

ORAL ARGUMENT NOT YET SCHEDULED  
No. 18-5353

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UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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MASSACHUSETTS LOBSTERMEN'S ASSOCIATION, et al.,

*Plaintiffs-Appellants,*

v.

WILBUR ROSS, et al.,

*Defendants-Appellees,*

and

NATURAL RESOURCES DEFENSE COUNCIL, INC, et al.,

*Defendants-Intervenors-Appellees.*

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NATIONAL AUDUBON SOCIETY'S BRIEF AS *AMICUS CURIAE* IN  
SUPPORT OF APPELLEES AND SUPPORTING AFFIRMANCE

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On Appeal from the U.S. District Court for the District of Columbia,  
Case No. 17-cv-406, Hon. James E. Boasberg

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**CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES****A. Parties and Amici**

Except for proposed *amicus curiae* National Audubon Society and other *amici* that may seek leave to participate, all parties, intervenors, and *amici* appearing before the district court and this Court are listed in Appellants' Opening Brief and in Federal Appellees' Response Brief.

**B. Rulings Under Review**

References to the ruling at issue appear in Appellants' Opening Brief. The district court's opinion is published at *Massachusetts Lobstermen's Ass'n v. Ross*, 349 F. Supp. 3d 48 (D.D.C. 2018).

**C. Related Cases**

This case has not previously been before this Court or any other court. National Audubon Society is not aware of any related cases pending before this Court or any other court.

## CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1 and Circuit Rule 26.1, *amicus curiae* the National Audubon Society (“Audubon”) discloses:

Audubon is a non-profit organization incorporated in the State of New York. Audubon uses science, advocacy, education, and on-the-ground conservation efforts to protect birds and their habitat. Audubon is not a publicly held corporation and has no outstanding stock shares or other securities in the hands of the public. Audubon does not have any parent corporations, and no publicly held corporation has a ten percent or greater ownership interest in Audubon.

**RULE 29 STATEMENTS**

As required by Fed. R. App. P. 29(a)(4)(E), counsel certifies that no party's counsel authored this brief in whole or in part. No party or its counsel contributed money that was intended to fund preparing or submitting this brief. No person other than *amicus curiae*, including its members and counsel, contributed money that was intended to fund preparing or submitting this brief.

As required by Circuit Rule 29(d), counsel certifies that a separate brief is necessary to provide the National Audubon Society's ("Audubon") insight into the conservation importance of the Northeast Canyons and Seamounts Marine National Monument, particularly with respect to the protection of seabirds with critical feeding grounds inside the Monument's boundaries. Audubon has advocated for the protection of birds, including seabirds, for over one hundred years, and routinely conducts research on seabirds that frequent the Monument area. Audubon has a strong interest in ensuring that the Monument boundaries remain intact to preserve the unique canyon and seamount ecosystem and to protect the seabird populations that are critical to

Audubon's mission and efforts, which include protecting the places birds need now, and into the future.

s/ *Samantha R. Caravello*

SAMANTHA R. CARAVELLO

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## GLOSSARY

**ADD** Addendum to National Audubon Society's Brief as *Amicus Curiae*

**APP** Appendix to Appellants' Opening Brief

**STATEMENT REGARDING ADDENDUM  
OF STATUTES AND REGULATIONS**

Except for pertinent scientific research articles, which are set forth in an addendum attached to this brief, all applicable statutes, regulations, and other authorities are contained in an addendum to Appellants' Opening Brief.

## INTRODUCTION

Just 130 miles off the coast of New England lies a world of underwater canyons and a submerged mountain range. Covered in deep-sea corals, these unique features are home to an array of ocean fish, which in turn attract marine predators including whales and seabirds that come to feast on this plentiful food. The canyons and seamounts also attract humans to view this abundant wildlife and to research the dynamic ecosystem.

