

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

SAFARI CLUB INTERNATIONAL,)
501 2nd Street, NE)
Washington, DC 20002)

Plaintiff,)

v.)

KEN SALAZAR, in his official capacity as)
Secretary of the U.S. Department of the Interior;)
DANIEL ASHE, in his official capacity)
as Director of the U.S. Fish and Wildlife Service;)
and U.S. FISH AND WILDLIFE SERVICE,)
1849 "C" Street, NW)
Washington, DC 20240)

Defendants.)

Civil Action No. 1:11-cv-01564-BAH

MOTION TO INTERVENE AS DEFENDANT AND MEMORANDUM IN SUPPORT

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INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 24 and Local Civil Rule 7(j), Friends of Animals (“FoA”) hereby moves this Court to intervene as of right as Defendants in the above-captioned matter, or, in the alternative, for permissive intervention because Safari Club International’s (“SCI”) lawsuit directly threatens FoA’ and its members’ interests in protecting the three antelope species, and threatens to undo years of successful administrative and legal advocacy. FoA easily meets the four-part test for intervention as of right in this action and should be granted intervention to protect its interests in the survival of the three antelope species here and abroad.

FoA contacted both the defendant and plaintiff in this case to inquire whether they would oppose this Motion to Intervene. Department of Justice stated that the government takes no position on this Motion. SCI indicated that they would wait until after FoA filed this Motion before deciding whether to oppose it or not.

Applicant respectfully refers this Court to the memorandum in support of this motion and the accompanying declaration of Priscilla Feral (Exhibit A). Applicant further requests that the Court file applicant's answer (Exhibit B), which is both lodged with this motion.

BACKGROUND

In this case, Plaintiff SCI challenges the final rule to include U.S. captive populations of the scimitar-horned oryx, dama gazelle, and addax in the endangered species listing of the three antelope species on September 2, 2005, and challenges the failure of the U.S. Fish and Wildlife Service to respond to SCI's petition to remove the United States captive herds of the three antelope species from endangered species status under the Endangered Species Act ("ESA"). 16 U.S.C. §§ 1531-1544 (2011); *see Final Rule to List the Scimitar-Horned Oryx, Addax, and Dama Gazelle as Endangered*, 70 Fed. Reg. 52,319 (Sept. 2, 2005) ("Final Listing Rule").

The road to protection of these beautiful and rare species of North African antelope has been a long one. After decade-long delays by the Department of Interior, the U.S. Fish and Wildlife Service, and officials of these agencies (collectively, "FWS"), in listing these three antelope species, the FWS finally listed all populations of the scimitar-horned oryx, dama gazelle, and addax on September 2, 2005. At the same time, the FWS also promulgated a regulation that exempted U.S. captive populations of the three antelope species from the ESA's prohibition on taking, exporting, reimporting, or selling endangered species, and thereby permitting continued hunting of these endangered species for sport. *Exclusion of U.S. Captive-Bred Scimitar-Horned Oryx, Addax, and Dama Gazelle From Certain*

Prohibitions, 70 Fed. Reg. 52,310 (Sept. 2, 2005) (hereinafter the “sport-hunting rule”). FoA was forced to file a lawsuit to compel FWS compliance with the ESA and to withdraw the sport-hunting rule.

Friends of Animals v. Salazar, 626 F. Supp. 2d 102 (D.D.C. 2009) *appeal dismissed*, 09-5292, 2010 WL 286806 (D.C. Cir. Jan. 4, 2010). The *Friends of Animals* case justly resulted in the FWS proposed withdrawal of the sport-hunting rule to hunt and kill U.S. captive-bred herds of the three antelope species. *Removal of the Regulation That Excludes U.S. Captive-Bred Scimitar-Horned Oryx, Addax, and Dama Gazelle From Certain Prohibitions: Proposed Rule*, 76 Fed. Reg. 39,804 (July 7, 2011). The Court in *Friends of Animals* held that excluding the domestic herds was arbitrary and capricious—this action seeks to accomplish the same.

A. Events Leading to the Listing of the Three Species of Antelope

The scimitar-horned oryx, addax, and dama gazelle once thrived in the deserts of northern Africa. Today, the scimitar-horned oryx is extinct in the wild and only very small numbers of addax and dama gazelle remain in their native ranges. 70 Fed. Reg. 52,319. Poaching, civil wars, and habitat destruction have led to the demise of the three antelope species. *Id.* The countries where these species live have few, if any, effective methods to protect the three antelope species from these threats.

Meanwhile, private ranches in the United States, mainly in Texas, breed the three antelope species solely to sell “hunts” of these rare species within fenced areas. For a hefty price, ranging from \$1,800 to \$5,000, these sport-hunting operations guarantee success and a mounted trophy. Declaration of Priscilla Feral (“Feral Decl.”) ¶ 25 (attached hereto as Exhibit A).

FWS recognized the imperiled status of the three antelope species, and on November 5, 1991, published in the Federal Register a proposed rule to list the three antelope species as “endangered” under the ESA. *Proposed Endangered Status for Scimitar-horned Oryx, Addax, and Dama Gazelle*, 56 Fed. Reg. 56,491, 56,491-95 (Nov. 5, 1991). The proposed rule indicated that FWS might treat captive

antelope differently than wild antelope and requested information about the status of captive populations. *Id.* at 56,491. FWS never finalized this proposed rule.

It was not until 2005, following a lawsuit, that the FWS listed the antelope species as endangered. *See* 70 Fed. Reg. at 52,319. On September 2, 2005, the FWS published the Final Listing Rule, listing the three antelope species as endangered throughout their ranges due to habitat loss through desertification, permanent human settlement, competition with domestic livestock, and by regional military activity and uncontrolled killing. *Id.* FWS found that, due to these threats, the scimitar-horned oryx is most likely extinct in the wild and that the addax and the dama gazelle are near-extinct in the wild. *Id.* FWS also found that but for captive breeding of the three species for the purpose of maintaining founder stock necessary for reintroduction, the species might be extinct. *Id.* Concurrently with the final listing rule, the FWS issued the sport-hunting rule.

B. Litigation on the Sport-Hunting Rule

In 2009, FoA filed suit against FWS for violating the ESA and the National Environmental Policy Act by promulgating the sport-hunting rule. *Friends of Animals*, 626 F. Supp. 2d at 102.

Under the sport-hunting rule, any person could:

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 (*Gazella dama*).

50 C.F.R. § 17.21(h). To qualify under the rule, the activity must be “associated with the management or transfer of live wildlife . . . or sport hunting in a manner that contributes to increasing or sustaining captive numbers or to potential reintroduction to range countries.” *Id.* § 17.21(h)(1). A person claiming the benefit of this exception “must maintain accurate written records of activities, including births, deaths, and transfers of specimens, and make those records accessible to Service officials for

inspection.” *Id.* § 17.21(h)(7). Therefore, a hunting facility must demonstrate only that it is “sustaining” numbers of any of the three antelope species to allow sport hunting and commerce in trophies. *Id.* § 17.21(h)(1). The rule does not require any current or future plans to assist in conservation or reintroduction efforts or engage in scientific study.

The court in *Friends of Animals* agreed with FoA that the sport-hunting rule violated the ESA because it permitted the continued killing of the antelope without the required case-by-case showing that each proposed take will enhance the survival of the species. 626 F. Supp. 2d at 120. The plain language of subsection 10(c) of the ESA demands that permits be issued on a case-by-case basis and not as a blanket exception: “The Secretary shall publish notice in the Federal Register of *each* application for an exemption or permit which is made under this section.” 16 U.S.C. § 1539(c) (emphasis added). “[T]he text, context, purpose and history of section 10 show a clear Congressional intent that permits must be considered on a case-by-case basis, the court grant[ed] summary judgment to plaintiffs with respect to their claim that the FWS violated subsection 10(c) when it promulgated the [Sport-Hunting] Rule.” *Friends of Animals*, 626 F. Supp. 2d at 120. The court remanded to FWS for further proceedings consistent with its opinion. *Id.*

As a result of the court’s decision, in July 2011, FWS finally posted its’ proposal to rescinded the sport-hunting rule. 76 Fed. Reg. at 39,804. On August 31, 2011, SCI filed this action. SCI’s case currently consists of three claims. These claims allege that the listing of the captive-bred antelope populations as endangered violates the procedural and substantive mandates of the ESA and the APA. Complaint, Dkt. # 1. Given FoA’ involvement in gaining protections for these three antelope species, it now seeks to intervene as of right in SCI’s suit challenging the Final Listing Rule.

