



CITY OF NEW BEDFORD
JONATHAN F. MITCHELL, MAYOR

October 2, 2023

Chairman Bruce Westerman
House Committee on Natural Resources
1324 Longworth House Office Building
Washington, D.C. 20515

Chairman Paul Gosar
Subcommittee on Oversight and Investigations
House Committee on Natural Resources
1324 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Westerman and Subcommittee Chairman Gosar:

Thank you for this opportunity to submit testimony in conjunction with the Subcommittee on Oversight & Investigation's hearing entitled "Examining Barriers to Access in Federal Waters: A Closer Look at the Marine Sanctuary and Monument System."

The management of marine fisheries in federal waters within the Northeast Canyons and Seamounts Marine National Monument is a matter of vital importance to the Port of New Bedford, Massachusetts—America's top-valued commercial fishing port.

As Mayor of the City of New Bedford and the Chairman of the New Bedford Port Authority, I have followed closely the Marine Sanctuary and Monuments policy discussion since the proposal for a Northeast Canyons and Seamounts Marine National Monument first came to light in 2016; and I have shared my views with a broad array of federal entities including the White House Council on Environmental Quality, NOAA Fisheries, and Congress.

As the Subcommittee undertakes its assessment of federal policy in this area, I encourage members to take into account the unique role that New Bedford plays nationally in commercial fishing. Our harbor serves not only the needs of the vessels that call New Bedford their home port, but also the needs of numerous East Coast vessels from North Carolina to Maine which land their catch in our port at different times during each fishing season. The proper management of our nation's marine fisheries is therefore crucial to the vitality of our port and our local and regional economy, but also to the nation, as we service the needs of an industry whose vessels operate up and down nearly the entirety of the East Coast.

The position of the Port and City of New Bedford has been consistent since 2016. We maintain that marine fisheries in federal waters everywhere, including in national monuments, should be managed under the Magnuson-Stevens Fishery and Conservation Management Act (MSA), the 169-page long legal instrument that governs marine fisheries management in U.S. federal waters. Originally enacted in 1976, the MSA has been amended and improved by several Congresses in its nearly 50-year history and is considered by many worldwide to be the "gold standard" for fisheries management.

The MSA and its accompanying ten National Standards establish specific requirements for the eight regional Fishery Management Councils. These requirements compel the Councils to address several key objectives, which include preventing overfishing, facilitating the recovery of overfished stocks, promoting the sustainability of fisheries and the communities dependent on them, enhancing safety at sea, and ensuring the long-term socio-economic benefits for both commercial and recreational fisheries, as well as the entire nation.

The MSA emphasizes that the management process should adhere to principles of openness, transparency, and robustness. It relies on scientific input and fosters collaboration with fisheries and various stakeholders while allowing for extensive public engagement and input. Importantly, the MSA does allow for regulatory adaptability in response to changing circumstances, including the challenges posed by climate change.

In contrast, the Antiquities Act of 1906 (AA) is a single page. Section 2 of this Act grants the President of the United States the authority to publicly proclaim historic landmarks, historic and prehistoric structures, and other objects of historic or scientific significance situated on government-owned or controlled lands, as national monuments. The President is also empowered to set aside portions of land within these monuments, with the caveat that the boundaries must be limited to the smallest area necessary for the proper preservation and management of the protected objects.

Notably, the Antiquities Act does not impose a requirement on the President to create an evidentiary record or follow specific procedures and analyses akin to those mandated by the Administrative Procedures Act (APA), National Environmental Policy Act (NEPA), and others, including the Magnuson-Stevens Act (MSA).

The following side-by-side comparison of how the Antiquities Act and the Magnuson-Stevens Act were applied to the waters comprising the Northeast Canyons and Seamounts Marine National Monument are illuminating and provide a clear example of why the Antiquities Act pales in comparison to the MSA in appropriateness for the management of marine fisheries.

Management by Antiquities Act

On September 16, 2016, the President employed the Antiquities Act to establish the Northeast Canyons and Seamounts Marine National Monument (Monument) in the Atlantic Ocean, located to the southeast of New England. The process for creating this Monument commenced on September 15, 2015, with a "town hall" meeting held in Providence, RI. Notably, this was the sole public meeting on the matter at that time. During this initial meeting, the Monument was merely a conceptual idea, devoid of any defined shape, structure, or specifics. Consequently, providing specific or informative feedback was challenging at best. Attendees at the meeting, representing a wide range of interested parties, were allotted a brief two-minute window to deliver oral comments, despite the meeting lasting two hours.

Following this event, the Council on Environmental Quality (CEQ) organized only a few smaller meetings, which still lacked essential geographic, spatial, or temporal data and details.

On August 8, 2016, a proposal was presented to the public, comprising solely a picture of the area under consideration and location information. Once again, the lack of detailed information hindered public input, and the details of the evidentiary record and analysis remained undisclosed.

