IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

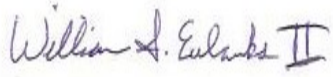
SAFARI CLUB INTERNATIONAL, Plaintiff, v. KEN SALAZAR, *et al.*, Defendants.	)	Civ. No. 1:11-cv-1564 BAH

MOTION TO INTERVENE BY DEFENDERS OF WILDLIFE, THE HUMANE SOCIETY OF THE UNITED STATES, AND BORN FREE USA

Pursuant to Rule 24 of the Federal Rules of Civil Procedure, and as explained in the supporting memorandum, Defenders of Wildlife, The Humane Society of the United States, and Born Free USA hereby move to intervene in this action. Proposed Defendant-Intervenors meet all of the criteria for intervention of right under Rule 24(a) including by having the requisite Article III standing to intervene in the case. Alternatively, Proposed Defendant-Intervenors seek permissive intervention pursuant to Rule 24(b).

In support of this motion, the proposed intervenors submit the accompanying Memorandum, four Declarations by organizational staff members of Proposed Defendant-Intervenors, a Proposed Answer, and a Proposed Order. Pursuant to the local rules, counsel for Proposed Defendant-Intervenors has contacted counsel for Plaintiff and Federal Defendants. Plaintiff's counsel represents that Plaintiff SCI plans to oppose the motion. Counsel for the Federal Defendants represents that the government takes no position on the motion.

Respectfully Submitted,



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SAFARI CLUB INTERNATIONAL, Plaintiff, v. KEN SALAZAR, *et al.*, Defendants.	)	Civ. No. 1:11-cv-1564 BAH

MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE AS DEFENDANTS BY DEFENDERS OF WILDLIFE, THE HUMANE SOCIETY OF THE UNITED STATES, AND BORN FREE USA

INTRODUCTION

Pursuant to Rule 24 of the Federal Rules of Civil Procedure, Defenders of Wildlife ("Defenders"), The Humane Society of the United States ("HSUS"), and Born Free USA (collectively referred to as "Proposed Defendant-Intervenors") respectfully request leave to intervene in this case, in which Plaintiff Safari Club International ("SCI") challenges the U.S. Fish and Wildlife Service's ("FWS") listing of captive members of three antelope species (Scimitar-horned oryx, Addax, and Dama gazelle) under the Endangered Species Act ("ESA"), 16 U.S.C. §§ 1531-1544.

As explained below, the relief sought by Plaintiff SCI in this case would impair the substantial informational and organizational interests of Proposed Defendant-Intervenors in conserving and protecting these antelope species. Moreover, the relief sought by Plaintiff SCI here would undermine a ruling secured by Proposed Defendant-Intervenors before the Honorable Henry H. Kennedy of the U.S. District Court for the District of Columbia. *Friends of Animals v. Salazar*, 626 F. Supp. 2d 102 (D.D.C. 2009) (Kennedy, J.). As illustrated below, Judge

Kennedy's 2009 ruling in favor of Proposed Defendant-Intervenors requires SCI's members and other entities wishing to kill or harm any member of these highly imperiled species to apply for a permit under Section 10 of the ESA to do so. *Id.* at 115-20. Thus, Plaintiff SCI's lawsuit here – which seeks to overturn the endangered listing status of captive members of these species – is nothing more than a backdoor attempt to avoid the statutorily required permit scheme embodied in Section 10 with respect to captive members of these antelope species, and to circumvent the ruling Proposed Defendant-Intervenors obtained from Judge Kennedy.

Defenders is a wildlife protection and conservation organization dedicated to the protection of imperiled species, including the antelope species at issue here, and its conservation mission would be impaired by the relief that SCI seeks in this case. HSUS is the nation's largest animal protection organization, which has committed substantial effort and financial resources to protecting the three antelope species here, and hence its mission would be impaired by the relief that SCI seeks in this case. Born Free USA's mission is to end the suffering of wild animals in captivity, with a particular focus on endangered and threatened animals in captivity, and thus its mission would be impaired by the relief that SCI seeks in this case.

As demonstrated below, Proposed Defendant-Intervenors satisfy the standards for both intervention of right under Rule 24(a) and permissive intervention under Rule 24(b). Accordingly, Proposed Defendant-Intervenors should be allowed to participate as parties in this matter.

BACKGROUND

A. The Endangered Species Act

Recognizing that all of the nation's "species of fish, wildlife and plants are of esthetic, ecological, educational, historical, recreational and scientific value to the Nation and its people," 16 U.S.C. § 1531(a)(3), Congress enacted the ESA with the express purpose of providing both "a means whereby the ecosystems upon which endangered and threatened species depend may be conserved, [and] a program for the conservation of such endangered species and threatened species . . . ." *Id.* at § 1531(b). As the Supreme Court has explained, the ESA is the "most comprehensive legislation for the preservation of endangered species ever enacted by any nation." *Babbitt v. Sweet Home Chapter of Cmtys. for a Great Or.*, 515 U.S. 687, 698 (1995) (citations omitted). Finding "the value of endangered species [to be] 'incalculable,'" Congress's "plain intent" in passing the statute "was to halt and reverse the trend toward species extinction, whatever the cost." *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 184, 187 (1978) (emphasis added) (internal citations omitted); *see also In re Am. Rivers and Idaho Rivers United*, 372 F.3d 413, 420 (D.C. Cir. 2004) (same).

Under the ESA, a species is listed as "endangered" when it is "in danger of extinction throughout all or a significant portion of its range," 16 U.S.C. § 1532(6), and as "threatened" when it "is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." *Id.* § 1532(20). FWS – which implements the ESA for terrestrial species such as the antelopes, 50 C.F.R. § 402.01(b) – must determine whether to list a species based on the presence of one or more of five factors:

(A) the present or threatened destruction, modification, or curtailment of its habitat or range;
(B) overutilization for commercial, recreational, scientific or educational purposes;
(C) disease or predation;
(D) the inadequacy of existing regulatory mechanisms; or
(E) other natural or manmade factors affecting its continued existence.

16 U.S.C. § 1533(a)(1); 50 C.F.R. § 424.11(c). This analysis must be conducted "solely on the basis of the best scientific and commercial data available . . . ." 16 U.S.C. § 1533(b)(1)(A). Thus, it is well established that economic factors – *e.g.*, any economic hardship that may occur from the listing of a species – are not to be considered in these decisions. *See, e.g.*, S. Rep. No. 418, 97th Cong., 2d Sess. 12 (1982) (explaining that the ESA "preclude[s] the Secretary from considering economic or other non-biological factors in determining whether a species should be listed").

Once a species is listed under the ESA, it is entitled to a number of significant protections. For example, FWS must "develop and implement" a recovery plan for the species, 16 U.S.C. § 1533(f)(1), and every federal agency must consult with FWS to "insure that any action authorized, funded, or carried out by" the agency "is not likely to jeopardize" the continued existence of any listed species. *Id.* § 1536(a)(2). In addition, it is illegal for anyone to "take" an endangered species, *id.* § 1538(a)(1); 50 C.F.R. §§ 17.21 – a term that is broadly defined to include "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." 16 U.S.C. § 1532(19). FWS has long explained that "the Act applies to both wild and captive populations of a species . . . ." 44 Fed. Reg. 30044 (May 23, 1979); *see also* 63 Fed. Reg. 48634, 48636 (Sept. 11, 1998) (explaining that "take" was defined by Congress to apply to endangered or threatened wildlife "whether wild or captive" and that this "statutory term cannot be changed administratively").

If a private party seeks to "take" a member of a listed species incident to an otherwise lawful activity, the party may apply for what is called an "incidental take permit" pursuant to Section 10 of the ESA, which must be obtained from FWS before such authorized take may occur. 16 U.S.C. § 1539(a)(1)(B). An entity may also seek a Section 10 permit to engage in otherwise prohibited activities by applying for and obtaining what is called an "enhancement permit," where such activities are directed at "enhanc[ing] the propagation or survival of the affected species." *Id.* § 1539(a)(1)(A).

In either case, FWS must make all "[i]nformation received by the Secretary as a part of any [Section 10 permit] application . . . available to the public as a matter of public record at every stage of the proceeding." *Id.* § 1539(c). Additionally, "[t]he Secretary shall publish notice in the Federal Register of each application for an exemption or permit which is made under [section 10, and] [e]ach notice shall invite the submission from interested parties, within thirty days after the date of the notice, of written data, views, or arguments with respect to the application." *Id.* After obtaining such information from interested parties, FWS may only grant permits if it "finds and publishes [its] finding in the Federal Register that . . . such exceptions were applied for in good faith, . . . if granted and exercised will not operate to the disadvantage of such endangered species, . . . and will be consistent with the purposes and policy set forth in" Section 1 of the ESA. *Id.* § 1539(d).

B. Relevant Facts

1. The Listing Of The Antelopes Under The ESA And The Antelope Exemption

FWS originally proposed listing the three antelope species at issue here as "endangered" on November 5, 1991. 56 Fed. Reg. 56491-95 (Nov. 5, 1991). However, the agency delayed

issuing the final rule for fourteen years in response to opposition from trophy hunting organizations such as Plaintiff SCI and the so-called "canned hunting" industry, which operates lucrative enclosed hunting ranches where individuals go to kill rare species for sport, at approximately $2,000-4,000 per antelope.

On September 2, 2005, FWS finally listed the three antelopes as endangered. 70 Fed. Reg. 52319 (Sept. 2, 2005). It explained that all three species "are in danger of extinction throughout their ranges," that the oryx may already be extinct in the wild, and that the addax is "near-extinction." *Id.* The listing of these species necessarily made it illegal to "take" any addax, dama gazelle, or scimitar-horned oryx, or trade any such specimens in interstate or foreign commerce without a Section 10 permit.

On the same day that FWS issued the final listing rule, it also issued a final regulation that effectively denied the captive-bred members of all three antelope species the core protections afforded by the statute, and specifically allowed such animals to be killed for sport and their body parts to be shipped throughout the United States and the world as trophies. Thus, the rule authorized any person to "take, export or re-import, deliver, receive, carry, transport or ship in interstate or foreign commerce, in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce live wildlife . . . and sport-hunted trophies of scimitar-horned oryx (*Oryx dammah*), addax (*Addax nasomaculatus*), and dama gazelle (*Gazelle dama*)." 70 Fed. Reg. at 52318-19. FWS explained that the purpose of the new regulation was to allow ranches to continue "sport hunting" operations that would have otherwise been prohibited by the new listing of the three species as endangered. *Id.*

Contending that *some* captive-breeding facilities in the United States – but none of the ranches that allow the killing of these species for sport – have "enhanced the propagation or survival" of the three species by providing founder stock for existing reintroduction programs, FWS decided to grant what its own officials referred to as a "blanket" exemption to *all* entities that engage in captive-breeding of these animals, including those that operate canned hunts. 70 Fed. Reg. at 52310. FWS stated that granting this wholesale exemption for all ranches engaged in sport-hunting of the species would necessarily "enhance the propagation of these species by providing an incentive to continue to raise animals in captivity," 70 Fed. Reg. at 52312, regardless of whether these entities are engaged in cooperative breeding programs with zoos and other institutions that actually breed these species for reintroduction into the wild.

Thus, under the 2005 blanket exemption, a facility that wished to engage in otherwise prohibited activities with respect to any of the three species of endangered antelopes bred in captivity in the U.S. would not have been required to secure an individualized permit to do so, nor even to register with FWS, nor, for that matter to make any showing whatsoever that it was engaged in a legitimate captive breeding program to assist the reintroduction of the antelopes into the wild. *Compare* 50 C.F.R. § 17.22(a)(1)(viii) (explaining that applicants for section 10 permits must provide a "statement of the applicant's willingness to participate in a cooperative breeding program" as a prerequisite to the agency finding that the permitted activities are necessary to "enhance the propagation" of the species). On the contrary, the blanket exemption purported to authorize such entities to engage in such prohibited activities, including the killing of antelopes for sport (and huge trophy fees), and any other "take" of the species, as long as the "purpose" of such activity was "associated with . . . sport hunting in a manner that contributes to

increasing or sustaining captive numbers" – *i.e.*, as long as the killing of the species was somehow related to breeding more of the species to stock the hunting ranch. 70 Fed. Reg. at 52318-19.

Moreover, under the exemption regulation, the public's statutory rights to certain crucial information were entirely eliminated, including notice of *which* entities would be operating under the new exemption, a "complete description" of such facilities, and a "full statement of the reasons why the applicant was justified in obtaining a permit including the details of the activities sought to be authorized by the permit." 50 C.F.R. § 17.22(a)(1)(vii). In addition, the exemption purported to entirely dispense with the public's opportunity to submit comments to the agency as to why a particular entity should not be allowed to engage in otherwise prohibited acts, as well as FWS's statutory obligation to make "findings" concerning each facility's ability to actually "enhance the propagation" of the species, as is otherwise required for all other section 10 permits. 16 U.S.C. §§ 1539(c)-(d).

