

April 20, 1999

## **SUPREME COURT DECLINES REVIEW OF ENDANGERED SPECIES CASE**

*(County Council of Volusia County v. Loggerhead Turtle, et al.)*

The U.S. Supreme Court this week declined to review a case where a court of appeals had ruled that a county government may be sued under the Endangered Species Act (ESA) solely for not making sure that every porch light along the beach in Volusia County, Florida is turned off after dark.

The U.S. Court of Appeals for the Eleventh Circuit decided that a county government can be sued under the ESA if the county's ordinance does not restrict beachfront lighting severely enough to prevent harm to federally protected sea turtles.

In a brief filed with the Court, WLF argued that the Court of Appeals read the ESA in a way that conflicts with the Court's decisions under the Tenth Amendment. In those decisions the Court has repeatedly said that Congress may not order states to make particular laws or to administer a federal program. The Court of Appeals' decision makes a county liable if its beachfront lighting regulations do not totally prevent harm to any protected sea turtle within its boundaries. In effect, this compels the county to make a particular law and to enforce the ESA in place of the U.S. Fish and Wildlife Service.

WLF filed its brief on behalf of itself and the Allied Educational Foundation.

"We are disappointed that the Court decided not to review this important case," said WLF's Senior Counsel for Litigation Affairs, Shawn Gunnarson. "State and local governments should not be forced to choose between enforcing federal wildlife regulations or facing liability under federal law."

WLF's brief was drafted with the *pro bono* assistance of Gaylen Schuler of the law firm of Perkins Coie LLC.

\* \* \*

For further information, contact WLF Senior Counsel for Litigation Affairs Shawn Gunnarson at (202) 588-0302.