

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

PATRICK FEHILY and DAVID T.
MALLEY,

Plaintiffs,

v.

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

Defendants.

No. _____

**Complaint for Declaratory
and Injunctive Relief**

Jonathan Houghton, Pacific Legal Foundation, 3100 Clarendon
Blvd., Suite 610, Arlington, VA 22201, for Plaintiffs.

Plaintiffs Patrick Fehily and David T. Malley, by their attorney,
Jonathan Houghton of Pacific Legal Foundation, allege the following:

INTRODUCTION

1. Plaintiffs Patrick Fehily and David T. Malley bring this action
challenging the Presidential Proclamation of Defendant Joseph R. Biden,

Jr., designating the Northeast Canyons and Seamounts Marine National Monument under the Antiquities Act of 1906 (“Antiquities Act or Act”). See Presidential Proclamation No. 10287, 86 Fed. Reg. 57,349 (Oct. 8, 2021).

2. Plaintiffs Mr. Fehily and Mr. Malley are commercial fishermen who earn their living through the Atlantic Ocean’s fisheries. Both have invested heavily in commercial fishing vessels and permits that allow them to ply their trade in the waters of the Atlantic Ocean.

3. Mr. Fehily started working on a fishing vessel in high school and has developed a deep appreciation for the fishing profession. After working in the industry for several years, he bought his own vessels and now owns four boats that currently fish for scallops, tuna, and swordfish.

4. Mr. Malley has worked in the fishing industry for over 50 years and recently bought his own fishing vessel to supplement his income during retirement. In doing so, he has spent hundreds of thousands of dollars preparing his vessel to be able to fish for tuna and swordfish in the Atlantic.

5. But on October 8, 2021, the President issued Proclamation 10287 designating the Northeast Canyons and Seamounts Marine

National Monument (“Monument Designation”) under the Antiquities Act, closing off a vast area of the Atlantic Ocean to commercial fishing and threatening these fishermen’s way of life.

6. Proclamation 10287 declares as a national monument approximately 5,000 square miles (3.2 million acres) of the Atlantic Ocean’s “Exclusive Economic Zone” (EEZ)—an ocean belt beyond the territorial seas between 12 and 200 nautical miles off the Nation’s coasts.

7. Proclamation 10287 includes not only physical canyons and seamounts as part of the Monument Designation, but also cites “ecosystems” and “biodiversity” within them as protectable “objects of historic or scientific interest” under the Act.

8. The Proclamation also bans or phases out commercial fishing within the Monument Designation’s waters—waters that have been an important commercial fishery for decades—preventing fishermen like Mr. Fehily and Mr. Malley from using the fishery’s resources within the designated area to practice their trade.

9. Proclamation 10287 exceeds the President’s authority under the Antiquities Act and violates the Constitution’s Separation of Powers.

10. First, the Act delegates the President limited authority to designate national monuments on “land” owned or controlled by the Federal Government. 54 U.S.C. § 320301(a). But Proclamation 10287 designates a national monument in an area of the Atlantic Ocean that is not on “land” under the Act. When Congress enacted the Antiquities Act in 1906, an ocean’s seabed or floor was not understood to be “land” as that term is used within the statute.

11. Second, the Act also limits the President’s authority to declare national monuments on lands “owned or controlled by the Federal Government.” *Id.* Yet the portion of the Atlantic Ocean within the EEZ is not “owned or controlled by the Federal Government” under the Act’s ordinary meaning. The Federal Government enjoys limited authority to regulate within the EEZ, which does not constitute “control” under the Act.

12. Third, the President may only designate as national monuments “historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest[.]” *Id.* But “ecosystems” and the “biodiversity” contained within them are not “objects” that he can designate as, or as part of, a national monument. The Act’s language,

“objects of historic or scientific interest,” follows “historic landmarks” and “historic and prehistoric structures.” This language’s ordinary meaning shows that Congress sought to protect discrete physical “objects of antiquity”—not amorphous ecosystems or the biodiversity within them.

13. Fourth, the Act also delegates to the President authority to reserve “parcels of land” as part of a national monument but limits that authority by mandating that the reserved land “shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.” *Id.* § 320301(b). Because “ecosystems” and the “biodiversity” contained within them are not “objects” protectable under the Antiquities Act, the Monument Designation’s area is not “confined to the smallest area compatible with the proper care and management of the objects to be protected.” Once these unprotectable objects are excised from the Monument Designation, the Proclamation’s designation of a national monument encapsulating vast areas of the Atlantic Ocean’s seabed or floor—outside the designated physical canyons and seamounts—is ultra vires. The Proclamation is also ultra vires because it offers conclusory factual justifications for the Monument Designation’s size based on the “ecosystems” to be protected.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.