IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SAFARI CLUB INTERNATIONAL	)	Case No. 11-cv-01564(BAH)
Plaintiffs,	)	**SAFARI CLUB INTERNATIONAL'S OPPOSITION TO FRIENDS OF ANIMALS' MOTION TO INTERVENE**
v.	)	
KEN SALAZAR, *et al.*	)	
Defendants.	)	

INTRODUCTION

Safari Club International ("Safari Club") opposes the intervention of Friends of Animals ("FoA") in this litigation. Even the liberal approach that Courts apply to intervention under Federal Rule of Civil Procedure 24(a) cannot remedy the inadequacies of FoA's intervention application.[1] In 2009, Judge Kennedy of this Court carefully considered FoA's alleged interest in the U.S. populations of the scimitar-horned oryx, dama gazelle and addax ("three antelope") and denied standing to FoA on all grounds except those related to FoA's access to information and participation in public comment opportunities. *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). Neither of these interests is at stake in this litigation. Because this Circuit requires that a party seeking intervention as of right demonstrate Article III standing, and because FoA lacks that standing, as well

[1] Safari Club generally supports a liberal application of Fed.R.Civ.P 24(a), and often seeks intervention to participate in Endangered Species Act cases and other litigation involving the sustainable use of wildlife. SCI's opposition to FoA's intervention is limited to the unique facts of this particular case.

as the requisite relevant interest and stake necessary to demonstrate intervention as of right and the common questions of fact or law required for permissive intervention, Safari Club respectfully requests that this Court deny FoA's intervention in this litigation.[2]

Safari Club filed this lawsuit to challenge two of the U.S. Fish and Wildlife Service's ("FWS" or "Service") illegal acts; 1) the original decision to include U.S. populations of the three antelope in the endangered listing for each of the three species as a whole; and 2) the subsequent failure to act on Safari Club's rulemaking petition that asks the Service to correct the foregoing error by delisting those U.S. populations. Safari Club's goal in this litigation is to protect these U.S. populations and to prevent their endangered status from reversing the success of privately conducted and financed conservation efforts by U.S. ranchers. Congress adopted the Endangered Species Act ("ESA"), 16 U.S.C. § 1531 *et seq*. to mandate the conservation of species. In the case of the three antelope species, the FWS's implementation of the ESA is having the opposite effect. The endangered status, along with its prohibitions and bureaucracy, has diminished the value of the species and has made it less economically feasible for private ranchers to continue their efforts to raise, breed and conserve these antelope.

Safari Club has brought this lawsuit to prevent the Service from administering the ESA in a way that will illegally undermine the statute's conservation precepts and will harm the three antelope. FoA lacks the requisite standing to participate as an intervenor as of right in the determination of the legality of the FWS's acts in listing as endangered and maintaining that listing of the U.S. populations of the three antelope. FoA's interest

[2] FoA has not sought amicus status as an alternative to intervention. Safari Club will not oppose FoA's participation as an amicus, if FoA seeks amicus status.

in the three antelope does not share the requisite factual and/or legal commonalities necessary for FoA's participation as a permissive intervenor in this litigation.

REGULATORY HISTORY OF THE SCIMITAR-HORNED ORYX, DAMA GAZELLE AND ADDAX

Prior to September 2, 2005, these three antelope species had no ESA status, and therefore their trade and take were spared from any ESA-imposed encumbrances. In their home ranges in the wild, primarily in Africa, the three species were dwindling in number, prompting the FWS to propose to list the three species as endangered. The FWS was well aware that the listing of the U.S. populations of the three antelope would jeopardize ongoing and successful private conservation efforts for those populations, but nevertheless violated ESA conservation mandates by including the U.S. populations in that listing. The FWS attempted to reduce the impact of their listing of the U.S. populations by adopting a regulation intended to protect the U.S. populations from the harmful repercussions of endangered status. On September 2, 2005 – the same date that the Service listed the U.S. populations as endangered, 70 Fed. Reg. 52319 (Sept. 2, 2005) – the FWS adopted a regulation that waived most ESA prohibitions and restrictions applicable to the U.S. populations, including requirements for obtaining individual permits for the trade and take of these animals. 70 Fed. Reg. 52310 (Sept. 2, 2005), 50 C.F.R. § 17.21(h).

