

# SAFARI CLUB INTERNATIONAL

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## IS SUCCESS ENOUGH FOR THE ESA?



A ruling is imminent in a case that will determine the legality of regulations that allow the trade and sport hunting of members of captive herds of three exotic, endangered antelope species living on ranches in the United States. Safari Club International and the Exotic Wildlife Association have intervened in that case to defend those regulations. The animal rights groups that sued, including HSUS and Friends of Animals, don't want hunting to be part of endangered species conservation. They want the court to toss the rule in order to prevent

hunting of the three species entirely or at least to require each ranch owner

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## WAITING IN THE WINGS

SCI has filed two cases involving polar bears. One case directly challenges the ban on imports of polar bear trophies from approved populations in Canada. That ban arose when the U.S. Fish and Wildlife Service (FWS) listed the polar bear as threatened under the Endangered Species Act (ESA). A second lawsuit challenges the listing itself, for without the listing, there would be no import ban. Both cases seek to reinstate the import authority that existed before the polar bear joined the list of threatened species. In both cases, SCI will soon have to prove that the import ban harms its members in concrete ways.

SCI's challenges are not the only polar bear cases occupying the courts. Three environmental groups believe that "threatened" status is not strong enough and have sued the FWS for not listing the polar bear as an "endangered" species. Success by these groups in their case would mean defeat for SCI in its own challenge to the listing. SCI needed to intervene in that case to prevent any rulings that could interfere with SCI's success in its own litigation. To persuade the court to allow us to intervene, SCI needed to prove that the listing and import ban harms SCI members. For that kind of proof, SCI's litigation team needed help.

SCI's lawyers sent the call out to members. Dozens responded, including those who hunted last year and now have trophies stranded in Canada because they were unable to import before the ban went into effect.

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## INTERVENTION KEEPS HOPE OF CONCEALED CARRY IN NATIONAL PARKS AND REFUGES ALIVE

Intervention is one of the many tools SCI's litigation team uses to protect hunter's rights. An intervenor is a person or group whose interests would be harmed by the outcome of a court case even though they are not an original party to the case. Intervention status is preferable to amicus status because the intervenor gains all of the rights of a party to a case, including the right of appeal.

Recent events in ongoing litigation about the ability to carry concealed handguns in national parks and refuges display the potential importance of gaining intervention status. In early December 2008, the Department of the Interior finalized new rules establishing that state law governs whether and how firearms may be carried in National Parks and National Wildlife Refuges. Before this change, federal law placed strict limits on the carriage and transport of firearms in and through National Parks and National Wildlife Refuges. Guns had to be unloaded, disassembled, and kept separate from the passenger area if being transported in a vehicle. While some exceptions applied (e.g., while hunting in a National Wildlife Refuge), in most situations, hunters found these restrictions burdensome. For example, a hunter that needed to pass through a National Park unit on his way from one hunting area to another would be required to disassemble and store his firearm. The new regulations relaxed those restrictions.

The Brady Campaign, an anti-gun group, and others filed lawsuits challenging the new regulations. The Mountain States Legal Foundation ("MSLF") and the National Rifle Association moved to intervene in both cases. SCI entered the case as an amicus, reasoning that because the two other groups had already moved to intervene, a third intervenor was not necessary.

In March, the D.C. federal District Court issued a preliminary injunction that reversed the 2008 concealed carry rules and restored the onerous previous restrictions. The NRA immediately appealed the ruling. After considering its options, the Department of the Interior decided not to appeal to defend the rule. But for the intervenor status of the NRA, the case would end with the ruling of the District Court. Even though the original government defendant will not pursue an appeal, the intervenors have the right to do so. Therefore

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## THE CANAAN CREED – AN ENTERTAINING NOVEL WITH AN ENVIRONMENTAL “TWIST”

L.P. Hoffman's new novel, *The Canaan Creed*, tells an engaging story with a plot that questions the validity of global warming research and firmly places the “black hats” on environmental fanatics. The author (who also happens to be the wife of former Deputy Assistant Secretary for Fish, Wildlife and Parks, Paul Hoffman) embroiders her story with references to the benefits of silviculture, unsavory aspects of the release of wolves in Wyoming, and valuable tactics for survival in the wild. The reader accompanies the protagonist, Anna O'Neill, as she learns hidden truths about the environmental movement. Through suspense and mystery, Hoffman offers her readers a perspective on the environment rarely found in fiction or non-fiction. The book can be ordered from the author at [www.hopespringmedia.com](http://www.hopespringmedia.com).



*One Legal Task Force Member spotted this extreme wolf position on a car's license plate.*

## SCI LEGAL VICTORIES LEAD TO ON-THE-GROUND BENEFITS

When SCI participates in a lawsuit, we hope for a victory and at least for some positive results that benefit on-the-ground hunting and conservation. With this in mind, we revisit some of our past litigation successes to check on the results of SCI's work.

**Kofa Water Development for Sheep Conservation:** When wilderness extremists challenged the U.S. Fish and Wildlife's (FWS) renovation and activation of two water developments to benefit bighorn sheep on Arizona's Kofa National Wildlife Refuge in 2008, SCI jumped in to help with the defense. The Court rejected the Wilderness groups' attempt to shut down and remove the two water developments. As a result, the water sources have remained in place and the local wildlife has benefitted. SCI is continuing to litigate this case in the court of appeals.

