



Final Regulation Agency Background Document

Agency name	Board of Agriculture and Consumer Services
Virginia Administrative Code (VAC) citation	2 VAC 5-320
Regulation title	Rules and Regulations for the Enforcement of the Endangered Plant and Insect Species Act
Action title	Amends the lists of endangered and threatened species
Date this document prepared	December 10, 2012

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

The purpose of this action is (i) to remove from the regulation one plant species that is no longer considered globally rare, and (ii) to add three plant species and one insect species to the threatened and endangered lists.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency or board taking the action, and (3) the title of the regulation.

On December 6, 2012, the Board of Agriculture and Consumer Services (Board) adopted as final the amendments to 2 VAC 5-320 *et seq.*, *Rules and Regulations for the Enforcement of the Endangered Plant and Insect Species Act*.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

Section 3.2-109 of the *Code of Virginia* (Code) authorizes the Board to adopt regulations in accordance with Title 3.2 of the Code regarding agriculture, animal care, and food.

Section 3.2-1002 of the Code authorizes the Board to adopt regulations listing threatened or endangered plant and insect species, their taking, quotas, seasons, buying, selling, possessing, monitoring of movement, investigating, protecting, or any other related action. As a result of research conducted by the Commissioner of Agriculture and Consumer Services, recommendations received regarding candidate species from the Director of the Department of Conservation and Recreation, and from other sound, scientific data, the Board may approve proposed plant or insect species to be added to, or deleted from, the list of threatened and endangered species, or to be transferred from one list to the other.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

This regulation seeks to protect those plants and insects found in Virginia that are of aesthetic, ecological, educational, scientific, economic, or other value and whose global populations are imperiled. The regulation also provides for the development and implementation of biologically sound and economically feasible protection, recovery and conservation measures that seek to ensure the survival of listed species while at the same time allowing citizens and entities to conduct their business or pursue construction projects in the most economical and least disruptive manner.

Benefits of this regulation include (i) the establishment of science-based, reasonable restrictions on the take and trafficking of listed species, (ii) promotion of greater voluntary conservation efforts through recognition of a species' imperiled status, and (iii) providing impetus for the establishment of programs for the management and conservation of listed species. By providing for the lawful harvest and export of listed species through approved management plans, the regulation provides protection for the welfare of the citizens of the Commonwealth.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

This regulation will be amended by 1) removing one plant species from the regulation and 2) adding three plant species and one insect species to the threatened and endangered lists.

The following species will be removed from the regulation:

<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>
<i>Nestronia umbellula</i>	nestronia

The following species will be added to the regulation as endangered:

<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>
<i>Boltonia montana</i>	valley doll's-daisy
<i>Isoetes virginica</i>	Virginia quillwort
<i>Pseudanophthalmus thomasi</i>	Thomas' cave beetle

The following species will be added to the regulation as threatened:

<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>
<i>Clematis viticaulis</i>	Millboro leatherflower

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If there are no disadvantages to the public or the Commonwealth, please indicate.

The primary advantage of this regulatory action is the protection of threatened or endangered plant and insect species that are of aesthetic, ecological, educational, scientific, economic, or other value and whose global populations are rare and imperiled. Once plants or insects are listed as threatened or endangered, the regulation enables the Virginia Department of Agriculture and Consumer Services to collaborate with landowners, at the landowner's discretion, to develop management plans that would support construction projects and other economic development activity on the landowner's property while minimizing the impact on these valuable, imperiled natural resources. Moreover, when good cause is shown and when necessary to alleviate damage to property, impact on progressive development, or to protect human health, the Virginia Endangered Plant and Insect Species Act includes a provision allowing for the removal or destruction of a listed species.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

No changes were made to the text of the proposed regulation subsequent to the publication of the proposed stage.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
Nikki Rovner, The Nature Conservancy	Expressed support for the proposed amendments and commended the Board for updating the endangered species and threatened species lists.	The agency appreciates The Nature Conservancy’s support.

All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
2 VAC 5-320-10	N/A	Establishes lists of endangered and threatened species.	The proposed amendments to this regulation add the following three species to the list of endangered species: (1) <i>Boltonia montana</i> ,(2) <i>Isoetes virginica</i> , and (3) <i>Pseudanophthalmus thomasi</i> . This amendment is proposed due to globally rare status of these species. Inclusion in this regulation is intended to prevent the extinction of these species in Virginia. The proposed amendments remove

			<p><i>Nestronia umbellula</i> from the regulation. This amendment is proposed due to the secure status of this species.</p> <p>The proposed amendments add <i>Clematis viticaulis</i> to the list of threatened species. This amendment is proposed due to globally rare status of this species. Inclusion in this regulation is intended to prevent the extinction of this species in Virginia.</p>
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