



# SAFARI CLUB INTERNATIONAL

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## LAS VEGAS EDITION

### MAKING A DIFFERENCE FOR NEW JERSEY BEAR HUNTING

SCI, alongside the New Jersey State Federation of Sportsmen's Clubs (Federation), has been advocating for black bear hunting in New Jersey since 2003, including most prominently in the courts. In the face of stiff political opposition, court decisions, and rabid anti-hunting efforts, the State held hunts in 2003, 2005, and 2010. All were safe, effective, and rewarding for the participants.

Battle lines were once again drawn in the fall of 2011. SCI had already helped defeat a last minute legal effort to stop the 2010 hunt. SCI's legal team, with the able assistance of local counsel Peter Bobchin, was ready. In the litigation, SCI and the Federation vigorously defended the state's black bear management policy, which authorizes bear hunting. SCI and the Federation filed briefs and presented oral argument at a hearing in late November. Shortly after the hearing, the New Jersey Appellate Court ruled in favor of the State, SCI and the Federation, paving the way for the 2011 hunt to start on December 5.

In its ruling upholding the legality of the State's black bear management policy, the Court relied on several of SCI's legal arguments, specifically mentioning SCI by name. For example, the Court explained, based on SCI's argument, that "the Council's enabling statutes permit it to consider

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### THREE ANTELOPE GO BACK TO COURT

Three exotic species of antelope are about to make history – with SCI's help of course. They are about to define the Endangered Species Act. These species' endangered listing status has begged the question of whether the ESA is truly designed to encourage species conservation. In other words, does the law require the FWS to place a species on the endangered species list, even if listing will harm that species?

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## MEASURING SCI'S VALUE IN DEFENSE OF HUNTING

Unlike the accurate methods used by expert measurers to score a prized trophy, measuring the value of SCI's involvement in various legal cases around the country is often difficult and imprecise. Sometimes, SCI clearly scores a victory for hunting. For example, just last year, SCI was instrumental in defending a legal challenge to hunting on wildlife refuges across the country. More recently, as discussed in another article in this Newsletter, a New Jersey Appellate Court referenced SCI by name in rejecting arguments by groups opposed to bear hunting. In one case involving the proper management of excess wild horses, the court dismissed the case in reliance on SCI's argument that the horse groups lacked standing to bring the case.

Other times, SCI advances sound arguments in support of the parties in litigation who ultimately prevail, but the Court's reliance on SCI's arguments is not clear. For example, in other wild horse cases, SCI's brief offered legal arguments that were not made by the Federal government in its own brief. The Court ruled in favor of SCI's choice of horse management strategies, but made no reference to our arguments. While the Bureau of Land



Management has expressed its appreciation of SCI's involvement, the courts so far have not expressly referenced SCI's arguments in upholding the gather decisions. Did SCI Win? Of course we did. Even if our arguments did not save the day, our participation was an essential element of the win. Whether acknowledged or not by the court, it is important to inform the court of the hunters' side to the story. The courts need to see that the horse advocates are not the only ones interested in whether and how wild horses are managed on federal lands. In the wild horse cases, SCI's participation informs the court that a significant segment of the public does not share the horse advocates view that the interests of wild horses

trump all other interests, including those of game animals and hunter/conservationists.

Another situation involves SCI losing the case (at least initially) but fighting the good fight. For example, SCI is the only hunting/conservation group that challenged the U.S. Fish and Wildlife Service's decision that with the listing of the polar bear under the ESA, the Service could no longer allow imports of polar bears previously allowed under the law. After a years-long litigation battle, the court rejected our challenge and accepted the Service's interpretation (SCI has appealed). Although SCI has not yet prevailed in this case, the importance of polar bear hunting to our members and to polar bear conservation made it worth the effort. SCI gained favorable press and, through the effort alone, demonstrated that we are willing to devote resources to advance important hunting and conservation positions.

Finally, there are cases where SCI is on the prevailing side, but our particular arguments are rejected. Recently, the federal District Court for the District of Columbia upheld a decision of the National Park Service that preserved small game (varmint) hunting on the Mojave National Preserve. SCI, together with the NRA, participated as intervenors in the case. The court did not agree with the particular argument we made but upheld the National Park Service's decision on other grounds.

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## SCI HEADS INTO THE SWAMP – TO GO HUNTING, OF COURSE!

