

This is an amendment to 19.21.2 NMAC, Sections 2, 3, and 6 through 15, effective x/xx/xxxx.

19.21.2.2 SCOPE: ~~[The general public that collects, transports, or offers for sale native, vascular plants within the state of New Mexico, with the exceptions of federal employees working on lands within their jurisdiction, and any plant collection activities within lands owned by, or held in trust for, Native American tribes.]~~ All persons who take, possess, transport, export from the state, process, sell or offer for sale or shipment an endangered plant species.

[8/31/1995; 19.21.2.2 NMAC - Rn, 19 NMAC 21.2.2, 11/30/2006; A, / /20xx]

19.21.2.3 STATUTORY AUTHORITY: Section 75-6-1 NMSA 1978 directs the energy, minerals and natural resources department ~~[(department)]~~ to investigate all plant species in the state ~~[for the purpose of establishing a list of endangered plant species]~~ to develop information relating to population, distribution, habitat needs, limiting factors and other biological and ecological data, and to determine conservation measures and requirements necessary for survival. The department shall establish a list of endangered plant species based upon the investigations. It also authorizes the department to prohibit the taking, possession, transportation, exportation ~~from the state, processing, sale or offer for sale or shipment of [endangered species]~~ listed plants or plant materials, [with the exception of] except for permitted scientific [collections] purposes or propagation and transplantation activities that enhance the survival of endangered species. ~~[The forestry division state forester is the department secretary's designated representative for the purposes of endangered plant investigations and for issuing collection and transplantation permits.]~~

[10/29/1985, 12/23/1991, 8/31/1995; 19.21.2.3 NMAC - Rn & A, 19 NMAC 21.2.3, 11/30/2006; A, / /20xx]

19.21.2.6 OBJECTIVE: ~~[Native plant resources contribute to the economic, ecological, and aesthetic well-being of New Mexico citizens. This part's objective is to prevent the extinction or extirpation of native plant species in the state of New Mexico. It establishes the criteria for the recognition of endangered plant species and a list of plant species perceived, by the department, to be endangered within the state. This part also prescribes rules and permitting requirements for taking endangered plants during scientific investigations or propagation and transplantation activities that enhance survival.]~~ To establish rules to implement Section 75-6-1 NMSA 1978 including establishing a list of endangered plant species.

[8/31/1995; 19.21.2.6 NMAC - Rn & A, 19 NMAC 21.2.6, 11/30/2006; A, / /20xx]

19.21.2.7 DEFINITIONS:

A. "Department" means the energy, minerals and natural resources department.

~~[A.]~~ **B.** "Population site" means an area of occurrence of a particular species.

~~[B.]~~ **C.** "Specimen" means the physical parts or a plant in its entirety taken from a population site for the purpose of scientific study.

D. "State forester" means the director of the department's forestry division and the department secretary's designated representative for the purposes of administering the department's authorities and responsibilities under Section 75-6-1 NMSA 1978 including endangered plant investigations and issuance of collection and transplantation permits.

~~[C.]~~ **E.** "Taking" means the removal, with the intent to possess, transport, export, sell, or offer for sale any of the plants listed in 19.21.2.9 NMAC, from the places in the state of New Mexico where they naturally grow.

~~[D.]~~ **F.** "Voucher specimen" means an identifiable and representative specimen taken by a botanical collector from a population site for the purpose of documenting that site as occupied habitat. It ~~[should]~~ shall be accompanied by pertinent information on location, habitat, collector, date taken and any other notes the collector can present concerning the population site.

[10/29/1985, 12/23/1991, 8/31/1995; 19.21.2.7 NMAC - Rn & A, 19 NMAC 21.2.7, 11/30/2006; A, / /20xx]

19.21.2.8 CRITERIA FOR INCLUSION ON THE ENDANGERED PLANT SPECIES LIST: The following are the criteria for listing a plant as a state endangered plant:

A. the taxon is listed as threatened or endangered under the provisions of the Federal Endangered Species Act (16 U.S.C. Sections 1531 *et seq.*), or is considered proposed under the tenets of the Act; or

B. the taxon is a rare plant across its range within the state, and of such limited distribution and population size that unregulated taking could adversely impact it and jeopardize its survival in New Mexico.

[10/29/1985, 8/31/1995; 19.21.2.8 NMAC - Rn, 19 NMAC 21.2.8, 11/30/2006; A, / /20xx]

19.21.2.9 LIST OF NEW MEXICO STATE ENDANGERED PLANT SPECIES: The following list of plants constitutes the New Mexico state endangered plant species list. Listed are the plant's scientific name, its common name and the criterion for inclusion by the subsection in 19.21.2.8 NMAC:

