

Dated: March 26, 1997.

**David J. Barram,**

*Acting Administrator of General Services.*

#### **PART 101-21—[AMENDED]**

Therefore 41, CFR part 101-21 is amended as set forth below:

1. The authority citation for 41 CFR part 101-21 continues to read as follows:

**Authority:** Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c).

#### **Subpart 101-21.6—Billings, Payments, and Related Budgeting Information for Space and Services Furnished by the General Services Administration**

2. Section 101-21.604 is amended by revising paragraphs (d) through (h) and by adding paragraph (i) to read as follows:

##### **§ 101-21.604 Billing procedures for reimbursable charges.**

\* \* \* \* \*

(d) The following basic types of reimbursable work are performed by GSA on a fixed price basis. The fixed price is the amount of the Reimbursable Work Authorization (RWA) which is the authorized amount:

(1) Non-recurring services performed above standard levels of service, such as out-of-cycle painting;

(2) Recurring services not included in the standard level for which a price can be established;

(3) Repairs and alterations in buildings not controlled by GSA;

(4) Special space alterations and adjustments performed by GSA in GSA-operated buildings, which are requested and financed by other agencies in accordance with § 101-20.106, Reimbursable services, of this chapter; and

(5) Alteration projects up to the prospectus threshold.

(e) Where the amount of the RWA is less than \$25,000, billing will occur at termination date. Other bills will be rendered at the customer's option, based on delivered orders either monthly or quarterly.

(f) RWAs above the prospectus threshold shall be performed on an actual cost basis. In special circumstances, when GSA and the ordering agency agree, non-prospectus alterations work may be performed on an actual cost basis. GSA will make every effort to obtain approval and certification of additional funds before incurring any obligations in excess of 10 percent of the authorized amount or \$500, whichever is greater. However, failure of GSA to notify the agency that obligations will exceed the authorized

amount, regardless of dollar amount, does not relieve the agency of paying in full the actual costs.

(g) A Reimbursable Work Authorization request (Form 2957 or other acceptable request) must be completed and approved by GSA and an agency official certifying that he/she has the authority to order the services and commit the agency to payment.

(h) Bills for recurring above-standard level services are rendered in advance at an established cost equal to the estimated amount. This type of work authorization, with the right to cancel (subject to incurred costs and obligations) upon 60 days notice by either party must be completed and forwarded to GSA prior to the commencement of the period for which services are required. With the exception of recurring work authorizations for utilities, which GSA may limit to 3-month periods, each recurring type work authorization must authorize charges for the full period during the fiscal year that the services will be required. These work authorizations must always begin and end within the same fiscal year.

(i) Agencies shall be responsible for timely payment and resolving any billing problems regarding orders they place under GSA contracts.

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#### **DEPARTMENT OF THE INTERIOR**

##### **Fish and Wildlife Service**

##### **50 CFR Part 17**

##### **RIN 1018-AC74**

##### **Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for *Helianthus eggertii* (Eggert's Sunflower)**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) determines threatened status for *Helianthus eggertii* (Eggert's sunflower) under the authority of the Endangered Species Act of 1973, as amended (Act). This rare plant is presently known from an estimated 34 populations in 14 counties—in Alabama, one population in Blount County; in Kentucky, one population from Grayson and Hardin counties, two populations from Edmonson and Barren counties, and seven populations from Hart County; in Tennessee, one

population each in Dickson, Marion, and Williamson counties, two (and a portion of a third) in Maury County, three in Lewis County, four in Lawrence County, and six in Coffee County. It is threatened throughout its range by habitat alteration; residential, commercial, or industrial development; plant succession; and conversion of its limited habitat to pasture or croplands. Herbicide use, particularly along roadsides, also poses a threat. This action extends Federal protection under the Act to Eggert's sunflower.

