

## Environmental groups intervene in St. Tammany landowners' gopher frog habitat lawsuit

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A legal battle over the dusky gopher frog has two more combatants — environmental groups that a federal judge has allowed to intervene in lawsuits filed by St. Tammany Parish landowners who say the government is taking their land by designating it as critical habitat for the species.

Three St. Tammany Parish landowners, P & F Lumber Co., St. Tammany Land Co. and PF Monroe Properties, filed suit in federal court in February, challenging a 2012 U.S. Fish & Wildlife Service ruling that designates 1,544 acres of land in the central part of the parish as critical gopher frog habitat.



Associated Press file photoA gopher frog is displayed at the Audubon Zoo in New Orleans in 2011. A property rights group is calling the designation of 1,500 acres in St. Tammany Parish as critical habitat for the endangered frog a federal land grab.

That suit and two others by landowners — the Pacific Legal Foundation on behalf of Markle Interests and Weyerhaeuser Company — were consolidated.

The Center for Biological Diversity and the Gulf Restoration Network petitioned to intervene in the lawsuits in April, and U.S. Magistrate Judge Sally Shushan ruled in their favor Tuesday.

“We’ll do everything we can to make sure these lawsuits don’t interfere with the survival and recovery of these highly endangered frogs,” Collette Adkins Giese, an attorney for the Center for Biological Diversity, said in a news release posted on the group’s website.

“I mean, there are maybe 100 of these frogs left in the world,” she said. “Protection of all their remaining essential habitat is absolutely necessary. Every species we lose forever is a loss that can never be undone.”

But the plaintiffs point out in their lawsuit that no dusky gopher frogs live in St. Tammany Parish. They argue that the U.S. Fish and Wildlife rule was improperly issued because the frog habitat was lost nearly 50 years ago and the land was not part of the species’ range.

Edward B. Poitevent, one of the landowners, calls the rule “an unconstitutional land grab” that will deny his family use of their land without any benefit to the frog.

“We regret yesterday’s ruling that left-wing environmental groups, Center for Biological Diversity and Gulf Restoration Network, can intervene in our lawsuit to overturn the Fish and Wildlife Service’s unconstitutional taking of our land in St. Tammany Parish to establish ‘critical habitat’ for frogs that cannot and do not live there as the land will never be suitable for frogs to survive,” Poitevent said in an email.

Despite that, he said, the agency ruled that the landowners’ property was essential for the frogs. “Our lawsuit was filed to right this wrong.”

On the environmental group’s website, Adkins Giese said that St. Tammany Parish is the last place in Louisiana where the frog lived, and the land in question provides what the frog needs: temporary ponds within hopping distance of each other where they can lay their eggs.

“The dusky gopher frog now regularly breeds in just one pond on Earth, so protection and restoration of the St. Tammany Parish lands are needed to prevent the frog’s extinction,” she said.

Brenda Bertus, executive director of the St. Tammany Economic Development Foundation, said the loss to the landowners from the rule would total \$36 million.

“That doesn’t take into account lost taxes,” she said.

St. Tammany officials have also identified that part of the parish as an area for potential growth because it is located north of Interstate 12 — an area that is safer from hurricanes.

The issue isn’t just about St. Tammany, Bertus said, but also has implications for the larger metro New Orleans area.

“When you look at the Atlanta, Dallas or Houston metro areas, what would it have done to their development?” she asked.

The Center of Biological Diversity says the dusky gopher frog, which spends much of its time underground in gopher tortoise burrows, has been hurt by fire suppression, drought, pesticides, urban sprawl, highway construction and the decline of gopher tortoises. Those pressures “have made this frog so rare it now lives in only a few small Mississippi ponds, with only one pond showing consistent frog reproduction,” the website said.

If landowners were willing to work cooperatively with the U.S. Fish and Wildlife Service “they could take reasonable steps to help save the frog while still keeping their lands in business,” Giese said.

But that's not how the landowners see it. They say the designation will render their land worthless, particularly since frequent controlled burns will be needed to keep down vegetation unfavorable to the gopher frog. It's not a matter of cooperation, according to Poitevent, but coercion.

“The message is this: you need to do things our way to ‘save the frogs’ (even though that won’t work), or you will never make a penny out of your land,” he said. “That’s extortion.”