

West Longitude. Channel 296C2 can be allotted to Osceola at Station KJJC's presently licensed transmitter site, at coordinates 41-01-34; 93-51-43. With this action, this proceeding is terminated.

DATES: Effective December 7, 1998.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96-95, adopted October 14, 1998, and released October 23, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by removing Channel 295C2 and adding Channel 296C2 at Osceola.

3. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended by removing Channel 295A and adding Channel 295C3 at Plattsmouth.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98-29319 Filed 11-2-98; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98-83; RM-9280]

Radio Broadcasting Services; Questa, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Metro Broadcasters-Texas, Inc., allots Channel 279C1 to Questa, NM, as the community's first local aural service. See 63 FR 34622, June 25, 1998. Channel 279C1 can be allotted to Questa in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.8 kilometers (3.6 miles) southeast, at coordinates 36-40-33 North Latitude; 105-32-27 West Longitude, to avoid a short-spacing to both the allotment reference coordinates and the transmitter site specified in the application of Idaho Broadcasting Consortium, Inc. (BPH-971126MD), for Channel 279C2 at Silverton, CO. With this action, this proceeding is terminated.

DATES: Effective December 7, 1998. A filing window for Channel 279C1 at Questa, NM, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98-83, adopted October 14, 1998, and released October 23, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by adding Questa, Channel 279C1.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98-29317 Filed 11-2-98; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AE37

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for Virginia Sneezeweed (*Helenium virginicum*), a Plant From the Shenandoah Valley of Virginia

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service or we) determines *Helenium virginicum* (Virginia sneezeweed) to be a threatened species, under the authority of the Endangered Species Act of 1973, as amended (Act). This rare plant is restricted to seasonally inundated sinkhole ponds and meadows in Augusta and Rockingham counties, Virginia. Five of the 25 known extant populations are on United States Forest Service land; the others are on private land. This perennial plant is threatened by residential development, incompatible agricultural practices, filling and ditching of its wetland habitat and other disruptions of its habitat and the hydrology that maintains it. *Helenium virginicum* is listed as endangered by the State of Virginia. This rule implements Federal protection and recovery provisions afforded by the Act for this species.

DATES: This rule is effective December 3, 1998.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the United States Fish and Wildlife Service, Chesapeake Bay Field Office, 177 Admiral Cochrane Drive, Annapolis, MD 21401.

FOR FURTHER INFORMATION CONTACT: Andy Moser, at the above address or by telephone (410/573-4537).

SUPPLEMENTARY INFORMATION:

Background

Helenium virginicum (Virginia sneezeweed) is a perennial plant and a member of the aster family (Asteraceae) known only from Augusta and

Rockingham counties, Virginia. The common name, sneezeweed, is based on the use of the dried leaves of these plants in making snuff, inhaled to cause sneezing that would supposedly rid the body of evil spirits (Niering 1979).

Helenium virginicum stems grow to a height of 4 to 11 decimeters (1.5 to 3.5 feet) above a rosette of basal leaves. Coarse hairs are visible on the basal and lower stem leaves. The basal leaves may be broad in the middle tapering toward the ends, but otherwise may appear oblong. Stem leaves are lance-shaped, and become progressively smaller from the base to the tip of the stem. The stems are winged, the wings being continuous with the base of the stem leaves. The flower ray petals are yellow, and wedge-shaped with three lobes at the ends. The central disk of the flower is nearly ball-shaped. Flowering occurs from July to October (Virginia Department of Conservation and Recreation 1995).

Helenium virginicum is similar to common sneezeweed (*Helenium autumnale*), but differs in having a sparsely-leaved stem, larger basal leaves, and longer pappus scales (appendages which crown the ovary or fruit). It is also differentiated by leaf shape, stem and leaf hairs, and habitat requirements. Comparison of morphological and ecological characters with plants in common gardens and transplant sites (Knox *et al.* 1995) clearly demonstrated that *H. virginicum* and *H. autumnale* were two distinct species.

