



ATLANTIC OFFSHORE LOBSTERMEN'S ASSOCIATION

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David Borden, Executive Director
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March 9, 2017

The Honorable Rob Bishop, Chairman
The Honorable Raúl Grijalva, Ranking Member
Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Bishop and Ranking Member Grijalva,

I write to you in my capacity as the Executive Director of the Atlantic Offshore Lobstermen's Association and member of the National Coalition for Fishing Communities regarding the Northeast Canyons and Seamounts Marine National Monument. Thank you and the committee members for your efforts to address the problems associated with the use of the Antiquities Act to designate protected areas in marine waters; we very much appreciate your efforts to make this a transparent process. Our Association and the Coalition did extensive work on this issue with the prior Administration, attempting to mitigate the negative impacts to the fishing industry. Several of our members also participated in your hearing with Mayor Mitchell in New Bedford, Massachusetts and had an opportunity to talk to you directly.

For over a year, members of the offshore fishing industry worked tirelessly with State personnel, Governors' offices, Congressional offices, Mayors in major ports, and others to dissuade the prior Administration from closing vast areas in the Atlantic to commercial fishing. In our collective view, there was never a compelling reason or threat to the marine resources of the Atlantic that warranted the use of the Antiquities Act. However, with the mere stroke of a pen, President Obama closed approximately 5,000 square miles to fishing, immediately ejecting the trawl fishery, with a near-term phase out of other industries. This action was taken without formal public hearings, without cost benefit analyses, without input from the most affected constituents, and counter to the spirit of the open government initiatives that the former President himself advocated. Although select leaders in the fishing industry had limited access to members of the White House staff, the public and fishing industry were, by and large, excluded. At no time prior to the Presidential announcement did we receive a written proposal detailing the specifics of the Monument designation and, further, the lack of transparency was appalling.

To assert my above comments, I herein submit to the March 15, 2017 committee hearing record copies of ten letters that our Association's members, staff, and related groups submitted to the prior Administration. These letters were submitted in the spirit of cooperation, with the intent of allowing the Monument process to continue, while reducing impacts on the environment and fishing industry. Our collective objections to the Monument designation process via the Antiquities Act, can be summarized as follows:

- There were no immediate threats to the marine resources that warranted the use of the Antiquities Act. Most documented corals are deeper than the areas fished and there

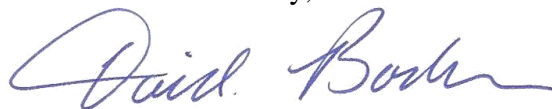
are no active proposals for oil, gas, or mineral exploration. Monument supporters called the closure area “pristine” despite 40 years of fishing.

- Jurisdiction to manage fisheries in the Monument area is already contained in the Magnuson-Stevens Fishery Conservation and Management Act and Atlantic Coastal Fisheries Cooperative Management Act, promulgated by regional Fishery Councils/Commission and NOAA Fisheries. Those acts are subject to impact analyses (NEPA) and extensive public input. It is our belief that the advocates for the Monument proposal specifically used the dated requirements in the Antiquities Act to circumvent the public process, and curtail public input on a key issue affecting thousands of individuals, as we do not believe that the action would have been approved following the Magnuson-Stevens Act requirements.
- U.S. marine Economic Exclusive Zones are not land owned or controlled by the United States and should, therefore, fall outside of Antiquities Act authority.
- Various fishing interests provided detailed and highly confidential information to the White House Office of Environmental Quality in order to document the negative impacts on the fishing industry. We offered a range of different alternatives to the White House that would have avoided negative impacts, but none were adopted. This included a proposal for a closure 5.5 times larger than the one designated, which would have protected deep water coral from the U.S./Canadian border to the Frank R. Lautenberg Deep-Sea Coral Protection Area in the Mid-Atlantic.
- Economic impacts were not analyzed. Using confidential industry information we estimate financial impacts on the lobster, crab, squid, mackerel and butterfish fisheries to be approximately \$30 million directly and \$100 million when multiplied across the economy.
- Habitat and social impacts were not analyzed. The Monument closure forces fishing effort into neighboring shallower waters that are inhabited by endangered right whales and forces larger vessels inshore, competing with small, community based, day boat fisheries.

Similarly themed correspondences were additionally submitted to the Administration by representatives of local, state, and regional governments and organizations.

In conclusion, we ask that you and your committee update the requirements of the Antiquities Act, and at a minimum formulate recommendations which require future Administrations to follow an open and transparent process. Thank you for the opportunity to comment.

Sincerely,



David Borden
Executive Director



ATLANTIC OFFSHORE LOBSTERMEN'S ASSOCIATION

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September 15, 2015

John Bullard, Regional Administrator
NOAA NMFS GARFO
55 Great Republic Drive
Gloucester, MA 01930-2276

Dear John,

The Atlantic Offshore Lobstermen's Association is strongly opposed to National Monument declaration for Cashes Ledge and Georges Bank canyons. To unilaterally allow such a designation would supplant the established habitat and fisheries management process and could be economically catastrophic to commercial lobstermen and coastal communities throughout New England. The Association has a number of concerns with this proposal and process which include the following:

To date, specifics have not been presented with the proposal to establish monument areas. For example, how many canyons are involved, what are the exact boundaries and water depths being proposed, what fishing gear types will be prohibited, following what time frame, will the current footprint of fishing be grandfathered? Without these types of details it is impossible to offer constructive comments on this concept in the short timeframe given for public comment.

Further, there has been no compelling need demonstrated for this action. Most corals are below the area fished in the canyons and Cashes is protected via the New England Fishery Management Council's (NEFMC's) habitat plan. According to NOAA's Deep-Sea Coral Database, 90% of documented canyon corals were in waters deeper than 350 fathoms (<https://deepseacoraldata.noaa.gov/>). In recent years, NOAA's ROV exploration of the northeast shelf edge aboard the R/V Okeanos Explorer hasn't even surveyed waters shallower than 360 fathoms (<https://oceanexplorer.noaa.gov/okeanos/explorations/ex1304/welcome.html>).

The fishery management process already protects habitat, including Cashes Ledge, which has been closed to mobile bottom tending gear for over a decade and will be protected into the foreseeable future via the recent NEFMC's Omnibus Habitat Amendment II. That this area is thriving is a testament to proper management of the area. Currently, the only commercial gear allowed around Cashes is fixed lobster gear, because fishery managers have determined that lobster gear has negligible impact on habitat. Designation of a monument would not only go against prior fishery habitat designations, but it would displace low impact, and in some case MSC certified, fisheries operating with limited environmental impacts.

If monuments were to be designated, every federal offshore lobster fishermen would be negatively affected either directly, by being prohibited from fishing an area, or by a redirection of effort into others' fishing grounds. We estimate there is at minimum \$10 million of lobster, jonah crab, and red crab activity involved in this decision. At Cashes Ledge, there is a \$1 million offshore fishery of four vessels operating alongside the inshore lobster fleet. The shelf edge

from Oceanographer Canyon to the US/Canadian border supports a \$4 million lobster fishery, prosecuted by approximately 8 vessels fishing in waters shoal of 250 fathoms. In addition to the lobster fleet, the Atlantic red crab fleet operates in these canyons seasonally, in depths between 350-375 fathoms. The Georges Bank lobster fleet has been active in the area since the 1970s. The George Bank fleet operates to the east of approximately 15 lobster vessels and additional red crab vessels operating in the canyons of Southern New England (Hydrographer to Hudson Canyons). Collectively, these vessels hail from numerous ports in four New England states, thus multiplying the economic impacts across many regional coastal communities.

These economic estimates do not include the draggers, gillnetters and longliners that fish in the area and sell in various New England ports. The canyon areas are utilized by a number of fixed and mobile gear sectors; closure of any of these sites will have real consequences in regards to gear conflicts, as various fleets struggle to adjust their fishing practices. Additionally, monument designation which closes the Georges Bank canyon region to lobstering will result in a redirection of effort into the Southern New England lobster stock area, which is overfished, resulting in more resource depletion. The fishery in the proposed monument areas is part of the Gulf of Maine/Georges Bank lobster stock, which is healthy and at record abundance.