The Service promulgated the regulatory exemption to protect the successful efforts of U.S. ranchers. Long before the Service listed the three antelope species as endangered, private individuals had, at their own expense, been engaged in the conservation of the three antelope by raising and breeding herds of one or more of the species on ranches throughout the United States. Although undeniably successful, those

conservation efforts have also been controversial. The strategy that has saved these animals and that has turned single digit U.S. populations into numbers in the thousands, is hunting. Many ranchers pay for the cost of maintaining, feeding and breeding these antelope by selling hunts for limited numbers of their herds. In addition to making room for the ranchers to bring in new genetic stock to their herds, the sustainable use of these animals has 1) given the three species significant financial value; 2) made it appealing and feasible for private ranch owners to raise them on their land; 3) encouraged breeding and the preservation of genetic integrity; and 4) increased the number of herds and animals in the U.S. All of these successes were possible because of the absence of ESA restrictions on the trade and take of members of these species. In short, the ranchers' ability to sell hunts for these animals made these three antelope a desired commodity and a subject of private conservation.

The regulatory exemption attempted to make it possible for private ranchers to continue to trade and sell hunts for these animals without individual permit limitations and requirements. In 2009, Judge Kennedy ruled that the regulatory exemption violated the ESA, but left the exemption in place while the Service sought a regulatory solution that would comply with ESA mandates. On July 7, 2011, the FWS published a proposed withdrawal of the regulatory exemption, 76 Fed. Reg. 39804 (July 7, 2011). As of the date of the filing of this Opposition, the FWS has yet to publish a Final Rule that withdraws the regulatory exemption, but Safari Club believes that such publication is imminent.

LITIGATION HISTORY OF THE SCIMITAR-HORNED ORYX, DAMA GAZELLE AND ADDAX

FoA filed one of two lawsuits that challenged the legality of the regulatory exemption. FoA filed its lawsuit to prevent hunting from being utilized as a tool for the three antelope species' conservation. They failed in that attempt. Judge Kennedy did not find hunting of the U.S. captive populations of the three antelope to be illegal and did not question the Service's conclusion that hunting enhanced the survival of the species. Judge Kennedy simply determined that, as long as the species were listed as endangered, the FWS was required to conduct a case-by-case analysis of whether exemptions to otherwise prohibited conduct would enhance the survival of the species and that ESA notice and comment requirements should apply for each application submitted for an exemption from the statutory restrictions imposed on the take of members of endangered species. 626 F. Supp. 2d at 116, 119, 120.

ARGUMENT

A. Friends of Animals' "Interest" in the Scimitar-Horned Oryx, Dama Gazelle, and Addax

On September 2, 2005, the FWS published its decision to include U.S. populations of the scimitar-horned oryx, dama gazelle and addax in the endangered species classification of the three species. 70 Fed. Reg. 52319 (Sept. 2, 2005). Despite knowledge that U.S. populations were growing and thriving due to the efforts of private ranchers and members of the hunting community, the Service included the U.S. populations in the listing. The Service did so, on what turned out to be an erroneous assumption that it could promulgate a regulation that would exempt the U.S. populations

from the ESA prohibitions that would hinder and discourage continued private conservation efforts.

