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Tennessee's Barrens Darter/Endangered Species Act: Center for Biological Diversity Lawsuit Challenging U.S. Fish and Wildlife Service Denial of Endangered Listing

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The Center for Biological Diversity ("CBD") filed a Complaint for Declaratory and Injunctive Relief ("Complaint") against the United States Fish and Wildlife Service ("Service") in the United States District Court for the District of Columbia alleging a violation of the Endangered Species Act ("ESA"). See Case No. 1:22-cv-02922.

The Complaint alleges the Service was required to list the Barrens darter ("Darter") as an endangered or threatened species under the ESA.

The Complaint describes the Darter as one of the rarest fishes in North America, persisting in only a handful of small headwater streams. Such streams are stated to flow into the Collins River on the Barrens Plateau between Nashville and Chattanooga in central Tennessee.

Of the referenced seven populations, it is alleged that two have already been lost and that the five remaining are:

. . . small, isolated from one another, and threatened by many serious threats, including stream dewatering from surface water diversions and groundwater pumping; habitat destruction and pollution caused by urban development, agriculture, and livestock grazing; invasive species; and climate change.

CBD states it petitioned the Service to list the Darter as an endangered or threatened species under the ESA in 2010 because the best available science showed that it was endanger of extinction.

The Service is stated to have determined that the Darter did not warrant protection as an endangered or threatened species. See 84 Fed. Reg. 13,237 (April 4, 2019).

The Service's decision is alleged to be arbitrary, capricious, and violate the ESA because it:

- Failed to reply on the best available science
- Failed to properly consider whether current regulatory mechanisms are adequate to protect the Darter
- Failed to properly determine whether the Darter is endangered or threatened in a significant portion of its range

CBD requests the Court declare that the Service's "not warranted" decision for the Darter is arbitrary and capricious and unlawful under the ESA. The organization further requests that the Court vacate the decision and remand it to the Service with direction to issue a new determination regarding whether the best available science supports protecting the Darter as an endangered or threatened species, by a date certain.

A copy of the Complaint can be downloaded [here](#).