Displaced effort could also increase interactions with marine mammals and other protected species. For example, relatively few whales are found in deep canyons compared to the nearby Great South Channel region (Atlantic Large Whale Take Reduction Plan). Endangered right whales, in particular, utilize nearshore Gulf of Maine areas around Cashes Ledge, therefore any displacement of gear to other areas of the Gulf of Maine, such as the noted whale habitats at Jeffreys Ledge or Jordan Basin, would need to be carefully analyzed. These analyses are a regular part of the Council's and NOAA's rule making process.

The NEFMC and NOAA have agreed to initiate, as a priority, a coral amendment which involves elaborate stakeholder input. This Amendment is expected to mirror closely the recently passed Amendment by the Mid-Atlantic Fisheries Management Council, which closed 38,000 square miles to most modes of fishing. The process that led to the Mid-Atlantic Amendment was touted as a success by many of the same organizations campaigning to use monument designation to preempt that process in New England. The NEFMC process should be allowed to proceed without the threat of a Presidential action.

Monument designation would circumvent traditional forms of public input. According to the Congressional Research Service, the Antiquities Act of 1906 has a "limited process compared with the public participation and environmental review aspects of other laws..." Use of the Antiquities Act, and unilateral action by the President, usurps established habitat and fisheries management processes which are open, democratic, and deliberative, allowing individuals to offer public comments on proposed restrictions, and offer suggestions on how to mitigate negative impacts. Realizing this downfall in the Act, "Congress is currently considering proposals to preclude the President from unilaterally creating monuments in particular states, and to impose environmental studies and public input procedures among other changes". (Congressional Research Service - Antiquities Act)

The assertion that monument designation would create permanent protection for the proposed areas is a gross misrepresentation of the authority of the President. The Antiquities Act was

designed to protect federal resources quickly, in response to concerns over destruction of archaeological sites. The President's authority is limited to respond to immediate threats to federal lands by designating "the smallest area compatible with the proper care and management of the objects to be protected" (Congressional Research Service). Presidents have used this authority to proclaim 130 monuments, however Congress has later modified or outright abolished many of those monuments. In this case, when the Republican led Congress learns that there was no immediate threat to these areas, that the public and President were misinformed, and that companies were forced out of business and jobs lost, it seems likely that they will respond. However, that response will come too late for the small businesses that comprise our fishing fleets.

The call to designate national monuments in New England waters, while touted as means to "permanently" protect habitat from various resource extraction operations, is more likely a targeted opposition to fishing. As noted by Jerry Fraser, publisher of *National Fisherman*: "The fact is, exploration for oil and gas on Cashes, or for that matter, anywhere else in the Gulf of Maine, is unlikely. 'There's no resource potential,' says the federal Bureau of Ocean Energy Management." It could be speculated that this call to action, led by the Conservation Law Foundation, is a direct response to being dissatisfied with the public process that resulted in the NEFMC's Omnibus Habitat Amendment II or even an elaborate fundraising or membership campaign. Whether or not these claims are true, it is unfair to hold the hardworking domestic fishing fleet hostage while lobbyist go head to head in Washington.

Thank you for the opportunity to comment, although we would have preferred to delay our comments until further details about the proposal and process were made public.

David Borden



Executive Director
Atlantic Offshore Lobstermen's Assn.



Massachusetts Lobstermen's Association, Inc.

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September 18, 2015

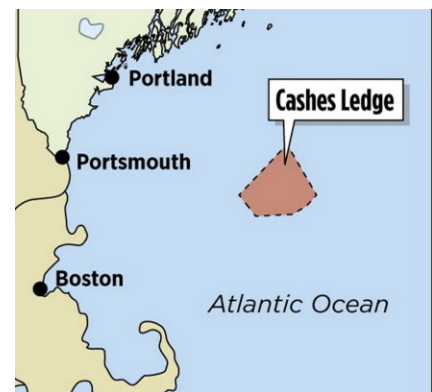
President Barack Obama
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

RE: Opposition to Cashes Ledge and the New England Canyons designation a
National Monument with in the region of the Gulf of Maine

Dear Mr. President;

The Massachusetts Lobstermen's Association along with the following organizations: Atlantic Offshore Lobstermen's Association, Maine Lobstermen's Association, Downeast Lobstermen's Association, Maine Lobstermen's Union, Stellwagen Bank Charter Boat Association, Rhode Island Lobstermen's Association, Gloucester Fisheries Commission and the American Bluefin Tuna Association (Organizations); collectively represent an estimated 10,500 commercial and charter fishermen from New Jersey to the Canadian Maritimes. Collectively, our Organizations are greatly concerned and strongly oppose the proposal put forth by environmental organizations to have Cashes Ledge and New England Canyons designated National Monuments. To unilaterally allow such a designation would usurp the established habitat and fisheries management public process and could be economically catastrophic not only to the commercial and charter fishermen, but also to hundreds of small coastal communities in New England.

The iconic New England commercial lobster industry has historically, fished within the Cashes Ledge and canyon areas without harm to the habitat/bottom. Over the years, the commercial fishermen, state and federal fisheries managers, and environmental groups have continually agreed that the Cashes Ledge region of the Gulf of Maine is home to a number of unique and important marine environments. State and federal fisheries managers have recognized the significance of this area and taken steps to ensure the long term protection of this unique habitat area. This includes prohibitions of mobile bottom tending gear from the area. The only fixed gear commercial fishery currently allowed is the lobster fishery, which is managed under the Atlantic Coastal Fisheries Cooperative Act, via the Atlantic States Marine Fisheries Commission and NOAA Fisheries. These organizations have determined that the placement of lobster pots on the bottom has negligible impact on the habitat/bottom as Cashes Ledge continues to thrive even with lobster fishing taking place.



The management measures adopted to date have been the result of countless discussions, public hearings, rulings and collaborative efforts of scientists, commercial fishermen, state & federal fisheries managers, and other important stakeholders in the New England region. The key point is that these efforts have all been taken in an open, democratic, deliberative, public process that allows individuals to offer public comments on proposed restrictions, and offer suggestion on how to mitigate negative impacts. Furthermore, the New England Fishery Management Council (NEFMC) and NOAA Fisheries have agreed to prioritize the development of a coral amendment for the New England area, so consideration of the New England Canyons is premature at this time. The proposed Council management plan will be developed in an open public process that involves all parties, including the environmental organizations, and allow for extensive opportunities for comment from all concerned parties.

We strongly oppose the designation of Cashes Ledge and the New England Canyons as a National Monument under the Antiquities Act. Any designation for a National Monument would require a unilateral action by your office, so we are requesting that you reject any such effort and allow the current process by NEFMC, ASMFC, and NOAA Fisheries to take place.

Thank you for taking the time to read our letter of concern. Should you have any further questions or concerns please feel free to call me at 781-545-6984 or on mobile 508-738-1245.

Kind regards,
Beth Casoni, Executive Director
Massachusetts Lobstermen's Assoc.

David Borden, Executive Director
Atlantic Offshore Lobstermen's Assoc.

Patrice McCarron, Executive Director
Maine Lobstermen's Assoc.

Sheila Dassatt, Executive Director
Downeast Lobstermen's Assoc.

Charlie Wade, President
Stellwagen Bank Charter Boat Assoc.

Gregory Mataronas, President
Rhode Island Lobstermen's Assoc.

Rock Alley, President
Maine Lobstermen's Union

Ralph Pratt, President
American Bluefin Tuna Association

Mark Ring, Chairman
Gloucester Fisheries Commission

CC: Senate Committee on Energy and Natural Resources
House Committee on Natural Resources
Senator Elizabeth Warren
Senator Edward Markey
Congressman William Keating
Congressman Stephen Lynch, Congressman Seth Moulton, Governor Charles Baker, MA FWE Commissioner George Peterson



Massachusetts Lobstermen's Association, Inc.

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President Barack Obama
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

October 23, 2015

RE: Opposition to Cashes Ledge and the New England Canyons designation as a National Monument

Dear Mr. President,

Several weeks ago the Massachusetts Lobstermen's Association and eight other fisheries associations, representing approximately 10,000 small businesses and fishermen, wrote to you in opposition to the creation of Marine Monuments in New England waters using the Antiquities Act. We note that your recent Marine Monuments announcement did not include the New England sites and we would like to thank you for not designating these areas. However, our concerns were recently heightened by two events, therefore we are again writing to you with the support of over 20 fisheries organizations representing small businesses in five Atlantic states.