2. The Antelope Exemption Litigation

The three organizations filing the present motion – Defenders, HSUS, and Born Free USA – filed suit in the Northern District of California challenging FWS's antelope exemption.[1] In denying the Federal Defendants' subsequent motion to dismiss that case for lack of standing, Chief Judge Vaughn Walker ruled that "Defenders has standing to pursue its claim under § 10(c)" because "the challenged regulation effectively denies Defenders information required to be made publicly available under § 10(c) so that Defenders can meaningfully participate in the §

[1] SCI intervened in that case as a defendant-intervenor, which was not contested by the plaintiffs in that case (again, the same parties now seeking to intervene here).

10 permit process, [and therefore] Defenders has alleged a concrete injury that comes within the zone of interests protected by § 10(c)." *Cary v. Hall*, Civ. No. 05-4363, 2006 WL 6198320, at *11 (N.D. Cal. Sept. 30, 2006). The court also stated that "§ 10(c) creates an enforceable right to information that the public have an opportunity to participate in the notice and comment process that is to accompany each § 10 permit application, [and that] Defenders' allegations satisfy the constitutional and non-constitutional requirements of standing." *Id.*[2]

Before briefing began on summary judgment in that case, the court transferred the matter to Judge Kennedy of this Court for consolidation with another case that challenged the exemption. *See Cary v. Hall*, Civ. No. 05-4363, 2006 WL 6198319, at *11 (N.D. Cal. Nov. 30, 2006). After merits briefing was complete, in a decision dated June 22, 2009, Judge Kennedy affirmed Chief Judge Walker's earlier ruling on standing, finding that "plaintiffs have suffered an informational injury which confers standing to challenge the Rule under subsection 10(c) of the Act," and that "plaintiffs have adequately demonstrated an organizational injury under [section 10(c) independent of informational injury because] . . . the Rule directly conflicts with their activities and the services they provide in learning about and informing the their members of the status of captive antelopes and participating in the section 10(c) process." *Friends of Animals v. Salazar*, 626 F. Supp. 2d 102, 113 (D.D.C. 2009) (Kennedy, J.).

On the merits, Judge Kennedy "conclude[d] that plaintiffs are correct and that the text, context, purpose and legislative history of the statute make clear that Congress intended

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[2] Having found that Defenders established standing, the court did not inquire as to the standing of the other organizations, because "[t]he court need not consider the standing of other plaintiffs to claim a violation of § 10(c)" since at least one plaintiff demonstrated standing. *Cary v. Hall*, 2006 WL 6198320, at *11.

permits for the enhancement of propagation or survival of an endangered species to be issued on a case-by-case basis following an application and public consideration of that application." *Id.* at 115. Accordingly, "the court conclude[d] that plaintiffs should be granted summary judgment on their claim under subsection 10(c) of the Act," and the court remanded the decision to FWS to remedy the illegality of the exemption regulation.

3. Withdrawal Of The Antelope Exemption

Pursuant to Judge Kennedy's Order in *Friends of Animals v. Salazar*, on July 7, 2011, FWS issued a proposed rule to withdraw the exemption regulation. *See* 76 Fed. Reg. 39804 (July 7, 2011). The withdrawal of this regulation will mean that "[a]ny person who wishes to conduct an otherwise prohibited activity with U.S. captive-bred scimitar-horned oryx, addax, or dama gazelle would need to qualify for an exemption or obtain authorization for such activity under the current statutes or regulations." *Id.* at 39805. In addition, the withdrawal of this rule will provide Proposed Defendant-Intervenors with the statutorily mandated information required by Section 10(c) of the ESA when any facility applies for a permit to take members of these species. As of the date of this filing, FWS has not issued a final rule withdrawing the exemption regulation.

4. Plaintiff SCI's Current Lawsuit

Having failed to convince Judge Kennedy to sustain FWS's illegal exemption regulation in the previous litigation brought by Proposed Defendant-Intervenors, Plaintiff SCI seeks in this lawsuit to achieve essentially the same objective that the antelope exemption authorized and that SCI unsuccessfully defended in the prior lawsuit – a scenario under which Plaintiff SCI's members and other entities that wish to engage in otherwise unlawful takes of captive antelopes

are not required to apply for a Section 10 permit before engaging in such activities. *See generally Friends of Animals v. Salazar*, 626 F. Supp. 2d 102 (D.D.C. 2009).

To achieve that objective, Plaintiff SCI seeks here to overturn FWS's listing of captive members of these three antelope species as endangered. Doc. # 1 at 29 (requesting that the Court "[s]et aside the Final Listing Rule in whole or in part and remand it back to the Federal Defendants for consideration of excluding the U.S. captive populations . . . from the endangered species listing"). In effect, Plaintiff SCI's challenge is a backdoor attempt to circumvent Judge Kennedy's earlier ruling by having this Court rule that FWS must exclude captive members of these three antelope species from the much-needed protections of the ESA, so that, in turn, Plaintiff SCI's members and other entities may engage in lethal and other harmful takes of captive members of these species without any public scrutiny, governmental or citizen participation in the process, or assurances that such entities are in fact enhancing the propagation of these species as contemplated by Congress in the carefully calibrated scheme provided for in Section 10 of the ESA.

5. <u>Proposed Defendant-Intervenors' Interests In Antelope Protection</u>

Formed in 1947, Defenders is "a national non-profit organization dedicated to the protection and restoration of all wild animals and plants in their natural communities," including the antelope species at issue. Exhibit 1 ¶ 2 (Declaration of Nina Fascione). Defenders has approximately 525,000 members nationwide. *See id.* Defenders advocates new approaches to wildlife conservation that protect endangered species and help keep other species from becoming endangered, and it employs education, litigation, research, legislation, and advocacy to defend wildlife and their habitat. *Id.* ¶¶ 4-8. Defenders is well-recognized for its leadership and special

expertise on ESA issues. Its staff includes both a former FWS Director and a former Deputy Assistant Secretary for Fish, Wildlife and Parks in the Interior Department. Defenders staff is frequently asked to testify before Congress on issues relating to ESA law, policy, and administration. *See, e.g., Endangered Species Implementation: Hearing Before the H. Natural Resources Comm.*, 110th Cong. (May 9, 2007) (Statement of Jamie Clark, Executive Vice President (now President and CEO)).

Formed in 1954, HSUS is a non-profit membership organization based in Washington, D.C., dedicated to protecting wild and domestic animals by actively opposing those projects, plans, and events that result in the killing or cruel treatment of animals. *See* Exhibit 2 ¶ 2 (Declaration of Andrew Page). HSUS has over 11 million members and constituents. *See id.* HSUS utilizes public education campaigns, litigation, and legislative advocacy to inform the public about the perils animals regularly face and to address those problems with diverse tools. *Id.* ¶¶ 6-7; Exhibit 3 ¶ 5 (Declaration of Marcia Slackman) HSUS invests considerable resources in its effort to end the trophy hunting of threatened and endangered species in general, and the inhumane practice of canned hunting of threatened and endangered species in particular. *See* Exhibit 2 ¶ 8 (testifying that "HSUS has devoted considerable resources to ending these practices"). HSUS also regularly responds to requests for public comments from federal, state, and local governments, and it submits complaints, petitions, and other information regarding endangered and exploited animals to such entities. *Id.* ¶¶ 13-17.

Formed in 1968, Born Free USA is a recognized leader in animal welfare and wildlife conservation. *See* Exhibit 4 ¶¶ 2-3 (Declaration of Adam Roberts). Through litigation, legislation, and public education, Born Free USA leads vital campaigns against animals in

entertainment, exotic "pets," trapping and fur, and the destructive international wildlife trade. *Id.* ¶¶ 4-9. Born Free USA also plays a key role in several national and international animal protection coalitions working to increase the effectiveness of animal advocates by fostering collaboration. *Id.* ¶¶ 5-6. Through their work, Born Free USA strives to end the suffering of wild animals in captivity, rescue individual animals in need, protect wildlife – including highly endangered species – in their natural habitats, and encourage compassionate conservation globally. *Id.*

All of these organizations regularly monitor applications for ESA permits seeking authorization to engage in otherwise prohibited takes of listed species – and, in particular, where such activities involve sport hunted trophy imports and canned hunting – and they inform their members and the public about proposed governmental actions that would impact endangered and exploited animals through various means, including electronic action alerts, their websites, and various mailings. *E.g.*, Exhibit 1 ¶¶ 7-13; Exhibit 2 ¶¶ 6-16; Exhibit 3 ¶¶ 6-8; Exhibit 4 ¶¶ 10-11. As a result, the organizations and their members routinely comment on such actions. Exhibit 1 ¶¶ 7-13; Exhibit 2 ¶¶ 6-16; Exhibit 3 ¶¶ 6-8; Exhibit 4 ¶¶ 10-11.

Therefore, declarants have previously confirmed the organizations' overwhelming interests in ensuring that these particular antelope species are afforded the protections of the ESA and that the Section 10 process is scrupulously complied with by permit applicants and FWS for "takes" of these species, and thus substantial informational and resource injuries result to the organizations and their members when facilities are not required to submit case-by-case permit applications before killing or otherwise taking captive members of these species. *E.g.*, Exhibit 1 ¶¶ 16-17 (explaining that the lack of case-by-case permits "cause[s] our organization

significant informational injury" and "cause[s] a drain on our limited resources, which could otherwise be spent on advocating for protection of other imperiled species"); Exhibit 2 ¶¶ 18-19 (testifying that the absence of case-by-case permits for these species "cause[s] The HSUS extensive informational injury . . . [because] we are not being informed about which entities are engaging in these activities; . . . [and] we are not being afforded the opportunity to comment on whether a particular entity should be allowed to engaged in otherwise prohibited acts with respect to these endangered animals" and also would require HSUS to "dedicate additional resources within our captive hunting campaign to obtain information on the sport hunting of these three Antelope species"); Exhibit 4 ¶¶ 12-14 (explaining that the lack of case-by-case permits would require Born Free USA "to spend additional time and resources to gain information about the three imperiled antelope species" and would "also deprive[] [Born Free USA] of its statutory right to submit comments on each application to engage in otherwise prohibited acts under the ESA, and hence [would result in] a diminished opportunity to inform and influence the agency with respect to such proposed actions").

ARGUMENT

I. PROPOSED DEFENDANT-INTERVENORS ARE ENTITLED TO INTERVENE AS A MATTER OF RIGHT.

Prior to Congress's 1966 amendments to Rule 24, courts had applied stringent criteria in determining whether seemingly affected parties should be allowed to intervene in ongoing litigation as a matter of right. *See Nuesse v. Camp*, 385 F.2d 694, 701 (D.C. Cir. 1967). The 1966 amendments relaxed the intervention standards considerably. Rule 24(a)(2) now provides:

> [o]n timely motion, the court must permit anyone to intervene who . . . claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or

> impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

Fed. R. Civ. P. 24(a)(2). As explained in *Nuesse*, the D.C. Circuit's seminal opinion on intervention, the 1966 revision was "obviously designed to liberalize the right to intervene in federal actions." *Nuesse*, 385 F.2d 694 at 701. Accordingly, an applicant is entitled to intervene under Rule 24(a)(2) by demonstrating that the applicant has "(i) an interest in the transaction, (ii) which the applicant may be impeded in protecting because of the action, (iii) that is not adequately represented by others," and that the motion to intervene is timely. *Id.* at 699; *see Sec. & Exch. Comm'n v. Prudential Sec., Inc*., 136 F.3d 153, 156 (D.C. Cir. 1998). As demonstrated below, Proposed Defendant-Intervenors clearly satisfy each of these standards.

A. The Proposed Intervenors' Motion Is Timely.

Whether a motion to intervene is timely is a matter left to the Court's discretion, to be "determined from all the circumstances." *NAACP v. New York*, 413 U.S. 345, 366 (1973); *see also United States v. AT&T Co.*, 642 F.2d 1285, 1295 (D.C. Cir. 1980). Plainly, where, as here, the applicants for intervention are seeking party status within approximately three months of the filing of the Complaint – and within one month of Federal Defendants' filing of their Answer, *see* Doc. # 9 (Nov. 7, 2011) – the intervention application is timely.

B. The Proposed Intervenors Have Legally Cognizable Interests That May Be Impaired By The Relief Sought By Plaintiff SCI.

The proposed intervenors clearly have an "interest" – and indeed a compelling one – in this litigation that is protectable within the meaning of Rule 24(a). The D.C. Circuit has construed the protectable "interest" requirement of Rule 24(a)(2) to mean that proposed intervenors must demonstrate that they have Article III standing. *Mova Pharm. Corp. v. Shalala*,

140 F.3d 1060, 1074 (D.C. Cir. 1998); *see also Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 732-33 (D.C. Cir. 2003). Here, Proposed Defendant-Intervenors easily satisfy the requirements for Article III standing – *i.e.*, injury in fact, causation, and redressability. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

It is already well established by two separate courts that these same entities have standing to ensure that all otherwise unlawful takes of members of the three antelope species proceed through the statutorily mandated Section 10 permit application process, and that Proposed Defendant-Intervenors have an enforceable right to all of the required information flowing from that process so that they can meaningfully participate in the Section 10 process. *Cary v. Hall*, Civ. No. 05-4363, 2006 WL 6198320, at *11 ("Defenders has standing to pursue its claim under § 10(c)" because "the challenged regulation effectively denies Defenders information required to be made publicly available under § 10(c) so that Defenders can meaningfully participate in the § 10 permit process"); *id.* (finding that "§ 10(c) creates an enforceable right to information [so] that the public ha[s] an opportunity to participate in the notice and comment process that is to accompany each § 10 permit application"); *Friends of Animals v. Salazar*, 626 F. Supp. 2d at 113 (finding that "plaintiffs have suffered an informational injury which confers standing to challenge the Rule under subsection 10(c) of the Act," and that "plaintiffs have adequately demonstrated an organizational injury under [section 10(c) independent of informational injury because] . . . the Rule directly conflicts with their activities and the services they provide in learning about and informing the their members of the status of captive antelopes and participating in the section 10(c) process").

