

THE UNITED STATES' AUTHORITY OVER THE NORTHEAST CANYONS AND SEAMOUNTS NATIONAL MONUMENT AND THE STATUS OF THE EXCLUSIVE ECONOMIC ZONE UNDER INTERNATIONAL AND U.S. LAW

The Northeast Canyons and Seamounts Marine National Monument is a nearly 5,000-square mile area approximately 130 miles from the New England coast. It falls within the U.S. “Exclusive Economic Zone” and was designated as a national monument by President Obama on the basis that it contains “objects of scientific and historic interest that are situated upon lands owned or controlled by the Federal Government.”¹

A lawsuit brought by the Massachusetts Lobstermen’s Association *et al.* challenges the designation of this monument, arguing, among other things, that the President exceeded his authority under U.S. law because this area is not “controlled” by the United States. President Trump has ordered a review of this and other monuments.² Our client, National Parks Conservation Association, has asked us to analyze that issue, both as it applies to all marine national monuments but particularly as it applies to the Northeast Canyons and Seamounts Marine National Monument. This Memorandum does not address the scope of the authority of the President under the Antiquities Act, which we have addressed elsewhere.

ANALYSIS

I. The Exclusive Economic Zone under International Law

A. Origins of the Exclusive Economic Zone

The legal concept of the exclusive economic zone (EEZ) is a relatively recent one. In the decades (and centuries) before its development, the law of the sea was largely comprised of customary international law principles, or legal principles based on the practice of States.³ It largely emphasized the freedom of the seas and the freedom of navigation. During the twentieth century, however, as the technological capacity of States to navigate, transit, and fish the seas became more advanced, the international community resolved to codify a set of principles to govern their interactions and use of

¹ Northeast Canyons and Seamounts Marine National Monument, Proclamation 9496, 81 Fed. Reg. 65163 (Sept. 21, 2016).

² See Executive Order 13792, *Presidential Executive Order on the Review of Designations Under the Antiquities Act* (Apr. 26, 2017); see also Executive Order 13795, *Implementing an America-First Offshore Energy Strategy* (Apr. 28, 2017)..

³ See Barbara Bean, *Law of the Sea*, AM. SOC’Y INT’L L. ELECTRONIC RESOURCE GUIDE, at 4 (updated Apr. 27, 2015), https://www.asil.org/sites/default/files/ERG_LOS.pdf.

resources.⁴ This culminated in the First United Nations Conference on the Law of the Sea in 1958, which produced four conventions on the law of the sea (also known as the 1958 Geneva Conventions on the Law of the Sea).⁵ These conventions regulated three critical zones—the territorial sea and contiguous zone, the continental shelf, and the high seas—as well as the rights and responsibilities of States in exploiting and preserving living resources in the high seas.⁶

Despite the codification of a number of important principles, the 1958 Geneva Conventions did not inspire broad-based support because the international community changed dramatically in subsequent years. The number of independent States doubled, with many of these newly created States (such as those emerging from colonial regimes) distrustful of a number of the international rules and norms suddenly imposed upon them. As a result, many were reluctant to join and ratify the 1958 Geneva Conventions and expressed support for new ideas such as expanded economic rights in areas beyond the territorial sea. At the same time, concern about the preservation of the marine environment also gained traction.⁷ Following an unsuccessful Second U.N. Conference on the Law of the Sea in 1960,⁸ the U.N. General Assembly therefore called for a third conference by a 1970 resolution.⁹

The Third U.N. Conference on the Law of the Sea took place from 1973 to 1982. It resulted in the United Nations Convention on the Law of the Sea (UNCLOS), which is the authoritative statement of the international law of the sea and which established the regime of the EEZ.

B. The Regime of the Exclusive Economic Zone

1. *Maritime Zones under the U.N. Convention*

UNCLOS establishes four maritime zones for coastal States: the territorial sea, the contiguous zone, the exclusive economic zone, and the continental shelf. Each is governed by a specific set of rules, which vest the coastal State with certain rights and responsibilities within each zone. It is not important for these purposes to describe each zone in detail. The following image depicts these zones and the area beyond these zones, known as the high seas.¹⁰

⁴ *See id.*

⁵ *See* Tullio Treves, *Introductory Note*, 1958 Geneva Conventions on the Law of the Sea, <http://legal.un.org/avl/ha/gclos/gclos.html>.

