

# SAFARI CLUB INTERNATIONAL

LITIGATION NEWSLETTER, August 2008 Vol. II, No. 3

## BROWN AND WHITE BEARS IN COURT

## In This Issue



Reminiscent of the “unity of opposites” concept of the yin/yang of Chinese philosophy, SCI is in court defending the delisting of the grizzly bears in the Yellowstone area and challenging the listing of the polar bear throughout the world under the Endangered Species Act. The sites of these legal wranglings span the country. SCI is defending the delisting of the grizzly bear in three cases in District Court in Idaho and in Montana. SCI brought its own lawsuit over the polar bear listing in District Court in

*Brown & White Bears in Court* 1, 4

*The Rewards of a Decade Long Lawsuit* 1, 2, 4

*Wolf Litigation Highs and Lows* 2, 3

*Just When You Think You Know Somebody* 3

Washington D.C., challenging the import ban that the U.S. Fish and Wildlife Service says arose because of the listing. SCI also participated in litigation in northern California over the deadline for listing the polar bear. In all, these distant bear cousins (polar bears evolved from grizzly bears somewhere around 150,000 years ago) have SCI involved in five separate lawsuits, with more possibly on the way.

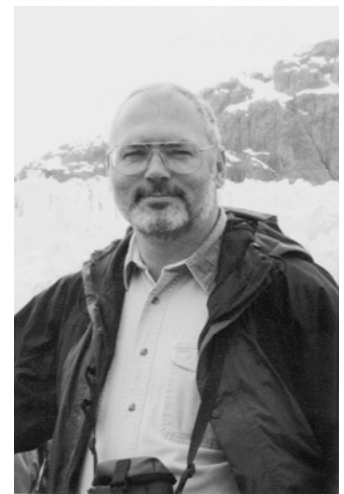
Why is it important that SCI be involved in all these cases? The simple answer is that we are protecting the ability of our members to hunt these species now and in the future. The more complicated response is that we

*Story cont. on page 4*

## THE REWARDS OF A DECADE LONG LAWSUIT

A decade ago, SCI filed a single lawsuit that gave birth to the hunting community’s strongest voice for litigation advocacy. In 1998, SCI officials John Monson and Skip Donau, together with then Governmental Affairs Director Rick Parsons, drafted and filed a complaint in U.S. District Court in Alaska that challenged: (1) decisions made by the Federal Subsistence Board (FSB) that gave priority to rural subsistence hunters for access to wildlife on federal lands; (2) the process by which the FSB made those priority subsistence decisions; and (3) the unfair membership composition of councils that advised the FSB on the subsistence allocations.

Initially, the lawsuit led to the hiring of Anna Seidman, who acted as a litigation consultant to SCI on a part-time basis. In addition, the suit brought in Alaska attorney, Brent Cole, as SCI’s local counsel. Over time, Seidman joined SCI as their full-time litigation attorney. She now serves as SCI’s Director of Litigation, managing a department that includes Senior Litigation Counsel, Doug Burdin, and newly hired Litigation Counsel, William McGrath. Brent Cole has joined SCI’s growing Legal Task Force, an active committee of SCI member attorneys who advise SCI on which cases to join and which strategies to pursue. SCI is now parti-



**Kevin Anderson,**  
Chair,  
Legal Task Force Committee

*Story cont. on page 2*

## WOLF LITIGATION HIGHS AND LOWS

The last few months have demonstrated some true highs and lows in the litigation concerning wolf delisting and management. The highest point was reached when SCI achieved a resounding victory by persuading the U.S. Court of Appeals for the D.C. Circuit to vacate a lower court ruling on ESA permits for lethal wolf management. This lower court ruling was having a chilling effect on the U.S. Fish and Wildlife Service's authority to permit states to manage problem members of listed predator species.

The lowest point was experienced last month, when a Montana federal district court judge granted a preliminary injunction and temporarily placed the wolves of the Northern Rockies (Montana, Idaho and Wyoming) back on the endangered species list. SCI's lawyers have conferred with the attorneys representing all other defendants (federal, state and non-governmental) to decide on the best strategy for reversing the judge's decision. No formal consensus has been reached, but most if not all of the defendants agree that a unified approach will be most effective. Although the judge's ruling on the preliminary injunction illustrated his skepticism about the legality of the delisting, it is important to remember that his determination was not based on a review of the full range of evidence that the U.S. Fish and Wildlife Service had available in making its decision to remove the wolves from the endangered species list. SCI's litigators remain hopeful that the final briefing in the case, where SCI and the other defendants will be able to demonstrate the full evidentiary support for the FWS's decision, will ultimately persuade the judge to uphold the delisting.