Moreover, because the relief sought here by Plaintiff SCI would effectively remove captive members of the three antelope species from the ESA's protection, *see* Doc. # 1 at 29 (requesting that the Court "*[s]et aside the Final Listing Rule* in whole or in part and remand it back to the Federal Defendants for consideration of *excluding the U.S. captive populations . . . from the endangered species listing*") (emphases added), such relief would concretely injure Proposed Defendant-Intervenors' organizational interests in the critical information to which they are statutorily entitled under Section 10, as well as their interests in meaningfully participating in the Section 10 process in the manner contemplated by Congress when it enacted that provision. *E.g.*, Exhibit 1 ¶¶ 16-17; Exhibit 2 ¶¶ 18-19; Exhibit 4 ¶¶ 12-14

In turn, Plaintiff SCI's requested relief, if granted, would also require Proposed Defendant-Intervenors to expend substantial organizational resources in order to seek additional legal protections for the species and to obtain crucial information about each entity killing and harming members of these species that would have otherwise been made available pursuant to the Section 10 process had they been listed as endangered. *See* 16 U.S.C. 1539(a)(1)(A); 50 C.F.R. § 17.22(a)(1)(viii) (explaining that applicants for section 10 permits must provide a "statement of the applicant's willingness to participate in a cooperative breeding program" as a prerequisite to the agency finding that the permitted activities are necessary to "enhance the propagation" of the species). As two courts have previously concluded, Proposed Defendant-Intervenors' injuries are more than sufficient to confer standing under the circumstances. *Cary v. Hall*, Civ. No. 05-4363, 2006 WL 6198320, at *11; *Friends of Animals v. Salazar*, 626 F. Supp. 2d at 113; *see also* Exhibits 1-4 (providing concrete examples of the injuries that Plaintiff SCI's relief, if granted, would cause to Proposed Defendant-Intervenors).

These cognizable injuries to Plaintiffs' interests are underscored because the relief requested by Plaintiff SCI would also wholly undermine Judge Kennedy's ruling – a successful judgment in Proposed Defendant-Intervenors's favor to halt precisely the result that Plaintiff SCI seeks here: a situation where canned hunting facilities and FWS need not comply with the informational and other mandatory obligations of Section 10 when taking members of these three antelope species. *Compare Friends of Animals v. Salazar*, 626 F. Supp. 2d at 115 (finding that "*plaintiffs are correct* . . . that Congress intended permits for the enhancement of propagation or survival of an endangered species *to be issued on a case-by-case basis following an application and public consideration of that application*") (emphasis added), *with* Doc. # 1, ¶ 94 (requesting that the court set aside the listing rule because, in Plaintiff SCI's view, FWS has, in compliance with Judge Kennedy's Order, "illegally created a situation where private ranch owners must seek and the FWS must issue permits for the trade, use and take of members of these herds").

As the U.S. Supreme Court recently recognized, "[a] party that obtains a judgment in its favor acquires a 'judicially cognizable' interest in ensuring compliance with that judgment." *Salazar v. Buono*, 130 S. Ct. 1803, 1814-15 (2010) (plurality) (Kennedy, J., concurring in judgment). There, the Court found that, "[h]aving obtained a final judgment granting relief on his claims, Buono had standing to seek its vindication." *Id.* at 1815. As the Court noted, "[t]he standing inquiry . . . turns on the alleged injury that prompted the plaintiff to invoke the court's jurisdiction in the first place, [and] Buono's entitlement to [relief] having been established in [previous cases], he sought . . . to prevent the Government from frustrating or evading that [relief]." *Id.* Therefore, as in *Buono*, Proposed Defendant-Intervenors "acquire[d] a 'judicially

cognizable' interest in ensuring compliance with th[e] judgment" obtained from Judge Kennedy in 2009, which would be entirely undermined if this Court grants the relief sought by Plaintiff SCI by setting aside the listing rule in whole or in part.

Thus, Proposed Defendant-Intervenors plainly satisfy the injury-in-fact requirement of Article III, and the organizations also readily satisfy the causation and redressability prongs of Article III since their informational and organizational interests may be significantly impaired should the listing be set aside as a result of Plaintiffs SCI's suit and, in addition, the Court can redress Plaintiffs' injuries by denying the relief requested by SCI. *See, e.g.*, *Animal Legal Def. Fund v. Glickman*, 154 F.3d 426 (D.C. Cir. 1998) (en banc).

C. The Interests Of Proposed Intervenors Are Not Adequately Represented By The Federal Defendants.

The final criterion for intervention of right – a demonstration that the applicants' interests are not "adequately represented by existing parties" – is also easily shown here. Fed. R. Civ. P. 24(a). Indeed, it is well established, especially in this Circuit, that this requirement "is not onerous." *Dimond v. Dist. of Columbia*, 792 F.2d 179, 192 (D.C. Cir. 1986). Rather, "[t]he requirement of the Rule is satisfied if the applicant shows that representation of his interest '*may be*' inadequate," and "the burden of making that showing should be treated as *minimal*." *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972) (emphasis added); *see also Nuesse*, 385 F.2d at 703. Moreover, the interests asserted by the applicant "need not be wholly 'adverse' before there is a basis for concluding that existing representation of a 'different' interest may be inadequate." *Nuesse*, 385 F.2d at 703.

This "minimal" standard is certainly satisfied here. To begin with, the background of the antelope listing shows that the government has in the past concurred in Plaintiff SCI's

interpretation of the ESA – *i.e.*, that captive members of these species may be wholly exempted from the strictures of the "take" prohibition – and that FWS also took *fourteen years* to finally list the three antelope species after announcing a proposed rule to do so. *Compare* 56 Fed. Reg. 56491-95 (Nov. 5, 1991), *with* 70 Fed. Reg. 52319 (Sept. 2, 2005). When FWS ultimately listed the three antelope species, it simultaneously promulgated the illegal antelope exemption, which was overturned by Judge Kennedy as unlawful under Section 10. *Friends of Animals v. Salazar*, 626 F. Supp. 2d at 115-21. On remand from Judge Kennedy, it took FWS more than *two years* to issue a proposed rule to withdraw the illegal antelope exemption, which would require case-by-case Section 10 permit applications for facilities engaged in otherwise unlawful takes of members of these species. *Compare Friends of Animals v. Salazar*, 626 F. Supp. 2d at 102 (issuing the opinion on June 22, 2009), *with* 76 Fed. Reg. 39804 (July 7, 2011). Indeed, as of this filing, FWS has still not issued a final rule withdrawing the antelope exemption, meaning that the judgment in Proposed Defendant-Intervenors' favor still has *not* been vindicated.

Under these circumstances, and regardless of *why* Federal Defendants have unlawfully delayed so long in protecting the antelopes, it is apparent that, at the very least, Federal Defendants' representation of Proposed Defendant-Intervenors' overarching interests in antelope conservation and statutorily required information relating to these species "*may* be inadequate." *Trbovich*, 404 U.S. at 538 n. 10 (emphasis added); *see also Coal. of Ariz./N.M. Cntys. For Stable Econ. Growth v. Dept. of the Interior*, 100 F.3d 837 (10th Cir. 1996); *Idaho Farm Bureau Fed. v. Babbitt*, 58 F.3d 1392 (9th Cir. 1995).

In any event, wildlife conservation groups that have long worked to protect these imperiled antelopes – including seeking heightened protection for these animals under the ESA –

can be expected to "mak[e] a more vigorous presentation" of the legal and factual arguments in support of a listing rule that furthers those objectives than federal officials who adopted the listing rule reluctantly, but did so by simultaneously circumventing Section 10 in an unlawful manner that has not yet been remedied by the agency. *See Natural Res. Def. Council*, 561 F.2d 904, 912 (D.C. Cir. 1977).[3]

Accordingly, because Proposed Defendant-Intervenors meet all of the requirements for intervention as of right, they should be permitted to intervene as full parties here. *Trbovich*, 404 U.S. at 537 n.8; *Neusse*, 385 F2d at 701 (explaining that Rule 24(a), as amended in 1966, was "obviously designed to liberalize the right to intervene in federal actions").

II. IN THE ALTERNATIVE, PROPOSED DEFENDANT-INTERVENORS SHOULD BE GRANTED PERMISSIVE INTERVENTION.

Although the proposed intervenors amply satisfy the criteria for intervention as of right under Rule 24(a), in the alternative this Court should exercise its discretion by allowing the applicants to intervene in this action as a permissive matter under Rule 24(b). Rule 24(b)(2) provides that "[o]n timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact," Fed. R. Civ. P. 24(b)(1), and further provides that "[i]n exercising its discretion the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3).

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[3] The fact that another animal protection organization, Friends of Animals, has also moved to intervene in this case, *see* Doc. # 11, has no bearing on whether the present motion should be granted. *See, e.g., Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 731 (D.C. Cir. 2003) (noting that the district court granted intervention to two different sets of "hunting and conservation" organizations).

In determining whether to grant permissive intervention, courts also consider whether a prospective intervenor will "contribute to the full development of the underlying factual issues in the suit and to the just and equitable adjudication of the legal questions presented." *In Re Acushnet River & New Bedford Harbor*, 712 F. Supp. 1019, 1023 (D. Mass. 1989); *see also Neusse*, 385 F.2d at 704 ("Rule 24(b) . . . provides basically that anyone may be permitted to intervene if his claim and the main claim have a common question of law or fact"). "As its name would suggest, permissive intervention is an inherently discretionary enterprise," *EEOC v. Nat'l Children's Ctr., Inc.*, 146 F.3d 1042, 1046 (D.C. Cir. 1998), and hence district courts have "wide latitude" in determining whether to grant such status. *Id.*; *see also U.S. Postal Sys. v. Brennan*, 579 F.2d 188, 191-92 (2d Cir. 1978).

Here, Proposed Defendant-Intervenors seek to intervene precisely to "contribute to the full development" of the factual and legal issues that require resolution in this case. *In Re Acushnet River & New Bedford Harbor*, 712 F. Supp. at 1023. Because of their longstanding interests in antelope conservation, in obtaining information and meaningfully participating in Section 10 permit processes for these species, and in proper implementation of the ESA, the organizations will contribute to the "just and equitable adjudication of the legal questions presented" without in any way prejudicing Plaintiff SCI's interest in an expeditious resolution of its claims. *In Re Acushnet River & New Bedford Harbor*, 712 F. Supp. at 1023. Accordingly, even if the Court concludes that the standards for intervention of right are not satisfied, the Court should nonetheless exercise its discretion to permit the organizations to intervene under Rule 24(b).

CONCLUSION

For all of the foregoing reasons, Proposed Defendant-Intervenors' Motion to Intervene should be granted.

Respectfully Submitted,

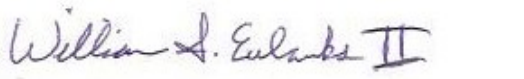

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EXHIBIT 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FRIENDS OF ANIMALS, **Plaintiff,** **v.** **DIRK KEMPTHORNE, Secretary of the Interior,** **Defendant,** **and** **SAFARI CLUB INTERNATIONAL, et al.,** **Defendant-Intervenors.**	**Civ. No. 04-1660 (HHK-DAR)** **Civ. No. 06-2120** **(Consolidated Cases)**
REBECCA ANN CARY, et al., **Plaintiffs,** **v.** **DALE HALL, Director, Fish and Wildlife Service, et al.,** **Defendants,** **and** **SAFARI CLUB INTERNATIONAL, et al.,** **Defendant-Intervenors.**	

DECLARATION OF NINA FASCIONE

I, Nina Fascione, hereby declare as follows:

1. I submit this declaration in support of plaintiffs' Motion for Summary Judgment in Cary v. Hall.

2. I am the Vice President for Field Conservation at Defenders of Wildlife ("Defenders"), a national non-profit organization dedicated to the protection and restoration of all wild animals and plants in their natural communities. Defenders has more than 500,000 members and supporters across the nation.

3. As Vice President for Field Conservation, my job responsibilities include overseeing the conservation work of 30 staff members based around the country, from Florida to Alaska, who conduct "on-the-ground" wildlife and habitat conservation, as well as contributing to our organization's comment letters on proposed agency actions. The position requires developing innovative management, science, and policy strategies to conserve and restore specific species, particularly those that are endangered or otherwise imperiled, and the habitats upon which they depend.

