

# SAFARI CLUB INTERNATIONAL



## Litigation Newsletter, August 2016 Vol. X, No. III

### KEEPING THE VILLAINS AT BAY

Anti-hunters who attack SCI, hunting and hunters are the true villains in the battle to protect sustainable use. That's why SCI has gone to court to prevent these haters from obtaining information that they would likely use to harass members of the SCI community.

Humane Society International (HSI) – the international cousin of HSUS – submitted an official Freedom of Information Act request to the U.S. Fish and Wildlife Service (FWS) to obtain information about the importation of animals into the U.S. The FWS maintains information about the importation of live and dead animals, primarily for law enforcement purposes. HSI asked the FWS for *all* the information that the FWS had collected, for any and all animals, including hunting trophies, imported in 2013-2014 and possibly earlier. HSI particularly wanted the identities of U.S. importers and foreign exporters of those animals. They wanted it, but they did not get it. While the FWS provided some of the data HSI requested, it refused to release other critical information and HSI filed suit in federal court in Washington, D.C.

Why did HSI need the names of the importers and exporters? Not surprisingly, their justifications were vague and extremely transparent. Their ulterior motives had nothing to do with species conservation. Instead, as demonstrated by the reports that HSI published in 2015 and 2016, all HSI really wanted to do was to publicly attack hunters by name and portray legal hunting and importing activities as ugly and evil.

SCI's Litigation Department moved quickly to intervene to defend the FWS's decision to withhold the identities of hunters/importers. In our motion, we explained to the court how HSI has used similar information to harass SCI and its members in the past and how it is important for us to join the case to help protect our members from similar future attacks.

Even though SCI has not yet officially been granted the right to participate, our involvement has already given us important information to protect our members and the hunting/importing community. SCI has learned that the FWS intends to try to notify all individuals who imported animals into the U.S. in 2013-2014, and possibly as far back as 2001, that they have the opportunity to oppose the release of their information to HSI. It is important not to miss this golden opportunity.

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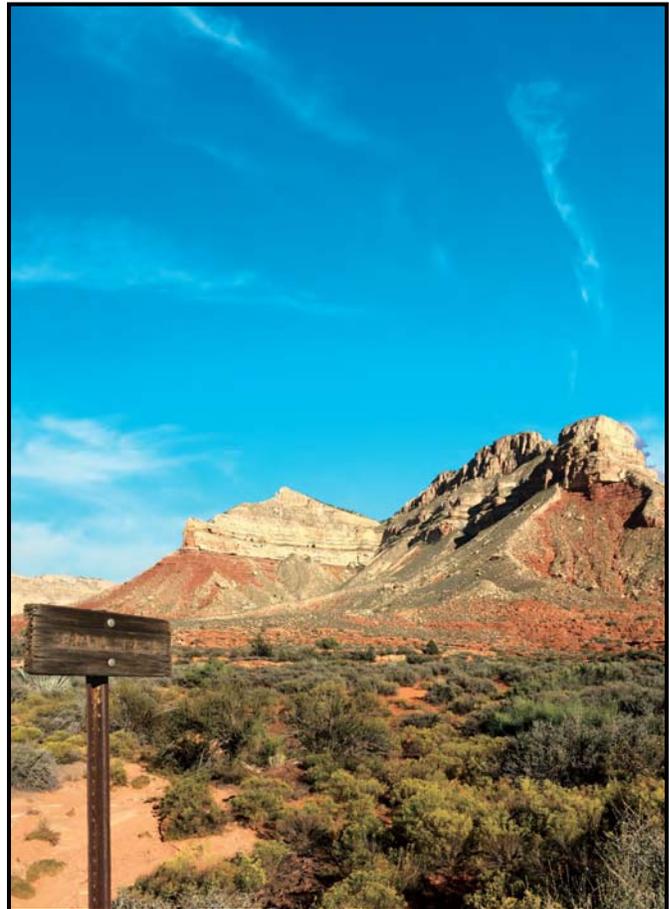
## KAIBAB LITIGATION HOT SPOT

The Kaibab National Forest in Arizona is known for its world-class elk and mule deer hunting and majestic vistas. In SCI's Litigation Department, it is becoming known for something else – a litigation hot spot. SCI is currently litigating two cases involving the Kaibab, both with national implications.

