

Federal judge upholds 'critical habitat' designation for endangered frog

By Kevin McGill / Associated Press
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NEW ORLEANS (AP) — A federal judge ruled Friday that U.S. Fish and Wildlife officials were within the law when they declared thousands of acres in Louisiana and Mississippi as 'critical habitat' for the endangered dusky gopher frog.

The case involved 1,544 acres in St. Tammany Parish and 5,000 acres in Mississippi named as critical habitat for the animal.

Landowners had argued that the Fish and Wildlife Service should have prepared an environmental impact statement on the designation, and that the service failed to adequately consider the possible economic impact of its decision.

U.S. District Judge Martin Feldman rejected those and other arguments Friday.

"The Court has little doubt that what the government has done is remarkably intrusive and has all the hallmarks of governmental insensitivity to private property," he wrote. "The troubling question is whether the law authorizes such action and whether the government has acted within the law. Reluctantly, the Court answers yes to both questions."

The 3½-inch-long frogs once lived in Louisiana, Mississippi and Alabama. Now an estimated 100 to 200 adults live in a few spots in Mississippi, with fewer than 900 in zoos around the country. The Center for Biological Diversity, which intervened in the suit, says that 98 percent of the frog's natural habitat has disappeared for various reasons, including drought and urban sprawl.

The Pacific Legal Foundation sued the Fish and Wildlife Service last year on behalf of landowners identified as the Markle Interests LLC. Other plaintiffs later included the Weyerhaeuser Co., P&F Lumber Co., PF Monroe Properties and St. Tammany Land Co.

In arguments Thursday, landowners noted estimates that the designation could cost more than \$33 million in lost development. A wildlife service lawyer argued that such a high cost is unlikely and that there are few cases in which developers have not come up with economically and reasonably workable ways to protect endangered animals.

Feldman ruled that federal authorities met their requirements for considering economic impacts. He also rejected arguments that the Louisiana acreage, in an area identified as "Unit 1," should not be in the Fish and Wildlife Service's critical habitat designation because dusky gopher frogs have not been sighted there since the 1960s.

"FWS's failure (as yet) to identify how or when a viable population of dusky gopher frogs will be achieved, as indifferent and overreaching by the government as it appears, does not serve to invalidate its finding that Unit 1 was part of the minimum required habitat for the frog's conservation," Feldman wrote.

Attorney M. Reed Harper for the Pacific Legal Foundation said he found some encouragement in Feldman's expressed reluctance to rule in favor of the wildlife service. "He's anticipating that there will have to be a legislative fix," Harper said. "That may be true in the end. Nevertheless, we'll avail ourselves of every opportunity we have to litigate this in the courts of appeal."

Collete Adkins Giese, an attorney with the Center for Biological Diversity, applauded the ruling.

"The dusky gopher frog is on the brink of extinction and desperately needed today's good news," she said in a news release.