S.F. Blake first described *Helenium virginicum* in 1936 from specimens collected near Stuart's Draft, Virginia. The species is a wetland plant found on the shores of shallow, seasonally flooded ponds in Virginia's Shenandoah Valley. From 1985 through 1995, extensive status survey work was conducted for *H. virginicum* in over 100 limestone sinkhole ponds along the western edge of the Blue Ridge Mountains in the Shenandoah Valley of Virginia. A total of 28 separate populations were located during these surveys.

In addition, one *Helenium* population with similarities to *H. virginicum* has been found near Pomona, Missouri. This population was originally described as a hybrid between *H. autumnale* and *H. flexuosum* (Steyermark 1960). However a recent study (Knox *et al.* 1995) shows that this population of *Helenium* shares 12 of 15 morphological characters with *H. virginicum*, but indicates that more genetic and evolutionary study is necessary to clarify the relationship of this population with *H. virginicum*. Should further studies demonstrate that

this population is *H. virginicum*, the existence of this single additional population would not significantly change the status of the species or the need to list it. Because this region of Missouri has been extensively surveyed over many years, it is unlikely that any additional *H. virginicum*-like populations occur there (G. Yatskiyevych, Missouri Dept. of Conservation, pers. comm. 1997).

The ponds supporting *H. virginicum* range in size from less than 0.04 hectare (ha) (0.1 acre (ac)) to 3 ha (8 ac) and are seasonally flooded or semi-permanent bodies of water. These ponds have poorly drained, acidic, silty loam soils, and are typically flooded from January through July.

Helenium virginicum is adapted to survive the water level fluctuations of the seasonal ponds, giving it a competitive advantage in this habitat. From year to year, the number of *H. virginicum* plants at any given site may vary greatly. A high water level one year may leave the ponds flooded, resulting in less shoreline for plants to become established or to survive. However, a high water level also eliminates the invading shrubs and trees that may compete with *H. virginicum* on the pond shores. When the water level is lower, more pond shore is exposed and the surviving plants and the seeds stored in the soil enable the *H. virginicum* populations to rebound (Virginia Department of Conservation and Recreation 1995).

Helenium virginicum disperses seeds in late fall and winter; the seeds germinate in late summer or early fall of the following year if conditions are suitable. Seeds will not germinate in the dark or under a standing column of water. In the first year of growth, the plant exists as a basal rosette with a diffuse root system. Plants seem to grow year-round, even while submerged. Flowering usually does not occur until the plant is more than 1 year old. *Helenium virginicum* forms one aerial stem bearing several flower heads during the first flowering season; in subsequent years it may form several flowering stems in a season. Plants may live for 5 years, flowering in consecutive years (J.S. Knox, Washington and Lee University, pers. comm. 1997).

Of the 28 populations of *Helenium virginicum* identified during the 10-year survey period, 25 are currently extant. The remaining three populations, where no *H. virginicum* have been seen in recent years, may be extirpated. Of the 25 extant populations, 5 are on U.S. Forest Service land and the remaining 20 are on private lands. The most recent status report (Van Alstine 1996)

provides an excellent review of the status and trends for the species. The report indicates that the majority of sites on private land are in wetlands and continue to have a range of disturbances and threats including ditching, filling, mowing, and grazing.

Previous Federal Action

Federal government actions on this species began on November 28, 1983, when we published a notice of review in the **Federal Register** (48 FR 53640) covering all native plants being considered for listing as endangered or threatened. We included *Helenium virginicum* in that notice as a category 2 species. We defined category 2 candidates as those taxa for which we had information indicating that listing may be warranted but for which we lacked sufficient information on status and threats to support issuance of proposed listing rules. We subsequently retained it as a category 2 species when we revised the Notice of Review for Native Plants in 1985 (50 FR 39526), and again in 1990 (55 FR 61184).

In 1985, The Nature Conservancy conducted status surveys of *Helenium virginicum* and numerous other rare plant species. Their final report, dated October 20, 1986, recommended threatened status for this plant but indicated that additional ponds should be checked for the presence of this species.