**EFFECTIVE DATE:** June 23, 1997.

**ADDRESSES:** The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Asheville Field Office, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801. **FOR FURTHER INFORMATION CONTACT:** Mr. J. Allen Ratzlaff at the above address (704/258-3939, Ext. 229).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

*Helianthus eggertii* (Small) (Eggert's sunflower) is a perennial member of the aster family (Asteraceae) known only from Kentucky, Tennessee, and Alabama. It is a tall (to 2.5 meters [8 feet]) plant arising from a short, thick base, perennating by shallow elongate, fleshy rhizomes that can form an extensive network. The plant is smooth, except for some slight roughening on the upper leaf surfaces, and it has a blue-waxy coloration. The lower leaves are conspicuously whitened. The plant's opposite (rarely whorled) leaves are mostly lanceolate to narrowly ovate, the largest being 10 to 20 centimeters (3.9 to 5.7 inches) in length. Leaf edges are smooth or minutely toothed, and the tip is usually pointed. Large yellow flowers (8 centimeters [3 inches]) are borne on the upper third of the stem. Cypsalas (seeds) are blackish or grayish and mottled, 5 to 6 millimeters (0.25 inches) long, faintly striated, and with a few scattered trichomes (hairs). Flowering begins in early August and continues through mid-September, and achenes mature from early September to early October (Jones 1991). Jones (1991) observed fruit set at between 5 and 25 seeds per flower head. Seed germination rates are generally low (rarely exceeding 25 percent) and most require exposure to cold to break dormancy (Heiser *et al.* 1969).

Eggert's sunflower develops an extensive rhizome system, and these rhizomes can live for many years. Thus, the plant does not have to produce seeds every year to ensure its survival. If environmental conditions change

(e.g., increased competition, shading, etc.); it can survive for several years by vegetative means, as Jones (1991) noted was the case in several populations.

Small (1903) designated the type locality of Eggert's sunflower as near White Bluff in Dickson County, Tennessee, from specimens collected by H. Eggert. Beatley (1963) considered this plant a distinct species and that it was "conspicuous because of the colonial habit and glaucescence." In a comprehensive essay on *Helianthus*, Heiser *et al.* (1969) retained *H. eggertii* as a distinct species and placed it in the series *Divaricati*, being distinguished by its nearly sessile, glaucous, and glabrous leaves. This work pointed out that *H. eggertii* is a hexaploid ( $n=51$ ) and could have arisen from a cross between *H. laevigatus* ( $n=34$ ), a shale barren species of the Allegheny Mountains, and *H. decapetalus* ( $n=17$ ), a widespread species of the eastern United States.

Spring and Schilling (1991) found *H. eggertii* to have a unique chemical profile. Of the related sunflowers, it is most similar to *H. laevigatus*, which shares 9 of 12 chemical compounds. Smith (1957) considered *H. eggertii* to be a local minor variant of *H. strumosus*, but this species is dissimilar biochemically although the two species appear to readily hybridize.

*Helianthus eggertii* typically occurs on rolling to flat uplands and in full sun or partial shade. It is often found in open fields or in thickets along woodland borders and with other tall herbs and small trees. The distribution of this species shows a strong correlation with the barrens (and similar habitats) of the Interior Low Plateau Physiographic Province, with a few records from the Cumberland Plateau Section of the Appalachian Plateau Physiographic Province. The following is a description of the species' status within each State where it occurs. The term "population" is used loosely in these descriptions because it is not known how distant individual plants must be from one another to prevent cross-pollination. Populations described below are groups of "occurrences" in general proximity to each other and may or may not correspond to true biological populations.

#### Alabama

The only known location for Eggert's sunflower in Alabama (Blount County) was discovered in 1981 by Robert Kral (Jones 1991). This site, although presently vigorous, could be affected by local development and Interstate 65 maintenance and improvements.

#### Tennessee

The following information on Eggert's sunflower in Tennessee is primarily from Jones (1991) and the Tennessee Natural Heritage Program database.

