# Standing for Nonhuman Animals: Developing a Guardianship Model from the Dissents in *Sierra Club v. Morton*

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## INTRODUCTION

Until the late 1970s, wild goats flourished on California's San Clemente Island, a military enclave under the exclusive jurisdiction of the United States Navy.[1] The Navy forbade public access to the island, one-third of which was also home to various endangered and threatened species of flora and fauna.[2] Believing that the goats' presence could compromise the island's fragile biodiversity, the Navy authorized the aerial eradication[3] of the entire population.[4] Public outrage erupted and in 1979, the Navy agreed to cease destruction of the goat population and permit a non-profit organization, Fund for Animals, to commence a more compassionate approach: capture and evacuation.[5] By 1983, however, the Navy had resumed efforts to eliminate the goats via aerial eradication and a frustrated Fund for Animals had withdrawn from the dispute.[6]

Animal Lovers Volunteer Association (ALVA) assumed the helm and sought an injunction in the United States District Court for the Central District of California to halt the aerial eradication. ALVA alleged that the Navy violated the National Environmental Policy Act

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1. Animal Lovers Volunteer Ass'n v. Weinberger, 765 F.2d 937, 938 (9th Cir. 1985).
2. *Id.*
3. The Navy employed marksmen to shoot the goats from helicopters. *Id.*
4. *Id.* at 938.
5. *Id.*
6. *Id.*

(NEPA)[7] by failing to prepare an adequate environmental impact statement (EIS) prior to resuming aerial eradication.[8] ALVA contended that its members, who were committed to preventing the inhumane treatment of animals, would experience grief and anguish if the goats were killed.[9] The District Court granted the Navy's motion for summary judgment and ALVA appealed.[10]

While the Ninth Circuit Court of Appeals expressed sympathy for ALVA's "distress over a particular form of capricide," it never addressed the merits of ALVA's claim, averring instead that ALVA lacked standing to pursue the action.[11] Relying on *Sierra Club v. Morton*,[12] the seminal case addressing organizational standing in environmental litigation, the Ninth Circuit maintained that an organization's assertion of interest is insufficient to establish standing unless accompanied by an individual member's injury-in-fact.[13] The court further held that even if ALVA's members suffered a detrimental psychological impact as a result of the goats' killings, such an emotional response was not included in the zone-of-interests protected by NEPA.[14] Rather, standing would require a "direct sensory impact" on an individual member's physical environment.[15]

Unfortunately, demonstrating such an impact was impossible because the island was a non-public military enclave and ALVA's members had no opportunity to enter the physical environment inhabited by the goats.[16] ALVA argued, to no avail, that denying standing in this case would essentially compel an actual-use test where no actual use was possible[17] and render the Navy unaccountable for violating the law.[18] Without

7. 42 U.S.C. §§ 4321, 4332 (2005). NEPA requires certain procedural protections prior to instituting a proposed action affecting the environment. § 4332. Among these procedures is the inclusion of "a detailed statement" addressing the "environmental impact of the proposed action," as well as any potential adverse affects and viable alternatives. § 4332(2)(C).

8. Animal Lovers Volunteer Ass'n v. Weinberger, 765 F.2d 937, 938 (9th Cir. 1985).

9. *Id.*

10. *Id.* at 937-38.

11. *Id.* at 938.

12. 405 U.S. 727, 733-34 (1972).

13. *Animal Lovers*, 765 F.2d at 938 ("If ALVA showed that the Navy's program would affect its members' aesthetic or ecological surroundings, its position . . . might be different. But ALVA has alleged no such cognizable injury to its members.") (citations omitted); *see also* Sabrina C.C. Fedel, *A Cause of Action for "Taking" of Wildlife Under the Endangered Species Act of 1973 (ESA), in* 13 CAUSES OF ACTION 2d 273 (1999).

14. *Animal Lovers*, 765 F.2d at 938.

15. *Id.*; *see also* CHARLES ALAN WRIGHT, ARTHUR R. MILLER, & EDWARD H. COOPER, FEDERAL PRACTICE AND PROCEDURE § 3531.8 (2d ed. 1984).

16. *See Animal Lovers*, 765 F.2d at 938.

17. *Id.* at 939.

18. *Id.*

explanation, however, the court rejected this argument,[19] suggesting instead that a proper plaintiff might still exist.[20]

What ultimately proved fatal to ALVA's claim, however, was the court's assertion that standing doctrine further required ALVA to differentiate its genuine dedication to the humane treatment of animals from the general disdain for animal cruelty shared by the public at large.[21] In doing so, the court found ALVA's asserted organizational injury to be abstract and thus relegated ALVA to the ranks of the "concerned bystander."[22]

This twenty-year-old opinion illustrates the complications and challenges that continue to scourge animal advocacy organizations in their efforts to enforce the rights of nonhuman animals[23] through litigation. Although the court decided *Animal Lovers Volunteer Association v. Weinberger* in 1985, standing doctrine, as applied to animal advocacy organizations, has changed very little since then. As a consequence, numerous nonhuman animals have experienced fates similar to that of San Clemente Island's goats.

### *A. The Difficulty of Obtaining Standing for Animal Rights Organizations*

*Animal Lovers* illustrates a common, but counterintuitive, scenario: A federal statute requires the protection of a nonhuman animal from harm or mistreatment. A dedicated non-profit organization challenges an action that violates the statute. A federal court refuses to confer standing upon the organization because an individual human has not alleged a sufficient injury-in-fact. Thus, a federal law is broken but the responsible party avoids accountability.

In *Animal Lovers*, the violated statute was NEPA, which does not expressly protect nonhuman animals from harm but rather requires adherence to mandated procedures before commencing any action impacting the environment.[24] While NEPA does not confer general rights on nonhuman animals in the same way that a statute such as the Marine

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19. *Id.*

20. *Id.* ("We do not hold that nobody may bring an action against the Navy to prevent it from violating NEPA; we hold that ALVA may not do so under these circumstances.").

21. *Id.*

22. *Animal Lovers*, 765 F.2d at 939; *see also* Int'l Primate Prot. League v. Admins. of the Tulane Educ. Fund, 895 F.2d 1056, 1060 (5th Cir. 1990) (declining to grant standing to an animal rights group with a genuine commitment to the welfare of animals because such a concern is insufficient to distinguish the group from members of public).

23. For the purposes of the following discussion, this Comment uses the phrase "nonhuman animal" rather than simply "animal" because—although it is easily forgotten—humans are also animals. However, this Comment maintains the phrases "animal rights" and "animal advocacy" to reflect the prevailing nomenclature among relevant organizations.

24. 42 U.S.C. § 4332 (1970).

