THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MASSACHUSETTS LOBSTERMEN'S ASSOCIATION, *et al.*, *Plaintiffs*, v. WILBUR ROSS, *et al.*, *Defendants*, and NATURAL RESOURCES DEFENSE COUNCIL, INC., *et al.*, *Defendant-Intervenors.*	Case No. 17-cv-00406 (JEB)

INTERVENORS' RESPONSE IN SUPPORT OF FEDERAL DEFENDANTS' MOTION TO DISMISS

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INTRODUCTION

Defendant-Intervenors Natural Resources Defense Council, Conservation Law Foundation, Center for Biological Diversity, and R. Zack Klyver respectfully submit the following response to Federal Defendants' motion to dismiss (ECF No. 32). Intervenors agree that Plaintiffs' complaint fails to state a claim for relief and thus join Federal Defendants' motion to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(6). Dismissal is warranted here not because the President's exercise of authority to designate a national monument is unreviewable (as Federal Defendants appear to suggest), but rather because a straightforward application of settled precedent compels the conclusion that Plaintiffs have not alleged any violation of the law. Even taking Plaintiffs' factual allegations as true, the designation of the Northeast Canyons and Seamounts Marine National Monument (Northeast Canyons or the Monument) was a lawful exercise of the President's authority under the Antiquities Act.

In this action—just as in *Mountain States Legal Foundation v. Bush*, 306 F.3d 1132 (D.C. Cir. 2002), and *Tulare County v. Bush*, 306 F.3d 1138 (D.C. Cir. 2002)—Plaintiffs' claims rest on a combination of conclusory assertions and legally erroneous premises. Their argument that the President cannot establish a national monument in the United States' Exclusive Economic Zone fails as a matter of law. As in other parts of the ocean where the Supreme Court has already affirmed the President's authority to designate national monuments, the federal government exercises broad and uncontested "control[]" over the U.S. Exclusive Economic Zone.

54 U.S.C. § 320301(a); *cf. Alaska v. United States*, 545 U.S. 75, 103 (2005); *United States v. California* (*California III*), 436 U.S. 32, 36 n.9 (1978). Plaintiffs' argument that Presidents may not designate national monuments to protect ecosystems or living creatures is also squarely foreclosed by Supreme Court and D.C. Circuit case law. *See Tulare County*, 306 F.3d at 1141-42 (citing *Cappaert v. United States*, 426 U.S. 128, 141-42 (1976)). And Plaintiffs' conclusory criticisms of the Monument's size are wholly insufficient to state a claim that the President abused his broad discretion to designate a national monument. Under a straightforward application of Supreme Court and D.C. Circuit precedent, Plaintiffs' complaint must be dismissed.

BACKGROUND

I. The Antiquities Act

The Antiquities Act of 1906 authorizes the President, "in [his] discretion, [to] declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated on land owned or controlled by the Federal Government to be national monuments," and to "reserve parcels of land as a part of the national monuments" that are "the smallest area compatible with the proper care and management of the objects to be protected." 54 U.S.C. § 320301(a), (b). The Act thus grants "broad discretion" to the President to designate national monuments for the protection of scientifically and historically valuable natural resources. Fed. Defs'. Mem. in Supp. of Mot. to Dismiss 21 (ECF No. 32-1) (hereinafter Gov't Br.). Indeed, in the Antiquities Act's 112-year

history, no court has ever invalidated a presidential proclamation establishing a national monument.

As the Supreme Court has explained, "[a]n essential purpose of monuments created pursuant to the Antiquities Act," much like national parks created by Congress, "is 'to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.'" *Alaska*, 545 U.S. at 103 (quoting 16 U.S.C. § 1). Starting with Theodore Roosevelt, Presidents have used the Antiquities Act to confer enduring protection on paleontological sites, geological wonders, biological reserves, and landmarks of the United States' diverse cultural and natural heritage, establishing monuments that range from less than an acre to millions of acres in size.[1] In total, Presidents have declared 157 national monuments in thirty-two states, four territories, two oceans, and the District of Columbia.

[1] *See, e.g.*, Proclamation No. 793, 35 Stat. 2174 (1908) (Muir Woods National Monument in California, 295 acres); Proclamation No. 794, 35 Stat. 2175 (1908) (Grand Canyon National Monument in Arizona, 808,000 acres); Proclamation No. 1713, 43 Stat. 1968 (1924) (Statue of Liberty—originally called Fort Wood—in New York, 2.5 acres); Proclamation No. 4616, 43 Fed. Reg. 57,035 (Dec. 1, 1978) (Denali National Monument in Alaska, 3.9 million acres); Proclamation No. 7395, 66 Fed. Reg. 7347 (Jan. 17, 2001) (Minidoka Internment National Monument in Idaho, 73 acres); Proclamation No. 8031, 71 Fed. Reg. 36,443 (June 15, 2006) (Northwestern Hawaiian Islands Marine National Monument in the Pacific Ocean, 89 million acres); Proclamation No. 8943, 78 Fed. Reg. 18,763 (Mar. 25, 2013) (Harriet Tubman Underground Railroad National Monument in Maryland, 11,750 acres).

II. The Antiquities Act's Application to the Ocean

Presidents have long used their Antiquities Act authority to protect marine ecosystems of scientific interest in U.S.-controlled ocean areas. In the mid-twentieth century, Presidents protected some of the nation's most iconic coastal land- and seascapes as national monuments, including Glacier Bay in Alaska and the Channel Islands in California.[2] The Supreme Court has specifically approved Presidents' decisions to include submerged lands and associated waters within national monuments. *See Alaska*, 545 U.S. at 103 (regarding Glacier Bay National Monument); *California III*, 436 U.S. at 36 n.9 (regarding Channel Islands National Monument); *see also infra* Argument Section II.B.

These early marine national monuments were located relatively close to shore, but as technology has advanced, scientific interest has extended to new ecosystems further off the nation's coasts, where scientists have discovered flora and fauna as unique and scientifically important as those found near shore or on dry land. For example, President Kennedy declared Buck Island Reef National Monument off the U.S. Virgin Islands to protect coral reefs "and the rare marine life which are dependent upon [them]." Proclamation No. 3443, 76 Stat. 1441 (1961). Over time, Presidents Ford and Clinton expanded Buck Island to encompass additional coral reefs and their interconnected marine habitats. *See* Proclamation

[2] *See* Proclamation No. 2330, 53 Stat. 2534 (1939) (expanding Glacier Bay National Monument to include submerged lands and waters); Proclamation No. 2825, 63 Stat. 1258 (1949) (expanding Channel Islands National Monument to include submerged lands).