In 1990 and 1991, the Virginia Department of Conservation and Recreation's Division of Natural Heritage (VDCRDNH) conducted further fieldwork, funded in part by us, to locate additional *Helenium virginicum* populations. The VDCRDNH conducted an exhaustive search and discovered seven additional locations of the species, but three of these locations contained very few individuals. Based largely on this new information, we designated *H. virginicum* as a category 1 candidate when we revised the Notice of Review for Plant Taxa in 1993 (58 FR 51144). We defined category 1 candidates as those taxa for which we had on file sufficient information on biological vulnerability and threats to support preparation of listing proposals. Upon publication of the February 28, 1996, notice of review (61 FR 7596), we ceased using category designations and included *H. virginicum* as a candidate species. Candidate species are those taxa for which we have on file sufficient information on biological vulnerability and threats to support proposals to list the species as threatened or endangered.

We published a proposed rule to list *H. virginicum* as threatened in the

Federal Register on September 29, 1997 (62 FR 50896).

Summary of Comments and Recommendations

In the September 29, 1997, proposed rule (62 FR 50896) and associated notifications, we requested all interested parties to submit factual reports or information that might contribute to the development of a final rule. We contacted appropriate State and Federal agencies and representatives, county governments, scientific organizations, and other interested parties and requested comments. We published legal notices soliciting comments in three Virginia newspapers—the *Harrisonburg News-Record* on October 17, 1997, the *Staunton News-Leader* on October 12, 1997, and the *Waynesboro News-Virginian* on October 10, 1997.

Six individuals and organizations submitted comment letters. Two peer reviewers supported the listing and provided additional pertinent information which we incorporated into the final rule. The U.S. Forest Service and the Virginia Department of Agriculture and Consumer Services supported listing, the Virginia Department of Transportation was neutral, and the Pacific Legal Foundation opposed listing. One private landowner commented by telephone, but neither supported nor opposed the listing.

The following summary includes responses to all substantive written and oral comments we received during the comment period.

Issue 1: One commenter stated that we lack authority under the Act pursuant to the Commerce Clause of Article 1, Section 8 of the United States Constitution to regulate this plant species because “the Fish and Wildlife Service must show that regulation of these plants will address activities that bear a substantial relation to or substantially affect interstate commerce” and “based upon the information contained in the Proposed Rule, regulation of the Virginia sneezeweed does not bear a connection to impacts upon interstate commerce.”

Response: A recent decision in the United States Court of Appeals for the District of Columbia Circuit (*National Association of Homebuilders v. Babbitt*, 130 F. 3d 1041, D.C. Cir. 1997) makes it clear in its application of the test used in the United States Supreme Court case, *United States v. Lopez*, 514 U.S. 549 (1995), that regulation of species limited to one State under the Act is within Congress’ commerce clause power. On June 22, 1998, the Supreme Court declined to accept an appeal of

this case (118 S. Ct. 2340 1998).

Therefore, our application of the Act to *Helenium virginicum*, a plant endemic to only two counties in the Commonwealth of Virginia, is constitutional.

In addition to the reasons supporting the constitutionality of the ESA itself which were discussed in *Homebuilders*, the past, current, and potentially future use of *Helenium virginicum* habitat for agriculture and cattle production, residential development and roads and highways are activities which affect interstate commerce. The specimens in botanical collections around the country directly traveled via the channels or instrumentalities of interstate commerce as well as the scientists and others who have traveled interstate to study or observe the species.

Issue 2: One commenter expressed concern about the uncertainties involved in wetland delineation and the potential effects of listing *Helenium virginicum* on the regulation of private landowners.

Response: Listing of *Helenium virginicum* will not affect the guidelines and methodologies for delineating wetlands. Listing, however, will require Federal regulatory agencies, primarily the Army Corps of Engineers (Corps), to insure that their actions, including the issuance of wetland permits under section 404 of the Clean Water Act, do not jeopardize the continued existence of this species. In some cases, the Corps may require private landowners applying for permits to reduce the scope or extent of their proposed wetland fill projects if the fill would adversely affect the species.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1513) and regulations (50 CFR part 424) we promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. We determine a species to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Helenium virginicum* (Virginia sneezeweed) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Habitat modification is the principal threat to *Helenium virginicum*. The species is threatened by residential development, incompatible agricultural practices, filling and ditching of wetland habitats, groundwater withdrawal, and other disruptions of

hydrology. Because the survival and maintenance of *H. virginicum* populations depend on seasonal water level fluctuations, either wetland drainage or increases in the time of inundation may cause high levels of mortality. Of the 18 populations visited in 1995, 8 were located in relatively undisturbed wetlands, while the remaining 10 were in wetlands altered by ditching, mowing, grazing or filling (Van Alstine 1996). At least four of the sites where the species has dramatically declined in recent years have modified hydrology (Van Alstine and Ludwig 1991). Three of these sites have been either ditched or filled, thereby shortening or eliminating the wet phase.

