



Status of SCI Litigation August 2022

Challenge to California Firearm Marketing Law (So Cal Top Guns v. Bonta) – SCI, along with the Congressional Sportsmen’s Foundation, Sportsmen’s Alliance Foundation, and So Cal Top Guns youth shooting organization, sued California to challenge a law which prohibits “firearm industry members” from advertising the use of firearms in a way that is “designed, intended, or reasonably appears to be attractive to minors.” The law was passed immediately after the tragedy in Uvalde, Texas, and without taking any amendments or even public comment. The law defines a “firearm industry member” broadly to include organizations that advocate for the “use” of firearms, which could include youth hunting and shooting activities. SCI’s suit challenges the law as unconstitutional under the First and Fourteenth Amendments. Status: SCI and its partners are preparing to ask the court to enjoin the law and allow youth hunting and shooting activities to continue. An amendment has been proposed that would carve out youth hunting and shooting activities. Enactment of the amendment would allow the marketing of those activities to continue; however, SCI’s suit would continue, because even as amended, the law potentially impacts SCI’s publications.

Challenge to Leopard Import Permits (CBD v. Haaland) – Anti-hunters challenged the FWS’ issuance of 13 permits authorizing the import of leopard trophies from Mozambique, Tanzania, Zambia, and Zimbabwe. Plaintiffs allege that the FWS’ issuance of these permits was arbitrary and capricious and did not comply with FWS regulations for making non-detriment findings under the Convention on International Trade in Endangered Species (CITES). Status: Many of the challenged permits were issued to SCI members. The court granted SCI’s motion to intervene but denied SCI’s motion to dismiss. Plaintiffs have supplemented their complaint four times, raising the number of challenged permits to 24, but dropping their allegations related to Mozambique (based on arguments made by SCI). Briefing is scheduled to conclude in February 2023.

Gray Wolf Delisting (DoW v. FWS, WildEarth Guardians v. Haaland, NRDC v. DOI) – Three sets of plaintiffs (16 groups total) filed suits in California federal court to vacate the FWS’ 20201 delisting of gray wolves in the lower 48 States. Status: The court granted SCI and NRA’s motion to intervene to defend the delisting but denied motions to intervene by livestock ranching groups. SCI and NRA filed motions to dismiss the complaints, forcing the plaintiffs to amend their suits. The judge granted summary judgment in favor of plaintiffs and overturned the delisting rule. The judge’s decision largely turns on technical issues in interpreting the ESA. Although SCI opposes most of the court’s decision, the court did rule that the FWS’ consideration of the adequacy of existing regulatory mechanisms was sufficient and state laws and management plans in the Great Lakes states did not threaten the recovery of wolves, which is a primary argument that SCI and NRA made. SCI and NRA were the first groups to appeal the judge’s ruling, followed by the State of Utah, and the FWS. The FWS is still deciding whether to pursue the appeal. The parties are participating in mediation (required in the Ninth Circuit) and likely will have more information on the status of the appeal following a mediation session on September 7. In

addition, the livestock ranching groups will join the appeal, after successfully challenging the district court's denial of their motion to intervene.

Challenge to 2020 Hunt Fish Rule (CBD v. FWS) – The Center for Biological Diversity sued the FWS to enjoin the 2020 Hunt Fish Rule, which opened or expanded hunting and fishing opportunities on over 2 million acres of National Wildlife Refuges across the country. CBD alleges that the increased use of lead ammunition and fishing tackle will harm wildlife, including ESA listed species, and also that more hunters and anglers on the landscape will harass ESA listed. The complaint specifically names eight refuges (Swan River in Montana; Leslie Canyon in Arizona; Laguna Atacosa in Texas; Everglades Headwaters and St. Marks in Florida; Kirwin in Kansas; Patoka in Indiana; and Lacreek in South Dakota) and certain ESA listed species, including grizzly bears, ocelot, and whooping crane (among others), that CBD claims will be injured by increased hunting and fishing. Status: SCI, NRA, Sportsmen's Alliance Foundation, and Rocky Mountain Elk Foundation moved to intervene to defend the rule. Surprisingly, the federal district court in Montana denied that motion. The intervenor coalition has appealed the denial to the Ninth Circuit. Meanwhile, CBD and the FWS are engaged in settlement discussions which involve certain prohibitions on the use of lead ammunition and tackle on refuges. The FWS represented in court filings that a settlement has been reached in principle; however, that agreement has still not resulted in a settlement proposal for the court to approve. In June 2022, the FWS published the 2022 Hunt Fish Rule, which opened or expanded hunting on 19 refuges, but also proposed to prohibit or phase-out the use of lead ammunition and tackle on these refuges.