No. 4346, 40 Fed. Reg. 5127, 5127 (Feb. 4, 1975) (adding thirty acres of submerged land); Proclamation No. 7392, 66 Fed. Reg. 7335, 7336 (Jan. 17, 2001) (adding another 18,135 acres of submerged land).

The federal government's legal interest in the ocean and control over its protection have expanded over time as well. Since the late 1700s, the United States has asserted control over at least a three-nautical-mile territorial sea. *See United States v. California* (*California I*), 332 U.S. 19, 32-33 & n.16 (1947). Technological and scientific advances have since broadened the nation's knowledge of the ocean and the resources within it—including the understanding that these resources are valuable and finite. Today, the United States exercises control over not only a twelve-nautical-mile territorial sea, Proclamation No. 5928, 54 Fed. Reg. 777 (Dec. 27, 1988), but also a 200-nautical-mile Exclusive Economic Zone (EEZ), Proclamation No. 5030, 48 Fed. Reg. 10,605 (Mar. 10, 1983). In the U.S. EEZ, the U.S. government has "sovereign rights" over "exploring, exploiting, conserving and managing natural resources, both living and non-living, of the seabed and subsoil and the superjacent waters," as well as jurisdiction to "protect[] and preserv[e] . . . the marine environment." *Id.* at 10,605. As explained below, the United States' control over this area of the ocean, including for purposes of conserving natural resources, is broad and well established. *See infra* Argument Section II.A.2.

Based on the United States' broad control in its EEZ, the U.S. Department of Justice Office of Legal Counsel concluded, nearly twenty years ago, that Presidents may establish national monuments there. *See* Memorandum from Randolph D.

Moss, Ass't Att'y Gen., U.S. Dep't of Justice Office of Legal Counsel, Administration of Coral Reef Resources in the Northwest Hawaiian Islands, 24 Op. O.L.C. 183, 196, 2000 WL 34475732, at *9-10 (Sept. 15, 2000). Since then, Presidents have used their authority under the Antiquities Act to establish national monuments in the U.S. EEZ multiple times. President George W. Bush designated four large marine monuments in the Pacific Ocean, each extending into the U.S. EEZ.[3] President Obama subsequently expanded two of those monuments to the limits of the EEZ, and added one more: the Monument at issue here.[4] These monument designations protect a wide range of flora, fauna, geological formations, and ecosystems—including coral reefs, seabirds, marine mammals, submerged volcanoes, and areas of high fish-biomass concentration, among other objects of scientific interest. Today, national monument designations encompass five unique areas in the U.S. EEZ,

[3] *See* Proclamation No. 8031, 71 Fed. Reg. 36,443 (June 15, 2006) (designating Northwestern Hawaiian Islands Marine National Monument to protect over 7,000 marine species); Proclamation No. 8335, 74 Fed. Reg. 1557 (Jan. 6, 2009) (designating Marianas Trench Marine National Monument, which includes "the greatest diversity of seamount and hydrothermal vent life yet discovered"); Proclamation No. 8336, 74 Fed. Reg. 1565 (Jan. 6, 2009) (designating Pacific Remote Islands Marine National Monument and noting high levels of fish and predator biomass); Proclamation No. 8337, 74 Fed. Reg. 1577 (Jan. 6, 2009) (designating Rose Atoll Marine National Monument to protect "a dynamic reef ecosystem that is home to a very diverse assemblage of terrestrial and marine species, many of which are threatened or endangered"); *see also* Proclamation No. 8112, 72 Fed. Reg. 10,031 (Feb. 28, 2007) (renaming Northwestern Hawaiian Islands as Papahānaumokuākea Marine National Monument).

[4] *See* Proclamation No. 9173, 79 Fed. Reg. 58,645 (Sept. 25, 2014) (expanding Pacific Remote Islands); Proclamation No. 9478, 81 Fed. Reg. 60,227 (Aug. 26, 2016) (expanding Papahānaumokuākea); Proclamation No. 9496, 81 Fed. Reg. 65,161 (Sept. 15, 2016) (establishing Northeast Canyons).

each providing essential protections to some of the most scientifically significant, rare, and vulnerable ecosystems and species in U.S. waters.

III. The Northeast Canyons and Seamounts Marine National Monument

In September 2016, pursuant to his authority under the Antiquities Act, President Obama designated the Northeast Canyons and Seamounts Marine National Monument. *See* Proclamation No. 9496, 81 Fed. Reg. 65,161 (Sept. 15, 2016). Following in the tradition of other marine national monuments, the Monument protects an area of "great abundance and diversity," rich in marine life. *Id*. at 65,161. Located approximately 130 miles off the coast of Cape Cod and entirely within the U.S. EEZ, the Monument contains four undersea volcanoes (known as seamounts) and three undersea canyons. *Id.*

The Proclamation specifies that the "canyons and seamounts, and the ecosystem they compose," are objects of "intense scientific interest." *Id.* at 65,163. Not only are the canyons and seamounts themselves unique and important types of undersea geological features, but they also create a dynamic and ecologically rich marine environment. The steep slopes of the canyons and seamounts generate strong currents that lift nutrients up to the ocean surface. *Id.* at 65,161-62. These currents fuel phytoplankton and zooplankton growth, which in turn support abundant fish populations and animals further up the food chain that feed on them. *Id.* Marine mammals (including beaked whales and endangered sperm whales), endangered sea turtles, seabirds, and numerous species of fish all congregate in the canyons and seamounts area. *Id*. The area is also home to cold-water coral species

and other marine species found nowhere else in the world. *Id.* at 65,162. It is of great scientific interest thanks to its unusual geological phenomena, its biodiversity, and the complex ecological relationships found there. *Id.* at 65,161-63.

To protect this fragile ecosystem, the President designated the 4,913 square-mile Monument, encompassing the four seamounts and three underwater canyons as well as the ecosystems in and around them. *See id.* at 65,161-63. To ensure the "proper care and management of the objects to be protected," the Proclamation prohibited several destructive activities within the Monument, including "[e]xploring for, developing, or producing oil and gas or minerals," *id.* at 65,163-64, and "[f]ishing commercially," *id.* at 65,165. (A seven-year transition period is specified for American lobster and red crab fishing. *See id.*) The Proclamation states that the Monument reservation is the "smallest area" compatible with the protection of the objects of scientific interest. *Id.* at 65,163.