After FoA filed suit to challenge the regulatory exemption, discovery conducted by the Federal Defendants and the summary judgment briefing in the *Friends of Animals* case revealed three very telling facts about FoA's interest, or lack thereof, in the conservation of U.S. populations of the three antelope species: 1) FoA has no interest in maintaining the large numbers of the captive populations of the three species on private ranches in the U.S.; 2) FoA does not believe that the privately owned captive populations are viable for seeding new populations in the species' home range and thereby conserving these species in the wild; and 3) FoA is willing to allow its distaste for hunting to jeopardize conservation since FoA objects to the use of U.S. privately owned captive populations for reintroduction into the wild simply because these animals have been raised on ranches where hunting has been permitted.

For example, in its "Combined Memorandum of Points and Authorities In: (1) Opposition for Federal Defendants' Cross-Motion for Summary Judgment, (2) Opposition to Defendant-Intervenors' Motion for Summary Judgment, and (3) Response to Federal Defendants' Opposition to Friends of Animals' Motion for Summary Judgment" ("FoA SJ Opposition Brief") in the *Friends of Animals* litigation, FoA voiced its willingness to simply discard the animals raised on captive herds. According to FoA "these stocks are not even needed for part of future reintroduction efforts." FoA SJ Opposition Brief, at 13, attached as Exhibit A. "There are already a [sic] sufficient numbers of antelope stock kept in the antelope's native range, as well as in zoos and other conservation programs that are better suited for reintroduction." *Id*. at 16.

The documents provided by FoA in response to the Federal Defendants' discovery requests further elucidated FoA's position on the U.S. populations. In e-mail correspondence from FoA President, Priscilla Feral, to then FoA independent consultant, Bill Clark, on January 19, 1999, Feral made clear that FoA did not consider U.S. captive animals from private facilities that allowed or supported hunting viable for reintroduction in the wild or home range conservation. In the following exchange, Ms. Feral explained to Mr. Clark that FoA, in its effort to develop a captive herd of scimitar-horned oryx in Senegal, would simply avoid accepting any animals coming from facilities that allowed or supported hunting:

> I left it with Dr. Rost that you would probably be contacting him by telephone directly. He said he would look forward to hearing from you. While I don't know if we'll want to deal with him in the future, he is certainly a fountain of information. *If nothing else, he can probably eventually point us in the direction of private owners who are opposed to hunting and might be interested in working with us.*

E-mail from Priscilla Feral to Bill Clark, January 19, 1999, Plaintiff's First Supplemental Response to Federal Defendant's First and Second Set of Interrogatories, Requests for Production of Documents, and Requests for Admissions, Civil No. 04-1660 (FoA Response to Discovery"), attached as Exhibit B (emphasis added). On July 6, 2000, Bill Clark wrote to Priscilla Feral:

> Concerning the ethics of dealing with them, I prefer to take the Quaker attitude. When there was some criticism of the American Friends Service Committee (Quaker relief program) taking money from the mafia, they replied that – through their good works, they are purifying the ill-gotten money. Perhaps – and only up to a certain extent. *If any of the zoos are involved in truly evil activities (i.e. selling to hunting ranches, etc., I think we should avoid them.*

Id. (emphasis added).

Despite its lack of interest in the conservation status and value of the U.S. captive populations, FoA asserted standing in the *Friends of Animals* case by attempting to draw a connection between the regulatory take of U.S. captive populations and the fate of the populations living in the species' home range in the wild. FoA claimed that the regulatory exemption that authorized the take of U.S. captive members of the three species injured FoA's aesthetic interest in viewing antelope species in the wild. FoA asserted its standing primarily based on a declaration submitted by Patricia Feral, remarkably similar to the one submitted by Ms. Feral in this litigation. FoA claimed that the regulated take of members of the U.S. populations provided an increased incentive for poachers to kill wild members of the antelope species by creating a legal market for antelope parts and trophies. *Friends of Animals*, 626 F. Supp. 2d at 109.

