IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY, et al.,	)	
Plaintiffs,	)	
v.	)	
DAVID BERNHARDT, in his official Capacity as Secretary, U.S. Department of Interior, et al.	)	Case No. 1:18-cv-1547-JCB
Defendants.	)	

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO SAFARI CLUB INTERNATIONAL'S MOTION TO INTERVENE

Plaintiffs, Public Employees for Environmental Responsibility (PEER), et al. hereby submit this Memorandum of Points and Authorities in Opposition to the January 4, 2019, Motion to Intervene of Safari Club International in the above-captioned matter. Plaintiffs oppose intervention by Safari Club International (SCI) as of right pursuant to Fed. R. Civ. P. 24(a)(2), and by permission of the Court pursuant to Fed. R. Civ. P. 24(b)(1)(B), as well as SCI's participation as *amicus*.

The Court should deny SCI's intervention because SCI has failed to satisfy the necessary prerequisites for intervention as of right and for constitutional standing under Article III. Moreover, SCI also does not qualify for permissive intervention or *amicus* status, because both its interest and its expertise lie in the area of hunting, and not in the legal, factual, and scientific issues concerning the listing status of the Louisiana black bear under the Endangered Species Act (ESA) that are the subject of this case. SCI's permissive intervention or participation as *amicus* could also prejudice the parties, unduly disrupt the schedule, and fruitlessly complicate the

pending case. If nevertheless granted, SCI's permissive intervention or participation as *amicus* should be properly limited so as not to disrupt the schedule or prejudice the parties.

RELEVANT FACTS

On January 7, 1992, the Louisiana black bear (*Ursus americanus luteolus)*, was listed as threatened pursuant to the Endangered Species Act. 57 Fed. Reg. 588 (January 7, 1992). The Louisiana black bear is one of sixteen recognized subspecies of the American black bear (*Ursus americanus*), which is the official state mammal of Louisiana. The listing decision was based on the modification and reduction of bear habitat and the threat of future habitat conversion and human-related mortality.

In 2015, one year after the U.S. Fish and Wildlife Service (Service) completed its first 5-year review of the status of the Louisiana black bear recommending continued listing, the Service proposed delisting of the Louisiana black bear. 80 Fed. Reg. 29394 (May 21, 2015). Soon thereafter, on March 11, 2016, the Service issued the final delisting rule. 81 Fed. Reg. 13124 (Mar. 11, 2016).

Pursuant to the delisting decision, the "LDWF [Louisiana Department of Wildlife and Fisheries] will be the sole agency responsible for Louisiana black bear management in Louisiana when the bear is delisted with publication of this final rule." 81 Fed. Reg. at 13160. Separate from the delisting decision, and the long-term management strategies of LDWF (LDWF Plan), the Service coordinated with the state to develop a Post-Delisting Monitoring (PDM) Plan for the Louisiana black bear: "the PDM plan is a Service document developed in coordination with the LDWF as required under section 4(g)(1) of the [Endangered Species] Act, while the LDWF Plan was developed independently by LDWF. The PDM plan covers a period of 7 years, while the LDWF Plan is a more long-term plan. The LDWF Plan was developed by the LDWF under their

State management authorities, not under Federal authority; the State will assume long-term management of Louisiana black bears upon delisting." *Id.* at 13153. Both the long-term LDWF Plan, and the 7-year PDM plan were available for public comment and review, separate and distinct from the delisting decision. *See* 81 Fed. Reg. at 13153; 80 Fed. Reg. at 29428; Davidson, et al., "Louisiana Black Bear Management Plan" (Jan. 2015).

Although the LDWF Plan identifies bear harvest as one potential management action it could employ, LDWF would not consider a harvest "if existing data and simulated population dynamic models indicate a restricted hunt could potentially compromise Louisiana black bear sustainability." 81 Fed. Reg. at 13160; *see also id.* at 13152; LDWF Plan, Davidson at 55. The black bear continues to be protected from taking, possession, and trade by State laws. *See* La. Admin. Code Title 76; La. R.S. Title 56; *see also* Davidson, at 57 ("the potential removal from federal protection would not alter or negate state penalties for poaching or harming a Louisiana black bear"). In fact, black bears in Louisiana have been protected from recreational hunting since 1984. *See* 81 Fed. Reg. 13159.