Among the most threatened populations of *Helenium virginicum* are those in the area south and southwest of Lyndhurst, Virginia, where land use is increasingly being converted from agricultural to residential. Increased drainage control which accompanies such development will adversely affect many of the sites located on or near agricultural lands over the next 10 years (Van Alstine and Ludwig 1991).

One proposed project, the widening of Route 340 in Augusta County from two to four lanes, could have severe impacts on one of the largest populations of *Helenium virginicum*. However, it may be possible to avoid or reduce impacts by careful routing of the highway, controlling runoff, and maintaining current hydrology.

Cattle grazing and mowing affect many of the sites supporting the species. In general, moderate levels of grazing and mowing appear to be beneficial, since populations at several regularly grazed or mowed sites are among the largest and best established. Nonetheless, there is a potential that frequent, or poorly timed mowing (and perhaps overgrazing) could have a long-term adverse effect on the species by interfering with flowering and seed production (Van Alstine and Ludwig 1991).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Other species in the genus *Helenium* have been shown to contain compounds with antitumor properties. However, there is no information to show that *Helenium virginicum* is in commercial trade for these compounds. Overcollection has not been documented as a problem for the species. Most collections, to date, have been for scientific purposes; scientists have collected specimens from locally large populations which can tolerate these low levels of collection.

Overcollection could become a problem at some of the sites supporting smaller populations of *H. virginicum*.

C. Disease or Predation

We believe disease and predation currently are not factors affecting the continued existence of *Helenium virginicum*. We believe the effects of grazing on the species are mostly positive, because most grazers appear to feed preferentially on competing vegetation while avoiding *H. virginicum*. We do not know the effects of long-term heavy grazing.

D. The Inadequacy of Existing Regulatory Mechanisms

The State of Virginia currently lists *Helenium virginicum* as an endangered species. State law prohibits the taking of this species from State or private lands without consent of the landowner but does not protect the species' habitat. Section 404 of the Clean Water Act provides some regulation of the species' wetland habitats. These regulations have not prevented draining and filling of sites supporting the species. Therefore, existing regulations appear to be inadequate to protect the species.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Invasion of an exotic species, purple loosestrife (*Lythrum salicaria*), is a potential threat to *Helenium virginicum*. Purple loosestrife is slowly extending its range throughout freshwater wetland areas in Virginia and may invade *H. virginicum* habitats. Climate changes (either natural or human-caused) are also a potential threat to the species. Several consecutive years of unusually wet or unusually dry weather can dramatically lower population numbers. Based on his long-term demographic study of one *H. virginicum* site, Knox (1997) suggests that *H. virginicum* is naturally at high risk of local extinction as a result of such events. *Helenium virginicum* is not self-fertilizing, and small populations are at risk of extirpation due to limited availability of compatible mates (Messmore and Knox 1997).

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to issue this final rule. Based on this evaluation, our preferred action is to list *Helenium virginicum* as a threatened species. This species is faced with increasing threats from loss and degradation of habitat due to development and related changes in hydrology as well as other activities incompatible with the species' long-

term survival. These threats are compounded by the species' restricted range and small number of populations. While not in immediate danger of extinction, *H. virginicum* is likely to become so in the foreseeable future. In accordance with the definitions for endangered and threatened species found in section 3 of the Act, threatened is the most appropriate classification for *H. virginicum*.