First, Secretary of State John Kerry's statements on October 5th at the Our Oceans Conference during which he indicated that the Administration is working on additional marine monument designations. Second, the revelation that NGOs had been working behind closed doors to keep their monument campaign hidden from public scrutiny. We are disappointed that NOAA officials appear willing to facilitate such a process that usurps public input. We again request that your administration terminate consideration of monuments in New England waters. The basis for our request follows and is a further elaboration on the points we made in our letter dated September 15, 2015.

To date, neither NOAA nor anyone in your administration has formalized or distributed a written document characterizing the specifics of a New England Monument proposal. This is in spite of repeated requests from members of the fishing industry, several Governors, and various members of the New England Congressional delegation. Lacking the specifics of a proposal, it is nearly impossible for affected industry members to provide comments or suggestions on ways to mitigate negative impacts. You, and members of your administration, have noted the need for government to act in an open and transparent manner, and the conduct of NOAA officials to date has been the antithesis of such a policy. We recognize that the Antiquities Act does not require public hearings per se, but logic dictates that any such action be vetted through an open public process, where the costs and benefits of the proposal are evaluated and discussed. NOAA officials have hosted a so called "town meeting" on the issue, but refused to provide specifics on the proposal, or even answer direct questions about the process and public comment deadline.

Of equal concern, after weeks of public discussion and speculation on this issue, no one has demonstrated a compelling, scientifically justified reason for your office to take unilateral action

to respond to immediate threats to federal land, as is your authority under the Antiquities Act. In fact, just the opposite is true, as most corals are below the areas fished in the New England canyons and Cashes Ledge is already protected by the New England Fishery Management Council's habitat plan. According to NOAA's Deep-Sea Coral Database, 90% of documented canyon corals are in waters deeper than 350 fathoms (<https://deepseacoraldata.noaa.gov/>). In recent years, NOAA's ROV exploration of the northeast shelf edge aboard the R/V Okeanos Explorer hasn't even surveyed waters shallower than 360 fathoms (<https://oceanexplorer.noaa.gov/okeanos/explorations/ex1304/welcome.html>). Further, the hysteria from some environmental advocates decrying the need to protect these areas from oil, gas and mineral exploration is nothing more than a fund raising gimmick and less than compelling. There are no active proposals to do so and, regardless, any proposal would require years of environmental impact studies. Therefore the only groups negatively affected by this concept are the small scale businesses that make a living off the fishery resources in the area, all of which are managed sustainably.

To date, a number of commercial and recreational fishing organizations have submitted petitions and letters voicing serious concerns about this concept, by noting that there are literally hundreds, if not thousands, of jobs at stake along the New England and Mid Atlantic coasts. We support their positions on this issue. As you know, this is an area of the country that is desperately in need of additional jobs. Jobs can be lost due to direct impacts, such as excluding mobile and fixed fishing gear from an area, and also to indirect impacts. The indirect impacts of this proposal may be far larger than the direct impacts as closures of this area will force large portions of the fleet to relocate into marginal fishing grounds that contain higher abundances of protected species and lower abundances of target species.

As example of the latter point, the offshore lobster, squid, mackerel and butterfish fisheries all fish in the offshore canyons on fish populations which are healthy and managed sustainably. Combined, these fisheries are worth on average in excess of \$30 million. Closure of the area will force fishermen from both fleets to fish in neighboring shallower (shoal) waters that are inhabited by species such as the endangered right whale. Alternatively, they may relocate further inshore, effectively competing with the small, community based, day boat fisheries also targeting those same species. Both of these industries have fished in the canyons for decades with little impact on the habitat.

As further example, any fixed gear closure between 350 to 375 fathoms will potentially force a New Bedford integrated crab company (fishing and seafood processing) out of business, or force the owners to relocate to the south. There are no imminent threats from this industry, which fishes Atlantic red crab; in fact, the fleet is Marine Stewardship Council certified. After spending millions of taxpayer dollars exploring and photographing these canyons, there has yet to be one shred of evidence of any damage incurred by red crab fishing gear—even the supporters of the proposal have called these areas “pristine” after 40 years of fishing. This single business is valued in excess of \$20 million and employs over 150 individuals in southern Massachusetts.

Our point is fairly simple; these limited examples demonstrate the profound negative impact that a unilateral Monument designation by your office will have on two states, Massachusetts and Rhode Island. They do not detail the impacts in other New England states if Cashes Ledge is also designated nor do they represent the cumulative impact on literally hundreds of small coastal communities along the Atlantic Coast. Clearly any action by your office, which potentially has as dire an impact, should be vetted through an open public process and be evaluated as to its costs and benefits.

Finally, we note that the New England Fishery Management Council and NOAA NMFS have initiated a coral amendment, under the Magnuson Stevens Fisheries Act, which will ultimately protect many of the species and habitats that the environmental community claims need protection. The Council process will involve elaborate stakeholder input, a democratic public hearing process, and an impact analyses, in accordance with NEPA regulations. This amendment is expected to mirror closely the recently passed amendment by the Mid Atlantic Fisheries Management Council, which closed 38,000 square miles to most modes of fishing. The Mid Atlantic process was touted by NOAA officials, and many fishing and environmental organizations, as a complete success.

In conclusion, we urge you to allow the Council process to develop without the threat of a Presidential action. The American public will be best served by allowing all parties to work in a collaborative and transparent manner to design potential closures for New England; we therefore request that you not designate these areas for protection under the Antiquities Act.

Should you and your staff wish to establish a dialog with members of the commercial and recreational fishing industry most affected by this concept, we would be happy to provide names of key individuals from some of the following organization. If so please contact Beth Casoni, Executive Director of the Massachusetts Lobstermen's Association at 781-545-6984 or David Borden, Executive Director of Atlantic Offshore Lobstermen's Association at 401-45-9312.

Thank you for your consideration of these concerns and perspectives.

Sincerely,

MASSACHUSETTS

American Bluefin Tuna Assn.
Atlantic Red Crab Co.
Base New England
Boston Wholesale Lobster Corp
Massachusetts Lobstermen's Assn.
Stellwagen Bank Charter Boat Assn.

MAINE

Associated Fisheries of Maine
Atlantic Trawlers Fishing, Inc.
Downeast Lobstermen's Assn
Maine Lobstermen's Assn

NEW HAMPSHIRE

Little Bay Lobster Co.

RHODE ISLAND

Atlantic Offshore Lobstermen's Assn.
Eastern New England Scallop Assn.
International Marine Industries, Inc.
Newport Fishermen's Co-Op
Rhode Island Lobstermen's Assn
Rhode Island Party and Charter Boat Assn.
Seafreeze Ltd.
The Town Dock

NEW JERSEY

Garden State Seafood Coalition
Lund's Fisheries, Inc.

CC:

Senator Susan Collins

Senator Angus King

Congresswoman Chellie Pingree

Congressman Bruce Poliquin

Senator Jeanne Shaheen

Senator Kelly Ayotte

Congressman Frank Guinta

Senator Elizabeth Warren

Senator Ed Markey

Congressman Bill Keating

Congressman Seth Moulton

Senator Jack Reed

Congressman Stephen Lynch

Senator Sheldon Whitehouse

Congressman David Cicilline

Congressman James Langevin

Senator Robert Menendez

Senator Cory Booker

Congressman Frank LoBiondo

John Bullard, NOAA NMFS GARFO

Robert Beal, ASMFC

Thomas Nies, NEFMC



RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF THE DIRECTOR

235 Promenade Street, Room 425
Providence, Rhode Island 02908

February 2, 2016

The Honorable Barack Obama
The White House
Washington, DC 20510

Dear Mr. President:

I write to offer comments regarding the proposed establishment of a marine national monument at several sites off the New England coast. These written comments are a follow-up to the oral comments I offered at the National Oceanic and Atmospheric Administration (NOAA) Town Hall Meeting held on September 15, 2015 in Providence, Rhode Island.

My comments reflect the collective interests of the Rhode Island Department of Environmental Management (RIDEM). Under my direction, the Department is responsible for the stewardship of Rhode Island's public trust resources, including our marine resources. This responsibility encompasses habitat protection, fisheries management, port management, and the promotion of local seafood.

RIDEM also shares responsibility for fisheries management and habitat protection in the federal waters off New England via our seat on the New England Fishery Management Council, as well as our seat on the Atlantic States Marine Fisheries Commission, which jointly manages many marine fishery resources that overlap state and federal waters along the East Coast

In exercising these roles and responsibilities, we work daily with the environmental and scientific community, commercial and recreational fishermen, other fishing-related businesses, and other stakeholders. We all have a strong, mutual interest in the conservation and management of our living marine resources and the protection of the habitats upon which they depend. This interest is governed by a host of federal and state laws that obligate us to protect what needs to be protected, and to utilize wisely the resources that can be sustainably harvested.

