IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Safari Club International, *et al.*, Plaintiffs, v. **S.M.R. Jewell,** in her official capacity as Secretary of the United States Department of Interior, *et al.*, Defendants.	Case No. 14-cv-00670-RCL

FEDERAL DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR CERTIFICATION OF RULING

Federal Defendants S.M.R. Jewell, in her official capacity as Secretary of the U.S. Department of the Interior, *et al.*, respectfully oppose Plaintiffs' Motion for Certification of Ruling. Plaintiffs ask the Court to enter final judgment on their claims challenging the U.S. Fish and Wildlife Service's ("Service") April 2014 non-detriment and enhancement findings regarding the importation of sport-hunted African elephant trophies from Tanzania, which the Court dismissed on December 26, 2014. Entry of a final judgment on the Court's ruling on the Tanzania claims would allow Plaintiffs to appeal the dismissal of these claims while they litigate the merits of their challenges to the Service's April and July 2014 enhancement findings for Zimbabwe. Federal Defendants do not dispute that the Court's ruling is final as to Plaintiffs' Tanzania claims. However, district courts are to grant Rule 54(b) motions sparingly and Plaintiffs have not demonstrated that there is no just reason for delaying their appeal in this case. Consequently, the Court should deny Plaintiffs' Motion.

LEGAL STANDARD

Under Rule 54(b), a court may direct final entry of judgment as to one or more, but not all, claims in the lawsuit if it determines that "there is no just reason for delay." Fed. R. Civ. P. 54(b); *see also Curtiss-Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 7-9 (1980); *Taylor v. Fed. Deposit Ins. Corp.*, 132 F.3d 753, 760 (D.C. Cir. 1997). The granting of a Rule 54(b) motion should be reserved for "exceptional cases." *Stewart v. Gates*, 277 F.R.D. 33, 35 (D.D.C. 2011); *see also Johnson v. Mukasey*, 248 F.R.D. 347, 354 (D.D.C. 2008); 10 Fed. Prac. & Proc. Civ. § 2655 (3d ed.) ("Rule 54(b) certificates should be granted sparingly."). In considering a Rule 54(b) motion, a court "functions as a 'dispatcher,' determining in its sound discretion when a claim should proceed on to appellate resolution, and when it should await its fellows." *Taylor*, 132 F.3d at 760 (citing *Curtis-Wright*, 446 U.S. at 8). A court must first determine whether there has been a final disposition of the claim at issue, that is, whether there has been "an ultimate disposition of an individual claim entered in the course of a multiple claims action." *American Forest Resource Council v. Ashe*, 301 F.R.D. 14, 17 (D.D.C. 2014) (quoting *Sears, Roebuck & Co. v. Mackey*, 351 U.S. 427, 436 (1956)).

Assuming that the threshold requirement of a final disposition of one or more claims has been met, a court then should determine "whether there is any just reason for delay." *Id.* (quoting *Curtiss-Wright*, 446 U.S. at 8). In making this determination, "a district court must take into account judicial administrative interests as well as the equities involved." *Id.* (quoting *Curtiss-Wright*, 446 U.S. at 8). Among the judicial administrative interests that should be weighed are "such factors as whether the claims under review were separable from the others remaining to be adjudicated and whether the nature of the claims already determined was such that no appellate court would have to decide the same issues more than once." *Johnson*, 248

F.R.D. at 355 (quoting *Building Indus. Ass'n of Superior Cal. v. Babbitt*, 161 F.3d 740, 744 (D.C. Cir. 1998)); *see also Baystate Med. Ctr. v. Leavitt*, 587 F. Supp. 2d 44, 46 (D.D.C. 2008). A district court should make express findings supporting its Rule 54(b) determination. *Johnson*, 248 F.R.D. at 355.

ARGUMENT

Plaintiffs proffer essentially two reasons why there is no just reason for delaying the appeal of their Tanzania claims. First, Plaintiffs contend that because permits are not required in order to import sport-hunted African elephant trophies from Zimbabwe, there is no factual or legal overlap between their Tanzania and Zimbabwe claims and therefore there would not be any significant judicial efficiency to delaying the appeal and separate appeals would not result in piecemeal litigation. Plaintiffs' Motion (ECF No. 53) ("Pls' Mot.") at 6, 8. While Plaintiffs are correct that permits are required to import sport-hunted African elephant trophies from Tanzania and are not required to import trophies from Zimbabwe, they have glossed over the substantial factual and legal overlap between their claims challenging the Service's 2014 findings for the two countries.