In 2016, recognizing the scientific importance of the canyon and seamount area, President Obama issued a Proclamation (the “Proclamation”) designating it the Northeast Canyons and Seamounts Marine National Monument (the “Monument”) and prohibiting disruptive activities in the Monument. *See* Proclamation No. 9496, 81 Fed. Reg. 65,161 (Sept. 21, 2016), Appendix (“APP”) 42. Now, Appellants (the “Lobstermen”) claim that the President exceeded his authority in creating the Monument and defining its boundaries to cover the canyon and seamount ecosystem.

The National Audubon Society (“Audubon”) submits this brief as *amicus curiae* in support of Federal Appellees and environmental and

conservation organization Appellees (collectively, “Appellees”). The President acted within his authority in designating the Monument under the Antiquities Act, 54 U.S.C §§ 320301–320303, including by setting its boundaries to cover an area larger than the isolated canyon and seamount features that give the Monument its name. These boundaries are necessary to adequately protect the canyon and seamount ecosystem, which includes the area surrounding the individual canyons and seamounts. The ecosystem is an object of scientific interest for Audubon and others who research seabirds that frequent the Monument area. For these reasons, although the Monument is larger than the isolated canyon and seamount features, it is nevertheless confined to the “smallest area compatible with the proper care and management of the objects to be protected.” *Id.* § 320301(b). This Court should affirm the district court’s dismissal of the complaint and ensure the continued protection of the Monument’s unique resources.

### **INTERESTS OF *AMICUS***

Audubon is a national non-profit organization with over 1.4 million members in 452 chapters across the United States and 22 state

offices. Founded in 1905, Audubon has been a leading advocate for bird conservation, ecosystem protection and restoration, and clean air and water resources for over 100 years.

Today, Audubon's policy, education, and science experts conduct critical research and guide lawmakers, agencies, and other stakeholders in shaping effective conservation projects and policies. This work includes scientific research in and around the Monument area, where Audubon has studied Atlantic puffins that use the Monument as feeding grounds.<sup>1</sup> Audubon also studies seabird species such as terns and storm-petrels that benefit from spillover of the Monument's abundant fish populations into areas closer to shore. *See p. 19, infra.*

Audubon's Seabird Restoration Program performed the research that led to the discovery that the Atlantic puffin uses the Monument area as wintering habitat.<sup>2</sup> The Proclamation specifically cited

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<sup>1</sup> See *What is Project Puffin?*, Audubon Project Puffin, <http://projectpuffin.audubon.org/about/what-project-puffin> (last visited May 23, 2019).

<sup>2</sup> See Hannah Waters, *Obama Announces the Atlantic's First Marine Monument, Protecting a Vital Underwater Ecosystem*, Audubon, <https://www.audubon.org/news/obama-announces-atlantics-first-marine-monument-protecting-vital-underwater> (last visited May 23, 2019).

Audubon's research when discussing the objects to be protected within the Monument. 81 Fed. Reg. at 65,163, APP45.

Audubon has vigorously advocated for the Monument's designation and its continued existence. In 2016, Audubon urged its members to ask President Obama to permanently protect the canyon and seamount area. Approximately 21,000 members responded by sending e-mails to the President in support of designating the Monument.

Subsequently, in 2017, President Trump ordered a review of certain national monument designations, including the Monument. Audubon urged the Secretary of Commerce to maintain the Monument's designation and its critical protections for seabirds and other wildlife. Audubon submitted public comment in support of retaining prohibitions and limits on certain activities in the Monument area. Audubon further enlisted nearly 27,000 of its members to articulate the reasons for their support for the Monument. Audubon and its members believe it is critical that the Monument continue to exist, and in its current form.

Audubon agrees with Appellees that the district court properly dismissed the complaint because the President acted within his

authority in establishing the Monument. Audubon respectfully requests that this Court affirm the district court's opinion and uphold the President's authority to protect objects of scientific interest, such as the Monument, under the Antiquities Act.

### **SUMMARY OF ARGUMENT**

The Lobstermen contend, in effect, that the boundaries of a marine national monument must be limited to the monument's geologic features—in this case, underwater canyons and volcanoes. This contention would require the Court to ignore the surrounding and overlying waters, teeming with aquatic life, and the birds and larger fish that congregate above and below. These oceanographic and living features were expressly noted as objects of scientific interest in the Proclamation establishing the Monument and are properly included within the Monument's boundaries.