Judge Kennedy rejected FoA's standing assertions, finding no chain of causation between the legal trade in United States captive-bred antelope and the poaching of wild antelope abroad. *Id*. The Court found that FoA showed no evidence that the regulated take of the U.S. captive herds increased the financial incentive for the illegal take (poaching) of the species in the wild. *Id*. "The court finds that FOA plaintiffs do not have standing on this basis because even if Feral has suffered an injury, she has not demonstrated that it is fairly traceable to the Rule." *Id*. at 110.

Judge Kennedy also found FoA's alleged interest in the U.S. captive populations of the three antelope insufficient for standing. The Court concluded that despite the fact that Ms. Feral had visited private ranches in 1991 and 2006, she could not demonstrate an aesthetic interest in the antelope species in captivity. Her 1991 visit was lacking because there was no evidence that she had seen any of the three antelope species during that visit

to a ranch. Her 2006 visits were lacking for multiple reasons, including the fact that these visits occurred only after FoA initiated its litigation challenge to the regulatory waiver. In addition, Ms. Feral's declaration offered no indication that she had any concrete plans for returning to any U.S. ranches that were homes to the three antelope. *Id.* at 110.

Judge Kennedy found that FoA had standing *only* to assert claims of informational loss and inability to participate in the public comment process related to applications for ESA exemption permits.

> Beyond the deprivation of information that hinders plaintiff organizations in the informational service they provide to their members and their ability to participate in the subsection 10(c) [permit application] process, plaintiffs have not demonstrated that the Rule hinders their *activities* in any other concrete way. FOA plaintiffs' argument that the introduction of an antelope from a hunting ranch could affect the genetic makeup of the herds FOA supports in the antelope species' native range is entirely speculative. Likewise, as explained above, FOA plaintiffs have not presented any evidence that the Rule increases incentives for poaching in the antelope species' native range. Finally, FOA plaintiffs' assertion that the Rule conflicts with their mission to preserve antelopes is exactly the type of abstract social interest or frustration of purpose that does not support standing.

626 F. Supp. 2d at 114.

FoA's interest/standing assertions in the instant case offer nothing more than the insufficient allegations that FoA made in *Friends of Animals*. Once again, FoA relies on the declaration of FoA President, Priscilla Feral. As in the *Friends of Animals* litigation, Ms. Feral's declaration highlights the work of FoA in Africa. In addition, Ms. Feral confirms Safari Club's premise for challenging the FWS's inclusion of the U.S. populations into the species' endangered listing. FoA's declaration establishes that, not only are there no restoration efforts currently being conducted for the three species in the wild but also that there are no conservation efforts that directly connect U.S. populations to the restoration of these populations in their home range in the wild. At most, Ms. Feral

can state her "hopes" that captive populations currently in Africa "will expand, become self-sufficient, and someday be reintroduced into the wild." Feral Declaration, ¶ 6.

Ms. Feral's declaration in the instant case fails to remedy a significant failing that plagued FoA's standing assertions in the *Friends of Animals* case. Her 2011 declaration again neglects to document any concrete plans to visit U.S. populations of the three antelope in the future. Instead, Ms. Feral announces her intention to visit a captive population in Senegal in December of 2011. Because there is no true connection between the status and conservation efforts for the species in the wild to the status and conservation efforts for U.S. populations, Ms. Feral's Senegal visit plans fall short of the future plans needed to satisfy her standing obligations. Feral Declaration, ¶13. This case involves the status of ***the U.S. populations***, not those in Africa and a visit to an African captive herd is not a substitute for concrete plans to visit a U.S. herd.

In the *Friends of Animals* case, Judge Kennedy found FoA's standing lacking, in part because Ms. Feral's visit to U.S. herds post-dated the inception of FoA's lawsuit. Ostensibly, in this case, this is not a problem, as Ms. Feral's 2006 visits to two private ranches occurred prior to Safari Club's initiation of this lawsuit in 2011. However, according to her declaration, Ms. Feral's 2006 visits to U.S. ranches were her last visits to any U.S. ranches with any of the three antelope. It appears that Ms. Feral and/or FoA's last direct contact with U.S. captive herds took place three years prior to the ruling in the *Friends of Animals* case and almost six years prior to FoA's attempt to intervene in this litigation.

