

Snail Darter/Endangered Species Act Delisting: The Fish that Faced Off Against the Tennessee Valley Authority Is Classified as Recovered



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The United States Fish and Wildlife Service (“Service”) issued a pre-Federal Register publication final rule removing the snail darter from the federal Endangered Species Act (“ESA”) List of Endangered and Threatened Wildlife. See Docket No. FWS-R4-ES 2020-0152.

The snail darter is a small freshwater fish native to the Tennessee River watershed.

The snail darter has historical significance. It was the subject of the 1978 United States Supreme Court case Tennessee Valley Authority v. Hill.

The United States Supreme Court addressed whether the three-inch-long fish, which had been listed as endangered under the ESA, could prevent the completion of the Tellico Dam on the Little Tennessee River. This case was the initial significant judicial test of the strength of the then recently enacted ESA.

The Supreme Court ruled that despite the economic ramifications of preventing the completion of a partially finished dam, the protective provisions of the ESA trumped these concerns. The Tellico Dam was later built due to a subsequently enacted Congressional exemption. However, pursuant to the ESA, measures were undertaken in other waterbodies to sustain and grow a viable population.

The Center for Biological Diversity recently noted that:

. . . Biologists then developed a transplant program to establish new populations of the darter. Pushed by the Act’s protections, TVA changed dam operations to increase oxygen and provide pulsing flows to reduce sediment in spawning areas below dams. The Clean Water Act’s major reductions in pollution also contributed to the fish’s recovery. Populations of the darter now swim in several waterways in Tennessee, Alabama, Georgia, and Mississippi.

The ESA sets forth procedures for reclassifying species or removing species from the List of Endangered and Threatened Wildlife. Species may be delisted if the best available scientific and commercial data indicate that:

1. The species is extinct.
2. The species does not meet the definition of endangered species or a threatened species when five factors specified by the ESA are considered.
3. The listed entity does not meet the statutory definition of a species.

The Service states that it was determined that the snail darter no longer meets the definition of either an endangered or threatened species under the ESA.

A copy of the final rule can be found [here](#).