On June 28, 2018, Plaintiffs filed the instant suit challenging the 2016 delisting decision. ECF 1. Plaintiffs assert claims under the Endangered Species Act and the Administrative Procedure Act challenging the Service's compliance with the ESA listing standards, the sufficiency of the scientific support the Service relied on in its delisting determination, and the Service's recovery determination. Defendant answered on September 11, 2016. ECF 6. On October 16, 2018, the Court entered an order on the parties' joint proposed briefing schedule (ECF 6) pursuant to which Plaintiffs filed its Motion to Complete and Supplement the Administrative Record on January 10, 2019. ECF 14. On January 4, 2019, Safari Club

International filed the instant motion to intervene, accompanied by declarations[1] of members and a proposed answer to Plaintiffs' complaint. ECF 13. In accordance with the Court's order of October 16, 2018, following the resolution of the administrative record, the parties will proceed to summary judgment briefing.

ARGUMENT

Safari Club International seeks to intervene as of right, or in the alternative, permissive intervention as a defendant or *amicus curiae* status in support of the 2016 delisting decision. The Court should deny SCI's motion to intervene on the basis that SCI fails to satisfy the requirements necessary to show Article III standing, and for intervention of right pursuant to Fed. R. Civ. P. 24(a). The Court should also exercise its broad discretion to deny SCI's request for permissive intervention under Rule 24(b) and participation as *amicus* to avoid prejudice and delay, and in consideration of SCI's lack of contribution to the just adjudication of relevant legal questions pending before the Court.

A. Safari Club International Cannot Establish Constitutional Standing

A party seeking to intervene as of right must also establish Article III standing. *Fund for Animals, Inc. v. Norton,* 322 F.3d 728, 731-32 (D.C. Cir. 2003); *see also Deutsche Bank Nat'l Trust Co. v. FDIC,* 717 F.3d 189, 191, 193-94 (D.C. Cir. 2013); *WildEarth Guardians, et al. v. Salazar (In re Endangered Species Act Section 4 Deadline Litig.),*704 F.3d 972, 976 (D.C. Cir. 2013) (quoting *City of Cleveland v. NRC*, 17 F.3d 1515, 1517 (D.C. Cir. 1994)) ("[T]he

[1] All but one of the declarations attached to SCI's Motion to Intervene include the following language, that the declaration is provided "in support of Safari Club International's and the National Rifle Association of America's motion to intervene in the above captioned case." As the National Rifle Association of America (NRA) was not specifically included in the Motion to Intervene as a potential intervenor in this litigation, Plaintiffs' presume that the inclusion of the NRA in the declarations in support was made in error.

underlying rationale for this requirement is clear: 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."); *United States v. Philip Morris USA, Inc.*, 566 F.3d 1095, 1146 (D.C. Cir. 2009); *Friends of Animals v. Kempthorne,* 452 F. Supp. 2d 64, 68 (D.D.C. 2006); *Military Toxics Project v. Envtl. Prot. Agency*, 146 F.3d 948, 953 (D.C. Cir. 1998); *Mova Pharm. Corp. v. Shalala*, 140 F.3d 1060, 1074 (D.C. Cir. 1998); *Bldg. & Constr. Trades Dep't v. Reich*, 40 F.3d 1275, 1282 (D.C. Cir. 1994). "Because a would-be intervenor's Article III standing presents a question going to this court's jurisdiction," the Court must first address whether SCI has standing before considering the four factors for intervention as of right. *Fund for Animals*, 322 F.3d at 732 (citing *Sierra Club v. Envtl. Prot. Agency*, 292 F.3d 895, 898 (D.C. Cir. 2002)).

SCI cannot satisfy Article III standing for the same reasons it also fails to satisfy the requirements for intervention of right under Rule 24(a), as discussed further *infra*. To establish constitutional standing, a SCI member must demonstrate "(1) an injury-in-fact that is (a) concrete and particularized, and (b) actual and imminent, (2) causation, and (3) redressability." *Defenders of Wildlife v. Jackson,* 284 F.R.D. 1, 5 (D.D.C. 2012) (quoting *In re Endangered Species Act ("ESA") Section 4 Deadline Litig.*, 270 F.R.D. 1, 5 (D.D.C. 2010), citing *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560-61 (1992)). Where, as here, a movant seeks to intervene as a defendant to uphold an agency action, the movant must establish that it would suffer a concrete injury if the action were to be set aside, that the injury would be fairly traceable to the setting aside of the agency action, and that the injury would be prevented if the government action is upheld. *Forest County Potawatomi Community v. United States,* 317 F.R.D. 6, 11 (D.D.C. 2016).

