UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES ASSOCIATION OF REPTILE KEEPERS, INC.,	)	
Plaintiff,	)	
v.	)	**Civil Action No. 13-2007 (RDM)**
THE HONORABLE SALLY JEWELL, et al.,	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Before the Court is the motion to intervene filed by the Humane Society of the United States ("HSUS") and the Center for Biological Diversity ("CBD"). For the reasons stated below, the motion is **GRANTED**.

I. BACKGROUND

The factual and procedural history of this litigation is set out in fuller detail in the May 12, 2015, Memorandum Opinion (Dkt. 52). Relevant to this motion, the United States Association of Reptile Keepers ("USARK"), as well as four individual plaintiffs, seek partially or fully to invalidate rules promulgated by the Department of the Interior ("Department") in 2012 and 2015. Together, the rules listed eight constricting snake species as "injurious" under the Lacey Act, 18 U.S.C. § 42. *See* 77 Fed. Reg. 3330 (Jan. 23, 2012) (the "2012 Rule"); 80 Fed. Reg. 12,702 (Mar. 10, 2015) (the "2015 Rule"). Based on the Interior Department's interpretation of the Lacey Act, the challenged rules prohibit the importation or interstate transportation of the eight listed species.

In the operative Second Amended Complaint, Plaintiffs allege that the Lacey Act does not prohibit interstate transportation of listed species (Counts I and II); that the Department of the Interior failed to comply with the National Environmental Policy Act (NEPA) in the course of its rulemaking (Counts III and IV); that the Department acted arbitrarily and capriciously in listing the eight constrictor species (Count V); and that the Department failed to comply with the provisions of the Regulatory Flexibility Act (Count VI). Shortly after the 2015 Rule was promulgated, Plaintiffs moved for a preliminary injunction to block the rule from taking effect. Dkt. 28. HSUS sought and received leave to file an amicus brief supporting Defendants in connection with that motion. Dkt. 33; Dkt. 37. On May 12, 2015, the Court issued a Memorandum Opinion concluding that Plaintiffs had established that they were likely to succeed on the merits of their argument that the Lacey Act does not prohibit interstate transportation of listed species within the continental United States. Dkt. 52. HSUS and CBD filed this motion to intervene on May 15, 2015. On May 19, 2015, the Court entered a preliminary injunction prohibiting the Interior Department from enforcing the 2015 Rule with respect to transportation between States within the continental United States of two of the listed species (the reticulated python and green anaconda) by Plaintiffs and members of Plaintiff USARK, with the exception that transportation of all listed species into Texas or Florida could remain subject to enforcement. Dkt. 61 at 1-2.

II. LEGAL STANDARDS

On a timely motion under Rule 24(a), the Court "must permit anyone to intervene who . . . claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Fed. R. Civ. P. 24(a). Alternatively, under Rule 24(b), the Court "may permit anyone to intervene who

. . . has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b). A party that moves to intervene as of right "must demonstrate that it has standing under Article III of the Constitution." *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 731-32 (D.C. Cir. 2003). It "remains . . . an open question in this circuit," however, "whether Article III standing is required for permissive intervention." *Defenders of Wildlife v. Perciasepe*, 714 F.3d 1317, 1327 (D.C. Cir. 2013) (quotation marks omitted).

III. DISCUSSION

A. Standing

There are two ways for an organization such as HSUS or CBD to demonstrate Article III standing. It can establish that it has "organizational standing" in its own right if it has suffered or will suffer a "concrete and demonstrable injury to the organization's activities—with the consequent drain on the organization's resources"—that amounts to "more than simply a setback to the organization's abstract social interests." *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982). An organization can also establish "associational standing" through the interests of its members. To do so, it must demonstrate that "'(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.'" *Nat'l Ass'n of Home Builders v. EPA*, 667 F.3d 6, 12 (D.C. Cir. 2011) (citation omitted); *see also Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977).

1. *HSUS*

HSUS argues that it has organizational standing because it "will suffer injury in fact to its organizational interests in eliminating the trade in dangerous wild animals as pets if importation or interstate sale of these exotic animals are allowed to continue." Dkt. 55-1 at 7-8. Specifically,

HSUS's declaration asserts that the organization will "have to redouble its limited organizational resources to strengthen regulation of large constrictor snakes at both the federal and state levels," and that a ruling for Plaintiffs "could have cascading negative impacts on HSUS's efforts to promote strict enforcement of similar provisions in other federal wildlife laws." Dkt. 55-3 ¶ 20. The declaration also states that HSUS "operates five animal care centers . . . that provide care to thousands of animals, including exotic animals rescued from the exotic pet trade." *Id.* ¶ 5. One of these centers is in South Florida, and that center "routinely rehabilitates wildlife native to Florida, and provides care for exotic pets abandoned by Florida residents, such as snakes." *Id.* According to HSUS's declaration, delay in implementation of the rules at issue here would "likely" cause a "flood of imports and interstate sales . . . potentially causing HSUS to make emergency expenditures to address the increase in released and escaped snakes." *Id.* ¶ 20.