C. The Movant FoA

FoA is a non-profit animal advocacy organization which maintains offices in Connecticut, New

York, and Washington, D.C., and regularly consults and communicates with experts, scientists, and government agencies worldwide. Feral Decl. ¶ 3. FoA has approximately 200,000 journal subscribers and members in the United States and internationally. *Id.* FoA, its members, and staff value the ways that humans and nonhuman species benefit from protecting native biological diversity. *Id.* FoA's mission is to cultivate a respectful view of nonhuman animals, free-living and domestic. *Id.* Its goal is to free animals from cruelty and institutionalized exploitation around the world. FoA uses the best available science to forward its mission through active participation in international and national policy and law formation, including law and policy involving the Convention on International Trade in Endangered Species of Wild Fauna and Flora, ratified by the United States in September 1973, and implemented through the ESA; and through national administrative processes, legal action, public outreach, and education. *Id.* FoA often participates in public processes involving endangered species and seeks to influence legislation regarding endangered and other protected species. *Id.* FoA has a limited number of resources, both in terms of staff and financial resources, to use furthering its mission. *Id.*

ARGUMENT

I. FOA IS ENTITLED TO INTERVENE AS OF RIGHT

Rule 24(a)(2) of the Federal Rules of Civil Procedure provides that “[o]n timely motion, the court must permit anyone to intervene who claims an interest relating . . . the subject of the action, and is so situated that disposing of the action may as a practical matter impair . . . the movant's ability to protect its interest, unless existing parties adequately represent that interest.” Fed. R. Civ. P. 24(a)(2). To intervene as of right: “(1) the application to intervene must be timely; (2) the applicant must demonstrate a legally protected interest in the action; (3) the action must threaten to impair that interest; and (4) no party to the action can be an adequate representative of the applicant’s interests.” *S.E.C. v.*

Prudential Sec., Inc., 136 F.3d 153, 156 (D.C. Cir. 1998). Rule 24(a) is construed liberally in favor of granting intervention. *Nuesse v. Camp*, 385 F.2d 694, 702 (D.C. Cir. 1967); *see also The Wilderness Soc’y v. Babbitt*, 104 F. Supp. 2d 10, 18 (D.D.C. 2000) (“the D.C. Circuit has taken a liberal approach to intervention”) (citing *NRDC v. Costle*, 561 F.2d 904, 910-911 (D.C. Cir. 1977)). Following the D.C. Circuit’s liberal application of Rule 24, this Court routinely grants conservation organizations’ motions to intervene where they have an interest in pending litigation.¹

In addition to establishing its qualification for intervention under Rule 24(a)(2), a party seeking to intervene as of right must demonstrate that it has standing under Article III of the U.S. Constitution. *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 731-32 (D.C. Cir. 2003). The D.C. Circuit explained that “because a Rule 24 intervenor seeks to participate on an equal footing with the original parties to the suit, he must satisfy the standing requirements imposed on those parties.” *Id.* (quoting *City of Cleveland v. NRC*, 17 F.3d 1515, 1517 (D.C. Cir. 1994)).

A. The Motion to Intervene is Timely

The timeliness of a motion to intervene depends on “consideration of all of the circumstances, especially weighing the factors of time elapsed since the inception of the suit, the purpose for which intervention is sought, the need for intervention as a means of preserving the applicant’s rights, and the probability of prejudice to those already parties to the case.” *United States v. Am. Tel. & Tel. Co.*, 642 F.2d 1285, 1295 (D.C. Cir. 1980).

¹ *See, e.g. George E. Warren Corp. v. EPA*, 159 F.3d 616 (D.C. Cir. 1998), *amended by* 164 F.3d 676 (D.C. Cir. 1999) (three environmental groups authorized to intervene on EPA’s behalf in industry challenge to EPA air rules); *Wilderness Soc’y v. Morton*, 463 F.2d 1261 (D.C. Cir. 1972) (Canadian environmental group allowed to intervene in U.S. environmental group’s challenge to Interior Department’s compliance with environmental procedures); *Nat’l Coal Ass’n v. Uram*, 39 Env’t Rep. Cas. (BNA) 1624 & n.2, 1994 U.S. Dist. LEXIS 16404, * 1 & n.2 (D.D.C. 1994) (environmental group authorized to intervene in industry challenge to environmental rules, and to act as plaintiff in challenging other aspects of those rules); *Kerr-McGee Corp. v. Hodel*, 630 F. Supp. 621 (D.D.C. 1986), *vacated on other grounds* 840 F.2d 68 (D.C. Cir. 1988) (environmental group authorized to intervene in

Here, SCI filed its complaint on August 31, 2011, therefore less than three months have elapsed. FWS filed its answer on November 7, 2011, less than three weeks before this motion to intervene. No dispositive motions have been filed, and no discovery has been taken. Because FoA has filed very near the inception of the case, its motion is timely. *See Fund for Animals*, 322 F.3d at 735 (finding motion timely where it was filed “less than two months after plaintiffs filed their complaint and before the defendant’s answer was filed”).

B. FoA Has a Significant Protected Interest in the Three Species of Antelope

FoA satisfies the second requirement of Rule 24(a) because it has a significant legally protected interest in the three species of antelope, the subject matter of this litigation. Rule 24 requires that an intervenor have an interest that is related “to the property or transaction which is the subject of the action.” Fed. R. Civ. P. 24(a)(2). When assessing the interest requirement, the D.C. Circuit has adopted a liberal approach, looking to the “policies behind the ‘interest’ requirement” in the rule, and viewing the rule as a “practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process.” *Nuesse v. Camp*, 385 F.2d at 700; *see also Friends of Animals*, 452 F. Supp. 2d 64, 69 (D.C. Cir. 2006) (“proposed intervenors of right ‘need only an interest in the litigation-not a cause of action or permission to sue’”); *Hodgson v. United Mine Workers of Am.*, 473 F.2d 118, 130 (D.C. Cir. 1972) (“the interest of justice is best served when all parties with a real stake in a controversy are afforded an opportunity to be heard”).

As is apparent from the procedural history described above, FoA and its members have a clear and legally cognizable interest in this action. FoA challenged the sport-hunting rule, leading to full protection of all scimitar oryx, addax, and dama gazelle, including U.S. captive-bred herds. SCI’s claims threaten to undermine FoA’s hard-fought victory in that case. FoA expended significant time and

industry litigation challenged alleged government inaction on mining leases).

resources obtaining ESA protections for the captive-bred herds, and now SCI seeks to remove them through this action. Further, as the court in *Friends of Animals* found that under section 10(c) of the ESA FoA' has a right to information – information about who on a case-by-case basis is getting permits and ensuring that the FWS is giving permits to those helping conserve the antelope. 626 F. Supp. 2d at 120. A finding in favor of SCI would eliminate FoA' access to this information by right.

FoA' mission encompasses the protection of imperiled species and its members have a specific interest in the survival and conservation of the three antelope species. FoA “works to cultivate a respectful view of nonhuman animals, free-living and domestic. [FoA'] goal is to free animals from cruelty and institutionalized exploitation around the world.” Feral Decl. ¶ 3. The organizational purpose of FoA is to raise public awareness of animal rights problems and promote changes that are essential to a peaceful future where animals are free from human dominion and abuse. *Id.* Moreover, individual members of FoA also have diverse personal and professional interests in the protection of the three antelope species. *Id.*

In sum, FoA and its members have demonstrated a long-standing interest in the protection of the three antelope species, which easily provides a basis for intervention in this case. *See, e.g., Idaho Farm Bureau Fed'n. v. Babbitt*, 58 F.3d 1392, 1397 (9th Cir. 1995) (“[a] public interest group is entitled as a matter of right to intervene in an action challenging the legality of a measure it had supported”); *Coal. of Ariz./N.M. Counties for Stable Econ. Growth v. Dep't of the Interior*, 100 F.3d 837, 841-44 (10th Cir. 1996) (individual's involvement with a species through his activities as a photographer, amateur biologist, naturalist, and conservation advocate amounted to sufficient interest for purpose of intervention in litigation covering the species' listing under the ESA); *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525, 526 (9th Cir. 1983) (environmental groups' “environmental, conservation and wildlife interests” were sufficient for intervention as a matter of right).

C. This Action Threatens to Impair FoA' Interests

Rule 24(a)'s "impairment" requirement concerns whether, as a practical matter, the denial of intervention will impede the prospective intervenor's ability to protect its interests in the subject of the action. As the Advisory Committee Notes for the 1966 amendments to Rule 24(a) explain, "[i]f an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene." Fed. R. Civ. P. 24(a) advisory comm. nn. (West 2011). The rule's emphasis on "practical disadvantage" was "designed to liberalize the right to intervene in federal actions." *Nuesse*, 385 F.2d at 701-02.

Environmental organizations' interests, such as FoA, are especially likely to be impaired when the action seeks to remove a species from the endangered species list because it impairs the organization's ability to protect and preserve that species. Courts have repeatedly found environmental organizations' interests of sufficient risk of impairment to sustain intervention for environmental groups in similar suits. In *Idaho Farm Bureau Federation*, for example, the Ninth Circuit held that a disposition of the action in favor of plaintiffs resulting in the delisting of the Bruneau Hot Springs Snail "would impair [intervenor's] ability to protect their interest in the Springs Snail and its habitat." 58 F.3d at 1398. In *Coalition of Arizona/New Mexico Counties for Stable Economic Growth*, the Tenth Circuit held that intervenor's interest in the protection of the Mexican spotted-owl would, "as a practical matter," be impaired by a ruling in favor of the plaintiffs to delist the owl "by the *stare decisis* effect of the district court's decision, not to mention the direct effect of a possible permanent injunction." 100 F.3d at 844; *see also Nuesse*, 385 F.2d at 319 (recognizing "*stare decisis* principles" as basis for intervention).