The injury must be actual, not conjectural or hypothetical, it must be fairly traceable to

the action, and it must be likely, not merely speculative, that the injury will be redressed by a favorable decision. *See Lujan*, 504 U.S. at 560-61.[2] Where the alleged injury has yet to occur, the injury must nevertheless be "certainly impending." *Ctr. for Biological Diversity v. United States Envtl. Prot. Agency*, 274 F.R.D. 305, 309 (D.D.C. 2011) **(**citing *Lujan,* 504 U.S. at 564 n.2; quoting *Whitmore v. Arkansas,* 495 U.S. 149, 158 (1990)).

The injury alleged by SCI is based on its members' interest in hunting the Louisiana black bear. Motion to Intervene of Safari Club International (SCI Motion)*,* at 12. SCI and its members' general interest in some potential future opportunity to hunt the Louisiana black bear is not actual or concrete, but highly speculative, conjectural, and hypothetical. SCI contends that its members "will almost certainly be deprived of their ability to participate in future black bear hunting seasons" should Plaintiffs be successful in the litigation, while simultaneously admitting that the delisting returns primary management to the state who then "*can* authorize well-regulated hunting seasons." *Id.* at 12, n. 6 (emphasis added). SCI itself acknowledges that there is no certainty that the state will authorize hunting, and admits that under the status quo, delisted status of the Louisiana black bear, the state has not authorized hunting under current state management practices. SCI offers no evidence, other than its declarants' wishes that it be so,[3] to

[2] "The injury-in-fact and causation connection with the challenged action requirements for standing are closely related to the second and third factors under Rule 24(a), which require a showing of interest in the subject matter of the lawsuit and the potential impairment of that interest absent intervention in the suit." *Safari Club Int'l v. Salazar,* 281 F.R.D. 32, 38 (D.D.C. Mar. 23, 2012).

[3] "If the plaintiffs are successful . . I will *most likely* lose my opportunity to hunt black bears." Declaration of Gregory Dale Elliott (Jan. 2, 2019), page 2, ¶ 11 (emphasis added); "it is *most likely* that I will be deprived of the opportunity to participate in the management and conservation of Louisiana's black bears through hunting." Declaration of Richard R. Kennedy III (Dec. 26, 2018), page 2, ¶ 11 (emphasis added); "I will *likely* lose my opportunity to hunt black bears." Declaration of Howard David Wilson (Dec. 28, 2018), page 3, ¶ 15 (emphasis added). The declarants do not explain why this potential injury is even "likely."

show that the state is likely to authorize hunting in the near future, or ever, thus failing to demonstrate that the injury alleged is "certainly impending" or imminent. *See Deutsche Bank,* 717 F.3d at 193 (noting the contingencies that must occur before the alleged economic harm would result in finding the injury to be neither actual or imminent); *Safari Club Int'l,* 281 F.R.D. at 42 ("The absence of any evidence in the record regarding the 'imminence' of the injury . . . is fatal to their ability to establish standing or their satisfaction of the second and third factor for intervention of right requiring a showing that they have a sufficiently current interest which would be impaired should plaintiffs prevail in this action.").

SCI claims that other courts "have found Safari Club's members' conservation and recreational interests in wildlife as bases for injury-in-fact and constitutional standing." SCI Motion at 12. However, in all of the cases cited by SCI, the claims pertained to rulemakings, regulations, or permits that directly impacted importation of hunted game animals (*Safari Club Int'l v. Jewell,* 76 F. Supp. 3d 198 (D.D.C. 2014); *Safari Club Int'l v. Jewell,* 842 F.3d 1280 (D.C. Cir. 2016); *Fund for Animals v. Norton,* 295 F. Supp. 2d 1, 2 (D.D.C. 2003)); or antelope species SCI members "own, breed, market hunt and otherwise manage," where the subject action would impact their "ownership, use and management of" the antelope species (*Friends of Animals,* 452 F. Supp. 2d at 67). These cases are easily distinguishable from the present suit where there is no existing right to hunt Louisiana black bears under state law, and the relevant issues concern not hunting or the rights of hunters, but rather the sufficiency of the scientific reasons for delisting and the alleged recovery of the Louisiana black bear.