Mammal Protection Act[25] (MMPA) does, nonhuman animals are often the beneficiaries of administrative statutes. This was the case in *Animal Lovers* because the goats' fate hinged on the procedural correctness of the Navy's actions yet the goats were unable to assert their rights.[26] An example of a right expressly granted to nonhuman animals but rendered unenforceable was that of the MMPA in *Citizens to End Animal Suffering and Exploitation, Inc. v. New England Aquarium*.[27] There the federal district court refused to grant standing to a dolphin challenging his transfer from an aquarium to the Department of the Navy.[28] The court denied standing to animal welfare organizations because their individual members did not suffer a sufficient injury.[29]

Courts maintain that the result of cases like *Animal Lovers* and *New England Aquarium* are but an unfortunate result of constitutionally-mandated standing principles, which require evidence of an individual human injury-in-fact, even where nonhuman animals' statutory rights are at stake.[30] However, this is actually a contemporary interpretation of standing doctrine that is not directly mandated by Article III, which confers jurisdiction on the federal courts to resolve legitimate claims brought by adverse parties.[31] While the Framers limited judicial review in order to restrict access to the federal courts to those with a personal stake in the outcome of a suit, there is nothing in the text of Article III that requires the result in *Animal Lovers* or *New England Aquarium*.[32]

Policy considerations also inform the standing dilemma: opponents of animal rights are concerned that human interests will suffer if nonhuman animals obtain standing to enforce their rights.[33] Such opponents argue that

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25. 16 U.S.C. § 1361 (1972).

26. *Animal Lovers*, 765 F.2d at 938.

27. 836 F. Supp. 45 (D. Mass. 1993).

28. *Id.* at 46.

29. *Id.*

30. *See, e.g.*, *Animal Lovers*, 765 F.2d at 938 ("A general contention that because of their dedication to preventing inhumane treatment of animals, ALVA members will suffer distress if the goats are shot does not constitute an allegation of individual injury.").

31. *See* Matt Handley, Comment, *Why Crocodiles, Elephants, and American Citizens Should Prefer Foreign Courts: A Comparative Analysis of Standing to Sue*, 21 REV. LITIG. 97, 107 (2002) ("[T]he modern view of many of the current Justices of the Supreme Court [is] that the constitutional prerequisites of standing, particularly injury-in-fact, must be present regardless of congressional actions or intent."); James Leonard & Joanne C. Brant, *The Half-Open Door: Article III, the Injury-In-Fact Rule, and the Framers' Plan for Federal Courts of Limited Jurisdiction*, 54 RUTGERS L. REV. 1, 31 (2001) ("Although the judiciary currently views the notion of an injury-in-fact requirement as a constitutional mandate, it is actually of recent origin."); *see also* Ann Woolhandler & Caleb Nelson, *Does History Defeat Standing Doctrine?*, 102 MICH. L. REV. 689, 689 (2004) ("[A]cademic critics insist that the law of standing is a recent 'invention' of federal judges.").

32. *See* Leonard & Brant, *supra* note 31, at 48.

33. *See, e.g.*, David R. Schmahmann & Lori J. Polacheck, *The Case Against Rights for Animals*, 22 B.C. ENVTL. AFF. L. REV. 747, 752 (1995) (arguing that extending legal rights to animals is detrimental to human rights).

the American legal system is ill-equipped to fully recognize the rights of nonhuman animals because their pain and suffering is an unfortunate requirement of progress.[34] The fear that granting standing to nonhuman animals will necessarily result in decreased rights for humans is unfounded.[35] Where Congress forbids certain activities involving nonhuman animals, a statutory right exists for those nonhuman animals. If a federal court subsequently confers standing to enforce that right, it is not denying a human right because one did not exist in the first place.

Reconsider the case of the ill-fated goats of San Clemente Island. Granting standing would not necessarily have meant that the goats would have been spared. The Navy would have been required to justify and support its decision to eradicate the goats and explain the advantages of its selected method of eradication. Their failure to comply with federal law would have been addressed by a court; the Navy would not have been deprived of any rights. Unfortunately, the goats were unable to assert standing and the Navy's violation of a federal law was without recourse.

### B. A Guardianship Model of Standing for Nonhuman Animals

Despite *Animal Lovers*, there exists a well-established system by which nonhuman animals may obtain judicial review to enforce their statutory rights and protections: guardianships. With court approval, animal advocacy organizations may bring suit on behalf of nonhuman animals in the same way court-appointed guardians bring suit on behalf of mentally-challenged humans who possess an enforceable right but lack the ability to enforce it themselves.

In the controversial but pivotal *Should Trees Have Standing?—Toward Legal Rights for Natural Objects*,[36] Christopher D. Stone asserts that the environment should possess the right to seek judicial redress even though it is incapable of representing itself.[37] While asserting the rights of speechless entities such as the environment or nonhuman animals certainly poses legitimate challenges—such as identifying the proper spokesman—the American legal system is already well-equipped with a reliable mechanism by which nonhumans may obtain standing via a judicially-established guardianship.[38] Stone notes that other speechless—and nonhuman—entities such as corporations, states, estates, and

34. *Id.* at 748.

35. *Id.* at 752 ("Every individual member of every species would have recognized claims against human beings and the state, and perhaps other animals as well. As the concept of rights expanded to include the 'claims' of all living creatures, the concept would lose much of its force, and human rights would suffer as a consequence.").

36. 45 S. CAL. L. REV. 450 (1972).

37. *Id.* at 464.

38. *Id.*

municipalities have standing to bring suit on their own behalf.[39] There is little reason to fear abuses under this regime as procedures for removal and substitution, avoiding conflicts of interest, and termination of a guardianship are well established.[40]

In fact, the opinion in *Animal Lovers* suggests that such an arrangement is indeed possible. The court indicated that ALVA might have obtained standing in its own right if it had an established history of dedication to the cause of the humane treatment of animals.[41] It noted that the Fund for Animals had standing and indicated that another more well-known advocacy organization might have had standing as well.[42] The court further concluded that an organization's standing is more than a derivative of its history, but history is a relevant consideration where organizations are not well-established prior to commencing legal action.[43] ALVA was not the proper plaintiff because it could not identify previous activities demonstrating its recognized activism for and commitment to the dispute independent of its desire to pursue legal action.[44] The court's analysis suggests that a qualified organization with a demonstrated commitment to a cause could indeed bring suit on behalf of the speechless in the form of a court-sanctioned guardianship.

This Comment advocates a shift in contemporary standing doctrine to empower non-profit organizations with an established history of dedication to the cause and relevant expertise to serve as official guardians *ad litem* on behalf of nonhuman animals interests. The American legal system has numerous mechanisms for representing the rights and interests of nonhumans; any challenges inherent in extending these pre-existing mechanisms to nonhuman animals are minimal compared to an interest in the proper administration of justice. To adequately protect the statutory rights of nonhuman animals, the legal system must recognize those statutory rights independent of humans and provide a viable means of enforcement.[45] Moreover, the idea of a guardianship for speechless plaintiffs is not new and has been urged on behalf of the natural environment.[46] Such a model is even more compelling as applied to nonhuman animals, because they are sentient beings with the ability to feel pain and exercise rational thought. Thus, animals are qualitatively different

39. *Id.*

40. *See id.* at 465.