*Story cont. on page 3*

## THE REWARDS OF A DECADE LONG LAWSUIT (CONT.)

*Story cont. from page 1*

icipating and earning victories in cases filed throughout the country.

The Alaska lawsuit gave rise not only to SCI's role as a leader in litigation advocacy, but also led to victories in a number of the challenges that SCI included in its claim against the Federal Subsistence Board. Although most of these victories were not spelled out in any official judicial ruling or court order, SCI's achievements in Alaska subsistence rulemaking are undeniable.

For example, SCI's Complaint challenged the degree of evidence upon which the Regional Advisory Councils could make recommendations to the FSB. In 2002, the Federal Government decided to amend their regulations to clarify that the Councils' recommendations "should be supported by substantial evidence." SCI also challenged the fact that the FSB had no formal operating procedures for their meetings. In 2003, the FSB officially adopted a set of "Meeting Guidelines." In addition, SCI challenged the failure of the FSB to create an adequate record to explain the basis for its subsistence decisions. The new Meeting Guidelines included a detailed description of the FSB's record making obligations. SCI also challenged the legality of a committee



*Photo courtesy of U.S. FWS*

composed of the chairpersons of the ten Regional Advisory Councils, known as the "Council of Chairs." The FSB subsequently acknowledged that SCI's lawsuit had alerted the federal government to the illegality of the Council of Chairs and disbanded the unlawful committee. The federal government even overturned some of the individual subsistence priority allocations that SCI attacked in their Complaint. For example, prior to SCI's litigation, the FSB had closed the Red Sheep Creek and Cane Creek drainages

*Story cont. on page 4*

## WOLF LITIGATION HIGHS AND LOWS (CONT).

### *Story cont. from page 2*

Somewhere between the highs and lows is the hopefulness with which SCI looks to a D.C. District Court's pending ruling on the fate of the delisted wolves of the Western Great Lakes (Michigan, Minnesota and Wisconsin). At a hearing on August 4th, the court heard oral argument on the delisting. The federal government's counsel did an extraordinary job of responding to all of the court's questions and explaining the legality of the delisting. SCI's counsel played an important role in demonstrating the adequacy of the states' management plans and in refuting several of the plaintiffs' challenges to the delisting. A ruling is likely in the weeks to come.

Wolves will obviously continue to play a predominant role in SCI's litigation efforts over the next few months.

## JUST WHEN YOU THINK YOU KNOW SOMEBODY...

The National Park Service (NPS) has never been the federal agency best known for its cooperation with the hunting community. In fact, for many years, the NPS, and more specifically officials at the Mojave National Preserve (MNP), did its best to prevent the installation, restoration and/or repair of artificial water sources for wildlife on the Preserve. However, after years of legal and administrative obstacles and delays, the NPS has become an important ally and is not only allowing the restoration of wells on the Preserve but is actively participating and assisting in that effort.

The restoration is part of a mule deer research project, supported and funded in part by SCIF. SCI and SCIF have long been staunch supporters of the well restoration and participated in litigation several years ago to defend the reactivation. As a result of that lawsuit, the NPS agreed to prepare an Environmental Assessment (EA). In the initial draft of the EA, the NPS claimed that the restoration of the wells would harm the Preserve's environment. When SCI provided scientific evidence disputing the professed harm, the NPS agreed to restore the wells as part of research designed to determine the impact of the wells on wildlife and the environment.

With SCI's encouragement, researchers from the University of Nevada proposed an extensive study of mule deer behavior. The NPS accepted the proposal but could offer little funding to assist with the project. SCI and many of its California Chapters provided initial funding. The State of California is providing both financial and in-kind assistance.

The project initiated with a mule deer capture earlier this year. Much to SCI's surprise and pleasure, the Superintendent of MNP and other Preserve officials joined researchers in a hands-on capacity, capturing and testing each of the subject deer.



*Photo courtesy of the U.S. Department of the Interior*

The National Park Service's support for the effort was demonstrated even more clearly during the most recent phase of the project – the reactivation of the first five wells. SCI and SCIF provided a \$25,000 donation to cover the NPS's estimate of costs for the reactivation work. Bids were solicited and several were received. SCI learned, to its dismay, that the lowest bid had come in at significantly more than SCI had provided. Instead of coming back to SCI for an additional grant, the NPS stepped up and covered the \$12,000 shortfall with its own funds.