For both Tanzania and Zimbabwe, Plaintiffs allege that the Service failed to provide notice and an opportunity for comment before issuing its findings. Amended Complaint (ECF No. 13), Counts II and IV; Second Amended Complaint (ECF No. 49), Counts III and VI.[1] Due to this overlap, if the Court grants Plaintiffs' Motion the question of whether the Service's enhancement findings are rulemakings requiring notice and comment could be before both the

[1] Also for both countries, Plaintiffs allege that the Service has improperly continued to require an enhancement finding before an individual can import a sport-hunted African elephant trophy despite changes under the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES") since the Service initially included the enhancement requirement in its special rule under the Endangered Species Act. Am. Compl., Counts III and V; Sec. Am. Compl., Counts IV and VII.

district court and the court of appeals at the same time. In fact, in dismissing the Tanzania claims, this Court discussed its prior ruling on the same issue in *Marcum v. Salazar*, 810 F. Supp. 2d 56, 71 (D.D.C. 2011) *vacated and remanded*, 694 F.3d 123 (D.C. Cir. 2012). ECF No. 48 at 13 ("In a recent case challenging the Service's 2005 decision not to issue a non-detriment advice for sport-hunted elephants from Zambia, this Court held that the Service's process of issuing import permits is an adjudication and not a rulemaking."). The potential duplication and waste of judicial resources inherent in the Court of Appeals reviewing the notice and comment issue in the context of the Tanzania claims while the district court is considering the same issue with respect to the Zimbabwe claims weighs against granting Plaintiffs' Motion. *See Athridge v. Iglesias*, 464 F. Supp. 2d 19, 22-23 (D.D.C. 2006) ("Jurisdictional authority of district courts and courts of appeals remain mutually exclusive regarding issues raised in the appeal to avoid confusion and the waste of time and judicial resources by having the same matter considered in more than one forum at the same time.") (citing *United States v. DeFries*, 129 F.3d 1293, 1303 (D.C. Cir. 1997)).

Second, Plaintiffs argue that unless the district court's decision is reversed on appeal, they likely will be prevented from challenging any future findings made by the Service regarding the importation of sport-hunted African elephant trophies from Tanzania and other countries whose elephants are listed on CITES Appendix I. Pls' Mot. at 7. While this may be true, it does not follow that this is one of the "exceptional cases" where allowing an interlocutory appeal is appropriate. *Stewart*, 277 F.R.D. at 34. That the Court's adverse decision has consequences for Plaintiffs is unremarkable. Indeed, if that were the test, interlocutory appeals would be commonplace. *See Carson v. Am. Brands, Inc.*, 450 U.S. 79, 84 (1981) ("Unless a litigant can show that an interlocutory order of the district court might have a serious, perhaps irreparable,

consequence, and that the order can be effectually challenged only by immediate appeal, the general congressional policy against piecemeal review will preclude interlocutory appeal.") (quotations omitted). Moreover, these consequences are the result of Plaintiffs' own choices. Plaintiffs chose to bring their Tanzania and Zimbabwe claims in a single case rather than file two separate cases. It also is Plaintiffs' choice not to correct the deficiency in their challenge to the Tanzania findings by locating a member who has applied for a permit or would be willing to do so. Were that member to be denied a permit, Plaintiffs' path would be cleared to file a new lawsuit without the administrative exhaustion concerns already identified by the Court.

In sum, because Rule 54(b) motions are to be granted sparingly and Plaintiffs have not demonstrated that there is no just reason to delay the appeal of this Court's decision dismissing their Tanzania claims, the Court should deny their Motion for Certification.

Dated: February 6, 2015

Respectfully submitted,

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Safari Club International, et al. Plaintiffs, v. **S.M.R. Jewell,** in her official capacity as Secretary of the United States Department of Interior, et al., Defendants.	Case No. 14-cv-00670-RCL **Proposed ORDER DENYING Plaintiffs' Motion for Certification of Ruling**

Having considered Plaintiffs' Motion for Certification of Ruling, ECF No. 53, and the parties' briefing on the motion, it is hereby **ORDERED** that the motion is **DENIED**.

Dated:

IT IS SO ORDERED:

ROYCE C. LAMBERTH
United States District Judge