Ms. Feral's declaration shows that the only overt action that Ms. Feral or FoA has taken since 2006 that is even remotely related to the U.S. populations of the three

antelope has been to give "an interview to Lara Logan for 60 minutes in 2011." Feral Declaration, ¶16. Instead of a visit to the animals themselves, the interview involved only "actual travel to D.C. on the part of the film crew and Priscilla." *Id*. Instead of demonstrating an intent to enjoy or conserve the U.S. populations, the interview was "entirely devoted to our lawsuit and efforts to halt the hunting of oryxes in hunting ranches." *Id*.

Instead of demonstrating an interest in the U.S. populations, Ms. Feral's declaration evinces an actual ***lack*** of any real interest in the captive populations since 2006, when Ms. Feral last made a visit to view any of members of the U.S. populations. In fact, the evidence presented in the *Friends of Animals* litigation, and underscored by Ms. Feral declaration in this case, shows that FoA considers the U.S. populations to be dispensable. It appears that FoA's sole interest in this litigation is to prevent hunting from being a part of the three antelope species' conservation, even if that position harms the U.S. populations.

B. FoA Should Not Be Granted Intervention As of Right

For intervention as of right in this jurisdiction, an applicant must fulfill five requirements; 1) timeliness; 2) a legally protected interest in the action; 3) an impairment of that interest; 4) the inadequacy of representation by the existing parties to the litigation; and 5) Article III standing to sue. Fed.R. Civ. P. 24(a)(2); *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 731-32 (D.C. Cir. 2003) (Mongolian Natural Resources Department of the Ministry of Nature and Environment could participate as an intervenor defendant because it had Article III standing to defend the FWS's decision to allow the importation of argali sheep trophies, citing *City of Cleveland v. NRC*, 17 F.3d 1515, 1517

(D.C.Cir.1994)). Because of its lack of an interest in the subject matter of this case – the three antelope populations in the United States -- FoA cannot meet its Article III standing requirements.

1. FoA Lacks Standing To Participate

A party seeking to intervene as of right under Fed. R. Civ. P. 24(a)(2) must establish Article III standing, because intervenors seek to participate on "equal footing" with the original parties to the litigation *Id. at* 732. This requirement extends to parties seeking to intervene as defendants. *Id.; Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 233 (D.C. Cir. 2003) (holding the United States established Article III standing to intervene as defendants to uphold the Algiers Accords). To demonstrate standing, a litigant must show 1) that it has suffered an "injury in fact"-an invasion of a legally protected interest which is (a) concrete and particularized, and (b) "actual or imminent, not 'conjectural' or 'hypothetical,' " 2) that there is a causal connection between the injury and the conduct complained of-the injury that is "fairly ... trace[able] to the challenged action of the defendant, and not ... th[e] result [of] the independent action of some third party not before the court;" and 3) that it is "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992) (citations omitted).

FoA has asserted an interest in the conservation of scimitar-horned oryx, dama gazelle and addax in the wild, but, as Judge Kennedy properly determined in the *Friends of Animals* litigation, FoA cannot demonstrate any causal connection between any aesthetic injury in enjoying the animals in the wild and the status of the U.S. populations. In addition, because of the absence of any concrete plans to view U.S. populations in the

future, FoA fails in its obligation to demonstrate an injury that is "concrete and particularized" and "actual and imminent."