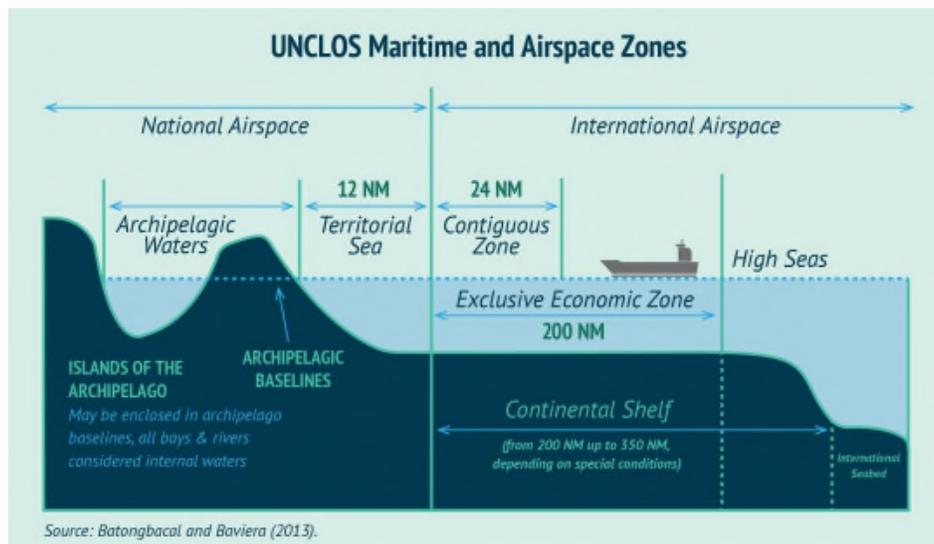
⁶ *See id.*

⁷ *See id.*

⁸ U.N. Diplomatic Conf., *Second United Nations Conference on the Law of the Sea, 1960*, <http://legal.un.org/diplomaticconferences/lawofthesea-1960/lawofthesea-1960.html>.

⁹ U.N. G.A. Res. 2750 (XXV) (Dec. 17, 1970).

¹⁰ *Arbitration 101: Philippines v. China*, Asia Maritime Transparency Initiative (Jan. 21, 2015), <https://amti.csis.org/arbitration-101-philippines-v-china/>.



2. *The Exclusive Economic Zone under the U.N. Convention*

Part V of UNCLOS (Articles 55-75) addresses the EEZ. It can be traced to a growing movement amongst coastal States to establish a zone extending beyond the territorial sea in which the coastal State could benefit from exclusive fishing rights.¹¹ The United States initially opposed the proposal for such a zone at the Second U.N. Conference, but ultimately supported the establishment of the EEZ.¹²

Pursuant to Articles 55 and 57 of UNCLOS, the EEZ is “an area beyond and adjacent to the territorial sea,” which “shall not extend beyond 200 nautical miles from” the coastal baselines, and which is “subject to the specific legal regime established in this Part.”¹³ This area includes the seabed, subsoil, and the water column (namely all water above the seabed).¹⁴ According to Article 56, the coastal State has the following rights in the EEZ:

- (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the

¹¹ See Tommy T.B. Koh, *The Exclusive Economic Zone*, 30 MALAYA L. REV. 1, 1-2 (1988). There is extensive evidence supporting the development of this norm, including international instruments like the 1970 Montevideo Declaration on the Law of the Sea, the 1970 Declaration of the Latin American States on the Law of the sea, and the 1972 Declaration of Santo Domingo.

¹² *Id.* at 2-3.

¹³ UNCLOS, arts. 55, 57.

