

Environmental lawyer sues to list vermilion darter as endangered

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A Montgomery environmental lawyer has filed suit to force the endangered species listing of a tiny fish that survives only in seven miles of Turkey Creek.

After publishing plans to place the vermilion darter on the endangered species list last year, the U.S. Fish and Wildlife Service in November announced it would not complete the work by its deadline this spring.

"They've got a deadline, and they've got to meet it," said Ray Vaughan, attorney in the Montgomery firm WildLaw. "You can't stop listing because you have something else you have to do."

Agency officials say they don't have the staff or money to list any more species because court-ordered work from other lawsuits is taking all their time and money.

"Unless it's involved in a lawsuit, we don't have the funds to handle the listings as we would have preferred," Fish and Wildlife spokesman Tom MacKenzie said. "Basically, we're getting sued so much that we're out of money."

Most of the suits against the agency have concerned failures to designate critical habitat for endangered species. MacKenzie said prior to the suits, the agency was focusing its efforts on new listings, because those were more important to protecting animals.

Now, it has reversed itself, saying the suits have forced them to focus on critical habitat work to the exclusion of new listings.

At the time they announced the policy change, agency officials said hundreds of species were candidates or in the process of being listed. They singled out the vermilion darter as an animal in particular need of the protection they could no longer offer.

Fish and Wildlife biologists say only 1,800 of the brilliantly colored fish remain in the north Jefferson County creek, which is polluted by sewage wastewater and dirt from construction.

The darter was further in the listing process than most. Fish and Wildlife's detailed description of the fish and its habitat were published in the *Federal Register* last April.

Vaughan said the darter needs only another hour of staff work and a final publication in the *Federal Register* to be listed.

MacKenzie said he could not respond to that because of the pending lawsuit, which was filed in federal court in Birmingham on Friday.

The darter needs protection from the rapidly accumulating silt and dirt in Turkey Creek, said Paul Blanchard, a Samford University professor who has studied the orange-and-blue fish for years.

"The fish requires very clean water for spawning," Blanchard said. "We actually videotaped it spawning, and the female will look for very clean rocks to lay eggs."

If the darters don't find them, they don't reproduce, Blanchard said. He said dirt from construction in the area also chases away the darter's food, bugs and larvae that live on clean creek bottom.

"Turkey Creek is extremely stressed with sediment right now," he said. "I still see darters, but I see less places where darters can live."

"I've been doing a lot of work up there, and the sediment would just break your heart if you knew what it was doing."