IV. Procedural History

In March 2017, Plaintiffs (commercial fishing industry groups) filed a complaint challenging the legality of the Northeast Canyons designation on two bases. First, Plaintiffs argue that the "area of the ocean [where the Monument lies] is not 'lands owned or controlled' by the federal government." Compl. 16 (ECF No. 1). Second, Plaintiffs argue that the Monument is not "'the smallest area compatible with proper care and management' of the canyons and seamounts on which it is purportedly based." *Id.* Intervenors—three conservation groups and an individual naturalist who leads whale-watching trips—moved to intervene to defend the

Monument designation. *See* Mot. to Intervene (ECF No. 7). Federal Defendants have now moved to dismiss Plaintiffs' complaint under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). ECF No. 32. Intervenors join in that motion as to Rule 12(b)(6).[5]

ARGUMENT

I. D.C. Circuit Law Establishes That Courts May Review Presidential Monument Proclamations for Adherence to the Statute.

Intervenors agree with Federal Defendants that, even taking the complaint's allegations as true, Plaintiffs have failed to state a claim for which relief may be granted. The complaint's allegations and the text of the Proclamation itself lead to only one conclusion: "The President properly exercised the broad discretion afforded to him in the Antiquities Act to designate a national monument fully in line with the purposes of this statute." Gov't Br. 21.[6]

While dismissal is clearly the correct result, Intervenors do not agree with Federal Defendants' assertion that "[t]his Court cannot review how the President exercised the discretion that Congress granted him to designate and define national

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[5] Contrary to Federal Defendants' argument, Gov't Br. 18-21, Plaintiffs' claims—including those against the Agency Defendants—are constitutionally ripe. Plaintiffs allege that the Proclamation's prohibition on commercial fishing (except for the lobster and red crab fisheries) took effect in November 2016. Compl. ¶¶ 63, 68; *cf. League of Conservation Voters v. Trump*, -- F. Supp. 3d --, No. 17-cv-0101 (SLG), 2018 WL 1385408, at *7-9, *11 n.115 (D. Alaska Mar. 19, 2018) (finding plaintiffs' challenge to executive order ripe). Intervenors do not further address that question or Federal Defendants' other arguments under Federal Rule of Civil Procedure 12(b)(1). As explained herein, the entire complaint should be dismissed under Federal Rule of Civil Procedure 12(b)(6).

[6] Because the Proclamation is incorporated into the Complaint, *see* Compl. ex. 4, the Court may consider it in resolving the motion to dismiss. *See* Gov't Br. 7.

monuments in the Antiquities Act." Gov't Br. 1. In *Mountain States* and *Tulare County*, the D.C. Circuit established a framework for judicial review in Antiquities Act challenges like this one, and it affirmed that judicial "review is available to ensure . . . that the President has not exceeded his statutory authority" under the Act. *Mountain States*, 306 F.3d at 1136; *see also Tulare County*, 306 F.3d at 1141. In both cases, the D.C. Circuit exercised judicial review and concluded that the plaintiffs had failed to state any claim for relief. *Mountain States*, 306 F.3d at 1136-38; *Tulare County*, 306 F.3d at 1141-44. The same reasoning applies here, with the same result.

It is well established that when the President claims to exercise statutory authority, courts have the power and the duty to ensure that he has not exceeded the limits of that authority. *See Mountain States*, 306 F.3d at 1136 ("[T]he responsibility of determining the limits of statutory grants of authority . . . is a judicial function entrusted to the courts by Congress." (quoting *Chamber of Commerce v. Reich*, 74 F.3d 1322, 1327 (D.C. Cir. 1996)); *Dart v. United States*, 848 F.2d 217, 224 (D.C. Cir. 1988) ("When an executive acts *ultra vires*, courts are normally available to reestablish the limits on his authority.").[7] Thus, in *Mountain States* and *Tulare County*, the D.C. Circuit considered—and ultimately rejected—

[7] *See also, e.g.*, *Dames & Moore v. Regan*, 453 U.S. 654, 665-67 (1981) (considering whether President and Treasury Secretary acted "beyond their statutory and constitutional powers" in freezing Iranian assets and suspending legal claims); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 583, 587-89 (1952) (invalidating President's executive order directing seizure of steel mills).

the plaintiffs' purely legal claims that the Antiquities Act protects "only . . . rare and discrete man-made objects," not natural ones like landscapes and ecosystems, and that the challenged monuments were purportedly unlawful for that reason. *Mountain States*, 306 F.3d at 1137; *accord Tulare County*, 306 F.3d at 1141-42. The court correctly rejected those claims "as a matter of law" because the Supreme Court has made clear that such features qualify as "objects of scientific interest" under the Act. *Mountain States*, 306 F.3d at 1137 (citing *Cameron v. United States*, 252 U.S. 450 (1920)); *see also Tulare County*, 306 F.3d at 1141-42 (citing *Cappaert*, 426 U.S. at 141-42).

To the extent plaintiffs raised other challenges to the President's exercise of authority that had a factual component—such as their claim that "the President abused his discretion by designating more land than is necessary to protect the specific objects of interest," *Tulare County*, 306 F.3d at 1142—the court had "no occasion to decide" the precise "scope of review" that would apply because the plaintiffs failed to allege sufficient non-conclusory "facts to support the[ir] claim." *Mountain States*, 306 F.3d at 1137; *accord Tulare County*, 306 F.3d at 1142 (affirming dismissal where the plaintiff "d[id] not make the factual allegations sufficient to support its claims"). The court looked to the language of the proclamations, found no obvious "infirmity," and—given the lack of supporting, non-conclusory allegations—had no reason to engage in any "further review of the President's actions." *Mountain States*, 306 F.3d at 1137.

The D.C. Circuit did not suggest that such claims are categorically unreviewable. In fact, the court observed that if the Giant Sequoia National Monument proclamation "had identified *only* Sequoia groves for protection"—and not also the ecosystems around them—then plaintiffs' allegation that "Sequoia groves comprise only six percent of the Monument might well have been sufficient" to survive a motion to dismiss. *Tulare County v. Bush*, 317 F.3d 227, 227 (D.C. Cir. 2003) (mem.) (per curiam) (denying petition for rehearing en banc).