It is almost as if FoA is attempting to return to the "animal nexus" theory rejected by the court in *Lujan, supra*. FoA appears to be asserting that, despite Judge Kennedy's ruling that there is no connection between the status of the populations in their home ranges in the wild and the U.S. populations, FoA's work with scimitar-horned oryx in Africa automatically confers standing to intervene in a case that focuses exclusively on the listing status of the species here in the U.S. The Supreme Court in *Lujan* confirmed that "[s]tanding is not 'an ingenious academic exercise in the conceivable'" and that "[i]t goes beyond the limit, however, and into pure speculation and fantasy, to say that anyone who observes or works with an endangered species, anywhere in the world, is appreciably harmed by a single project affecting some portion of that species with which he has no more specific connection." *Id.* at 566 (rejecting the idea that one who visits or works with elephants in the Bronx Zoo would have standing to challenge the legality of a federally funded project that might affect elephants in Sri Lanka).

Alternatively, FoA attempts to assert an aesthetic interest in the U.S. captive populations of the three species. In doing so, FoA fails, as it did in the *Friends of Animals* case, to demonstrate any concrete plans to visit any U.S. populations in the future. Although there is some evidence that FoA President Priscilla Feral visited private ranches approximately six years ago, there is no evidence of any intent, concrete or otherwise, to make future visits. The U.S. Supreme Court in Lujan rejected plaintiffs' standing under a similar set of facts in the *Lujan* case. An environmental group had challenged a regulation that failed to require consultation with the FWS for federally

funded projects taking place outside of the U.S. The plaintiffs presented declarations from two members who could document trips abroad to view listed species in the past, but could not offer any concrete plans for such trips in the future.

> "'Past exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief ... if unaccompanied by any continuing, present adverse effects.' " *Lyons*, 461 U.S., at 102, 103 S.Ct., at 1665 (quoting *O'Shea v. Littleton*, 414 U.S. 488, 495-496, 94 S.Ct. 669, 676, 38 L.Ed.2d 674 (1974)). And the affiants' profession of an "inten[t]" to return to the places they had visited before-where they will presumably, this time, be deprived of the opportunity to observe animals of the endangered species-is simply not enough. Such "some day" intentions-without any description of concrete plans, or indeed even any specification of *when* the some day will be-do not support a finding of the "actual or imminent" injury that our cases require.

504 U.S. at 564. In *Lujan*, the declarants at least expressed a "some day" intention of visiting the animals that were in the location that was the subject of the challenged action. In the instant matter, FoA has not even done that.[3]

FoA cannot establish a causal connection between the action challenged in this litigation – the erroneous listing of U.S. populations of the three antelope species and failure to respond to a delisting petition – and the conservation status of the species in the wild. FoA has not offered concrete plans to visit herds of the species that are at issue in

[3]Even if there were no standing requirement for intervention in this jurisdiction, FoA would still fail to meet the requirements for intervention as of right. The requirements for demonstrating interest for intervention as of right and standing are equivalent. Courts in this jurisdiction recognize that a demonstration of standing fulfills the interest requirement for intervention as of right. *Roeder*, 333 F.3d at 233 (party that demonstrates entitlement to intervene as of right also demonstrates standing). Jurisdictions that do not require standing for intervention have acknowledged the parallels between the type of interest that applicants must assert for standing and for intervention. "The standing cases, however, are relevant to help define the type of interest that the intervenor must assert." *Chiles v. Thornborough*, 865 F.2d 1197, 1213 (11th Cir. 1989) (Court held that U.S. Senator lacked standing to challenge operation of federal alien detention facility).

this litigation. Without these two crucial components, FoA lacks standing and consequently, on this ground alone, cannot intervene as of right.

2. FoA Has No Informational Standing Claims in this Litigation

FoA's standing salvation in the *Friends of Animals* case was based on access to information and the ability to comment as a result of that access. These concerns are also not at issue in this case. The endangered status of a species has no direct connection with access to information or opportunities to comment about members of that species. FoA is not entitled to any type of information or comment opportunities simply because the three antelope species are listed as endangered. The only time FoA might be entitled to information or an opportunity to comment is if an individual seeks a permit for an exemption from ESA take prohibitions. FoA cannot predict the likelihood that anyone will apply for such a permit, and, if an application is made it is quite likely that it will be submitted by individuals who are not before this Court. FoA's proposed injury and potential redress are far too attenuated, and are contingent on the "unfettered choices" of third parties not before this Court. *Miami Building and Const. Trades Council, AFL/CIO v. Secretary of Defense*, 493 F.3d 201, 205 (D.C. Cir. 2007)(Court ruled that developer lacked standing to challenge Air Force decision, since decision-making was in the hands of the County, not the parties to the litigation).[4]