I welcome efforts to protect marine resources and natural areas from threats to their health. The marine habitats that have been identified for consideration by NOAA are all incredibly rich and important areas of the ocean that warrant our attention. However, I have serious concerns regarding the opaque nature of the process to date, the supplanting of the role of the New England and Mid-Atlantic Fishery Management Councils, and the significant economic impacts that would occur if areas that are currently open to fishing are permanently closed.

To date, there is a dearth of information associated with the proposal. The announcement for the NOAA Town Hall Meeting offers the only official information regarding the proposal, and it merely references

three deep-sea canyons – Oceanographer, Gilbert, and Lydonia Canyons – and four seamounts off the New England coast. It does not offer any detail on the specific region(s) to be encompassed, nor does it reference Cashes Ledge in the Gulf of Maine, which many advocates are seeking to include. All of these areas are well-known regions, but unless and until specifically identified, defined, and demarcated, we cannot offer meaningful comment on what the impacts of the designations would be. So, at the very least, I urge the Administration to precisely characterize the area under consideration.

The Antiquities Act offers an option for Presidential decision-making that contrasts markedly with the engaged, informed and transparent public processes in which RIDEM routinely participates. Regardless of the mechanism being employed, good government requires good public engagement. While I appreciate that NOAA selected Providence, RI as the location for the September 15 town hall meeting, there was very little notice or opportunity for quality input at that forum. Certainly, a proposal of this magnitude requires extensive, informed public review and input in order to assure a good outcome.

With regard to fisheries and habitat-related issues and impacts, review and input are already underway in accordance with the Magnuson-Stevens Fishery Conservation and Management Act and consistent with the National Environmental Policy Act (NEPA). I share the concerns expressed by many regarding the disconnect between the seemingly abrupt proposal to establish a national marine monument and the extensive, ongoing work by the New England and Mid-Atlantic Councils to establish and maintain protections for the very same areas. Both Councils have recognized and acted upon the importance of protecting marine habitat areas of particular concern, have already targeted for protection all of the areas under consideration, and have already initiated the process of preventing or limiting activities that could adversely impact these areas. To specify, I reference: 1) the draft Deep Sea Corals Amendment to the Mackerel, Squid, and Butterfish Fishery Management Plan adopted by the Mid-Atlantic Fishery Management Council in June 2015; 2) the complementary Omnibus Deep-Sea Coral Amendment currently being developed by the New England Fishery Management Council (NEFMC); and 3) Omnibus Essential Fish Habitat Amendment 2, adopted by the NEFMC in April 2015. These major actions involve difficult decisions; importantly, they have been and continue to be made in a fully transparent way, with input from all stakeholders. This requires years of hard work, careful consideration and compromise by people who are bound to comply with federal law and motivated to do the right thing.

A key distinction between the two processes, and their outcomes, is that the actions being taken by the Fishery Councils are focused on preventing or limiting fishing-related activities that could adversely impact the areas while supporting sustainable harvest activities. In contrast, the proposal being considered under the Antiquities Act would ostensibly ban all such activities, without regard to their impacts, nor the potential for adverse impacts on other areas and species, including marine mammals, resulting from displaced effort. Clearly, the marine monument proposal would also ban other activities in the designated areas, which is beyond the scope of the Fishery Councils.

If the application of the Antiquities Act is intended to protect critical marine resources and habitats, there needs to be a clear understanding of the types of activities that pose threats. Is there evidence that current fishing activities are adversely impacting the areas under consideration? If so, which types of activities? Establishing a clear, scientifically-based nexus between preservation goals, and activities that are incompatible with those goals, should be the crux of the process. If there is justification for imposing bans on certain types of fishing, that needs to be spelled out and subject to thorough analysis. Absent such justification, the application of the Antiquities Act, as proposed, runs the risk of contravening long-standing federal laws that support sustainable, environmentally sound harvests of our Nation's renewable fishery resources. In addition, this approach disenfranchises and discourages the

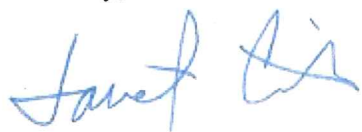
experts and stakeholders who are participating in fisheries management and marine spatial planning efforts in New England.

It is important to note that Rhode Island-based fishermen, commercial and recreational, have long utilized the canyon areas targeted by the proposal; as such, they risk being impacted by the proposal. For many years, our commercial fishermen have landed lobster and crab, squid, mackerel and butterfish, sea scallops, whiting, and summer flounder from the productive areas near and between the canyons. These are well-managed fisheries undertaken with no significant environmental impacts (per prior NEPA review). In fact, these special ocean areas have achieved their special status thanks in part to many years of sound resource management. Depending on where the boundaries for the monuments are drawn, the economic impacts for Rhode Island commercial fishermen, due to lost access to the resources and fishing grounds, could be in the range of \$5-10 million annually, constituting a major blow for a state with a commercial fishery that serves as a major economic engine. The overall impacts to fishing communities throughout New England would clearly be higher. Although we lack good economic data on the economic impacts for Rhode Island recreational fishermen who target the offshore canyons, we know they would be significant, given the sizable expenditures associated with offshore trips. Our strong, working relationship with Rhode Island's commercial and recreational fishermen enables us to access and make available site-specific data pertaining to the nature and extent of fishing activities in the canyon areas under consideration. RIDEM along with the Rhode Island fishing community would be more than willing to make that information available to the Administration for use in conducting an impact analysis.

In sum, given the lack of due process and non-applicability of NEPA to the designation of national monuments, it is important for the Administration to: provide more information on the specific nature of and justification for the proposal; fully consider the interests of all stakeholders; carefully evaluate the economic impacts; and, assess the potential for unintended consequences, such as displaced fisheries.

Please consider my comments on behalf of RIDEM. I trust that the Administration will take the time necessary to disseminate and consider more information, explore alternatives, and carefully weigh the consequences of the marine monument proposal. We are part of a vast community of ocean interests, including environmentalists and fishermen, scientists and government officials, whale watchers, seafood consumers, and many others. We are all essentially interested in the same thing – a healthy and productive marine environment. I look forward to working with your staff as you further consider your actions regarding marine resources to be protected under the Antiquities Act.

Sincerely,



Janet Coit
Director

Cc: Christy Goldfuss, CEQ Managing Director
Senator Jack Reed
Senator Sheldon Whitehouse
Congressman James Langevin
Congressman David Cicilline
Governor Gina Raimondo



Atlantic States Marine Fisheries Commission

NEWS RELEASE

Vision: Sustainably Managing Atlantic Coastal Fisheries

FOR IMMEDIATE RELEASE
May 12, 2016

PRESS CONTACT: Tina Berger
703.842.0740

ASMFC Urges Transparency and Public Input in Proposed New England Offshore Canyons & Seamounts Monument Decision Making Process

Arlington, VA – In a May 9th letter to President Barack Obama, the Atlantic States Marine Fisheries Commission (Commission) urged the President and the White House Council on Environmental Quality (CEQ) for transparency and a robust opportunity for public input as the Administration considers designating a National Monument through its authority under the Antiquities Act. While details on the specific location of the monument remain unknown, one potential area discussed centers around the New England offshore canyons and seamounts.

Currently, the New England Fishery Management Council (Council) is drafting an Omnibus Deep-Sea Coral Amendment which considers protection of corals in and around the canyons of the Atlantic Ocean. At the request of the Council, the Commission conducted a survey of active offshore lobstermen to understand the potential impacts to the fishery should lobster traps be limited by the Draft Amendment. Preliminary results indicate a high dependence on the offshore canyons for revenue, with over \$15 million in revenue generated each year by fishermen targeting American lobster and Jonah crab in the canyons. Given that input from concerned stakeholders is a key component of the Council's decision-making process, the Commission strongly supports using the Council process to develop measures to protect the ecosystems within these deep waters.