Mountain States and *Tulare County* thus demonstrate that courts have the power and the duty to ensure that the President has complied with the limits of his statutory authority, but only if plaintiffs' claims are adequately pleaded. The Antiquities Act confers "broad discretion" on the President to designate national monuments. *Mountain States*, 306 F.3d at 1137. Thus, a complaint challenging a President's monument designation could survive a motion to dismiss if, for example, it showed the proclamation was facially deficient (e.g., it contained no description of objects of historical or scientific interest[8] or it reserved an area bearing no rational connection to any such objects) or if it offered specific, non-conclusory allegations

[8] For example, President Franklin Roosevelt's proclamation designating Jackson Hole National Monument contained no description whatsoever of the objects to be protected; it stated only that "the area . . . contains historic landmarks and other objects of historic and scientific interest." *Wyoming v. Franke*, 58 F. Supp. 890, 894 (D. Wyo. 1945) (quoting Proclamation No. 2578, 8 Fed. Reg. 3277 (Mar. 18, 1943)). Because it was impossible to tell from the face of the proclamation whether the President had complied with the Antiquities Act, the district court held that it had "a limited jurisdiction" to consider factual evidence relating to "whether or not the Proclamation is an arbitrary and capricious exercise of power under the Antiquities Act." *Id.* After a hearing, the court upheld the monument designation and dismissed the complaint. *Id.* at 897.

showing that the proclamation's factual premises were false. The plaintiffs in *Mountain States* or *Tulare County* did not clear that bar; nor have Plaintiffs done so here.

Despite acknowledging that *Mountain States* and *Tulare County* control the Court's inquiry, Federal Defendants contend that "the President's exercise of discretion under the Antiquities Act is not subject to judicial review." Gov't Br. 8; *see also id.* at 1, 7 (citing, e.g., *Dalton v. Specter*, 511 U.S. 462 (1994)). The federal government made essentially the same argument in *Mountain States* and *Tulare County*,[9] and the D.C. Circuit rejected it. The cases Federal Defendants cite "merely stand[] for the proposition that when a statute entrusts a discrete specific decision to the President and contains *no limitations* on the President's exercise of that authority, judicial review of an abuse of discretion claim is not available." *Mountain States*, 306 F.3d at 1136 (quoting *Reich*, 74 F.3d at 1331 (discussing *Dalton*, 511 U.S. at 476) (footnote omitted in original; emphasis added)). As the D.C. Circuit has already held, the Antiquities Act is not such a statute. Rather, it "places discernible limits on the President's discretion," and "[c]ourts remain obligated to determine whether [those] statutory restrictions have been violated." *Id.*

Although Plaintiffs' claims here plainly fail under *Mountain States* and *Tulare County*, the availability and scope of judicial review is not an academic

[9] *See* Brief for President George W. Bush at 35-36, *Mountain States Legal Found. v. Bush*, 306 F.3d 1132 (D.C. Cir. 2002) (No. 01-5421), 2002 WL 34244749, at *16-17; Brief for the Federal Appellees at 18, *Tulare County v. Bush*, 306 F.3d 1138 (D.C. Cir. 2002) (No. 01-5376), 2002 WL 34244709, at *13-14.

question: Federal Defendants' sweeping assertions would have dramatic implications for other cases currently pending in this District. President Trump's recent proclamations dismantling the Bears Ears and Grand Staircase-Escalante National Monuments in Utah are the subject of several consolidated lawsuits that challenge the President's assertion of authority to revoke monument protections under the Antiquities Act. *See Hopi Tribe v. Trump*, No. 17-cv-02590 (TSC) (lead case defending Bears Ears); *The Wilderness Soc'y v. Trump*, No. 17-cv-02587 (TSC) (lead case defending Grand Staircase-Escalante). Moreover, as the Court is aware, President Trump may take similar action with respect to Northeast Canyons in the future. *See* Joint Status Report 2, ECF No. 25 (Jan. 8, 2018) (describing Interior Secretary Zinke's recommendation that the President revoke the ban on commercial fishing in Northeast Canyons). Here, however, the Court need go no further than the path laid out in *Mountain States* and *Tulare County*: Plaintiffs' claims must be dismissed because they are based on legally erroneous premises and wholly conclusory allegations.

II. The Court Should Dismiss Plaintiffs' Complaint Because It Fails to State a Claim for Relief.

Plaintiffs' complaint here, like those in *Mountain States* and *Tulare County*, offers the Court no basis to look beyond the four corners of the President's proclamation. As explained below, both their claims fail to state a claim for relief.

A. Plaintiffs' claim that the Antiquities Act does not apply in the U.S. Exclusive Economic Zone fails as a matter of law.

Plaintiffs' first claim asserts that the Antiquities Act does not authorize the President to establish a monument in "this area of the ocean" because it is not "land

owned or controlled by the Federal Government" for Antiquities Act purposes. Compl. ¶ 71. Plaintiffs are incorrect as a matter of law. The Supreme Court has categorically affirmed Presidents' authority to establish national monuments in areas of the ocean subject to U.S. control, and the U.S. Exclusive Economic Zone is indisputably such an area.

1. The Antiquities Act applies to submerged lands and waters.

As an initial matter, nothing in the Antiquities Act limits its reach to dry land. The Supreme Court has long recognized that land submerged under a body of water qualifies as "land" for Antiquities Act purposes, *see* 54 U.S.C. § 320301(a), and that if it is owned or controlled by the federal government, it may be reserved as a national monument. *See Alaska*, 545 U.S. at 103 ("It is clear, after all, that the Antiquities Act empowers the President to reserve submerged lands."); *California III*, 436 U.S. at 36 ("There can be no serious question . . . that the President . . . had power under the Antiquities Act to reserve . . . submerged lands . . . .").

It is equally well settled that the superjacent waters (also called the water column) *above* such submerged lands may also be reserved as part of a national monument. In *California III*—which involved a dispute between California and the United States over submerged lands within the Channel Islands National Monument, in the Pacific Ocean off California's coast—the Supreme Court had no trouble concluding that "the President . . . had power under the Antiquities Act to reserve the submerged lands *and waters*" of the monument. 436 U.S. at 36 (emphasis added). The Court explained that, "[a]lthough the Antiquities Act refers

to 'lands,' . . . it also authorizes the reservation of *waters located on or over* federal lands." *Id.* at 36 n.9 (emphasis added).

Indeed, the Supreme Court has recognized that some monument reservations would be meaningless and ineffective at protecting the identified objects if they did not also include the superjacent waters above submerged lands. *See Alaska*, 545 U.S. at 101-02 (noting that the expansion of Glacier Bay National Monument "include[d] all of Glacier Bay's *waters* and . . . extend[ed] the monument's western boundary three nautical miles out to sea," consistent with its purpose of facilitating "scientific study of the majestic tidewater glaciers" and "safeguarding the flora and fauna that thrive" in the Bay's "interdependent ecosystem" (emphasis added)); *Cappaert*, 426 U.S. at 147 (concluding that the reservation of Devil's Hole, a subterranean pool in Death Valley National Monument, included "appurtenant water sufficient to maintain the level of the pool to preserve its scientific value"). Interpreting the Antiquities Act to allow the President to protect only the submerged lands and not the superjacent water would have eviscerated the protection of important objects of scientific interest in both those monuments. The Supreme Court has thus made clear that national monuments' protections may encompass water as well as land.

