

LITIGATION NEWSLETTER

Kevin Anderson
Legal Task Force Committee

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Is Hunting at Risk If the Polar Bear Lands on Threatened Species List?

Doug Burdin, Litigation Counsel

As most of you probably know, on December 27, 2006, the U.S. Fish and Wildlife Service proposed to list the polar bear as “threatened” under the Endangered Species Act. A species must be listed as “threatened” if it is “likely” to become “endangered” (imminent risk of extinction) in the “foreseeable future.” The FWS believes that polar bear populations are threatened because of continued global warming and the loss of arctic sea ice, which the bears use as a platform for hunting seals, their primary food source.

In general, the world’s polar bear populations currently are relatively healthy, and only one or two populations allegedly have shown any adverse effects from global warming. But the ESA also focuses on what will happen in the future. The FWS believes that global warming will make it likely that the polar bear will face a risk of extinction within the next 45 years, even if the FWS is not absolutely certain that this will come to pass.

If This Is November, It Must Be New Jersey

Anna Seidman, Chief Litigation Counsel

In mid-October this year, I found myself making plans for the remainder of year with the assumption that I would be spending most of November traveling to, and/or immersed in, legal battles over bear hunting in New Jersey. I knew it did not matter whether or not the state of New Jersey decided to hold a 2006 bear season, because in either case, I would be litigating a bear hunt challenge. Either we’d be battling animal rights groups to defend the state’s decision to hold a bear hunt, or we’d be battling the state over their decision not to hold a bear season. Every year for

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This marks the first proposed listing primarily due to the alleged impacts of global warming.

Although listing under the ESA would not affect the legality of hunting in Canada or any other foreign country, it could bar hunters from importing their trophies into the United States without obtaining additional authorization from the FWS. The FWS would have to issue a special Section 4(d) rule allowing the import of sport-hunted

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the last four years, SCI has participated in litigation during late November and early December to protect bear hunting in the Garden State. So when the calendar flipped to November 2006, I knew exactly where I’d be – in New Jersey, fighting about bears.

For the last four years, New Jersey’s bear hunt has been scheduled for a five day period during the first week of December. In 2003 and 2005, successful hunts took place. In 2004 and 2006, the state refused to hold a bear season.

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Polar Bears from page 1.

trophies or issue individual import permits, in addition to the currently required permit under the Marine Mammal Protection Act. While the FWS has expressed a willingness to continue to allow the import of sport-hunted trophies from several healthy populations in Canada even if the species is listed as threatened, there is no certainty about this.

Thus, a “threatened” listing for polar bears could seriously harm polar bear conservation efforts taking place right now in Canada. First, because of the revenue that foreign hunters bring to native communities, those communities come to value the bear and minimize illegal or nuisance take of the bear. Second, sport hunting brings valuable conservation dollars for polar bear research and management. If import restrictions result in fewer U.S. hunters of polar bears, the loss of revenues could seriously harm these important conservation activities.

Legal Task Force Meeting

Friday, January 26, 2007

8:00 - 10:00 A.M.

Reno Sparks Convention Center
Room A-9

The FWS is giving the public until April 9, 2007 to comment. Consistent with comments it filed earlier in this matter, SCI intends to file comments that will support continued hunting and importation of polar bears as one of the primary tools for sustaining the species into the foreseeable future. After reviewing the comments and scientific materials submitted, the FWS will reach a final decision whether or not to list, probably in early 2008.

The Canadian government also is currently considering whether to add the polar bear to Canada’s Species at Risk Act list. In 2002, the independent body that recommends how the government should designate the species



recommended “special concern” status, which would not prohibit any activities related to the species. The government, however, could decide to upgrade the species to “threatened,” especially in light of new information since 2002. “Threatened” status would trigger prohibitions on killing or harming the species or harming its habitat (similar to ESA prohibitions). A listing under Canadian law could have an impact on hunting of polar bears in Canada, as a special permit would be required to hunt and (possibly) to export the species. It is unclear whether a U.S. listing would affect the Canadian decision. It is also unknown when Canada might reach a decision. If and when given the opportunity, SCI will provide information to the Canadian government to help it understand the importance of hunting to polar bear conservation.

Thus, a “threatened” listing for polar bears could seriously harm polar bear conservation efforts taking place right now in Canada.

SCI will continue to monitor and participate in this issue. For further information about the polar bear, the U.S. proposed listing, and the Canadian action, visit the FWS’s Endangered Species Program website: <http://www.fws.gov/endangered/> and the Environment Canada website: http://www.sararegistry.gc.ca/gen_info/default_e.cfm.