In the older of the two cases, SCI and the NRA are intervenors defending against a challenge by the Center for Biological Diversity regarding lead ammunition use for hunting in the Kaibab. CBD is claiming that because the Forest Service does not ban the use of lead ammunition, it is violating the Resource Conservation and Recovery Act, a federal solid waste disposal law. If CBD were to prevail, federal, state, local, and tribal governments could be liable under RCRA any time an activity on their lands, including hunting with lead ammunition, is deemed a disposal under the Act. Additional lawsuits, or even just the fear of such liability, could prompt governments to ban the use of lead ammunition for hunting or shooting sports on all types of public lands.

In the second case, several anti-hunting groups have sued the U.S. Forest Service to challenge Kaibab National Forest travel management plans, which authorize limited off-road vehicle use for elk and bison retrieval and other hunting related activities. SCI and the State of Arizona both intervened in the case to defend the use of ORVs for game retrieval in remote and rough areas. An unfavorable result could make it impossible for many to hunt elk and bison in the Kaibab and could lead to similar challenges on other National Forests.

Although the cases were originally filed almost three years apart, they are both still in relatively early stages. The lead ammunition case was filed in 2013, but a long trip to the Ninth Circuit regarding a motion to dismiss delayed the proceedings until recently. The parties have just resumed briefing aimed toward resolving the case. The travel management plans case has not yet reached the briefing stage. Both cases will likely involve long, contentious litigation. But our involvement is worth it, both for the particular hunting opportunities at risk in the Kaibab National Forest and for the dangerous national precedents these cases could establish.



### Special Thanks to Legal Task Force Committee Members:

Rew Goodenow (Chairman), Kevin Anderson, Bruce Benson, James Berglund, Donald Black, Ryan Burt, Richard Capozza, Brent Cole, Tina Cuning (consultant), John Daly, Marc Fong, Ned Johnson, Linda Linton, John Monson, Sue Monson, Alan Stevenson, Paul Turcke, Robert Welch, and David Willms

## SCI GIVES FUTURE ATTORNEYS BROADER PERSPECTIVE

For the seventh consecutive summer, SCI's Litigation Department hosted two law students from The Fund for American Studies' Legal Studies Institute, Evan Ferguson and Noah Sweet.

Evan is entering his second year at West Virginia University College of Law. He received his bachelor's degree in Political Science from Texas Christian University in Fort Worth. Evan very much enjoyed his summer interning for SCI and plans to apply his new experience to a potential career in administrative law.

Noah will be transferring to Georgetown University Law for his second year in law school. He graduated from Northern Arizona University with a bachelor's degree in anthropology. Noah found that interning with SCI gave him a unique perspective of environmental and administrative law, and he hopes to work in Washington, D.C. in the future.

During their summer internship, Evan and Noah drafted federal comments on proposed hunting regulations by the

U.S. Fish and Wildlife Service; conducted legal research on SCI's California mountain lion and Three Antelope cases; wrote memoranda on third party intervention and the proposed Separation of Powers Restoration Act; and even presented mock oral arguments to SCI staff.

Evan and Noah particularly enjoyed helping SCI attorneys prepare for and host SCI's annual summer seminar "Practicing Wildlife Law" for other interns in the Legal Studies Institute. Through this seminar, SCI attempts to present the sustainable use perspective to students who will soon be practicing law throughout the country. The students who attended learned about wildlife conservation and the vital role hunting plays in those efforts.

Evan and Noah have already returned to their law schools to finish out their last two years. Things are much quieter now that they have departed. We were sad to see them leave, but we are excited see where their future successes and broadened perspectives will take them.