FoA has an interest in preventing extinction of the antelope, and restoration of these species in their native habitat to a point where they are no longer endangered. Feral Decl. ¶ 13. Given the

antelope's current imperiled status, FWS correctly determined that the domestic herds are necessary for the survival and recovery of the antelope. *See* 70 Fed. Reg. 52,319. In addition, continued sport hunting in the U.S. undermines recovery efforts because it creates an international market for trophies. Feral Decl. ¶ 13. As long as some trophies can be obtained legally in the U.S. there will be a continued economic incentive to poach the antelope in Africa. *Id.* Setting aside the Final Listing and declaring the inclusion of the captive-bred antelope herds as arbitrary and capricious will contribute to the continued decline or all these antelope populations and impede FoA' members and others from observing wild herds in Africa.

D. FoA' Interests Are Not Adequately Represented by the Existing Parties

The "inadequate representation" requirement of Rule 24(a) "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 and acc. text (1972) (citation omitted). Under this lenient approach, representation may be inadequate where the interests of the party seeking intervention and those of the existing party are "different," even if they are not "wholly 'adverse,'" *Nuesse*, 385 F.2d at 703, or where they are "similar but not identical." *Am. Tel. & Tel.*, 642 F.2d at 1293. Indeed, "the [D.C. Circuit] Court of Appeals has stated that 'the burden is on those opposing intervention to show that representation for the absentee will be adequate.'" *Alexander v. FBI*, 186 F.R.D. 21, 31 (D.D.C. 1998) (quoting *Am. Tel. & Tel.*, 642 F.2d at 1293).

This standard is met here because the Defendants do not represent FoA' interests in this case. The D.C. Circuit has frequently recognized that governmental representation of private intervenors may be inadequate, particularly where the private intervenors can be expected to make different arguments from their governmental counter-parts. *Fund for Animals*, 322 F.3d at 736; *Dimond v. Dist. of Columbia*, 792 F.2d 179, 193 (D.C. Cir. 1986). In this case, FoA is legitimately concerned that FWS

will not adequately represent its interests by vigorously defending the current listing without the sport-hunting rule given the past litigation between FoA and the Defendants over the listing of the three antelope species. *See, e.g., Idaho Farm Bureau Fed'n*, 58 F.3d at 1398 (noting that the FWS was unlikely to adequately represent Conservation Groups who had “compelled FWS to make a final decision by filing a lawsuit”).

Although FWS is the defendant here, and SCI the plaintiff, their interests aligned until FoA forced FWS to obey the ESA and protect the captive herds. *Friends of Animals*, 626 F. Supp. 2d at 115. From the outset, FWS sought to exclude the captive herds from ESA protection by enacting the sport-hunting rule. 70 Fed. Reg. 52,310. When FoA sued to challenge the rule, SCI intervened as a defendant on behalf of FWS in defense of the unlawful regulation. *See Friends of Animals*, 626 F. Supp. 2d at 102. FWS only rescinded the sport-hunting rule because the court forced it to do so. 76 Fed. Reg. at 39,804. The complaint here makes it very clear that SCI only filed suit when FWS refused to continue the unlawful course of conduct advocated by SCI. Complaint, Dkt. # 1. Given this history, FoA has a reasonable fear that FWS will not adequately represent its interests.

E. FoA has Standing to Intervene as of Right

In addition to satisfying the “protected interest” and “impairment” prongs of Rule 24(a), the foregoing discussion shows that FoA also has standing to defend the final listing decision regarding the three antelope species from SCI’s challenge. Specifically, FoA and their members can demonstrate injury-in-fact, causation, and redressability. *See Fund for Animals*, 322 F.3d at 733 (requiring that prospective intervenors demonstrate standing).

FoA is an environmental organization with a mission that includes the protection of imperiled species, therefore, its members have significant professional and personal interests in the three antelope species, habitats, and protection. Feral Decl. ¶ 3. FoA’ interest is among those interests that the

Supreme Court has found sufficient to establish standing. *See, e.g., Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc.*, 528 U.S. 167, 181-82 (2000) (holding that harm to recreation opportunities constitutes injury in fact for purposes of standing); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 562-63 (1992) (holding that “desire to use or observe an animal species, even for purely aesthetic purposes, is undeniably a cognizable interest for purposes of standing”).

SCI’s case threatens to harm FoA’ interest by seeking to remove protections currently afforded to these gravely imperiled species by the Final Listing Rule. If SCI is successful, the three antelope species will no longer be provided the protections of the ESA even as they continue to face threats to their survival, including hunters who breed them in captivity and exploit them for profit. Feral Decl. ¶ 13. This makes it far more likely the three antelope species will continue to decline and become extinct, harming FoA’ interest in the survival and recovery of the species.

In short, SCI’s claims challenge the very protections FoA’ fought to obtain in *Friend of Animals*, in which the Court also held that FoA had standing to pursue its claim that the FWS violated subsection 10(c) of the ESA. 626 F. Supp. 2d at 115. There, the Court held that excluding the domestic herds was arbitrary and capricious. *Id.* at 115-17. SCI’ seeks to accomplish the same result as the sport-hunting rule, which the court found violated the ESA. Protections were won to ensure that permits will be granted on a case-by-case basis and that ranchers with captive-bred herds show that they are contributing to the conservation of the three antelope species. By de-listing captive-bred herds, those ranchers will no longer have to show contribution to the conservation of the species, nor will the ranchers have incentive to do so. Such a ruling will injure FoA’ past work and future endeavors to protect the species and bring them back from near extinction in the wild.

Finally, the harm FoA faces can be redressed by a decision that does not compromise the protections currently afforded to the three antelope species and the hard-fought victory in this court to

rescind the sport-hunting rule. Accordingly, FoA has standing in this case.

For these reasons, this Court should not hesitate to grant intervention as of right pursuant Rule 24(a).

II. IN THE ALTERNATIVE TO INTERVENTION OF RIGHT, PERMISSIVE INTERVENTION IS WARRANTED

Should this Court find that FoA is not entitled to intervene as of right under Rule 24(a), FoA moves that this Court grant permissive intervention pursuant to Federal Rule of Civil Procedure 24(b). Rule 24(b) provides that:

On 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. . . . In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

Fed. R. Civ. P. 24(b)(1)-(3).

Permissive intervention may be granted in the court's discretion if the proposed intervenor presents "(1) an independent ground for subject matter jurisdiction; (2) a timely motion; and (3) a claim or defense that has a question of law or fact in common with the main action." *E.E.O.C. v. Nat'l Children's Ctr., Inc.*, 146 F.3d 1042, 1046 (D.C. Cir. 1998). Like intervention of right, permissive intervention is to be granted liberally. *E.E.O.C.*, 146 F.3d at 1045 (permissive intervention granted where intervenor has substantial interest at stake even if no common claim or defense claimed; "flexible interpretations" of rule appropriate in favor of intervention); *Nuesse*, 385 F.2d at 704-06 (D.C. Circuit eschews strict reading of rules to advance policy favoring liberal allowance of permissive intervention).

FoA easily meets all of these requirements. As discussed above in the context of intervention as of right, FoA's motion is timely and existing parties will not be prejudiced. The Court has jurisdiction over FoA and its defenses, as they all involve issues of federal law in defending against SCI's claims under federal law.

Lastly, FoA' defenses are in common with SCI's claims both in law and fact, as they address the exact matters raised by SCI – the legality of the Final Listing Rule and the implications of listing the captive-bred populations of the three antelope species under the ESA. *See, e.g., In re Polar Bear Endangered Species Act Listing & 4(d) Rule Litig.*, 09-245, 2011 WL 2601604 (D.D.C. June 30, 2011) (Center for Biological Diversity had been involved in ongoing litigation regarding polar bear protection and its general mission was the protection of imperiled species and their habitats; granted permissive intervention as a defendant in the challenges to the Polar Bear Final Listing Rule).

Additionally, permissive intervention must not “delay or prejudice the adjudication of the rights of the original parties.” Fed. R. Civ. P. 24(b)(3). Unlike in other D.C. Circuit cases denying permissive intervention, here permissive intervention will not delay or prejudice the adjudication of the rights of SCI or the FWS and is appropriate in this case because there is no settlement agreement pending, nor any other alternative dispute resolutions in consideration. *See In re Endangered Species Act Section 4 Deadline Litig.*, 10-377 (D.D.C. Sept. 9, 2011) (denying SCI's motion to intervene as a right, also denying permissive intervention because intervention would cause undue delay in already-existing settlement agreements between conservation groups and FWS at the time permissive intervention was requested).