41. Animal Lovers Volunteer Ass'n v. Weinberger, 765 F.2d 937, 937, 939 (9th Cir. 1985).

42. *Id.*

43. *Id.*

44. *Id.*

45. *See* Joyce S. Tischler, Comment, *Rights for Nonhuman Animals: A Guardianship Model for Dogs and Cats,* 14 SAN DIEGO L. REV. 484, 506 (1977).

46. *See, e.g.,* Sierra Club v. Morton, 405 U.S. 727, 758 (1972) (Blackmun, J., dissenting).

from other legally protected nonhumans and therefore have interests deserving direct legal protection.[47]

Furthermore, the difficulty of enforcing the statutory rights of nonhuman animals threatens the integrity of the federal statutes designed to protect them, essentially rendering them meaningless. Sensing that laws protecting nonhuman animals would be difficult to enforce, Congress provided for citizen suit provisions: the most well-known example is found in the Endangered Species Act (ESA).[48] Such provisions are evidence of legislative intent to encourage civic participation on behalf of nonhuman animals.[49] Our law of standing should reflect this intent and its implication that humans are suitable representatives of the natural environment, which includes nonhuman animals.

Part I of this Comment illustrates the difficulties of enforcing the statutory rights of nonhuman animals. Part II explores the contours of standing doctrine as applied to humans, nonhuman animals, and organizations. Part III explains how the unnecessarily stringent and probative nature of the modern standing regime unfairly hinders animal advocacy organizations in their efforts to enforce the rights of nonhuman animals. Part IV examines the dissents of Justices Douglas and Blackmun in *Sierra Club* and seeks support from their impassioned sentiments for establishing guardianships on behalf of nonhuman animals. Part V proposes a model for such guardianships.

## I
## THE DIFFICULTY OF ENFORCING THE RIGHTS OF NONHUMAN ANIMALS

Even though nonhuman animals contribute significantly to human well-being—serving as food, research subjects, companions, protection, entertainment, and recreation—they are often prevented from enforcing their statutory rights due to contemporary standing doctrine.[50] As it is, nonhuman animals have very few statutory rights and any rights that are conferred upon nonhuman animals by federal statutes are diluted because they are largely unenforceable by judicial review.[51] Despite growing public

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47. Lauren Magnotti, Note, *Pawing Open the Courthouse Door: Why Animals' Interests Should Matter When Courts Grant Standing*, 80 ST. JOHN'S L. REV. 455, 494-95 (2006) (arguing that animals are qualitatively different from other types of property and this difference warrants recognition when deciding standing).

48. 16 U.S.C.S. § 1540 (2006); *see also infra* note 60.

49. Peter Manus, *The Blackbird Whistling—The Silence Just After: Evaluating the Environmental Legacy of Justice Blackmun*, 85 IOWA L. REV. 429, 432, 512 (2000) (arguing that the current Supreme Court should heed Justice Blackmun's "passionate, strongly worded dissents" in environmental standing cases).

50. *See* Tischler, *supra* note 45, at 486.

51. Elizabeth L. Decoux, *In the Valley of the Dry Bones: Reuniting the Word "Standing" with its Meaning in Animal Cases*, 29 WM. & MARY ENVTL. L. & POL'Y REV. 681, 719 (2005) ("Federal laws

concern for the well-being of nonhuman animals,[52] protective laws are routinely ignored without recourse. This is due, in part, to the lack of accountability articulated by the statutes themselves, as well as by the requirement of a human injury-in-fact for enforcing these laws in court.[53]

The existence of such laws simply masks the problem of abuses to nonhuman animals. While many people believe that animals are adequately protected, the very conditions prompting protective laws continue unabated, without adequate enforcement mechanisms.[54] As a result, nonhuman animals who have been wronged cannot enforce their own rights,[55] and even those prepared to fight for the rights of nonhuman animals face insurmountable hurdles.[56] ALVA's unsuccessful plight to save the goats of San Clemente Island is an example of how efforts to enforce statutes affecting animals plays out against the backdrop of these constraints.[57]

## II
## THE CONTOURS OF STANDING DOCTRINE WITH RESPECT TO NONHUMAN ANIMAL INTERESTS

### A. *Standing for Individual Plaintiffs*

To assert standing, an individual must demonstrate (1) injury-in-fact that is (2) fairly traceable to the defendant's action and (3) redressable by a favorable court decision.[58] The injury must be (1) concrete and particularized, and (2) actual and imminent.[59] Generalized grievances, regardless of how prevalent or noble they may be, are insufficient to establish injury-in-fact.[60] One mechanism by which individuals may obtain

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offering minimal protections are riddled with exclusions, routinely ignored, and in the case of AWA, rendered almost useless because the power to regulate is in the hands of the regulated.").

52. *See* Amy Mosel, Comment, *What about Wilbur? Proposing a Federal Statute to Provide Minimum Humane Living Conditions for Farm Animals Raised for Food Production,* 27 DAYTON L. REV. 133, 159 (2001).

53. Tischler, *supra* note 45, at 490.

54. Decoux, *supra* note 51, at 683-84 ("[T]he government passed laws that have since proven worse than useless; their very existence gives the public the impression that the institutionalized torture of animals in this country has ended when, in fact, it continues unabated.").

55. *Id.* at 715.

56. *Id.* at 684.

57. *See* INTRODUCTION, *supra*.

58. Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., 528 U.S. 167, 180-81 (2000).

59. *Id.*

60. *See, e.g.*, Bowker v. Morton, 541 F.2d 1347 (9th Cir. 1976) (holding that a desire to purchase additional land for a more reasonable price is insufficient to confer standing). Beginning with the Clean Air Act in 1970, numerous environmental statutes expressly granted standing to individuals to enforce environmental regulations through citizen suit provisions. *See, e.g.*, Endangered Species Act, 16 U.S.C. § 1540 (2005); Federal Water Pollution Control Act, 33 U.S.C. § 1365 (2005); Noise Control Act, 42 U.S.C. § 4911 (2005); Resource Conservation and Recovery Act, 42 U.S.C. § 6972 (2005); Clean Air Act, 42 U.S.C. § 7604 (2005).

standing to press review of federal agency determinations is the Administrative Procedure Act (APA).[61]

In order for the court to recognize an injury as being particularized, a specific relationship or evidence of interactions between the nonhuman animal(s) in question and the injured human is necessary.[62] For instance, federal courts have explicitly recognized an aesthetic injury-in-fact as a result of environmental degradation,[63] including an inability to view nonhuman animals in their natural habitats,[64] a decline in the number of nonhuman animals available for viewing,[65] and witnessing inhumane treatment of nonhuman animals.[66] While this regime is arguably sufficient where such personal relationships or close interactions are possible, it still emphasizes the human's interests even though the nonhuman animal's interests are at stake. It also entirely neglects the rights of nonhuman animals that are simply inaccessible to humans, such as the goats of San Clemente Island. This is particularly important where the right in question is dictated by federal law.