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**No Refuge Hunting, No Black Bear Seasons
and Other Nightmare Scenarios
-Why SCI Is In Court Fighting For You-**

Litigation Seminar

Saturday, January 27, 2007

10:00-11:00 A.M.

Reno Sparks Convention Center

Room A-14

Since 2003, SCI has participated in four different cases over New Jersey's bear seasons. The courts, adversaries, partners and results have varied, but the subject – bears – has remained a constant.

In 2003, New Jersey scheduled its first bear hunt in 30 years. When national animal rights groups filed suit in federal court to attack the portion of the hunt scheduled to take place on federal lands, SCI intervened to help New Jersey to defeat the challenge. In 2004, when New Jersey refused to go forward with a hunt, SCI challenged that decision in New Jersey state court. The state Supreme Court ultimately ruled in the state's favor, ordering the state to develop comprehensive black bear management policies before holding any further hunts. After the state complied with the court's order in 2005, New Jersey animal rights groups filed suit in state court to challenge the legality of the state's newly minted policies. SCI intervened in that case and helped defeat the challengers' emergency efforts to stop the 2005 black bear season.

When November rolled around this year, it was apparent that the state of New Jersey had made none of the necessary preparations to hold a 2006 black bear season. No permit applications had been solicited, no permits issued, no mandatory training sessions scheduled. On October 30, 2006, New Jersey state Governor Jon Corzine instructed the head of the state's environmental agency to re-examine the state's bear management policies and to implement non-lethal methods of bear management before implementing a bear harvest. On November 15,

2006, the Commissioner of the New Jersey Department of Environmental Protection complied, abruptly withdrawing approval of the state's policies, making it impossible for the state to hold a bear season in 2006.

SCI, in collaboration with the New Jersey State Federation of Sportsmen's Clubs Inc. and the U.S. Sportsmen's Alliance, brought suit to challenge the state's action. When the appellate court denied SCI's request for emergency relief, SCI then appealed to the state Supreme Court, again without success. Neither court was willing to rule that SCI met the legal criteria for emergency relief. However, neither court made any determination that the state was justified in its last minute revocation of its black bear management policy. The Appellate Court ordered SCI to fully brief and argue its challenge in March of 2007 – too late to save the state's 2006 black bear hunt, but perhaps early enough to establish a 2007 season.



Although New Jersey is just one state, with a single, five-day season that involves the harvest of only around 300 bears, its annual battle, and SCI's involvement, have far-reaching significance. After SCI helped defeat challenges to New Jersey's first bear hunt in 30 years, Maryland followed by defending their own litigation challenges and holding their first black bear hunt in over 50 years. Please see *New Jersey* on page 4.

New Jersey from page 3.

Recently, due to its growing black bear population, Connecticut has been looking into the possibility of instituting its own black bear season. It is likely that they too will appreciate SCI's litigation assistance when the time comes.

November 2007 is almost a year away, and it is unclear at this time whether New Jersey will schedule a 2007 black bear season. Without a hunt in 2006, the state's bear population has gone without control and it is likely that the number of nuisance bear incidents will rise dramatically in the summer and fall of 2007. New Jersey Governor Corzine, who expressed opposition to bear hunting during his election campaign, may find that his preference for "non-lethal methods" proves sorely

Water in the Desert
-Reactivating Water Developments in the
East Mojave National Preserve-
 Conservation and Litigation Seminar
 Saturday, January 27, 2007
 12:00 - 1:00 P.M.
 Reno Sparks Convention Center
 Room A-14

insufficient. It is more than likely that even after SCI goes to court, early in 2007, to resolve both the animal rights' groups' ongoing 2005 challenge and the state's 2006 policy reversal, we will find ourselves in court again in November 2007, battling one or more opponents to make sure that New Jersey properly manages its bears.

SCI In the Limelight

SCI's efforts to preserve New Jersey's black bear season drew the attention of several reporters and media outlets and, on an almost daily basis, they consulted SCI for up-to-date and accurate information about the issues. SCI's advocacy in standing up for sportsmen and women in New Jersey and elsewhere was in the limelight throughout the month. In total, SCI's involvement in this important case was publicized in more than 19 papers with a circulation of at least 2,500,000

people. SCI New Jersey Chapter President Gene Rurka and Litigation Counsels Anna Seidman and Doug Burdin were quoted in numerous articles. Coverage also appeared on the websites of three top ranked television stations in New York and Philadelphia. SCI Litigation Counsel Doug Burdin gave interviews to a number one ranked radio station in New York and two programs on the NRA News Network.

