

## Frog's 'critical habitat' not abuse of federal power, court rules



The endangered dusky gopher frog (*NOLA.com | The Times-Picayune archive*)

By [Kim Chatelain, NOLA.com | The Times-Picayune](#)

Email the author | [Follow on Twitter](#)

on July 05, 2016 at 2:34 PM, updated July 05, 2016 at 2:58 PM

In a decision deemed by a plaintiff's attorney as "absurd," the federal appeals court in New Orleans agrees that the U.S. Fish and Wildlife Service did not overstep its authority by [designating 1,544 acres of privately owned land in western St. Tammany Parish as "critical habitat"](#) for the endangered dusky gopher frog. Attorneys for the plaintiffs, owners of the St. Tammany Parish land affected by the designation, said Tuesday (July 5) they will ask the 5<sup>th</sup> U.S. Circuit Court of Appeals to reconsider the case and, if necessary, will petition the U.S. Supreme Court for review.

In essence, the 5<sup>th</sup> Circuit Court held that the Fish and Wildlife Service was on sound ground in concluding that the St. Tammany land is essential for recovery of the frogs, which environmentalists say number fewer than 100 on Earth. Writing the majority opinion, Judge Stephen Higginson of New Orleans, whom President Barack Obama appointed to the bench, rejected the landowners' argument that federal regulation of private land amounts to an abuse of power.

"This important ruling is good news for these endangered frogs that desperately need room to recover," Collette Adkins, an attorney for the Center for Biological Diversity, said.

The medium-sized frog, with warts covering its back and dusky spots on its belly, lives underground in pine forests and breeds in small, temporary ponds. It hasn't been seen in Louisiana since 1965, and the only frogs known to exist today are in Harrison County, Miss., north of Gulfport.

[Lawsuits were filed](#) in 2013 by Poitevent family companies and Weyerhaeuser Co. over the federal government's

2012 decision to label 1,544 acres of timberland as critical habitat for the frog. The Poitevent family owns most of the acreage, which straddles Louisiana 36 west of [Pearl River](#); Weyerhaeuser owns 140 acres and has a timber lease on all of it.

The landowners assert that the property does not contain the three elements necessary for the frog:

- Temporary ponds
- Upland habitat
- Connecting habitat allowing the frogs to move from one area to the other.

They say the government overstepped its authority and violated the law with its designation on the land. They argued that the government's action amounts to a federal land grab that illegally takes the property out of commerce and could cost them tens of millions of dollars.

But defense attorneys argued that the property is a breeding habitat that could be used today if the frogs were present. The Fish and Wildlife Service followed the law in its actions, including considering the economic effects on the property owners, defense attorneys said.

In August 2014, U.S. District Judge Martin Feldman, who was nominated to the bench by President Ronald Reagan, rejected the plaintiffs' arguments. Edward Poitevent II of New Orleans, whose family owns most of the property, announced at the time he would take the case to the 5<sup>th</sup> Circuit Court of Appeals.

