

Supreme Court grants a shy frog the chance to shape critical habitat designations

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Endangered Species Alert

The Supreme Court (the Court) will soon address two recurring issues concerning administration of the Endangered Species Act, and more broadly the deference given to agency action in the discretionary exercise of statutory authority. Last week, the Supreme Court granted certiorari of *Weyerhaeuser Co. v. U.S. Fish and Wildlife Service* (the Service), a Fifth Circuit case involving a small “shy frog” from Mississippi that could have broad implications for interpretations of the Endangered Species Act.

The Supreme Court’s opinion in this case is likely to influence both the designation of critical habitat and administrative law generally. A reversal by the Supreme Court could prevent the Service from designating critical habitat in areas not currently inhabited or otherwise deemed inhabitable by the species. A particularly strict reading may even prevent the Service from designating unoccupied habitat that is needed to supplement the listed species’ currently occupied habitat. The Court will also likely provide guidance on the weight given by the Service to its assessment of economic factors when making critical habitat designations. More broadly, this case is expected to impact basic principles of judicial review and agency deference and could have an expansive reach for federal agencies generally, well beyond the Service’s protection of the shy frog from Mississippi.

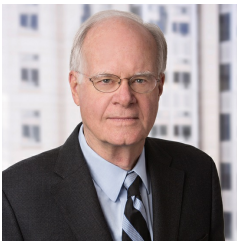
Read more: [Supreme Court grants a shy frog from Mississippi the chance to shape the future of critical habitat designations](#)

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