PART 1033—CAR SERVICE
Missouri-Kansas-Texas Railroad Company Authorized To Operate Over Tracks of the Chicago, Rock Island and Pacific Railroad Company MARCH 26, 1976.

At a Session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 24th day of March, 1976.

Upon further consideration of Service Order No. 1202 (29 F.R. 49765 and 49 F.R. 14318 and 43914), and good cause appearing therefor:

It is ordered, That:

§ 1033.1202 Missouri-Kansas-Texas Railroad Company authorized to operate over tracks of the Chicago, Rock Island and Pacific Railroad Company.

Service Order No. 1202 be, and it is hereby, amended by substituting the following paragraph (d) for paragraph (d) thereof:

(d) Expiration date. The provisions of this order shall expire at 11:59 p.m., September 30, 1976, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., March 31, 1976.

Applications arising in proceedings other than Section 5 of the Interstate Commerce Act (A) for transfer or lease of (1) motor carrier Certificates of Registration issued pursuant to section 206 of the Act, (2) motor common and contract carrier operating rights issued pursuant to Sections 207 and 209 of the Act, and (2) brokers' licenses issued pursuant to Section 111 of the Act; and (B) for approval of a change in control of a company holding a broker's license.

Cross References: Parts 1045, 1132 and 1133 of this chapter.

And it is further ordered, That this order shall become effective May 1, 1976, and notice of this order shall be given to the general public by depositing a copy thereof in the Office of the Secretary of the Commission, Washington, D.C., for inspection and by filing a copy thereof with the Director, Office of the Federal Register.

By the Commission.

[SEAL] ROBERT L. OSWALD, Secretary.

Title 50—Wildlife and Fisheries
CHAPTER 1—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR
PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS
Snail Darter

Background. On December 16, 1975, the United States Fish and Wildlife Service found that the snail darter, a small fish native to the Tennessee River system, was in danger of extinction throughout its range.

FEDERAL REGISTER, VOL. 41, NO. 64—THURSDAY, APRIL 1, 1976
Service proposed to amend 50 CFR Part 17 by designating critical habitat for the small darter and five other species (46 FR 58308). The small darter, Percina (Immostoma) sp. (now known as Percina tanasi) was listed as an endangered species pursuant to Section 4 of the Endangered Species Act of 1973 (16 USC 1533), on October 3, 1975 (46 FR 47655).

This amendment was a new section, and a new section to Part 17 relative to the critical habitat of the small darter. Action on the critical habitats of the five other species covered in the proposal will be forthcoming later.

The Endangered Species Act of 1973 conserves endangered and threatened species in several ways. One of those ways is by authorizing the Secretary to determine that the habitat of a species is critical. When such a determination is made, any Federal agency which might authorize, fund, or carry out an action which could result in the modification or destruction of such habitat must take whatever steps are necessary to avoid the modification or destruction.

In the Federal Register of April 22, 1975, 40 FR 1164-1170, the Fish and Wildlife Service and the National Marine Fisheries Service published the following interpretation:

The term "habitat" could be considered to consist of a special environment in which a species lives and all elements of that environment including, but not limited to, land and water areas, physical structure and topography, flora, fauna, of soil, water and air.

"Critical habitat" for any endangered or threatened species could be the entire habitat or any portion thereof. If, and only if, any constituent element is necessary to the normal needs or survival of the species.

Also, in the Federal Register of April 22, 1975, the Fish and Wildlife Service and the National Marine Fisheries Service published the following statement:

Actions by a Federal agency which result in the destruction of critical habitat considered "critical habitat" for a given endangered or threatened species would not conform with Section 4 of the Endangered Species Act of 1973, if such action might be expected to result in a reduction in the numbers or distribution of that species of sufficient magnitude to place the species in further jeopardy, or restrict the potential and reasonable expansion or recovery of that species. It must be emphasized that because of the primary intention of the Fish and Wildlife Service and the National Marine Fisheries Service, the Fish and Wildlife Service Act is to protect, maintain, and restore presently endangered and threatened species, application of the term "critical habitat" may not be restricted to the habitat necessary for a minimum viable population.