SCI cites to *Military Toxic Project v. Envtl. Prot. Agency,* in which the Court found that the intervenor had standing to join in defense of a suit challenging the Military Munitions Rule under the Resource Conservation and Recovery Act. 146 F.3d at 954. However, this case is

distinguishable because the intervenor company CMA was "directly subject to the challenged rule." *Id.* CMA produced military munitions and operated a military firing range regulated under the challenged rule. Its interest in the litigation was actual and concrete, whereas here, SCI's interest is tenuous and hypothetical. SCI's interest in the outcome of the suit is predicated upon an assumption that the state *can* at some future date open a season for hunting the Louisiana black bear if the delisting decision stands, but is not based on any evidence that this is likely to happen.

In sum, SCI lacks standing because it alleges nothing more than a generalized interest in the possibility of a future season for hunting Louisiana black bears, not a concrete actual injury or protectable legal interest in the litigation. In addition to failing to establish "injury in fact," SCI also has failed to establish redressability. Because the bear is currently delisted and yet not legal to hunt, SCI cannot show that its alleged injury is fairly traceable to Plaintiffs' pursued relief, or that the alleged injury is redressable by a favorable decision. Even if the Defendants were to prevail in this suit, SCI's purported injury would not be redressed, because such a ruling would not provide SCI members the ability to hunt the Louisiana black bear unless state authorities took independent action to establish a hunting season, something which they have not done to date despite the fact that the bear has been delisted since March 2016. *See Lujan*, 504 U.S. at 568-71 (plurality opinion) (redressability prong for standing not met where redress of plaintiffs' injury would require action by federal agencies that were not parties to the suit); *Wilderness Soc'y v. Norton*, 434 F.3d 584, 591-93 (D.C. Cir. 2006) (no redressability for claim seeking to compel NPS to review lands for wilderness suitability because NPS lacks authority to designate suitable lands as wilderness); *U.S. Ecology, Inc. v. Dept. of Interior*, 231 F.3d 20, 24-25 (D.C. Cir. 2000) (when redress depends on the cooperation of a third party, the party seeking

relief must adduce facts showing that the third party's choices have been or will be made in such manner as to permit redressability).

Because SCI fails to identify an injury that is concrete, certainly pending, and redressable by a judgment of the Court in favor of Defendants, it cannot establish Article III standing and is not entitled to intervene as of right in this litigation.

B. Safari Club International Has Failed to Demonstrate Entitlement to Intervention of Right

Even apart from its lack of standing, Safari Club International does not have the right to intervene pursuant to Fed. R. Civ. P. 24(a). A nonparty has the right to intervene when it demonstrates impairment of an interest and lack of existing adequate representation in the case. SCI bears the burden to show that it meets the four prerequisites to intervention of right: (1) that the motion is timely; (2) that the movant claims a protectable interest relating to the transaction that is the subject of the suit; (3) that disposition of the action may impair or impede the movant's ability to protect that interest; and (4) that the movant's interest in adequately represented by other parties. *See* Fed. R. Civ. P. 24(a); *Harrington v. Sessions (In re Brewer)*, 863 F.3d 861, 871-72 (D.C. Cir. 2017); *Karsner v. Lothian*, 532 F.3d 876, 885 (D.C. Cir. 2008); *Fund for Animals,* 322 F.3d at 731.