It is doubtful that HSUS could satisfy the requirements of Article III by merely showing that its advocacy and policy preferences were being affected. The fact that HSUS "has long advocated . . . for strict regulation of large constrictor snakes," and "for strict implementation of the Lacey Act" (Dkt. 55-3 ¶¶ 17-18), shows that HSUS cares about the "subject that could be affected by" the litigation. *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 40 (1976). But Article III standing demands "more than simply a setback to the organization's abstract social interests." *Havens Realty*, 455 U.S. at 379. Likewise, the fact that HSUS has "expended substantial . . . time and . . . resources participating in the . . . rulemaking pertaining to the injurious status for nine species of large constrictor snakes" (Dkt. 55-3 ¶ 19), is—at least without more—insufficient to establish standing. *See Fund Democracy, LLC v. SEC*, 278 F.3d 21, 27 (D.C. Cir. 2002) ("Participation in agency proceedings is alone insufficient to satisfy standing requirements."). And, although the Court of Appeals has left open the possibility that "injury to an organization's advocacy [might] support[] . . . standing," *ASPCA v. Feld Entm't, Inc.*, 659

F.3d 13, 27 (D.C. Cir. 2011), HSUS has not identified any "concrete and demonstrable injury to the organization's [advocacy] activities," *Havens Realty,* 455 U.S. at 379.

HSUS's additional showing that it expends resources to care for escaped or released exotic animals at facilities across the country comes closer to establishing standing. Evidence already presented in this case shows that "all snakes," and especially "large constrictors," are "adept at escaping": "The more nonnative large constrictor snakes that are available in the United States, the more likely it is that some will escape and be released into the wild." Dkt. 32-1 ¶ 24. Plaintiffs submitted a raft of declarations with their motion for preliminary relief showing that enforcement of the challenged rules would force many reptile breeders who cater to the pet and hobby market to curtail their operations, or even cease them altogether. *See, e.g.*, Dkt. 28-6; Dkt. 28-9; Dkt. 28-10. The evidence in the record thus shows that a ruling invalidating the challenged rules would contribute to greater availability of the listed species throughout the United States and that that increase will likely lead to a corresponding increase in escapes or intentional releases of the listed snakes.

HSUS's showing that its facilities care for escaped and released exotic pets, including snakes, might be sufficient to establish a "concrete and demonstrable injury to the organization's activities" that is cognizable under Article III. *Havens Realty*, 455 U.S. at 379 (1982). But the question is a close one, because it turns on a number of uncertain events: that a listed snake will escape as a result of invalidation of the challenged rules, that it will be recaptured, that it will be brought to a HSUS facility, and that the HSUS facility will incur additional costs caring for the listed snake. Because the Court concludes below that CBD has established standing, however, it is not necessary to the Court's exercise of jurisdiction to determine whether HSUS's showing is independently sufficient. As the Court of Appeals has explained, where one proposed intervenor has established standing, the court "need not decide the standing issue as to the remaining

intervening . . . organizations" that seek the same "proposed remedy." *United States v. Philip Morris USA Inc.*, 566 F.3d 1095, 1146 (D.C. Cir. 2009). This is such a case.

2. *CBD*

The Court concludes that CBD has established that it has associational standing to intervene as a representative for its members. Most notably, CBD has presented evidence that one of its members, Christina Celano, has extensive professional and aesthetic interests in observing wildlife in the Everglades and Florida Keys. *See* Dkt. 55-6 ¶¶ 3-4. Ms. Celano, a professional photographer, has identified several specific species of native wildlife that she "regularly photograph[s] and seek[s] to photograph," and asserts that "[t]he importation and interstate trade of invasive, non-native snakes is harming native wildlife species and reducing the likelihood that [she] will be able to observe [native] animals in the future." *Id.* ¶¶ 4, 10-11.