Lending a Hand in Litigation: Why You Should Help

Problem: Let's say that the Fund for Animals, Humane Society of the United States, Animal Protection Institute, or another animal rights group files a lawsuit to stop some valuable hunting opportunity. SCI decides it needs to intervene in the case to protect hunting and the sustainable use conservation of the species at issue. Unfortunately, the desire to defend hunting is not enough to allow SCI to jump into the case. SCI must give the court concrete proof that SCI's members and/or the organization itself will be

harmed if the Fund, HSUS or API succeeds in stopping the hunt.

Solution: Knowing of its members' willingness to help on important hunting cases, SCI puts out a call to members in the affected region. SCI seeks member hunters who have participated in the hunt in the past and who have definite plans to participate in the hunt that the lawsuit threatens. The members work with SCI's litigation team to tell their story to the court - usually involving their

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hunting experiences, the details of their planned future hunt, and the damage that they will suffer if they lose that opportunity. SCI's attorneys craft these stories into sworn statements that the member hunter signs for use in the litigation. SCI submits those sworn declarations to persuade the court that SCI's participation is necessary to protect its members and the organization from harm.

Example: SCI wanted to intervene in a lawsuit brought by the Fund for Animals to force the U.S. Fish and Wildlife Service to list the Florida black bear under the Endangered Species Act. Such a listing would end the current annual Florida black bear hunt in southern Georgia and would prevent the State of Florida from re-establishing a hunt. Together with SCI's attorneys, SCI members Bill Monts de Oca, James Petrina, Lee Davenport,

Randal Morris, and Robin Thigpen (all from Chapters in Florida and Georgia) prepared sworn declarations for the court, describing the harm that they would suffer if the Fund for Animals succeeded. Based on the strong showing made in these declarations, the court granted SCI's intervention in the case.

How Can You Help: Make sure that you are a "Cross-hairs" subscriber and that the Washington, D.C. office of SCI has your e-mail address for litigation alerts. (E-mail kschwartz@sci-dc.org to sign up for both.) When you see a request for assistance that applies to your hunting activities or to those of your friends and/or acquaintances, respond to the call for volunteers. Don't miss the opportunity to be part of SCI's litigation efforts!

To Join or Not to Join With Other Groups in Litigation

When you hear about SCI's litigation efforts, you may notice that sometimes we share the spotlight with groups like Ducks Unlimited, the Exotic Wildlife Association, U.S. Sportsmen's Alliance, The New Jersey State Federation of Sportsmen's Clubs, Inc., the Minnesota Outdoor Heritage Alliance, California Waterfowl, and Delta Waterfowl. We decide to collaborate with others for many reasons, but always to protect the right to hunt and sustainable use conservation.

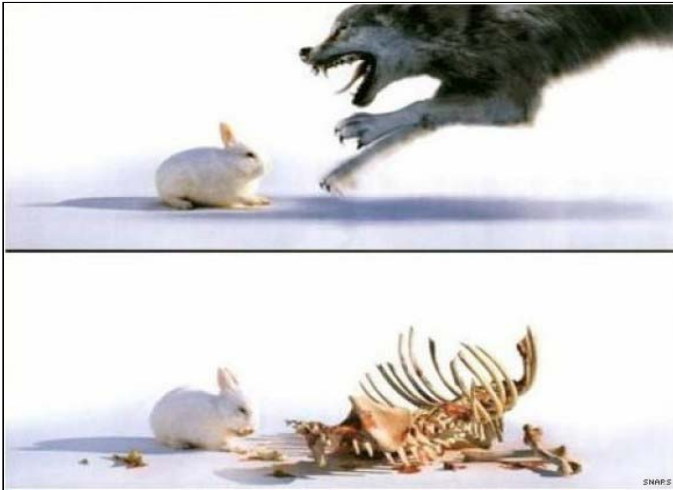
In the majority of our cases, the most direct impact of a case is focused within a particular state or region. In many of those situations, SCI's litigation team seeks out local or state-wide groups that have members who stand to lose the most in these lawsuits. Without the involvement of these local hunters or groups, SCI can be perceived as an "outsider." SCI collaborates with these individuals and groups so that local and state judges and officials recognize SCI's connection with and understanding of the interests of the affected community.

Partnerships with local organizations sometimes help SCI's attorneys to obtain helpful on-the-ground factual information or insight about the issues of the case. In some cases, the local group may have a lawyer member willing to act as "local counsel" on a for-free or reduced-rate basis. And lastly, participating with local or state groups exposes these groups to SCI and what we are doing to protect their hunting opportunities and advance sustainable use conservation. This "good will" can lead to more members, more satisfied members, and favorable public relations.

