

ORAL ARGUMENT NOT YET SCHEDULED
No. 18-5353

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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.

NATIONAL AUDUBON SOCIETY'S MOTION TO PARTICIPATE AS
AMICUS CURIAE IN SUPPORT OF APPELLEES

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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Pursuant to Fed R. App. P. 29(3) and D.C. Circuit Rule 29(b), the National Audubon Society (“Audubon”) respectfully moves to participate as *amicus curiae* in support of Federal Appellees and environmental and conservation organization Appellees (collectively, “Appellees”) in the above-captioned case.

Federal Appellees and environmental and conservation organization Appellees consent to Audubon’s participation as *amicus curiae*. Appellants (the “Lobstermen”) do not consent to Audubon’s participation.

INTERESTS OF PROPOSED *AMICUS*

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

The continued existence of the Northeast Canyons and Seamounts Marine National Monument (the “Monument”) is of critical interest and importance to Audubon. Audubon researches and advocates for seabirds that have important habitat in the Monument and that

otherwise benefit from the Monument. Audubon's Seabird Restoration Program conducted the research that led to the discovery that the Atlantic puffin uses the Monument as wintering habitat, a discovery that was specifically cited in the presidential proclamation designating the Monument (the "Proclamation"). Proclamation No. 9496, 81 Fed. Reg. 65,161, 65,163 (Sept. 21, 2016), Appendix to Appellants' Opening Br. ("APP") 45.

Given this research and advocacy, Audubon has a strong interest in the protection of the Monument and the outcome of this litigation. Audubon's interest is discussed in further detail in Audubon's proposed *amicus* brief at pages 2–5.

CONFERRAL WITH OTHER PROPOSED *AMICI*

Pursuant to D.C. Circuit Rule 29(d), counsel for Audubon has conferred with counsel for other proposed non-government *amici curiae* in support of Appellees. Counsel have determined that joining in a single brief is not practicable. It is counsel for Audubon's understanding that these proposed *amici* include ocean experts and former government officials whose proposed brief will speak to the international law of the sea and international conventions; law school

professors whose proposed brief will elaborate on the president's authority under the Antiquities Act to protect marine resources; and academic scientists whose proposed brief will detail the complex ecosystems and oceanographic processes in and around the canyons and seamounts, and the importance of scaling the Monument to protect these ecosystems and processes.

Audubon's proposed brief will provide unique input gathered from its role as a research and advocacy organization that has studied and championed the protection of New England coastal seabirds—including the Atlantic puffins referenced in the Proclamation, 81 Fed. Reg. at 65,163, APP45—for decades. Audubon does not have expertise related to the international law of the sea and international conventions, nor can it speak to the history of the application of the Antiquities Act to protect marine resources. Audubon's proposed brief does not detail broader ecosystem science principles or complex oceanographic processes at work in the Monument area, and instead focuses on the need for protecting the canyon and seamount ecosystem to allow continued scientific study of seabirds.

Audubon seeks to provide this Court with a concise, tailored explanation—at only 4,048 words, well under the *amicus* brief word limit—of the importance of the Monument area in its present form to Audubon’s study of and advocacy for seabirds. Because of this limited focus, Audubon believes it is not practicable to combine its proposed brief with the brief of other proposed *amici*. Audubon respectfully requests leave to file its proposed brief as *amicus curiae*.

AUDUBON’S PROPOSED *AMICUS* BRIEF WILL ASSIST THE COURT AND PROVIDE RELEVANT INFORMATION

As required by Fed. R. App. P. 29(a)(3)(B), Audubon’s proposed *amicus* brief is desirable and asserts matters relevant to this Court’s disposition of the case. The proposed brief will illustrate for the Court the importance of the canyon and seamount ecosystem to scientific study through the example of Audubon’s research on Atlantic puffins and other seabirds that frequent and benefit from the Monument area. The proposed brief will provide this Court with an articulable example of the objects of scientific interest the Monument was designated to protect. Audubon’s decades of experience studying and advocating for the protection of New England seabirds allows it to provide this Court with a unique and valuable perspective.

In addition to being desirable, the proposed *amicus* brief will assist this Court in resolving the issues presented in this case.

Audubon will explain the President's authority under the Antiquities Act to designate national monuments to protect objects of scientific interest. Informed by its decades of experience researching birds that utilize the Monument area, Audubon will build on the arguments contained in the principal briefs of Appellees to explain why the canyon and seamount ecosystem is an object of scientific interest qualified for protection under the Act.

Audubon will also draw on its experience to explain why the Monument boundaries are necessarily drawn larger than the individual canyon and seamount features to provide the requisite protection for the ecosystem to flourish and scientific study to continue. This Court can and should affirm the district court's dismissal of the Lobstermen's claims regarding the size of the Monument due solely to their failure to provide any factual support for their allegations. *See* Fed. Appellees' Resp. Br. 47; Defs.-Intervenors-Appellees' Resp. Br. 65–66, Nevertheless, Audubon's proposed brief will assist this Court in understanding why the Monument is the "smallest area compatible

with the proper care and management of the objects to be protected,”
54 U.S.C. § 320301(b). In this way, Audubon will provide additional
context not elaborated upon in the principal briefs. *See* D.C. Circuit
Rule 29(a).

CONCLUSION

For the foregoing reasons, Audubon respectfully requests that this
Court to grant its motion to participate as *amicus curiae* in support of
Appellees.

Respectfully submitted,

Dated: June 5, 2019

s/ Samantha R. Caravello

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CERTIFICATE OF COMPLIANCE

I hereby certify that this motion 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 motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 940 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

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.

CERTIFICATE OF SERVICE

I hereby certify that on June 5, 2019, I electronically filed the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the D.C. Circuit using the appellate CM/ECF system.

The participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

s/ *Samantha R. Caravello*
SAMANTHA R. CARAVELLO