

# Supreme Court partially answers legal question about critical habitat

The fate of a gopher frog

By MATEUSZ PERKOWSKI  
Capital Press



U.S. Fish and Wildlife Service

The dusky gopher frog is endangered.

The question of whether critical habitat must actually be inhabitable by a threatened or endangered species has been partially answered by the U.S. Supreme Court.

The ruling pertains to the dusky gopher frog, an endangered amphibian historically found in the South, but agriculture advocates argue such designations would affect farm and forestland elsewhere.

About 1,500 acres in Louisiana were designed as critical habitat for the species, even though the property would need to be significantly modified to be suitable for the frog.

While the property does contain five seasonal ponds that could serve as breeding habitat for the species, the upland forests are too dense for the frog.

Weyerhaeuser and other affected landowners feared the designation would prevent development of the property and challenged the U.S. Fish and Wildlife Service's decision in court.

The critical habitat designation was affirmed by a federal judge and the 5th U.S. Circuit Court of Appeals upheld that ruling.

The nation's highest court has now overturned the 5th Circuit's opinion, ruling that only the actual habitat of a threatened or endangered species can be designated as critical.

"According to the ordi-

nary understanding of how adjectives work, 'critical habitat' must also be 'habitat,'" according to the unanimous decision, which was written by Chief Justice John Roberts.

However, that finding doesn't put an end to the matter because the U.S. Fish and Wildlife Service disputes Weyerhaeuser's claim that the frog can't currently survive on the 1,500 acres.

Instead of resolving this question, the Supreme Court has instead sent the case back to the 5th Circuit to consider what qualifies as habitat.

"That is no baseline definition of habitat — it identifies only certain areas that are indispensable to the conservation of the endangered species," the ruling said. "The definition allows the secretary to identify the sub-

set of habitat that is critical, but leaves the larger category of habitat undefined."

Some other of Weyerhaeuser's arguments regarding the critical habitat designation's economic impacts have also been remanded to the 5th Circuit.

Specifically, the company claimed the federal government should have considered the specific impacts of the designation on those 1,500 acres, rather than the entirety of the frog's critical habitat, which included sites in Mississippi it inhabits.

Also, the company argued the U.S. Fish and Wildlife Service should have considered more than the \$34 million cost of lost development rights, such as the lost tax revenues for the local government and the cost of modifying the habitat.

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# Large earthquake rocks buildings in Anchorage

Associated Press

ANCHORAGE — A 6.6 magnitude earthquake rocked buildings this morning in Anchorage and caused lamp posts and trees to sway, prompting people to run out of offices and seek shelter under office desks.

The U.S. Geological Survey says the earthquake was

centered about 7 miles north of Alaska's largest city.

An Associated Press reporter working in downtown Anchorage saw cracks in a 2-story building after the quake. It was unclear whether there were injuries.

People went back inside buildings after the earthquake but a smaller aftershock a short time later sent them running

back into the streets again.

Shortly after the quake, a tsunami warning was issued for the southern Alaska coastal areas of Cook's Inlet and part of the Kenai peninsula.

The warning means tsunami waves were expected.

The U.S. Geological Survey initially said it was a 6.7 magnitude earthquake and then reduced the magnitude to 6.6.

# Feds threaten to sue Washington state to block Hanford worker comp

Associated Press

RICHLAND, Wash. — The federal government is threatening to sue Washington state to block recent legislation that helps workers at a former nuclear weapons production site win compensation claims for illnesses.

The U.S. Department of Justice recently informed Gov. Jay Inslee that the law violates the supremacy clause of the U.S. Constitution because it "purports to directly regulate" the federal government and discriminates against it and its contractors.

The Seattle Times reported the letter to Inslee warned of legal action if a settlement cannot be reached by today.

The letter represents the Trump administration's displeasure with a state law passed last spring to help Hanford workers who fell sick, the newspaper reported.

Hanford for decades made plutonium for nuclear weapons and thousands of workers are now engaged in the dangerous work of cleaning up the resulting radioactive waste. The site is located near Richland, Washington.

The Department of Energy, which operates Hanford, is a self-insured employer and pays out claims. The state Department of Labor & Industries makes the final determination on any cases that are appealed by Hanford workers.

Under the new law passed this year, some cancers and other illnesses are assumed to be due to chemical or radiological exposures at Hanford, unless that presumption can be rebutted by clear and convincing evidence.

Representatives for Inslee and state Attorney General Bob Ferguson, both Democrats, said they were willing to discuss the new law with the federal government, but were unwilling to suspend enforcement.

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