The Director is preparing, in consultation with the affected agencies, guidelines for Fish and Wildlife Service and the National Marine Fisheries Service compliance with the provision of section 7 of the Act. In the future, regulations will be published regarding section 7.

The small darter critical habitat proposal as it appeared in the Federal Register (Vol. 40, No. 242, pp. 58308-58312) is as follows:

Basis for Determination

SMALI DARTER (Percina (Immostoma) sp.), Tennessee. Critical habitat for the small darter extends from river mile 0.5 to 17 of the Little Tennessee River, Loudon County, Tennessee. River miles 0.5 through 17 are shown on a map entitled "Tellico Project," prepared by the Tennessee Valley Authority (TVA), Bureau of Water Control Planning, August 1965 (map 65-MS-453 F 501). River mile 17 is two river miles below the U.S. Highway 411 bridge over the Little Tennessee River, and is within 1.0 mile of the Little Tennessee River is one half mile upstream from its confluence with the Tennessee River. Presently, this section of the river is the only known existing habitat of the small darter. In portions of this area, certain conditions exist which are required by the species, and the disruption of these conditions would lead to decline or extinction of the small darter.

At the time of publication the small darter had not been assigned a specific scientific name in the scientific literature. However, on January 22, 1976, Dr. David A. Etlinger described and assigned a specific scientific name to the small darter in the Proceedings of the Biological Society of Washington Vol. 89, No. 44, pp. 469-488 in a paper entitled "Percina (Immostoma) tanasi, a new perchid fish from the Little Tennessee River, Tennessee." In the future, reference to the scientific name of the small darter should be Percina tanasi. Also when the proposal was published the snail darter was not known to occur below river mile 0.5 on the Little Tennessee River; however, it has recently been found below river mile 0.5 and 0.4, below Tellico Dam. Based on this discovery, the present known existing habitat would be between river miles 0.1 and 17 on the Little Tennessee River.

Summary of Comments. A total of 19 comments were received relative to the proposal to determine a portion of the Little Tennessee River as critical habitat for the small darter, Percina tanasi, which was published in the Federal Register, Vol. 40, No. 242, Tuesday, December 16, 1975, pages 58308-58312. These comments are summarized as follows:

(1) Seventeen of the 19 comments received completely supported the proposal to delineate a portion, river mile 0.5 to 17, of the Little Tennessee River as critical habitat for the small darter. These include professional biological societies, national and state conservation associations and a national sportsman organization. The State of Tennessee, through the Tennessee Wildlife Resources Agency, supported the critical habitat designation as proposed. In addition, several citizens submitted letters in support of the proposal.

(2) One letter opposing the proposal was received from an individual living in the area. There was no factual information presented by this individual to warrant any change of the proposed critical habitat.

(3) A letter with attached appendices was received from the Tennessee Valley Authority, the agency sponsoring the Tellico Project. The Tennessee Valley Authority was not opposed to the proposal, but felt it should not be adopted at the present time. Quoted below are the specific reasons why the TVA felt the proposal should not be adopted.

1. The river mile designation of 0.5 to 17 appears to be in error since significant numbers of the small darter have been discovered between river mile 0.1 and river mile 0.4 of the Little Tennessee River. These discoveries, which were previously reported, were made downstream from Tellico Dam, in depths of 10 to 30 feet. The importance of these discoveries has not yet been determined, and critical habitat determination should be postponed until evaluation of these discoveries is completed.

2. Although the existence of the small darter in the proposed critical habitat area does indicate that at least some of the small darter are met in this particular habitat and identification of these critical needs is not yet complete. TVA, in conjunction with Jones & Stokes Associates, Inc., a biological consulting firm in Sacramento, California, is presently conducting a detailed field study and analysis of the biotic and abiotic characteristics of the lower 17 miles of the Little Tennessee River and how these factors relate to the life history of this species. An interim report covering all, or virtually all, of the biotic characteristics of the Little Tennessee River and the biotic and abiotic characteristics for the fall and winter seasons will be available in approximately 60 days. The final report, completing the description of the abiotic characteristics and providing the biont characteristics of the spring and summer seasons, will be available by October 1, 1976.