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If you imported a trophy into the U.S. during that period of time and don't want your personal information released, **YOU WILL NEED TO RESPOND TO THE FWS!** When the FWS makes the announcement, you will have only 20 days to inform the FWS that you **DO NOT WANT YOUR IDENTITY DISCLOSED!** The FWS's announcement should be coming very soon.

SCI's Litigation Department is carefully monitoring the situation. When it is time to respond, we will send out an alert to all SCI members and, to the extent possible, others in the hunting community. Please watch your e-mails and SCI electronic publications for information about this important opportunity to protect your identity and privacy. Help us keep the anti-hunting villains at bay!

**For any questions or feedback on litigation matters, please contact Anna Seidman at [aseidman@safariclub.org](mailto:aseidman@safariclub.org), Doug Burdin at [dburdin@safariclub.org](mailto:dburdin@safariclub.org), or Jeremy Clare at [jclare@safariclub.org](mailto:jclare@safariclub.org)**

# CURRENT LITIGATION

*SCI is currently involved, will soon be involved, or has recently been involved in the following cases:*

- **Elephant Importation Bans Challenge (*SCI v. Jewell*)** – Challenge to the FWS’s decisions to suspend the importation of sport-hunted elephant trophies from Zimbabwe in 2014 and 2015 and from Tanzania in 2014. Status: The parties consolidated the briefing of the 2014 and 2015 Zimbabwe cases and completed briefing on summary judgment on April 29, 2016. SCI appealed the Court’s decision to dismiss our claims regarding the 2014 Tanzania importation ban. Briefing is complete and oral argument is scheduled for September 19, 2016.
- **California’s Ban on Importation of Mountain Lion Trophies (*SCI v. Harris*)** – Challenge to the constitutionality of a California law that bans individuals from importing or possessing trophies of mountain lions hunted outside of California. SCI claims that the California law violates the U.S. Constitution’s Commerce Clause. Status: For the second time, the State moved to dismiss SCI’s complaint and the Court granted the motion. Instead of amending our complaint again, SCI appealed the dismissal to the Ninth Circuit. Briefing will be complete on September 9, 2016.
- **Wyoming Wolf Delisting Challenges (*Defenders of Wildlife v. Jewell; HSUS v. U.S. FWS*)** – Defense of delisting and hunting of Wyoming portion of the northern Rocky Mountain wolf population in D.C. federal court. SCI is a defendant-intervenor. Status: D.C. district court invalidated the rule and returned Wyoming wolves to endangered status. All parties have appealed the court’s decision. Briefing is complete and the court of appeals has schedule oral argument for September 23, 2016.
- **Western Great Lakes Wolf Delisting Challenge (*HSUS v. Jewell*)** – Defense of delisting and hunting of WGL wolf population. SCI, NRA, USSAF and several other organizations intervened. Status: The district court vacated the delisting and placed the WGL wolves back on the endangered species list. All defendants and defendant-intervenors appealed the decision. After a failed attempt to mediate the appeal, the parties completed briefing in June 2016. Oral argument is scheduled for October 18, 2016.
- **Three Antelope Cases (*Friends of Animals v. Jewell et al.*)** – In the 2014 Appropriations Law, Congress directed the FWS to reissue a 2005 permit exemption rule regarding the hunting of three antelope species on ranches in the United States. After the FWS reissued the rule, FoA filed suit to challenge the constitutionality of Congress’s action and the rule. SCI joined as a defendant-intervenor. Status: The district court denied FoA’s summary judgment motion, and the D.C. Circuit, on appeal, upheld the dismissal. FoA has until September 1, 2016 to ask the U.S. Supreme Court to take the case. Other cases regarding the listing and permit system are on hold pending final outcome of the appeal in the constitutional challenge.
- **Big Cypress ORV/Wilderness Plan (*NPCA et al. v. DOI et al.*)** – Defense of National Preserve (Addition Lands) Management Plan facilitating hunting and ORV use. SCI intervened in case to defend plan. Status: After extensive briefing and an all-day hearing, the Florida federal district court ruled in the NPS and SCI’s favor and upheld the plan. The case is now on appeal to the Eleventh Circuit Court of Appeals. The Court held oral argument in June. SCI attended and helped the government prepare for the hearing.