¹⁴ National Oceanic and Atmospheric Administration, *Maritime Zones and Boundaries*, http://www.gc.noaa.gov/gcil_maritime.html (defining “superjacent waters” as the entire “water column” above the seabed).

economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;

(b) jurisdiction as provided for in the relevant provisions of this Convention with regard to:

(i) the establishment and use of artificial islands, installations and structures;

(ii) marine scientific research;

(iii) the protection and preservation of the marine environment;

(c) other rights and duties provided for in this Convention.¹⁵

This complex regime is summarized as follows:

<u>Type of Right</u>	<u>Issue Area</u>	<u>Right</u>
Sovereign Right	Living Resources	<ul style="list-style-type: none"> ➤ Prohibit, limit, and regulate the exploitation of marine mammals ➤ Determine the allowable catch of living resources (where the coastal State does not have the capacity to harvest the allowable catch, it shall give other States access to the surplus) ➤ Cooperate with other States with respect to highly migratory species in the region ➤ Enforce the laws and regulations in these areas, including through measures such as boarding, inspection, arrest, and judicial proceedings
Duty	Living Resources	<ul style="list-style-type: none"> ➤ Ensure the maintenance of living resources through proper conservation and management measures ➤ Promote the objective of optimum utilization of the living resources
Sovereign Right	Non-Living Resources	<ul style="list-style-type: none"> ➤ Produce and manage the production of energy from the water, currents, and winds
Jurisdiction	Living and Non-Living Resources	<ul style="list-style-type: none"> ➤ Construct, authorize, and regulate artificial islands, installations, and structures for the purpose of exploiting, managing, etc. all living and non-living resources
Jurisdiction	Living and Non-Living Resources	<ul style="list-style-type: none"> ➤ Regulate, authorize and conduct marine scientific research ➤ Reject requests to conduct marine scientific research if the research relates to the exploitation of resources, involves drilling or the construction of artificial islands or structures

¹⁵ UNCLOS, art. 56.

At the same time, States other than the coastal State have certain rights in the EEZ.¹⁶ These include certain of the general rights belonging to all States on the high seas, which is the area that includes “all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State.”¹⁷ Within the EEZ, other States have the right to:

- (a) freedom of navigation;
- (b) freedom of overflight;
- (c) freedom to lay submarine cables and pipelines, subject to Part VI.¹⁸

Other rights of non-coastal States provided for in the Convention are also applicable to the extent that they are not incompatible with the specific provisions governing the EEZ.¹⁹

In sum, UNCLOS establishes a legal regime whereby coastal States have wide array of rights—an accompanying responsibilities—in the EEZ.

3. *The Legal Status of the Regime*

Before proceeding to an analysis of the application of these principles to the issues at hand, it is helpful to first address the legal character of these norms. Two of the key sources of international law are treaty law and customary international law.²⁰ Treaty law is comprised of the principles codified in treaties, which are defined as written agreements between States governed by international law.²¹ Rules of treaty law are only binding upon the States that ratify or accede to the treaty in question. Customary international law, by contrast, is comprised of rules of international law developed from State practice.²² An example of a customary international law norm is the prohibition on the use of force. Unlike provisions of treaties, rules of customary international law are binding on all States in the international community.²³

The U.N. Convention is a treaty, the rules of which are only binding on States that have ratified the Convention. However, there are circumstances in which certain treaty

¹⁶ *See id.* art. 58.

¹⁷ *Id.* art. 86.

¹⁸ *Id.* arts. 58, 87.

¹⁹ *See id.* art. 58.

²⁰ *See* Statute of the International Court of Justice, art. 38.

²¹ *See, e.g.* Vienna Convention on the Law of Treaties, art. 2, Jan. 27, 1980, 1155 U.N.T.S. 331, 333 (hereinafter “Vienna Convention”).

²² North Sea Continental Shelf (Ger. v. Neth.), 1969 I.C.J. 3, 47, para. 77 (hereinafter “North Sea Continental Shelf”) (requiring evidence of widespread and consistent State practice and accompanying *opinio juris sive necessitatis* to recognize a rule of customary international law).