Prior to the status survey conducted by Jones (1991), there were 12 counties in Tennessee with records (a total of 13) of *H. eggertii*. Four sites were found to have been extirpated (one each in Coffee, Davidson, Lawrence, and Williamson counties) and four were found to be erroneous records (one each in Dekalb, Grundy, Clay, and Morgan counties). Additional occurrences were discovered during the status survey and later by the Tennessee Department of Environment and Conservation (TDEC) (1993, *in litt.*) and the U.S. Air Force, Arnold Engineering Development Center (AEDC). Several sites in Coffee, Franklin, Lawrence, and Lewis counties are probably single populations and are treated as such in this document, including the occurrences on AEDC in Coffee and Franklin counties. The 20 known populations in Tennessee are distributed as follows: Coffee County—six populations; Lawrence County—four populations; Franklin County—two populations plus a portion of the occurrences on AEDC; Lewis County—three populations; Maury County—two populations; and one population each in Dickson, Marion, and Williamson counties. Most of these populations (about 50 percent) are small, having fewer than 20 individual plants. The other populations contain several hundred stems. Most of the Tennessee populations are threatened either by roadside maintenance, weedy invaders, fire suppression, or development. The largest known population is found on Federal lands (AEDC), three occur entirely or partially on State lands, and the remainder are found in roadside rights-of-way or on private lands.

#### Kentucky

The following information on Eggert's sunflower in Kentucky is primarily derived from Jones (1991) and the Kentucky State Nature Preserves Commission (KSNPC) (1996, *in litt.*).

Populations of Eggert's sunflower in Kentucky are known from the Mammoth Cave Plateau subsection and Eastern Highlands Rim subsection of the Interior Low Plateau Physiographic Provinces. Prior to the status survey conducted by Jones (1991), there were three counties in Kentucky with single records of occurrence for *H. eggertii*. One site, in Edmonson County, has been extirpated, and the other two records have proven to be erroneous (one each in Lincoln and Jackson counties). However, seven

new populations were discovered during the status survey, and additional sites were later discovered by R. Seymour in the Mammoth Cave area (D. White, KSNPC, 1996, *in litt.*). The 13 known sites in Kentucky are distributed as follows—one population from Grayson and Hardin counties, two populations from Edmonson and Barren counties, and seven populations from Hart County. Most of these populations have fewer than 15 individual plants, with four having only five or fewer plants. Only two populations occur on barrens, and half of these are threatened by weedy competitors and/or road maintenance. Five of the thirteen Kentucky populations are found entirely or partially on Federal lands (Mammoth Cave National Park), two on The Nature Conservancy's (TNC) land and the remainder are found along roadside rights-of-way or on private lands.

#### Previous Federal Action

Federal government actions on this species began with section 12 of the Act (16 U.S.C. 1531 *et seq.*). It directed the Secretary of the Smithsonian Institution (Smithsonian) to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice (40 FR 27823) that formally accepted the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act. By accepting this report as a petition, the Service also acknowledged its intention to review the status of those plant taxa named within the report. *Helianthus eggertii* was included in the Smithsonian report and also in the July 1, 1975, Notice of Review. On June 16, 1976, the Service published a proposed rule (41 FR 24523) that determined approximately 1,700 vascular plant taxa, including *H. eggertii*, to be endangered pursuant to section 4 of the Act.

The 1978 amendments to the Act require that all proposals that are not finalized within two years be withdrawn. On December 10, 1979 (44 FR 70796), the Service published a notice withdrawing all plant species proposed in the June 16, 1976 rule. The revised Notice of Review for Native Plants published on December 15, 1980 (45 FR 82480), now included *H. eggertii* as a category 2 species. It was subsequently retained as a category 2 species when the Notice of Review for Native Plants was revised in 1983 (48 FR 53640), in 1985 (50 FR 39526), and again in 1990 (50 FR 61184). In 1990, category 2 species were those taxa for

which the Service had information indicating that proposing to list them as endangered or threatened might be appropriate; or for which substantial data on biological vulnerability and threats were not known at this time or were not on file to support the listing. This was the case with *H. eggertii*; the Service believed that additional surveys of potential habitat and further identification of threats were needed before a decision could be made on whether to propose listing the species. In 1989, the Service funded a survey to determine the status of *H. eggertii* in Alabama, Kentucky, and Tennessee; a final report on these surveys (Jones 1991) was accepted by the Service in 1991.

