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<https://www.regulations.gov/comment?D=FWS-R4-ES-2017-0063-0001>

Public Comments Processing  
Attn: FWS-R4-ES-2017-0063  
U.S. Fish and Wildlife Service  
MS: BPHC  
5275 Leesburg Pike  
Falls Church, VA 22041-3803

**RE: Comments in support of Final Endangered Species Act Protection for the Trispot Darter (*Etheostoma trisella*) 82 FR 46183**



Trispot Darter © Bernard Kuhajda

Please accept these comments from the Center for Biological Diversity in support of final Endangered Species Act (ESA) protection for the trispot darter (*Etheostoma trisella*). The trispot darter is a small colorful freshwater fish found in the Coosa River System in the Ridge and Valley ecoregion of Alabama, Georgia, and Tennessee. The survival of the trispot darter is of scientific, moral, aesthetic, recreational, economic, spiritual, and other value to our members, supporters, and staff.

The trispot darter was identified as a candidate for federal protection in 1975 (40 FR 12297) and again in 1982 (47 FR 58454). On April 20, 2010 the Center for Biological Diversity petitioned the Service to protect the fish under the ESA. On September 27, 2011 the Service published a 90-day finding on the petition determining that protection may be warranted (76 FR

59836). On February 18, 2015 the Center sued the Service for failing to issue a 12-month finding on the petition. On September 9, 2015 the Service agreed to issue a final finding on the petition by the end of September 2017.

Thus, seven years after the petition was filed, and 42 years after the trispot darter was first identified as a candidate for federal protection, the Service has finally issued a “12-month” finding and proposed to list the fish (82 FR 46183).

Waiting 42 years from the time the trispot darter was first identified as being in need of federal protection to actually propose protection has allowed populations to decline, threats to grow, and will make recovery more difficult and expensive. We thus urge the Service to promptly finalize protection for the trispot darter, promptly develop a recovery plan, and request full funding to implement the plan for the species’ recovery.

The Endangered Species Act states that a species shall be determined to be endangered or threatened based on any one of five factors (16 U.S.C. § 1533 (a)(1)). The trispot darter is threatened by at least three of these factors and thus indisputably warrants listing. The darter is threatened by modification and curtailment of habitat and range by factors including sedimentation, hydrologic alteration, channel modification, loss of riparian vegetation, urbanization, contaminants, and pollution from poultry operations. The darter is threatened by other factors including reduced connectivity and viability, stochastic events, and global climate change. There are no existing regulatory mechanisms that are adequate to protect the fish from these threats.

Due to years of delay in enacting protection for the fish, the trispot darter now survives in only 20 percent of its former range and none of the surviving populations are in good condition. The Service has categorized the remaining populations of the trispot darter into four Management Units (MUs): Little Canoe Creek Basin, Ballplay Creek Basin, Conasauga River Basin, and Coosawattee River Basin. All four units have low abundance, low occurrence extent, and low water quality. The overall condition of the MUs in Ballplay Creek, Conasauga River, and Coosawattee River are ranked as low. The overall condition of the Little Canoe Creek MU is ranked as moderate, even though six of the seven factors the Service considered in the ranking are scored as low (82 FR 46187).

We disagree with the Service’s determination that critical habitat for the trispot darter is not determinable (82 FR 46195). Section 4(a)(3) of the Act requires that the Service designate critical habitat at the time a species is determined to be an endangered or threatened species. The Service is in violation of the law for not proposing critical habitat with proposed listing and we thus request that a critical habitat proposal be promptly issued.

Thank you for taking our comments into consideration.

Sincerely,



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