If the President chooses to use the Antiquities Act to protect deep sea corals, the Commission requested the designated area be limited to the smallest area compatible with the proper care and management of the objects to be protected. Additionally, the Commission requested the area be limited to depths greater than approximately 900 meters and encompass any or all of the region seaward of this line out to the outer limit of the exclusive economic zone. Further, the Commission asked that only bottom tending fishing effort be prohibited in the area and all other mid water/surface fishing methods (recreational and commercial) be allowed to continue in the area.

The May 9th letter to the President follows. For more information, please contact Megan Ware, Fishery Management Plan Coordinator, at mware@asmfc.org or 703.842.0740.

PR 16-14

The Atlantic States Marine Fisheries Commission was formed by the 15 Atlantic coastal states in 1942 for the promotion and protection of coastal fishery resources. The Commission serves as a deliberative body of the Atlantic coastal states, coordinating the conservation and management of nearshore fishery resources, including marine, shell and anadromous species.

1050 N. Highland Street • Suite 200A-N • Arlington, VA 22201
703.842.0740 (phone) 703.842.0741 (fax) www.asmfc.org



Atlantic States Marine Fisheries Commission

1050 N. Highland Street • Suite 200A-N • Arlington, VA 22201
703.842.0740 • 703.842.0741 (fax) • www.asmfmc.org

Douglas E. Grout (NH), Chair

James J. Gilmore, Jr., (NY), Vice-Chair

Robert E. Beal, Executive Director

Vision: Sustainably Managing Atlantic Coastal Fisheries

May 9, 2016

President Barack Obama
The White House
1600 Pennsylvania Ave, NW
Washington, DC 20500

Dear Mr. President,

On behalf of the Atlantic States Marine Fisheries Commission (Commission), I am writing to express the Commission's preference for the continuation of the current New England Fishery Management Council's (NEFMC) regulatory process as the primary approach to protect deep-sea corals in the Atlantic Ocean.

The Commission was formed by the 15 Atlantic coast states in 1942 in recognition that fish do not adhere to political boundaries. The Commission serves as the deliberative body, coordinating the conservation and management of the states shared fishery resources – marine, shell, and anadromous – for sustainable use. The Commission manages several species which are harvested in and around the New England canyons and seamounts area, including American lobster and Jonah crab. These two fisheries have been prosecuted in the offshore canyons for close to five decades and generate over \$15 million per year in direct revenue from the canyons alone.

The NEFMC is currently drafting an Omnibus Deep-Sea Coral Amendment which considers protection of corals in and around the canyons of the Atlantic Ocean. Per the requirements of the Magnuson-Stevens Fishery Conservation and Management Act, the creation of such an Amendment includes multiple stakeholder comment opportunities, public hearings, detailed cost benefit analysis, and NEPA impact analyses. The transparency of the amendment process allows for collaboration between the Commission, NEFMC and stakeholders. In fact, the Commission is currently working with the NEFMC to collect data on the offshore lobster and Jonah crab fishery to fully understand potential impacts to the industry.

The Commission has been informed that you, Mr. President, are considering utilization of the American Antiquities Act of 1906 to protect similar deep-sea coral areas through the designation of a national monument. While the Commission fully supports actions which ensure healthy oceans, there is concern over the lack of public input or impact analysis required in the establishment of a monument through the Antiquities Act. Without specific details on the proposed areas which may be included in a national monument or a potential timeline, it is difficult to characterize the potential impacts to the fishing industry or provide meaningful comments.

President Barack Obama

May 9, 2016

Page 2

At its spring meeting, the Commission unanimously agreed to the following position on this issue. With two separate processes ongoing to protect deep-sea corals in New England waters, the Commission is requesting the NEFMC regulatory process be allowed to continue without the potential for a Presidential proclamation of a national monument. Should you decide to establish a New England waters monument prior to the end of your presidency, the Commission requests any designated areas be limited to the smallest area compatible with the proper care and management of the objects to be protected, as required by the Antiquities Act. Furthermore, the Commission proposes that if you, Mr. President, pursue the designation of a national monument, the area be limited to waters deeper than 900 meters to the outer margin of the exclusive economic zone and only bottom tending fishing gear be prohibited. All other mid water/surface fishing methods, both recreational and commercial, could continue within the designated area with no impact to corals. Finally, the Commission requests the public and affected user groups be allowed to review and comment on any specific proposal prior to its implementation.

Thank you for considering the Commission's comments on this important issue. Please contact me if the Commission can provide any additional information.

Most Respectfully,



Douglas E. Grout
Chairman ASMFC

cc: ASMFC Commissioners

John Bullard, Regional Administrator NOAA Fisheries

Thomas Nies, NEFMC Executive Director



ATLANTIC OFFSHORE LOBSTERMEN'S ASSOCIATION

Grant Moore, President
exec@offshorelobster.org

David Borden, Executive Director
dborden@offshorelobster.org

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May 18, 2016

President Barack Obama
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

Dear Mr. President,

I write to oppose the designation of a marine monument in the Atlantic Ocean canyon and seamount area in depths less than 900 meters. There are no immediate nor documented threats to these areas that would warrant the use of the unilateral Presidential authority encompassed in the Antiquities Act. This Congressional Act was authored in 1906, long before the movement to promote open government. I urge you to not supersede the transparent, public processes currently underway in New England to protect Atlantic Ocean habitat and coral.

Despite the claims of proponents, there are no imminent threats to the habitat and coral in these areas that require expedient action by your Administration. There are no active proposals for oil, gas, or mineral exploration, nor could there be such activity without years of environmental impact assessment and permitting review. Further, multiple fisheries, some Marine Stewardship Council certified, have worked in these canyon areas for decades with such little habitat impact that monument proponents themselves call these areas “pristine” despite 40 years of fishing activity. Importantly, most Atlantic corals are in waters deeper than the areas fished (NOAA’s Deep-Sea Coral Database) and there are no plans or technologies available which would allow these fisheries to shift to deeper waters.

Therefore, I urge you to allow the open, transparent, public processes that now govern ocean planning and habitat protection in the region to continue without threat of unilateral Presidential action. There are a number of federal laws, federal advisory committees, and Executive Orders involved in this issue, and all require transparency in the rule making process. These include: deep-sea coral protections being developed by the New England Fishery Management Council (NEFMC) under authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and National Environmental Policy Act (NEPA); and the forthcoming northeast regional ocean plan, an outcome of the National Ocean Policy established by your Executive Order in 2010. Unlike the Antiquities Act, these directives offer the public an opportunity for meaningful input, require cost benefit analyses, and allow stakeholders opportunities to offer strategies to mitigate

negative impacts. In addition, the above align with the ocean policies set out by your Administration, specifically Executive Order 13563 which states:

“Sec. 2. Public Participation. [...] Regulations shall be adopted through a process that involves public participation. To that end, regulations shall be based, to the extent feasible and consistent with law, on the open exchange of information and perspectives among State, local, and tribal officials, experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole.”

As noted in the attached May 4, 2016 letter from Kelley Drye & Warren, Counsel for Fisheries Survival Fund, the Antiquities Act does not require public hearings or public input, and is the antithesis of the goals and objectives you sought by signing Executive Order 13563 “Improving Regulation and Regulatory Review”. I very much applaud your efforts to promote transparency in the governmental regulatory process. Notwithstanding your prior efforts, open government is not merely a short term political convenience, and should be a corner stone of every Administration. Either you believe in open government or not, and conduct yourself accordingly.

I therefore urge you to endorse and implement a transparent public process on this issue and direct the White House’s Council for Environmental Quality to do likewise. To date they have not provided any specifics describing what they intend to advocate on this issue, which makes it virtually impossible to offer comments, suggestions, or gauge impacts.

Should you decide to unilaterally move forward on this issue, I urge you to implement the position put forward by the Atlantic States Marine Fisheries Commission. That alternative is reasonable, will protect the environment, protect a majority of the deep water corals, and allow for continuation of historic fishing practices in the offshore areas.

Thank you for the opportunity to comment; I am happy to discuss the specifics and any questions with your staff.

Sincerely,

A handwritten signature in black ink, appearing to read "Grant Moore". The signature is fluid and cursive, with a large initial "G" and a stylized "M".

Grant Moore
President, Atlantic Offshore Lobstermen’s Assn.

