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SCI LITIGATION AND THE BAMBERGER RANCH MAKE A DIFFERENCE FOR THREE ANTELOPE CONSERVATION

By: Anna Seidman

Recently, SCI set itself apart from animal rights groups that litigate on behalf of wildlife by putting its litigation money into genuine conservation. When SCI's litigation team earned a modest attorney fee award from the federal government in one of its lawsuits, Safari Club decided to directly invest that money in conservation and research for the species at issue in the litigation. SCI received attorneys' fees and costs for a suit in which SCI challenged the U.S. Fish and Wildlife Service's (FWS) failure to act on time on SCI's petition to delist the U.S. populations of scimitar-horned oryx, dama gazelle and addax (three antelope species). The agency settled the suit, paying SCI's attorneys' fees and costs. Upon receiving the award, SCI set out to invest those funds in a program or project designed to conserve and/or research one of the three antelope species.

After almost a year of careful evaluation, SCI's litigation staff finally found the perfect program – Selah, Bamberger Ranch Preserve (Bamberger Ranch), a 5,500 acres ranch near Johnson City, Texas. J. David Bamberger, an 85 year old rancher and conservationist, with the heart and energy of a person half his age, converted overgrazed and damaged land into a conservation oasis. Until 2012, when animal rights litigation undermined scimitar conservation,

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RED WOLF RULE NOT MADE TO BE BROKEN

By: Doug Burdin

The “Rules are made to be broken” adage shouldn’t apply to red wolves in North Carolina. Beginning in 1987, the U.S. Fish and Wildlife Service (FWS) reintroduced red wolves to a small area of public land in northeastern North Carolina. The deal was that the “experimental” reintroduction, under authority of the Endangered Species Act (ESA), would not interfere with existing recreational activities, like coyote hunting, even if they incidentally led to the deaths of some red wolves. Normally such deaths would be a prohibited “take” of a listed species. But to garner local and state support for the controversial reintroduction, the FWS enacted a special rule that relaxed those take prohibitions.

Eventually the recovery area spread to include five counties, including a great deal of private lands. Coyotes also moved into the area in increasing numbers, to the dismay of landowners and to the detriment of game populations. The state and local residents wanted strong measures to control the coyotes, so the state adopted liberal rules for coyote hunting. Landowners were allowed to lethally control coyotes on their lands. The federal special rule for red wolves allowed the taking of red wolves incidental to other activities, such as coyote hunting, as long as the takings are unintentional and, for those on public lands, not carried out with a lack of due care.

This rule excusing the incidental take of red wolves has been in place for decades. The terms of that rule were the basis of the public’s acceptance of the reintroduction of the species. Now, three groups want to change the deal. The Red Wolf Coalition, Defenders of Wildlife, and Animal Welfare Institute are asking a U.S. District Court in North Carolina to hold the North Carolina Wildlife Resources Commission liable

for causing the take of red wolves allegedly associated with coyote hunting. The groups want the court to immediately end coyote hunting in the five counties. Essentially ignoring the special rule that governs the red wolves, these groups argue that the state is violating the ESA whenever a red wolf dies from a firearms wound, whether the person mistakenly shot the red wolf or did it on purpose.



After polling its members, SCI decided to participate in the case to defend the state. Although the case focuses on red wolves and coyotes, the outcome of the suit has broader implications for SCI members and other hunters. This case involves two important legal issues over which SCI is litigating or has litigated: (1) the impact of ESA experimental populations on recreational activities (Mexican wolf cases) and (2) holding states liable for allowing recreational activities that allegedly take listed species (lynx in Minnesota and Maine).

SCI filed an “amicus” brief with the Court, arguing that either no illegal takings had occurred (because the special rule allowed them) or the state was not liable for any takings that were illegal (because the shooter was not acting under state authorization when illegally taking the red wolf). The state also filed an excellent brief explaining why the three groups should not prevail and the Court should not end coyote hunting.

The Court will hold a hearing on February 11 to consider the request to halt coyote hunting. SCI’s litigation team will be there. Kieran Shanahan and John Branch, of Shanahan Law Group in Raleigh, North Carolina, are assisting SCI in this litigation. We will try to ensure that the red wolf special rule is one that is not broken.