²³ Minor exceptions exist, but are not relevant here.

provisions become binding on all States, including States that have not ratified the treaty. This is the case, for example, for the prohibition against genocide; this is a norm of customary international law binding on all States that is also codified in the Genocide Convention. This situation occurs when either: (a) a treaty codifies rules that were already followed by States as rules of customary international law, or (b) over time, the treaty rules are so ubiquitously followed that they eventually crystallize into rules of customary international law.²⁴ Through both of the processes described above, many key provisions of UNCLOS are now considered to be binding on all States, rather than just those States that have ratified the Convention.

These considerations are relevant to the current analysis because the United States has not ratified UNCLOS, despite its significant involvement in the negotiation of the treaty at the Third U.N. Conference. As a non-party to the Convention, the United States is not bound by its terms. However, certain key elements of UNCLOS, including the regime of the EEZ, have crystallized into rules of customary international law.²⁵ The United States is therefore bound by the legal provisions discussed above governing the EEZ and may acquire rights thereunder.²⁶

²⁴ See Vienna Convention, art. 38; see generally *North Sea Continental Shelf*, 1969 I.C.J. 3, 47, para. 77.

²⁵ See, e.g., *Continental Shelf (Libyan Arab Jamahiriya v. Malta)*, 1985 I.C.J. 13, 33, para. 34 (“It is in the Court’s view incontestable that, apart from those provisions, the institution of the exclusive economic zone, with its rule on entitlement by reason of distance, is shown by the practice of States to have become a part of customary law.”); *United States v. Carvajal*, 924 F. Supp. 2d 219, 234 (D.D.C. 2013) (recognizing the EEZ regime as a part of customary international law); *United States v. Matute*, No. 06-20596-CR, 2013 WL 6384610 (S.D. Fla. Aug. 20, 2013) (recognizing the EEZ regime as a part of customary international law); *United States v. Alaska*, 503 U.S. 569, 588 n.10 (1992) (implicitly affirming that the EEZ provisions of UNCLOS are custom, based on a recognition that the baseline provisions (by which the EEZ is measured) are custom, and directly citing to UNCLOS); RESTATEMENT OF FOREIGN RELATIONS LAW § 514, commentary (confirming that the EEZ regime is a part of customary international law).

²⁶ The United States’ acceptance of these rules of international law is evidenced in a variety of ways. See, e.g., *Mayagüezanos por la Salud y el Ambiente v. United States*, 198 F.3d 297, 305 (1st Cir. 1999) (“The United States has taken the position that the twelve-mile territorial sea and the two-hundred-mile EEZ [established in UNCLOS] are declarative of customary international law”); RESTATEMENT OF FOREIGN RELATIONS LAW § 514 (adopting the UNCLOS definition of the EEZ); *Exclusive Economic Zone of the United States of America*, Proclamation 5030, 97 Stat. 1557, 1557 (Mar. 10, 1983) (“Whereas international law recognizes that, in a zone beyond its territory and adjacent to its territorial sea, known as the Exclusive Economic Zone, a coastal State may assert certain sovereign rights over natural resources and related jurisdiction”); U.S. NAT’L OCEANIC & ATMOSPHERIC ADMIN., *What Is the EEZ?*, <http://oceanservice.noaa.gov/facts/eez.html> (defining the U.S. EEZ according to the provisions of UNCLOS).

C. *Application of International Law to the Present Circumstances*

The Northeast Canyons and Seamounts Marine National Monument is comprised of a nearly 5,000-square mile area within the U.S. EEZ. The question is whether, under international law, the U.S. Government has the authority to effect this designation.

International law, and specifically the regime of the EEZ described above, creates rights and duties for States vis-à-vis other States. To determine whether the U.S. Government was within its international legal rights to make this designation, one must first consider the effect of this designation. According to Proclamation 9496, the U.S. Government has done the following in designating this area as a national monument:

- 1) Undertaken the management of activities and species within the monument;
- 2) Assigned management responsibility to the Secretaries of Commerce and the Interior, and specifically the responsibility to promulgate regulations for the proper care and management of the objects and area;
- 3) Committed to advancing resource protection in the area;
- 4) Prohibited, to the extent consistent with international law:
 - a) the exploration, development, or production of oil, gas, and minerals,
 - b) the use or attempted use of poisons, electrical charges, or explosives in the collection or harvest of a monument resource,
 - c) the introduction of new species,
 - d) the removal, harvesting, disturbing, or damaging of any living or nonliving resource except as allowed in the regulations below,
 - e) drilling into, anchoring, dredging, or otherwise altering the submerged lands,
 - f) the construction or placement of any structure, except for scientific instruments,
 - g) commercial fishing and the possession of commercial fishing instruments in the monument unless stowed during passage;
- 5) Provided for the following activities as regulated by the U.S. government, to the extent consistent with international law:
 - a) Research and scientific exploration,
 - b) Activities to further the educational value of the monument,
 - c) Anchoring scientific instruments,
 - d) Commercial fishing for red crab and American lobster for 7 years,
 - e) Sailing and other activities that do not impact monument resources.²⁷

By its terms, the Proclamation does *not*:

²⁷ See generally Northeast Canyons and Seamounts Marine National Monument, Proclamation 9496, 81 Fed. Reg. 65161, 65164-65 (Sept. 21, 2016).

- 1) Unlawfully restrict navigation, overflight, and other internationally recognized lawful uses of the sea in the monument;
- 2) Apply restrictions against persons who are not citizens, nationals, or resident aliens of the United States (including foreign flag vessels) except in accordance with international law;
- 3) Apply restrictions to foreign warships, naval auxiliaries, or other government vessels owned or operated by a State and used, for the time being, only on government non-commercial service (so as to respect the sovereign immunity of such vessels);
- 4) Restrict the construction or maintenance of submarine cables.²⁸

This list of regulations and restrictions, drawn directly from the text of the Proclamation, demonstrates that the U.S. Government has undertaken a careful and nuanced exercise of its authority, tailored to the applicable legal regime. The U.S. Government has proclaimed its intention to regulate certain activities relating to the exploration, exploitation, conservation and management of the living and non-living resources in the seabed, subsoil, and water column of its EEZ—which it has a sovereign right to do. It has explicitly restricted its authority according to the limits imposed by international law and has provided for the rights of other States, including the freedom of navigation. It is therefore reasonable to conclude that the U.S. Government was within its rights to make this designation under international law.

II. The Exclusive Economic Zone under U.S. Law

A. *The U.S. Legal Regime*

As discussed above, the United States has not ratified UNCLOS and is therefore not bound by its provisions. However, the U.S. is bound by the legal regime of the EEZ as a matter of customary international law and may acquire rights thereunder by proclaiming an EEZ.

Consistent with this legal regime, President Reagan proclaimed a U.S. EEZ on March 10, 1983. Proclamation 5030 establishes the following:

- The U.S. EEZ “is a zone contiguous to the territorial sea” and “extends to a distance 200 nautical miles from the baseline from which the breadth of the territorial sea is measured;”
- Within the EEZ, “the United States has, to the extent permitted by international law, (a) sovereign rights for the purpose of exploring, exploiting, conserving and managing natural resources, both living and non-living, of the seabed and subsoil and the superjacent waters” and

²⁸ See generally *id.*

“(b) jurisdiction with regard to the establishment and use of artificial islands, and installations and structures having economic purposes, and the protection and preservation of the marine environment.”²⁹

The Proclamation also makes clear that “[t]he United States will exercise these sovereign rights and jurisdiction in accordance with the rules of international law.”³⁰

On the same day, the White House issued a “Fact Sheet on United States Oceans Policy.” The Fact Sheet repeatedly emphasizes that the “Proclamation is consistent with existing international law” and affirms the United States’ intention to “act in accordance with international law as reflected in the results of the Law of the Sea Convention.”³¹

In this way, the President adopted (by and large)³² the international law regime of the EEZ, which was subsequently applied by the federal government. For example, the President’s definition of the EEZ contained in the 1983 Proclamation was incorporated in federal legislation. In the Chapters of the U.S. Code relevant to fishery conservation and management as well as shipping rights, the “exclusive economic zone” is defined as “the zone established by Proclamation Numbered 5030, dated March 10, 1983.”³³ The Restatement (Third) of Foreign Relations Law likewise affirms that “[a] coastal State has sovereign rights to the management of natural resources and other economic activities within its Exclusive Economic Zone.”³⁴ Federal agencies like the National Oceanic and Atmospheric Administration also act in accordance with the UNCLOS definition of the EEZ.³⁵

In sum, the U.S. Government declared an EEZ consistent with the legal regime established by the U.N. Convention. The current U.S. EEZ is depicted in the image below.³⁶

²⁹ Exclusive Economic Zone of the United States of America, Proclamation 5030, 97 Stat. 1557, 1557-58 (Mar. 10, 1983).