CONCLUSION

FoA respectfully requests that this Court grant its motion to intervene.

Dated this 22nd day of November, 2011.

Respectfully submitted,

/s/ Michael Harris

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Friends of Animals

**UNITED STATES DISTRICT COURT
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SAFARI CLUB INTERNATIONAL,)
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Plaintiff,)

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Defendants.)

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DECLARATION OF PRISCILLA FERAL

I, Priscilla Feral, declare as follows:

1. The facts set forth in this declaration are based upon my personal knowledge. If called as a witness, I could and would testify to these facts. As to those matters which reflect an opinion, they reflect my personal opinion and judgment on the matter.

2. I am president of Friends of Animals (“FoA”). In my capacity as President of FoA, I have led recovery efforts for African antelopes as described below. Mindful of the interconnections between and among animals and their habitat, I also educate the public about the need to preserve the health of biocommunities in which these antelopes live. FoA recognizes the importance of this goal and work to support the recovery of the antelopes’ native habitat.

3. FoA is a non-profit animal advocacy organization which maintains offices in Connecticut, New York, and Washington, D.C. and regularly consults and communicates with experts, scientists, and government agencies worldwide. FoA has approximately 200,000 journal subscribers and members in the United States and internationally. FoA and its members and staff value the ways that humans and nonhuman species benefit from protecting native biological diversity. FoA's mission is to cultivate a respectful view of nonhuman animals, free-living and domestic. Our goal is to free animals from cruelty and institutionalized exploitation around the world. FoA uses the best available science to forward its mission through active participation in international and national policy and law formation, including law and policy involving the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES"), ratified by the United States in September 1973 and implemented through the Endangered Species Act ("ESA"); and through national administrative processes, legal action, public outreach, and education.

4. Since 1991, FOA has been closely involved in species conservation projects in the United States and Africa. We shipped excess Department of Defense vehicles to Africa to aid in anti-poaching efforts. We funded ranger salaries, motorbikes, field equipment, and training in Senegal. Furthermore, FOA funded airplanes to African wildlife services, trained pilots to fly the planes, and funded airport surveillance for illegal wildlife trade. We funded African chimpanzee surveys, and were integral to the scimitar-horned oryx reintroduction efforts in Senegal. In the United States, FOA regularly participates in public processes involving endangered species and seeks to influence legislation regarding endangered and other protected species. FoA has limited resources, both in terms of staff and financial resources, to use furthering its mission.

5. FoA and its staff have conducted extensive research on the status of the Addax, Scimitar-horned Oryx, and Dama Gazelle. All three species are imperiled due to the misuse of land through ranching and other threats, including hunting. The Scimitar-horned Oryx, for example, once inhabited more than one million square miles of the Sahel from Senegal in West Africa to Egypt and Sudan; but recent biological surveys showed that, notwithstanding the survival of a few Oryx in semi-confinement as discussed below, all truly free-living populations have been wiped out. The last free Oryx was chased to exhaustion by hunters and died in 1973. At one point, the survival of the species rested on 7 captive animals. After learning this information, I decided that FoA should become instrumental in re-introduction efforts for these species.

6. To this end, FoA has been instrumental in establishing and maintaining a recovery program for the Scimitar-horned Oryx and Dama Gazelle in Senegal. FoA has worked with the *Direction des Parcs Nationaux* (Senegal's National Park Agency) to restore the Scimitar-horned Oryx and Dama Gazelle to two reserves managed by the Agency. In 1993, *Direction des Parcs Nationaux* established this protected habitat of approximately 1,250 acres within 1,500 square miles Ferlo National Park, which is a range located in the heart of the Sahel and covering much of the northern quarter of Senegal. FoA and the *Direction des Parcs Nationaux* are working to improve the habitat conditions within Ferlo National Park so that the Scimitar-horned Oryxes and Dama Gazelles can eventually be released from the fenced area into the entire National Park. In 1999, FoA funded and assisted in the delivery of eight Scimitar-horned Oryxes to the Guembeul Fauna Reserve in northwestern Senegal. In 2002, FoA funded and facilitated the delivery of two more Scimitar-horned Oryxes from Paris to the Guembeul Fauna Reserve in Senegal. In January 2003, FoA funded and facilitated efforts to move Scimitar-horned Oryxes

and Dama Gazelles from the Guembeul Fanua Reserve to a fenced area within Ferlo National Park in northeastern Senegal. Due to successful breeding efforts, as of June 2011 there were 157 Scimitar-horned Oryxes, 31 Dama Gazelles, and 6 Addax in semi-captivity within the two reserves. FoA is currently speaking with other African countries about establishing captive antelope populations on habitat reserves, with hopes that the populations will expand, become self-sufficient, and someday be re-introduced into the wild.

7. As a consequence of our efforts to stabilize the soil and to provide natural food for the antelopes, Ferlo National Park is being restored from an area damaged by animal agriculture into a biosphere reserve, able to support the needs of the Scimitar-horned Oryx and the Dama Gazelle. As part of these efforts, FoA has raised and donated substantial funds to recovery efforts in Senegal. For example, in November 2000, FoA donated \$25,000 to *Direction Des Parcs Nationaux* for habitat rehabilitation efforts in the Ferlo National Park. In June 2001, FoA contributed \$1,250 for recovery efforts in the Ferlo. In August 2001, FoA provided more than \$18,000 to *Direction Des Parcs Nationaux* for fencing in the Ferlo, construction of a ranger post, and supplementary feed and assistance to the Scimitar-horned Oryxes and Dama Gazelles. In February 2002, FoA provided \$6,200 for rehabilitation of a pond area within the Ferlo. In July 2002, FoA sent *Direction Des Parcs Nationaux* \$11,250 for restoration of vegetation within the Ferlo and to build a cistern. Also in 2002, FoA provided a directional radio receiver, transmitters, and veterinary supplies for the Scimitar-horned Oryx recovery project. In February 2003, FoA provided \$1,236.50 to help maintain Scimitar-horned Oryxes moved from the Guembuel Reserve to Ferlo.

8. FoA has also provided substantial personal effort as well. As part of our recovery efforts, I also ensured FoA employees have traveled to Africa to see the species, including those

in recovery areas, and their historic habitats. Then FoA employee, Bill Clark, visited Senegal and participated in recovery efforts multiple times between 1999 and 2002. Mr. Clark was instrumental in organizing both the initial and subsequent deliveries of Scimitar-horned Oryxes to Senegal, as well as the transfer of Scimitar-horned Oryxes and Dama Gazelles from the Guembuel Reserve to Ferlo National Park. He also visited the historic habitat of the Scimitar-horned Oryx and Dama Gazelle.

9. FoA also funded trips for both Bill Clark and the Director of the *Direction Des Parcs Nationaux* to attend the Second Annual Meeting of the Sahelo-Saharan Interest Group (“SSIG”) in Almeria, Spain in May 2001. FoA also funded Bill Clark’s trip to the Third Meeting of the SSIG in Slovakia in May of 2002. At both meetings, the participants discussed FoA’s recovery efforts for the Scimitar Horned Oryx and Dama Gazelle in Senegal.

10. In 2005, I traveled to Senegal to monitor FoA’s recovery efforts. On December 26, 2005, I flew to Dakar, Senegal where we were met at the airport by Souleye Ndiaye, who in February 1999, worked as the Director of National Parks in Senegal when FoA delivered the first eight Scimitar-horned Oryxes to Senegal. Souleye now works for the Minister of the Environment as Inspector of Financial and Administrative Issues. On December 27, 2005, I had lunch with Col. Mame Balla Gueye, Director of Senegal National Parks to discuss FoA’s recovery efforts for Scimitar-horned Oryx and Dama Gazelle and our field assistance for Niokolo-Koba National Park's rangers. I also had an introductory meeting with Thierno Lo, Minist`ere de l'Environnement et de la Protection de la Nature in Dakar, to assure the Minister that FoA’s cooperative work would continue in Senegal under my direction. Souleye Ndiaye arranged and accompanied me to both meetings.

11. On December 27, 2005, after meeting Souleye in Dakar, Souleye drove us north about five hours to St. Louis where we stayed overnight, and drove the next day to the 2,000-acre Guembeul Fauna Reserve in the northwest part of Senegal. On foot we joined several Park rangers and traveled through the Reserve. We saw about 20 Oryxes grazing and a dozen or more Dama Gazelles within this closely protected, fenced habitat. As we drove through the Ferlo region, I viewed the land outside the fenced Guembeul Reserve and saw the erosion and serious damage from cattle grazing land that the Oryx once occupied. Not only did the sight fill me with a sense of urgency regarding the continued need to supply materials for fencing and protection, but it also impressed upon me the importance of thinking and working holistically, to ensure our investments in these animals' future really do last.