Critical Habitat

Section 3 of the Act defines critical habitat as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. We find that designation of critical habitat is not prudent for *Helenium virginicum*. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Twenty of the 25 known extant populations of *Helenium virginicum* are on private land. Most of these populations are located near or adjacent to residential areas or public roads. The remaining five populations, located on Forest Service land, are easily accessed by existing roads. The publication of precise maps and descriptions of critical habitat in the **Federal Register**, as required in a proposal for critical habitat, would make this plant vulnerable to incidents of collection and vandalism and, therefore, could contribute to the decline of the species. Although we do not know that

collectors currently seek this species, related members of the genus are commercially cultivated and at least one member of the genus, *H. amarum*, has been shown to contain compounds of possible medicinal value. The listing of this species as threatened also publicizes its rarity and, thus, may make this plant more attractive to researchers, collectors, and those wishing to see rare plants. The potential desirability and the accessibility and vulnerability of the species, therefore, could make the plants subject to collection and vandalism if we publicized their precise locations.

In addition, critical habitat designation for *Helenium virginicum* is not prudent due to lack of benefit. Five of the species' 25 known extant populations occur on Federal land in the George Washington and Jefferson National Forest. The Forest Service is aware of the locations of these populations and has protected four of them through designation of the sites as Special Interest Areas (Biological). The Forest Service likely will protect the fifth population, discovered more recently, by designating the site as a Special Interest Area also. The Forest Service has indicated a commitment to assisting in the recovery of this species by protecting these sites. In the unlikely event that the Forest Service would plan an activity that could potentially affect a population, it is highly likely that if the activity would cause adverse modification of critical habitat, it would also cause jeopardy to the species. Therefore, the designation of critical habitat on Federal lands would not provide greater protection for this species or its habitat than that provided by listing.

The remaining 20 of the 25 known extant populations of *Helenium virginicum* are located on private lands. We informed the owners and managers of these private lands of the population locations and of the importance of protecting the species and its habitat. It is highly likely that an activity on private land involving Federal permitting or funding which causes adverse modification of critical habitat would also cause jeopardy to the species. For this reason, the designation of critical habitat on private lands would not provide greater protection for this species or its habitat than that provided by listing. As outlined above, the designation of critical habitat could cause additional threats but likely would provide no additional benefits for the species. Therefore, the Service concludes that designation of critical habitat for *H. virginicum* is not prudent.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery plans be developed for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is listed or proposed for listing as endangered or threatened and with respect to those species' designated or proposed critical habitat, if any. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the Federal agency must enter into formal consultation with us. Federal agency actions that may require conference and/or consultation include Forest Service land management activities and Corps permitting of projects such as road construction and filling of wetlands subject to section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*).

The Act and its implementing regulations set forth a series of general trade prohibitions and exceptions that apply to all threatened plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal

jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Section 4(d) of the Act allows for the provision of such protection to threatened species through regulation. The protection may apply to this species in the future if regulations are promulgated. Seeds from cultivated specimens of threatened plants are exempt from these prohibitions provided that their containers are marked "Of Cultivated Origin." Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. For threatened plants, permits are also available for botanical or horticultural exhibition, education purposes, or special purposes consistent with the purposes of the Act. In the case of *Helenium virginicum*, we anticipate that few, if any, trade permits would ever be sought or issued since the species is not common in cultivation nor in the wild.

It is our policy published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time we list a species those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. Collection, damage, or destruction of listed species on Federal lands is prohibited, although in appropriate cases a Federal endangered species permit may be issued to allow collection. Such activities on non-Federal lands would constitute a violation of section 9, if conducted in knowing violation of State law or regulations or in violation of State criminal trespass law. We are not aware of any otherwise lawful activities being conducted or proposed by the public that would affect *Helenium virginicum* and result in a violation of section 9. You should direct questions regarding whether specific activities would constitute a violation of section 9 to the Field Supervisor of our Chesapeake Bay Field Office (see **ADDRESSES** section).

You should direct requests for copies of the regulations concerning listed plants and general inquiries regarding prohibitions and permits to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1903).

National Environmental Policy Act

We have determined that we do not need to prepare Environmental Impact Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018-0094. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid control number. For additional information concerning permit and associated requirements for threatened species, see 50 CFR 17.32.