Courts have further limited judicial review by introducing various prudential requirements for standing that must be met in addition to the injury-in-fact element.[67] The most relevant of these is the zone-of-interests test. Under this test, the plaintiff must establish that the injury is one that the statute in question was intended to protect.[68] This test was aimed at excluding those whose challenges would frustrate rather than further the goals of a statute[69] by requiring plaintiffs to seek to vindicate their own

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61. 5 U.S.C. § 551 (1966).

62. *See, e.g.*, Humane Soc'y of the United States v. Babbitt, 46 F.3d 93 (D.C. Cir. 1995) (finding no aesthetic injury where organizations' members had not visited the animal in question).

63. *See, e.g.*, Sierra Club v. Morton, 405 U.S. 727, 734 (1972) (acknowledging that an interest in preserving the cnvironment for a member's recreational purposes may constitute a cognizable injury-in-fact). Although the Supreme Court rcjected the *Sierra Club*'s assertion of organizational standing, it has encouraged organizations to seek a member whose recreational interests would be impacted by the development, stating, "the desire to use or observe an animal species, even for purely aesthetic purposes, is undeniably a cognizable interest for purpose of standing." Lujan v. Defenders of Wildlife, 504 U.S. 555, 562-63 (1992) (citing *Sierra Club*, 405 U.S. at 734).

64. *See, e.g.*, *Defenders of Wildlife*, 504 U.S. at 567 (recognizing that standing would be proper if plaintiffs had demonstrated more concrete plans to observe the wildlife in question).

65. *See, e.g.*, Japan Whaling Ass'n v. Am. Cetacean Soc'y, 478 U.S. 221 (1986) (finding a sufficient injury-in-fact where plaintiff conservation group's members would suffer diminished viewing opportunities as a result of whale harvesting); Fund for Animals v. Lujan, 962 F.2d 1391, 1396 (9th Cir. 1992) (granting standing to non-profit organization whose members would be harmed by a decrease in buffalo available for viewing as a result of the government's planned destruction of a herd).

66. *See, e.g.*, ASPCA v. Ringling Bros. & Barnum & Bailey Circus, 317 F.3d 334, 336 (D.C. Cir. 2003) (granting standing to former elephant handler required by employer to observe mistreatment of captive elephants as a condition of employment); Animal Legal Defense Fund v. Glickman, 154 F.3d 426, 431 (D.C. Cir. 1998) (holding that standing was proper due to an aesthetic injury where plaintiff regularly visited captive exotic animals and viewed their inhumane living conditions).

67. *See Defenders of Wildlife*, 504 U.S. 555.

68. Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871, 883 (1990).

69. Clarke v. Secs. Indus. Ass'n, 479 U.S. 388, 397 (1987).

legal rights rather than those of third parties.[70] Of course, if the beneficiary of the statute is ineligible for standing, another individual attempting to bring suit on its behalf will necessarily fail the zone-of-interests test even if it can demonstrate an injury-in-fact. This prudential requirement prevents an animal advocacy organization from suing as a representative of its individual members because the alleged human injury-in-fact must be protected by the statute in question.

### *B. Standing for Nonhuman Animals*

While a few cases suggest that nonhuman animals have standing to sue in special circumstances, such as where Congressional intent is clear,[71] others have incorrectly[72] rejected that possibility.[73] Even where courts have granted standing to nonhuman animals, many have held that standing resulted from a human injury-in-fact despite the reality that the relief sought was an injunction to halt mistreatment and thus any asserted human injury was irrelevant to the remedy.[74] Since nonhuman animals are property and lack legal personhood, courts view their injuries as "tangential" to the true injury—that injury suffered by the person or organization bringing the suit.[75]

Yet nonhuman animals are qualitatively different from other nonhuman entities that have standing to sue on the basis of their own injury, such as corporations and ships. Unlike these entities, nonhuman animals have the ability to engage in various mental processes, such as reason and desire, and they also suffer emotionally and physically as a direct result of pain and trauma.[76] Thus nonhuman animals possess the very characteristics—the ability to suffer and rational thought—that merit the protections that their human counterparts enjoy. Just like humans, nonhuman animals need protection from mistreatment and abuse because harmful actions demonstrably cause their suffering. Yet inanimate objects often possess more rights than they do. And even though nonhuman animals have been granted some rights via statutes such as the AWA and

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70. *See* Warth v. Seldin, 422 U.S. 490, 499 (1975); *see also* Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc., 454 U.S. 464, 484 (1982).

71. In *Palila v. Hawaii Department of Land & Natural Resources*, the Ninth Circuit held that, pursuant to the ESA, an endangered species may commence a legal action in its own right. 852 F.2d 1106 (9th Cir. 1998).

72. *See* Decoux, *supra* note 51, at 740 ("There is no barrier to Article III standing for animals, for the simple reason that Article III raises no such barrier.").

73. Cetacean Comm. v. Bush, 386 F.3d 1169 (9th Cir. 2004) (denying standing to whales, dolphins, and porpoises challenging the Navy's use of low frequency active sonar in violation of the ESA, MMPA, and NEPA).

74. Magnotti, *supra* note 47, at 457-58 ("As a result, the standing alleged in these suits is a legal fiction, since the injury being pleaded is often not the injury with which the parties are typically concerned.").

75. *Id.*

76. Tischler, *supra* note 45, at 500.

the EPA, they must rely on a human interest to vindicate them.[77] In this way, the current legal regime encourages the perspective that duties owed to nonhuman animals are minimal and indirect even where Congress has expressly provided for a statutory right. This in turn perpetuates an unjust and ineffective system of limited and inconsistent enforcement that threatens the integrity of federal law.[78] Instead, nonhuman animals should have standing to sue themselves through court-appointed guardians on the basis of their own injury-in-fact.

### C. *Standing for Organizations*

In *Sierra Club v. Morton*, the United States Supreme Court denied standing to the Sierra Club in an action under the APA on the basis that an organizational interest, no matter how committed or longstanding, is insufficient by itself to prove that the organization has been "adversely affected" or "aggrieved" within the meaning of the act.[79] In doing so, the Court invoked the injury-in-fact barrier, suggesting that environmental organizations must secure standing through members' interests.[80]

The origins of the case began when the United States Forest Service welcomed bids from private developers for the construction of a ski resort in Sequoia National Forest's Mineral King area in 1965. Walt Disney Enterprises, Inc. proposed an elaborate complex of ski trails, lifts, motels, restaurants, pools, and a cog railway designed to accommodate 14,000 visitors per day.[81] When the Forest Service approved Disney's plan for the undeveloped wilderness, the Sierra Club, a national environmental organization founded in 1892 "to explore, enjoy, and protect the wild places of the Earth," actively opposed the pending development and challenged the Forest Service's approval in federal district court under various provisions of the statutes governing use of the national forests.[82] The organization asserted its standing to sue by basing its allegations primarily on its status as a national environmental organization.[83]

Although the majority of the U.S. Supreme Court acknowledged that the development of Mineral King would wreak environmental injury on *someone*, it denied standing to the Sierra Club because the organization failed to demonstrate that it was itself among the injured.[84] In doing so, the Court was not persuaded by decisions in some circuit courts recognizing

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77. *See* Stone, *supra* note 36, at 452.

