

The Supreme Court - November 27, 2018

The Supreme Court of the United States issued the following decision today:

Weyerhaeuser Co. v. United States Fish and Wildlife Serv., No. 17-71: The Fish and Wildlife Service, which administers the Endangered Species Act on behalf of the Secretary of the Interior, listed the dusky gopher frog as an endangered species and designated “Unit 1” in St. Tammany Parish, Louisiana as “critical habitat” under 16 U.S.C. §1533(a)(3)(A)(i). Petitioner Weyerhaeuser and other landowners of Unit 1 challenged this designation in federal court. They argued Unit 1 – an area where the frog had once, but did not currently live – could not be critical habitat because the frog could not currently survive there. They also argued that the Secretary erred in failing to exclude their property, as the Secretary is authorized to do under the Act if the benefits of exclusion outweigh the benefits of designation. The District Court rejected these challenges, and the Fifth Circuit affirmed, holding that the “critical habitat” definition does not contain any habitability requirement, and that the Secretary’s decision not to exclude Unit 1 was unreviewable. Today, the Court vacated and remanded, holding that “critical habitat” must be “habitat,” but remanded for the Fifth Circuit to determine in the first instance whether habitat includes areas where the species could not currently survive. The Court also held that the Service’s decision not to exclude the landowners’ property from critical habitat was subject to judicial review as arbitrary, capricious, or an abuse of discretion, and remanded for the Fifth Circuit’s consideration of that issue in the first instance.

The Court’s decision is available [here](#).

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