



Virginia  
Regulatory  
Town Hall

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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Department of Agriculture and Consumer Services
<b>Virginia Administrative Code (VAC) citation</b>	2 VAC 5-320
<b>Regulation title</b>	Regulations for the Enforcement of the Endangered Plant and Insect Species Act
<b>Action title</b>	Amendments to the lists of endangered and threatened plant and insect species
<b>Date this document prepared</b>	March 24, 2009

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

The proposed action seeks to amend the lists of endangered and threatened plant and insect species by (i) removing from the regulation a plant species that is no longer globally rare, (ii) transferring certain plant species from the endangered list to the threatened list to reflect the improved status of those species, and (iii) adding to the endangered and threatened lists certain plant and insect species that are considered in danger of extinction, or which are likely to become endangered in the foreseeable future throughout all or a significant portion of their native range. This action reflects the imperiled status of the various species and it seeks to protect them from take and destruction. It will also stimulate conservation programs to preserve and protect the affected species.

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

Section 3.2-1002(A) of the Code of Virginia authorizes the Board of Agriculture and Consumer Services (Board) to adopt regulations including the listing of threatened or endangered species, their taking, quotas, seasons, buying, selling, possessing, monitoring of movement, investigating, protecting, or any other need in furtherance of the purposes of the Endangered Plant and Insect Species Act. Section 3.2-1002(B) states that the Board shall approve proposed species to be added to or deleted from the list of threatened species or the list of endangered species, or to be transferred from one list to the other based upon investigations by the Commissioner of Agriculture and Consumer Services, recommendations from the Director of the Department of Conservation and Recreation regarding candidate species, and from other reliable data.

### Need

*Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.*

The proposed action is essential to the preservation of rare natural resources in Virginia, which in turn would protect and promote the public's health, safety, and welfare. Listing a species as threatened or endangered offers protection to plants and insects that are of aesthetic, ecological, educational, scientific, economic, or other value to the Commonwealth; it also provides for the development and implementation of protection, recovery, and conservation measures to ensure the survival of listed species while allowing building projects that could potentially impact those species to proceed in the most economical, biologically-sound, and environmentally-sensitive manner. Issues that may be addressed as the regulation is developed include:

1. Restrictions on the taking and trafficking in listed species
2. Consideration of federally-funded opportunities for cooperative agreements for the conservation and recovery of endangered species, or for related surveys
3. Encouragement of voluntary conservation efforts by other agencies, organizations and individuals through the recognition of the species' precarious status
4. Establishment of programs for the management and conservation of listed species to help ensure their survival
5. Protection of landowners on whose property a listed species occurs, from unauthorized collecting, taking, cutting, etc., and
6. Development of approved management plans for the legal harvesting and export of threatened species

### Substance

*Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.*

The proposed amendments to Section 10 of the regulation are as follows:

- 1) Removal of *Nestronia umbellula*, Nestronia, from the regulation.
- 2) Transfer of the following plants from the endangered species list to the threatened species list:
  - a. *Fimbristylis perpusilla*, Harper's fimbristylis
  - b. *Helenium virginicum*, Virginia sneezeweed

- c. *Helonias bullata*, Swamp pink
- d. *Ilex collina*, Long-stalked holly
- e. *Isotria medeoloides*, Small whorled pogonia
- f. *Scirpus ancistrochaetus*, Northeastern bulrush
- g. *Spiraea virginiana*, Virginia spiraea

3) Addition of the following to the list of endangered species:

- a. *Boltonia montana*, Valley doll's daisy
- b. *Iliamna remota*, Kankakee globe mallow
- c. *Isoetes virginica*, Virginia quillwort
- d. *Ludwigia ravenii*, Raven's seedbox
- e. *Pseudanophthalmus hubbardi*, Hubbard's cave beetle
- f. *Pseudanophthalmus thomasi*, Thomas' cave beetle

4) Addition of the following to the list of threatened species:

- a. *Clematis addisonii*, Addison's leatherflower
- b. *Clematis viticaulis*, Millboro latherflower
- c. *Lilium pyrophilum*, Sandhills lily
- d. *Ludwigia brevipes*, Long Beach seedbox
- e. *Packera millefolia*, Yarrow-leaved ragwort
- f. *Paxistima canbyi*, Canby's mountain-lover
- g. *Phlox buckleyi*, Sword-leaf phlox
- h. *Potamogeton tennesseensis*, Tennessee pondweed
- i. *Pycnanthemum clinopodioides*, Basil mountain-mint
- j. *Pycnanthemum torrei*, Torrey's mountain-mint
- k. *Rudbeckia heliopsisidis*, Sun-facing coneflower

## Alternatives

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.*

No alternative action is available to afford equivalent protection from the taking or destruction of those plant and insect species that are in danger of extinction or which are likely to become endangered in the foreseeable future.

## Public participation

*Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.*

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia.

Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation. Anyone wishing to submit written comments may do so by mail, fax or e-mail to:

Keith Tignor  
Virginia Department of Agriculture and Consumer Services  
P.O. Box 1163  
Richmond, VA, 23218  
Fax: 804-371-7793  
E-mail: Keith.Tignor@vdacs.virginia.gov.

Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period. No public hearing will be held on this notice.

### Participatory approach

*Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.*

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The agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach.

### Family impact

*Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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Unless otherwise discussed in this report, the amendments to this regulation will have no impact upon families.