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In Win for WLF, High Court Authorizes Courts to Consider Costs of Endangered Species Act Listings

(Weyerhaeuser Co. v. U.S. Fish & Wildlife Service)

“The federal government argued that courts are not permitted to review a broad swath of Fish and Wildlife Service decisions imposing land-use restrictions under the Endangered Species Act. The Supreme Court appropriately rejected that argument, which contradicts the ‘strong presumption’ that federal administrative actions are judicially reviewable.”

—Richard Samp, WLF Chief Counsel

WASHINGTON, DC—In a victory for Washington Legal Foundation (WLF), the U.S. Supreme Court today reinstated challenges to a decision by the U.S. Fish and Wildlife Service (FWS) to designate private property in Louisiana as “critical habitat” for an endangered species of frog, even though the frog does not live in Louisiana and might be unable to do so without substantial land modifications. The Court’s decision in *Weyerhaeuser v. U.S. Fish & Wildlife Service* agreed with WLF’s arguments, set out in its brief, that the appeals court erred in concluding that Congress barred cost-benefit challenges to such designations. WLF’s brief was joined by the Allied Educational Foundation.

The disputed Louisiana land consists of 1,500 acres of forest that the owners hope to develop, but its potential for development is substantially decreased by the “critical habitat” designation. FWS officials estimated that the designation decreases land values by as much as \$35 million. They also recognized that the designation would have little, if any, short-term value for the endangered frog because the landowners’ permission (unlikely to be granted) is required before (1) necessary land modifications could be undertaken; and (2) frogs could be transported to the land from their current Mississippi habitat. Despite this near-infinite cost-benefit ratio, FWS nonetheless decided to designate the land.

WLF’s brief argued that the Endangered Species Act (ESA) expressly authorizes courts to review whether FWS abuses its discretion if it designates land as “critical habitat” when the costs of designation greatly exceed the benefits. WLF noted that Congress amended the ESA to require FWS to take account of costs and benefits of its actions—a strong indication that Congress intended to permit judicial review. In ruling that courts are permitted to review FWS cost-benefit determinations, the Supreme Court agreed with WLF that a contrary ruling would be inconsistent with the strong presumption that all federal administrative actions are subject to judicial review. The Court also directed the lower courts, on remand, to determine whether the designated land qualifies as “habitat” for the endangered frog—that is, whether the frog could survive on the land in the absence of substantial modifications.

Celebrating its 41st year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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