i. SCI Fails to Allege a Legally Protectable Interest

SCI is not entitled to intervene of right because it has failed to demonstrate its members' interest in hunting Louisiana black bears is a "significantly protectable interest" relating to the subject of the litigation. Fed. R. Civ. P. 24 (a); *Diamond v. Charles,* 476 U.S. 54, 68 (1986) (quoting *Donaldson v. United States,* 400 U.S. 517, 531 (1971)). The interest in the litigation required for intervention is not just any interest, but a "legally protectable interest," which is "of such a direct and immediate character that the intervenor will either gain or lose by the direct

legal operation and effect of the judgment." *Defenders of Wildlife,* 284 F.R.D. at 6 (quoting *In re ESA,* 270 F.R.D. at 5, quoting *United States v. Am. Tel. and Tel. Co.*, 642 F.2d 1285, 1292 (D.C. Cir. 1980)). SCI has failed to allege a "legally protectible" interest that is related to the legal and factual questions before the Court.[4]

The legal interest that SCI asserts is "an interest in promoting and protecting sustainable-use conservation through hunting" and that it "seeks to preserve its members' ability to participate in future black bear hunting in Louisiana." SCI Motion at 8. As explained above, the outcome of this suit will not determine whether or not SCI can pursue its interests in hunting and using hunting as a tool of conservation of the Louisiana black bear – it will not be able to engage in hunting unless the state agency takes action independent of this suit. The agency that will determine whether or not SCI's members will be able to hunt Louisiana black bears – the LDWF – is not even a party to the suit. Because of the uncertainty regarding the establishment of a hunting season even if Defendant prevails, SCI would not "either gain or lose by the direct legal operation and effect of the judgment." *Defenders of Wildlife,* 284 F.R.D. at 6.

In *Crow Indian Tribe v. United States,* the district court found that the intervenors' (Safari Club and the NRA) interest in hunting opportunities for their members did not constitute

[4] "Courts in this circuit generally treat the standing analysis for intervention as of right as equivalent to determining whether the intervenor has a 'legally protected' interest under Rule 24(a). *See, e.g., Jones*, 348 F.3d at 1018 ("Article III's 'gloss' on Rule 24 requires an intervenor to have a 'legally protectable' interest." (quoting *S. Christian Leadership Conference v. Kelley*, 747 F.2d 777, 779 (D.C. Cir. 1984))); *WildEarth Guardians*, 272 F.R.D. at 13 n.5 ("[W]hen a putative intervenor has a 'legally protected' interest under Rule 24(a), it will also meet constitutional standing requirements, and *vice versa*." (citations omitted)); *see also Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 233 (D.C. Cir. 2003) ("With respect to intervention as of right in the district court, the matter of standing may be purely academic.")." *100reporters LLC v. U.S. Dep't of Justice,* 307 F.R.D. 269, 276 (D.D.C. 2014). Therefore, the fact that SCI does not have standing, as explained above, also means that it does not have a legally protectible interest.

a "significant protectable interest" relating to the grizzly bear's delisting. *Crow Indian Tribe v. United States*, 2017 U.S. Dist. LEXIS 203416, 17-89-M-DLC, at *6 (D. Mont. Dec. 11, 2017); *see also Sierra Club v. United States Envtl. Prot. Agency,* 995 F.2d 1478, 1482 (9th Cir. 1993) (citing *Portland Audubon Soc'y v. Hodel*, 866 F.2d 302 (9th Cir. 1989)) (distinguishing the two cases and noting that the loggers seeking intervention in defense of the government in *Portland Audubon* lacked a protected interest because they did not have an existing legal right, contract, or permit relating to future timber sales, but rather their economic interest was "based upon bare expectation.").

ii. SCI Cannot Show that its Alleged Interest Will be Impaired

SCI likewise has not shown that its interest would be impaired by the litigation. The movant's interest in the transaction must be such that it would be impaired if intervention is not granted. *Harrington*, 863 F.3d at 871-873. SCI alleges that if Plaintiffs are successful, it is unlikely that SCI members will be able to participate in a hunt as long as the bear is listed. SCI Motion at 8. However, at present, with the Louisiana black bear's current delisted status and management and protection by LDWF, the SCI's interest in hunting is not fulfilled. Therefore, there is no impairment of SCI's interest if it is not allowed to intervene or if Plaintiffs succeed in the litigation, because the interest in hunting Louisiana black bears was never recognized to begin with.

iii. SCI Cannot Show that its Interest Will Not Be Adequately Represented

SCI cannot show that the existing parties will not adequately represent its alleged interests. In addition to the other requirements for intervention of right that are not met here, a nonparty may intervene as of right only if the current parties to the case will not adequately represent its interests. *Harrington*, 863 F.3d at 872-873. However, whether or not there should be

a hunting season will not be an issue in the case – the issue is whether the decision to delist the bear can be upheld based on the criteria for delisting in the ESA. SCI acknowledges that it will address the same issues as will the existing parties, such as hybridization, historical habitat, peer review, and assessment of the listing factors. SCI Motion at 14. SCI has not claimed that it will not be adequately represented by Defendant on these issues, regarding which it has not claimed any special expertise or unique point of view. Any other arguments made by SCI would be irrelevant to the issues in the case and an improper burden on the Court and the existing parties.