In this *amicus* brief, Audubon establishes that the Antiquities Act authorizes the creation of a national monument to protect and preserve not only geologic features, but also the ecosystems they support. This Court's case law supports that conclusion, and no other court has ever held to the contrary. Furthermore, Audubon demonstrates that the

unique and vibrant canyon and seamount ecosystem is worthy of such protection and preservation under the Antiquities Act, and that the Monument's boundaries are appropriately tailored to the proper care and management of this valuable resource.

## **SCIENTIFIC BACKGROUND AND SIGNIFICANCE OF THE MONUMENT**

### **A. The canyon and seamount area has intense ecological richness and provides important seabird habitat.**

The canyons and seamounts within the Monument exhibit unique geologic and oceanographic characteristics that make the area a biodiversity hotspot. The canyons begin at the edge of the geological continental shelf and then drop to become thousands of meters deep. 81 Fed. Reg. at 65,161, APP43. Sponges and corals line the canyon walls, and an array of species find habitat to spawn, feed, and hide. *See id.* at 65,161–62, APP43–44.

The seamounts are four underwater volcanoes that rise like a mountain range from the ocean floor. *See id.* at 65,162, APP44. Bear Seamount is the largest of the four and, at approximately 2,500 meters—over 8,000 feet—tall, *id.*, it is taller than any above-water mountain on the East Coast of the United States. Like the canyons, the seamounts are home to corals and many other deep-sea organisms. *Id.*

When cool, nutrient-rich water encounters the steep slopes of the canyons and seamounts, it rises up and displaces warmer water closer to the surface in a process called “upwelling.” *See id.* at 65,161, APP43. Nutrients from the deeper water enhance the growth of phytoplankton and zooplankton that form the base of the ocean food chain. *Id.* Schools of small fish gather, and larger animals come to prey on these fish. *Id.* at 65,161–62, APP43. Thus, a vibrant ecosystem is created on the canyons and seamounts and in the adjacent waters that make up the Monument.

This ecosystem allows numerous seabird species to thrive. Seabirds are drawn to upwelling areas in the Monument to feed on the fish that have gathered there. Indeed, “[s]everal species of gulls, shearwaters, storm petrels, gannets, skuas, and terns, among others, are regularly observed in the region, sometimes in large aggregations.” *Id.* at 65,163, APP45.

Atlantic puffins, a seabird species of particular conservation importance to Audubon, also frequent the Monument area. *Id.* At approximately ten inches tall and the weight of a can of soda, the

Atlantic puffin is smallest of the puffin species.<sup>3</sup> Atlantic puffins are found exclusively in the North Atlantic Ocean, with the Monument area lying in the southern portion of their range.<sup>4</sup> Although historically Maine's puffins were over-hunted and had largely disappeared by 1900, Audubon's Seabird Restoration Program worked to re-establish puffin colonies off the Maine coast in the late 20th century.<sup>5</sup> Despite this progress, Atlantic puffins continue to be listed by the State of Maine as a threatened species, Me. Rev. Stat. tit. 12, § 12803(3)(W), and are listed as "vulnerable" by the International Union for Conservation of Nature.<sup>6</sup>

In the summer, puffins breed on remote coastal islands where they nest under boulders or dig burrows two- to three-feet long.<sup>7</sup> Here

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<sup>3</sup> *Puffin FAQs*, Audubon Project Puffin, <http://projectpuffin.audubon.org/birds/puffin-faqs> (last visited May 16, 2019).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Atlantic Puffin*, IUCN Red List, <https://www.iucnredlist.org/species/22694927/132581443> (last visited May 30, 2019).