78. *See* Tom Regan, *Progress Without Pain: The Argument for Humane Treatment of Research Animals*, 31 ST. LOUIS U. L.J. 513, 517 (1987).

79. Sierra Club v. Morton, 405 U.S. 727, 729 (1972).

80. *Id.*

81. *Id.*

82. *Id.*

83. *Sierra Club*, 405 U.S. at 732.

84. *Id.* at 734-35.

the standing of non-profit organizations to assert the public interest[85] and instead established individual human injury as the constitutional minimum for obtaining standing.[86] Thus, the Sierra Club needed to assert the individual injuries of its members rather than its own organizational interests.[87]

Given the Court's holding that abstract social interests are insufficient to confer standing on organizations regardless of how pressing the interests may be,[88] an organization must avail itself of representational standing as established by the Supreme Court in *Hunt v. Washington State Apple Advertising Commission*.[89] Under *Hunt*, an association may bring suit on behalf of its members where: (1) the members have standing to sue;[90] (2) the interests to be protected are germane to the group's purpose; and (3) neither the claim nor the requested relief requires the individual participation of members.[91] While this approach may appear to be straightforward, representational standing has become increasingly difficult to prove, since federal courts have demanded more detailed showings of individual injury and causation.[92] For example, satisfying the first prong of the *Hunt* test requires that at least one of an organization's members have standing in her own right to bring the claim asserted by the organization.[93] In relation to *Animal Lovers*, this requirement was fatal to ALVA's claim because none of its members could have encountered the goats on the military enclave.

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85. *See, e.g.*, Scenic Hudson Pres. Conference v. Fed. Power Comm'n, 354 F.2d 608 (2d Cir. 1965) (finding that environmental groups have standing to allege the public interest).

86. Karl S. Coplan, *Refracting the Spectrum of Clean Water Act Standing in Light of* Lujan v. Defenders of Wildlife, 22 COLUM. J. ENVTL. L. 169, 183 (1997).

87. *Sierra Club*, 405 U.S. at 740-41.

88. *See* Douglas L. Parker, *Standing to Litigate "Abstract Social Interests" in the United States and Italy: Reexamining "Injury in Fact,"* 33 COLUM. J. TRANSNAT'L L. 259, 266 (1995).

89. 432 U.S. 333 (1977); *see also* Roger Beers, *Standing and Rights of Action in Environmental Litigation*, ALI-ABA COURSE OF STUDY MATERIALS, at 39 (2004).

90. *See* Part I.B, *supra*.

91. *Hunt*, 432 U.S. at 343.

92. Coplan, *supra* note 86, at 183, 194.

93. United Food & Commercial Workers Union Local 751 v. Brown Group, Inc., 517 U.S. 544, 545 (1996) (determining that individual participation requirement was mandated by Article III, and was thus ineligible for congressional override). Further, in applying *Hunt's* second prong, some courts have insisted that an organization demonstrate a formal nexus between members' interests and its authority to represent those interests. *See* Health Research Group v. Kennedy, 82 F.R.D. 21 (1979) (denying standing to a non-membership organization seeking to bring suit on behalf of its contributors and supporters because those individuals lacked sufficient control over the organization, and the organization's purpose was not adequately related to the contributors' or supporters' interests). Courts have also called into question the representational capacity of organizations whose members do not elect the board or actively participate in determining the organizations' future actions. *See* Pac. Legal Found. v. Gorsuch, 690 F.2d 725 (9th Cir. 1982) (depublished) (holding that an organization lacked representational standing because it failed to allege that any of its members authorized its representation in the suit).

Theoretically, an organization may have standing to sue where the organization is itself injured, such as where an action impairs an organization's ability to further its corporate purpose.[94] To accomplish standing in this manner, animal advocacy organizations have engaged in creative tactics that have been largely ineffective. For example, in *Animal Legal Defense Fund v. Quigg,*[95] the American Association for the Prevention of Cruelty to Animals alleged a sufficient injury-in-fact as an organization by asserting that the group would be required to increase its budget and enforcement staff as a result of increased animal experimentation.[96] In addition, the Animal Legal Defense Fund (ALDF) challenged the issuance of patents that necessitated such experiments,[97] arguing that they would have to expend more resources challenging the inhumane practices, researching humane alternatives, and educating the public as to relevant concerns.[98] While the court accepted these grounds for establishing an organizational injury-in-fact, it did not find the injury to be fairly traceable to the issuance of the patents, indicating instead that it was the actions of the experimenters that harmed the group.[99]

The Sierra Club's strategic decision to assert its general interest in environmental protection ultimately "provoked" a Supreme Court precedent that blocked "the direct road" to organizational standing.[100] As a result, until the early 1990s, organizations had little choice but to rely on representational standing to vindicate environmental and, ultimately, nonhuman animal rights.[101] Most well-established organizations could accomplish this by locating members who lived in the vicinity of a threatened environmental resource and requesting an affidavit for standing purposes.[102] However, in 1992 the Supreme Court's decision in *Lujan v. Defenders of Wildlife* imposed stricter criteria for establishing an injury-in-fact, and representational standing has since proven to be increasingly difficult as a result.[103] For example, in *Friends of the Earth v. Chevron Chemical Co.*,[104] a federal district court ultimately denied representational standing because an organization lacked formally-defined membership criteria and thus its member base was too broad.

94. Citizens to End Animal Suffering & Exploitation v. New England Aquarium, 836 F. Supp. 45, 56 (D. Mass. 1993).

95. 932 F.2d 920 (Fed. Cir. 1991).

96. *Id.* at 936.

97. *Id.* at 922.

98. *Id.* at 936.

99. *Id.* at 936-37.

100. Coplan, *supra* note 86, at 185.

101. *Id.*

102. *Id.* at 191.

103. Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992). The stricter criteria articulated in *Defenders of Wildlife* created a precedent for attacking organizations on their representative capacity, organizational structure, and membership qualifications. Coplan, *supra* note 86, at 185.

104. 919 F. Supp. 1042 (E.D. Tex. 1996).

Historically, there are two other possible avenues for securing direct organizational standing and bypassing the strict representational requirements: procedural and informational injuries.[105] Procedural injuries derive from citizen suit provisions, such as the one found in the ESA, which provide that "any person may commence a civil suit on his own behalf (A) to enjoin any person, including the United States and any other governmental instrumentality or agency . . . alleged to be in violation of any provision of this chapter."[106] Informational injuries arise when "organizations engaged in the dissemination of environmental information [are] injured by a party's refusal to do a full environmental analysis of a program, thus depriving them of the ability to disseminate the information."[107]

Neither strategy has ultimately proven successful.[108] In fact, *Lujan v. Defenders of Wildlife* suggested that a procedural injury did not independently support standing because it is "abstract, self-contained, [and] noninstrumental" rather than a tangible right directly affecting the plaintiff's interests.[109] Courts have been equally unreceptive to assertions of informational standing.[110] In fact, there are no cases in which standing was conferred solely on the basis of informational harm.[111] Invoking the zone-of-interests prudential requirement, courts have held that the individual claiming an injury must be among those poised to benefit from the relevant statute.[112]

For example, in *Animal Legal Defense Fund, Inc. v. Espy*, non-profit organizations challenged a narrow definition of "animal" pursuant to the AWA on the grounds that it undermined their efforts to assemble and disseminate information about the treatment and living conditions of laboratory animals.[113] The definition excluded birds, rats, and mice, thereby denying these nonhuman animals used as research subjects the same protections as dogs, cats, and nonhuman primates received.[114] The federal circuit court of appeals held that such an informational injury was not within the zone-of-interests protected by the AWA.[115] The court further found that informational standing requires more than a general corporate

105. Beers, *supra* note 89, at 39.

106. 16 U.S.C. § 1540(g)(1) (1973).