On January 19, 2012, SCI moved to intervene in two lawsuits that challenge the National Park Service's plan for the Addition Lands of the Big Cypress National Preserve in Florida. Decades ago, when the Preserve was established and later in 1988 when lands were added, sportsmen and women supported these efforts on the promise that the traditional activities that they had long enjoyed in these areas (e.g., hunting, frogging, off-road vehicle use) would be allowed to continue. In fact, Congress created a new type of National Park – a Preserve – to allow hunting, an activity that normally cannot occur in a National Park unit. While in the NPS fulfilled this promise for the most part in the original Preserve, the Addition Lands remained closed to hunting and ORV use for over two decades. Finally, at the end of 2010, the Park Service took the first step in fulfilling that promise for the Addition Lands



by designating ORV trails. At the same time, the NPS also designated a large area as protected Wilderness, which would impair hunting and ORV use in the area. The NPS has not yet opened the Addition Lands to hunting. Before that will happen, the Park Service will need to finalize a hunting plan. That plan is currently in the works.

Two sets of plaintiffs, one led by the National Parks Conservation Association and the other by Public Employees for Environmental Responsibility, sued the NPS, claiming that the agency designat-

ated insufficient Wilderness areas and too many Off-Road Vehicle trails in the Addition Lands. SCI conferred with our local Florida Chapters and decided to intervene to support the Addition Lands plan. Although SCI and our chapters do not necessarily agree with the plan's designations, and instead believe that the NPS should have designated no Wilderness areas and a greater number of ORV trails, we decided to support the plan. SCI and its chapters understand that any success by NPCA and PEER in their lawsuits would undermine and further delay the opening of the Addition Lands to hunting and ORV use. SCI has moved to intervene to prevent these groups from setting up additional obstacles to hunting and access to hunting in these highly valued areas.

SCI is assisted in the case by SCI member and local counsel Eric Sodhi of the firm of Richman, Greer P.A. Several SCI members offered their help in demonstrating SCI's interest in the case to the Court. Richard Gotshall, David Charland, David Severns III, Jack Moller, Dennis Wilson, Jules Mazzarantani and Frank Denninger each worked diligently with SCI lawyers to prepare detailed declarations documenting their hunting and ORV use of Big Cypress National Preserve and the Addition Lands as well as their personal involvement in the planning process.

Not unexpectedly, the two plaintiff groups have not voluntarily consented to our involvement in the case, so we will prepare additional briefs to support our intervention and will wait for the court's decision.



## 2012 AND WE ARE STILL FIGHTING ABOUT WOLVES



After decades of wrangling over the status of wolves and after multiple lawsuits challenging the U.S. Fish and Wildlife Service's attempts to delist the wolves of the Northern Rocky Mountains and the Western Great Lakes – we are still in court, and are likely to be for a while.

Earlier this year, Congress attempted to take the Northern Rocky Mountain wolf question away from the courts by enacting a statute that required the delisting of Montana and Idaho's wolves. Several groups challenged the constitutionality of Congress' legislative delisting attempt. Judge Molloy of the federal district court of Montana grudgingly rejected the constitutional challenge, prompting the groups to appeal to the Ninth Circuit. We are now awaiting the appellate court's ruling.

Wyoming's wolves were not part of that litigation, but it is likely that the status of Wyoming's wolves will once again be in the hands of the judicial branch. The FWS has approved the latest version of Wyoming's wolf management plan and has published a proposed rule to delist Wyoming's wolves as soon as Wyoming's legislature approves the new plan. Since Wyoming has resolutely maintained its dual status classification of wolves (predator and trophy game animal), animal rights advocates are likely to bring a lawsuit challenging any delisting based on Wyoming's conservation and management strategies.

In the Western Great Lakes, wolves were officially delisted on January 27, 2012. As of the time of the writing of this article, SCI was unaware of any litigation challenge to that delisting, but such a lawsuit is more likely than not. In the process of proposing the delisting, the FWS toyed with the concept of designating a second species of wolves (the Eastern wolves) with a home range in the Western Great

Lakes. The FWS withdrew the proposed dual species designation and in doing so, created a fair amount of uncertainty. It is just that kind of uncertainty that Plaintiffs love when they want to challenge federal agency decision-making.

In the meantime, the lawsuit filed by two Minnesota citizens to challenge the FWS's failure to delist the Western Great Lakes wolves is still active in federal court in Minnesota. At a hearing in mid-January, the magistrate judge assigned to the case questioned whether the case is now moot due to the fact that the Plaintiffs appear to have achieved what they sought in the litigation – the delisting of the WGL wolves. The question that remains unanswered is – Did the FWS actually delist the wolves – or will another legal challenge by animal rights groups undo this latest delisting? Stay tuned fans . . .