Plaintiffs argue that the prospect of listed snakes escaping or being released and establishing invasive populations as a result of a judgment in their favor is too remote to constitute an injury that is "actual or imminent," rather than "conjectural or hypothetical." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (quotation marks omitted); *see* Dkt. 66 at 7-13. They note that Florida already has a robust regulatory scheme that imposes significant limitations on transportation of the listed snakes into the State, as well as the conditions under which they must be kept after they enter. And Plaintiffs correctly state the "issue is whether the CBD declarants can demonstrate an injury-in-fact via an incremental increase in the probability that these snakes" will become established in the wild "solely due to vacatur of the rules" challenged here. Dkt. 66 at 12.

Although Plaintiffs' argument is not without force, the Court concludes that Ms. Celano's declaration is sufficient to establish that she faces an imminent threat of a cognizable injury in this litigation. In a declaration supporting the Department of the Interior's opposition to the

preliminary injunction motion, a Department official asserted that the listed snake species "pose significant risks to native wildlife and native ecosystems" and that it was "essential that measures under the Lacey Act that will prevent or minimize these risks go into effect." Dkt. 32-1 ¶ 33. The Department made these representations even though Florida's regulatory regime would have remained in place regardless of the Court's determination on the preliminary injunction motion. Although this factual conclusion also turns on some uncertainty regarding future events, the harm alleged by CBD is both more direct than that asserted by HSUS and is supported by the administrative and evidentiary record. Indeed, to conclude that the Department was mistaken in its assessment of the risk to native species would ignore the agency's scientific and technical expertise. The evidence in the record thus demonstrates that a judgment for Plaintiffs would pose a "substantial risk" to native wildlife in South Florida, *Clapper v. Amnesty Int'l USA*, 133 S. Ct. 1138, 1150 n.5 (2013), and at least one member of CBD has demonstrated a concrete interest in avoiding that harm. Moreover, Plaintiffs have not disputed, and the Court finds, that Ms. Celano's interest in avoiding harm to native wildlife is "germane to the organization's purpose," and that asserting that interest does not require "the participation of individual members in the lawsuit." *Nat'l Ass'n of Home Builders*, 667 F.3d at 12 (quotation marks omitted). The Court therefore concludes that CBD has standing to intervene in this litigation.

B. Intervention as of Right

In addition to satisfying the requirements of Article III, HSUS and CBD have satisfied the criteria for intervention as of right under Rule 24(a). *Cf. Nuesse v. Camp*, 385 F.2d 694, 702 (D.C. Cir. 1967) (the language of Rule 24(a) "underscores . . . the need for a liberal application in favor of permitting intervention"). By establishing standing, CBD has shown that it "claims an interest relating to the property or transaction that is the subject of the action." Fed. R. Civ. P. 24(a); *see Philip Morris USA, Inc.*, 566 F.3d at 1146 ("By demonstrating Article III standing, the

intervenors adduce a sufficient interest [to satisfy Rule 24(a)].”). The Court concludes, based on the evidence in the record, that HSUS’s organizational interest in the subject of this litigation likewise demonstrates a sufficient interest under Rule 24(a). “[D]isposing of the action may as a practical matter impair or impede [HSUS and CBD’s] ability to protect [their] interest[s],” Fed. R. Civ. P. 24(a)(2), because they will both be “affected in a practical sense” by the increased trade in listed species that would result if the challenged listings were invalidated, Fed. R. Civ. P. 24, advisory committee notes. And HSUS and CBD have also met the “minimal” burden of showing that representation of their interest by Defendants “may be inadequate.” *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972) (quotation marks omitted). In promulgating and defending wildlife regulations, for example, the government properly considers some factors that CBD and HSUS do not, including the economic harm regulations impose on the exotic pet industry and the government’s discretionary allocation of litigation resources. *See* 77 Fed. Reg. at 3356-58. This partial divergence of Intervenors’ and Defendants’ interests is sufficient to satisfy the “minimal” burden imposed by Rule 24(a).

IV. CONCLUSION

For the foregoing reasons, the motion to intervene filed by HSUS and CBD is **GRANTED**. The Court, moreover, declines to limit the involvement of HSUS and CBD to particular counts or aspects of the case.[1]

/s/ Randolph D. Moss
RANDOLPH D. MOSS
United States District Judge

Date: July 6, 2015

[1] Plaintiffs contend that HSUS and CBD should not be permitted to intervene for the purpose of "lodg[ing] any appeal of this Court's preliminary injunction decision." Dkt. 66 at 18. Although the Court sees no basis to limit the scope of intervention, it does not, and cannot, determine whether HSUS or CBD has standing to appeal any order of this Court. *See, e.g.*, *United States v. W. Elec. Co.*, 900 F.2d 283, 309-10 (D.C. Cir. 1990) (a party's "status as an intervenor does not . . . guarantee that it has standing to appeal the district court's decisions"). That determination must be left to the Court of Appeals.