12. During my stay in Senegal I put emphasis on the importance of cultivating and eating crops directly, in order to circumvent this reliance on grazing that devastates the land. People I met were happy to treat me to vegetarian meals; they understood that I, as a westerner, did not expect them to provide me with food that contributed to the problems we're working together to solve. And together we talked, whenever the opportunity arose, of the essential links between preserving habitat in its natural state and respect for interconnected life in the continent's biocommunity. With the big picture always in mind, and the seriousness of the work ahead influencing our everyday interactions, FoA's work restores these critically endangered antelopes to their native landscape, and works with the Senegalese parks people to restore a large part of that degraded habitat to its natural conditions.

13. On my trip to Senegal, I was able to observe the positive impact on the Scimitar-horned Oryx and Dama Gazelle as result of FoA's efforts and programs. While currently there are no Scimitar-horned Oryx in the wild, FoA has ensured at least they are beginning to thrive in

captivity. Thanks to FOA's efforts, the captive herds are completely self sufficient, and no longer need supplemental feed or financial assistance from FOA. As soon as the African political situation stabilizes, and the antelope have sufficient habitat, they will be re-introduced into the wild. Additionally, as long as it is safe to travel in Africa, I intend to ensure that a member of the FoA staff or I continue our regular travels to Africa to see all species our members support and protect, including the antelopes at Ferlo National Park. I have concrete plans to travel to Senegal to see the antelopes in the Ferlo Reserve on December 26, 2011. During this trip I plan to continue working on FoA's plans to release 6 of the Ferlo Rerves' oryxes outside of Ferlo National Park next year.

14. The U.S. Fish and Wildlife Service's ("FWS") decision in 2005 to allow hunting and transport of sport-hunted trophies of Scimiatar-horned Oryx, Dama Gazelle, and Addax harmed FoA's efforts to recover these species. FWS allowed activities that were prohibited under the ESA without any showing that hunting ranches were working towards recovery of species in the wild, like FoA is doing in Senegal. Because FoA has limited resources, if more was being done to promote the recovery of the antelope in the wild, FoA could use its resources to provide even greater protections and recovery of the antelope, or to work on other animal protection issues.

15. FoA and its members and staff, including myself, have a long-standing institutional, informational, personal, and philosophical interest in the future of the Scimitar-horned Oryx, Addax, and Dama Gazelle anywhere they live. Our public education and outreach efforts have pointed out that, although it is now possible that rare specimens can be collected from all over the world to satisfy the human yearning for novelty, the rarity of a species should not be exploited for profit and amusement. Yet people have started capturing and flying these

animals around the world as collectors' items, exploiting their rarity for commercial gain. This they do to the animals' severe detriment. Collectors who breed them in captivity are exploiting them for profit, and the propagation of these animals for trophy hunting, while self-serving to entrepreneurs, does not confer a benefit on the antelopes. Nor does the practice further the protection and rehabilitation of these animals in their native range. Moreover, long-distance travel, whether it is to and from hunting ranges in the U.S. or between Africa and other countries, presents grave dangers to these animals. It can and does kill individual animals. Claims by those who purport to rehabilitate these rare species outside of Africa should be treated with the most exacting scrutiny, and should never be accepted from those who also use the animals in commerce. Life outside of their native territory can mean loss of ability to cope with predators, genetic aberration, loss of immunity to the pathogens and nuisances that naturally exist in Africa, and a complex loss for the biocommunity of which the antelopes are a natural part. In short, if the antelopes are not interacting in their natural habitat, they become functionally extinct. If critically endangered antelopes have a serious chance of thriving again in freedom, it will be within their natural habitat. Thus, FoA works to educate the public about the reasons why the theory put forth by some, that captivity for profit helps, is false. It works to the animals' direct detriment by shifting the focus away from the urgent need to protect the natural habitat of the species. In short, FoA firmly opposes the commercial exploitation of these species in any form. No incentive should be extended to those who hold the Addax, Scimitar-horned Oryx, or Dama Gazelle in captivity for profit.

16. FoA regularly publicizes our efforts to recover Scimitar-horned Oryxes and Dama Gazelles to our members and subscribers as well as other members of the public. FoA publishes articles and on-the-spot photography in our quarterly journal *Act-ionLine* (e.g., "Friends of

Animals Win: African Antelope Shielded From Safari Club and Trophy Tourists,” Summer 2009; “Milestones in Senegal,” Fall 2001). FoA also ran public service ad in Business 2.0 in December 2005 urging support for protection of the Scimitar-horned Oryx. I also wrote an editorial in the Spring 2006 detailing my visit to see the Scimitar-horned Oryx and Dama Gazelle recovery efforts in Senegal, the work and progress being made, as well as the significant impact the visit had on me. FoA’s members understand the importance of biodiversity and have financially supported FoA’s efforts over the years to protect and preserve the natural habitats of the Scimitar-horned Oryx and the Dama Gazelle. I also gave an interview to Lara Logan for 60 Minutes in 2011; the segment is expected to air before the end of December 2011. This involved actual travel to D.C. on the part of the film crew and Priscilla. It was entirely devoted to our lawsuit and efforts to halt the hunting of oryxes in hunting ranches.

17. FoA has extensively researched the issue of the connection between zoos and hunting facilities. FoA published articles about this connection in the November/December 1991 (“Exposing the Zoo-Hunting Ranch Connection,” pp. 5-9) and April/May 1992 (“On the Trail of the ‘Ranch Connection’,” pp. 15-17) editions of *Act-ionLine*. In New York City, on July 9 and 10, 2005, FoA hosted an animal rights conference with participants that discussed the connection between zoos and hunting ranches in Texas. FoA published a summary of the conference on their website.

18. In 1991, I learned that the San Diego Zoo had sold two Dybowski’s Sika deer to Priour Brother’s Ranch in Ingraham, Texas, as breeding stock for the ranch’s hunting operations. In the fall of 1991, I flew to Texas to investigate the Priour Ranch. While driving through West Kerr County and Ingram, Texas, I spoke with taxidermists, hunting guides and “Buck Corn” feed store operators about Priour. Although it was too late in the day to find the

Priour Ranch after learning where the Priour Ranch was located, I saw other hunting ranches in West Kerr County, and took a photo of the entrance of one that appears in the *ActionLine* article. I viewed antelope and deer from outside the fence, but am unsure what species the captive animals were. I noticed that antelopes and deer stared at me when I approached the iron fence, rather than fleeing. I also watched ranch operators drive up in pick-up trucks to ring a bell for these animals to come to feed on buck corn. I was deeply saddened; these animals were utterly dependent and trusting, and it was obvious to me that this kind of activity is completely disconnected from the ideal of antelopes experiencing free and independent lives as part of a thriving biocommunity. I found it disheartening that animals who exhibited no fear of humans were incapable of fleeing successfully from the fenced estates to escape from a hunter, and their trust in humans allowed them to be easily killed in hunts.

19. FoA has also invested substantial time and resources in opposing trophy hunting of the critically endangered African antelopes and other species, as well any trade or transport of sport-hunted trophies. In the fall of 2005, I assigned two employees to research Texas hunting ranches to determine the acreage involved, numbers and species of animals traded, and to identify what activities make an exotic ranch operation profitable. Such research came from the Texas Agricultural Statistics Service, the Texas Parks and Wildlife Department, and a hunt trade publication, the Ingram, Texas-based Exotic Wildlife Association (“EWA”) – whose 2005 Game Ranch Directory, Volume 14, lists many hundreds of the 8,274 hunting operations in Texas who hold hunting lease licenses. The directory listed EWA members who responded to a survey, and included a full page ad on the Y.O. Ranch in Mountain Home, Texas, along with Y.O. Ranch Exotic Game Sales & Game Ranching Seminars. There was also an ad to promote the Exotic Wildlife Association's Annual Membership Meeting on March 3 -5, 2006, and the Trophy Game

Records of the World Awards Weekend on July 7-8, 2006, both at the Y.O. Ranch Resort Hotel & Conference Center, in Kerrville, Texas. FoA's research revealed 2,437 ranches with more than 1,000 acres who qualified for a 2005 Texas Hunting Lease License.

20. In the Spring 2005 edition of *Act·ionLine*, based on this research, I wrote an editorial about hunting ranches in Texas. The article documents hunts at the Y.O. Ranch, including Scimitar-horned Oryx for \$3,750, Dama Gazelle for \$5,250, and Addax for about \$500 more. An *Act·ionLine* article from November/December 1989 titled "Hunting 'Tony the Tiger' on the Texas Prairie" included a caption describing Barbary sheep on a hunting ranch in Texas, stating, "Many of the prey are so tame a hunter can pet his target before killing it." FWS's exemption of hunting ranches from the ESA requires FoA to spend more of its time and resources educating the public about hunting of the endangered antelope and encouraging people not to hunt the antelope in captivity, as well as efforts to influence legislation to prohibit hunting. Without the exemption, hunting of the antelope would be illegal, and there would be no need to expend these resources with respect to those species.