All plant taxa included in the comprehensive plant notices are treated as if under a petition. Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. This was the case for *H. eggertii* because of the acceptance of the 1975 Smithsonian report as a petition. In 1983, the Service found that the petition calling for the listing of *H. eggertii* was not warranted because of insufficient data on its distribution, vulnerability, and degrees of threat. Information contained in the above-mentioned status survey completed these informational gaps and was sufficient and conclusive to warrant preparation of a proposed rule to list the species. *Helianthus eggertii* was accepted as a category 1 species on August 30, 1993, and was included in this category in the revised Notice of Review for Native Plants published on September 30, 1993 (50 FR 51144). On September 9, 1994 (59 FR 46607), the Service published a proposed rule to list Eggert's sunflower as threatened under the Act.

The processing of this final rule conforms with the Service's final listing priority guidance published in the **Federal Register** on December 5, 1996 (61 FR 64475). The guidance clarifies the order in which the Service will process rulemakings during fiscal year 1997. The guidance calls for giving highest priority to handling emergency situations (Tier 1) and second highest priority (Tier 2) to resolving the listing status of the outstanding proposed listings. This rule falls under Tier 2. Presently, there are no pending Tier 1 actions in Region 4.

### Summary of Comments and Recommendations

In the September 9, 1994, proposed rule (59 FR 46607) to list Eggert's sunflower as threatened and through other associated notifications, all interested parties were requested to submit factual reports and information that might contribute to the development of a final rule for this sunflower. Appropriate Federal and State agencies, county governments, scientific organizations, and interested parties were contacted by letter dated September 29, 1994. Legal notices were published in the *Hart County News Herald*, *Democrat-Union* (Lawrenceburg), and *Daily Herald* (Columbia) on September 27, 1994; in the *Blount Countian*, *State Journal* (Frankfort), *Chattanooga Times*, and *Dickson Herald* on September 28, 1994; in the *Edmonson News*, *Herald Chronicle* (Hart County), *Daily News* (Bowling Green), and *Lewis County Herald* on September 29, 1994, and in the *Manchester Times* on October 5, 1994.

Six individuals provided written responses on the proposed rule to list Eggert's sunflower. Four of the individuals who responded supported the listing, one requested information but did not support or oppose the listing, and one provided additional information but neither supported nor opposed the listing. All of these comments were incorporated into the final rulemaking.

The comment period on the proposed rule (59 FR 46607) was reopened on August 30, 1996 (61 FR 45931). Through associated notifications, interested parties were requested to submit factual reports and information that might contribute to the development of a final rule for this sunflower. One hundred and thirty-eight Federal and State agencies, county governments, scientific organizations, and interested parties were contacted by letter dated September 6, 1996. Legal notices were published in the *Herald Chronicle* on September 2, 1996; in the *Hart County News Herald* and *Nashville Banner* on September 3, 1996; in the *Blount Countian*, *Daily Herald* (Columbia, TN), *Chattanooga Times*, and *Dickson Herald* on September 4, 1996; in the *Edmonson News* and *Lewis County Herald* on September 5, 1996; in the *Frankfort State Journal* on September 6, 1996; and in the *Manchester Times* on September 11, 1996.

Eight written responses were received during the reopening of the comment period on the proposed rule to list Eggert's sunflower. One individual

supported the listing and provided additional information; two State agencies supported the listing and provided additional information (KSNPC and TDEC); two private conservation organizations supported the listing and provided additional information (the Kentucky and Tennessee Chapters of TNC); one Federal agency supported the listing and provided additional information (AEDC); one Federal agency supported the listing but provided no additional information (U.S. Natural Resources Conservation Service, Tennessee); and one Federal agency (U.S. Forest Service) neither supported nor opposed the listing, but did provide additional information. These comments were also incorporated into the final rule.

