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## Massachusetts Lobstermen's Association v. Ross

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***Massachusetts Lobstermen's Association v. Ross*, \_\_\_ F. Supp. 3d \_\_\_, 2018 U.S. Dist. Lexis 172151, 2018 WL 4853901 (D.D.C. Oct. 5, 2018)**

**Daniel M. Brister**

President Obama established the first—and only—national monument in the Atlantic Ocean on September 15, 2016. Located 130 miles southeast of Cape Cod, Massachusetts, and comprised of 4,913 square miles of marine ecosystems rich in biodiversity, the protected area includes four underwater mountains and three submarine canyons. Plaintiff commercial lobster and fishing associations, seeking to overturn the designation, asserted that the Antiquities Act does not permit a president to establish marine national monuments. The U.S. District Court for the District of Columbia disagreed, upholding a president's authority to protect offshore areas and vast ecosystems as objects of scientific interest, and dismissing the Lobstermen's case in a memorandum opinion splashed with maritime references.

## I. INTRODUCTION

*Massachusetts Lobstermen's Association v. Ross* examined whether President Obama exceeded his authority under the Antiquities Act of 1906 ("Antiquities Act" or "Act") in establishing the Northeast Canyons and Seamounts Marine National Monument ("Monument").<sup>1</sup> Claiming injury from commercial fishing restrictions implemented under the Monument's management plan, the Massachusetts Lobstermen's Association and other fishing associations (collectively, "Plaintiffs") filed suit in the United States District Court for the District of Columbia, seeking declaratory and injunctive relief against the President, the Secretaries of Interior and Commerce, and the Chairman of the Council on Environmental Quality (collectively, "Defendants").<sup>2</sup>

In arguing the President exceeded his authority under the Antiquities Act, Plaintiffs challenged textual definitions of terms within the Act and the breadth of the area set aside for the Monument.<sup>3</sup> Defendants refuted those allegations, asked the court to dismiss the case as nonjusticiable, and asserted the President did not exceed the statutory authority granted to him under the Antiquities Act.<sup>4</sup> Upon review, the court determined Plaintiffs failed to prove the President exceeded his powers under the Act and issued a memorandum opinion dismissing the case.<sup>5</sup>

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1. *Mass. Lobstermen's Ass'n v. Ross*, \_\_\_ F. Supp. 3d \_\_\_, 2018 U.S. Dist. Lexis 172151, 2018 WL 4853901, at \*5 (D.D.C. Oct. 5, 2018).

2. *Id.* at \*6-9.

3. *Id.* at \*4-9 (quoting 54 U.S.C. § 320301(b) (2012)).

4. *Id.*

5. *Id.* at \*14.

## II. FACTUAL AND PROCEDURAL BACKGROUND

Congress passed the Antiquities Act in 1906, granting the President the authority to proclaim “objects of historic or scientific interest” as national monuments.<sup>6</sup> Since President Theodore Roosevelt’s utilization of the Antiquities Act to preserve the Grand Canyon in 1908, courts and presidents have interpreted the Act to allow the withdrawal and protection of vast tracts of land owned or controlled by the federal government based on their cultural or scientific value.<sup>7</sup> In all, presidents have declared 157 national monuments of varying size and purpose.<sup>8</sup>

In October 2016, President Obama established the Monument in the northwestern Atlantic Ocean, in part to protect a diverse array of marine creatures and habitats, including corals, squid, octopus, whales, tuna, billfish, and sharks.<sup>9</sup> As part of the Monument designation, Obama directed the Secretaries of Interior and Commerce to develop a management plan for the Monument within three years.<sup>10</sup> More notably, however, he required the Secretaries of Interior and Commerce to encourage scientific research and exploration, prohibit oil and gas exploration, and restrict commercial fishing within the Monument.<sup>11</sup> Concerned with such economic restrictions, Defendants brought suit in March 2017.<sup>12</sup>

## III. ANALYSIS

Plaintiffs, in challenging President Obama’s statutory authority to declare the Monument, advanced three overarching arguments.<sup>13</sup> First, that Congress, in granting the President the right to protect “lands” as national monuments under the Antiquities Act, did not intend for marine ecosystems or areas of ocean to qualify for the Act’s protections.<sup>14</sup> Second, that the Monument, which lies more than 130 miles off the coast of New England, is not under the complete control of the United States, as required by the Antiquities Act.<sup>15</sup> Finally, Plaintiffs argued that the Monument is overly large and therefore in violation of the Antiquities Act’s requirement that monuments be limited to the smallest area necessary for their proper management and protection.<sup>16</sup>

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6. *Id.* at \*5.  
7. *Id.* at \*4-6.  
8. *Id.* at \*5.  
9. *Id.* at \*7.  
10. *Id.*  
11. *Id.*  
12. *Id.* at \*9.  
13. *Id.* at \*4.  
14. *Id.* at \*15.  
15. *Id.* at \*27.  
16. *Id.* at \*46.