2. The Antiquities Act may be used to create monuments in the U.S. Exclusive Economic Zone.

Plaintiffs ultimately appear to accept—as they must, given the binding Supreme Court precedent on point—that national monuments may be established in *some* parts of the ocean. *See* Compl. ¶ 72. They contend, however, that the

Antiquities Act does not permit the creation of national monuments "*beyond* the territorial sea," *id.* (emphasis added), in the United States' Exclusive Economic Zone. *See id.* ¶ 71. Plaintiffs are incorrect.

The Antiquities Act authorizes the President to establish national monuments on "land owned *or controlled* by the Federal Government." 54 U.S.C. § 320301(a) (emphasis added). Congress's use of both words—owned *or controlled*—indicates that it meant for the Antiquities Act to reach all lands under de facto U.S. control, not just those that the federal government "owns" outright.[10] And under any reasonable definition of "control," the United States controls not only its territorial sea, but also its Exclusive Economic Zone.

U.S. and international law recognize three major zones in the ocean. First and closest to shore is the "territorial sea," which may cover up to twelve nautical miles from the coastal baseline. The United States' territorial sea, as established by presidential proclamation, currently extends from 0 to 12 nautical miles. *See* Proclamation No. 5928, 54 Fed. Reg. at 777. Second, beyond the territorial sea is the EEZ, which extends from 12 to 200 nautical miles from the coastal baseline. *See* Proclamation No. 5030, 48 Fed. Reg. at 10,605. As discussed below, *infra* at 19-22,

[10] Early versions of the bill that became the Antiquities Act used the term "public lands," referring only to lands owned by the federal government and managed by the Interior Department. Congress later dropped that term and replaced it with the phrase "lands owned or controlled" by the federal government, which was deliberately more inclusive. *See* Ronald F. Lee, Nat'l Park Serv., *The Antiquities Act of 1906*, at 73-74 (1970), *available at* https://www.nps.gov/archeology/pubs/lee/Lee_CH6.htm.

the United States has broad sovereign rights in the U.S. EEZ.[11] Third and finally, beyond the 200-nautical-mile mark lie the "high seas," where no nation exercises sovereign rights. *See* Restatement (Third) of the Foreign Relations Law of the United States §§ 511-17, 521 (describing three zones).

The Supreme Court has already held that there was "no serious question" that the United States "controlled" its territorial sea for Antiquities Act purposes, and that the President had the authority to expand a national monument there in 1949. *United States v. California* (*California III*), 436 U.S. 32, 36 (1978). The Supreme Court's reasoning applies with equal force to the EEZ today.

In *California III*, the Supreme Court relied on its previous decision in *United States v. California* (*California I*), 332 U.S. 19 (1947) —which held that the federal government, not the State of California, controlled the submerged lands three nautical miles off California's coast for purposes of issuing oil and gas leases, *id*. at 35-36—to conclude that the federal government also "controlled" the territorial sea for Antiquities Act purposes. *California III*, 436 U.S. at 36. *California I* had held that the federal government had "paramount rights" in that area of the ocean, and thus its interests were superior to those of the states. *California I*, 332 U.S. at 38; *see also United States v. California* (*California II*), 332 U.S. 804 (1947) (entering

[11] The EEZ overlaps with and incorporates the so-called "continental shelf," which is understood in customary international law as extending at least 200 nautical miles from a nation's coast. *See* Restatement (Third) of the Foreign Relations Law of the United States § 515 cmt. a (observing that the "continental shelf" and "exclusive economic zone" overlap and that "the state's rights under the two regimes in respect of natural resources are . . . largely duplicative").

judgment). Notably, *California I* acknowledged that the United States' control over the territorial sea was not exclusive or absolute. The states were still "authorized to exercise local police power functions" there, 332 U.S. at 36, and the federal government was still bound by international law and treaty obligations to other nations, *id.* at 34-35. Despite these limitations, the Supreme Court concluded that the federal government had "claim[ed] and exercise[d] broad dominion and control" over this area. *Id.* at 33, 35. And in *California III*, the Supreme Court held that there was "no serious question" that this degree of control was sufficient for the President to establish a national monument there. 436 U.S. at 35-36 (citing *California I*, 332 U.S. at 29).[12]

The federal government exercises similarly broad and unchallenged control in the U.S. EEZ today—and in 2016, when Northeast Canyons was established. First, the Supreme Court recognized decades ago that the federal government had paramount rights in what is now the U.S. EEZ, expressly extending *California I*'s

[12] *California III* considered the 1949 expansion of the Channel Islands National Monument into the submerged lands and waters within one nautical mile of California's coast, and held that these areas were indisputably "controlled by the Government of the United States" as of that time. 436 U.S. at 36. Subsequently, Congress passed the Submerged Lands Act of 1953, which conveyed to the several states the federal government's "interests" in the submerged lands within a three-nautical-mile band around the coast—including those within the Channel Islands National Monument. *Id.* at 41; *see also* 43 U.S.C. § 1311. Following the Supreme Court's decision in *California III*, Congress re-designated the Monument as Channel Islands National Park, *see* Pub. L. 96-199, § 201, 94 Stat. 67, 74 (1980), and directed federal agencies to enter into cooperative management agreements with California authorities in recognition of the state's interests in submerged lands within the park, 16 U.S.C. § 410ff-2(b).

holding beyond the territorial sea. *United States v. Louisiana*, 339 U.S. 699, 704 (1950) (holding that the federal government, and not the State of Louisiana, controls submerged lands twenty-seven nautical miles off Louisiana's coast; noting that *California I* "controls this case"). And second, in addition to having paramount rights, the federal government has affirmatively "claim[ed] and exercise[d] broad dominion and control," *California I*, 332 U.S. at 33, over the submerged lands and waters of the U.S. EEZ, including with respect to other nations.

Both international and domestic law recognize the federal government's control over the EEZ. Under international law, the U.S. government has "sovereign rights" in its EEZ for a wide range of purposes, including "exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil." United Nations Convention on the Law of the Sea art. 56(1)(a), Dec. 10, 1982, 1833 U.N.T.S. 397, 418, 21 I.L.M. 1245, 1280 (UNCLOS). The U.S. government also has "jurisdiction . . . with regard to," inter alia, "the protection and preservation of the marine environment" in its EEZ. *Id.* art. 56(1)(b). Although the United States has not ratified UNCLOS, UNCLOS's "concept of the exclusive economic zone . . . and the basic rules governing it" are customary international law, which is "binding . . . on states generally . . . even as to states not party to the Convention." Restatement (Third) of the Foreign Relations Law of the United States § 514 cmt. a.