A perfect example of the benefits of partnership with local groups is SCI's collaboration in the Minnesota lynx/trapping cases. When SCI decided to participate in litigation brought by anti-hunting and anti-trapping groups, SCI looked for a "local" partner. Through SCI leaders Don McMillan and Sven Lindquist, SCI's litigation team contacted the Minnesota Outdoor Heritage Alliance (MOHA), an umbrella organization of over 40 hunting, Please see *Litigation Groups* on page 6.

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trapping, and sporting groups in the State. This group is well-respected and represents thousands of hunters and sportsmen and women in Minnesota. No doubt the Judge was aware of these facts when he granted amici curiae (friend of the court) status to SCI and MOHA.



MOHA and SCI member Kirk Schnitker stepped up to the plate and offered to be “local counsel” in the case without charging for any of his time. Already, Kirk has assisted on the filing of several motions, attended a hearing with SCI’s attorney, and participated in a meeting with attorneys for the State and other defendants.

Our collaboration with MOHA has exposed the members of the groups comprising MOHA to our efforts to protect trapping, hunting, and sustainable use conservation. SCI gets local credibility and an understanding of the impact of the loss of trapping opportunities for Minnesota trappers and hunters. This win-win situation will be a powerful tool in our effort to beat back the efforts of those who would like to end trapping and hunting forever.

Meet Your Legal Task Force and Litigation Staff

SCI’s litigation advocacy is the product of the valuable collaboration of volunteer and staff effort. The members of the Legal Task Force have no easy job and are frequently asked to “weigh in” on decisions affecting SCI’s involvement in cases around the country. To make these decisions, LTF members are asked to review lengthy and detailed descriptions of legal and political issues and often must render their considered opinions on a moment’s notice.

The Legal Task Force is led by Chairman **Kevin Anderson**. Kevin is currently a Vice President of SCI, Chairman of the Ethics Committee and sits on the Bylaws and Publications Committee. He is a partner in the Missouri law firm of Anderson, Milholland & Wagner P.C.; serves as a municipal judge for the city of Harrisville, Missouri; and has been practicing probate, real estate, criminal and business law for 25 years. He has been a member of Safari Club for over 15 years and is a member of

the Kansas City, Missouri Chapter. In the past he has served as a Chapter Director, Chapter President and Director-At-Large.

Ron Arendt practices personal injury, emphasizing in motor vehicle incident cases, through the firm of Ronald A. Arendt Inc. He has been a member of SCI for 17 years and is a charter member of the Granite Bay Chapter, for which he has served as Treasurer, President and continues as an active board member. He is currently Treasurer of SCI and has previously served as Vice President, Secretary and Regional Representative. He has chaired and served on both the Ethics Committee and Membership Committee in addition to working on and with numerous other committees. Ron is presently the EC liaison to the Veterans Committee.

Before retiring from his law practice, **John Nelson** was a trial attorney, specializing in personal Please see *Meet Your* on page 8.

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injury, commercial and family law. He also served as a Judge Pro Tem for the Maricopa County Superior Court. John has been a member of SCI for 24 years and is affiliated with the Western Colorado and Bookcliff Chapters. He currently serves as an SCI Vice President, chairs the Membership Committee, is the vice chairman of the Bylaws Committee and serves on the Ethics Committee. He was the Founding Director, President, and Secretary of the Phoenix Chapter, the President, Secretary, and Director of the Western Colorado Chapter, and has served as the Chair of the Regional Representatives of SCI.

After retiring from his position as senior officer of a super-regional financial institution, **Donald Black** entered the private practice of law, specializing in corporate, commercial, real estate and federal tax law. He has been a Safari Club International member for 21 years and is affiliated with the Detroit, Paso del Norte, Novi, Lansing Area and Southern New Mexico Chapters. He has served as President of the Detroit Chapter and on several committees of that and other chapters. He is a former member of the Southwestern Ontario Canada Chapter and has provided his pro bono legal services to a number of SCI chapters.

Former SCI President **John Monson** is a member of the New Hampshire law firm of Wiggin and Nourie P.A. For the last 40 years John has practiced corporate, merger and acquisition, estate and taxation law. John is a life member of SCI and has been a member since 1989. He has also served as Vice President, Treasurer and President Elect. He is a member of the Maine, New Hampshire, Idaho and New England Chapters and an honorary member of the Bavarian and Catalunya Chapters.