21. FoA regularly urges its members and the public to take positions on legislative proposals that support or harm our animal protection goals. For example, FoA used its resources to urge people to oppose the Sportsmanship in Hunting Act of 2005 because it would allow hunting. "Can It! Say NO to The Sportsmanship in Hunting Act of 2005," *Act·ionLine* November 2005. That is, the proposed legislation would allow hunting of captive animals such as the endangered antelopes, even though it would, perhaps, rule out some of the smallest enterprises. It is important to us that we model in North America the same respect for antelopes that we expect to see in North Africa.

22. On April 1, 2005, FoA provided comments on the regulation exempting the three antelope from ESA protections and allowing hunting and the draft Environmental Assessment (“EA”). We objected to the regulation based on violations of the ESA and National Environmental Policy Act (“NEPA”). Since the Scimitar-horned Oryx was listed in September 2005, FoA has monitored the Federal Register for actions regarding these species. FoA has commented on four separate requests to import Oryx trophies that were sport-hunting in South Africa to the United States. FoA requested that FWS deny those permits because they did nothing to enhance the survival or propagation of the Oryx as required by the ESA. FoA has used and will continue to use all legal means at its disposal to further and protect its interests in preserving these species and inculcating the international respect for these species that is necessary to do so.

23. After the U.S. Fish and Wildlife Service exempted captive Scimitar-horned Oryxes, Addax, and Dama Gazelles from the ESA, I received a brochure from the Exotic Wildlife Association containing a message from its Executive Director. That message stated: "This association, with its allied groups such as SCI and the AZA, has been successful obtaining a new policy, which basically exempts U.S. captive bred Scimitar-horned Oryx, Dama Gazelle, and Addax antelope from the Endangered Species Act. Hopefully in the near future, we will be able to report that all U.S. captive bred species currently listed as endangered will fall under the same policy." I was alarmed by the fact that this Association hopes to extend the Service's bad decision to other species. Even though the exemption rule was rescinded by the U.S. Fish and Wildlife, FoA is greatly concerned by Safari Club International's effort to de-list the U.S. populations of these antelope, which in effect is the same policy as the exemption rule. Without

all populations listed, the three antelope species as a whole will be irreparably harmed by the de-listing of U.S. populations of the antelope.

24. Because the Service based its decision to exempt the antelope from sport hunting on alleged benefits that hunting ranches were purported to provide to recovery of the species, I decided to investigate further whether this was true. My previous research on hunting ranches had not revealed any efforts by these facilities to recover species, unlike the efforts of FoA. I chose the Y. O. Ranch to visit because it's one of the oldest and largest hunting ranches, with 40,000 acres, in addition to having Scimitar-horned Oryxes, Dama Gazelles, and Addax available to hunters. I also wanted to visit the Bamberger Ranch because I had heard that they had a large number of the antelope.

25. On May 17, 2006, I went on a 90-minute truck tour of the 5,500 acre Selah Bamberger Ranch Preserve in Johnson City, Texas with Ranch Operations Manager Scott Grote. According to Mr. Grote, the ranch houses 50 female Oryxes and 11 males. We went to a field and viewed a grouping of 3 dozen or so female Oryxes. One female was crippled, but still used for breeding. We viewed a male Oryx outside the fenced area trying to find an opening in the gate to get inside. We drove into another pasture with female Oryxes, grouped together, who appeared unafraid of the truck.

26. Mr. Grote told me he organized hunting programs for native deer on the Bamberger Ranch, but not exotics. He said, "We don't hunt any Oryxes here," and added, "but I don't necessarily think it's a bad thing." I learned that the Ranch sells both male and female Oryxes from \$650.00 to \$1250.00 depending on the sex and age. Mr. Grote admitted to me that while the Ranch doesn't sell to hunting ranches, it does knowingly sell to brokers who then sell them to hunting ranches. Clearly, hunting ranches depend on Bamberger's to supply their

hunter-customers with easy living targets – a thought I found most discouraging. He also told me that individuals with broken horns are not commercially profitable because hunters only want individuals with decorative horns.

27. Mr. Grote further informed me that the Ranch had provided some Scimitar-horned Oryxes to the Smithsonian, and there were plans for a reintroduction program in Tunisia. Finally, he told me that the Ranch had provided Scimitar-horned Oryx DNA to an unnamed zoo. My impression is that this ranch sees antelopes as commodities that must be subject to quality control, not as individuals with an interest in being in place in a natural biocommunity. Indeed, the rarity of these animals is something from which this ranch benefits financially.

28. On May 18, 2006, I toured the Y.O. Ranch, a 40,000 acre sport-hunting ranch near Mountain Home, Texas. The Y.O. maintains Scimitar-horned Oryxes and, before I was taken on the “Africa in Texas” exotic game tour, I observed pictures of hunters posing with animals they had killed at the Y.O. The pictures contained not only dead Scimitar-horned Oryxes, but a dead Addax and Dama Gazelle as well. On the tour, I was informed that hunting was the main source of income for the Y.O. and that it allows sport-hunting year-round. Hunters purchase the right to hunt Scimitar-horned Oryxes for \$3,750.00, while Dama Gazelles can be hunted for \$5,250.00. The tour guide informed me that the Y.O. auctions its own animals and buys others at auction as well. The property includes an auction building and a trophy room.

29. As part of the tour, I was taken to “Deer Park” where I observed several different species inside a high fenced park. The park included fallow deer, a blackbuck antelope, axis deer, waterbuck, an eland with a calf, white-tailed deer, bison, and an ostrich, among others. “Deer Park” also contained more than 20 Scimitar-horned Oryxes, including a calf. The deer and exotic animals I viewed along the bus tour were unafraid of the vehicle and passengers, and

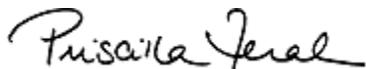
remained close to the dirt road among trees and other vegetation as we drove slowly through the breeding park. A brochure that advertised the tour called the breeding park "an exotic game pasture."

30. The tour guide told us that exotics are not hunted in the Deer Park, but that they use a helicopter and have a net gunner capture them and put them in a trailer for transfer to other areas of the park where they are hunted. I found it disgusting to imagine these unsuspecting animals shot with arrows or bullets after they were netted, transported from their breeding area, and dropped on the land provided to hunters on the other side of the fence. I was also offended by the notion that these essentially tame animals would be subject to an unfair chase.

31. At no time did the tour operator discuss any efforts by the Y.O. Ranch to engage in scientific studies or provide endangered species for recovery efforts in the wild. Several times the tour operator described the animals in comical terms, as if it were humorous to know that the animals we were seeing would soon be killed in an inhumane fashion. The entire display was deeply offensive, both in knowing the manner in which these animals were to be hunted as well as knowing that these practices are apparently condoned by the FWS, despite the fact that no scientific study or enhancement of the species activities were going on. I will certainly continue to monitor the Y.O. Ranch and other sport-hunting facilities as well as those that breed Scimitar-horned Oryxes, Dama Gazelles, and Addax to determine and assess whether these ranches are promoting the survival and enhancement of the species.

32. Based on scientific research on the status and threats to the Addax, Scimitar-horned Oryx, and Dama Gazelle, the government agreed that the species need the fullest protection under the Endangered Species Act to avoid extinction. The government's original

regulation exempting captive-bred antelope from the ESA harmed FoA's and its supporters' interests, as well as my own personal interest for these animals addressed. The regulation harmed our work to protect the antelopes wherever they may be found. De-listing the captive-bred antelope herds in the U.S. will equally harm our work and undermine our past successful efforts to obtain protection for all populations of these antelope. Lack of the fullest protection for all members of the endangered species under the ESA imperils them in Africa, undermines their protection under CITES, and allows them to be treated as a commodity, all of which adversely affected FoA's and its members' interests in these species as it facilitates their decline. I and FoA, its staff, and its members have serious and long-term educational, scientific, and moral interest in the antelopes discussed herein, which would incur future harm by the lack of full protection for all members of the endangered species under the ESA if the listing was changed to exclude U.S. populations of these antelope. In accordance with 28 U.S.C. § 1746 and under penalty of perjury, I swear that the foregoing is true and correct.



Priscilla Feral

Executed on 11 November 2011

at 777 Post Road, Darien, Connecticut

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

SAFARI CLUB INTERNATIONAL,)
501 2nd Street, NE)
Washington, DC 20002)

Plaintiff,)

v.)

KEN SALAZAR, in his official capacity as)
Secretary of the U.S. Department of the Interior;)
DANIEL ASHE, in his official capacity)
as Director of the U.S. Fish and Wildlife Service;)
and U.S. FISH AND WILDLIFE SERVICE,)
1849 "C" Street, NW)
Washington, DC 20240)

Defendants.)