<sup>7</sup> *Puffin FAQs*, *supra* note 3.

they incubate their single egg and rear their chick over a three-month period from mid-April to mid-May.<sup>8</sup> The remainder of the year is spent at sea, but it was a long-standing mystery where puffins go after leaving the nesting islands in mid-August.<sup>9</sup> However, in 2015, using geolocation tags attached to leg bands, Audubon scientists discovered that puffins were making the Monument area their wintertime home.<sup>10</sup>



Figure 1: Atlantic puffins with leg bands (Audubon Photography Awards/Derrick Jackson)

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Press Release, Audubon Scientists Uncover Winter Home of Maine Atlantic Puffins (Feb. 16, 2016), <https://www.audubon.org/news/audubon-scientists-uncover-winter-home-maine-atlantic-puffins>.

**B. The canyon and seamount area is a critical location for studying and observing seabirds.**

Where seabirds flock, scientists and tourists follow for the opportunity to research and observe these species. Using geolocation devices, researchers are able to track migratory birds to learn about their behavior when away from their coastal nesting sites. Audubon's Seabird Restoration Program uses this approach to observe Maine puffins as they winter at sea in the Monument area. *See supra* p. 9.

Others also research puffins in the Monument area. In a recent study, scientists tracked the migration of 270 Atlantic puffins, including Maine puffins, across their entire migratory range. Annette L. Fayet et al., *Ocean-Wide Drivers of Migration Strategies and Their Influence on Population Breeding Performance in a Declining Seabird*, 27 Current Biology 3871, 3871 (2017), Addendum (“ADD”) 2. The study found that puffin breeding performance in the spring and summer months is likely affected by environmental conditions during the winter season, when Maine puffins visit the Monument. *Id.* at 3876, ADD7; *see also infra* pp. 15–17 (describing additional seabird research in the Monument).

Birders and tourists are also drawn to the Monument area. Birdwatching is a popular Maine tourist attraction, and many visitors

seek out puffin-watching tours narrated by Audubon naturalists. Audubon estimates that in 2018, 13,000 visitors took tours to see the puffin colony revived by the Seabird Restoration Program. Over the past 30 years, Audubon estimates that Maine puffin-watching tours have served 300,000 passengers. Tour attendees have the unique opportunity to view puffins and other seabirds that frequent the Monument area.

By providing crucial habitat for puffins and other seabirds to feed and thrive, the canyon and seamount area permits important scientific research and makes it possible for individual conservationists to develop a personal connection with these animals and their ocean habitat.

**C. The Monument protects and preserves this unique and important area.**

The canyon and seamount area is home to a unique and vibrant ecosystem consisting of diverse marine life. The Proclamation recognizes this fact, identifying not only the canyons and seamounts, but also “the ecosystem they compose,” as objects of “intense scientific interest.” 81 Fed. Reg. at 65,163, APP45. The Proclamation describes the “dynamic currents and eddies” created by the canyons and

seamounts, which “enhance biological productivity and provide feeding grounds” for a diverse array of seabirds, whales, dolphins, turtles, tuna, sharks, and additional sea creatures. *Id.* at 65,162, APP45.

To protect these important objects, the Proclamation limits certain activities that might otherwise disrupt the Monument’s special characteristics. Energy exploration and development are prohibited, as is nearly all commercial fishing. *Id.* at 65,164–65, APP48–49. The agencies charged with managing the Monument are authorized to set appropriate conditions for activities such as recreational fishing and bird-watching trips. *Id.* at 65,165, APP49. The agencies may also permit and regulate “[r]esearch and scientific exploration designed to further understanding of Monument resources and qualities or knowledge of the North Atlantic Ocean ecosystem and resources.” *Id.*

## **ARGUMENT**

**I. The Monument was properly designated to preserve the canyons and seamounts and the ecosystem they compose.**

**A. National monuments may be designated to preserve objects of scientific interest, including ecosystems.**

The Antiquities Act’s grant of authority is clear and concise: The President may declare “historic landmarks, historic and prehistoric structures, and other *objects of historic or scientific interest* that are

situated on land owned or controlled by the Federal Government to be national monuments.” 54 U.S.C. § 320301(a) (emphasis added).

