answer is required, Intervenors state that the Proclamation directed the Secretaries to act in accordance with international law and not to "unlawfully restrict" certain recognized lawful uses. The remainder of Paragraph 65 is Plaintiffs' legal characterization and

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

66. Paragraph 66 is Plaintiffs' characterization of the contents of Proclamation No. 9496. Intervenor state that the Proclamation speaks for itself and is the best evidence of its contents; to the extent an answer is required, Intervenor deny the allegations as inconsistent with the text of the Proclamation.

67. Paragraph 67 paraphrases the contents of Proclamation No. 9496. Intervenor state that the Proclamation speaks for itself and is the best evidence of its contents; to the extent an answer is required, Intervenor deny Paragraph 67 as inconsistent with the text of the Proclamation.

68. Intervenor admit the allegation in Paragraph 68.

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

69. Paragraph 69 is Plaintiffs' characterization of the contents of Proclamation No. 10049. Intervenor state that the Proclamation speaks for itself and is the best evidence of its contents. To the extent Paragraph 69 is deemed a factual allegation that fishermen needed "relief" from the 2016 Proclamation, Intervenor lack knowledge or information sufficient to form a belief about the truth of such allegation, and therefore deny it.

70. Paragraph 70 is Plaintiffs' characterization of the contents of Proclamation No. 10049. Intervenors state that the Proclamation speaks for itself and is the best evidence of its contents; to the extent an answer is required, Intervenors admit that the Proclamation so stated.

71. Paragraph 71 is Plaintiffs' characterization of the contents of Proclamation No. 10049. Intervenors state that the Proclamation speaks for itself and is the best evidence of its contents; to the extent an answer is required, Intervenors admit that the quoted phrase appears in Proclamation No. 10049.

72. Paragraph 72 is Plaintiffs' characterization of the contents of Proclamation No. 10049. Intervenors state that the Proclamation speaks for itself and is the best evidence of its contents; to the extent an answer is required, Intervenors admit that the quoted phrases appear in Proclamation No. 10049.

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

73. Paragraph 73 is Plaintiffs' characterization of the contents of Proclamation No. 10287. Intervenors state that the Proclamation speaks for itself and is the best evidence of its contents; to the extent an answer is required, Intervenors admit.

74. Paragraph 74 is Plaintiffs' characterization of the contents of Proclamation No. 10287. Intervenors state that the Proclamation speaks for itself and is the best evidence of its contents.

75. Paragraph 75 is Plaintiffs' characterization of the contents of Proclamation No. 10287 and contains legal conclusions and argument to which no response is required. Intervenors state that the Proclamation speaks for itself and is the best evidence of its contents; to the extent an answer is required, Intervenors deny.

76. Paragraph 76 is Plaintiffs' characterization of the contents of Proclamation No. 10287. Intervenors state that the Proclamation speaks for itself and is the best evidence of its contents; to the extent an answer is required, Intervenors admit that the quoted phrases appear in Proclamation No. 10287.

77. Paragraph 77 is Plaintiffs' characterization of the contents of Proclamation No. 10287. Intervenors state that the Proclamation speaks for itself and is the best evidence of its contents; to the extent an answer is required, Intervenors admit that the quoted phrases appear in Proclamation No. 10287.

78. Paragraph 78 is Plaintiffs' characterization of the contents of Proclamation No. 10287 and contains legal conclusions and argument to which no response is required. Intervenors further state that the Proclamation speaks for

itself and is the best evidence of its contents. To the extent an answer is required, Intervenor deny.

79. Paragraph 79 is Plaintiffs' characterization of the contents of Proclamation No. 10287 and contains legal conclusions and argument to which no response is required. Intervenor further state that the Proclamation speaks for itself and is the best evidence of its contents. To the extent an answer is required, Intervenor deny.

80. Paragraph 80 is Plaintiffs' characterization of the contents of Proclamation No. 10287. Intervenor state that the Proclamation speaks for itself and is the best evidence of its contents. To the extent an answer is required, Intervenor state that Proclamation No. 10287 directed the Secretary of the Interior (through the U.S. Fish and Wildlife Service) and the Secretary of Commerce (through the National Oceanic and Atmospheric Administration) to share management responsibility for the Monument, to prepare a joint management plan by September 15, 2023, and to promulgate implementing regulations that address any further specific actions necessary for the proper care and management of the Monument and its objects as appropriate; Intervenor deny the remaining allegations as inconsistent with the language of the Proclamation.

81. Paragraph 81 is Plaintiffs' characterization of the contents of Proclamation No. 10287. Intervenor state that the Proclamation speaks for itself

and is the best evidence of its contents. To the extent an answer is required, Intervenor's state that the Proclamation incorporates Proclamation No. 9496's phase-out of commercial fishing for red crab and American lobster, and otherwise admit.

82. Paragraph 82 quotes Proclamation No. 10287. Intervenor's state that the Proclamation speaks for itself and is the best evidence of its contents; to the extent an answer is required, Intervenor's admit that the quoted phrases appear in Proclamation No. 10287.

83. Paragraph 83 quotes Proclamation No. 10287. Intervenor's state that the Proclamation speaks for itself and is the best evidence of its contents; to the extent an answer is required, Intervenor's admit that the quoted phrases appear in Proclamation No. 10287.

84. Intervenor's deny the allegation in Paragraph 84.

DECLARATORY AND INJUNCTIVE RELIEF ALLEGATIONS

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

86. Intervenor's lack knowledge or information sufficient to form a belief about the truth of the allegation in Paragraph 86, and therefore deny them.