Civil Action No. 1:11-cv-01564-BAH

Defendant’s Answer to Plaintiff’s Complaint for Declaratory and Injunctive Relief

Michal Harris (DCB#CO0049), Environmental Law Clinic, University of Denver, School of Law, 2255 E. Evans Ave., Denver, CO 80208, (303) 871-6034, (303) 871-6991 [Fax], elc@law.du.edu, Attorney for Proposed Defendant-Intervenor Friends of Animals, hereby answers the Complaint and sets forth its affirmative defenses in this matter.

INTRODUCTION

1. Paragraph 1 purports to characterize a final rule published in the Federal Register, 70 Fed. Reg. 52,319 (Sept. 2, 2005) (“Listing Rule”), a document that speaks for itself and provides the best evidence of its contents; any allegation contrary to its plain meaning is denied.
2. Defendant denies the allegations in Paragraph 2.
3. Defendant denies the allegations in Paragraph 3.

4. The allegations in Paragraph 4 are conclusions of law, to the extent a response is required, Defendant denies the allegations.

5. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the first sentence of Paragraph 5, and on that basis denies them.

6. Defendant admits the allegations in Paragraph 6.

7. The allegations in Paragraph 7 purport to characterize a final rule published in the Federal Register, 70 Fed. Reg. 52,310 (Sept. 2, 2005) (“Sport Hunting Rule”), a document that speaks for itself and is the best evidence of its contents. Defendant denies any allegation that is inconsistent with the plain language and meaning of the Sport Hunting Rule.

8. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 8, and on that basis denies them.

9. The allegations in paragraph 9 purport to characterize the order and opinion issued in the cases *Friends of Animals v. Salazar*, and *Cary v. Gould*, 626 F. Supp. 2d 102 (D.D.C. 2009), documents that speak for themselves and are the best evidence of their contents. Defendant denies any allegation that is inconsistent with the plain language and meaning of those documents.

10. Defendant admits the allegations in sentences 1 and 4 in Paragraph 10 that Plaintiffs submitted a petition and that the FWS have not acted on that petition. Defendant denies all other allegations in Paragraph 10.

11. The allegations in Paragraph 11 purport to characterize a proposed rule published in the Federal Register, 76 Fed. Reg. 39,804 (July 7, 2011), a document that speaks for itself and is the best evidence of its contents. Defendant denies any allegation inconsistent with the plain language and meaning of that document.

12. Defendant admits that Plaintiffs submitted comments to the proposed rule. However, Defendant

denies all other allegations in Paragraph 12.

13. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 13, and on that basis denies them.

14. Defendant denies the allegations in Paragraph 14.

15. Defendant denies the allegations in Paragraph 15.

16. Defendant denies the allegations in Paragraph 16.

17. Defendant denies all allegations in Paragraph 17, unless specifically stated otherwise:

- Defendant denies the allegations in subpart 1.
- Defendant denies the allegations in subpart 2.
- Defendant denies the allegations in subpart 3.
- Defendant denies the allegations in subpart 4.
- Defendant denies the allegations in subpart 5.
- Defendant denies the allegations in subpart 6.
- Defendant denies the allegations in subpart 7.
- Defendant denies the allegations in subpart 8.
- Defendant denies the allegations in subpart 9.
- Defendant denies the allegations in subpart 10.
- Defendant denies the allegations in subpart 11.
- Defendant denies the allegations in subpart 12 regarding the “erroneous listing,” but admits that the FWS violated the ESA and APA by failing to act, one way or another, on the submitted petition.

18. The allegations set forth in Paragraph 18 are a characterization of Plaintiff’s Complaint and requested relief to which no response is required. To the extent a response may be required, these

allegations are denied.

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 denies the allegations.

20. The allegations in Paragraph 20 are conclusions of law, which require no response. To the extent a response is required, Defendant denies the allegations.

21. Defendants are without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 21, and on that basis denies them.

22. Defendant admits that Plaintiff furnished written notice of its intent to sue under the ESA more than sixty days ago. Defendant denies the remaining allegations set forth in Paragraph 22.

23. The allegations in Paragraph 23 are conclusions of law, which require no response. To the extent a response is required, Defendant denies the allegations.

PARTIES

24. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 24, and on that basis denies them.

25. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 25, and on that basis denies them.

26. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 26, and on that basis denies them.

27. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 27, and on that basis denies them.

28. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 28, and on that basis denies them.

29. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 29, and on that basis denies them.

30. Defendant admits the allegations that Plaintiffs submitted a petition. Defendant denies all other allegations in Paragraph 30.

31. Defendant admits that the stated law does regulate owners of captive-bred population of the three antelope species. Defendant denies all other allegations in Paragraph 31.

32. Defendant admits that Safari Club participated in litigation in federal district courts to defend the regulatory exemption.

33. Defendant admits that the FWS has announced its intention to adopt a permit-based system as stated by Plaintiffs. However, Defendant is without knowledge or information sufficient to form a belief as to the truth of the other allegations set forth in Paragraph 33, and on that basis denies them.

34. The allegations set forth in Paragraph 34 are a characterization of Plaintiff's Complaint and requested relief to which no response is required. To the extent a response may be required, these allegations are denied.

35. In response to the allegations in Paragraph 35, Defendant admits that Ken Salazar is the Secretary of the Interior and is being sued by Plaintiffs. The third sentence of Paragraph 35 contains characterizations of Plaintiff's case, which require no response; to the extent a response is required, Defendant denies them.

36. In response to the allegations in Paragraph 36, Defendant admits that Daniel Ashe is the Director of the Fish and Wildlife Service and is being sued by Plaintiffs. The third sentence of Paragraph 35 contains characterizations of Plaintiff's case, which require no response; to the extent a response is required, Defendant denies them.

37. In response to the allegations in Paragraph 37, Defendant admits that the Fish and Wildlife Service is

a federal agency within Department of Interior authorized to administer the Endangered Species Act (“ESA”), but otherwise denies the allegations.

LEGAL BACKGROUND: ENDANGERED SPECIES ACT (“ESA”)

38. Paragraph 38 purports to characterize a provision of the ESA, a statute that speaks for itself and provides the best evidence of its contents; any allegation contrary to its plain meaning is denied.

39. Paragraph 39 purports to characterize a provision of the ESA, a statute that speaks for itself and provides the best evidence of its contents; any allegation contrary to its plain meaning is denied.

Defendant admits that the FWS listed all populations of the three antelope species as endangered, both in their native habitats and U.S. captive populations.

40. Paragraph 40 purports to characterize the ESA’s implementing regulations, regulations that speak for themselves, and provide the best evidence of their contents; any allegations contrary to their plain meaning are denied.

41. Paragraph 41 purports to characterize the ESA’s implementing regulations, regulations that speak for themselves, and provide the best evidence of their contents; any allegations contrary to their plain meaning are denied.

42. Paragraph 42 purports to characterize a policy under the Department of the Interior and the Department of Commerce, regulations that speak for themselves, and provide the best evidence of their contents; any allegations contrary to their plain meaning are denied.

43. Paragraph 43 purports to characterize the ESA’s implementing regulations, regulations that speak for themselves, and provide the best evidence of their contents; any allegations contrary to their plain meaning are denied.

44. Paragraph 44 purports to characterize the ESA’s implementing regulations, regulations that speak for themselves, and provide the best evidence of their contents; any allegations contrary to their plain

meaning are denied.

45. Paragraph 45 purports to characterize the ESA's implementing regulations, regulations that speak for themselves, and provide the best evidence of their contents; any allegations contrary to their plain meaning are denied.

46. Paragraph 46 purports to characterize the ESA's implementing regulations, regulations that speak for themselves, and provide the best evidence of their contents; any allegations contrary to their plain meaning are denied.

LEGAL BACKGROUND: ADMINISTRATIVE PROCEDURE ACT ("APA")

47. Paragraph 47 purports to characterize the APA's implementing regulations, regulations that speak for themselves, and provide the best evidence of their contents; any allegations contrary to their plain meaning are denied.

48. Paragraph 48 purports to characterize the APA's implementing regulations, regulations that speak for themselves, and provide the best evidence of their contents; any allegations contrary to their plain meaning are denied.

49. Paragraph 49 purports to characterize the APA's implementing regulations, regulations that speak for themselves, and provide the best evidence of their contents; any allegations contrary to their plain meaning are denied.

FACTUAL BACKGROUND: THE THREE ANTELOPE SPECIES

50. Defendant admits the allegations in Paragraph 50, but notes that it only admits that the regulatory exemption claimed that hunting and other activities enhance the survival of the three antelope species. Defendant does not admit that this finding by the FWS was correct.

51. Defendant is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations in the first sentence of Paragraph 51 and on that basis denies

them. The allegations in the second, third, fourth, and eighth sentences of Paragraph 51 characterize the Listing Rule, a document that speaks for itself and is the best evidence of its contents. Defendant denies any allegations inconsistent with the plain language and meaning of the Federal Register document. The allegations in fifth through seventh sentences of Paragraph 51 purport to characterize information from a website maintained by the International Union for Conservation of Nature and Natural Resources (“IUCN”), information that speaks for itself and is the best evidence of its contents. Defendant denies any allegations inconsistent with the plain language and meaning of the website.