4. A focus of Defenders for over the past decade has been to ensure that imperiled species are listed under the Endangered Species Act ("ESA" or "Act"), that their habitats are protected, and that the activities undertaken with respect to ESA listed species adhere to the requirements of the Act. Defenders' Action Fund lobbies to ensure that ESA programs receive funding, and that the protections of the ESA are not weakened.

5. Defenders also engages in rulemaking and other processes to ensure that the agencies who implement the ESA continue to maintain a lawful and reasonable interpretation of the statute and do not weaken the Act's provisions through administrative action. In addition, Defenders regularly submits petitions to the Fish and Wildlife Service ("FWS") requiring the agency to list imperiled species under the ESA and to designate critical habitat for those species

that are listed. We also monitor agency actions and proposals to ensure compliance with the ESA and, when necessary, bring lawsuits to enforce the provisions of the statute.

6. Additionally, the International Program at Defenders utilizes the organization's scientific, legal and policy expertise to protect global biodiversity, and to reform trade practices to protect wildlife. Our work involves advocacy in numerous international forums to ensure that policy decisions adequately protect wildlife and biological diversity, and to prevent governments from weakening protections for the global environment. Defenders devotes significant time and resources in its international work.

7. Part of our work to protect imperiled species and maintain the integrity of the ESA includes our public education and media campaigns that are designed to keep our members and the public informed about proposals that effect imperiled species, their habitats, and biological diversity. We send out action alerts by electronic mail to our members informing them of proposed actions with ramifications for ESA listed species and the actions they can take with respect to such proposals. We also routinely update our website to inform our members and the public about breaking news regarding the conservation of species and their habitat. Our newsletter includes stories on ESA listed species and work being done to conserve and recover these species. We have also dedicated resources to structuring a portion of our website for children, so that the next generation can learn to appreciate and conserve wildlife and habitat.

8. Defenders also compiles detailed reports that educate the public and law makers about important conservation issues. We also work with the news media to further educate the public about these issues, including by providing reporters with information about ESA listed species and writing Op-Ed pieces and Letters to the Editor.

9. As a result of these efforts, our members and the public rely on Defenders for up-to-date information about ESA listed species, conservation issues, and work that needs to be done to ensure that the ESA is fully implemented. Indeed, many of our members joined Defenders and continue to support our organization because of these services that we provide.

10. One component of our work includes reviewing the Federal Register to learn about permit applications under section 10 of the ESA. Defenders routinely requests section 10 application materials, comments on the permit applications, and reviews and sometimes brings legal challenges to the FWS's decisions to issue permits that Defenders believes fail to comport with the ESA. We also rely on the information that we obtain and the public process provided under section 10 of the ESA to send out action alerts to our members, update our website, write stories for our newsletter, compile detailed reports, and work with the news media.

11. One example of our use of information obtained under section 10 of the ESA, is Defenders' tracking of Incidental Take Permits and accompanying Habitat Conservation Plans that are also issued under Section 10. This work culminated in a report entitled, *Frayed Safety Nets*, http://www.defenders.org/pubs/hcp01.html, which describes the scientific and legal problems with the manner in which section 10 is currently implemented. We have used this report as a valuable tool in our advocacy work and in educating the public and our members about these permits and plans.

12. In 2003, Defenders submitted comments on a proposed regulatory change to the FWS's regulations implementing section 10 that would have vastly expanded the circumstances under which the agency could issue section 10 permits. See 68 Fed. Reg. 53327 (Sept. 10, 2003); 68 Fed. Reg. 49512 (Aug. 18, 2003). To explain why this proposal failed to comport with

the ESA and would contribute to the demise of ESA protected species, rather than their recovery, we relied on information obtained through the section 10 process, including information on the Giant panda and bontebok – a southern African ungulate.

13. These examples only begin to illustrate how important the implementation of the section 10 process is to the proper functioning of the ESA and its goal of recovering endangered species. Section 10 provides the only opportunity under the ESA for an entity to engage in otherwise prohibited acts with respect to endangered species. Hence, this provision and its proper implementation are essential to the work that Defenders does to preserve the integrity of the ESA, ensure that it is fully implemented, and advocate for the protection of imperiled species.

14. When the FWS first proposed the Antelope Exemption for the scimitar horned oryx, addax, and dama gazelle, Defenders worked in coalition with several organizations to gather information and provide meaningful comments on the proposed regulation. We objected to the rule on numerous grounds, including the fact that it signified a new and unprecedented interpretation of section 10 by the FWS. We also informed our members of the opportunity to comment on this rule. However, without any specific information about each of the ranches and other facilities that would benefit from the rule and the activities in which they engage, Defenders could not offer the kind of fact-specific comments that it normally provides under section 10. Indeed, the agency's departure from the case-by-case analysis required by section 10 and the information that this statutory provision requires, raised significant concerns for Defenders as an organization and the ramifications such blanket regulations could have for all section 10 permits and ESA listed species.

15. The examples discussed above demonstrate that our ability to obtain the information to which we are entitled under section 10 of the ESA is essential to our advocacy work. Without the opportunity to be involved in the decision-making process and to obtain relevant information on proposals that implicate ESA listed species, we simply would not be able to accomplish our organizational objectives.

16. The decision by the FWS to issue a regulation that allows hunting and other prohibited activities with respect to the endangered scimitar-horned oryx, addax, and dama gazelle has caused our organization significant informational injury. The Antelope Exemption denies us information on these three species to which we are entitled under section 10. For example, we have not received any permit application materials from any of the ranches or hunters that are authorized to kill these endangered species under the new regulation. We also have not received a case-by-case determination as to how breeding these animals at each game ranch covered by the rule and/or how turning imperiled species into trophies at the facilities operating under the Exemption in any way enhances the survival or propagation of the species as a whole. Particularly, when there are valid conservation facilities in this country and abroad that are already engaged in legitimate captive breeding of these species. As a result, we are not obtaining up-to-date information on the three antelope species and actions that are being taken with respect to these species in the U.S., since any one who breeds these animals in captivity in the U.S. and who allows them to be hunted no longer has to obtain a permit. The denial of this information also makes it impossible for Defenders to monitor these facilities to ascertain whether they are in compliance with the statute and all relevant regulations and that their activities do in fact enhance the survival of the species as required under section 10. Such

information is not only crucial to the work that Defenders does but is also critical to Defender's ability to avail itself of the citizen suit provision of the ESA, 16 U.S.C. § 1540(g).

17. As a result of the FWS's regulation, Defenders has used and continues to use its resources that would otherwise be committed to our advocacy work to learn about these hunting practices, to inform our members and the public about this important conservation issue and the integrity of the ESA. We have spent resources conducting on-line research, talking to people in the field who are trying to preserve these species in the wild, and otherwise endeavoring to learn about these species in the U.S., all of which has caused a drain on our limited resources, which could otherwise be spent on advocating for protection of other imperiled species. Without the information to which we are entitled under section 10, Defenders has struggled to inform our members about the scimitar-horned oryx, addax, and dama gazelle and why these endangered species can be killed for sport under the ESA. Defenders' ability to ensure the proper implementation of the ESA and the protection of ESA listed species and their habitat has also been impaired.

18. All of our injuries would be redressed if we prevail in this lawsuit because the FWS would be required to follow the process required by Section 10 of the ESA before granting any permit that may allow a permit holder to engage in acts that are otherwise prohibited by the ESA. As a result, we would receive the information – including the permit application materials and the FWS's findings – to which we are statutorily entitled. Additionally, we would be able to participate in the process – i.e., receive notice of the application, the opportunity for comment, and notice of the FWS's final decision and the basis for that decision – under the ESA. If Defenders obtains such a ruling, we will also no longer have to dedicate additional resources to

obtaining information about the scimitar-horned oryx, addax, and dama gazelle through alternative means and, instead, we could devote more of our resources to protecting these species and their habitat, as well as other imperiled species.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statement is true and correct.

Nina Fascione

Dated: November 10, 2008

EXHIBIT 2

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FRIENDS OF ANIMALS,	
Plaintiff,	
v.	
DIRK KEMPTHORNE, Secretary of the Interior,	**Civ. No. 04-1660 (HHK-DAR)**
Defendant,	**Civ. No. 06-2120**
and	**(Consolidated Cases)**
SAFARI CLUB INTERNATIONAL, et al.,	
Defendant-Intervenors.	
REBECCA ANN CARY, et al.,	
Plaintiffs,	
v.	
DALE HALL, Director, Fish and Wildlife Service, et al.,	
Defendants,	
and	
SAFARI CLUB INTERNATIONAL, et al.,	
Defendant-Intervenors.	

DECLARATION OF ANDREW PAGE

I, Andrew Page, hereby declare as follows:

1. I submit this declaration in support of plaintiffs' Motion for Summary Judgment in Cary v. Hall.

2. I am the Senior Director for the Wildlife Abuse Campaign at the Humane Society

of the United States ("The HSUS"), a non-profit membership organization with over 10.5 million members and constituents. The mission of The HSUS is to create a humane and sustainable world for all animals and people, through education, advocacy, and the promotion of respect and compassion. The HSUS protects animals through legislation, litigation, investigation, public education, special events, and field work.

3. The HSUS focuses its efforts on particular issues pertaining to the welfare of animals. Among these is the protection of wild animals in light of the increasing number of threats from anthropogenic factors, including habitat loss and degradation, over-hunting, and illegal trade in imperiled animals and their parts. It is The HSUS's position that the demise of any species is an irreparable loss that deprives the world of a unique creature and the role that creature plays in its ecosystem. Thus, The HSUS is committed to protecting threatened and endangered species and their habitats under the Endangered Species Act ("ESA").

4. The HSUS's international branch, Humane Society International ("HSI"), works to eliminate illegal trade in wildlife including sport hunted trophies, and to ensure that various treaties and international agreements affecting wildlife and trade in animals and their parts are fully implemented and continue to protect animals throughout the world.

5. As Senior Director for The HSUS, I oversee efforts to stop egregious practices such as captive or "canned" hunting, wildlife penning, and killing contests in the U.S. The campaign works to expose inhumane hunting practices and inform and mobilize HSUS constituents and the general public. My overall job responsibility is to campaign for regulatory and legislative changes for the types of wildlife abuses that we target.

6. Our members rely on The HSUS's services including monitoring, reporting,

investigating, and otherwise endeavoring to conserve imperiled species, collaborating internationally to protect animals, and endeavoring to end wildlife abuses. These services include:

a. Monitoring. HSUS employees routinely read the Federal Register to learn about species proposed for listing under the ESA and about proposed actions that would impact ESA protected animals. We also request information under the Freedom of Information Act. On our members' behalf we send alerts, solicit comments, and comment on agency proposals. The HSUS monitors proposed changes in the law regarding hunting and press coverage of hunting issues. We follow proposed legislation at both the state and federal level. The HSUS monitors state regulatory changes in hunting, captive wildlife management, importation, and exportation and provides information and testimony to state wildlife agencies with regards to captive wildlife hunting.

b. Investigations. The staff of the Investigative Services department works to expose organized or institutionalized animal cruelty. HSUS investigators provide comprehensive, in-depth investigative and research support for The HSUS and HSI. The HSUS uses this valuable information to bring violators of animal protection laws to justice, educate the public about wildlife abuse and animal cruelty, and show legislators the need for stronger animal protection laws. To provide this information, The HSUS Investigative Services staff regularly accesses the Federal Register, Fish and Wildlife Service ("FWS") and other state wildlife agencies' websites.

c. Reporting. The HSUS uses the information it obtains from various monitoring activities, ongoing research, and investigations to report to our members, update our website, and to prepare reports, action alerts, fact sheets, and press releases on important issues pertaining to animal protection.

d. Advocacy Work. The HSUS advocates for stronger protections for all animals, including those who are threatened and endangered. This includes lobbying for the passage of legislation at both the federal and state levels, responding to requests for public comments from government agencies; submitting complaints, petitions, and other information to such entities. Additionally, The HSUS brings lawsuits in federal and state court and submits *amicus* briefs in other cases.

e. Public Education & Reporting To HSUS Members. The HSUS maintains a website regarding our campaigns, sends action alerts to our members to keep them informed about issues pertaining animals and how their voice can be heard in various forums on these issues. We also send out a regular newsletter that includes updated information on our campaigns and in depth reports on key issues.

7. Among our recent efforts is our campaign to halt the captive hunting of animals

and other wildlife abuses Captive hunting operations, also referred to as "preserves" or "game ranches," are private trophy hunting facilities that offer their customers the opportunity to kill exotic and native animals trapped within enclosures. These ranches require payment of a fee to hunt at their facilities, and one ranch even allowed its clients to kill animals remotely via the Internet, before that practice was banned in the state. Frequently, the animals have become habituated to human contact or are provided food at regular intervals. These practices make it easy for the ranches to guarantee a kill, because the animals are become acclimated to the presence of people and will routinely visit certain locations to feed, which is precisely when they are shot by hunters.