Designating a monument empowers the federal management authority to prohibit or restrict activities that would interfere with the purposes of the proclamation. *See* Mark Squillace, *The Monumental Legacy of the Antiquities Act of 1906*, 37 Ga. L. Rev. 473, 516–17 (2003); *see also* 81 Fed. Reg. at 65,164, APP47 (requiring Secretaries of Commerce and the Interior to promulgate regulations as necessary “for the proper care and management of the objects and area identified in [the P]roclamation”). The Antiquities Act thus provides broad authority to prioritize protection and preservation of objects for scientific study over conflicting uses.

Some of the earliest national monuments were designated to preserve objects for scientific study. In 1908, President Theodore Roosevelt designated Grand Canyon National Monument, identifying the canyon as “an object of unusual scientific interest.” Proclamation No. 794, 35 Stat. 2175 (1908). In a resulting legal challenge, the U.S. Supreme Court confirmed the President’s authority to designate a national monument based on its scientific characteristics, noting that

the Grand Canyon had become a destination for scientists and provided “an unexampled field for geologic study.” *Cameron v. United States*, 252 U.S. 450, 455–56 (1920).

In the century since that case, courts have consistently upheld monument designations intended to preserve objects of scientific interest. *E.g., Cappaert v. United States*, 426 U.S. 128, 141–42 (1976) (concluding that Antiquities Act authorized reserving land to protect underground pool and fish that were “features of scientific interest”); *Anaconda Copper Co. v. Andrus*, No. A79-161, 1980 U.S. Dist. LEXIS 17861, at \*7 (D. Alaska June 26, 1980) (“Obviously, matters of scientific interest . . . are within . . . presidential authority under the Antiquities Act.”).

Under this line of case law, objects of scientific interest are not limited to nonliving natural features, but may be plants, animals, and entire ecosystems worthy of protection. *E.g., Cappaert*, 426 U.S. at 141 (identifying “peculiar race of desert fish . . . which is found nowhere else in the world” as a “feature of scientific interest” the monument was created to preserve (citations omitted)); *Tulare Cty. v. Bush*, 306 F.3d 1138, 1142 (D.C. Cir. 2002) (“Inclusion of such items as ecosystems and

scenic vistas in the Proclamation did not contravene the terms of the statute by relying on nonqualifying features.”); *Wyoming v. Franke*, 58 F. Supp. 890, 895 (D. Wyo. 1945) (determining national monument designation was within presidential authority when the area contained “a biological field for research of wild life in its particular habitat within the area, involving a study of the origin, life, habits and perpetuation of the different species of wild animals, all of which it is claimed constitute matters of scientific interest”).

The case law is clear and there can be no question that national monuments may be designated to preserve objects of scientific interest, including ecosystems.

**B. The canyon and seamount ecosystem is an object of scientific interest.**

The Proclamation specifies that “the canyons and seamounts, *and the ecosystem they compose*,” are objects of scientific interest. 81 Fed. Reg. at 65,163, APP45 (emphasis added). The Proclamation notes the many scientific expeditions “that have yielded new information about living marine resources.” *Id.*

Indeed, the canyon and seamount ecosystem is an object of scientific interest for Audubon and others researching seabirds in the

Monument area. Scientists study the interactions between seabirds and their prey, as well as the effect of stressors on the ecosystem, such as climate change and competition for food sources due to commercial fishing. *See, e.g.*, Lauren C. Scopel et al., *Seabird Diets as Bioindicators of Atlantic Herring Recruitment and Stock Size: A New Tool for Ecosystem-Based Fisheries Management*, 75 Canadian J. Fisheries & Aquatic Scis. 1215 (2018), ADD9 (assessing health of herring fishery by studying diet of seabirds that feed in the Monument); Stephen W. Kress et al., *Recent Changes in the Diet and Survival of Atlantic Puffin Chicks in the Face of Climate Change and Commercial Fishing in Midcoast Maine, USA*, 1 FACETS 27 (2016), ADD22 (examining changes in diet of Atlantic puffin chicks near the Monument in the context of climate change and commercial fishing); *cf.* Michelle Paleczny et al., *Population Trend of the World's Monitored Seabirds, 1950–2010*, PLoS ONE, June 9, 2015, at 1 (noting that seabirds “are good indicators of long-term and large-scale change” in marine ecosystems).

