

SAFARI CLUB INTERNATIONAL

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ANOTHER TRIP TO THE SUPREME COURT

SCI member John Sturgeon has been waging a battle for all hunters. He went to federal court in Alaska to challenge the National Park Service's decision to control activities on navigable waters that run through National Preserves. Those navigable waters belong to the State of Alaska and the state has the authority to regulate conduct on those waters – such as Mr. Sturgeon's ability to operate his hovercraft to travel to a hunting location. The National Park Service decided to ignore the state's authority and asserted the right to prohibit Mr. Sturgeon from operating his vehicle on the waters running through the Yukon-Charley Rivers National Preserve. Although Mr. Sturgeon's challenge was about his right to operate his hovercraft, the issues of the case are much broader. The NPS's decision to extend their authority could apply to all modes of transportation, and related activities, on waters running through National Preserves in Alaska.

The federal district court in Alaska ruled for the National Park Service and Mr. Sturgeon appealed to the Ninth Circuit Court of Appeals. They too ruled for the NPS. Mr. Sturgeon recently filed a petition for a writ of certiorari with the U.S. Supreme Court. There is no guarantee that the Supreme Court will hear his case. The Supreme Court takes only a small percentage of the cases that are brought to their attention. SCI hopes to help Mr. Sturgeon's chances by submitting an amicus curiae brief. SCI's brief explains to the Supreme Court how the NPS's overreach of authority will impact the hunting community generally, making it difficult, if not impossible for hunters and guides to access locations within and outside National Park units. SCI wants to be sure that the Supreme Court understands that the outcome of this litigation could have broad implications and could deprive both resident and nonresident hunters of important hunting opportunities in Alaska.

The U.S. Supreme Court does not often consider cases that directly affect hunters. As this case does, it represents a special opportunity for SCI not only to assist Mr. Sturgeon who has fought this battle on his own, but also to advocate for the hunting community generally.

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SCI'S BATTLE TO RESTORE ELEPHANT CONSERVATION IN ZIMBABWE CONTINUES

By: Anna Seidman

In March 2015, the U.S. Fish and Wildlife Service (FWS) made another terrible decision. Sadly, the FWS decided to continue its ban on the importation of Zimbabwe's elephants for 2015 and indefinitely. Despite all the information provided to the FWS by the Zimbabwe Parks and Wildlife Authority, Safari Club International, numerous outfitters and other conservation organizations, the FWS chose not to lift the importation ban. Our government simply refuses to acknowledge that the hunting and importation of Zimbabwe's elephants enhances the survival of the species. The FWS does not claim to see *no* value in elephant hunting and importation. Instead, they assert they don't see *enough* – by their standards. What are those standards? The answer is unclear; the FWS keeps changing those standards with each new importation decision.

One thing seems certain: the FWS is conditioning “enhancement” on whether the benefits from hunting offset the detriments caused by poaching. This is not what enhancement means. According to the Merriam-Webster Dictionary (and yes, I still have my hard bound version from college), “enhance” means to increase or improve something. It does not mean to completely cure or solve a problem. Why is the

FWS putting the entire burden for resolving the poaching threat on the hunting community? Do they think that “enhance” means “ensure”? Perhaps they simply think that enhancement means anything the FWS says it does.

SCI does not agree. For this reason, SCI's litigation team will soon file another lawsuit to challenge the FWS's latest Zimbabwe elephant importation ban. Meanwhile, we continue to pursue the lawsuit we filed in 2014 to challenge the April and July 2014 importation ban deci-

sions. That lawsuit applies only to elephants hunted in 2014. Because the latest importation ban decision affects elephants hunted or to be hunted in 2015 and beyond, we must file a new lawsuit.

As long as the importation ban continues, fewer U.S. hunters will be traveling to Zimba-



bwe to hunt elephants. Fewer U.S. hunters means less money for Zimbabwe's outfitters to invest in anti-poaching patrols and equipment. By discouraging U.S. hunters from going to Zimbabwe, the FWS is certainly enhancing *something*. That *something* is the ability of poachers to succeed. While the hunting community is doing its best to conserve the elephants, our government keeps putting obstacles in our way. Currently, litigation is the best way to resolve this absurd situation.

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

ON AGAIN, OFF AGAIN – CALIFORNIA MOUNTAIN LION CASE

Sometimes, just presenting your case to the court can be a drawn out process. This wouldn't be so bad if the final outcome was favorable. In a case involving the importation of mountain lions into California, Safari Club International got the worst of both worlds – a drawn out proceeding that led to a bad result. Luckily, the case is not over, as the Court gave us another opportunity to present our claims.

In August 2014, Safari Club International sued two California officials over the State's ban on the importation and possession of mountain lions hunted outside of California. Our complaint asserts that the import ban violates the U.S. Constitution's Commerce Clause and Equal Protection Clause. The State filed a motion with the Federal Court in Sacramento to dismiss the case. Because of the significance of the outcome of the motion, SCI asked for extra time to prepare our response. Normally, the briefing would be followed by a hearing in open court.



A hearing on the State's motion was first scheduled for February 2, 2015, just before SCI's Convention. Two anti-hunting groups, including the Humane Society of the United States, asked the Court if they could participate in the case as an amicus curiae to defend California's import ban. The Court agreed. The involvement of these anti-hunting organizations prompted the Court to reschedule the hearing until March 30, to allow time for SCI to also respond to HSUS's arguments.