CC:

Christy Goldfuss, White House CEQ
Whitley Saumweber, White House CEQ
Senator Susan Collins
Senator Angus King
Congresswoman Chellie Pingree
Congressman Bruce Poliquin
Senator Jeanne Shaheen
Senator Kelly Ayotte
Congressman Frank Guinta
Senator Elizabeth Warren
Senator Ed Markey
Congressman Bill Keating
Congressman Seth Moulton
Senator Jack Reed
Congressman Stephen Lynch
Senator Sheldon Whitehouse
Congressman David Cicilline
Congressman James Langevin
Senator Robert Menendez
Senator Cory Booker
Congressman Frank LoBiondo
John Bullard, NOAA NMFS GARFO
Robert Beal, ASMFC
Thomas Nies, NEFMC
Massachusetts Lobstermen's Association
Maine Lobstermen's Association
Rhode Island Lobstermen's Association
Boston Globe
Commercial Fisheries New
New Bedford Standard Times
Saving Seafood

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September 14, 2016

Christina W. Goldfuss, Managing Director
Council on Environmental Quality
722 Jackson Place NW
Washington, D.C. 20503

Dear Ms. Goldfuss:

On behalf of participants in the Southern Georges Bank Coalition ("SGBC"), we are writing to oppose the White House's decision to designate a marine national monument in the Northwest Atlantic Ocean, which we understand to encompass Oceanographer, Lydonia, and Gilbert Canyons and adjacent sea mounts, starting at a depth of one hundred meters. The SGBC, moreover, opposes the designation of such marine protected areas pursuant to the Antiquities Act more generally. The SGBC's founding participants include: Dennis Colbert, Colbert Seafood Inc. & Trebloc Seafood Inc., Sandwich, MA; Charles Raymond, Fair Wind, Inc., Gloucester, MA; J. Grant Moore, Broadbill Fishing Inc., Westport, MA; Jon Williams, Atlantic Red Crab Co., New Bedford, MA; William Palombo, Palombo Fishing Corp., Newport, RI; Glenn Goodwin, Seafreeze Ltd., Davisville, RI; David Spencer, Spencer Fish & Lobster Inc., Newport, RI; Edward McCaffrey, Silver Fox Fisheries Inc., Point Judith, RI; John Peabody, Lady Clare Inc., Point Judith, RI; Jonathan Shafmaster, Little Bay Lobster Co. & Shafmaster Fishing, Newington, NH; Daniel Farnham, Silver Dollar Seafood Inc., Montauk, NY; and Beth Casoni, Massachusetts Lobstermen's Association. The above-described fishermen and fishing organizations are directly affected by the monument description, as it includes their fishing grounds. Millions of dollars of lost revenue are at stake.

We explained in our letter dated May 4, 2016, on behalf of another client, that the President lacks the unilateral authority to use the Antiquities Act to designate marine monuments offshore. The SGBC concurs, and submits the following additional information. Extending the Antiquities Act's application into the Exclusive Economic Zone ("EEZ") represents an illegal and illegitimate use of presidential authority. Moreover, by enacting what was then called the Magnuson Fishery Conservation and Management Act, Congress explicitly granted regional fishery management councils authority over fishery management activities in what has since become the EEZ. Furthermore, this law governs executive authority, rather than the prior-enacted and more general Antiquities Act, and controls over the subsequently-implemented presidential proclamation

Christina W. Goldfuss, Managing Director
September 14, 2016
Page Two

regarding the United States EEZ more generally. Finally, the Antiquities Act does not allow for designation of any part of the water column as a monument.

To be clear, the SGBC and its participants support sound, science-based fisheries conservation and management. They have participated—actively and constructively—in regional fishery management council and Atlantic interstate fishery compact processes for decades. What they request is that the Administration observe the limits of its authority and honor well-developed statutory and regulatory processes.

I. THE ANTIQUITIES ACT DOES NOT ALLOW FOR MARINE MONUMENT DESIGNATION IN THE EXCLUSIVE ECONOMIC ZONE

In 1906, Congress enacted the Antiquities Act,¹ specifically with reference to terrestrial areas of unique value. Far later, in what is now called the Magnuson-Stevens Fishery Conservation and Management Act (“MSA”),² Congress in 1976 staked a brand new claim to an exclusive fisheries zone seaward of the United States territorial sea, and established a unique, quasi-legislative governance structure, administered under the auspices of the Department of Commerce.³ The conflict between these two laws is evident from the circumstances of each law’s enactment.

In 1906, no such exclusive fisheries zone or EEZ yet existed. Rather, it was not until 1976 when Congress declared an exclusive U.S. fishing zone—consistent with emerging trends in international law of the sea—which it ultimately in 1986 MSA amendments redefined as “the zone established by Proclamation Numbered 5030, dated March 10, 1983.”⁴ Tellingly, Congress extended U.S. fisheries jurisdiction via legislation, in a manner entirely distinct from the manner in which the U.S. Constitution provides for the addition of the terrestrial states of the union.⁵ Notably, the MSA did not incorporate pre-existing terrestrial management processes but created an entirely new, fully unique, process of regional representative government for this newly claimed fishery zone. This newly enacted, purpose-designed MSA thus governs the management of U.S. fisheries in the EEZ.

¹ 16 U.S.C. §§ 431-433.

² 16 U.S.C. §§ 1801 *et seq.*

³ *See generally J.H. Miles & Co. v. Brown*, 910 F. Supp. 1138, 1143 (E.D.Va. 1995).

⁴ 16 U.S.C. § 1802(11). Under the United Nations Convention on the Law of the Sea, the EEZ is merely a zone and not a territory. It is specifically defined as “an area *beyond and adjacent to* the territorial sea.” United Nations Convention on the Law of the Sea, art. 55, 1833 UNTS 3 (1982) (entered into force Nov. 16, 1994) (emphasis added). The Reagan Proclamation, *infra* note 7, later incorporated the United Nations definition.

⁵ *See* U.S. CONST. art. IV, § 3.

Christina W. Goldfuss, Managing Director
September 14, 2016
Page Three

The Antiquities Act did not apply to areas to which Congress staked its MSA-based claims, moreover, because the United States had never claimed any right or authority to manage the area for fisheries, natural resource protection, or anything else, prior to 1976. As explained above, the MSA literally invented and applied a novel system of governance—the regional fishery management council system—to this newly-claimed fisheries zone. Indeed, the MSA provides that it is “to maintain without change the existing territorial or other ocean jurisdiction of the United States *for all purposes other than the conservation and management of fishery resources.*”⁶

Seven years after the MSA’s adoption, the President proclaimed, as a matter of international relations, an EEZ substantively more broad than an exclusive fisheries zone.⁷ By its terms, however, the EEZ remains “an area beyond and adjacent to the territorial sea” of the United States. Indeed, Proclamation 5030 further stated it “does not change existing United States policies concerning the continental shelf, marine mammals and fisheries...” This condition makes sense; a presidential proclamation, simply put, lacks the authority to amend an Act of Congress.⁸ In relation to the issue of domestic fisheries management, the MSA created a specific governance structure that cannot be simply overruled by presidential decree.

In 2000, in the Clinton Administration’s waning days, the Department of Justice’s Office of Legal Counsel (“OLC”) issued a memorandum in response to a request from the National Oceanic and Atmospheric Administration (“NOAA”). NOAA demonstrated, among other claims, that the President could not establish a national monument in the EEZ.⁹ OLC did concede the question was “closer” than one of whether the President could establish a monument within the territorial sea.¹⁰ It also stated that, because regulations implemented under the MSA must comply with all other applicable law,¹¹ there was no conflict between the MSA and the Antiquities Act.¹²

In summary, while the Justice Department’s OLC not surprisingly rationalized an expansive envisioning of presidential authority, the experts at NOAA who understood the MSA’s nature and intent have the better of the argument. The Antiquities Act explicitly states that the President may declare as national monuments “objects of historic or scientific interest that are

⁶ 16 U.S.C. § 1801(c)(1) (emphasis added).

⁷ Presidential Proclamation No. 5030 (March 10, 1983).

⁸ See, e.g., *Chamber of Commerce v. Reich*, 74 F.3d 1322 (D.C. Cir. 1996) (invalidating an Executive Order that conflicted with provisions of the National Labor Relations Act).

⁹ Randolph Moss, Assistant Attorney General, *Administration of Coral Reef Resources in the Northwest Hawaiian Islands*, Memorandum Opinion (Sept. 15, 2000), at 197 (“Mem. Op.”).

¹⁰ *Id.* at 196.

¹¹ 16 U.S.C. § 1853(a)(1)(c).

¹² Mem. Op. at 208.