107. *See* Beers, *supra* note 89, at 39.

108. *Id.*; *see also* Citizens to End Animal Suffering & Exploitation v. New England Aquarium, 836 F. Supp. 45, 56 (D. Mass. 1993) (finding that both procedural and informational injuries are insufficient to confer standing).

109. Lujan v. Defenders of Wildlife, 504 U.S. 555, 573 (1992).

110. *See* Beers, *supra* note 89, at 39.

111. *New England Aquarium*, 836 F. Supp. at 57.

112. *Id.* at 41.

113. 23 F.3d 496, 497-98 (1994).

114. *Id.* at 497.

115. *Id.* at 504.

commitment to the interests protected by the statute[116] but also a demonstrated Congressional intent that the organization is the "suitable challenger of administrative neglect"[117] and thus, the "intended representatives of the public interest"[118] with respect to the statute.

Organizations thus encounter many hurdles in their efforts to vindicate the statutory rights of nonhuman animals by asserting their own injuries or the injuries of their members because injuries must be essentially human even where the protection sought is for a nonhuman animal. Though organizational standing may be possible for some animal advocacy groups as the court in *Animal Lovers* suggested, it is an inadequate remedy for ensuring compliance with animal protection statutes, and is inconsistent in its application. Current doctrine sends relevant and committed organizations scrambling to find technicalities that might provide access to the courts. And in many situations, such as the case of the San Clemente Island goats, there are no technicalities to be found.

## III
## STANDING REQUIRED BY CONGRESS TO PROTECT NONHUMAN ANIMALS

Despite the controversy surrounding animal rights, protecting nonhuman animals has emerged as a goal of federal statutory law.[119] Congress has enacted more than fifty statutes protecting the well-being of nonhuman animals.[120] If aggressively enforced, these federal statutes would prevent widely-condemned abusive practices and punish perpetrators.[121] However, when it comes to enforcement of these statutes, there is an

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116. *Id.*

117. *Id.* at 503.

118. *Id.* In addition, several courts have warned against recognizing informational injuries in the future on the grounds that doing so would open the flood gates to litigation and tax judicial resources. *See, e.g.*, Found. on Econ. Trends v. Lyng, 943 F.2d 79, 85 (D.C. Cir. 1991) (suggesting that an informational injury might occur any time a federal agency fails to deliver information sought by a member of the public and is thus too broad); Citizens to End Animal Suffering & Exploitation v. New England Aquarium, 836 F. Supp. 45, 57 (D. Mass. 1993) (expressing concern that recognizing an informational injury would be damaging to Article III standing requirements).

119. Cass R. Sunstein, *Standing for Animals (with Notes on Animal Rights)*, 47 UCLA L. REV. 1333, 1333-34 (2000) (detailing both state and federal laws with respect to animal rights and/or welfare).

120. For the purposes of this discussion, it is not important to understand the wide array of federal statutes pertaining to animals. A few examples might help to better frame the debate. For example, the Animal Welfare Act (AWA) provides an array of safeguards designed to prevent cruelty. 7 U.S.C.S. § 2131 (2006). Perhaps the most famous of federal animal statutes is the Endangered Species Act, 16 U.S.C.S. § 1531 (2006), designed to protect threatened or endangered species against extinction. The act, which is enforced publicly rather than privately, raises a number of knotty standing problems. *See generally* Stephanie J. Engelsman, *"World Leader"—At What Price? A Look at Lagging American Animal Protection Laws*, 22 PACE ENVTL. L. REV. 329 (2005) (examining current laws pertaining to animals and comparing them to laws of the European Union).

121. Sunstein, *supra* note 119, at 1334.

unfortunate disconnect between the law and its implementation.[122] Standing is the crucial link and has proven to be the greatest obstacle to the courtroom,[123] affecting nonhuman animal plaintiffs and their self-appointed guardians more than other plaintiffs.[124] Decisions denying standing in cases involving nonhuman animals ignore the principle that standing doctrine exists to ensure that litigants are those entities most directly affected by the issue.[125] The argument can be made that this negates the need for a human injury-in-fact requirement in nonhuman animal rights cases. Such a requirement disconnects the harm from the remedy and wastes time and resources as animal advocacy organizations strive to obtain standing through other avenues.[126] Stringent standing limitations pose a myriad of challenges to would-be plaintiffs seeking to vindicate the statutory rights of nonhuman animal on their behalf.[127]

Judicial adherence to the injury-in-fact requirement has been widely criticized as incoherent and tantamount to legislating from the bench.[128] Some scholars note that resistance in this area is a direct response to efforts by groups and individuals to mobilize the federal courts as a vehicle for effecting social change and tackling issues not traditionally viewed as suitable for judicial resolution.[129] Following this line of reasoning, the

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122. *Id.*

123. Schmahmann & Polacheck, *supra* note 33, at 773-74 (describing standing requirements as "tortured and overly technical," but defending their rigidity on the grounds that enforcing strict standing requirements in animal litigation correctly focuses the injury analysis on human rights rather than nonhuman rights).

124. *See* Beers, *supra* note 89, at 7 ("While [standing] cuts across every subject matter of litigation, it has rarely had the decisive role in shaping a body of law that it has had in the environmental field."). However, it is important to note that the evolution of standing doetrine has been both a blessing and curse. *Id.* While current standing limitations greatly restrict the ability of organizations to bring actions on behalf of the animals or the environment, it was the very evolution of standing doctrine throughout the 1970s that unlocked the courtroom doors to environmental groups—and thus animal advocacy organizations—in the first place. *Id.* Prior to such advancements, it was rare for courts to hear disputes that did not directly relate to economic or property interests. *Id.*

125. *See* William A. Fletcher, *The Structure of Standing*, 98 YALE L.J. 221, 224 (1988) (proposing the abandonment of the injury-in-fact requirement and instead address the merits claims).

126. *See* Part III.C, *supra*.