WE COULDN'T DO IT WITHOUT OUR MEMBERS

By: Jeremy Clare

Safari Club's members, without question, are an essential part of every case we litigate. From wolves to mountain lions (see article on p. 6) to Sunday hunting, before we go to court, we ask for the assistance and personal participation of members affected by the case. SCI cannot start or join a case without statements from members that demonstrate SCI's interest and stake in the outcome. Without fail, when SCI attorneys send out an alert for help through e-mails, phone calls, and word of mouth, our members always come through.

A new lawsuit in Idaho is a perfect example. In that case, Defenders of Wildlife, Wilderness Watch, Western Watersheds Project and Center for Biological Diversity came together to challenge a decision by the Idaho Department of Fish and Game (IDFG) to hire a hunter/trapper to lethally remove two wolf packs in the Frank Church-River of No Return Wilderness Area. Pack removal was necessary to help restore the declining elk populations in the area. SCI wanted to intervene to defend IDFG's management strategy and the interests of members who hunt elk in the vicinity.

The case took off at a break-neck pace. After filing their complaint, the Plaintiffs almost immediately moved for a restraining order to stop the wolf removal. The Court gave the federal and state government defendants only a few days to file a response. To get into the case, SCI had to put together all their documents in a fraction of the time normally available for the task. SCI needed help from members who hunt in the area, and we needed it fast!

Thanks to several members who worked with SCI's legal team over the course of a weekend to prepare sworn statements, SCI was able to file a motion to intervene only a couple of days after learning of the case – perhaps a record for SCI's litigation staff. For some members, providing assistance – in the form of a dec-

laration – was easier said than done. Many members responded to SCI's alert. The majority filled out the lengthy questionnaire that SCI attorneys sent to help draft their statements. In a remarkably short time, these volunteers completed their questionnaires and returned them by e-mail or fax. SCI attorneys converted the answers to declarations, which were sent back out to those who offered to help. For one member, the exercise was a technical nightmare. Trying to open SCI's documents caused a complete crash of his computer. Another member had difficulties faxing his documents and a snowstorm thwarted his effort to fly into town to use a different fax machine. One member had to send and receive SCI's faxes from a nearby courthouse.

SCI members and attorneys persevered. Within 36 hours, most of which was weekend, SCI obtained seven declarations from members who hunt, guide and or depend on hunting in the Frank Church area. These seven declarations formed the basis of the motion and brief SCI filed in court when the weekend was over. SCI and its members had let the court know this issue was important to them. Within a few days, the Idaho federal court denied the plaintiffs' request for a restraining order and allowed the IDFG hunter/trapper to continue his work.

SCI attorneys wish to thank all those members who offered their help in this case and numerous cases in the past, and to thank all of our members, in advance, who will answer the call to help with SCI's future litigation efforts. Your SCI litigation team is aware that we ask a lot of you and we are proud to be part of an organization whose members give so much and so willingly. Even if you have never assisted in a case, please be on the lookout for litigation alerts in the future because the next case just might be the one that is important to your own hunting and conservation opportunities.

THREE ANTELOPE CONSERVATION

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the Bamberger Ranch laid claim to the largest scimitar herd in the world.

Mr. Bamberger purchased the property in 1969 and slowly turned it into a conservation and educational facility. In 2002, he established Selah, Bamberger Ranch Preserve, which operates as a 501(c)(3) nonprofit corporation.

The scimitar-horned oryx herd is one of the ranch's major conservation successes and primary attractions. Mr. Bamberger became involved in scimitar conservation as a result of his former affiliation with the American Zoological and Aquarium Association (AZA). He agreed to work with the AZA's Species Survival Program (SSP) and offered ranch lands for a special restoration project. Because zoos lacked sufficient space for species like the scimitar that need a lot of space to thrive, the Bamberger Ranch's acres and acres of range offered a perfect solution.

In 1991, Mr. Bamberger offered to provide 640 acres of the ranch for the exclusive use of captive breeding of the scimitar-horned oryx. Under the plan, AZA facilities supplied the genetic material and dictated the breeding program, record keeping process and transfers of breeding stock to and from the ranch. The Bamberger Ranch managed the herd and provided nutrition, veterinary care, and research projects – at its own expense.