8. The HSUS has devoted considerable resources to ending these practices. In 2005, we combined forces with The Fund for Animals, which had commenced a captive hunting campaign in the 1990's that The HSUS is now continuing. One component of this campaign has been the gathering of information on ranches that allow the hunting of exotic animals for sport. We have submitted requests under the Freedom of Information Act and State Public Records acts regarding hunting ranches in the U.S. Our Investigative Services staff has completed investigations into captive hunt facilities, both domestically and abroad, including a 2004 investigation of U.S. trophy hunters killing animals at several captive hunting operations in South Africa. These investigations produced information The HSUS uses to generate reports, inform the public and the media, and support The HSUS's hunting campaign's department's advocacy work. The HSUS has provided testimony and information to several state wildlife agencies as they develop rules restricting the practice, has actively mobilized members and lobbied for the passage of legislation in several states, worked to promote the passage of federal

legislation to restrict captive and Internet hunting, and assisted in the efforts to pass a ballot measure to prohibit captive hunting in North Dakota.

9. The HSUS also prepares and maintains information on captive hunting and the illegal trade in sport hunted trophies, which we make available to the public and our members and have been used in our advocacy work. For example, an HSUS undercover investigation revealed that trophy hunters were using a loophole in the tax code to claim inflated tax deductions for donating trophies, including those of endangered species, to pseudo-museums, thereby enabling them to deduct the expenses of their hunting trips. In 2005, HSUS submitted testimony on this trophy hunting tax scam to the Senate Finance Committee, and the issue also received extensive coverage in the news media. As a result of our research on the illegal importation of sport hunted trophies, The Washington Post ran an expose piece covering this issue and explaining to the public how sport hunters launder their trophies through museums and non-profit organizations in order to bring them into this country. Marc Kaufman, *Big Game Hunting Brings Big Tax Breaks*, Washington Post, April 5, 2005, at A01.

10. The piece in the Washington Post is just one example of our media work, which includes crafting press releases on issues pertaining to captive hunting, including those we learn about through the Federal Register. Our media efforts are designed to help educate the public about captive hunting and raise public awareness about this issue.

11. We also participate in lawsuits to curtail the captive hunting of animals. For example, we submitted an amicus brief to the Oregon Supreme Court in support of a State agency's authority to regulate the possession, sale, and hunting of exotic species – authority that would enable the state to end the captive hunting of exotic animals in Oregon. We also were

permitted to intervene in a case in Indiana state court, to assist the Indiana Department of Natural Resources in defending a state-wide captive hunting prohibition. The HSUS has also worked to outlaw internet hunting and trafficking in animals intended for hunting ranches at the state and federal levels.

12. We regularly update the "Wildlife Abuse" and "Captive Hunts" segments of our website to keep our members and the public informed about arising hunting issues and our victories on behalf of animals. We also report to our members about captive hunting through our newsletter. Additionally, we send out action alerts to our members and supporters, which keep them apprised of our work to end captive hunting, and provide our members with information about actions they can take to assist our effort to curtail captive hunting.

13. A specific component of our captive hunting campaign is the monitoring of applications for ESA section 10 permits. As an initial matter, to maintain an ESA protected species in captivity and undertake "normal practices of animal husbandry" under the ESA, ranches and other entities can either (1) register under the FWS's Captive Bred Wildlife program to engage in routine husbandry if their activities enhance the survival of the species and the ranch is willing to submit annual reports to the FWS, or (2) apply for an enhancement permit under section 10 of the ESA for the proposed activity. With respect to the latter, for an ESA listed species to be killed and converted into a trophy, typically a hunter pays a trophy fee that ranges from several hundred to thousands of dollars and a nominal portion of this fee is contributed by the ranch to some nonprofit organization, that may or may not benefit the species, as the "conservation" justification for the permit.

14. Staff working on our wildlife abuse campaign regularly monitor the Federal

Register for notices of proposals to kill endangered species at captive hunting facilities. HSI closely monitors the Federal Register for proposals to import trophies and parts of endangered species into this country. The HSUS and HSI routinely request copies of the application materials, research issues raised by the applications, and submit comments to the FWS on behalf of our members. We also monitor the Federal Register to determine whether permits are granted by the FWS and on what basis, and keep our members and the general public informed about these matters.

15. For example, we submitted a comment letter, in conjunction with Defenders of Wildlife and Born Free USA, on March 6, 2006 asking the FWS not to issue a permit to a sport hunter who applied to import the trophy of a sport-hunted scimitar-horned oryx from Africa. See Letter from Sarah Uhlemann, HSUS, to Monica Farris, FWS (Attachment); see also 71 Fed. Reg. 5,876 (Feb. 3, 2006). Our comments relied heavily on the application materials we obtained from the FWS under Section 10 and the failure of the applicant to demonstrate that importing the oryx trophy would meet the requirements of Section 10 at all including those of Section 10(d). Id. We also conducted independent research on the place where the oryx was killed – Tams Farm – and learned that it was a captive hunt facility in the Republic of South Africa and that, therefore, the application was incorrect when it stated the animal was "[n]ever held in captivity," because it was taken outside of its range at a game ranch. Id. at 3. We have continue to monitor the Federal Register to determine whether this permit will be granted and to date have not received any notice that it has been issued.

16. We have also submitted extensive comments opposing numerous other section 10 applications seeking to import or kill endangered antelopes, including Laguna Vista Ranch's

application to take and transport Eld's deer and barasinga, Barnhart Ranch's application to take and transport barasinga, and Patio Ranch's application to take and transport barasinga and Arabian oryx. In response to Patio Ranch's application, HSUS informed the Israel Nature and Parks Authority that Patio Ranch was claiming its $1000 donation to the agency's oryx research project justified the Ranch's section 10 take application because the donation "enhances the propagation or survival" of oryx. The agency submitted a letter opposing Patio Ranch's take application, explaining that Patio Ranch had not informed the agency about its purpose for the donation, and had it known, the agency would not have accepted the donation. The agency noted: "we do not consider that this small donation had any significant impact on the survival or proposition of the species in the wild."

17. To accomplish our objective of ending the captive hunting of ESA listed species, we rely heavily on the information required by the section 10 process. Not only do we use this information – namely the application materials and the FWS's findings – to comment on the permit applications, but we also use the information to prepare articles and reports, inform our members, and document examples for use in lobbying and other advocacy work. We also use this information to monitor the number of operations in each state and the species hunted at different sport hunting ranches.

18. Because of the regulation issued on September 2, 2005, 70 Fed. Reg. 52310, the scimitar-horned oryx, addax, and dama gazelle are listed as endangered under the ESA and are being sport hunted in the U.S., The HSUS is not receiving any of the information about these activities, is also not being provided any of the process to which it is statutorily entitled under section 10 of the ESA. This major change in the regulatory process is due to the new Antelope

Exemption that the FWS promulgated that creates a blanket exemption from the permitting requirements of section 10 of the ESA for all captive breeding, sporting hunting, and transportation of captive bred scimitar-horned oryx, addax, and dama gazelle in the United States. Under this regulation, there are no permit or registration requirements for the sport hunting of these animals. Indeed, there is not even a list of all the ranches that are allowed to operate under the new rule. Therefore, the decision by the FWS to issue this rule has caused The HSUS extensive informational injury – i.e., we are not being provided the information we are normally entitled to under section 10: we are not being informed about which entities are engaging in these activities; we are not being provided the materials that such entities normally must submit to the FWS in order to obtain a permit; we are not being afforded the opportunity to comment on whether a particular entity should be allowed to engaged in otherwise prohibited acts with respect to these endangered animals; and we are not receiving the statutory "findings" that are required to be made for each such permit under section 10(d) before the FWS can issue a permit.

19. Also as a result of the new regulation, we have had to dedicate additional resources within our captive hunting campaign to obtain information on the sport hunting of these three Antelope species. These efforts have included submitting requests for information under the Freedom of Information Act, conducting research on-line to attempt to discern the ranches that have these animals and whether they allow hunting, and researching the number and source of endangered animal trophies imported into the United States and traded across state lines. All of these additional efforts have drained the resources we have available for this campaign and the advocacy work we can carry out on behalf of animals who are being hunted

for sport.

20. Additionally, our ability to provide our members with the services that they expect from our organization has also been diminished. We are not receiving the information to which we are statutorily entitled under the ESA that we would otherwise use to keep our members informed about these antelope species and the sport hunting of these endangered animals in the United States. We cannot as readily update our website about the captive hunting of these species, or otherwise gain sufficient details regarding the ranches that are benefiting from the Antelope Exemption and their programs, because of the FWS's blanket Antelope Exemption. We are also not receiving any findings from the FWS about these activities and how they can possibly be justified under the ESA.

21. Because we are not receiving the information from the section 10 process that we are entitled to once an animal is listed as endangered, our ability to advocate for the end of captive and sport hunting of captive scimitar-horned oryx, addax, and dama gazelle has been impaired. For example, we cannot readily obtain information on the ranches that permit the sport hunting of scimitar-horned oryx, addax, and dama gazelle or their practices to know which States to target for our legislative efforts, or the specific ranches we should investigate. Indeed, we cannot even discern whether these ranches are even breeding members of these species that genetically could be used for reintroduction into the wild. Additionally, without the FWS's findings that are required by section 10(d), we cannot ascertain the agency's position on why it is permissible to hunt an endangered species for sport at each game ranch, whether each such ranch is in fact doing anything to enhance the survival or propagation of the species as a whole, and

then to advocate more protections for these animals or for the FWS to change this regulatory approach.

22. All of these injuries to our organization would be redressed if we prevail in this lawsuit, because the FWS would be required to follow the process mandated by section 10 of the ESA with respect to each application for a permit to engage in activities that are otherwise prohibited under the Act. As a result, we would receive the information – including the permit application materials and the FWS's findings – and the process to which we are statutorily entitled – including notice, the opportunity for comment, and notice of the FWS's final decision and the basis for that decision – under the ESA. If The HSUS obtains such a ruling, we will also no longer have to dedicate additional resources to obtaining this and similar information about the scimitar-horned oryx, addax, and dama gazelle through alternative mechanisms and, instead, could devote more of our resources to protecting these and other animals in need of our advocacy work and hopefully improving their welfare.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statement is true and correct.

ANDREW PAGE

Dated: November 4, 2008

Attachment
Page Declaration

Cary v. Hall,

Civ. Nos.04-1660, 06-2120 (HHK)

March 6, 2006

Monica Farris
Senior Permit Biologist,
U.S. Fish and Wildlife Service
Division of Management Authority
4401 North Fairfax Drive, Room 700
Arlington, Virginia 22203

VIA FACSIMILE

Re: Comments on Application PRT-111436 to Import a Sport-Hunted Scimitar-Horned Oryx (*Oryx dammah*) Trophy for the Purpose of Enhancement of the Survival of the Species, 71 Fed. Reg. 5876

Dear Ms. Farris:

On behalf of The Humane Society of the United States, Defenders of Wildlife, and Born Free USA, I submit these comments on the Fish and Wildlife Service's ("FWS" or "Service") notice of February 3, 2006, in the Federal Register regarding permit PRT-111436. 71 Fed. Reg. 5876 (Feb. 3, 2006). The application, submitted by Robert M. Serrano, requests a permit to import a sport-hunted Scimitar-horned oryx trophy from the Republic of South Africa, allegedly for the purpose of enhancing the survival or propagation of the species. Because the applicant has not complied with FWS regulations, and the issuance of the permit would in no way "enhance the propagation or survival" of this critically endangered species, the FWS must deny this application and refuse to issue the import permit.

The Humane Society of the United States is a non-profit membership organization with over nine million members and constituents dedicated to protecting wild and domestic animals by actively opposing those projects, plans, and events that result in the cruel treatment of animals. Defenders of Wildlife is a non-profit conservation organization dedicated to the protection of wildlife in its native habitat. Born Free USA is a non-profit organization founded to protect animals and conserve threatened and endangered species, with a specific emphasis on keeping wild animals in their native habitats. On behalf of the nearly ten million members and supporters of our organizations, we respectfully request that this permit be denied.

I. Status of the Scimitar-Horned Oryx in the Wild

The Scimitar-horned oryx is a large, critically endangered antelope endemic to the arid Sahelo-Saharan region of North Africa. Once found roaming the Sahel in herds of up to 1000 individuals, the scimitar-horned oryx is now considered extinct in the wild. Its numbers have been decimated by hunting and habitat loss. A transect through Chad and Niger conducted by the Sahara Conservation Fund in 2001-2002, found only a few horn fragments. Efforts are currently underway in Morocco and Tunisia to re-establish

scimitar-horned oryx populations in the wild. The success of these reintroduction efforts will depend in part on how well the threats that brought the species to the brink of extinction are addressed.

II. The Application for the Import Permit is Legally Deficient

As a result of the species' dramatic decline, the Service has listed the Scimitar-horned oryx as endangered under the Endangered Species Act ("ESA"), 16 U.S.C. § 1531-1544; 70 Fed. Reg. 52,319 (Sept. 2, 2005). Under the ESA, it is unlawful for any person to import a scimitar-horned oryx specimen into the United States without a permit issued pursuant to Section 10 of the Act. 16 U.S.C. § 1539. Permit applications must comply with all FWS regulations. 50 C.F.R. § 17.22; 50 C.F.R. pt. 13. Because the Scimitar-horned oryx is listed on Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES"), importation of the oryx must also comply with requirements of the treaty and its implementing regulations. 50 C.F.R. pt. 23; see also 16 U.S.C. § 1538(c)(1) (making it illegal to engage in any trade in any specimen contrary to the provisions of CITES).