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

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

89. Intervenors lack knowledge or information sufficient to form a belief about the existence of Plaintiffs' alleged injuries, and therefore deny the allegation in Paragraph 89.

90. The first sentence of Paragraph 90 contains Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenors deny. As to the second sentence of Paragraph 90, Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations, and therefore deny them.

91. Intervenors lack knowledge or information sufficient to admit or deny the allegations in Paragraph 91, and therefore deny them.

92. Intervenors lack knowledge or information sufficient to admit or deny the allegations in Paragraph 92, and therefore deny them.

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

94. Paragraph 94 contains Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenors state that Proclamation No. 10287 has the effect of prohibiting some forms of commercial fishing within the Monument and phasing out others, and requires the Secretaries

to enforce its terms. Intervenors lack knowledge or information sufficient to admit or deny the allegation that Proclamation No. 10287 immediately forbids Plaintiffs from fishing in the Monument or that it is the reason why Plaintiffs are not fishing in the Monument, and therefore deny it.

95. Intervenors deny that Plaintiffs are entitled to declaratory or injunctive relief.

CLAIMS FOR RELIEF

Count I:

Ultra Vires Executive Action: Designating a National Monument Within an Area That is Not on “Land” (Antiquities Act, 54 U.S.C. § 320301(a))

96. Paragraph 96 is a statement incorporating Plaintiffs’ allegations in the preceding paragraphs, to which no response is required. To the extent a response is required, Intervenors incorporate their preceding responses.

97. Paragraph 97 contains Plaintiffs’ legal conclusions, to which no response is required. To the extent a response is required, Intervenors admit that the Antiquities Act places discernible limits on the President’s authority, and that courts may review the President’s actions for compliance with those limits, but deny that Plaintiffs have stated a claim on which relief may be granted here. Intervenors further state that the cited court decisions speak for themselves and are the best evidence of their contents; Intervenors therefore deny any characterizations inconsistent with the text of those decisions.

98. Paragraph 98 contains a partial quotation from the Antiquities Act. Intervenor admits that the quoted word appears in the Act, but states that the Act speaks for itself and is the best evidence of its contents.

99. Paragraph 99 contains Plaintiff's legal conclusions, to which no response is required. To the extent a response is required, Intervenor denies.

100. Paragraph 100 contains Plaintiff's legal conclusions, to which no response is required. To the extent a response is required, Intervenor denies.

Count II:

Ultra Vires Executive Action: Designating a National Monument on Land Not "Owned or Controlled by the Federal Government" (Antiquities Act, 54 U.S.C. § 320301(a))

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

102. Paragraph 102 contains a partial quotation from the Antiquities Act. Intervenor admits that the quoted words appear in the Act, but states that the Act speaks for itself and is the best evidence of its contents.

103. Paragraph 103 contains Plaintiff's legal conclusions, to which no response is required. To the extent a response is required, Intervenor denies. Intervenor further states that the cited court decision speaks for itself and is the best evidence of its contents; Intervenor therefore denies Plaintiff's characterization as inconsistent with the text of that decision.

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

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

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

Count III:
***Ultra Vires Executive Action: Designating "Objects" Not
Protectable Under the Antiquities Act
(Antiquities Act, 54 U.S.C. § 320301(a))***

107. Paragraph 107 is a statement incorporating Plaintiffs' allegations in the preceding paragraphs, to which no response is required. To the extent a response is required, Intervenor incorporate their preceding responses.

108. Paragraph 108 contains a partial quotation from the Antiquities Act. Intervenor admit that the quoted words appear in the Act, but state that the Act speaks for itself and is the best evidence of its contents.

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

110. Paragraph 110 contains Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor deny. Intervenor further state that the cited court decision speaks for itself and is the

best evidence of its contents; Intervenor therefore deny any characterizations inconsistent with the text of that decision.

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

Count IV:

Ultra Vires Executive Action: Designating Land as Part of a National Monument That is not the Smallest Area Compatible with the Care and Management of the Objects to be Protected (Antiquities Act, 54 U.S.C. § 320301(b))

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

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

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

115. Paragraph 115 contains Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor deny.

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

Count V:
Ultra Vires Executive Action and Violation
of the Constitution's Separation of Powers
(U.S. Const. art. I)

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

118. Paragraph 118 contains Plaintiffs' legal conclusions, to which no response is required.

119. Paragraph 119 contains Plaintiffs' legal conclusions, to which no response is required. Intervenor's further state that the cited court decision speaks for itself and is the best evidence of its contents.

120. Paragraph 120 contains Plaintiffs' legal conclusions, to which no response is required. Intervenor's further state that the cited court opinions speak for themselves and are the best evidence of their contents.

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

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

123. Paragraph 123 is Plaintiffs' characterization of the contents of the Antiquities Act. Intervenor's state that the Act speaks for itself and is the best evidence of its contents.

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

125. Paragraph 125 contains Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, Intervenor deny.

REQUESTED RELIEF

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

* * *

INTERVENORS' AFFIRMATIVE DEFENSES AND REQUESTED RELIEF

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

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

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

THIRD AFFIRMATIVE DEFENSE

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

FOURTH AFFIRMATIVE DEFENSE

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

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

WHEREFORE, Intervenors respectfully request that the Court:

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

Dated: August 22, 2022

Respectfully submitted,

s/ Bradley Campbell
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CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 11.2

I hereby certify that, to the best of my knowledge, the matter in controversy is not the subject of any other action pending in any court, or of any pending arbitration or administrative proceeding.

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

Executed on August 22, 2022

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