3. Determination of critical habitat without information such as will be provided by these studies could result in a determination to substantial criticism by the scientific community since such a determination would be based upon the lack of scientific data rather than specific scientific support.

The Director has reviewed the comments and the attachments submitted by the Tennessee Valley Authority in their response to the FWS proposal to delineate critical habitat for the small darter, Percina tanasi. Other documents submitted to the FWS by the TVA and individual biologists have also been reviewed by the Director. The response to the FWS comments presented below is based on information presently available.

1. The designation of river mile 0.5 to 17 in the Little Tennessee River in the original small darter critical habitat proposal was based on information available at that time. Subsequent to the publication of the critical habitat proposal additional information was received from TVA indicating that the small darter had been observed in water.
20 to 30 feet deep between river mile 0.4 to 0.1 on the Little Tennessee River. While this area may also be critical habitat, we do not feel that this has any bearing on the present proposal. As was pointed out in the snail darter critical habitat proposal (Paragraph 2, page 58306, Federal Register, Vol. 40, No. 243, December 16, 1975), “The areas delineated below do not necessarily include the entire small habitat of any of the named species and modifications to critical habitat descriptions may be proposed in the future.” Based on information contained in the TVA small darter conservation program progress report, the area below the Tellico Dam between river mile 0.4 to 0.1 on the Little Tennessee may very well represent additional critical habitat. If the area is found to be critical it, along with any other critical areas found subsequent to this rulemaking, will be proposed and published in the Federal Register for review and comments.

2. We interpret the year-round occurrence of adult small darters including large numbers of gravid males and females in the Tellico River to mean that this area is critical habitat. This point is made by comments submitted in response to the proposal and we quote: “While this area may also be critical for the snail darter, it is not critical to the proposal (Paragraph 2, page 0.4 to 0.1).” The Department of the Interior, Bureau of Water Control Planning, determined, we do not feel that this has any bearing on the present proposal.

Discussion. The information presently available indicates that the Little Tennessee River between river mile 0.4 to 0.1 on the Little Tennessee is critical to the survival of the small darter, Percina tanasi. As was pointed out above, we were not aware of the presence of the small darter below Tellico Dam at river mile 0.1 to 0.4 on the Little Tennessee until the public hearings on December 16, 1975. The fact that this area 0.1 to 0.4 is inhabited by the small darter does not invalidate the area proposed as critical habitat. The area between river mile 0.1 to 0.4 on the Little Tennessee River may also be critical habitat, and if this is found to be the case it will be proposed in the future. The restrictions we would impose in the area or areas originally delineated as critical habitat.

Final Rulemaking. The Director has considered all comments and data submitted in response to the proposed determination of the critical habitat of the small darter. The Director has also considered comments and data submitted by the Fish and Wildlife Service both prior to and subsequent to the publication of the proposal in the Federal Register. Based on this review, the area between river mile 0.5 to 17 in the Little Tennessee River is determined to be critical habitat for the small darter, Percina tanasi. These amendments will become effective on May 3, 1976.

Dated: March 29, 1976.

GEORGE W. MILLIS,
Acting Director,
Fish and Wildlife Service.

1. Amend the table of sections in 50 CFR Part 17 by adding a new Subpart F, reading as follows:

Subpart F—Critical Habitat

§ 17.80 [Reserved]

§ 17.81 Small Darter

2. Amend the new Subpart F, 50 CFR Part 17 by adding the following new § 17.81:

Subpart F—Critical Habitat

§ 17.80 [Reserved]

§ 17.81 Small Darter.

(a) The following area is critical habitat for the small darter (Percina tanasi) sp.: From river mile 0.5 to river mile 17 of the Little Tennessee River, Loudon County, Tennessee, as shown on a map entitled “Tellico Project,” prepared by Tennessee Valley Authority, Bureau of Water Control Planning, August 1965 (map 65-MS-455-1965).

(b) Pursuant to section 7 of the act, all Federal agencies must take such action as is necessary to insure that actions authorized, funded, or carried out by them do not result in destruction or modification of this critical habitat area.