The permit applicant here has requested permission to import a trophy of an endangered Scimitar-horned oryx. Although the applicant claims the import is for "trophy" purposes, the Service's Federal Register notice states the import is "for scientific purposes or to enhance the propagation or survival of the affected species." 71 Fed. Reg. at 5876. There are a number of deficiencies in the permit application submitted by Mr. Serrano, including information gaps and inaccurate and inconsistent information. Therefore, the application does not comply with FWS regulations nor does it provide the FWS with adequate information upon which to make a finding that allowing the import of this scimitar-horned oryx trophy will not "operate to the disadvantage" of the species.

First, Mr. Serrano used the improper Permit Application Form. He used Form 3-200-37, which is an application to import *live* species or their products, instead of Form 3-200-20, the proper form for application for the Import of Sport-Hunted Trophies. As a result, Mr. Serrano failed to provide much of the information required for the import of a sport hunted trophy.

For example, Mr. Serrano failed to provide the required basic description of the animal he wishes to import, including common/scientific names, number, age, and sex. 50 C.F.R. § 17.22(a)(1)(i). Indeed, Mr. Serrano claims that a description of the animal is "N/A." At the very least, the scientific name, gender, and features should be provided to the FWS and made available to the public. 16 U.S.C. § 1539(c) ("Information received by the Secretary as a part of any application shall be available to the public as a matter of public record at every stage of the proceeding").

Further, the information Mr. Serrano did provide was inaccurate or inconsistent. Both the correct Form (Form 3-200-20) and the Form submitted (Form 3-200-37) require the applicant to indicate where the specimen was removed from, whether from the wild or from captivity. Mr. Serrano claims that the animal was removed from Tams Farm in

South Africa. Tams Farm is a canned hunting facility. However, Mr. Serrano emphasizes that the animal was "Never held in captivity," despite the clear fact that the range of the scimitar-horned oryx does not extend to South Africa so the animal could not have been taken from the wild. In the section requiring information about animals taken from the wild, Mr. Serrano indicates nothing other than the location of the canned hunt facility is applicable. In the section requiring information about captive wildlife, Mr. Serrano also indicates that nothing is applicable. Due to Mr. Serrano's inaccurate and contradictory information, the Service should deny this application.

Contrary to regulatory requirements, the application does not indicate Mr. Serrano's attempts to use captive species or to avoid the animal's death. 50 C.F.R. § 17.22(a)(1)(iii). Indeed, because the applicants' intent was to take home a trophy of a scimitar-horned oryx, it is reasonable to assume that he did not make any attempt to avoid its death

Finally, the form requires applicants to provide a copy of all required foreign permits, including a CITES export permit or evidence that one will be issued. Mr. Serrano indicates that no such permit is applicable. However, the Scimitar horned-oryx is an Appendix-I species, and a CITES permit is clearly required for export of this animal. As a result of these deficiencies in the application, the FWS should deny the application. 50 C.F.R. § 13.21(b)(2) (the FWS should deny a permit where the "applicant has failed to disclose material information required . . . in connection with his application").

Moreover, the applicant has not provided the Service with the necessary information upon which to make its required finding. The Secretary may only grant permits for the enhancement of the survival of the species if she makes and publishes a finding that: "(1) such exceptions were applied for in good faith, (2) if granted and exercised will not operate to the disadvantage of such endangered species, and (3) will be consistent with the purposes and policy set forth in section 1531 of this title." 16 U.S.C. § 1539(d). In order to sustain this finding, each application for a permit under this section must include a statement outlining the reasons why the applicant is justified in receiving a permit. 50 C.F.R. § 17.22(a)(1)(vii).

Although the Service claims Mr. Serrano's purpose for importing the scimitar-horned oryx is "for scientific purposes or to enhance the propagation or survival of the affected species," the applicant *never even suggests* that his purpose is for science or for the benefit of the species. Instead, Mr. Serrano describes his purpose by stating: "This was a trophy hunt conducted May of 2005. Tams Farm is in business selling trophy hunts to those interested." There is no evidence in the permit that the agency's characterization of the applicant's purpose is correct. Indeed, there is nothing in the application materials indicating that the importation of a sport-hunted trophy in any way will enhance the survival of the oryx.

Because the applicant failed to provide the information required under 50 C.F.R. § 17.22(a)(1), the Secretary does not have an adequate factual basis upon which to make the determinations required by the Act and its implementing regulations, see 50 C.F.R. §

13.21 (b)(2), and, therefore, the application must be denied. 50 C.F.R. § 13.21(b)(3) (a permit should be denied where the "applicant has failed to demonstrate a valid justification for the permit"). Additionally, Mr. Serrano's poor attempt to complete the required permit, as well as the obvious inaccuracies, show the application was not made in "good faith," as required by the ESA. 16 U.S.C. § 1539(d). Accordingly, the application should be denied.

III. The Import Permit is Not Warranted

Pursuant to ESA regulations, the Director must consider the direct and indirect effects that issuing the permit will have on the wild populations of the species. 50 C.F.R. § 17.22(a)(2)(ii). Allowing the legal import of sport-hunted trophies of Scimitar-horned oryx undermines conservation efforts for the species in two ways. First, availability of trophies from captive-bred Scimitar-horned oryx stimulates demand. In our comments opposing the ESA exemption for captive-bred scimitar-horned oryx located in the United States, Final Rule at 70 Fed. Reg. 52310 (Sept. 2, 2005), we pointed out that such demand might inspire efforts to obtain trophies from individuals in the wild. What is true in the U.S. context would apply, *a fortiori*, when the hunters are in or near the native habitat of the species. Second, by allowing some Scimitar-horned oryx trophies to be traded legally, identification of and enforcement against trophies illegally taken from wild reintroduced populations becomes more difficult. These two factors combined pose a risk to the success of ongoing and future reintroduction efforts. Moreover, because hunting is a key factor that has contributed to the decline of this species, it is particularly important that the applicant demonstrate how hunting here is actually enhancing the survival of the species rather than contributing to its decline.

The Director must also consider whether the trophy hunting is "likely to reduce the threat of extinction facing" the scimitar-horned oryx. 50 C.F.R. § 17.22(a)(2)(iv). Even if the Service does not agree that trophy hunting poses a danger to wild populations of endangered species, the regulation does not allow issuance of a permit for activities that simply cause no harm or maintain current populations. Rather, permits for the enhancement of the survival of the species may only be granted for *activities* that are necessary to reduce the threat of extinction. For example, genetic research of the nene in Hawaii, surveys to determine the range of the Quino checkerspot butterfly, and even the Service's own request to export and re-export Mexican wolves for breeding and reintroduction all warrant this exception. 70 Fed. Reg. 73255 (Dec. 9, 2005); 70 Fed. Reg. 73,256 (Dec. 9, 2005), 70 Fed. Reg. 71554 (Nov. 29, 2005). The activities sought to be authorized in Mr. Serrano's application share nothing in common with these examples. Instead, the applicant is requesting a permit for a commercial activity for which only he, and the ranch owners and guides that sold his hunt, will see any benefit from. Granting this permit will not have the effect of reducing the threat of extinction facing the Scimitar-horned oryx.

IV. The Permit Applicant Has Not Demonstrated That He Is Entitled To A Hardship Exemption

Section 10(b) of the ESA permits an applicant who has "enter[ed] into a contract with respect to a species of fish or wildlife or plant before the date of the publication in the Federal Register of notice of consideration of that species as an endangered species and the subsequent listing of that species as an endangered species" and who can demonstrate "undue economic hardship" under the contract to apply for a hardship exemption. 16 U.S.C. § 1539(b)(1). The FWS can issue such an exemption only if the applicant applies for such an exemption and "includes with such application such information as the [FWS] may require to prove such hardship." Id.

The permit applicant here is not entitled to a hardship exemption because he did not apply for a permit before November 26, 2003 (68 Fed. Reg. 66,395), July 24, 2003 (68 Fed. Reg. 43,706), June 8, 1992 (57 Fed. Reg. 24,220), or November 5, 1991 (56 Fed. Reg. 56,491) – the dates on which the FWS's intent to list the scimitar-horned oryx under the ESA was announced in the Federal Register. Moreover, the application materials submitted to the FWS do not contain requests for hardship exemptions or any proof of entitlement to such exemptions.

For all of the aforementioned reasons, our organizations request that permit PRT-111436, submitted by Mr. Serrano be denied.

Respectfully submitted,

Sarah Uhlemann
Litigation Fellow
The Humane Society of the United States

CC'd:

Katherine Meyer
Meyer Glitzenstein & Crystal

EXHIBIT 3

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FRIENDS OF ANIMALS,	
Plaintiff,	
v.	
DIRK KEMPTHORNE, Secretary of the Interior,	**Civ. No. 04-1660 (HHK-DAR)**
Defendant,	**Civ. No. 06-2120**
and	**(Consolidated Cases)**
SAFARI CLUB INTERNATIONAL, et al.,	
Defendant-Intervenors.	
REBECCA ANN CARY, et al.,	
Plaintiffs,	
v.	
DALE HALL, Director, Fish and Wildlife Service, et al.,	
Defendants,	
and	
SAFARI CLUB INTERNATIONAL, et al.,	
Defendant-Intervenors.	

DECLARATION OF MARCIA SLACKMAN

I, Marcia Slackman, hereby declare as follows:

1. I submit this declaration in support of the Plaintiffs' motion for summary judgment in Cary, et al. v. Hall, et al.

2. I am a resident of El Sobrante, California, and a member of The Humane Society

of the United States ("HSUS").

3. I am also employed by The HSUS as Director of Philanthropy, Northern California Region, with the responsibility of informing donors about The HSUS's programs, and facilitating their gifts to The HSUS for our work on animal protection issues.

4. I have been involved for many years in protecting international and domestic wildlife. For example, I was active in several California campaigns to protect cougars, bears, and endangered species in the San Francisco Bay Area. I have also lobbied at the state and federal level, using information I received from The HSUS, including information I received from action alerts, the HSUS website, and the Humane Activist newsletter. My lobbying efforts have included work on wildlife issues such as the purported "management" of wild mustangs on federal lands.

5. To stay informed on issues affecting animals, and to ensure that I can provide current and potential HSUS donors with up-to-date information, I frequently refer to information made available to be by the HSUS. I rely heavily on the HSUS website to keep both myself and our donors informed about the animal issues that interest them. I find myself referring to the HSUS website daily to answer our donors' substantive questions regarding animals and endangered species, as well as to collect information to write funding proposals.

6. Many of our donors are very interested in endangered species and other wildlife issues, including international endangered species issues. Our donors frequently speak to me about their concerns for a variety of endangered species, including several species of endangered African wildlife. Additionally, many of our donors oppose sport hunting at game ranches, particularly when this hunting involves endangered species.

7. Part of the way that I remain informed about animal issues is through The HSUS's weekly electronic mail alerts that often feature endangered species and other wildlife issues, including trophy hunting issues. I frequently take the recommended courses of action suggested in these alerts myself. I also keep our donors apprised about these alerts, and frequently they inform me that they too have taken the recommended course of action. Similarly, I receive, read, and distribute The HSUS newsletters to donors. I also am the recipient of numerous internal electronic mail messages and press releases from The HSUS staff regarding wildlife and hunting issues upon which I rely to remain informed on animal issues.

8. Because of our organizational interest as well as our donors' interest in eliminating cruel hunting practices and ensuring the protection of imperiled species, the decision by the Fish and Wildlife Service (FWS) to issue a regulation that allows the hunting and other prohibited activities with respect to the endangered scimitar-horned oryx, addax, and dama gazelle has caused me informational injury. Likewise, as a result of this regulation, the FWS is no longer requiring the submission of permit applications for individuals to engage in a whole host of activities with these antelopes, which means that The HSUS, including its employees, no longer receive the information to which we are entitled under Section 10 of the Endangered Species Act (ESA). For example, I no longer learn about individual permit applications for sport hunters to "take" endangered species at hunting ranches, the basis for such applications, and other information that would normally be required before the FWS grants a Section 10 permit – all of which The HSUS would have otherwise informed me of.

9. This means that I no longer have the opportunity to submit my own comments to the FWS on such permit applications and explain why I believe that hunting of imperiled animals

at such facilities does not contribute to the conservation of those species. It also means that I am deprived of information that I would otherwise be able to rely on in advocating for stricter protections for animals.