Challenge to Allocation of Non-Resident Hunting Permits on Kodiak Island (Cassell v. State of Alaska, Board of Game) – Plaintiff, an Alaskan resident, sued the State Board of Game, alleging that the allocation of 40% of hunting permits for brown bear on Kodiak Island to non-residents violates the Alaska Constitution. The State defended the allocation, as did the Alaska Professional Hunters Association through an amicus brief and reply brief. SCI, in partnership with SCI's Alaska Chapter and the Alaska Outdoor Council, submitted an amicus brief in defense of the Board of Game. SCI's brief argues that non-resident hunting is consistent with the public trust provisions of the Alaska Constitution because of the financial and conservation benefits that it provides, and that non-residents support Alaskans in many ways including by keeping license fees low for Alaska residents and defending State interests in federal court. At the end of May, the court granted judgment in favor of the State, based in part on arguments made by the amicus, including SCI.

Louisiana Black Bear Delisting (Atchafalaya Basinkeeper v. Haaland) – In a prior iteration of this case, several groups and individuals challenged the 2016 delisting of the Louisiana black bear, previously listed as threatened under the ESA. Agreeing with SCI's arguments, the D.C. district court dismissed the case. In 2020, plaintiffs sued again in Louisiana federal court. Plaintiffs made similar allegations in the second case but tried to address some of the deficiencies that SCI identified in the prior suit. Status: SCI successfully intervened in the Louisiana court to defend the delisting, despite the plaintiffs' opposition. The State of Louisiana also intervened. Cross-motions for summary judgment on the merits were fully briefed in December 2021.

Challenge to FWS and NPS Alaska Hunting Regulations (SCI v. Haaland) – SCI and the State of Alaska sued the NPS to challenge a 2015 rule prohibiting certain hunting methods on National Preserves in Alaska and sued the FWS to challenge a rule prohibiting certain hunting on the Kenai National Wildlife Refuge. Status of the NPS challenge: After multiple delays, the NPS published a final rule revoking nearly all challenged provisions. SCI’s remaining claim was voluntarily dismissed. Status of the Kenai challenge: SCI and the State jointly briefed the merits of the Kenai rule challenge. The district court found for SCI on one of four claims and found for the defendants on the other three. SCI and the State appealed to the Ninth Circuit. After briefing and oral argument, the Court held against SCI and the State, upholding the hunting restrictions. The Ninth Circuit denied the State’s petition for *en banc* consideration, essentially affirming the initial decision.

Challenge to NPS Withdrawal of Alaska Hunting Restrictions (AK Wildlife Alliance v. Bernhardt) – In 2015, the NPS published a rule prohibiting certain hunting methods on National Preserves in Alaska. In 2020, the NPS published a second rule withdrawing most of those restrictions. A coalition of plaintiffs sued the NPS over this 2020 rule. Status: SCI successfully intervened to defend the withdrawal rule, which aligns federal and state regulations on National Preserves. The Alaska Professional Hunters Association and the State of Alaska also intervened to defend the rule. Plaintiffs filed a motion for summary judgment in December 2021. Instead of responding to that motion, the NPS sought to remand the rule without vacatur (meaning it would remain in place) while the NPS prepared another rule that would reimpose some of the restrictions on hunting on National Preserves in Alaska. The court denied the remand, and SCI, APHA, and the State of Alaska jointly responded to the plaintiffs’ summary judgment motion. The court held oral argument on that motion in early August. Now the court will need to decide whether to sustain or vacate the rule. Simultaneously, the NPS should shortly publish its new rule addressing hunting on National Preserves.