As demonstrated by this research and affirmed by the Proclamation, 81 Fed. Reg. at 65,163, APP45, the canyon and seamount

ecosystem “has attracted wide attention among explorers and scientists” and “affords an unexampled field” for biological study, *see Cameron*, 252 U.S. at 456. Still, “[m]uch remains to be discovered about these unique, isolated environments and their geological, ecological, and biological resources.” 81 Fed. Reg. at 65,163, APP45. The canyon and seamount ecosystem is an object of scientific interest appropriately designated for protection under the Antiquities Act. *See Franke*, 58 F. Supp. at 895 (describing evidence presented to show objects of scientific interest in monument area, including “a biological field for research of wild life in its particular habitat”).

**II. The Monument protects the smallest area compatible with the proper care and management of the canyon and seamount ecosystem.**

Audubon agrees with Appellees that the Lobstermen failed to present any, much less sufficient, factual support for their allegations that the Monument is not the smallest area compatible with the proper care and management of the objects it protects. Fed. Appellees’ Resp. Br. 47; Defs.-Intervenors-Appellees’ Resp. Br. 65–66. This alone warranted the district court’s dismissal of the Lobstermen’s claims.

Nevertheless, it is clear that the Monument boundaries are appropriately tailored to protect the canyon and seamount ecosystem for scientific study. To properly protect and manage the ecosystem, the Monument boundaries must be drawn to prohibit disruptive activity in an area coextensive with the ecosystem, even if that area is larger than the footprint of the canyons and seamounts in isolation.

Commercial fishing must be prohibited in the full Monument area to protect fish populations that support seabirds, thereby permitting continued scientific research of the type described above. *Supra* pp. 10, 15–17. Fish in the Monument area may be sought after by both natural predators and commercial fishing vessels. For example, small, fatty fish such as Atlantic herring are critical to marine ecosystems, serving as the food chain link between phytoplankton and larger predators. Scopel et al., *supra*, at 1216, ADD10. When herring are targeted in a commercial fishery, natural predators such as larger fish and seabirds may suffer. *See id.; see also* Kress et al., *supra*, at 37–38, ADD32–33 (drawing connection between reductions in Atlantic herring and white hake in puffin chick diets and decline in puffin breeding success); Fayet

et al., *supra*, at 3875, ADD6 (noting correlation between increased energy expended on foraging and reduced breeding productivity).

The Monument area is home to healthy populations of older fish that are the breeding stock for juvenile fish that seabirds feed their young. *See* Waters, *supra* note 2. These fish spawn in the Monument, and young fish then migrate seasonally towards shore. *See* Michael P. Fahay & Kenneth W. Able, *White Hake, Urophycis Tenuis, in the Gulf of Maine: Spawning Seasonality, Habitat Use, and Growth in Young of the Year and Relationships to the Scotian Shelf Population*, 67 Canadian J. Zoology 1715, 1722 (1989). There, the benefits of robust fish populations in the Monument area spill over to outside the Monument as well—juvenile white hake and Atlantic herring become food for the chicks of several seabird species that nest along the coast, including Atlantic puffins, common terns, Arctic terns, and razorbills. *See* Scopel et al., *supra*, at 1218, ADD12 (analyzing herring in diet of seabirds nesting off of Maine coast). Commercial fishing would threaten the survival of breeding populations of fish, and consequently the seabirds that rely on them.

Commercial fishing in the Monument would also threaten seabirds because of the risk of incidental take, or “bycatch.” *See* Joshua M. Hatch, *Comprehensive Estimates of Seabird-Fishery Interactions for the U.S. Northeast and Mid-Atlantic*, 28 Aquatic Conservation: Marine & Freshwater Ecosystems 182, 182 (2018). Birds that dive for their food, such as puffins, are at risk of becoming entangled in fishing nets set below the ocean surface. *See* Paul Regular et al., *Canadian Fishery Closures Provide a Large-Scale Test of the Impact of Gillnet Bycatch on Seabird Populations*, Biology Letters, 2013, at 2. A recent study estimated that there are approximately 2,500 interactions between seabirds and commercial fishing operations in the U.S. northeast and mid-Atlantic each year. Hatch, *supra*, at 188. Prohibiting commercial fishing in the full area of the canyon and seamount ecosystem where seabirds feed will protect them from this threat.