- **Lead Ammunition in Kaibab National Forest (*CBD v. U.S. Forest Service*)** – Defense against attempt to ban lead ammunition use in Kaibab National Forest. Status: District court granted a motion to dismiss filed by the federal government. CBD appealed decision to Ninth Circuit. After a year-long delay, the appellate court overturned the district court and remanded to proceed on the merits. SCI and the NRA intervened in the case. The federal defendants and SCI/NRA are seeking another dismissal of the case.
- **Grand Teton National Park Elk Hunt (*Mayo v. Jarvis; Sierra Club v. Jewell*)** – Two photographers challenged the elk management program administered on Grand Teton National Park in Wyoming. In a separate case, Sierra Club challenged the FWS’s approval of the hunt. SCI is participating as a defendant-intervenor in both cases. Status: After the parties completed the briefing, the judge ruled without hearing oral argument. Both sets of plaintiffs lost on all counts except one small procedural claim that the FWS can cure without interruption to future hunts. The Court made favorable rulings on the issues of primary concern for SCI. In the Sierra Club case, the federal defendants, SCI, and the plaintiffs appealed the Court’s decision. The federal defendants appealed first, which triggered SCI’s decision to appeal. Briefing has not yet been scheduled by the Court. The plaintiffs in the Mayo case likely will appeal their defeat soon.
- **NPS Regulations in Alaska (*Sturgeon v. Masica*)** – SCI member, John Sturgeon, challenged the NPS’s authority to regulate activities on non-federal waters in Alaska. An Alaska district court and the Ninth Circuit upheld the NPS’s exercise of authority. Sturgeon petitioned the U.S. Supreme Court to consider his case. Status: SCI filed an amicus brief in support of Sturgeon’s petition to demonstrate the broader impact of the lower courts’ ruling on resident and non-resident hunters in Alaska. The Supreme Court accepted review of the case and reversed the Ninth Circuit, but remanded the case back for further review. Oral argument is scheduled for October 25, 2016.
- **Revisions to the Mexican Wolf Experimental Population Rule (*SCI v. Jewell, et al.*)** – In January 2015, the FWS finalized revisions to the regulations concerning the management of the Mexican wolf nonessential experimental population. The regulations increase the number of wolves to be recovered and expand the area into which they will be released and allowed to range. Status: SCI filed suit in New Mexico and have been joined by two New Mexico chapters. Over SCI’s objections, the court transferred the case to Arizona but did not consolidate it with other pending cases. Briefing is scheduled to begin in September 2016.
- **McKittrick Policy (*WildEarth Guardians v. DOJ*)** – In 2013, WildEarth Guardians sued to challenge the Department of Justice’s policy not to request specific jury instructions in cases involving individuals who accidentally shoot ESA listed species. Plaintiffs claim that the policy jeopardizes Mexican wolf recovery. Status: The Arizona federal district court denied the DOJ’s motion to dismiss the case. The court granted SCI’s motion to intervene. Briefing is expected to begin in the fall of 2016.
- **Kaibab National Forest Travel Management Plan (*WildEarth Guardians v. Provencio*)** – Several anti-hunting groups sued the U.S. Forest Service in Arizona federal district court to challenge the Kaibab National Forest travel management plans that allow off-road vehicle use for game retrieval and other hunting related activities. Status: In August 2016, SCI and the State of Arizona were granted leave to intervene to defend the travel management plans.
- **FOIA Demand for Information About Trophy Importers (*HSI v. FWS*)** – Humane Society International filed a Freedom of Information Act (FOIA) suit against the FWS, challenging the FWS’s decision to withhold information about the identity of individuals who import and/or export trophies into the U.S. Status: In August 2016, SCI filed an unopposed motion to intervene to defend the FWS’s decision.