As required under the Court's rules, SCI filed its opposition brief two weeks before the date that the hearing was set to take place. The State filed its final brief a week later. SCI's attorney was ready to travel to Sacramento to argue our case. A few days before the hearing, the Court once again rescheduled it, this time until April 20. Perhaps upon receiving all the briefs, the Court realized this was a complicated case and wanted more time to study the papers before the hearing.

Again, SCI's attorney prepared to travel to Sacramento to present our case in person. But just four days before the hearing, the judge cancelled it entirely. He gave no reason. About a week after the hearing was to take place, the Court issued its decision. The Court, in a very sparse opinion, dismissed SCI's case, but gave us leave to file an amended complaint to address the deficiencies identified by the Court. SCI will now gather the needed information and file an amended complaint on May 13. Hopefully, the path to a final resolution of this case will not be so full of obstacles and delays.

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, Alan Stevenson, Paul Turcke, Robert Welch, and David Willms

CURRENT LITIGATION

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

• **Elephant Importation Ban Challenge (SCI v. Jewell)** – Challenge to the FWS’s decision to suspend the importation of sport-hunted elephant trophies from Zimbabwe and Tanzania in 2014. Status: In late December, the court ruled in SCI’s favor and denied two motions filed by the FWS to dismiss SCI’s challenges to the April and July 2014 Zimbabwe importation bans. SCI did not succeed in defeating the challenges to the Tanzania bans, but will begin our appeal of that portion of the case this summer. We are awaiting a ruling on our motion to compel the FWS to supplement the Administrative Record with additional documents related to the Zimbabwe decisions.

SCI will also be filing a new lawsuit to challenge the FWS’s decision to continue Zimbabwe’s importation ban for 2015 and into the future.

• **Elephant Importation Ban Freedom of Information Act Request (SCI v. FWS)** – SCI sued to challenge the FWS’s failure to respond to SCI’s request for documents pertaining to the July 2014 decision to ban the importation of elephants from Zimbabwe. Status: As soon as SCI filed suit, the FWS responded by providing all relevant documents. We are negotiating with the government about settlement with a possible recovery of some attorney fees and litigation costs in exchange for dismissing the case.

• **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 and Equal Protection Clauses. Status: SCI filed suit on August 6, 2014. State defendants responded with a motion to dismiss. The judge granted the state’s motion to dismiss, but has given SCI an opportunity to amend its complaint to provide more information regarding the impact and burden of the import ban. SCI will file an amended complaint by mid-May.

• **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. federal court. SCI is a defendant-intervenor. Status: D.C. district court invalidated the rule and returned Wyoming wolves to endangered status. Wyoming adopted emergency regulations that addressed the court’s one main issue of concern. The court rejected motions from Wyoming, the FWS and SCI/NRA/RMEF requesting that she amend her ruling and allow the wolves to remain delisted and under management by Wyoming. All parties have appealed the court’s decisions.

• **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. 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. Potential legislative relief, similar to the one adopted to delist Montana and Idaho’s wolves, has been proposed for both the WGL and Wyoming wolf populations.

• **Three Antelope Cases – (FoA v. Jewell et al.)** – In the 2014 Appropriations Law, Congress directed the FWS to reissue a 2005 permit exemption rule regarding 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 FoA appealed to the D.C. Circuit. (*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. Appeal has been stayed on SCI’s request, pending the district court ruling on the constitutional challenge. SCI will seek a continuation of the stay for the duration of the appeal of the constitutional challenge. (*FoA v. Ashe et al.*) – FoA challenged permit process for culling members of captive herds of the three antelope. SCI is a defendant-intervenor in the case. Status: Briefing has been stayed, also pending the 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. Status: SCI intervened in case to defend plan. 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. This case is now on appeal to the Eleventh Circuit Court of Appeals and briefing is likely to start this summer.

• **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 is participating as an amicus in the appeal. Appellate briefing is complete. We are currently awaiting a ruling or the scheduling of oral argument.

• **Grand Teton National Park Elk Hunting (Mayo v. Jarvis)** – Two photographers challenged the elk management program administered on Grand Teton National Park in Wyoming. Status: SCI is participating as a defendant-intervenor.

• **NPS Regulations in Alaska (Sturgeon v. Masica)** – SCI member, John Sturgeon, challenged the NPS’s authority to regulation activities on non-federal waters in Alaska. An Alaska district court and the Ninth Circuit upheld the NPS 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.

SCI is monitoring and/or considering the following matters:

• **Revisions to the Mexican Wolf Experimental Population Rule** – In January, the FWS finalized modifications to the regulations concerning management of the experimental Mexican Wolf 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 is in the process of deciding whether to file a challenge to the revisions and to the Environmental Impact Statement prepared by the FWS relating to those changes.

• **State Constitutional Challenge to Michigan Wildlife Management Statute (Keep Michigan Wolves Protected v. State of Michigan)** An anti-hunting group sued to challenge the legality of state law that gives authority to the Natural Resources Commission for designating game species. Status: The state has filed a motion to dismiss and SCI will await the outcome of the motion before deciding if and how we should become involved in the case.

• **Challenge to Black Rhino Importation Permits (Friends of Animals v. Ashe)** – An anti-hunting group has challenged the legality of two permits for the importation of black rhino trophies. Status: After initially suing in federal court in New York, FoA dismissed the case and refiled in D.C. SCI will soon decide whether we should move to intervene in the matter.