Christina W. Goldfuss, Managing Director
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Page Four

*situated upon the lands owned or controlled by the Government of the United States.*¹³ In *Alaska v. United States*,¹⁴ the Supreme Court delimited the Act's scope to include submerged lands, and other judicial precedent has established that the Antiquities Act can be applied in the United States territorial sea.¹⁵ This conclusion is satisfactory, as the territorial sea is clearly "controlled by" the government in a comprehensive sense. However, in this instance, the question presented is not whether the Secretary of Commerce can implement a fishery management plan with provisions that conflict with a pre-existing, legally-authorized monument designation. The question is, rather, whether the MSA and its unique role in the EEZ represents an exercise of federal management authority beyond the scope of the Antiquities Act. We contend that it does.

Nor, moreover, does the OLC memorandum address the issue of a monument designation within the water column. A plain reading of the statutory language referenced above—authorizing monument designation for objects of scientific interest "*situated upon the lands owned or controlled by*" the United States government—excludes the water column from eligibility for monument designation, and does not allow presidential authority to manage activities therein. The Antiquities Act does not confer unilateral authority on the President to create what amounts to a marine protected area extending up through the water column.

II. FISHERIES ARE BEST MANAGED UNDER THE MSA

As stated above, the MSA established a specific statutory process for managing our nation's fisheries in the U.S. EEZ. This regional fishery management council system has existed and evolved over forty years. The Mid-Atlantic Fishery Management Council has taken, and the New England Fishery Management Council is in the process of taking, actions to protect the types of deep sea areas subject to the monument designation, using public transparent processes prescribed in detail by law.¹⁶

The council process provides a series of major important benefits totally absent from the monument designation process. First, as noted directly above, for instance, the council process is, by law, open and transparent. The Mid-Atlantic deep sea coral protection areas represent just how cooperative such public management processes can be. In fact, some of the same organizations advocating for these monuments praised the Mid-Atlantic Council's collaborative action. Second, the MSA requires decisions to be made based on the best scientific information available. In complete and total contrast, the monument ultimately designated in the Atlantic was largely the

¹³ 16 U.S.C. § 431 (emphasis added).

¹⁴ 545 U.S. 75, 103 (2005).

¹⁵ See *United States v. California*, 436 U.S. 32 (1978); see also Restatement (Third) of the Foreign Relations Law of the United States § 512 (1987) ("...the coastal state has the same sovereignty over its territorial sea, and over the air space, sea-bed, and subsoil thereof, as it has in respect of its land territory").

¹⁶ See generally 16 U.S.C. §§ 1852-1853.

Christina W. Goldfuss, Managing Director
September 14, 2016
Page Five

result of a series of political compromises layered with a thin veneer of public outreach. Significantly, courts invalidate management actions made under the MSA that are the result of such political compromise rather than the product of the best scientific information available.¹⁷

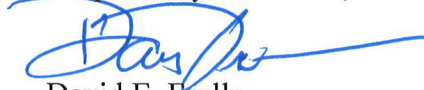
III. THE PROPOSAL IS NOT NARROWLY TAILORED AS REQUIRED UNDER THE ANTIQUITIES ACT

The Antiquities Act requires the limits of national monuments to be “confined to the smallest area compatible with proper care and management of the objects to be protected.”¹⁸ As we understand it,¹⁹ however, the proposal for a monument designation in the Northwest Atlantic canyons is not narrowly tailored to achieve its objectives. Unlike the deliberative, scientifically-based fishery management council activities to protect habitat based on the presence of or suitability for corals, a restricted fishing area based solely on geographic location and depth contour is neither narrowly tailored, nor practically defensible.

* * * * *

In conclusion, we urge you to reconsider the White House’s position on designating a marine monument in the Northwest Atlantic. Such a designation by an imperial stroke of the pen would be contrary to controlling law and principles of sound fisheries management.

Respectfully submitted,



David E. Frulla

Andrew E. Minkiewicz

Anne E. Hawkins

¹⁷ See *Parravano v. Babbitt*, 837 F. Supp. 1034, 1047 (N.D. Cal. 1993) (“...the purpose of the Magnuson Act is to ensure that such compromise decisions are adequately explained and based on the best scientific evidence available—and not simply a matter of political compromise”); see also *Midwater Trawlers Co-op. v. Dept. of Commerce*, 282 F. 3d 710, 720-21 (9th Cir. 2002) (stating that while the National Marine Fisheries Service’s allocation of Pacific whiting between tribes and industry groups “may well be eminently fair, the Act requires that it be founded on science and law, not pure diplomacy”).

¹⁸ 16 U.S.C. § 431.

¹⁹ Significantly, there has been no proposed monument designation that in any way would resemble a notice of proposed rulemaking under the Administrative Procedure Act, 5 U.S.C. §§ 553(b). Rather, the monument designation process has more resembled a shadow-boxing exercise, largely best characterized as an *ad hoc* combination of media events, hastily-arranged “stakeholder” sessions, and often secretive bargaining. This is no way to administer a public resource in a democracy.

MATARONAS LOBSTER CO., INC.

Gary S. Mataronas, President

22 CALIFORNIA ROAD

LITTLE COMPTON, R.I.

02837 – 1010

(401) 635-2143

August 10, 2016

To the US Congress & US Senate

Dear Congressmen & Senators,

I have been an Offshore Lobsterman for forty-three years and have been involved with the planning of the management and conservation plan for AREA 3 since 1990. I have owned and operated three different offshore lobster boats in that time.

I am vehemently opposed, along with other fishers, to blatantly designating a Marine Monument for the offshore canyons through the Antiquities Act with no public input from the users of these canyon areas.

I have fished in the offshore canyons (Veatch, Block, & Atlantis) since 1973. I lobster in that area with several other lobstermen and we have held that bottom from other lobstermen, draggers, (foreign & domestic), & scallopers. Most lobstermen do the same thing in the canyons as there is just a sliver of area where jonah crab, lobster, and red crab are found. These depths range anywhere from 100 meters to 900 meters. If any lobster boats are displaced from the designated area, they will move their gear to the Gulf of Maine and create gear conflicts with lobstermen in that area and create more interactions with whales which inhabit the Gulf. If these lobster boats move to the south, instead, they will also create gear conflicts with lobstermen there and put more pressure on an already stressed Area 3 Southern New England lobster resource.

I want to make it clear there is a significant amount of gear fishing in these designated areas and it will be near impossible to move gear anywhere else, never mind the negative financial impact it will have. I, along with many other offshore canyon fishers I have spoken with, have never had any interaction with offshore coral. As was stated by many environmentalist and scientist, the coral in the designated area is pristine, so it bewilders me why

we should be shut out off from these areas after lobstering there for over forty-three years.

I would implore you to allow public input in the process along with NOAA, NMFS, and ASMFC and at the very least move the inside boundary of the designated area outside of 900 meters.

Sincerely,

Gary Mataronas
F/V Edna May

Gary Mataronas Jr
F/V Night Prowler

James Mataronas
F/V Sakonnet Lobster

Peter Brown

PO Box 1953
North Falmouth, MA 02556

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pbrown721@comcast.net

August 25, 2016

President Obama
The White House
Washington, DC

Subject: Marine National Monuments

Dear Mr. President,

PLEASE DON'T DO THIS.

Please don't take my livelihood away from me.

Mr. President, I am second generation offshore lobsterman. We fish from Munson Canyon to the Hague Line along the self between 60 to 275 fathoms depending on the season. Ninety percent of my lobstering is done in the area that is being considered to become a National Monument. I have been fishing the continental shelf and canyons for 40 years. I followed in my Dad's footsteps when I was a young man. My father, Bob Brown of "The Perfect Storm" fame, was one of the pioneers in the offshore lobstering fishery. I worked for Dad till I was 26 and went out on my own. When I was 29, I had my current boat built, the "Rachel Leah". This is my only boat, and my only source of income. The Rachel Leah has a crew of 5 guys. Most of the guys have wives or girlfriends and children. They head out for 6-8 days at a time, two of those days are to get to there and return. It's a long way offshore, but that's where we fish. Lobstermen are a proud, hard working people and just want a chance to make a honest living.