One of our newest members of the Litigation Task Force, attorney **Robert Gilbert** practices commercial litigation and bankruptcy law with the firm of Carlton Field, P.A. He has been a

member of SCI for approximately five years and is affiliated with the Palm Beach Florida Chapter of SCI.

Jeff Goodwin of the Goodwin Law Corporation specializes in personal injury, medical malpractice, products liability, and estate planning. He has been a member of SCI for over 25 years and is a member of the Quarter Century Society. He is a member of the Sacramento and Granite Bay chapters and has been president of both chapters. Jeff served as SCI's local counsel for the California three-antelope litigation.

Brent Cole is a partner in the firm of Marston & Cole, P.C. of Anchorage, Alaska. Brent practices civil litigation and represents guides, outfitters and transporters around the state of Alaska on civil, criminal, small business, land and regulatory issues. He has been a member since 2000 and is also a member of the Alaska Chapter of SCI. Brent is one the Litigation Task Force's most active members and has served as SCI's local Please see *Meet Your* on page 8.



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counsel for the Alaska Subsistence Litigation since its origin in 1998.

SCI's Legal Task Force is supported by the Litigation Department of Safari Club International, headquartered in Washington, D.C. **Anna Seidman**, SCI's Chief Litigation Counsel, has been practicing law for 25 years and is admitted to practice in Virginia, Pennsylvania and District of Columbia. Anna joined SCI in 1999 as an independent contractor and became a full-time litigation attorney for SCI in 2003. Prior to her employment with SCI, Anna specialized in nonprofit risk and liability law and she is the author and/or co-author of several publications on nonprofit risk management.

Doug Burdin, SCI's Litigation Counsel, joined SCI's litigation team in 2005, after 14 years of private practice. Doug has focused on wildlife, natural resources, and environmental law, and has represented a national hunting organization. He is admitted to practice in the District of

Columbia and is a member of numerous Federal courts around the country.

Rick Parsons, who is SCI's Director of Governmental Affairs and Wildlife Conservation, maintains general oversight of the litigation staff. As a government attorney, Rick worked on a variety of wildlife laws and their implementing regulations, including the Endangered Species Act and the Marine Mammal Protection Act. He was one of the draftsmen for the CITES treaty, headed the original CITES office in the U.S. Fish and Wildlife Service, and was the first chairman of the CITES Standing Committee. Rick has served as governmental affairs counsel for SCI since 1985. In 1997, he became head of SCI's Washington Office.

Maya Kapsokavadis is the newest addition to the litigation department. Maya provides litigation and administrative support on a part-time basis while completing her degree in International Conflict Resolution and History at George Mason University.

Litigation Hall of Fame

SCI thanks all of the fine individuals who have made it possible for us to enter courts around the country to protect hunting and advocate for sustainable use conservation.

Our litigation hall of fame includes **Cliff McDonald**, East Mojave National Preserve Water Development litigation; **Gene Rurka**, New Jersey Black Bear litigation; Maryland State **Senator John Astle**, Maryland Black Bear litigation; **Jerry Fletcher** and **Michael Ward**, Arizona Mountain Lion litigation; **Bernard Smits**; **Stephen J. Gillhouse**, **Russell Smith**, **Duane Bernard**, and **Robert Jurak**, Gray Wolf Listing litigation; **Broughton Earnest** and **Maureen Waterman**, Mute Swan litigation; **Alan P. Zanotti** and **Michael MacAskill**, Cape Cod National Seashore hunting litigation; **Mark C. Cook** and **Mike Ohlmann** National Wildlife Refuge litigation; **Don Tarpey**, **Mike Simpson** and **Tom Riley**, three antelope species litigation; **Larry Rivers**, **Jerry Jacques**, **Larry**



Lewis, **Jon Shiesl**, **Dan Ziek**, **Charles Daniels**, **Eugene Witt III**, **Susan Entsminger**, **Frank Entsminger**, **Joe Klutsch**, **Ron Maddox**, **Kurt Norby**, **Larry Daly** and **Mike Hamrick** Alaska Subsistence litigation; **Eduardo Jose Maria Gerlero**, **Bill Moritz**, **Suaro Albertini**, **Jose A Martinez De Hoz**, **Joseph Ben Ward**, **Donald Jacklin** and **James Craig Groomett**, Argali Sheep litigation; **Bill Monts de Oca**, **James Petrina**, **Lee Davenport**, **Randal Morris** and **Robin Thigpen**, Florida Black Bear litigation; and **Kirk Schnitker**, Minnesota trapping litigation.