10. The deprivation of information to which I am entitled under the ESA also means that I cannot provide our donors with detailed information about the sport hunting of these endangered antelopes, because there are no permit applications being submitted or any other information on these practices or facilities that would ordinarily be taken into account in deciding whether these entities meet the Section 10 requirements. In addition, because the FWS is no longer making the findings that are required under Section 10, I cannot readily ascertain the agency's position on why it believes that particular sport hunting ranches can be permitted to allow endangered species to be shot and made into trophies – i.e., why those entities in particular are enhancing the survival of the species – to better inform our donors about the necessary advocacy work The HSUS must undertake to change the agency's position on this matter and ensure endangered animals are protected, not killed for "sport." The information we should be receiving under Section 10 about each of these ranches that allow hunting of the endangered antelopes is precisely the type of information that many of our donors are interesting in learning about, evaluating, and using in their work with The HSUS on behalf of animals.

11. However, because The HSUS is not receiving this information, it has to dedicate additional resources to learning about the sport hunting of these antelopes through other avenues, which requires the expenditure of additional organizational resources. In addition, our efforts to halt canned hunting have been harmed by our need to devote resources to learning about these antelopes through additional sources. I now have to spend my time explaining to our donors, and

to foundations that fund our organization, why we have had to divert our resources in this manner, which also further drains our organizational resources.

12. All of these injuries would be redressed if The HSUS prevails in this lawsuit, because the FWS would be required under Section 10 of the ESA to inform the public about each permit application relating to the three antelope species, to provide the public with all such application materials and the opportunity to comment on them, and to receive notice of the FWS's findings with respect to each permit that was issued. Such a ruling will also ensure that The HSUS will not have to dedicate resources to alternative ways to obtain such information, which would mean we could concentrate the resources of our canned hunt campaign on other efforts to halt this inhumane practice.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statement is true and correct.

Marcia Slackman

Marcia Slackman

Dated: November 5, 2008

EXHIBIT 4

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FRIENDS OF ANIMALS, **Plaintiff,** **v.** **DIRK KEMPTHORNE, Secretary of the Interior,** **Defendant,** **and** **SAFARI CLUB INTERNATIONAL, et al.,** **Defendant-Intervenors.**	**Civ. No. 04-1660 (HHK-DAR)** **Civ. No. 06-2120** **(Consolidated Cases)**
REBECCA ANN CARY, et al., **Plaintiffs,** **v.** **DALE HALL, Director, Fish and Wildlife Service, et al.,** **Defendants,** **and** **SAFARI CLUB INTERNATIONAL, et al.,** **Defendant-Intervenors.**	

DECLARATION OF ADAM ROBERTS

I, Adam Roberts, hereby declare as follows:

1. I submit this declaration in support of the plaintiffs' Motion for Summary Judgment in Cary v. Hall.

2. I am the Senior Vice President for Born Free USA united with Animal Protection Institute, a non-profit organization and a companion group to the United Kingdom-based Born Free Foundation. Born Free was founded to protect animals and conserve threatened and endangered species, with a specific emphasis on keeping wild animals in their native habitats.

3. In December 2007, Born Free USA joined forces with the organization Animal Protection Institute to become Born Free USA united with Animal Protection Institute ("Born Free USA"). Through this combination, Born Free USA is even more focused on helping captive and wild animals in need.

4. Born Free USA's mission is to alleviate the unnecessary suffering of wild animals in captivity, rescue individual animals in need, protect wildlife — including highly endangered species — in their natural habitats, and encourage compassionate conservation globally, a mission that is supported by our 40,000 members and supporters.

5. To accomplish its mission, Born Free USA's programs help ensure that imperiled species and their habitats are conserved. Born Free USA contributes to programs that, in collaboration with local communities, conduct non-invasive research on wild animals to better understand their conservation needs, and help reintroduce into the wild animals that have been extirpated from their natural ranges or that are threatened with extinction. Dugongs, sea turtles, Ethiopian wolves, and Asian elephants have all benefited from these programs. In addition, the President of Born Free USA, Will Travers, is a member of the World Conservation Union ("IUCN") Reintroduction Specialist Group, which sets standards for the reintroduction of animals into the wild. As a result of this work, Born Free USA is particularly interested in

reintroduction programs and ensuring that animals are humanely treated and slated for reintroduction in areas where adequate protections exist to ensure the survival of the animals.

6. Born Free USA also protects the continuing viability of wildlife in the wild by taking steps to halt the over-exploitation of wildlife in international trade, including on the black market. Born Free participates in meetings of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES"), as well as in CITES committee meetings (the Animals Committee and Standing Committee), to strengthen the enforcement of the Convention and the terms of the Resolutions that implement this treaty. This work has included monitoring international and often illegal trade in sport-hunted trophies, improving the conditions under which live animals are transported, examining the relationship between *ex situ* breeding and *in situ* conservation, and narrowing the circumstances under which animals can be removed from the wild.

7. Born Free USA also works to prevent cruelty to animals in circuses, zoos, and other captive situations. We endeavor to ensure that captive animals are provided the space and natural environments that are necessary for them to perform species specific behaviors. This includes ensuring that the transportation of captive animals is done humanely and under the proper conditions. We also work to curtail the hunting of exotic animals at game ranches, because such sport hunting is frequently cruel and does not contribute to conservation. For example, Born Free serves on the Species Survival Network Trophy Hunting Working Group, which monitors export quotas and proposals for trophy exports under CITES. Currently, Born Free USA, in conjunction with Born Free UK, is contributing to the process to establish regulations for canned hunt facilities in South Africa.

8. Born Free USA's focus includes elephants, lions, tigers, and imperiled species that are protected under both CITES and the ESA. The scimitar-horned oryx, addax, and dama gazelle fall into the latter category and are also species that have been negatively impacted by sport hunting, which Born Free USA works to curtail. Additionally, Mr. Travers, the President of Born Free USA and Born Free Foundation, had the opportunity to view the dama gazelle in the wild, and his experience has inspired the organization to do what they can to assist with the gazelle's preservation in the wild.

9. A primary focus of all of these efforts has been to educate the public and advocate for the strengthening of laws that protect and conserve wildlife. To accomplish these objectives, Born Free USA regularly updates its website, distributes a quarterly magazine (*Animal Issues)* and, in partnership with Born Free UK, distributes a newsletter (*Wildlife Times*) – both of which inform the public about conservation and welfare issues pertaining to wildlife. Born Free USA also prepares articles for assorted publications, works closely with the media to generate stories on wildlife related news, and advocates for stronger laws that are applicable to wildlife, including by submitting comment letters, attending CITES committee meetings, and meeting with government officials. For example, Born Free USA, in conjunction with Born Free UK, prepared a report detailing the illegal and black market trade in elephant ivory that occurs throughout the world (see *Tip of the Tusk: Elephant Poaching and Ivory Seizures 1998-2004*, for instance). Born Free USA also compiles fact sheets for educational and advocacy purposes.

10. Born Free USA dedicates significant resources to coalition building to strengthen our position on the issues on which we work. Thus, Born Free USA conducts research on

programs and proposals that impact imperiled species, and informs its colleagues about these matters in order to work in coalition to halt those projects that would negatively affect wildlife.

11. Frequently, these endeavors require Born Free USA to obtain information on species that are threatened and endangered under the ESA. In order to obtain such information, I regularly review the Federal Register to ascertain whether proposals relevant to Born Free USA's work and mission are being undertaken. This includes following applications for permits under section 10 of the ESA for the importation of sport hunted trophies, the killing of ESA listed species at U.S. game ranches, and the importation and exportation of live animals. When such applications are noticed in the Federal Register we routinely request and obtain copies of such application materials. We use this information to submit comment letters on the applications to the Fish and Wildlife Service ("FWS"), as well as to compile fact sheets, prepare reports, update our website, and collaborate with other organizations. In particular, Born Free USA has been an ardent opponent of the issuance of permits to allow endangered species to be bred and subsequently killed at canned hunt facilities in the United States. Since 2000, API and now Born Free USA has regularly submitted extensive comments to the FWS outlining our concerns about this practice. See *Behind the Fence: Inside the Canned Hunt Industry (http://www.bancrueltraps. com/articles.php?p=389&more=1*).

12. The FWS's decision to issue the Antelope Exemption causes Born Free USA an informational injury because we are not receiving the information to which we are entitled under section 10. For example, had the three antelope species been listed as endangered under the ESA without any exemption being issued, Born Free could have readily tracked actions taken with respect to these species by continuing to review the Federal Register. Doing so would have

enabled us to monitor the sport hunting of the species, because permits to kill and transport the antelopes would have been noticed in the Federal Register. The FWS's published findings on such permits would have informed us how the agency is implementing the ESA by providing explanations for the particular activities that the agency believes constitute "enhancement" of the survival of the species as a whole, what specific activities are consistent with the ESA, and the specific activities that the FWS determines will not operate to the disadvantage of the species in the wild – such findings that are all required by section 10(d) of the ESA. These findings on each permit application could also have been used to determine if any permits should be challenged in court or brought to the attention of a larger coalition of conservation groups for a coordinated response. Because the FWS has eliminated all of these requirements, Born Free USA is also deprived of its statutory right to submit comments on each application to engage in otherwise prohibited acts under the ESA, and hence has a diminished opportunity to inform and influence the agency with respect to such proposed actions.

13. If there were no Exemption for the Antelopes, Born Free USA could also monitor efforts to reintroduce the Antelopes to the wild because permits to export live antelopes would be noticed in the Federal Register. After receiving such notice, we could work to ensure that the animals are humanely transported and are only being reintroduced into areas with adequate protections, including adequate habitat and anti-poaching mechanisms, rather than simply being shipped to another game ranch in another country. Thus, while ranches still have to obtain CITES permits to export their live antelopes from the U.S. because there are no public notice and comment provisions for CITES permits and the Antelope Exemption negates any notice under section 10, we are not learning about such permits in the Federal Register, cannot request the

permit application materials, and have lost the opportunity to comment and take action on them. The information that has now been eliminated through the Antelope Exemption also deprives Born Free USA of the ability to monitor illegal trade, since we are no longer provided with information on approved permits that could be compared to data on the number of such antelopes and trophies actually being traded – i.e., illegitimately.

14. Without receiving the information to which we are entitled under section 10 of the ESA, Born Free USA has had to spend additional time and resources to gain information about the three imperiled antelope species. This has included conducting research on-line to determine which ranches currently have any of these species, the conditions under which the antelopes are maintained and bred, what the hunting ranches charge for trophies, and any other available information that would shed light on whether these ranches are engaged in any legitimate conservation efforts for the species. Additionally, Born Free USA has been unable to monitor or obtain sufficient information on the sport hunting of the antelopes in the U.S. in order to draft a report or present this issue to a larger coalition. As a result, Born Free USA's ability to ensure the conservation of these ESA and CITES protected species, and to ensure that both the statute and the Treaty are properly applied, has been significantly impaired.

15. All of Born Free USA's injuries would be redressed if we prevail in this lawsuit, because the FWS would be required to follow the process required by section 10 of the ESA. As a result, we would receive the information – including the permit application materials and the FWS's findings – to which we are statutorily entitled. Additionally, we would be able to participate in the process, i.e., receive the notice, the opportunity for comment, and notice of FWS's final decision and the basis for that decision, that is required under section 10 of the ESA.

Furthermore, if Born Free USA obtains such a ruling, we will no longer have to dedicate additional resources to obtaining information about the scimitar-horned oryx, addax, and dama gazelle through alternative means and, instead, could devote more of our resources to advocating on behalf of these and other animals, and ensuring their survival in the wild.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statement is true and correct.

Adam Roberts

Dated: November 11, 2008

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SAFARI CLUB INTERNATIONAL, Plaintiff, v. KEN SALAZAR, *et al.*, Defendants.	)	Civ. No. 1:11-cv-1564 BAH

[PROPOSED] ANSWER OF DEFENDANT-INTERVENORS

Proposed Intervenor-Defendants hereby answer the Complaint for declaratory judgment and injunctive relief ("Complaint") filed by Plaintiff Safari Club International in the above captioned action. All factual allegations not expressly admitted are denied.

INTRODUCTION

1. Paragraph 1 explains a final rule published in the Federal Register, 70 Fed. Reg. 52,319 (Sept. 2, 2005) ("Listing Rule"). The Listing Rule speaks for itself and is the best evidence of its contents.

2. Paragraph 2 constitutes a characterization of Plaintiff's Complaint, to which no response is required.

3. Paragraph 3 consists of legal conclusions to which no response is required. To the extent a response is required, Defendant-Intervenors deny the allegations.

4. The allegations in paragraph 4 are conclusions of law, which require no response. To the extent a response is required, Defendant-Intervenors deny the allegations.

5. Defendant-Intervenors lack information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 5, and on that basis they are denied.

6. The allegations in paragraph 6 are conclusions of law, which require no response. To the extent a response is required, Defendant-Intervenors deny the allegations.

7. Paragraph 7 explains a final rule published in the Federal Register, 70 Fed. Reg. 52,310 (Sept. 2, 2005) ("Antelope Exemption"). The Antelope Exemption speaks for itself and is the best evidence of its contents.

8. Defendant-Intervenors lack information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 8, and on that basis they are denied.

9. Paragraph 9 explains a ruling in *Friends of Animals v. Salazar*, 626 F. Supp. 2d 102 (D.D.C. 2009). The ruling speaks for itself and is the best evidence of its contents.