In 1983, President Reagan incorporated UNCLOS's definition of the EEZ into U.S. domestic law, proclaiming "the sovereign rights and jurisdiction of the United

States of America . . . within an Exclusive Economic Zone" extending 200 nautical miles from the coastal baseline. Proclamation No. 5030, 48 Fed. Reg. at 10,605. Echoing the language of UNCLOS, President Reagan affirmed that within the U.S. EEZ, the United States has:

> (a) sovereign rights for the purpose of exploring, exploiting, *conserving and managing natural resources, both living and non-living*, of the seabed and subsoil and the superjacent waters . . . ; and (b) jurisdiction with regard to the establishment and use of the artificial islands, and installations and structures having economic purposes, *and the protection and preservation of the marine environment*.

Id. (emphases added).

The 1983 Reagan Proclamation confirms that the United States' "sovereign rights" and "jurisdiction" in the EEZ extend as far as "permitted by international law," while not displacing the traditional rights of other nations to navigation, overflight, and the laying of submarine cables. *Id*. at 10,605-06. It is the sole province of the United States to regulate "explor[ation], exploit[ation], conserv[ation] and manag[ement]" of natural resources in the U.S. EEZ. *Id*. at 10,605; *accord* UNCLOS art. 56(1)(a). The seabed, the water column above it, and all the living and non-living marine resources within the U.S. EEZ are subject to the United States' undisputed control.

The federal government has exercised its sovereign rights and jurisdiction in the U.S. EEZ by, among other things, enacting a variety of statutes regulating the use, conservation, and management of natural resources. *See, e.g.*, Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1811(a) (asserting "sovereign rights and exclusive fishery management authority over all fish, and all

Continental Shelf fishery resources, within the exclusive economic zone"); Outer Continental Shelf Lands Act, 43 U.S.C. § 1332(a) (stating that "the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, *control*, and power of disposition" (emphasis added)); National Marine Sanctuaries Act, 16 U.S.C. § 1432(3) (defining areas of "marine environment" where Secretary of Commerce may designate marine sanctuaries as "those areas of coastal and ocean waters . . . and submerged lands over which the United States exercises jurisdiction, including the exclusive economic zone"); *see also Am. Pelagic Fishing Co., L.P. v. United States*, 379 F.3d 1363, 1379 (Fed. Cir. 2004) (noting the right to "the 'conservation and management of the EEZ' belongs to the [federal government as] sovereign").

Given this clear legal framework, the U.S. Department of Justice's Office of Legal Counsel (OLC) correctly concluded in 2000 that "the quantum of U.S. 'control' over the EEZ is sufficient to allow the President to establish a national monument in the EEZ under the Antiquities Act to protect the marine environment." Memorandum from Randolph D. Moss, 24 Op. O.L.C. at 196, 2000 WL 34475732, at *9. That other nations retain certain rights in the United States' EEZ does not mean the U.S. government lacks "control" there, just as the Supreme Court held that states' rights in U.S. territorial waters "d[id] not detract from the Federal Government's" control over that area either. *California I*, 332 U.S. at 36. As the OLC explained, "[t]he Antiquities Act only requires that the Government exert 'contro[l]' over the area. Nothing in the language of the statute requires that the

Government maintain *absolute control* over the area without exceptions." 24 Op. O.L.C. at 186 n.6, 2000 WL 34475732, at *3 n.6 (alteration in original; emphasis added).[13]

To be sure, the federal government recognizes more international commitments in the EEZ than it does in the territorial sea. *Compare* Proclamation No. 5030, 48 Fed. Reg. at 10,606 (recognizing other nations' rights to overflight, navigation, and laying of cable in the U.S. EEZ), *with* Proclamation No. 5928, 54 Fed. Reg. at 777 (recognizing only other nations' right of innocent passage in the U.S. territorial sea). But this does not mean that the United States loses "control" at the twelve-mile mark. It simply means that any national monument designations in the U.S. EEZ—just like any other U.S. actions there—must comply with the United States' international commitments.

The Proclamation establishing Northeast Canyons is fully compliant with international law, and Plaintiffs do not claim otherwise. It is well settled, under international law and the 1983 Reagan Proclamation, that the U.S. government has the power to regulate and prohibit fishing, mineral exploration, the discharge of explosives or poisons, the introduction of invasive species, and the placement of structures in the U.S. EEZ—all activities prohibited or regulated by the Northeast

[13] The OLC also explained that the Fifth Circuit's opinion in *Treasure Salvors, Inc. v. Unidentified Wrecked and Abandoned Sailing Vessel*, 569 F.2d 330 (5th Cir. 1978), was "decided before President Reagan extended the EEZ to 200 miles," and thus does not speak to whether the federal government has controlled the area for Antiquities Act purposes since that time. 24 Op. O.L.C. at 197 n.18, 2000 WL 34475732, at *10 n.18. Plaintiffs' reliance on that outdated, out-of-circuit opinion, Compl. ¶ 23, is therefore misplaced.

Canyons proclamation. *Compare* Proclamation No. 9496, 81 Fed. Reg. at 65,164-65, *with* Proclamation No. 5030, 48 Fed. Reg. at 10,605, *and* UNCLOS arts. 56(1)(a), (b), 61-62, 73, 21 I.L.M. at 1280-82, 1284. It strains credulity to say the federal government can regulate and prohibit all these activities in its EEZ, and yet does not "control" its EEZ.[14]

In sum, a straightforward application of *California III* compels the conclusion that the federal government "control[s]" the U.S. EEZ for purposes of the Antiquities Act. 54 U.S.C. § 320301(a). Plaintiffs' first claim fails as a matter of law.

B. Plaintiffs' claim challenging the Monument's size must be dismissed.

Plaintiffs' second claim—that the Monument is not "'the smallest area compatible with proper care and management' of the canyons and seamounts," Compl. ¶ 72—must also be dismissed. To the extent Plaintiffs' claim depends on their premise that living organisms and ecosystems cannot qualify as "objects of scientific interest" under the Antiquities Act, they are wrong; both the Supreme Court and the D.C. Circuit have conclusively held otherwise. *See infra* Argument

[14] The President's clear authority to designate a national monument in the U.S. EEZ does not mean that the Antiquities Act's reach is limitless. The President may not establish a national monument on the high seas beyond the EEZ, for example, because the federal government has not asserted any claim there, let alone the type of control recognized in *California III*. Nor could the President establish a national monument on private property. *Cf.* Compl. ¶ 23; 54 U.S.C. § 320301(c) (private property may be protected under the Antiquities Act only if the landowner "relinquish[es]" the land to the federal government). The Antiquities Act contemplates the designation of national monuments only where the federal government has a "proprietary [or] administrative interest[]," *California III*, 436 U.S. at 41—i.e., areas where the government can "manage[]" a monument to protect the identified objects of interest, 54 U.S.C. § 320301(b), as it can in the U.S. EEZ.