The Service also solicited the expert opinions of three independent specialists regarding pertinent scientific and commercial data and assumptions relating to taxonomy and biological and ecological information for this species. The Service received one response from the specialists and these comments are incorporated into this final rule.

### Summary of Factors Affecting the Species

After a thorough review and consideration of all available information, the Service has determined that Eggert's sunflower should be classified as a threatened species. Section 4(a)(1) of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined 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 *H. eggertii* (Eggert's sunflower) are as follows:

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

Most of the known populations of *H. eggertii* are threatened with destruction or adverse modification of their habitat. Over 50 percent of the known *H. eggertii* sites are threatened by the encroachment of more competitive herbaceous vegetation and/or woody plants that produce shade and compete with this species for limited water and nutrients. Active management is required to ensure that Eggert's sunflower continues to survive at all sites.

Since most of the sites where this species survives are artificial (not true barrens) or manmade habitats, such as rights-of-way or similar habitats that mimic barrens; direct destruction of this

habitat for commercial, residential, or industrial development or intensive rights-of-way maintenance (e.g., herbicide use) is a significant threat to most of the known populations.

Barrens habitat, which is preferred by Eggert's sunflower, is disappearing from the south-central United States at a rapid rate. Most of this type of habitat has been converted to croplands, pasture, or has been developed as residential or industrial sites. DeSelm (1989), in a study on Tennessee barrens, reported that all of his study sites were in the later stages of succession, with the prevention of fires being the major contributing factor.

As its natural habitat disappears, Eggert's sunflower is now found in habitats that replicate the species' ecological requirements. These sites, having the accompanying assortment of weedy vegetation associated with disturbed areas, typically are disturbed habitats, such as roadside rights-of-way, ditches, road cuts, or mounds of soil. Colonization most likely occurs soon after a disturbance to the habitat. Eggert's sunflower can initially compete with other vegetation. However, as successional stages progress, this species is consequently reduced to vegetative growth from rhizomes and is eventually eliminated. Periodic burning, mowing, or thinning of vegetation on these sites favors the species by lessening competition. This sunflower is persisting at several sites due to the current mowing regime.

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

At this time, there is little, if any, commercial trade in *H. eggertii*. Most populations are very small and cannot support the collection of plants for scientific and/or other purposes. Inappropriate collecting for scientific purposes or as novelties pose a threat to the species.

#### *C. Disease or Predation*

Disease and predation are presently not factors affecting the continued existence of the species. However, in several populations, larval insects were found to have destroyed nearly all the mature seeds in several flower heads (Jones 1991; personal observations, Ratzlaff 1992).

#### *D. The Inadequacy of Existing Regulatory Mechanisms*

*Helianthus eggertii* is a Species of Special Concern in Tennessee, and it does not receive any formal protection since it is not listed as endangered under the State's Rare Plant Protection

and Conservation Act. In Alabama, the species does not receive any State protection, and in Kentucky, it is listed as endangered by the Kentucky Academy of Science and KSNPC (Branson *et al.* 1981, Warren *et al.* 1986). However, these lists have no legal standing in the State.

The Act will afford additional protection to populations that occur on Federal lands and will protect other populations when the taking is in violation of any State law, including State criminal trespass laws. Protection from inappropriate interstate commercial trade will also be provided for under the Act.

#### *E. Other Natural or Manmade Factors Affecting its Continued Existence*

An additional factor that threatens the survival of *H. eggertii* is extended drought. Dry conditions cause higher than normal mortality of seedlings in the natural populations. If drought continues over an extended period of time, it could have an adverse effect on the survival of the species, itself. Additionally, dwindling numbers in the populations of this species could increase the potential for inbreeding depression and other reproductive-related problems.