³⁰ *Id.*

³¹ Fact Sheet, United States Oceans Policy, Off. Press Sec’y (Mar. 10, 1983).

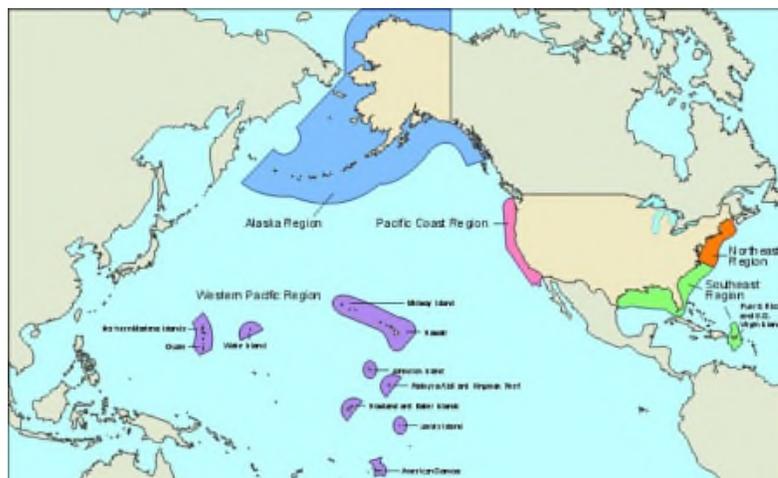
³² President Reagan chose not to “assert jurisdiction over marine scientific research in the U.S. EEZ...consistent with the U.S. interest in promoting maximum freedom for such research.” *Id.* The President did not deny, however, that the United States *could* exercise such jurisdiction.

³³ 16 U.S.C. § 1802(11). Notably, under U.S. law, “the inner boundary of that zone is a line coterminous with the seaward boundary of each of the coastal States.” *Id.*; *see also* 46 U.S.C. § 107.

³⁴ RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 514.

³⁵ *See, e.g.*, U.S. NAT’L OCEANIC & ATMOSPHERIC ADMIN., *U.S. Maritime Limits & Boundaries*, <https://www.nauticalcharts.noaa.gov/csdl/mbound.htm>.

³⁶ U.S. NAT’L OCEANIC & ATMOSPHERIC ADMIN, *What is the EEZ?*, <https://oceanservice.noaa.gov/facts/eez.html>.



B. Application of U.S. Law to the Present Case

In view of the fact that the United States has adopted and implemented the same definition of and authority over the EEZ as established under international law, the analysis with respect to the designation of the Northeast Canyons and Seamounts Marine National Monument yields the same result. The following chart therefore compares the regulatory control declared in Proclamation 9496 with the rights provided for under the international and domestic regime of the EEZ:

Regulatory Action	Legal Right in UNCLOS
Prohibit the exploration, development, or production of oil, gas, and minerals	Sovereign right to regulate - Art. 56(a)
Prohibit the use or attempted use of poisons, electrical charges, or explosives in the collection or harvest of a monument resource	Sovereign right to regulate - Arts. 56(a), 61, 62
Prohibit the introduction of new species	Sovereign right to regulate - Arts. 56(a), 61
Prohibit the removal, harvesting, disturbing, or damaging of any living or nonliving resource except as specifically allowed	Sovereign right to regulate - Arts. 56(a), 61, 62
Prohibit drilling into, anchoring, dredging, or otherwise altering the submerged lands	Sovereign right to regulate - Art. 56(a)
Prohibit the construction or placement of any structure, except for scientific instruments	Jurisdiction to regulate - Arts. 56(b), 60