Twenty-eight scimitar-horned oryx, representing 29 of the 32 known remaining bloodlines of the species, were relocated to the ranch. The SSP set a goal for the ranch to produce 400 individual antelope with diverse genetic material for ultimate reintroduction to Africa. Once the Bamberger

Ranch achieved that goal, it would retain full ownership of all surplus animals.

The scimitar conservation project did not come cheap. After an initial capital investment of \$106,000, the ranch spent \$30,000 a year to feed, manage, care for and breed the herd. Once the herd reached the 400 antelope goal, the surplus animals helped pay for the herd's upkeep. The ranch sold surplus members to other ranches that had their own scimitar herds. The other ranchers purchased the Bamberger Ranch's antelope in order to introduce new genetic material and avoid genetic problems commonly caused by inbreeding. Over the years, the Bamberger Ranch also contributed scimitar to African reintroduction programs and SSP projects at dozens of zoos and institutions. Unfortunately, war and poor habitat conditions in the species' home ranges in Africa hindered the progress of the scimitar's restoration to the wild.

Despite the FWS's decision to list the three antelope species as endangered in 2005, the Bamberger Ranch maintained its herd through the sale of surplus animals. Federal regulations exempting the species from take prohibitions associated with endangered status enabled ranchers to sell hunts for members of their herds without permit requirements. The exemptions allowed scimitar herd ownership to remain financially viable.

That ended when, as a result of a lawsuit brought by animal rights groups, the FWS withdrew those exemptions. New regulations adopted by the FWS in 2012 required ranches to obtain permits to manage and sell hunts for the three species. Because of the burdensome application requirements, many ranches chose not



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to continue in the business of owning and breeding the antelope. The Bamberger Ranch found itself without buyers for its surplus scimitar and consequently without funding for the upkeep of its large herd. Soon, the ranch realized that continued breeding would cause the scimitar population to exceed the ranch's carrying capacity within three years, and would result in overgrazing and habitat damage.

The ranch discontinued its breeding operations. In addition, although it never had done so previously, the ranch added limited scimitar hunting to the other hunts offered on ranch property. The ranch determined that, on an annual basis, it could offer one or two quality guided scimitar hunts to keep its herds healthy and productive, with the proceeds going to pay the costs of maintaining the herd. Two scimitar, both in excess of 20 years of age and neither of which contributed to the species' future gene pool, were the first selected for potential conservation hunts. Despite the potential revenue from the hunts, the ranch desperately needed additional funding to pay the \$30,000 a year maintenance costs for the herd's upkeep.

SCI's litigation award provided a solution. Through a research plan devised by Safari Club International Foundation biologists and Bamberger Ranch Biologist Steven Fulton, SCI provided the ranch with a check for \$10,000 to financially support genetic testing of the herd and to provide food and veterinary services for healthy herd maintenance.

On November 18, 2013, Rew Goodenow, Chairman of SCI's Legal Task Force and Anna Seidman, Director of Litigation for SCI, visited the Bamberger Ranch to formally present SCI's check. David Bamberger and the members of the Bamberger Ranch team provided Rew and Anna with a full-day's tour of the scimitar herd, the ranch facilities and conservation projects. They viewed the specially designed testing apparatus used for the capture and blood sampling of members of the scimitar herd.

Mr. Bamberger personally spent the entire

day with Rew and Anna, touring the facility, demonstrating ranch projects, and recounting stories about the origin of the ranch, the scimitar project, and the ongoing missions of the ranch to conserve wildlife and habitat and teach others how to conserve.

A particular highlight of Rew and Anna's day was the chance to see one of the ranch's large and healthy herds of scimitar, running across the property, much as scimitar once did in the wild in Africa. Rew said of the visit, "As a person with a lifetime of agricultural experience, I was greatly impressed with Selah, Bamberger Ranch Preserve's unique breeding and herd management facilities." Rew and Anna bore witness, on behalf of all SCI members, to the fruits of SCI litigation's unique and concrete contribution to the fate of the species.