SCI "must produce something more than speculation as to the purported inadequacy" of the federal Defendant's representation. *Aref v. Holder,* 774 F. Supp. 2d 147, 173 (D.D.C. 2011) (quoting *Moosehead Sanitary Dist. v. S.G. Phillips Corp.,* 610 F.2d 49, 54 (1st Cir. 1979)). Both SCI and the Defendant share the same objective in upholding the 2016 delisting decision. SCI has failed to describe how its defense of the decision would differ from the Defendant's. It has not identified any distinct, relevant arguments unique to the organization or its members concerning the delisting decision. *See United States v. Michigan*, 424 F.3d 438, 444 (6th Cir. 2005) (upholding denial of intervention as of right on the grounds of adequate representation where intervenors raised issues and future concerns that "are not now, and possibly never will be, before the district court."). For these reasons, the Court should deny SCI's motion for intervention as of right.

iv. Timeliness

The final requirement for intervention as of right is timeliness. A nonparty must move for intervention "once it becomes clear that failure to intervene would jeopardize her interest in the action." *Harrington*, 863 F.3d at 872 (citing *United Airlines, Inc. v. McDonald,* 432 U.S. 385, 394 (1977)). SCI did not do that, given that this case was filed on June 28, 2018, and SCI did not

seek intervention until January 4, 2019. SCI provides no reason why it did not become clear that its alleged interests would be jeopardized by the case for over six months. However, in light of this district's findings that the timeliness requirement "is aimed primarily at preventing potential intervenors from unduly disrupting litigation, to the unfair detriment of the existing parties" (*Roane v. Leonhart,* 741 F.3d 147, 151 (D.C. Cir. 2014), and that SCI has represented that it does not expect to participate in motion practice to address the Administrative Record (SCI Motion at 7), Plaintiffs do not contest the timeliness of SCI's motion. However, if, contrary to Plaintiffs' arguments, intervention is granted, it should be limited so as not to disrupt the proceeding or prejudice the rights of the existing parties. SCI should only be authorized to participate in the summary judgment briefing that is currently subject to an agreed-upon Scheduling Order signed by the Court and entered in the matter on October 16, 2018. To allow more expansive intervention would unduly delay these proceedings and prejudice the parties. Specifically, if allowed to intervene, SCI should not be allowed to participate in the briefing regarding the completeness of the administrative record or other ancillary issues that may arise and should be required to file its summary judgment briefing in a manner that does not extend the existing schedule.

C. Safari Club International Should be Denied Permissive Intervention Under the Circumstances of its Request and the Issues before the Court

SCI has also failed to show that permissive intervention is appropriate and would not cause delay or prejudice the parties. Permissive intervention is discretionary with the court, which *may* allow timely intervention if the movant has "a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B). Additionally, the Court "must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights," (Fed. R. Civ. P. 24(b)(3)), and it may assess "whether parties

seeking intervention will significantly contribute to . . . the just and equitable adjudication of the legal questions presented." *Aristotle Int'l, Inc. v. NGP Software, Inc.*, 714 F. Supp. 2d 1, 18 (D.D.C. 2010) (quoting *H.L. Hayden Co. v. Siemens Med. Sys., Inc.*, 797 F.2d 85, 89 (2d Cir. 1986)).

SCI asserts that its defenses will respond to the Plaintiffs' claims and will include arguments in support of the legality of the delisting decision. SCI Motion at 14. Moreover, SCI contends that "by allowing Safari Club to intervene, the Court will have a party to this action that will advocate for the rights of those who wish to participate in hunting Louisiana black bear." *Id.* However, again, the issues of fact and law before the Court center upon the sufficiency and legality of the Service's 2016 delisting decision on the basis of the best available science and finding of recovery of the species. SCI's intended arguments on these issues have not been shown to do other than duplicate those of Defendant, and these issues are unrelated to the proposed advocacy for the rights of persons interested in a black bear hunt, the initiation of which is wholly within the purview of the LDWF.