References Cited

- Blake, S.F. 1936. A New *Helenium* from Virginia. *Claytonia* 3(2): 13-15.
- Knox, J.S. 1997. A Nine Year Demographic Study of *Helenium virginicum* (Asteraceae), a Narrow Endemic Seasonal Wetland Plant. *J. Torrey Bot. Soc.* 124(3): 236-245.
- Knox, J.S., M.J. Gutowski, D.C. Marshall, and O.G. Rand. 1995. Tests of the Genetic Bases of Character Differences between *Helenium virginicum* and *H. autumnale* Using Common Gardens and Transplant Studies. *Syst. Bot.* 20: 120-131.
- Messmore, N.A. and J.S. Knox. 1997. The Breeding System of the Narrow Endemic, *Helenium virginicum* (Asteraceae). *J. Torrey Bot. Soc.* 124(4): 318-321.
- Niering, W.A. 1979. The Audubon Society Field Guide to North American Wildflowers—Eastern Region. Alfred A. Knopf, New York. p. 383.
- Steyermark, J.A. 1960. An Unusual Hybrid *Helenium*. *Rhodora* 62: 343-346.
- Van Alstine, N.E. 1996. A Reassessment of the Status of the *Helenium virginicum* Populations in the Shenandoah Valley of Virginia. Natural Heritage Technical Report 96-6. VA Dept. of Conservation and Recreation, Richmond, VA. Unpublished report to the U.S. Fish and Wildlife Service. 36pp.
- Van Alstine, N.E., and J.C. Ludwig. 1991. Natural Heritage Inventory: *Helenium*

virginicum. 1990 Final Report. VA Dept. of Conservation and Recreation, Div. of Natural Heritage, Richmond, VA. Unpublished report. 50pp.
Virginia Department of Conservation and Recreation. 1995. Natural Resources Fact Sheet—Virginia Sneezeweed (*Helenium virginicum*). VA Dept. of Conservation and Recreation, Richmond, VA. 2pp.

Author: The primary author of this final rule is Andy Moser, Chesapeake Bay Field office (see ADDRESSES section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, the Service amends part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.12(h) is amended by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *
 (h) * * *

| Species | | Historic range | Family name | Status | When listed | Critical habitat | Special rules |
|----------------------------|---------------------|-------------------|------------------|--------|-------------|------------------|---------------|
| Scientific name | Common name | | | | | | |
| FLOWERING PLANTS | | | | | | | |
| <i>Helenium virginicum</i> | Virginia sneezeweed | U.S.A. (VA) | Asteraceae | T | 652 | NA | NA |

Dated: October 16, 1998.
Jamie Rappaport Clark,
 Director, Fish and Wildlife Service.
 [FR Doc. 98–29303 Filed 11–2–98; 8:45 am]
 BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208298–8055–02; I.D. 102898B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock by Vessels Catching Pollock for Processing by the Inshore Component in the Bering Sea Subarea of the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the inshore component in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the amount of the 1998 pollock total allowable catch (TAC) apportioned to vessels catching pollock for processing by the inshore component in the Bering

Sea subarea of the Bering Sea and Aleutian Islands management area.
DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 29, 1998, until 2400 hrs, A.l.t., December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(c)(3)(iii), the Final 1998 Harvest Specifications of Groundfish for the BSAI (63 FR 12689, March 16, 1998) established the amount of the 1998 pollock TAC apportioned to vessels catching pollock for processing by the inshore component in the Bering Sea subarea of the BSAI as 359,363 metric tons (mt).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the amount of the 1998 pollock TAC apportioned to vessels catching pollock for processing by the inshore component in the Bering Sea subarea of the BSAI will be reached. Therefore, the Regional Administrator is establishing a directed fishing

allowance of 358,363 mt, and is setting aside the remaining 1,000 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the inshore component in the Bering Sea subarea of the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent overharvesting the amount of the 1998 pollock TAC apportioned to vessels catching pollock for processing by the inshore component in the Bering Sea subarea of the BSAI. A delay in the effective date is impracticable and contrary to the public interest. The fleet has already taken the amount of the 1998 pollock TAC apportioned to vessels catching pollock for processing by the inshore component in the Bering Sea subarea of the BSAI. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action can not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived. This action is required by § 679.20 and is exempt from review under E.O. 12866.