*A. Oceans as "Lands" Under the Antiquities Act*

Citing Antiquities Act language allowing the President to establish monuments on "lands" controlled by the federal government, Plaintiffs argued that oceans are not lands as mentioned in the Act, and therefore fall outside its scope.<sup>17</sup> After acknowledging the initial appeal of this argument, the court nevertheless found itself "buffeted by the strong winds of Supreme Court precedent, executive practice, and ordinary meaning."<sup>18</sup> Citing three U.S. Supreme Court decisions, the district court held that submerged lands and their overlying waters may indeed be considered "lands" under the Antiquities Act.<sup>19</sup>

The court also relied on numerous instances where presidents withdrew submerged lands as part of national monument designations without Congressional objection.<sup>20</sup> According to the court, examples of such unchallenged national monument creations abound, including Devil's Hole, Channel Islands, Glacier Bay, Fort Jefferson, Buck Island Reef, and the Papahānaumokuākea Marine Monument.<sup>21</sup> The court interpreted these monuments as evidence of presidential authority to protect submerged lands under the Antiquities Act.<sup>22</sup>

Finally, the court turned to the plain meaning of the word "land," citing several dictionary definitions to show that the term includes not only dry land, but also lands on the seafloor.<sup>23</sup> Moreover, the district court offered a particularly relevant quote from the Supreme Court: "Lands are not the less land for being *covered with water*."<sup>24</sup> Finding the issue well settled, the court held that "[t]he Antiquities Act reaches lands both dry and wet."<sup>25</sup>

Plaintiffs next asserted the Antiquities Act does not apply to maritime areas because: (1) the National Marine Sanctuaries Act ("NMSA") impliedly repealed the Antiquities Act with respect to maritime areas; and (2) that, in passing the NMSA, Congress tacitly

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17. *Id.*

18. *Id.* at \*15.

19. *Id.*; *Cappaert v. United States*, 426 U.S. 128, 138-42 (1976) (providing that a pool of water and the underlying groundwater within the Death Valley National Monument were subject to the president's power under the Act); *United States v. California*, 436 U.S. 32, 33 (1978) ("Although the Antiquities Act refers to 'lands,' . . . it also authorizes the reservation of waters located on or over federal lands."); *Alaska v. United States*, 545 U.S. 75, 103 (2005) ("It is clear . . . that the Antiquities Act empowers the President to reserve submerged lands.").

20. *Id.* at \*18.

21. *Id.*

22. *Id.* at \*19.

23. *Id.* at \*20.

24. *Id.* at \*20-21 (quoting *Ill. Cent. R.R. Co. v. Chicago*, 176 U.S. 646, 660 (1900)) (emphasis in original).

25. *Id.* at \*21.

declared the Antiquities Act only relevant to terrestrial areas.<sup>26</sup> The court, liberally employing maritime metaphors, found that “[n]either argument . . . holds water.”<sup>27</sup> First, the court cited *Watt v. Alaska*, which held unfavorable “repeals by implication.”<sup>28</sup> Although statutory repeals may be inferred when a subsequent statute explicitly contradicts an existing one, the court noted that, in addition to the NMSA’s failure to mention the Antiquities Act, the NMSA’s express intent is to “complement[] existing regulatory authorities.”<sup>29</sup> As for Plaintiffs’ second contention of the Antiquities Act’s singularly terrestrial relevance, the court found it “provide[d] the Lobstermen’s boat little headway” because subsequent acts may confer additional protections without rendering existing acts meaningless.<sup>30</sup> Finding the Antiquities Act unaffected by the subsequent enactment of the NMSA, the court rejected Plaintiffs’ notion that the “Monument exceed[ed] the President’s authority under the Antiquities Act because it lies entirely beneath the waves.”<sup>31</sup>

#### B. Government Control of the Lands at Issue

Plaintiffs’ next argument “haul[ed] in no more catch” than the previous one,<sup>32</sup> wherein Plaintiffs maintained that the Monument was invalid because the Antiquities Act only gives the President authority to establish national monuments on “lands owned or controlled by the Federal Government.”<sup>33</sup> Where the previous argument centered on the definition of “lands,” this one focused on the words “owned or controlled.”<sup>34</sup> Plaintiffs urged a narrow interpretation of “control” as meaning “complete control” and asserted that the government lacked such control over the Exclusive Economic Zone (“EEZ”), which extends to 200 miles from the coast.<sup>35</sup>