Section II.B.1. To the extent Plaintiffs argue that the boundaries of the Monument are still too large, even granting that ecosystems are properly among the objects to be protected, their allegations are wholly conclusory. *See infra* Argument Section II.B.2. For the same reasons as in *Mountain States* and *Tulare County*, Plaintiffs fail to state a claim for relief.

1. The Monument's living organisms and ecosystems are "objects of scientific interest" under the Act.

Central to Plaintiffs' "smallest area" claim is their contention that the marine wildlife and "ecosystems" in and around the canyons and seamounts are not "objects" that can be protected by the Antiquities Act. Compl. ¶ 75. The Court should reject this contention as a matter of law. Starting with Theodore Roosevelt, numerous U.S. Presidents have established monuments specifically to protect wildlife and ecosystems of scientific interest—sometimes very large ones.[15] At every opportunity, both the U.S. Supreme Court and the D.C. Circuit have recognized

[15] *See, e.g.*, Proclamation No. 869, 35 Stat. 2247 (1909) (Theodore Roosevelt) (designating Mount Olympus National Monument to protect "objects of unusual scientific interest, including . . . breeding grounds of the Olympic Elk"); Proclamation No. 1262, 38 Stat. 1991 (1914) (Woodrow Wilson) (designating Papago Saguaro National Monument to protect "cacti and the yucca palm" and other "desert flora . . . of great scientific interest"); Proclamation No. 3443, 76 Stat. at 1442 (1961) (John F. Kennedy) (designating Buck Island Reef National Monument to protect "the rare marine life which are dependent upon" the reef); Proclamation No. 4616, 43 Fed. Reg. 57,035 (Dec. 1, 1978) (Jimmy Carter) (designating Denali National Monument to protect "habitat for the McKinley caribou herd" and "other scientifically important mammals such as grizzly bear, wolf and wolverine"); Proclamation No. 8335, 74 Fed. Reg. at 1557 (George W. Bush) (designating Marianas Trench Marine National Monument to protect "coral reef ecosystems," including sharks and "apex predators").

that ecosystems, plants, and animals do indeed qualify as "objects" to be protected under the Antiquities Act.

In *Cappaert*, a unanimous Supreme Court held that both a subterranean "pool" in Death Valley National Monument and the pool's "rare inhabitants"—a species of fish called the desert pupfish—were "objects of historic or scientific interest" for Antiquities Act purposes. 426 U.S. at 142. The Court rejected the argument that the Antiquities Act protected only archaeological relics and fossils. *Id.* At oral argument, the government persuasively argued that reading the Act to permit protection of the endangered pupfish only after it had become extinct and fossilized, but not the living animal whose existence provided scientists with an "unlimited future" of research potential, would be absurd. Oral Argument at 53:43-55:42, 1:08:37-1:08:58, *Cappaert v. United States*, 426 U.S. 128 (1976) (No. 74-1107), *available at* https://www.oyez.org/cases/1975/74-1107. That the pupfish were alive in such a unique biome made them worthy of protection and scientific interest. *See* 426 U.S. at 132. The same is true of the natural resources and ecosystems that Northeast Canyons protects. The diverse and interconnected life-forms found in the Monument area—including endangered whales, century-old corals, and "rare and endemic species, several of which are new to science and are not known to live anywhere else on Earth"—offer extraordinary opportunities for scientific research of the "living marine resources . . . [in] these unique, isolated environments." 81 Fed. Reg. at 65,162-63.

Similarly, in *Alaska*, the Supreme Court concluded that Glacier Bay National Monument "was set aside in part for [wildlife] preservation" because it "serves as habitat for many forms of wildlife" of scientific interest. 545 U.S. at 109.[16] Among the "purposes that led" to the monument's creation, the Supreme Court explained, were the "study and . . . preserv[ation] . . . of interglacial forests" and "safeguarding the flora and fauna that thrive in Glacier Bay's complex and interdependent ecosystem." *Id.* at 102 (internal quotation marks omitted); *see also* Proclamation No. 1733, 43 Stat. 1988 (1925) (designating Glacier Bay because it "presents a unique opportunity for the scientific study of glacial behavior and of resulting movements and development of flora and fauna"). The monument's purpose of preserving Glacier Bay's ecosystem was wholly consistent with the "essential purpose of . . . the Antiquities Act," which was to "conserve the scenery and the natural and historic objects and the wild life therein . . . by such means as will leave them unimpaired for the enjoyment of future generations." *Alaska*, 545 U.S. at 103. Given *Cappaert* and *Alaska*, there can be no serious question that the Antiquities Act authorizes the President to establish national monuments to safeguard ecosystems, plants, and animals of scientific interest. *See also Cameron*, 252 U.S. at 456 (affirming

[16] This conclusion was central to the Supreme Court's holding in *Alaska*. That case addressed whether the area reserved as part of Glacier Bay National Monument (and later converted to a national park) qualified as "lands withdrawn or otherwise set apart as refuges or reservations for the protection of wildlife," which were excluded from transfer to Alaska under the Alaska Statehood Act. 545 U.S. at 105 (quoting 72 Stat. 341, § 6(e)). The Court concluded that the area was set apart for the protection of wildlife, so the U.S. government retained title over the area. *Id.* at 105-06.

designation of Grand Canyon National Monument as "one of the [nation's] great natural wonders").

Based on these cases, the D.C. Circuit has likewise recognized the protection of ecosystems and species as a lawful exercise of Antiquities Act powers. *See Mountain States*, 306 F.3d at 1133, 1137 (rejecting argument that monuments could protect only archaeological resources, and noting important "watershed[s]," "ecoregions," and "ecosystem[s]" protected by the challenged proclamations); *Tulare County*, 306 F.3d at 1140, 1142 (noting that the challenged proclamation listed both sequoia groves "and their surrounding ecosystem[s]" as objects of scientific interest, and holding that "[i]nclusion of such items as ecosystems . . . did not contravene the terms of the statute"); *see also Franke*, 58 F. Supp. at 895-96 (affirming designation of Jackson Hole National Monument, which contained indigenous "plant life" and "different species of wild animals" of scientific interest).