In mid-January, Congress passed an omnibus budget bill containing a provision affecting the three antelope species. In part due to the efforts of SCI's advocacy team in Washington, D.C., the provision directs the FWS to reissue the original regulatory exemptions that eliminate the requirement that ranchers obtain permits to sell hunts for members of U.S. herds. Hopefully, this will encourage private ranchers to once again raise, breed and offer sales of scimitar-horned oryx, dama gazelle and addax. If so, demand will return for the Bamberger Ranch's surplus scimitars and the ranch will once again be able to generate its own financial support for herd upkeep. Safari Club can take great pride in the fact that its litigation efforts helped the Bamberger Ranch sustain its herd and maintain its genetic integrity during a crisis that threatened not only the Bamberger Ranch's herd but the herd's contribution to long-term species survival.

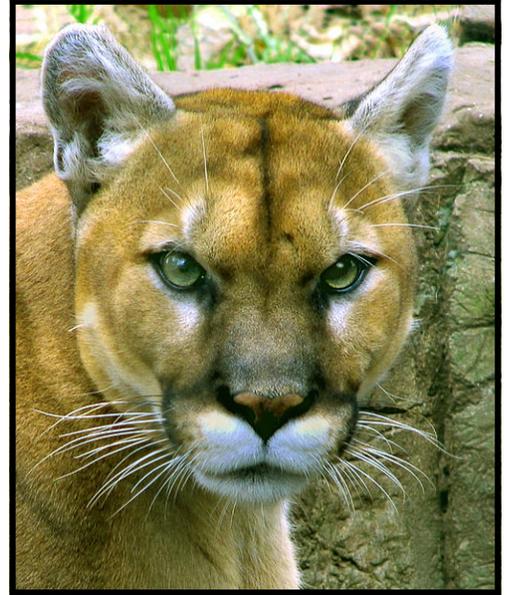
If you are interested in learning more about SCI's litigation efforts and/or would like to make a donation to assist with SCI's future litigation pursuits, please contact SCI's Director of Litigation, Anna Seidman at aseidman@safariclub.org.

OVERWHELMING SUPPORT FOR CALIFORNIA MOUNTAIN LION LAWSUIT

SCI's California members are unhappy with California's law banning the importation and possession of mountain lion trophies hunted in other states. At the request of a member of SCI's Legal Task Force, the litigation team began researching the possibility of suing California to overturn the ban. We concluded SCI could bring viable claims.

Over 110 SCI members in California quickly responded to our Action Alert. About 70 members said they would hunt mountain lions in another state if they could import their trophy. Thirteen members have already hunted a mountain lion and want to import their trophy. Another 10 have definite plans to hunt mountain lions in another state and would love to import their trophies (if successful). Finally, 20 members don't plan to hunt mountain lions, but support SCI's efforts nonetheless. This number of responses was an Action Alert record, by a wide margin.

With such strong support, SCI's leadership approved the filing of a suit against the state to end this discriminatory law. In the coming months, we will prepare and file a lawsuit on behalf of SCI and its members. Prevailing in the case is not a "sure thing" by any means. But when hunting opportunities are arbitrarily denied, SCI is willing to bring the tough case. Being "First for Hunters" requires nothing less.



LITIGATION OPEN HOUSE

Join SCI's attorneys to discuss our efforts to protect your hunting rights and opportunities throughout the U.S. Do you want to --

- *Import mountain lion trophies into California?*
- *Hunt on Sundays in Virginia and other states with Sunday hunting bans?*
- *Hunt wolves and elk in Wyoming and Idaho?*
- *Get the lowdown on Congress' fix to the decade-long three antelope battle?*
- *Learn about ongoing SCI litigation supporting hunting in Wisconsin, North Carolina, Florida, Michigan, Minnesota, New Mexico, Arizona, Nevada . . . to name just a few?*

Find out why SCI stands apart from other sportsmen's organizations in hunting advocacy. Meet your SCI litigation team, ask questions and bring ideas for new issues and cases for SCI to pursue.