Returning to the dictionary to demonstrate common usage of the word “control” contemplates something less than absolute dominion,<sup>36</sup> the court held that establishment of the EEZ<sup>37</sup> and passage of the Outer Continental Shelf Lands Act conveyed adequate control of the oceanic lands at issue to permit their protection under the Antiquities Act as a national monument.<sup>38</sup> In assessing the adequacy of the government’s control over the EEZ, the court considered three points.<sup>39</sup> First, the

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26. *Id.*  
 27. *Id.* at \*22.  
 28. *Id.* (quoting *Watt v. Alaska*, 451 U.S. 259 at 267 (1981)).  
 29. *Id.* (quoting 16 U.S.C. § 1431(b)(2)).  
 30. *Id.*  
 31. *Id.* at \*27.  
 32. *Id.*  
 33. *Id.* (quoting 54 U.S.C. § 320301(a)).  
 34. *Id.*  
 35. *Id.* at \*37.  
 36. *Id.* at \*28.  
 37. *Id.* at \*37.  
 38. *Id.* at \*35 (citing 43 U.S.C. § 1331(a)).  
 39. *Id.* at \*36.

government's regulation of fisheries and resource extractive industries within the EEZ evinced substantial control.<sup>40</sup> Second, the government's specific authority to regulate the area for purposes of environmental conservation revealed a strong level of control.<sup>41</sup> Third, no other entity or person exerted an equal measure of control over the EEZ as did the U.S. government.<sup>42</sup> According to the court, these three considerations, taken together, demonstrate that "the federal government controls the EEZ for purposes of the Antiquities Act."<sup>43</sup>

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### C. Smallest Area Compatible with Proper Care and Management

Finally, Plaintiffs argued that the Monument's boundaries violated the Act's "smallest compatible area"<sup>44</sup> stipulation because they "b[ore] little relation to the canyons and seamounts" themselves and "encompass[ed] areas that are dozens of miles from the nearest seamount."<sup>45</sup> In other words, Plaintiffs claimed the Monument protects excessive areas of ocean outside the specific features named in the presidential proclamation establishing the Monument.<sup>46</sup> Going a step further, they also asserted that ecosystems and natural features are not "objects" under the Antiquities Act and their inclusion in the Monument exceeded the Act's authority.<sup>47</sup>

The court rejected these arguments because Plaintiffs incorrectly assumed the canyons and seamounts were the only areas worthy of protection.<sup>48</sup> According to the court, the presidential proclamation clearly established that the canyons, seamounts, and the "natural resources and ecosystems in and around them" constituted "objects of historic and scientific interest" under the Act.<sup>49</sup> The court cited both D.C. Circuit and U.S. Supreme Court precedent in support of its assertion that large ecosystems, rather than just individual objects of curiosity, are worthy of protection under the Antiquities Act.<sup>50</sup> In granting the government's motion to dismiss, the court held that, just as President Roosevelt had acted within his authority under the Antiquities Act in establishing Grand Canyon National Monument in 1908, so had President Obama acted within his authority in establishing the Canyons and Seamounts National Monument in 2016.<sup>51</sup>

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40. *Id.* at \*37.

41. *Id.*

42. *Id.* at \*40.

43. *Id.* at \*42.

44. *Id.* at \*45 (quoting 54 U.S.C. § 320301(b)).

45. *Id.* at \*47.

46. *Id.*

47. *Id.* at \*48.

48. *Id.* at \*49.

49. *Id.* at \*47.

50. *Id.* at \*48 (citing *Alaska*, 545 U.S. at 103; *Cappaert*, 426 U.S. at 141-142; *Cameron v. United States*, 252 U.S. 450, 455-456 (1920); *Tulare County v. Bush*, 306 F.3d 1138, 1142 (D.C. Cir. 2002)).

51. *Id.* at \*4.

#### IV. CONCLUSION

At a time of significant uncertainty for the Antiquities Act, *Massachusetts Lobstermen's Association v. Ross* nonetheless represents an affirmation of the Act's authority and breadth. This district court decision is momentous, both because of its determination of executive authority to establish national monuments at sea, and by its affirmation of presidential authority to protect vast ecosystems as objects of scientific interest under the Antiquities Act. Because the decision is likely to be appealed to the Court of Appeals for the D.C. Circuit, it has the potential—along with the ongoing litigation over Bears Ears and Escalante National Monuments—to have a profound effect on the future of the Antiquities Act. Despite the conclusion's delivery via memorandum opinion, the holding could have a watershed impact on the future management of lands owned or controlled by the federal government, both on- and off-shore. ▲