A mere thirty-nine days later, the Monument was officially designated. The entire process, from inception to proclamation, spanned one year and one day. The Monument encompasses two distinct areas, totaling 4,914 square miles, with numerous

Management by Magnuson-Stevens Act

Under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), in late 2015, the New England Fishery Management Council (NEFMC) initiated a comprehensive effort to develop a discretionary, non-mandatory measure aimed at safeguarding fragile deep-sea ecosystems, including corals and their habitats.

This extensive undertaking spanned nearly four years and encompassed numerous public Council meetings, committee sessions, advisory panel gatherings, and plan development team meetings. It also involved in-depth scientific and socio-economic analyses, incorporating procedures such as the National Environmental Policy Act (NEPA) and adhering to the MSA and its ten National Standards. Ultimately, this effort resulted in the approval of the Omnibus Deep-Sea Coral Amendment for submission to the National Oceanic and Atmospheric Administration (NOAA) for final review and approval.

The Amendment itself comprises 566 pages along with eight appendices, providing a thorough justification for designating an area spanning 25,153 square miles for the protection of vulnerable deep-sea ecosystems, including corals. Importantly, the Amendment also considered both the intended and unintended consequences for various stakeholders. A "freeze the footprint" approach was adopted, preserving access to historical fishing grounds for fishermen, thereby sustaining socio-economic benefits for the entire nation.

On July 26, 2021, the Omnibus Deep-Sea Coral Amendment came into effect.

restrictions imposed on extractive activities, including mining and oil/gas operations.

Moreover, commercial fishing of any kind, apart from a temporary exemption for lobster/crab pot fishing (which has since expired), is prohibited within the Monument. Nevertheless, recreational fishing remains permitted, even extending to Highly Migratory Species fisheries like tuna, where recreational fishermen can use gear identical to that used in commercial fishing.

In addition to the prohibitions outlined in the declaration, a management plan for the Monument was supposed to be collaboratively developed by the Departments of Interior and Commerce within three years of its establishment. However, seven years later, draft management guidance is only now beginning to surface.

The Magnuson-Stevens Act has been developed for the express purpose of managing marine fisheries. The Antiquities Act was passed to give President Theodore Roosevelt the authority to protect American Indian artifacts.

As is evident from a comparison of the texts of the MSA and the AA, and by the comparison of the restrictions included in the Northeast Canyons and Seamounts Marine National Monument waters, the Antiquities Act is simply inadequate for the proper management of marine fisheries.

The fishery management amendments described above which were created under the MSA protected approximately 88% of the sea bottom, canyons, and sea mounts currently in the monument area. The remaining 12% is the historic fishing grounds of the offshore lobster and red crab fisheries. These fisheries have been operating in this area for over 50 years, and yet these areas are asserted to be “pristine” by the advocates of protections within the monument area.

Commercial fishing in the water column above the seamounts and canyons was historically regulated under the MSA provisions covering highly-migratory species such as swordfish and tuna. The management of these species has been successfully implemented by NOAA Fisheries until Presidential actions under the Antiquities Act imposed a ban on commercial fishing.

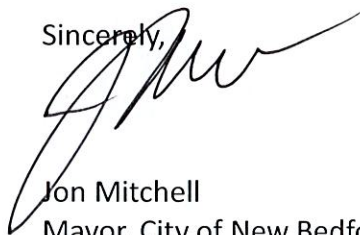
The commercial fishing ban creates a number of difficulties for affected fisheries:

- In years when highly migratory species such as swordfish and tuna are traversing the monument region, our longline fishermen are likely to be unable to harvest their internationally-negotiated quotas.
- Harvesters targeting quid, butterfish, and other fisheries are forced to travel for hours across the monument unable to fish until they exit the far side of the monument passing schools of these species that they can easily see in the monument waters. This wastes time and fuel, and unnecessarily increases their carbon footprint.
- Although the Atlantic scallop industry – the most valuable federally-managed wild-caught fishery in the nation – does not operate in the Northeast Canyons and Seamounts Marine National Monument, the commercial fishing ban is moving the offshore lobster industry from the region and leaving them nowhere to go except onto scallop grounds, creating a potential for conflict between fisheries.
- The Atlantic red crab industry, which is sustainable and has brought an underutilized species to market, relieving pressure on over-exploited species can no longer harvest in areas where they have successfully harvested for decades.

For all these reasons, I remain convinced that fisheries management under existing Magnuson-Stevens authority, is the most sensible approach to managing fishing activity within the Northeast Canyons and Seamounts Marine National Monument.

Thank you again for your consideration of this important issue.

Sincerely,



Jon Mitchell
Mayor, City of New Bedford
Chairman, New Bedford Port Authority