In determining to make this rule final, the Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species. Based on this evaluation, the preferred action is to list Eggert's sunflower as threatened. This sunflower is presently known from 34 populations in 14 counties—in Alabama, one population in Blount County; in Kentucky, one population from Grayson and Hardin counties, two populations from Edmonson and Barren counties, and seven populations from Hart County; in Tennessee, one population each in Dickson, Marion, and Williamson counties, two in Maury County, two in Franklin County and two "occurrences" are included as a portion of the AEDC population in Coffee County, three in Lewis County, four in Lawrence County, and six in Coffee County. The species is threatened throughout its range by habitat alteration; residential, commercial, and industrial development; plant succession; and the conversion of its limited habitat to pasture or croplands. Additionally, herbicide use, particularly along roadsides, also poses a threat. See the "Critical Habitat" section for a discussion of why critical habitat is not being proposed for this plant.

#### **Critical Habitat**

Section 4(a)(3) of the Act and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent at this time for *H. eggertii*. Service 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) the designation of critical habitat would not be beneficial to the species.

Section 7(a)(2) and regulations codified at 50 CFR part 402 require Federal agencies, in consultation and with the assistance of the Service, to ensure that those activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat, if any is designated. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of its proposed critical habitat (see "Available Conservation Measures" section for a further discussion of section 7). As part of the development of this rule, Federal and State agencies were notified of the plant's general distribution, and they were requested to provide any and all data on proposed Federal actions that might adversely affect the species. No specific projects were identified during the initial comment period. However, during the listing moratorium, the Arnold Engineering Development Center of the U.S. Air Force (AEDC) entered into section 7 consultation with the Service (Cookeville Field Office) concerning the proposed training of the National Guard on a base where *H. eggertii* occurs. The Air Force has since requested a formal conference. The Service has been working closely with the AEDC on a conservation plan that benefits the species and allows the Air Force to carry out its mission. No additional projects were identified during the second comment period. Should any future projects be proposed in areas inhabited by this plant, the involved Federal agency will be given the general distributional data necessary to determine if the species would be

impacted by their action. If needed, more specific distributional information will be provided.

Most populations of this species are small, and even the loss of a few plants to such activities as scientific collecting, could extirpate this sunflower from several locations. Therefore, publication of critical habitat descriptions and maps would increase the vulnerability of the species to vandalism without significantly increasing protection. The private landowners and local, State and Federal managers on whose property that all the known populations of *H. eggertii* occur, will be made aware of the location of existing plants and the importance of protecting them and their habitat. No additional benefits would result from the designation of critical habitat. Therefore, the Service concludes that it is not prudent at this time to designate critical habitat for the species. Existing precise locality data will be made available to appropriate Federal, State, and local government agencies from the Service office described in the ADDRESSES section or from the Service's Cookeville Field Office, 446 Neal Street, Cookeville, Tennessee 38501.

#### 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 results in public awareness and conservation actions to be taken 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 actions be carried out 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 being proposed or is already listed as endangered or threatened and with respect to critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. 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 adversely affects a listed species or its critical habitat, the

responsible Federal agency must enter into consultation with the Service. Most *H. eggertii* populations are found on privately-owned or State-owned lands. However, one entire population and portions of four others are found in Mammoth Cave National Park (U.S. Park Service) and one population (that includes 62 "occurrences") of *H. eggertii* is on AEDC lands.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.67, 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, 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. This protection will apply to this species in the future if such regulations are promulgated. Seeds from cultivated specimens of threatened plants are exempt from these prohibitions provided, when commercially shipped, the 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 and/or the survival of the species. For threatened plants, permits are also available for botanical or horticultural exhibition, educational purposes, and/or special purposes consistent with the purposes of the Act. It is anticipated that few commercial permits would ever be sought or issued since the species is not in cultivation and is not common in the wild.