**Friday, February 7, 2014, 9:00-10:00 A.M., South Pacific B, Lower Level North,
Mandalay Bay Convention Center**

WILDLIFE LAW: SCI'S UNIQUE CLE OPPORTUNITY FOR LAWYERS RETURNS FOR A SEVENTH YEAR

SCI's litigation staff will once again host a continuing legal education course at Convention this year. The seventh annual course, entitled "*Current Issues in Domestic and International Wildlife and Hunting Law 2014*," is co-sponsored by Safari Club International and the State Bar of Nevada. The course is scheduled for Friday, February 7, 2014, 1:00 P.M. - 5:15 P.M. in Lower Level-North, South Pacific B of the Mandalay Bay Convention Center, in Las Vegas, Nevada. Participants can earn four CLE credit hours, including one ethics hour. The agenda includes:

- ◆ *Hunting, Wildlife Management & Access – Recent Legal Developments in the State of Alaska* – Kent Sullivan, Assistant Attorney General, Alaska
- ◆ *Frequently Asked Questions Concerning Trophy Ownership and Transfer in the United States* – Richard Parsons, CITES Consultant, Safari Club International
- ◆ *Determining the Value of Lost or Damaged Trophies* – David Willms, Dray, Dyekman, Reed and Healey, PC
- ◆ *Update on Recent Wildlife Conservation and Outdoor Recreation Law* – Douglas Burdin, Litigation Counsel, Safari Club International
- ◆ *Wildlife Law in Jeopardy* – Jeremy Clare, Litigation Associate, Safari Club International
- ◆ *Wildlife Trafficking Executive Order – Implications for Hunters?* – William C. Woody, Assistant Director for Law Enforcement, U.S. Fish and Wildlife Service
- ◆ *Ethics in the Use of Technology for the Wildlife Law Practitioner* – Safari Club International CLE Ethics Ensemble



For more information about this unique opportunity for lawyers who seek to learn about legal issues concerning wildlife, hunting, conservation, importation and other related topics, please contact Anna Seidman, aseidman@safariclub.org or 202-543-8733.

Special Thanks to Legal Task Force Committee Members:

Rew Goodenow (Chairman), Kevin Anderson, James Berglund, Donald Black, Ryan Burt, Brent Cole, John Daly, Marc Fong, Ned Johnson, Linda Linton, John Monson, Alan Stevenson, Paul Turcke, and David Willms

For any questions or feedback on litigation matters, please contact Anna Seidman at aseidman@safariclub.org, Doug Burdin at dburdin@safariclub.org, or Jeremy Clare at jclare@safariclub.org

CURRENT LITIGATION

SCI is currently involved or has recently been involved in the following cases:

- **Wyoming Wolf Delisting Challenges (*Defenders of Wildlife v. Jewell*; *HSUS v. U.S. FWS*)** – Defense of delisting and hunting of Wyoming portion of the NRM wolf population in D.C. and Wyoming federal courts. Status: D.C. Court – Oral argument held in December 2013. Awaiting a ruling. Wyoming Court – Plaintiffs filed a notice of voluntary dismissal; opposed by defendants and defendant-intervenors. Awaiting a ruling.
- **Western Great Lakes Wolf Delisting Challenge (*HSUS v. Jewell*)** Defense of delisting and hunting of WGL wolf population. Status: SCI, NRA, USSAF and several other organizations intervened. Briefing is underway and will finish in early 2014.
- **New Mexico Wolves (*WildEarth Guardians v. Lane*)** – Defense of New Mexico officials’ authorization of trapping in Mexican wolf experimental population area. Status: New Mexico District Court ruled in state’s favor, dismissing claims. Plaintiffs appealed to the Tenth Circuit and SCI is participating as amicus. Oral argument was held on January 23, 2014. Awaiting a ruling.
- **Wisconsin Wolves (*Wisconsin Federated Humane Societies v. Stepp*)** – Defense of statutorily authorized use of dogs for wolf hunting. Status: Judge issued a partial ruling in favor of the state and SCI/USSA intervenor group. Plaintiffs appealed and SCI filed a cross appeal. Awaiting scheduling of oral argument or a ruling.
- **Wolf Cull for Predator-Prey Balance in Idaho (*Maughan v. Vil-sack et al.*)** – Defense of Idaho’s decision to cull two wolf packs from the Frank Church-River of No Return Wilderness Area. Status: District Court denied plaintiffs’ motion for preliminary injunction and temporary restraining order. Plaintiffs appealed that decision to Ninth Circuit Court of Appeals. SCI has moved to intervene in District court and to participate as amicus curiae in the Court of Appeals.
- **Coyote Hunting in Red Wolf Area in NC (*Red Wolf Coalition v. NCWRC*)** – Defense of coyote hunting in recovery zone of non-essential experimental population of red wolves in NC. Status: SCI opposed plaintiff’s motion for a preliminary injunction to stop coyote hunting in the area. The court will hear oral argument regarding the motion on February 11, 2014.
- **Three Antelope Cases – *SCI v. Jewell et al.***: SCI challenged the FWS’s classification of U.S. captive populations as endangered. Status: Court upheld the legality of the listing. SCI appealed the ruling to the D.C. Circuit Court. ***FoA v. Jewell et al.***: Friends of Animals challenged permit process for culling members of captive herds of the three antelope. Status: SCI intervened and supported FWS’s motion to dismiss the case. Awaiting a ruling. Following passage of J 2014 Omnibus Bill in January 2014, SCI joined with FWS in motion to stay further proceedings with plan to seek dismissal of case as moot.
- **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. Status: Magistrate judge issued a “Report and Recommendation” to uphold the plan (which SCI supported). Awaiting final ruling on recommendation from District Court judge after parties submitted additional briefing regarding plaintiffs’ standing to sue.
- **Twin Peaks (*California/Nevada Horse Gather Litigation (In Defense of Animals v. Jewell)*** – Defense of BLM wild horse gather. Status: Ruling in SCI’s favor issued by California federal district court. Plaintiffs filed an appeal to the Ninth Circuit. Briefing is complete and oral argument was held August 29, 2013. Awaiting a ruling.
- **Triple B (*Nevada Horse Gather Litigation (Cloud Foundation v. Jewell)*** – Defense of BLM wild horse gather. Status: On March 26, the District court ruled in favor of SCI and the BLM on all claims. Horse advocates appealed to Ninth Circuit. SCI is participating in the appeal, but it has been put on hold pending resolution of the Twin Peaks appeal (above).
- **Kofa Water Development (*Wilderness Watch v. Jewell et al.*)** Defense of artificial water development designed for bighorn sheep conservation. Status: Arizona District Court ruled in favor of SCI/NRA and FWS to allow water developments to remain while FWS provides better explanation of necessity of artificial water sources.
- **Lead Ammunition Case (*CBD v. EPA*)** – Defending EPA’s denial of second petition seeking to ban lead in ammunition. Status: EPA and SCI/NRA filed motions to dismiss the case. Court dismissed after oral argument. CBD appealed. Briefing is ongoing.
- **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. SCI will soon move to participate as an amicus in the appeal.
- **Polar Bears (*SCI et al. v. Jewell*; *SCI v. Jewell*)** – Challenge to threatened listing of polar bears and imposition of importation bans. Status: After unfavorable rulings in the District Court and Circuit Court, SCI petitioned the U.S. Supreme Court for review of the listing case. In October, the Supreme Court denied the petition, putting an end to the litigation for this matter.
- **Virginia Sunday Hunting (*SCI v. Commonwealth of Virginia*)** SCI has challenged a Virginia law that prohibits hunting of wild animals on Sundays. Status: SCI purposefully delayed the lawsuit. Currently waiting to see if Virginia’s General Assembly corrects the problem during the current legislative session.
- **McKittrick Policy (*WildEarth Guardians v. DOJ*)** – Defense of DOJ policy to not pursue criminal prosecution of individuals who accidentally shoot members of federally protected species. Status: We are waiting for the Court to rule on DOJ’s motion to transfer the case from Arizona to D.C. or New Mexico. Once decided, SCI will move to intervene in the case.
- **California’s Ban on Importation of Mountain Lion Trophies** SCI is developing a case to challenge the constitutionality of a California law that bans individuals from possessing or importing trophies of mountain lions taken in another state. Suit will likely be filed in late winter or spring of 2014.
- **Forest Road Closure (*County of Shoshone v. U.S. Department of Agriculture*)** – SCI filed an amicus brief to explain how a road closure in a National Forest would undermine adaptive management practices and prevent hunters from being able to access preferred hunting areas and from retrieving game.