Notice of Intent to Sue/Endangered Species Act: Black Warrior Riverkeeper Alleges Failure By U.S. Fish and Wildlife Service to Make Initial Determination Listing for the Birmingham Darter



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11/17/2026

Black Warrior Riverkeeper and two other environmental organizations sent a November 12th letter to the United States Fish and Wildlife Service ("Service") styled:

Sixty-day Notice of Intent to Sue for Violations of the Endangered Species Act for Failure to Timely Promulgate a 90-day Finding for the Birmingham Darter ("NOI")

The two other environmental organizations joining the NOI include:

- Center for Biological Diversity.
- Alabama Rivers Alliance.

(Collectively, "Riverkeeper").

The NOI alleges that the Service has failed to issue an initial determination ("90-day finding") on the Center for Biological Diversity's petition to list the Birmingham darter, in violation of the Endangered Species Act's ("ESA") statutory deadline.

Note that any interested person may petition the Service to add a species to its formal list of threatened and endangered species under the ESA. In response to a petition to list a species as threatened or endangered, Section 4 of the ESA requires that the Service make a preliminary finding on the petition within 90 days of receiving the petition. If in its 90-day finding the Service finds substantial information indicating that the petitioned action may be warranted, it must publish that finding and conduct a full scientific review of the species' status.

The Birmingham darter is a two-inch long, brightly colored, freshwater fish and is a newly described darter and one of six species within the vermillion darter complex, all of which are stated to be found exclusively within Valley Creek and other tributaries of the Black Warrior River.

The species is stated to face imminent threats to its survival and is already extirpated from sections of its historic range.

The alleged threats include:

- Industrialization.

- Quarrying operations.
- Proposed Northern Beltline highway project.
- Poor water quality.

The Center for Biological Diversity states that it submitted a petition to list the Birmingham darter as an endangered or threatened species on November 13, 2025. This included a request for the Service to designate critical habitat. The petition is stated to have been pending for over 330 days without a finding as to whether the Birmingham darter listing is warranted.

As a result, Riverkeeper states that the Service has violated Section 4 of the ESA.

A copy of the NOI can be found here.