It is the policy of the Service (59 FR 34272) to identify, to the maximum extent practicable at the time a species is listed, 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 the listing on proposed and ongoing activities within the species' range. Of the 34 remaining populations of Eggert's sunflower, six populations are found entirely or partially on Federal lands. Collection, damage, or destruction of this species on public lands is prohibited, although in appropriate cases a Federal endangered species permit may be issued to allow collection. Removal, cutting, digging up, or damaging or destroying endangered plants on non-Federal lands constitutes a violation of section 9 only if conducted in knowing violation of any State law or regulation, including State criminal trespass law. This would not affect any activities in Alabama, or Kentucky, as neither Alabama nor Kentucky State laws provide any protection for plants. In Tennessee, *Helianthus eggertii* is protected under the Rare Plant Protection and Conservation Act of 1985, which controls the removal of plants from State properties for scientific, educational, or propagative purposes, and the disturbance of the species on private lands is not allowed without the landowner's consent. The Service is not aware of any otherwise lawful activities being conducted or proposed by the public that will be affected by this listing which could result in a violation of section 9 of the Act.

Questions on whether specific activities could or will constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Asheville Field Office (see the "Addresses" section) or to the Cookeville Field Office, U.S. Fish and Wildlife Service, 446 Neal Street, Cookeville, Tennessee 38501 (615/528-6481). Requests for copies of regulations regarding listed species and inquiries about prohibitions and permits should be addressed to the U.S. Fish and Wildlife Service, Ecological Services Division, 1875 Century Boulevard, Atlanta, Georgia 30345 (Phone 404/679-7313; Fax 404/679-7081).

#### National Environmental Policy Act

The Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements. This rulemaking was not subject to review by the Office of Management and Budget under Executive Order 12866.

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Author

The primary author of this final rule is Mr. J. Allen Ratzlaff, Asheville Field Office, (See ADDRESSES section).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

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 to read as follows:

**§ 17.12 Endangered and threatened plants.**  
\* \* \* \* \*  
(h) \* \* \*

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS:							
* <i>Helianthus eggertii</i> .....	* Sunflower, Eggert's .....	* U.S.A. (AL, TN, KY).	* Asteraceae .....	* T	* 613	* NA	* NA
*	*	*	*	*		*	

Dated: April 8, 1997.

**John G. Rogers,**  
*Acting Director, Fish and Wildlife Service.*  
[FR Doc. 97-13412 Filed 5-21-97; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 960805216-7111-06; I.D. 121796B]

RIN 0648-AH06

Fisheries of the Northeastern United States; Regulatory Amendment to the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Commercial Quota Harvested for Delaware and New Hampshire

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

**ACTION:** Final rule; commercial quota harvest.

**SUMMARY:** NMFS issues this final rule to implement approved measures contained in a regulatory amendment to the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP). This regulatory amendment revises the allocation and management of the commercial scup quota. As a consequence of this rule, NMFS further announces that no commercial scup quota is available for the States of Delaware and New Hampshire for the 1997 Summer period, which ends October 31, 1997.

**EFFECTIVE DATE:** May 20, 1997.

**ADDRESSES:** Copies of the regulatory amendment are available upon request from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901.

Comments regarding burden-hour estimates for collection-of-information requirements contained in this final rule should be sent to Andrew A. Rosenberg,

Ph.D., Regional Administrator, 1 Blackburn Drive, Gloucester, MA 01930, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20502 (Attention: NOAA Desk Officer).

**FOR FURTHER INFORMATION CONTACT:** Regina L. Spallone, Fishery Policy Analyst, 508-281-9221.

**SUPPLEMENTARY INFORMATION:** This final rule implements approved measures contained in the regulatory amendment to the FMP, which was prepared by the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission). Background concerning the development of this regulatory amendment was provided in the notice of proposed rulemaking (62 FR 5375, February 5, 1997), and is not repeated here.

This rulemaking revises the manner in which the annual commercial quota is allocated to the scup fishery. With this revision, the total annual allowable catch (TAC) for the commercial fishery