The Proclamation’s prohibition on other activities in the Monument’s boundaries, such as oil and gas exploration and development, is also necessary to protect the Monument ecosystem. An oil spill in the Monument would be devastating to seabirds and other marine life. *E.g.*, Gera Troisi et al., *Impacts of Oil Spills on Seabirds:*

*Unsustainable Impacts of Non-Renewable Energy*, 41 Int'l J. Hydrogen Energy 16549, 16550 (2016) (noting that “[s]eabird populations are particularly vulnerable” to oil spills “due to their distribution, foraging and breeding behaviour”). And an oil spill would not respect isolated boundaries drawn around individual canyon and seamount features.

The Monument’s valuable ecosystem and its inhabitants will be adequately protected only by prohibiting disruptive activities across a space coextensive with the ecosystem. This is necessary to manage the Monument consistent with the goals of the Proclamation, which calls for preservation of the marine environment to protect the objects of scientific interest contained therein. 81 Fed. Reg. at 65,163, APP45. For example, research on the region’s seabirds and their role in the ecosystem depends on the availability of a robust dataset. *See* Kress et al., *supra*, at 29–30, ADD24–25 (examining diet of puffin chicks over the course of a decade); Scopel et al., *supra*, at 1218, ADD12 (examining diet of seabirds over course of two decades). The collapse of seabird populations would render this data and research unavailable. *See* Scopel et al., *supra*, at 1218, ADD12 (noting that because tern colony collapsed in 2006, no observations could be performed from 2006 to

2013). If commercial fishing or resource extraction negatively impact fish and seabird populations, it will interfere with scientific study, undermining the purpose of the Monument. The Monument’s boundaries are tailored as necessary to protect the canyon and seamount ecosystem for scientific study.

Additionally, the Monument’s boundaries are properly drawn to protect a critical feeding area for “highly migratory” species such as tunas, billfish, and sharks, as well as Atlantic puffins that leave their coastal nesting sites to winter in the Monument area. *See* 81 Fed. Reg. at 65,162–63, APP45. The Lobstermen claim that designating a national monument to protect an ecosystem that includes migratory species “leads to absurd results” because it would “allow the designation of billions of acres of ocean in one fell swoop.” Opening Br. 59–60. But the Monument boundaries, limited to the distinct canyon and seamount ecosystem area, disprove this straw-man argument. Here, the President properly drew the Monument’s boundaries to protect habitat and feeding grounds that are uniquely important to the scientific study of an ecosystem and its inhabitants. The President did not designate

the entirety of the inhabitant species' ranges for protection, so the Court need not address that hypothetical.

The Monument is properly confined to the smallest area compatible with the proper care and management of the canyon and seamount ecosystem it was designated to protect, and the Lobstermen have presented no factual support for their arguments to the contrary.

## CONCLUSION

The Antiquities Act authorizes the President to designate national monuments to preserve objects of scientific interest. The President did just that in 2016 when he designated the Monument to protect the canyons and seamounts and the ecosystem they compose. The Monument boundaries are properly defined to encompass the ecosystem and represent the smallest area compatible with its proper care and management. The district court was correct to dismiss the Lobstermen's complaint, and this Court should affirm the district court's judgment.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief complies with the requirements of Fed. R. App. P. 32(a)(5) and (6) because it has been prepared in 14-point Century, a proportionally spaced font.

I further certify that this brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and 32(a)(7)(B) because it contains 4,048 words, excluding the parts of the brief exempted under Rule 32(f), according to the count of Microsoft Word.

s/*Samantha R. Caravello*

SAMANTHA R. CARAVELLO

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