I have made a huge investment in this fishery with the knowledge that I would be able to fish in the area that I have been. Just my boat and the lobster gear represent over a three million dollar investment. A boat and her permit are valued by the area where that boat fishes. If we were to lose "our " area the value of my business would be drastically reduced to the point I couldn't afford to sell it. I run my boat as a real business and try to keep the boat up as well as possible. We all know that any boat is expensive to keep up. I am proud to have been able to make it in this tough business, We have faced so many challenges and continue to face new ones all the time. However this challenge is different, it is not about gear conflicts, overfishing, regulations or the weather. I'm really not sure what this is about but I know it could put me out of business, with just your signature.

Please don't put us out of business.

Mr. President, All lobstermen need a home or as we say "bottom" to fish. Without it all you have is a boat and a bunch of traps. We, as lobsterman, earn our bottom. When a new guy comes into an area that is already being fished by established boats he must be careful. Only taking the sets that they don't want or fishing above or below them with permission. It takes years for a new boat to move into an area like that. Or It takes buying one of the established boats to get in. I wanted to tell you this because, if I am forced to move out my area , I will be that new guy. Being forced out of "my" area it will be disastrous to me and my family, my business, to my crew and

their family. I don't want to move, I have an established area that I have been fishing for 40 years.

Please don't make us move.

I feel that I have been a great caretaker of the "bottom" we fish. Lobstermen are like farmers, careful not to plant their crops too closely. We set our trawls perpendicular to the contour and over 1/3 of a mile apart. The entire continental shelf is set with lobster gear like that. I feel we have held the bottom responsibly and by doing so have created a good fishery. Obviously, we are there to make money but we have always looked to the future and resisted overfishing our area. My boat can fish 52 trawls of lobster traps. Each trawl has 35 traps and spans 1 NM on the bottom. The area my boat fishes spans 60 miles along the shelf. I fish along side 3 other boats as well. You see, each lobster boat has a lot of fishing presence. All that lobster gear stays out year round as well. So if 8 or 9 lobster boats are displaced (as projected) that would be an incredible amount of gear with no place to put it. Other boats may feel bad for us but they won't just let us on their bottom. It will be a war out there. We also could not move on to what's known as a Dragger bottom. They will not stand for that and our traps will not be there for long. The Ocean is actually a very small place because there is so much of it that is already closed off to one fishery or another.

Deep Water Coral, let's talk about it. We are not destroying deep water coral, at all. This kind of coral is not like a shallow coral reef teeming with life. These corals are found very sporadically with some life around them but not much. Then there are vast areas of nothing between them. I think we have to remember how deep these corals are and that it takes a submersible with a strong light to even see them. Not that they should be destroyed recklessly but I think it shows well for the lobster fishing that they are still there. We don't fish deeper than 275 fathoms because there is a natural boundary there. If we go to deep we run into red crabs which we don't want, so I know that we will not continue to explore deeper than that. I have seen a publication put out by CLF and it is extremely exaggerated. Remember that these environmental groups have nothing to lose in proposing anything. They will still have a job no matter if a Marine National Monument is signed or not. Please carefully check into what these groups are telling you.

Please call me. I feel I could be helpful

Mr. President, The area we fish produces some of the best, most desirable lobsters in the fishery. The lobsters on average are bigger and stronger than in most other areas, so people want them. These lobsters are shipped all over our country and the world. If we were to be forced out of this area, it would damage a portion of the lobster market that could not be replaced. Which leads me to another issue, loss of jobs. I know you don't want to put hard working people out of work. But that is exactly what will happen if a National Monument is proclaimed. This will have a direct and ripple effect thru out every business associated with the fishing industry. The direct affect will be some boats will go out of business and others will suffer a dramatic loss of income. Which means loss of jobs. The companies that will feel the ripple effect are ones that provide, fuel, bait, rope, traps, fishing supplies, boat repairs, insurance, banking, trucking, lobster marketing, and groceries. All of these industries will be affected and will lose revenue. Which means loss of jobs. My business alone gives jobs to 10 people. Jobs lost are never a good thing for anyone. There is too much burden on the government already.

Please let us continue to work and provide the best lobster in the world

If you feel a National Monument is necessary in this area, please consider making it 300 fathoms and deeper. That is where most of the coral is anyway. The proposal I have heard of for the Monument closes off way too much bottom in an already crowded ocean. Coral is already being protected thru the normal government agencies. I think it would be ill advised to use the Antiquities Act in this way. I know you are a good and wise leader and you want to have a win-

win situation with proclaiming a National Monument, however this would not be that situation. The upheaval will be devastating and the ripple effect will be felt everywhere. This isn't like protecting a landmark or a pristine forest for lots of people to enjoy. This is an area offshore 200 miles in the Ocean where most people will never see but an area where fishermen have been making a living for decades. Please carefully consider our fate before signing any Marine National Monument proposal.

Sincerely yours,

Peter Brown, commercial offshore lobsterman



Palombo Fishing Corp.

f/v Endeavour
f/v Freedom
f/v Timothy Michael

221 Third Street Newport, RI 02840
Tel (401) 848-8118 Fax (401) 847-9966

September 12, 2016

President Barack Obama
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

Dear Mr. President,

Below is a picture of my offshore lobster boat, the f/v Freedom, steaming by the brand new USS Destroyer Zumwalt in Narragansett Bay, this past Saturday afternoon. The USS Zumwalt couldn't inflict any more needless damage to my freedom, fishing boat and fishing operation, than you are about to do this coming week with a stroke of your pen.



I am told that you are about to designate a Marine Monument in the Atlantic Ocean Canyons and Seamount area in depths of less than 900 meters. There are no immediate or documented threats to these areas less than 900 meters, which would warrant the use of the unilateral Presidential authority encompassed in the Antiquities Act. This Congressional Act was authored in 1906,



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long before the movement to promote open government. I urge you to not supersede the transparent, public processes currently underway in New England to protect Atlantic Ocean habitat and coral.

Despite the claims of proponents: the Conservation Law Foundation; the Natural Resources Defense Council; Oceana and the Pew Foundation, there are no imminent threats to the habitat and coral in these areas that require expedient action by your Administration. There are no active proposals for oil, gas, or mineral exploration, nor could there be such activity without years of environmental impact assessment and permitting review.

Further, multiple fisheries, including the Red Crab Fishery which is certified by the Marine Stewardship Council, have fished in these canyon areas for decades with such little habitat impact that monument proponents themselves, call these areas “**PRISTINE**”, despite 40+ years of fishing activity. Importantly, most Atlantic corals are in waters deeper than the areas fished (see NOAA’s Deep-Sea Coral Database)

Despite the fears expressed by the environmental groups that Lobstermen will eventually fish deeper than 600 meters, it will not happen, even if the technology was available, which it isn’t, because Lobster does not reside at these deeper depths.

It seems like, you are now at a decision making point and an announcement is eminent, therefore I urge you to listen to what industry has recommended to the Council for Environmental Quality and have the White House Staff modify the proposal to incorporate what industry representatives have recommended to CEQ which is to start the area at a depth of 450 meters. In other words 450 meters and deeper would be the monument area. If you take this recommendation, this becomes a win/win, for the environmentalists and the fishing industry.

The f/v Freedom’s Captain, Marc Ducharme, has personally fished for 25+ years with 100% of his lobster Traps in the three canyons: Oceanographer’s; Lydonia’s and Gilbert’s, for 100% of the year. In his lifetime, he has probably hauled 47,500 traps per year for twenty five plus years or a total of over one million hauls. And the area is still considered “PRISTINE” by the very groups that want to throw us out of our traditional fishing grounds.

Please don’t take my freedom away, either from me, the boats Captain or Crew.

Sincerely,

William Palombo
President,
Palombo Fishing, Corp.



Palombo Fishing Corp.

f/v Endeavour
f/v Freedom
f/v Timothy Michael

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CC:

Christy Goldfuss, White House CEQ
Whitley Saumweber, White House CEQ
Senator Susan Collins
Senator Angus King
Congresswoman Chellie Pingree
Congressman Bruce Poliquin
Senator Jeanne Shaheen
Senator Kelly Ayotte
Congressman Frank Guinta
Senator Elizabeth Warren
Senator Ed Markey
Congressman Bill Keating
Congressman Seth Moulton
Senator Jack Reed
Congressman Stephen Lynch
Senator Sheldon Whitehouse
Congressman David Cicilline
Congressman James Langevin
Senator Robert Menendez
Senator Cory Booker
Congressman Frank LoBiondo
John Bullard, NOAA NMFS GARFO
Robert Beal, ASMFC
Thomas Nies, NEFMC
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