Regulatory Action	Legal Right in UNCLOS
Prohibit commercial fishing and the possession of commercial fishing instruments in the monument unless stowed during passage	Sovereign right to regulate - Arts. 61, 73
Regulate research and scientific exploration	Jurisdiction to regulate - Art. 56(b)
Regulate activities to further the educational value of the monument	Sovereign right to regulate - Art. 56(a)
Regulate anchoring scientific instruments	Jurisdiction to regulate - Arts. 56(b), 60
Regulate commercial fishing for red crab and American lobster for 7 years	Sovereign right to regulate - Art. 61
Regulate sailing and other activities that do not impact monument resources	Jurisdiction to regulate, as long as regulations do not prevent navigation through the area - Arts. 65, 73

Proclamation 9496 is thus nuanced and limited in scope, carefully restricting the exercise of U.S. authority in the monument area to conform to the limits rights and control granted to the coastal State under international and U.S. law. For this reason, it is reasonable to conclude that the federal government had the authority under U.S. law to designate this monument in the EEZ.

Despite the fact that it is clear that the U.S. Government intended to adopt the international law regime of an EEZ into its domestic law, Plaintiffs in the ongoing litigation attempt to diminish the scope of U.S. Government authority over the EEZ under U.S. law. In their Complaint, Plaintiffs argue that the President exceeded his authority in designating the Northeast Canyons and Seamounts Marine National Monument. This raises the question as to the scope of the President’s authority under the Antiquities Act, and specifically the meaning of lands that are “owned and controlled” by the federal government, which is beyond the scope of this Memorandum.³⁷ However, to bolster their argument that these lands within the EEZ are not federally owned or controlled, Plaintiffs point to federal legislation that purportedly shows the limited scope of federal authority over the EEZ. Specifically, Plaintiffs discuss the Magnuson-Stevens Fishery Conservation and Management Act, which they allege is “the primary law governing fisheries management in the Exclusive Economic Zone” and exemplifies the federal government’s “limited authority to regulate the Exclusive Economic Zone.”³⁸

³⁷ Compl. ¶¶ 70-74, Massachusetts Lobstermen’s Association et al. v. Ross et al., 1:17cv00406-JEB (D.D.C. Mar. 7, 2017).

³⁸ *Id.* at ¶¶ 28, 30.

Yet this legislation—passed in 1976 before the conclusion of UNCLOS—does not signal a lack of authority over the EEZ. This is made clear in the 1983 Fact Sheet accompanying the President’s proclamation of an EEZ; the Fact Sheet observes that the United States had previously exercised certain authority in the area within 200 nautical miles of the coasts, for example under the Magnuson Fishery Conservation and Management Act.³⁹ However, the Fact Sheet specifies that “the Proclamation *bolsters* U.S. authority over the living resources of the zone.”⁴⁰ In other words, the limited authority exercised by Congress in the area within 200 nautical miles from the coastline in 1976 is not reflective of the scope of U.S. authority in the EEZ after it was declared in 1982. Under U.S. law, the U.S. Government has the authority to regulate and control certain aspects of the EEZ.

CONCLUSION

A preliminary analysis of the international and domestic law regimes of the exclusive economic zone thus reveals that the scope of rights and responsibilities of coastal States is understood to be largely identical under international and U.S. law. While it is not contested that the coastal State does not exercise sovereignty (or ownership) over the EEZ, it is also not contested that the coastal State possesses certain sovereign rights and exercises jurisdictional control over certain activities.

For that reason, the validity of the exercise of U.S. authority in the EEZ requires a case-specific analysis under both international and domestic law. A comparison of Proclamation 9496 and the provisions of UNCLOS governing the EEZ reveals that the drafters of the Proclamation carefully considered the limits placed on coastal State authority under UNCLOS. In view of this tailored approach and the restrictions placed on the exercise of authority by the U.S. Government, it is certainly reasonable to conclude that the U.S. Government had the authority under international law to undertake the actions and control described in Proclamation 9496.

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³⁹ Fact Sheet, United States Oceans Policy, Off. Press Sec’y (Mar. 10, 1983).

⁴⁰ *Id.* (emphasis added).