127. *See* Beers, *supra* note 89, at 7 ("The plaintiffs in environmental litigation often face a maze of procedural dead-ends which they must avoid to get to a hearing on the substance of their case. Of principal concern are those doctrines which may require dismissal in even the most meritorious case—for example, the requirements of standing."); Parker, *supra* note 88, at 272 ("[T]he American system of standing remains mired in a judicially mandated search for some sort of imminent personal injury and a link between that injury and the relief sought . . ."); Schmahmann & Polacheck, *supra* note 33, at 779 ("In cases involving our animal laws, the search for an actual human injury often leads to tangential inquiries into topics such as the plaintiff's vacation preferences and feelings about animals."); *see also* Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871, 883-89 (1990).

128. *See, e.g.*, Fletcher, *supra* note 125, at 221 ("The structure of standing law in the federal courts has long been eriticized as incoherent. It has been described as 'permeated with sophistry,' as 'a word game played by secret rules,' and more recently as a largely meaningless 'litany' . . .") (citations omitted).

129. *See, e.g.*, Parker, *supra* note 88, at 261.

courts may apply the rules of standing in order to avoid addressing the merits of legitimate and pressing—but necessarily controversial—claims. Some scholars find this practice to be "intellectually dishonest."[130] Addressing standing for humans specifically, Judge William Fletcher argues that limiting Congress's power to create standing ultimately limits its power to "define and protect against certain kinds of injury that the Court thinks it improper to protect against."[131] The injury-in-fact requirement thus "operates as a limitation on the power normally exercised by a legislative body."[132] This holds true for nonhuman animals as well. If Congress intends to provide nonhuman animals an enforceable statutory right, to deny standing to nonhuman animals seeking to vindicate those rights is to usurp legislative authority and to treat such rights as though they do not really exist.

## IV
## NONHUMAN ANIMAL STANDING SUPPORTED BY DISSENTS IN *SIERRA CLUB v. MORTON*

By holding that a federal court is the incorrect forum for raising general ideological concerns, *Sierra Club v. Morton* impeded the efforts of subsequent public interest organizations to mobilize on behalf of the speechless.[133] While the Sierra Club's legal strategy was a noble attempt to recognize the rights of the environment independent of the injury-in-fact requirement, the decision erected nearly insurmountable hurdles for public interest organizations.[134] However, the dissents of Justices Douglas and Blackmun proposed additional avenues for environmental organizations to bring suit on behalf of nonhuman animals either as guardians *ad litem* or as organizational plaintiffs in their own right. This Comment assumes the position that Justice Douglas's approach—permitting nature to obtain standing—is most appropriate for nonhuman animals where they are the beneficiaries of statutory protections. In this way, standing doctrine as applied to nonhuman animals will be most consistent with Article III, which sought to ensure that those most affected by the violation of a law are the ones litigating the claim. However, Justice Blackmun's approach—permitting organizational standing on behalf of nature—essentially reaches the same result because a nonhuman animal's claim must proceed via a

130. *Id.*

131. Fletcher, *supra* note 125, at 233.

132. *Id.*

133. Beers, *supra* note 89, at 12.

134. At oral argument, the Sierra Club proposed criteria for determining whether a private litigant could raise the public interest in court. Transcript of Oral Arguments at 11, Sierra Club v. Morton, 405 U.S. 727 (1972) (No. 70-34). The criteria included the organization's age, involvement in the asserted public interest, expertise in the area, and the existence of educational programs or publications. *Id.*

human spokesperson whether the standing is granted to the spokesperson or the nonhuman animal directly.

Relying on Christopher D. Stone's environmental standing model,[135] Justice Douglas argued that the Court should recognize the concept of an environmental representative akin to a guardian *ad litem*, conservator, and receiver.[136] In this way, Douglas proposed to confer Article III standing on the environment itself so that nature itself could be a litigant.[137] Douglas believed that the judicial system was indeed the proper vehicle for developing this new legal concept, and his impassioned model of environmental representation called for "those people who have so frequented the place as to know its values and wonders" to serve as nature's representatives.[138] He did, however, acknowledge the environment as an independent legal party with valid legal rights.[139] Douglas's opinion received dramatic press coverage immediately after publication because it was radical and sought to raise political and social awareness.[140] Although some lower courts have quoted sensitive excerpts from his dissent, subsequent judicial decisions have not embraced Douglas's model for environmental standing.[141] His dissent is still perceived to be a first step toward judicial recognition of environmental values.[142]

Justice Douglas supported his position by analogizing to other areas of the law where nonhumans, such as ships and corporations, obtained unconditional recognition as parties in litigation.[143] He reasoned that courts broadly permit these legal fictions on behalf of ships and corporations so that these nonhumans may protect their interests.[144] Why then, Justice Douglas asked, should these same constructs not apply to nature and its dedicated representatives as well?[145] This is especially important where nature or nonhuman animals are protected by a federal law. If a nonhuman animal is unable to enforce the law through the courts, what then is the purpose of the law?

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135. Stone, *supra* note 36.

136. *Sierra Club*, 405 U.S. at 742-43 (Douglas, J., dissenting).

137. Manus, *supra* note 49, at 444.

138. 405 U.S. at 751-52 (Douglas, J. dissenting) ("Those who hike Appalachian Trail into Sunfish Pond, New Jersey, and camp or sleep there, or run the Allagash in Maine, or climb the Guadalupes in West Texas, or who canoe and portage the Quetico Superior in Minnesota, certainly should have standing to defend those natural wonders before courts or agencies, though they live 3,000 miles away. Those who merely are caught up in environmental news or propaganda and flock to defend these waters or areas may be treated differently.").

139. *Id.* at 741-742.

140. Manus, *supra* note 49, at 447.

141. *Id.* at 450.

142. *Id.*

143. Tischler, *supra* note 45, at 505.

144. *Id.*

145. *Id.*

While Justice Blackmun agreed with Justice Douglas that the judiciary could develop an ethic and policy appreciating environmental values and granting them judicial attention,[146] Blackmun endorsed a model that permitted organizational standing on nature's behalf.[147] This difference explains why Blackmun's dissent was considered less controversial than Douglas's even though they advocated the same end result. While many scholars criticized Douglas's model as being vague and self-contradictory,[148] these same scholars viewed Blackmun's dissent as practical and grounded and the result would be similar.[149]

Blackmun asserted that organizational standing should be proper where an organization is able to demonstrate a "provable, sincere, dedicated, and established status."[150] Under Blackmun's model, courts would make determinations in a manner similar to their decisions regarding guardianship in non-environmental cases, accepting applications and determining which proposed representative was best suited to handle the litigation.[151]

Unlike Douglas, Blackmun also articulated a framework for environmental standing that would be a more promising solution than the majority's insistence on injury-in-fact as a vehicle for litigating the public interest.[152] During oral argument, Blackmun indicated that permitting organizational standing via some form of guardianship would not necessarily overburden the judicial system because courts are capable of exercising judicial discretion and making case-by-case determinations.[153]

Applying Justices Blackmun and Douglas' models to the plight of the goats on San Clemente Island illustrates their suitability and potential impact on nonhuman animal rights litigation. Under the system endorsed by Justice Douglas, the goats of San Clemente would have been litigants in their own right and would have been eligible for a guardian *ad litem* empowered to challenge the Navy's failure to prepare an EIS. Under Justice Blackmun's model, ALVA would have presented its credentials to the court for a determination as to whether it was the appropriate representative of the goats, thereby obtaining organizational standing independent of a human injury-in-fact. If the court had found that ALVA was not experienced or dedicated enough due to its youth, the court would have sought another guardian such as the Fund for Animals. Recall that the

146. Manus, *supra* note 49, at 450.
147. *Id.*
148. *Id.* at 446.
149. *Id.*
150. Sierra Club v. Morton, 405 U.S. 727, 757-58 (1972) (Blackmun, J., dissenting).
151. Manus, *supra* note 49, at 445.
152. *Id.* at 446.
153. *Id.*

court suggested that a proper plaintiff indeed existed.[154] Applying the *Sierra Club* dissents, the court would have had license to seek this proper plaintiff and the goats would have received a stay until the case could be heard. Most importantly, however, the Navy's actions would have faced judicial scrutiny and the path to enforcing NEPA would not have been blocked simply because there was no human injury-in-fact.