Hunting Black Bears over Bait in WY/ID (WEG v. Forest Service) – WildEarth Guardians and other anti-hunting groups challenged the use of bait to hunt black bears on National Forests in Idaho and Wyoming. Status: SCI moved to intervene to defend black bear hunting over bait and to defend the Forest Service’s deference to state law, as did the states of Idaho and Wyoming. Due to the limited relief sought by plaintiffs, the court denied SCI’s motion but granted Idaho’s and Wyoming’s motions to intervene. SCI was granted leave to submit an amicus (friend of the court) brief. After the Forest Service compiled the administrative record for the case, plaintiffs sent them discovery requests—a highly unusual move in administrative litigation. The case proceeded to summary judgment briefing. SCI submitted an amicus brief explaining that harvest of bears over bait can play an important role in species management and correcting Plaintiffs’ misstatements about harvest over bait. Briefing in the district court is scheduled to conclude in mid-September.

Lead Ammunition in Kaibab National Forest (CBD v. Forest Service) – In 2012, the Center for Biological Diversity sued the Forest Service under the Resource Conservation and Recovery Act (RCRA), alleging that spent lead ammunition used for hunter is a solid waste covered by this statute. The case was twice dismissed by the district court, and the Ninth Circuit Court of Appeals twice reversed and revived the claims. Status: SCI and NRA successfully intervened to again defend against an attempt to ban lead ammunition use in Kaibab National Forest. The

district court dismissed the case for a third time, finding that the Forest Service cannot be sued under RCRA because it does not regulate the use of lead ammunition. The court also denied a motion to amend the complaint to add the State of Arizona as a defendant. Plaintiffs again appealed to the Ninth Circuit. Briefing is scheduled to conclude in October.

Wyoming Elk Supplemental Winter Feeding (DoW v. FWS; WWP v. Christiansen) – In the first case, an anti-hunting group challenged the FWS’ supplemental winter feeding program on the National Elk Refuge in Wyoming. In the second case, groups challenged Forest Service permits authorizing supplemental winter feeding in Bridger-Teton National Forest. Plaintiffs seek to end these programs. Status of National Elk Refuge case: SCI intervened jointly with the Wyoming Outfitters and Guides Association and the Jackson Hole Outfitters and Guides Association to defend the FWS’ plan to adaptively step-down the feeding program. Thousands of elk and hundreds of bison survive on this feeding program in the winter when other forage is unavailable. If the feeding program is immediately halted or reduced too quickly, many elk and bison will starve, harming not only those wildlife populations but also hunters, outfitters, and guides who depend on healthy populations of these species. Summary judgment briefing is complete and awaiting the court’s decision. Status of National Forest case: SCI intervened with the outfitter groups and Sublette County Outfitters and Guides Association to defend three feedgrounds on the National Forest. In September 2021, the district court issued a mixed ruling, allowing for feeding to continue in two of the three feedgrounds. The case is now closed.

FOIA Demand for Information About Trophy Importers (CBD v. FWS) – The Center for Biological Diversity filed a Freedom of Information Act suit challenging the FWS’ delay in processing requests for information about the importation of wildlife contained in the FWS’ law enforcement database. This database contains information collected on the Form 3-177, which is prepared by all persons importing or exporting wildlife into or out of the U.S., including those importing hunting trophies. Status: SCI informed the parties of its intent to move to intervene to prevent disclosure of hunters’ personal information. SCI had successfully defended the FWS’ decision to withhold such information in another lawsuit filed in the district court in D.C. In response, CBD stipulated to the court that it would not seek such information, and the FWS stipulated that it did not disclose personal information. SCI agreed to not intervene at this time. SCI will continue to monitor this case to ensure that individual hunter data remains protected from disclosure.

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