This long term effort represents not only a unique partnership between SCI and the NPS, but also an unusual and potentially precedential collaboration of the National Park Service, the State of California, the University of Nevada and several non-governmental groups. It will examine the role that artificial sources of water play in wildlife behavior and health and could serve as a model for similar projects and cooperative efforts for desert wildlife conservation.

***If you are interested in helping to fund this effort, please contact Anna Seidman at [aseidman@safariclub.org](mailto:aseidman@safariclub.org).***

## BROWN AND WHITE BEARS IN COURT (CONT.)

### *Story cont. from page 1*

are supporting the benefits that sport hunting brings to both bear conservation and the local people most involved in and affected by those conservation efforts. We cannot allow to go unchallenged those who would abuse the ESA to achieve their special interests and, as a consequence, harm the wildlife the statute was designed to protect.

The list of players on both sides of the brown and white bear cases also illustrates why it is important for SCI to stay involved and advocate our interests. The participants include the federal government; the States of Idaho, Montana, Wyoming, and Alaska; anti-hunting groups; other pro-hunting groups; the oil and gas industry; agricultural and cattle interests; environmental groups; an individual citizen; and even a civil rights group (arguing on behalf of low-income minorities harmed if the polar bear listing drives up the cost of energy, transportation and food). SCI hopes to make sure that the best interests of the two bears do not get lost in the churn of these politically infused battles.

The listing of the polar bear brought with it a ban on imports of sport-hunted trophies from Canada. Without imports, U.S. hunters are less likely to travel to Canada to spend upwards of \$50,000 on a polar bear hunt, most of it going to local native communities. Without U.S. dollars flowing to local native communities that must live with the bear on a day-to-day basis, conservation efforts suffer. The delisting of the Yellowstone population of grizzly bears returned primary management over this animal to the states of Idaho, Montana, and Wyoming. The states can better manage the species to minimize troublesome conflicts with humans, including hunters out in the field. In addition, with the grizzly delisted, the states can establish hunting seasons when appropriate.

All of these cases are moving forward. SCI has already filed briefs in two of the grizzly bear cases and is battling with the Plaintiff in the other case over procedural issues. Briefing in these cases will continue throughout the year. Although SCI's polar bear case is not as far along, briefing is expected to start in the near future. These seemingly opposite yet related brown and white bears, and the legal battles over them, will keep SCI busy for some time to come.

## THE REWARDS OF A DECADE LONG LAWSUIT (CONT.)

### *Story cont. from page 2*

within the Arctic Village Sheep Management Area to sheep hunting by anyone other than residents of Arctic Village, Venetie, Fort Yukon, Kaktovik and Chalkyitsik. In 2008, the FSB finally acknowledged that the closure was not supported by the evidence and opened the area to hunting by residents and non-residents.

In addition, the court acknowledged the validity of SCI's challenge to the membership balance of the Regional Advisory Councils and directed the agency to adopt a formal rule to make certain that non-subsistence interests were adequately represented. After several years of rulemaking attempts, the FSB ultimately published a federal regulation that formally balanced the membership of the councils with 70 percent representing the subsistence hunting and fishing community and 30 percent representing recreational and commercial hunting and fishing interests, finally giving a recognized voice to the sportsman.

In June, the Alaska District Court ruled that all of SCI's claims had been resolved and dismissed SCI's original complaint. The dismissal incorporated a ruling against some of SCI's claims, leaving SCI with the question of whether to file an appeal with the Ninth Circuit Court of Appeals. SCI's Litigation Department and Legal Task Force are currently considering the merits of filing such an appeal.

The judge's recent dismissal of the case may be bringing to a close the first chapter of SCI's role in litigation advocacy. However, it is obvious that, armed with an experienced crew of attorneys, an active Legal Task Force and a broad list of cases filed around the country, the book is just getting to the good part.

***For more on this story, please read the next issue of Safari Magazine.***

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

**Kevin Anderson (Chairman), John W. Nelson, Paul Turcke, John Monson, Ron Arendt, Brent Cole, Donald Black, Robert Gilbert, Brian Russo, Rew Goodenow, Robert Lange, Fred Burresh, John Daly**