## V
## DEVELOPING JUSTICE BLACKMUN'S AND JUSTICE DOUGLAS'S IDEAS ON BEHALF OF NONHUMAN ANIMALS

Animal law scholars have proposed numerous methods for overcoming barriers to standing so a court can address the merits of a claim. One suggestion has been to amend animal welfare statutes to permit a private cause of action pursuant to which either human beings or animals could seek enforcement.[155] While this approach is viable, it is unnecessary. Our judiciary already has at its fingertips a "rich assortment" of mechanisms that can be employed to assist nonhuman animals seeking to vindicate their statutory rights.[156] Where legal rights are conferred upon a nonhuman animal by statute, there is no need to revamp the judicial system to enforce those rights. First, Congress has created legal fictions throughout history to permit juridical persons to bring suits in their own right, a prominent example of which is the corporation.[157] Second, proceedings entailing guardian representation of another entity already exist, such as suits brought on behalf of children.[158] Third, plaintiffs need not be explicitly labeled as "persons" in order to enforce their legal rights.[159] In fact, their legal rights were granted by Congress specifically because they are not persons so this distinction is not important. Trusts, municipalities, partnerships, and even ships may often obtain standing independent of a human.[160]

Permitting guardians *ad litem* on behalf of nonhuman animal interests as suggested by Justices Blackmun and Douglas in *Sierra Club* applies these mechanisms to the framework of standing doctrine to ensure that claims against those who violate federal laws are heard. Under a guardianship model, animal advocacy organizations such as ALDF,

154. Animal Lovers Volunteer Ass'n v. Weinberger, 765 F.2d 937, 938 (9th Cir. 1985).

155. Sunstein, *supra* note 119, at 1336 ("A serious problem with current animal welfare statutes . . . is an absence of sufficient enforcement activity . . . . At least when a violation of the statute is unambiguous, private parties should be permitted to bring suit directly against violators. This system of dual public and private enforcement would track the pattern under many federal environmental statutes. There is no reason that it should not be followed for statutes protecting animal welfare.").

156. *Id.* at 1341-42.

157. *Id.* at 1360.

158. *Id.* at 1359.

159. *Id.*

160. *Id.* at 1361.

Humane Society of the United States (HSUS), and the American Society for the Prevention of Cruelty to Animals (ASPCA) could apply to serve as the guardians *ad litem* to protect the statutory rights of nonhuman animals. They could also obtain standing as organizations and achieve the same effect. As the court in *Animal Lovers* suggested, organizations with a demonstrated commitment to animal rights and welfare, whose various activities and educational efforts indicate an established and enduring interest in protecting animals, should have organizational standing without a showing of individual injury-in-fact.[161]

Italian law provides a working example of a system similar to that proposed by Justice Blackmun.[162] However, the same principles could be applied to Justice Douglas' approach by aiding courts in selecting and certifying the proper guardian *ad litem*. Italian law grants certain powers to environmental organizations to intervene in some environmental matters and even challenge government actions in their own right.[163] The statute provides that the Minister of the Environment can certify national organizations based on their programmatic goals, "internal democratic" nature, and demonstrated history of involvement in environmental activism.[164] This certification indicates that the organizations are valid representatives of the environment and are thus permitted to essentially bypass standing requirements that would certainly prove fatal to the cause.[165] Thus, certified organizations in Italy possess an absolute right to participate fully in relevant legislation absent a showing of a particular injury.[166] While such an "absolute right" is not necessary, the United States could benefit from a system by which worthy organizations may serve as the voice of speechless plaintiffs. Such a system—whether it grants standing directly to nonhuman animals or to organizations representing them—would remedy the conflict described above in which a federal law is broken and accountability is avoided because the victim of the violation is unable to enforce the very laws enacted to protect him.

The prospect of a legal system in which a nonhuman animal's rights are aggressively enforced may be unsettling to many because it raises the fear that nonhuman animal rights will overcome significant human interests.[167] However, it is important to remember that Congress has already granted substantive rights of protection to animals. These include

161. *See* Animal Lovers Volunteer Ass'n v. Weinberger, 765 F.2d 937, 939 (9th Cir. 1985).
162. Parker, *supra* note 88, at 288, 292.
163. *Id.*
164. *Id.*
165. *Id.* at 288-89.
166. *Id.* at 292.
167. Tischler, *supra* note 45, at 491 ("This difficulty consists of two components: that of identifying which species should enjoy legal rights and that of identifying what those rights should be."); *see also* Sunstein, *supra* note 119, at 1365.

the AWA, the ESA, and to some extent, NEPA. Grants of standing simply ensure that groups have access to the courts in their attempts to have the laws enforced.

## CONCLUSION

Throughout the development of the law, extending rights outside of their traditional boundaries has at one time or another appeared "unthinkable" to those adhering to traditional values and notions of the law.[168] However, every right includes the authority of enforcement and the marshalling of resources devoted to protecting it.[169] Judges will continue to maintain necessary standing requirements and preserve the essential gatekeeping functions of Article III.[170] Justices "adhering to a code of judicial restraint coupled with a sense of social responsibility" are capable of demonstrating the necessary control that prevents public interest organizations from crippling the government with lawsuits.[171] The unnecessarily rigid inquiry of current standing doctrine applied to animal rights organizations has hindered the protection of nonhuman animals rights by preventing litigation where individual human rights are not sufficiently implicated. Animal advocacy organizations would be more capable of enforcing compliance with federal statutes if they were more easily granted standing to sue, as guardians *ad litem* to nonhuman animals, wherever the group asserts a public interest or challenges actions detrimental to nonhuman animals. In this way, the standing inquiry will focus on the soundness and commitment of the organization and determine the fit between the right at issue and the suitability of an organization to vindicate it. Standing to sue should be conferred upon any devoted entity capable of demonstrating a genuine and established interest in nonhuman animal protection.

168. Stone, *supra* note 36, at 453.
169. *Id.*
170. *See* Manus, *supra* note 49, at 509.
171. *Id.*