



Attorney General Steve Marshall Applauds Supreme Court Decision in Favor of Critical Habitat Lawsuit Supported by Alabama and 17 Other States

(MONTGOMERY) - Alabama Attorney General Steve Marshall applauded the U.S. Supreme Court's unanimous decision Tuesday in favor of a critical habitat lawsuit supported by Alabama and 17 other states*. The high court decided 8-0 that the federal government cannot designate land as critical habitat for an endangered species that does not and cannot live on the land.

"Today's decision is a victory for fairness and common sense and a loss for overreaching federal bureaucrats," said Attorney General Marshall.

"At issue is the question of whether the federal government, acting under the authority of the Endangered Species Act, could extend the reach of a critical habitat beyond the area currently occupied by a species at risk. Under President Obama, the federal government vastly expanded the definition of what constitutes a critical habitat, going even beyond the boundaries of what is considered habitable for an endangered species to include areas that may never be inhabitable by that species.

"This unprecedented action would bestow upon the federal government the power to claim essentially any land as critical habitat for practically any endangered species. Given the potential impact of such a federal expansion over Alabama's agriculture, timber and mining industries, it was vital that we oppose this federal land grab all the way to the U.S. Supreme Court," Marshall added.

In its decision in *Weyerhaeuser Company v U.S. Fish and Wildlife Service*, the Supreme Court held that "Only the 'habitat' of the endangered species is eligible for designation as critical habitat. Even if an area otherwise meets the statutory definition of unoccupied critical habitat because the Secretary finds the area essential for the conservation of the species, [the law] does not authorize the Secretary to designate the area as critical habitat unless it is also habitat for the species."

On August 15, 2017, Attorney General Marshall led 17 other attorneys general in filing an amicus brief asking the U.S. Supreme Court to overturn a prior decision by the U.S. Fifth Circuit Court of Appeals that upheld the ability of the federal government to expand critical habitat areas. Marshall and the states further argued that the federal court ruling actually violates the

501 Washington Avenue • Montgomery, AL 36104 • (334) 242-7300

www.ago.alabama.gov



Endangered Species Act's own limitations on the designation of unoccupied land as critical habitat.

In November, 2016, Alabama also led 18 states in a lawsuit against the National Marine Fisheries Service, the U.S. Fish and Wildlife Service, and the Secretaries of the Interior and Commerce, to challenge Obama administration rules that purported to allow the federal government to designate land as habitat on which an endangered species does not and cannot live. After the Trump administration agreed to withdraw the objectionable rules, Alabama settled the lawsuit in March, 2018.

**Joining Alabama in filing the August, 2017, amicus brief before the U.S. Supreme Court were Alaska, Arkansas, Georgia, Idaho, Kansas, Louisiana, Michigan, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Utah, West Virginia and Wisconsin.*

--30--

[Link to the Supreme Court ruling](#)