**Wildlife Refuge Hunting:** Over the last five years, SCI has been defending against litigation that seeks to end hunting in over 70 National Wildlife Refuges. After the anti-hunting plaintiffs achieved some success on the merits in 2006, the Judge ordered briefing on whether he should halt hunting until the FWS complies with the law. SCI filed a brief explaining why hunting should continue. The Court did not order the cessation of hunting on the refuges. As a result, over the last couple of years, extensive hunting has continued on these refuges.

**Florida Black Bear Hunting:** In 2006-07, SCI helped successfully defend a decision by the FWS not to list the Florida black bear under the Endangered Species Act (ESA). Such a listing would have ended Florida black bear hunting in southern Georgia and precluded Florida from re-establishing a hunt. Victory in this case has allowed Georgia to hold successful bear hunts near the Okefenokee Swamp in September/October 2007 and 2008. Georgia will be holding another bear hunt in 2009.

**Mute Swan Management:** In 2005-06, SCI defended a challenge to a federal law that allowed the states, in particular Maryland, to lethally control non-native mute swans. This species is detrimental to both native waterfowl and their habitat. We achieved success in both the trial court and court of appeals. Now, several years later, Maryland has reduced the mute swan population from approximately 3,500 to 500, a much more manageable number. The waterfowl and habitat of the Chesapeake Bay have benefitted.

**Cape Cod Hunting Program:** In 2004, SCI helped defend against a challenge to the hunting program at Cape Cod National Seashore. While the Court stopped one aspect of the overall hunting program (stocked pheasant hunting), it allowed the rest of the hunting to continue while the National Park Service established a new hunting program. Several years later, the Park Service completed that process, adopting a comprehensive hunting program and even reinstating pheasant hunting.

Victory is sweet, but concrete results are even better. SCI's Litigation Team continues to seek success in the courts and, more importantly, real, on-the-ground benefits to hunting and conservation.

## WAITING IN THE WINGS (CONT.)

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Other SCI members attested to cancelling or not making plans to hunt polar bear because of the import ban. All were willing to help SCI in its litigation efforts, including by providing sworn declarations recounting these facts.

While SCI obtained intervenor status in the environmental groups' lawsuit without the need for declarations, the information that SCI obtained from these members will soon become valuable for our own polar bear lawsuits. In the coming months, the litigation team will again call on these members to recount their stories for the court. It is only through the willingness of SCI members to help the cause, to take the time to recount their stories, and to put their signatures to paper, that SCI can bring lawsuits that benefit not only SCI's members, but hunting and conservation in general. SCI appreciates these members who are waiting in the wings to help.

## THREE ANTELOPE (CONT.)

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to file an individual permit application each time he or she wants to allow a hunter to take an animal from his or her ranch.

On September 2, 2005, the U.S. Fish and Wildlife Service (FWS) listed the three antelope species as “endangered.” Native to northern Africa, the three species had all but disappeared in the wild. Because thousands of the three antelope species were thriving on ranches in Texas and other states in the U.S., the FWS adopted a special regulation that allowed ranches to continue trading and to permit hunting of antelope from their herds without submitting individual permit applications. The regulation preserved a situation that had been successfully conserving and increasing population numbers for years. Ranchers strongly opposed the listing and/or any restrictions on their ability to trade and manage these exotic animals. They candidly explained to the FWS that regulatory restrictions and the imposition of additional requirements would make the raising, breeding, trading and managing of these animals more difficult and more expensive and would encourage if not force many ranchers to abandon their efforts with scimitar-horned oryx, dama gazelle and addax. The FWS crafted a reasonable solution and listed the three species but waived the individual permit requirements for U.S. captive populations. The animal rights groups refused to tolerate the agency’s reasonable approach.

In their briefs in support of the rule, SCI lawyers have asked the court to recognize the conservation success that the regulation has protected. SCI has reminded the court that the ESA is not an anti-hunting law and that the procedural requirements of the law should not interfere with the demonstrated conservation of a species. Success in this case will take a huge step in the recognition of hunting as a valuable conservation tool for listed species.

## INTERVENTION KEEPS HOPE OF CONCEALED CARRY IN NATIONAL PARKS ALIVE (CONT.)

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it is only the intervention of the outside parties that is allowing the appeal to move forward, with hopes of a reversal of the lower court ruling.

Intervenor status has served SCI well in other cases. It was SCI’s intervenor status that made all the difference in a case involving ESA permits to Wisconsin for the lethal removal of problem wolves. As an intervenor, SCI had the right to ask the D.C. Court of Appeals to vacate a district court opinion on the use of ESA enhancement permits for the lethal removal of problem members of an endangered species.

Although intervenor status involves more work, and exposes SCI to some additional risk, it also entitles SCI to carry on battles and remedy errors in cases that are important to SCI members, to hunting and to conservation. Intervenor status is not the correct tool for every case of interest to SCI, but it is a valuable tool that we, and our colleagues, have used to our advantage to protect hunters’ rights and the wildlife we value.

### **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 Burrell, John Daly**

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