### MEASURING SCI'S VALUE IN DEFENSE OF HUNTING (CONTINUED FROM PAGE 2)

The Court actually denied our motion for summary judgment. Did We Lose? Not on your life. Our participation in the case demonstrated that the hunting community cared about these hunting opportunities. Without SCI and NRA's involvement, the court would have heard only the anti-hunting group's perspective on the whether small game hunting should continue on the Preserve. It is quite possible that our participation helped sway the court to uphold these hunting opportunities.

SCI always enters into a case with the idea of winning. Many of our cases are cutting edge cases without clear legal precedents. The possibility always exists that we or our side will not prevail. But we often do win outright or otherwise make an important contribution. Regardless, our involvement makes a clear statement to the anti-hunting, and animal rights groups, that hunters value the opportunities that are under assault and that we are going to make sure the courts are aware of the value of these hunting opportunities. Our efforts in waging these fights is supported by the Legal Task Force and Governmental Affairs Committee and approved by the Executive Committee.



## LEGAL INTERN MICHAEL JEAN



### THE HUNTING ORIGIN OF THE GUINNESS WORLD RECORD

By Michael Jean

Michael Jean came to SCI as an intern for his final term at Thomas M. Cooley Law School, in Lansing Michigan. While interning, Michael assisted in researching, drafting, and editing documents, and helped SCI's legal team prepare to defend against the constitutional attack on the statutory delisting of the Northern Rocky Mountain grey wolf; assert SCI's challenge to the listing of the U.S. captive populations of the scimitar-horned oryx, dama gazelle and addax; intervene in defense of the New Jersey black bear hunt; support SCI's position on the planning for the Big Cypress Addition Lands; and participate in several other cases.

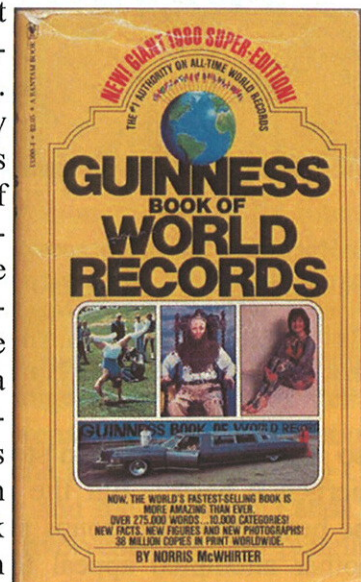
Michael was instrumental in preparation for the Ethics portion of SCI's Wildlife Law CLE held during the 2012 SCI Convention in Las Vegas. Additionally, Michael attended and reported on several House Natural Resources Committee Hearings on hunting and the Endangered Species Act.

After leaving SCI, Michael graduated from law school in January, and will take the Michigan Bar Exam in February. After that, Michael reports that it will be "the start of the 'rat race' that I'm now significantly more prepared for, thanks to my time at SCI and all the knowledge I've gained through the great people here." We truly enjoyed having Michael as part of our litigation team and we wish him great success in his future endeavors!

In 1951, the managing director of Guinness Breweries, Sir Hugh Beaver, went on a hunting trip in Wexford County Ireland. On this hunting trip Beaver and some fellow hunters got into an argument over what was the fastest game bird in Europe. The argument went unresolved as the parties returned for the evening. Later that night Beaver realized there was no good way to settle the argument using the reference books available at the time. An answer to the question would require the researcher to consult a large number of sources. Beaver further realized there must be similar arguments that go unsettled in pubs across the world, and decided that a single book with these answers might be both useful and popular. Upon his return, Beaver hired a fact finding agency to gather several records which later became the first

edition of the Guinness Book of Records. Guinness gave away the first 1,000 copies during the fall of 1954, solely as a promotion to sell more beer. True to Sir Beaver's predictions, the book proved to be a hit, and Guinness began selling it in stores a year later. Within four months the book became a best seller in the United Kingdom.

A year later it was released in the United States and sold over 70,000 copies. After several name changes and annual updated editions, the book now holds its own Guinness World Record for being the most sold copyrighted book in the world.





## MAKING A DIFFERENCE FOR NEW JERSEY BEAR HUNTING (CONTINUED FROM PAGE 1)

'public recreation' when determining if and when game animals may be hunted." This statement will be valuable legal precedent in any future litigation. The Court also relied on SCI's brief to reject the Bear Groups' ludicrous argument that previous bear hunts actually increased the state's bear population, finding that this theory was nothing but "speculation." While we are confident that our arguments usually capture the courts' attention, it was particularly satisfying to be clearly recognized by name.