52. The allegations in the first and second sentences of Paragraph 52 purport to characterize the Listing Rule, a document that speaks for itself and is the best evidence of its contents. Defendant denies any allegations inconsistent with the plain language and meaning of the Federal Register document. Defendant admits the allegations in the third sentence of Paragraph 52.

53. The allegations in Paragraph 53 purport to characterize the Listing Rule, a document that speaks for itself and is the best evidence of its contents. Defendant denies any allegations inconsistent with the plain language and meaning of the Federal Register document.

54. Defendant admits the allegations in Paragraph 54.

55. The allegations in the sixth sentence of Paragraph 55 purport to characterize the IUCN website, a website that speaks for itself and is the best evidence of its contents. Defendant denies any allegations inconsistent with the plain language and meaning of the IUCN website. The remaining allegations in Paragraph 55 purport to characterize the Listing Rule, a document that speaks for itself and is the best evidence of its contents. Defendant denies any allegations inconsistent with the plain language and meaning of the Federal Register document.

56. Defendant is without knowledge or information sufficient to form a belief as to the truth of the

allegations set forth in Paragraph 56, and on that basis denies them.

57. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 57, and on that basis denies them.

58. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 58, and on that basis denies them.

59. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 59, and on that basis denies them.

FACTUAL BACKGROUND: REGULATION AND LITIGATION CONCERNING THE THREE ANTELOPE SPECIES

60. Defendant admits to the allegations in Paragraph 60.

61. The allegations in Paragraph 61 characterize the Listing Rule, a Federal Register document that speaks for itself and is the best evidence of its contents. Defendant denies any allegations inconsistent with the plain language and meaning of this Federal Register document.

62. The allegations in Paragraph 62 characterize the Listing Rule, a Federal Register document that speaks for itself and is the best evidence of its contents. Defendant denies any allegations inconsistent with the plain language and meaning of this Federal Register document.

63. The allegations in Paragraph 63 purport to characterize the Listing Rule, a Federal Register document that speaks for itself and is the best evidence of its contents. Defendant denies any allegations inconsistent with the plain language and meaning of this Federal Register document.

64. Defendant denies the allegations in Paragraph 64.

65. The allegations in Paragraph 65 purport to characterize the Listing Rule, a Federal Register document that speaks for itself and is the best evidence of its contents. Defendant denies any allegations inconsistent with the plain language and meaning of this Federal Register

document.

66. The allegations in the first sentence of Paragraph 66 characterize the Listing Rule, a

Federal Register document that speaks for itself and is the best evidence of its contents.

Defendant denies any allegations inconsistent with the plain language and meaning of this

Federal Register document. Defendant is without information or knowledge sufficient to form a belief

as to the truth or falsity of the allegations in the second sentence of Paragraph 66, and on

that basis denies them.

67. Defendant admits that the FWS promulgated a rule that exempted activities otherwise prohibited by

the ESA on September 2, 2005. Defendant denies all other allegations in Paragraph 67.

68. Defendant admits the allegations in Paragraph 68.

CAUSES OF ACTION: COURT I

69. Defendant's responses to each and every allegation set forth in Plaintiff's Complaint are incorporated herein by reference and thus provide the response to Plaintiff's Paragraph 69.

70. Defendant denies the allegations in Paragraph 70.

71. Defendant denies the allegations in Paragraph 71.

72. Defendant denies the allegations in Paragraph 72.

73. Defendant denies the allegations in Paragraph 73.

74. Defendant denies the allegations in Paragraph 74.

75. Defendant denies the allegations in Paragraph 75.

76. The allegations set forth in Paragraph 76 are a characterization of Plaintiff's Complaint and requested relief to which no response is required. To the extent a response may be required, these allegations are denied.

CAUSES OF ACTIONS: COUNT II

77. Defendant's responses to each and every allegation set forth in Plaintiff's Complaint are incorporated herein by reference and thus provide the response to Plaintiff's Paragraph 77.

78. Defendant denies the allegations in Paragraph 78.

79. Defendant denies the allegations in Paragraph 79.

80. Defendant denies the allegations in Paragraph 80.

81. Defendant denies the allegations in Paragraph 81.

82. Defendant denies the allegations in Paragraph 82.

83. Defendant denies the allegations in Paragraph 83.

84. The allegations set forth in Paragraph 84 are a characterization of Plaintiff's Complaint and requested relief to which no response is required. To the extent a response may be required, these allegations are denied.

CAUSES OF ACTIONS: COUNT III

85. Defendant's responses to each and every allegation set forth in Plaintiff's Complaint are incorporated herein by reference and thus provide the response to Plaintiff's Paragraph 85.

86. Defendant denies the allegations in Paragraph 86.

87. Defendant denies the allegations in Paragraph 87.

88. Defendant denies the allegations in Paragraph 88.

89. Defendant denies the allegations in Paragraph 89.

90. Defendant denies the allegations in Paragraph 90.

91. The allegations set forth in Paragraph 91 are a characterization of Plaintiff's Complaint and requested relief to which no response is required. To the extent a response may be required, these allegations are denied.

CAUSES OF ACTIONS: COUNT IV

92. Defendant's responses to each and every allegation set forth in Plaintiff's Complaint are incorporated herein by reference and thus provide the response to Plaintiff's Paragraph 92.

93. Defendant denies the allegations in Paragraph 93.

94. Defendant denies the allegations in Paragraph 94.

95. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 95, and on that basis denies them.

96. Defendant denies the allegations in Paragraph 96.

97. Defendant denies the allegations in Paragraph 97.

98. Defendant denies the allegations in Paragraph 98.

99. The allegations set forth in Paragraph 99 are a characterization of Plaintiff's Complaint and requested relief to which no response is required. To the extent a response may be required, these allegations are denied.

CAUSES OF ACTIONS: COUNT V

100. Defendant's responses to each and every allegation set forth in Plaintiff's Complaint are incorporated herein by reference and thus provide the response to Plaintiff's Paragraph 100.

101. Defendant admits the allegations in Paragraph 101, FWS failed to respond to Plaintiff's petition within a reasonable amount of time.

102. Defendant admits the allegations in Paragraph 102, FWS failed to make a 90-day finding.

103. Defendant admits that FWS failed to make a determination in a timely manner. However, Defendant denies all other allegations in Paragraph 103.

104. Defendant denies the allegations in Paragraph 104.

105. Defendant denies the allegations in Paragraph 105.

106. The allegations set forth in Paragraph 106 are a characterization of Plaintiff's Complaint and

requested relief to which no response is required. To the extent a response may be required, these allegations are denied.

PRAYER FOR RELIEF

The remaining allegations set forth in the Complaint consist of Plaintiffs' prayer for relief, to which no response is required. Defendant denies that Plaintiffs are entitled to the relief prayed for, or any relief whatsoever, and request that this action be dismissed with prejudice, that judgment be entered for the Defendant, and that the Defendant's costs be allowed and such other and further relief as the court may allow.

GENERAL DENIAL

Defendant hereby denies any allegations of Plaintiffs' Complaint, whether express or implied, that are not otherwise specifically admitted, denied, or qualified herein.

Dated this 22nd day of November, 2011.

Respectfully submitted,

/s/ Michael Harris

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Attorney for Proposed Defendant-Intervenor
Friends of Animals

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

SAFARI CLUB INTERNATIONAL,)
501 2nd Street, NE)
Washington, DC 20002)

Plaintiff,)

v.)

KEN SALAZAR, in his official capacity as)
Secretary of the U.S. Department of the Interior;)
DANIEL ASHE, in his official capacity)
as Director of the U.S. Fish and Wildlife Service;)
and U.S. FISH AND WILDLIFE SERVICE,)
1849 "C" Street, NW)
Washington, DC 20240)

Defendants.)

Civil Action No. 1:11-cv-01564-BAH

[PROPOSED] ORDER

This matter is before the Court on Defendant Friends of Animals’ Motion to Intervene as Defendant and Memorandum in Support. This Court concludes that Plaintiff has shown good cause for the motion to be granted.

IT IS ORDERED that the Defendant Friends of Animals’ Motion to Intervene as Defendant is GRANTED.

DATED this ____ day of _____, 2011.

BY THE COURT:

United States District Court Judge

CERTIFICATE OF SERVICE

I certify that on November 22, 2011, I electronically filed the foregoing **MOTION TO INTERVENE AS DEFENDANT AND MEMORANDUM IN SUPPORT** with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following attorneys of record:

Meredith Flax, meredith.flax@usdoj.gov
Counsel for the Fish and Wildlife Service

and

Anna M. Seidman, Director of Litigation for Safari Club International, (202) 543-8733,
aseidman@safariclub.org.

Dated this 22nd day of November, 2011.

Respectfully submitted,

/s/ Michael Harris

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