10. Defendant-Intervenors lack information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 10, and on that basis they are denied.

11. Paragraph 11 explains a proposed rule published in the Federal Register, 76 Fed. Reg. 39,804 (July 7, 2011). The proposed rule speaks for itself and is the best evidence of its contents.

12. Defendant-Intervenors lack information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 12, and on that basis they are denied.

13. Defendant-Intervenors lack information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 13, and on that basis they are denied.

14. Defendant-Intervenors deny the allegations in Paragraph 14.

15. Defendant-Intervenors lack information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 15, and on that basis they are denied.

16. Defendant-Intervenors deny the allegations in Paragraph 16.

17. Defendant-Intervenors deny the allegations in Paragraph 17.

18. Paragraph 18 constitutes a characterization of Plaintiff's case, to which no response is required.

JURISDICTION AND VENUE

19. The allegations in paragraph 19 are conclusions of law, which require no response. To the extent a response is required, Defendant-Intervenors deny the allegations.

20. The allegations in paragraph 20 are conclusions of law, which require no response. To the extent a response is required, Defendant-Intervenors deny the allegations.

21. Defendant-Intervenors lack information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 21, and on that basis they are denied.

22. The allegations in the first sentence of Paragraph 22 are conclusions of law, which require no response. To the extent a response is required, Defendant-Intervenors deny the allegations. As to the remainder of Paragraph 22, Defendant-Intervenors lack information or knowledge sufficient to form a belief as to the truth of the allegations, and on that basis they are denied.

23. The allegations in paragraph 23 are conclusions of law, which require no response. To the extent a response is required, Defendant-Intervenors deny the allegations.

PARTIES

24. Defendant-Intervenors lack information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 24, and on that basis they are denied.

25. Defendant-Intervenors lack information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 25, and on that basis they are denied.

26. Defendant-Intervenors lack information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 26, and on that basis they are denied.

27. Defendant-Intervenors lack information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 27, and on that basis they are denied.

28. Defendant-Intervenors deny the allegations in the first and second sentences of Paragraph 28. Defendant-Intervenors are without information or knowledge sufficient to form a belief as to the truth of the allegations in the third sentence of Paragraph 28, and on that basis they are denied.

29. The allegations in the first through third sentences of Paragraph 29 are conclusions of law, which require no response. To the extent a response is required, Defendant-Intervenors deny the allegations. Defendant-Intervenors are without information or knowledge sufficient to form a belief as to the truth of the allegations in the fourth and fifth sentences of Paragraph 29, and on that basis they are denied.

30. Defendant-Intervenors lack information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 30, and on that basis they are denied.

31. Paragraph 31 explains a final rule published in the Federal Register, 70 Fed. Reg. 52,319 (Sept. 2, 2005) ("Listing Rule"). The Listing Rule speaks for itself and is the best evidence of its contents.

32. Defendant-Intervenors admit that Plaintiff SCI participated in the litigation in federal district courts in California and the District of Columbia challenging the regulatory exemption for antelopes issued on September 2, 2005.

33. The first sentence in Paragraph 33 explains a proposed rule published in the Federal Register, 76 Fed. Reg. 39,804 (July 7, 2011). The proposed rule speaks for itself and is the best evidence of its contents. Defendant-Intervenors lack information or knowledge sufficient to form a belief as to the truth of the remaining allegations in Paragraph 33, and on that basis they are denied.

34. Defendant-Intervenors lack information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 34, and on that basis they are denied.

35. Defendant-Intervenors admit the allegations in the first and second sentences of Paragraph 35. The third sentence of paragraph 35 explains Plaintiff's case, which requires no response.

36. Defendant-Intervenors admit the allegations in the first and second sentences of Paragraph 36. The third sentence of paragraph 36 explains Plaintiff's case, which requires no response.

37. Defendant-Intervenors admit the allegations in Paragraph 37.

LEGAL BACKGROUND

A. The Endangered Species Act

38-46. The allegations in Paragraphs 38-46 are characterizations of the requirements of the Endangered Species Act ("ESA") and its implementing regulations. The ESA and its implementing regulations speak for themselves and are the best evidence of their respective contents.

B. The Administrative Procedure Act

47-49. The allegations in Paragraphs 47-49 are characterizations of the requirements of the Administrative Procedure Act ("APA"). The APA speaks for itself and is the best evidence of its contents.

FACTUAL BACKGROUND

A. The Three Antelope Species

50. Defendant-Intervenors lack information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 50, and on that basis they are denied. As to the allegations referencing the Antelope Exemption, the Antelope Exemption speaks for itself and is the best evidence of its contents.

51. Defendant-Intervenors lack information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 51, and on that basis they are denied. As to the allegations referencing the Listing Rule, the Listing Rule speaks for itself and is the best evidence of its contents.

52. Defendant-Intervenors lack information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 52, and on that basis they are denied. As to the

allegations referencing the Listing Rule, the Listing Rule speaks for itself and is the best evidence of its contents.

53. Defendant-Intervenors lack information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 53, and on that basis they are denied. As to the allegations referencing the Listing Rule, the Listing Rule speaks for itself and is the best evidence of its contents.

54. Defendant-Intervenors lack information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 54, and on that basis they are denied. As to the allegations referencing the Listing Rule, the Listing Rule speaks for itself and is the best evidence of its contents.

55. Defendant-Intervenors lack information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 55, and on that basis they are denied. As to the allegations referencing the Listing Rule, the Listing Rule speaks for itself and is the best evidence of its contents.

56. Defendant-Intervenors lack information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 56, and on that basis they are denied.

57. Defendant-Intervenors lack information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 57, and on that basis they are denied.

58. Defendant-Intervenors lack information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 58, and on that basis they are denied.

59. Defendant-Intervenors lack information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 59, and on that basis they are denied.

B. Regulation and Litigation Concerning the Three Antelope Species

60. The allegations in Paragraph 60 attempt to explain the history of the Listing Rule and the contents of the rule. The Listing Rule speaks for itself and is the best evidence of its contents.

61. Paragraph 61 explains the Listing Rule. The Listing Rule speaks for itself and is the best evidence of its contents.

62. Defendant-Intervenors lack information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 62, and on that basis they are denied.

63. Paragraph 63 explains the Listing Rule. The Listing Rule speaks for itself and is the best evidence of its contents.

64. Paragraph 64 explains the Listing Rule. The Listing Rule speaks for itself and is the best evidence of its contents.

65. Paragraph 65 explains the Listing Rule. The Listing Rule speaks for itself and is the best evidence of its contents.

66. Paragraph 66 explains the Listing Rule. The Listing Rule speaks for itself and is the best evidence of its contents.

67. Paragraph 67 explains the Antelope Exemption. The Antelope Exemption speaks for itself and is the best evidence of its contents.

68. Paragraph 68 explains a ruling in *Friends of Animals v. Salazar*, 626 F. Supp. 2d 102 (D.D.C. 2009). The ruling speaks for itself and is the best evidence of its contents.

CAUSES OF ACTION

Count I

69. All responses to allegations in the above paragraphs are incorporated herein by reference.

70. Defendant-Intervenors deny the allegations in the first and second sentences of paragraph 70. The allegations in the third sentence of paragraph 70 are conclusions of law, which require no response. To the extent a response is required, Defendant-Intervenors deny the allegations.

71. Defendant-Intervenors deny the allegations in paragraph 71.

72. Defendant-Intervenors deny the allegations in paragraph 72.

73. Defendant-Intervenors deny the allegations in paragraph 73.

74. Defendant-Intervenors deny the allegations in paragraph 74.

75. The allegations in paragraph 75 are conclusions of law, which require no response. To the extent a response is required, Defendant-Intervenors deny the allegations.

76. The allegations in paragraph 76 are conclusions of law, which require no response. To the extent a response is required, Defendant-Intervenors deny the allegations.

Count II

77. All responses to allegations in the above paragraphs are incorporated herein by reference.

78. Defendant-Intervenors deny the allegations in paragraph 78.

79. Defendant-Intervenors deny the allegations in paragraph 79.

80. Defendant-Intervenors deny the allegations in paragraph 80, with the exception of the quotation of a Federal Register notice that speaks for itself and is the best evidence of its contents.

81. Defendant-Intervenors deny the allegations in paragraph 81.

82. Defendant-Intervenors deny the allegations in paragraph 82.

83. The allegations in paragraph 83 are conclusions of law, which require no response. To the extent a response is required, Defendant-Intervenors deny the allegations.

84. The allegations in paragraph 84 are conclusions of law, which require no response. To the extent a response is required, Defendant-Intervenors deny the allegations.

Count III

85. All responses to allegations in the above paragraphs are incorporated herein by reference.

86. The allegations in the first sentence of Paragraph 86 are conclusions of law, to which no response is required. To the extent a response is required, Defendant-Intervenors deny the allegations. Defendant-Intervenors deny the allegations in the second sentence of Paragraph 86.

87. Defendant-Intervenors deny the allegations in paragraph 87.

88. Defendant-Intervenors deny the allegations in paragraph 88.

89. Defendant-Intervenors deny the allegations in paragraph 89.

90. The allegations in paragraph 90 are conclusions of law, which require no response. To the extent a response is required, Defendant-Intervenors deny the allegations.

91. The allegations in Paragraph 91 are conclusions of law, which require no response. To the extent a response is required, Defendant-Intervenors deny the allegations.

Count IV

92. All responses to allegations in the above paragraphs are incorporated herein by reference.

93. Defendant-Intervenors deny the allegations in paragraph 93.

94. Defendant-Intervenors deny the allegations in paragraph 94.

95. Defendant-Intervenors lack information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 95, and on that basis they are denied.

96. Defendant-Intervenors lack information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 96, and on that basis they are denied.

97. Defendant-Intervenors deny the allegations in paragraph 97.

98. The allegations in Paragraph 98 are conclusions of law, which require no response. To the extent a response is required, Defendant-Intervenors deny the allegations.

99. The allegations in paragraph 99 are conclusions of law, which require no response. To the extent a response is required, Defendant-Intervenors deny the allegations.

Count V

100. All responses to allegations in the above paragraphs are incorporated herein by reference.

101. Defendant-Intervenors lack information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 101, and on that basis they are denied.

102. Defendant-Intervenors lack information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 102, and on that basis they are denied.

103. Defendant-Intervenors lack information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 103, and on that basis they are denied.

104. Defendant-Intervenors deny the allegations in paragraph 104.

105. The allegations in Paragraph 105 are conclusions of law, which require no response. To the extent a response is required, Defendant-Intervenors deny the allegations.

106. The allegations in Paragraph 106 are conclusions of law, which require no response. To the extent a response is required, Defendant-Intervenors deny the allegations.

PRAYER FOR RELIEF

1-5. Paragraphs 1-5 of Plaintiff's Prayer for Relief characterize Plaintiff's requests for relief should they prevail on their claims and do not require a response. To the extent a response is required, Defendant-Intervenors deny that the Plaintiff is legally or equitably entitled to any of the relief it seeks.

GENERAL DENIAL

Defendant-Intervenors deny each and every allegation in the Complaint for Declarative and Injunctive Relief not otherwise expressly admitted, qualified, or denied herein. To the extent that any allegations in Plaintiff's Complaint for Declarative and Injunctive Relief remain unanswered, Defendant-Intervenors hereby deny such allegations.

AFFIRMATIVE DEFENSES

1. Plaintiff has failed to state a claim for which relief can be granted.

2. The Court lacks jurisdiction over Count V.

3. Plaintiff lacks standing to bring some or all of its claims for relief.

WHEREFORE, Defendant-Intervenors deny that Plaintiff is entitled to the relief requested, or to any relief whatsoever, and request that this action be dismissed with prejudice, that judgment be entered for Defendants and Defendant-Intervenors, and that the Court order such other and further relief as the Court may allow.

Defendant-Intervenors reserve the right to amend and/or supplement these affirmative defenses as appropriate.

Respectfully Submitted,

/s/

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SAFARI CLUB INTERNATIONAL, Plaintiff, v. KEN SALAZAR, *et al.*, Defendants.	)	Civ. No. 1:11-cv-1564 BAH

[PROPOSED] ORDER

Upon consideration of the motion to intervene by Defenders of Wildlife, The Humane Society of the United States, and Born Free USA, any responses thereto, and the entire record herein, it is hereby on this __ day of _____, 2011 ORDERED that the motion to intervene is hereby GRANTED; and it is further

ORDERED that Defendant-Intervenors are hereby granted intervention as of right under Rule 24(a) of the Federal Rules of Civil Procedure and party status as defendant-intervenor; and it is further

ORDERED that the Proposed Answer attached to Defendant-Intervenors' motion to intervene shall be deemed filed as of the date of this Order.

_____
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SAFARI CLUB INTERNATIONAL, Plaintiff, v. KEN SALAZAR, *et al.*, Defendants.	)	Civ. No. 1:11-cv-1564 BAH

CERTIFICATE OF SERVICE

I hereby certify that I caused copies of the foregoing Motion to Intervene, Supporting Memorandum, Exhibits, Proposed Answer, and Proposed Order to be served on the following via the court's ECF system:

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