As expected, the anti-hunt groups did not go quietly into the night. They immediately appealed their loss to the State Supreme Court. That court



Attorney Anna Seidman argues in favor of the state's upcoming black bear hunt, during a hearing before Appellate Division Judges William E. Nugent, Philip S. Carchman and Clarkson S. Fisher, Jr., in Trenton, N.J., Tuesday, Nov. 29, 2011. Photo: Mel Evans, Pool / AP

also rejected the effort to stop the 2011 hunt on an emergency basis. But the fight is still not over. The bear advocacy groups are proceeding with yet another attempted appeal to the New Jersey Supreme Court. Their right to appeal is not automatic. These groups now must convince the State Supreme Court to take their appeal on the merits. SCI will oppose these efforts as well. If that court takes the case, SCI will have the opportunity to defend the 2012 bear hunt in the highest court in New Jersey.

SCI and the Federation applaud the efforts of the New Jersey state wildlife professionals and decision-makers in holding a hunt for the past two consecutive years. The hunt in 2010 was very successful, with close to 600 bears harvested without incident. In 2011, hunters in New Jersey, including numerous SCI and Federation members, harvested 469 bears, again without incident. One harvested bear weighed 750 pounds. The state scientists again gathered important biological information about the health and population of New Jersey bears. Safari Club will continue to remain in the forefront on this important issue, especially as other states, such as Nevada and Florida, consider allowing bear hunts and anti-hunting zealots lie in wait.

### SCI's Fifth Wildlife Law CLE

On Friday, February 3, 2012, SCI's Litigation team, with the assistance of wildlife and firearms legal experts from around the country, will present SCI's Fifth Annual Continuing Legal Education Course at the SCI Convention in Las Vegas, Nevada. Joining SCI attorneys, Anna Seidman and Doug Burdin as presenters will be Carol Bamberg, Counsel for the Association of Fish and Wildlife Agencies; David Hardy, Senior Attorney with National Rifle Association; Linda Linton, SCI Legal Task Force member and Partner in Linton and Associates, P.C.; Richard Parsons, former SCI Director of Governmental Affairs and Conservation and current consultant to Safari Club International; and David Willms, Senior Assistant Attorney General for the State of Wyoming.

This year's course will present updates on recent wildlife, hunting, criminal, and second amendment litigation and law as well as discussions on drafting contracts for international hunts; the future of African lion conservation and importation; and avoidance of trophy forfeitures. For the first time in its history, SCI's CLE course will also include ethics for the wildlife attorney.



## THREE ANTELOPE GO BACK TO COURT (CONTINUED FROM PAGE 1)

SCI has filed a lawsuit against the U.S. Fish and Wildlife Service, challenging the endangered species listing of U.S. captive herds of the scimitar-horned oryx, dama gazelle and addax. These animals are disappearing in their home ranges in Africa, but here in the U.S., the three antelope are thriving on private ranches. Through individual conservation efforts, private ranchers have turned a single digit U.S. population into numbers in the thousands. Now that is in jeopardy – simply because the FWS listed the captive populations as endangered.



In 2005, the FWS made a decision to list the three species, throughout their range, as endangered. Despite our protests, and those of private ranchers and the Exotic Wildlife Association, the FWS included the U.S. captive populations of the three species in that endangered listing. Prior to that time, private ranchers could trade and sell hunts for members of their herds of these species without the need for obtaining permits. The lack of restrictions worked in favor of conservation. The animals' value increased. Hunters prized these exotic animals and were willing to pay ranchers to allow them to come on the ranches and hunt them. The high value of these animals encouraged ranchers to own and raise them. The ranchers used the money earned from selling hunts to pay for feeding and breeding their herds. But the ranchers made it clear that they had no interest in dealing with the costs, bureaucracy and uncertainties of a permit system.

Realizing that the endangered species listing and the required permits associated with that endangered status would undermine private conservation efforts, the FWS adopted a rule that exempted U.S. captive herds from ESA permit requirements. Animal rights groups could not stand that hunting was part of the conservation of an endangered species. They challenged the exemption in court and won. In 2009, a federal district court directed the FWS to withdraw the exemption.

It took the government two years, but on January 5, 2012, the FWS published a rule to finally

withdraw the permit exemption. Realizing that the rule was imminent, in August of 2011, SCI filed suit to challenge the underlying problem. But for the endangered listing of the U.S. populations of the three species – no permits would be required. SCI has challenged the FWS's decision to include the U.S. captive herds in the endangered species listing for the species as a whole. That suit is progressing and briefing will take place later this year.