Finally, SCI asserts that "the focus is on whether intervention will help or hinder the Court in resolving the case. As an engaged defendant-intervenor, Safari Club has proven helpful in the resolution of other wildlife and hunting cases, and can do so here." *Id.* at 14-15. However, this is not a hunting case, and SCI has not shown how it will be helpful in resolving this case. Plaintiffs question the contribution of SCI's intervention into an already complex matter. The Court's decision whether to allow intervention involves two "potentially conflicting goals: to achieve judicial economies of scale by resolving related issues in a single lawsuit, and to prevent the single lawsuit from becoming *fruitlessly complex* or unending." *Smick v. Hobson,* 408 F.2d 175, 179 (D.C. Cir. 1969) (emphasis added). Here, SCI presents no "related issues" to resolve in

this lawsuit, since hunting is not an issue in the case. Allowing SCI to intervene would only complicate the matter and confuse the underlying issues germane to the Plaintiffs' case by allowing argument on irrelevant issues. *See Michigan*, 424 F.3d at 444 (denying permissive intervention where issued raised by intervenors "prematurely [sought] to inject management and regulatory issues" that were not pending at that time in the proceedings).

Plaintiffs ask the Court to determine the legality and sufficiency of the agency's 2016 delisting decision, to which SCI can offer no more than "conclusory assertions that their participation will be helpful, and fail to demonstrate an 'ability to contribute to the full development of the factual and legal issues presented.'" *Ctr. for Biological Diversity,* 274 F.R.D. at 313 (citing *City of Williams v. Dombeck*, 2000 WL 33675559, at *4 (D.D.C. Aug. 17, 2000); quoting *Humane Soc'y v. Clark*, 109 F.R.D. 518, 521 (D.D.C. 1985)); *see also Envtl. Def. Fund v. Thomas*, 1985 U.S. Dist. LEXIS 14397, 1985 WL 6050, at *6-7 (D.D.C. Oct. 29, 1985) (denying permissive intervention where industry groups sought to intervene in a suit over the timing with which EPA would promulgate certain regulations, on the ground that their "substantial experience and technical expertise as an industry . . . ha[d] no bearing on the legality of the timetable process here in dispute"). Likewise, SCI's expertise concerning hunting issues has no bearing on the issues here concerning whether the ESA standards for delisting are met. For these reasons, the Court should exercise its discretion to deny permissive intervention.

Notwithstanding Plaintiffs' opposition to the proposed intervention, if the Court permits intervention, in the interest of fairness, Plaintiffs respectfully request that the Court condition intervention by requiring SCI to adhere to the current agreed-upon scheduling order previously entered in this case, limiting the intervenor-defendant's participation to summary judgment briefing within the existing schedule, and permitting Plaintiffs to request additional pages to

respond to motions for summary judgment as needed. *See Forest County Potawatomi Community,* 317 F.R.D. at 14-15 (citing *Fund for Animals,* 322 F.3d at 737 n. 11) ("Even where the Court concludes that intervention as a matter of right is appropriate, . . . district courts may impose appropriate conditions or restrictions upon the intervenor's participation in the action.").

For the same reasons that SCI's participation as a permissive intervenor would not significantly contribute to the just and equitable adjudication of the legal questions presented here, and in fact would only needlessly complicate the case with irrelevant issues, its participation as *amicus* is not warranted. However, if the Court determines to grant *amicus* status, it should limit SCI's participation to one brief supporting Defendant's Cross-Motion for Summary Judgment and Opposition to Plaintiffs' Motion.

CONCLUSION

For the foregoing reasons, Safari Club International's Motion to Intervene should be denied. If it is nevertheless allowed to participate as an intervenor or *amicus*, its participation should be reasonably conditioned as described above.

Dated: January 18, 2019

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Memorandum in Opposition to the Motion to Intervene was served upon all counsel of record through the ECF system this 18th day of January, 2019.

/s/ Misha L. Mitchell