The only authority Plaintiffs cite for their contrary position is the Supreme Court's decision that a "fish" is not a "tangible object" for purposes of the Sarbanes-Oxley Act. *See* Compl. ¶ 75 (citing *Yates v. United States*, 135 S. Ct. 1074 (2015)). Even putting aside that "tangible object" is not the term used in the Antiquities Act, the meaning of such a term in a 2002 "financial-fraud" criminal statute, 135 S. Ct. at 1079, is irrelevant to the meaning of the word "objects" in the Antiquities Act. As *Yates* emphasized, the task of interpreting statutory language is a contextual one, and "the same words, placed in different contexts, sometimes mean different things." *Id*. at 1082. In the specific context of the Sarbanes-Oxley Act, the phrase

"tangible object[s]" means "objects one can use to record or preserve information," such as "computers, servers, and other media on which information is stored." *Id.* at 1081. There is no logical reason to transpose this highly context-specific definition of "tangible objects," *id.*, into the Antiquities Act—a conservation statute that the Supreme Court has already held may be used to protect fish. *See Cappaert*, 426 U.S. at 142.

2. The Monument protects the smallest area compatible with the proper care and management of the objects.

Once the Monument's ecosystems are recognized as protectable objects of scientific interest, nothing remains of Plaintiffs' "smallest area" claim but conclusory allegations. *Cf. Tulare County*, 306 F.3d at 1142 (rejecting conclusory allegations that "the Monument includes too much land"). Plaintiffs contend that "[t]he proclamation offers no justification for why this roughly 5,000 square mile (3.2 million acre) area is the smallest area compatible with protecting the monument." Compl. ¶ 58. But the Court need not accept that legal conclusion as true. In fact, the Proclamation offers an extensive justification for the Monument's location and size—albeit one with which Plaintiffs apparently disagree.

The Proclamation states that the Monument encompasses "approximately 4,913 square miles," divided into two non-contiguous units—a "canyons" unit and a "seamounts" unit—which represent "the smallest area compatible with the proper care and management of the objects to be protected." 81 Fed. Reg. at 65,161, 65,163. The Proclamation describes in great detail the objects to be protected, including "the canyons and seamounts themselves, and the natural resources and ecosystems in

and around them." *Id.* at 65,161. The map accompanying the Proclamation shows that the two Monument "units" are drawn around the three canyons (Oceanographer, Gilbert, and Lydonia) and the four seamounts (Bear, Mytilus, Physalia, and Retriever), and that the two units are separated from one another by a vessel transit corridor roughly eight nautical miles wide. *See id.* at 65,167; *see also* Govt. Br. 4 (including map of the Monument).

In addition to describing the canyons and seamounts themselves, the Proclamation describes the dynamic, interrelated ecosystems that those geological features help support on the seafloor, in the water column, and on the surface of the water around them, all of which are of scientific interest. The Proclamation explains:

> The submarine canyons and seamounts create dynamic currents and eddies that enhance biological productivity and provide feeding grounds for seabirds; pelagic species, including whales, dolphins, and turtles; and highly migratory fish, such as tunas, billfish, and sharks. More than ten species of shark, including great white sharks, are known to utilize the feeding grounds of the canyon and seamount area. Additionally, surveys of leatherback and loggerhead turtles in the area have revealed increased numbers above and immediately adjacent to the canyons and Bear Seamount.

81 Fed. Reg. at 65,162. The Proclamation further explains how "active erosion and powerful ocean currents . . . transport sediments and organic carbon from the [continental] shelf through the canyons to the deep ocean floor," where they support a variety of marine species. *Id.* It describes how "the steep slopes of the canyons and seamounts" interact with ocean currents to create "upwelling[s]" of nutrients that "fuel an eruption of phytoplankton and zooplankton," which in turn "draw large

schools of small fish and then larger animals that prey on these fish, such as whales, sharks, tunas, and seabirds." *Id.* at 65,161-62. It explains that "endangered sperm whale[s], . . . fin whales and sei whales" are known to use the "canyon and seamount area," *id.* at 65,162; that the area is "home to at least 54 species of deep-sea corals," *id.* at 65,161; that the "New England seamounts host many rare and endemic species, several of which are new to science and are not known to live anywhere else on Earth," *id.* at 65,162; that many species of "[m]arine birds concentrate in upwelling areas near the canyons and seamounts," *id.* at 65,163; and that "Maine's vulnerable Atlantic puffin" uses the area as a "wintering habitat," *id.* The "[m]ajor oceanographic features" in these areas operate "on a large scale," influencing distribution patterns and providing nursery grounds, habitat, and feeding grounds for a diverse array of marine species. *Id.* at 65,162. These complex, dynamic "ecosystem[s]" in and around the canyons and seamounts are objects of "intense scientific interest" that the Monument is meant to protect. *Id.* at 65,163.

On its face, the Proclamation easily satisfies the Antiquities Act's requirements. *See Tulare County*, 306 F.3d at 1142 (rejecting challenge to the size of Giant Sequoia National Monument where, inter alia, the proclamation stated that the Monument was "'the smallest area compatible with the proper care and management of the objects to be protected,'" and that "the sequoia groves are not contiguous but instead comprise part of a spectrum of interconnected ecosystems"). As the D.C. Circuit has made clear, the Antiquities Act does not require the President to recite the location of each object to be protected in the text of the

proclamation. *Id.* at 1141-42. Reading such a requirement into the Antiquities Act would be grossly impracticable and unnecessary, stymieing presidential action in exactly those situations where monument protection can be most merited: where the deserving objects exist at a significant scale and complexity, and where they have not yet been fully studied. *Cf.* 81 Fed. Reg. at 65,163 ("Much remains to be discovered about these unique, isolated environments and their geological, ecological, and biological resources.").

Plaintiffs protest that the "monuments [sic] boundaries bear little relation to the canyons and seamounts," Compl. ¶ 73, but again, the canyons and seamounts are not the only objects of scientific interest to be protected; so are the associated "ecosystems in and around them." 81 Fed. Reg. at 65,161. In any event, there is plainly a rational connection between the canyons' and seamounts' locations and the boundaries of the respective Monument units encompassing them. *See id*. at 65,167. That the boundaries are not drawn where Plaintiffs might like, *see* Compl. ¶¶ 73-74, does not render the President's action unlawful. *Cf. Motor Vehicle Mfrs. Ass'n. v. State Farm*, 463 U.S. 29, 43 (1983) (agency action is unlawful if it has no "rational connection between the facts found and the choice made"). Like the sequoia groves in Giant Sequoia National Monument, the canyons and seamounts "comprise part of a spectrum of interconnected ecosystems," *Tulare County*, 306 F.3d at 1142, and it was well within the President's discretion to include those entire ecosystems within the Monument boundaries.

CONCLUSION

For the foregoing reasons, the Court should dismiss Plaintiffs' complaint because it fails to state a claim on which relief can be granted.

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Respectfully submitted,

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