In the meantime, the day for implementation of the rule requiring Endangered Species Act permits for the take of the three antelope is rapidly approaching. Permits will be required on April 4, 2012. Until that time, everything remains status quo, and U.S. ranchers can continue to sell hunts for members of their herds, without need for permits. In the meantime, the FWS is making an effort to educate the public about the permit process. The U.S. Fish and Wildlife Service is scheduled to make a short presentation about the new regulation here at Convention at the Hunter Defense Fund Open House on Thursday, February 2, 2012 in Lagoon L of the Mandalay Bay Convention Center, at 4:00 P.M. Representatives of the FWS will offer a more extensive, hands-on presentation about the requirements for submitting permit applications for the three U.S. captive populations, also here at Convention, on Saturday, February 4, 2012 in Lagoon H at 12:30 P.M.

Many ranchers have chosen not to apply for permits and are selling off their herds. By the time the rule goes into effect, it is expected there will be significantly fewer herds and fewer individual members of the three species here in the U.S.

SCI is carefully weighing its options for a potential legal challenge to the implementation of this new rule. Our goals are simple. SCI wants to prevent an end to private conservation of the three species and to demonstrate to the court that listing a species is not the only way to conserve it. In fact, sometimes, such as with the scimitar-horned oryx, dama gazelle and addax, it is the wrong way.



## CURRENT AND RECENT LITIGATION AND ADMINISTRATIVE COMMENTS

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

- Wolf Constitutional Challenge (*Alliance for the Wild Rockies/Center for Biological Diversity v. Salazar*)
- Western Great Lakes Wolf Delisting (*Lueck and Tyler v. Salazar*)
- Northern Rocky Mountain Wolf Delisting (*Defenders of Wildlife v. Salazar*)
- Yellowstone Grizzly Bear Delisting (*Greater Yellowstone Coalition v. Servheen; Western Watersheds Project v. Servheen; Aland v. Servheen*)
- Polar Bear Listing and Importation (*SCI v. Salazar* (2 cases))
- ESA Settlement Litigation (*In Re Endangered Species Act Section 4 Deadline Litigation*)
- Greater Sage Grouse Candidate Status (*Western Watersheds Project v. FWS*)
- Columbian Sharp-Tailed Grouse Listing (*WildEarth Guardians v. Salazar*)
- Three Antelope Listing Challenge (*SCI v. Salazar*)
- Twin Peaks (California/Nevada) Horse Gather Litigation (*In Defense of Animals v. Salazar*)
- Triple B (Nevada) Horse Gather Litigation (*Cloud Foundation v. Salazar*)
- Big Cypress Addition Lands Planning Litigation (*NPCA v. DOI, PEER v. Salazar*)
- Kofa Water Development (*Wilderness Watch v. Kempthorne*)

- Rocky Mountain National Park Elk Management (*WildEarth Guardians v. NPS*)
- Hunting in Mojave National Preserve (*PEER v. National Park Service*)
- Arizona Strip and Lead Ammunition (*Center for Biological Diversity v. Salazar*)
- Lead Ammunition Case (*Center for Biological Diversity v. EPA*)
- New Jersey Bear Hunt (*BEAR Group v. NJ Department of Environmental Protection*)
- Nevada Bear Hunt (*NoBearHunt.org v. State of Nevada*)

***Since the May 2011 Board Meeting, SCI has filed comments on the following:***

- Forest Service planning for the Huron-Manistee Forest, following a ruling from the Sixth Circuit Court of Appeals
- U.S. Fish and Wildlife Service Proposal to Acquire Lands to Create the Everglades Headwaters National Wildlife Refuge
- U.S. Fish and Wildlife Service Plans to Remove Water Developments in the Sheldon National Wildlife Refuge
- U.S. Fish and Wildlife Service's Proposal to Designate a New Species of Wolves in the Western Great Lakes
- U.S. Fish and Wildlife Service's Approval of Wyoming's Wolf Management Plan
- National Park Service Planning for the Use of Volunteers in Non-native Ungulate Removal in Volcanoes National Park

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

**Rew Goodenow (Chairman), Kevin Anderson, Brent Cole, Brian Russo, Donald Black, Elizabeth Howard, John Daly, John Monson, Paul Turcke, Linda Linton, James Berglund, Ned Johnson, Alan Stevenson**

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