C. FoA Should Not Be Granted Permissive Intervention

[4]Moreover, it is Safari Club's position in the filing of this litigation that the continued endangered status of the three antelope species is likely to discourage individuals from continuing to raise and own these species, which in turn reduces the likelihood that individuals will submit applications to the FWS for the ability to sustainably use members of these species.

FoA asserts that it should be entitled to permissive intervention under Rule 24(b), claiming that it wishes to assert claims or defenses that share common questions of law or fact with those of Safari Club's original action. There are no common questions of law or fact. By its own admissions in the *Friends of Animals* litigation, FoA cares only for the populations of the three antelope that are not part of the U.S. populations. It sees the U.S. populations as dispensable. A Court has already found unsupportable FoA's claims of a connection between the sustainable use of the U.S. populations and the poaching of members of the species in the wild. The professed goal of FoA is to prevent any form of hunting of U.S. populations, yet this case is not specifically about hunting or regulations that authorize hunting. This case is simply about the endangered species status of a population of animals that FoA has deemed unnecessary to the conservation of the species in the wild.

FoA has a professed interest in the fate of scimitar-horned oryx, dama gazelle and addax in the wild. They have an interest in the species, but not the populations of the species that are at issue in this litigation. A party may not succeed in a bid for permissive intervention simply because it has an interest in a subject that bears some relation to the subject of the ongoing litigation. *Mt. Hawley Insurance Co. v. Sandy Lake Properties*, 425 F.3d 1308, 1312 (11th Cir. 2005). (Court denied permissive intervention to representative of estate of drowning victim in insurance company's action against owner and manager of property. Although the estate had an interest in issues related to the drowning, the Court found that question of insurance coverage was insufficiently related to issue of fault to support permissive intervention). FoA 's interest in the scimitar-horned oryx, dama gazelle and addax outside of the U.S. does not rise to the level of

common questions of law or fact necessary for participation as a permissive intervenor.

CONCLUSION

FoA has failed to demonstrate the criteria necessary for intervention as of right or permissive intervention. For those reasons, Safari Club respectfully requests that this Court deny FoA's Motion to Intervene.

Dated this 9th day of December, 2011.

Respectfully submitted

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Safari Club International Opposition to
Friends of Animals' Motion to Intervene

Safari Club International v. Ken Salazar et al.,
Civil Action No. 1:11-cv.01564(BAH)

EXHIBIT A

Safari Club International Opposition to
Friends of Animals' Motion to Intervene

Safari Club International v. Ken Salazar et al.,
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EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SAFARI CLUB INTERNATIONAL	)	Case No. 11-cv-01564(BAH)
Plaintiffs,	)	**PROPOSED ORDER ON MOTION TO INTERVENE OF FRIENDS OF ANIMALS**
v.	)	
KEN SALAZAR, *et al.*	)	
Defendants.	)	

Upon consideration of Friends of Animals' Motion to Intervene and Memorandum in Support and Safari Club International's Opposition thereto, it is this _____ day of _____ ORDERED that Friends of Animals' Motion to Intervene is DENIED.

_____

District Court Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SAFARI CLUB INTERNATIONAL	)	Case No. 11-cv-01564(BAH)
Plaintiffs,	)	**CERTIFICATE OF SERVICE**
v.	)	
KEN SALAZAR, *et al.*	)	
Defendants.	)	

_____

CERTIFICATE OF SERVICE

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

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Dated this 9th day of December, 2011.

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