<u>Agalinis calycina (Leoncita false-foxglove)</u>	<u>Subsection B of 19.21.2.8 NMAC</u>
<u>Aliciella formosa (Aztec gilia)</u>	<u>Subsection B of 19.21.2.8 NMAC</u>
<u>Allium gooddingii (Goodding's onion)</u>	<u>Subsection B of 19.21.2.8 NMAC</u>
<u>Amsonia tharpai (Tharp's bluestar)</u>	<u>Subsection B of 19.21.2.8 NMAC</u>
<u>[Argemone pleiacantha subsp. Pinnatisecta] Argemone pinnatisecta (Sacramento prickly-poppy)</u>	<u>Subsection A of 19.21.2.8 NMAC</u>
<u>Astragalus humillimus (Mancos milkvetch)</u>	<u>Subsection A of 19.21.2.8 NMAC</u>
<u>Peniocereus greggii (night-blooming cereus)</u>	<u>Subsection B of 19.21.2.8 NMAC</u>
<u>Castilleja ornata (Swale paintbrush)</u>	<u>Subsection B of 19.21.2.8 NMAC</u>
<u>Castilleja tomentosa (Tomentose paintbrush)</u>	<u>Subsection B of 19.21.2.8 NMAC</u>
<u>Cirsium vinaceum (Sacramento Mountains thistle)</u>	<u>Subsection A of 19.21.2.8 NMAC</u>
<u>Cirsium wrightii (Wright's marsh thistle)</u>	<u>Subsection B of 19.21.2.8 NMAC</u>
<u>Cleome multicaulis (slender spiderflower)</u>	<u>Subsection B of 19.21.2.8 NMAC</u>
<u>[Coryphantha scheeri var. scheeri] Coryphantha robustispina ssp. scheeri (Scheer's pincushion cactus)</u>	<u>Subsection B of 19.21.2.8 NMAC</u>
<u>Cylindropuntia viridiflora (Santa Fe cholla)</u>	<u>Subsection B of 19.21.2.8 NMAC</u>
<u>Cymopterus spellenbergii (Spellenberg's springparsley)</u>	<u>Subsection B of 19.21.2.8 NMAC</u>
<u>Cypripedium parviflorum var. pubescens (golden lady's slipper)</u>	<u>Subsection B of 19.21.2.8 NMAC</u>
<u>Echinocereus fendleri var. kuenzleri (Kuenzler's hedgehog cactus)</u>	<u>Subsection A of 19.21.2.8 NMAC</u>
<u>Erigeron hessii (Hess' fleabane)</u>	<u>Subsection B of 19.21.2.8 NMAC</u>
<u>Erigeron rhizomatus (Zuni fleabane)</u>	<u>Subsection A of 19.21.2.8 NMAC</u>
<u>Eriogonum gypsophilum (gypsum wild buckwheat)</u>	<u>Subsection A of 19.21.2.8 NMAC</u>
<u>Escobaria duncanii (Duncan's pincushion cactus)</u>	<u>Subsection B of 19.21.2.8 NMAC</u>
<u>Escobaria organensis (Organ Mountain pincushion cactus)</u>	<u>Subsection B of 19.21.2.8 NMAC</u>
<u>Escobaria sneedii var. leeii (Lee's pincushion cactus)</u>	<u>Subsection A of 19.21.2.8 NMAC</u>
<u>Escobaria sneedii var. sneedii (Sneed's pincushion cactus)</u>	<u>Subsection A of 19.21.2.8 NMAC</u>
<u>Escobaria villardii (Villard's pincushion cactus)</u>	<u>Subsection B of 19.21.2.8 NMAC</u>
<u>Hedeoma todsenii (Todsens pennyroyal)</u>	<u>Subsection A of 19.21.2.8 NMAC</u>
<u>Helianthus paradoxus (Pecos sunflower)</u>	<u>Subsection A of 19.21.2.8 NMAC</u>
<u>Hexalectris colemanii (Coleman's coral-root)</u>	<u>Subsection B of 19.21.2.8 NMAC</u>
<u>Hexalectris nitida (shining coralroot)</u>	<u>Subsection B of 19.21.2.8 NMAC</u>
<u>[Hexalectris spicata] Hexalectris arizonica (crested coralroot)</u>	<u>Subsection B of 19.21.2.8 NMAC</u>
<u>Ipomopsis sancti-spiritus (Holy Ghost ipomopsis)</u>	<u>Subsection A of 19.21.2.8 NMAC</u>
<u>Lepidospartum burgessii (gypsum scalebroom)</u>	<u>Subsection B of 19.21.2.8 NMAC</u>
<u>Lilium philadelphicum (wood lily)</u>	<u>Subsection B of 19.21.2.8 NMAC</u>
<u>Linum allredii (Allred's flax)</u>	<u>Subsection B of 19.21.2.8 NMAC</u>
<u>[Mammillaria wrightii var. wileoxii (Wileox pincushion cactus)]</u>	<u>Subsection B of 19.21.2.8 NMAC</u>
<u>Opuntia arenaria (sand prickly pear)</u>	<u>Subsection B of 19.21.2.8 NMAC</u>
<u>Pediocactus knowltonii (Knowlton's cactus)</u>	<u>Subsection A of 19.21.2.8 NMAC</u>
<u>Pediomelum pentaphyllum (Chihuahua scurfpea)</u>	<u>Subsection B of 19.21.2.8 NMAC</u>
<u>Penstemon metcalfei (Metcalfe's beardtongue)</u>	<u>Subsection B of 19.21.2.8 NMAC</u>
<u>Polygala rimulicola var. mescalorum (San Andres milkwort)</u>	<u>Subsection B of 19.21.2.8 NMAC</u>
<u>Puccinellia parishii (Parish's alkali grass)</u>	<u>Subsection B of 19.21.2.8 NMAC</u>
<u>Sclerocactus cloverae (Clover's cactus)</u>	<u>Subsection B of 19.21.2.8 NMAC</u>
<u>Sclerocactus mesae-verdae (Mesa Verde cactus)</u>	<u>Subsection A of 19.21.2.8 NMAC</u>
<u>Scrophularia macrantha (Mimbres figwort)</u>	<u>Subsection B of 19.21.2.8 NMAC</u>
<u>Spiranthes magnicamporum (lady tresses orchid)</u>	<u>Subsection B of 19.21.2.8 NMAC</u>
<u>Townsendia gypsophila (gypsum Townsend's aster)</u>	<u>Subsection B of 19.21.2.8 NMAC</u>

[10/29/1985, 12/23/1991, 8/31/1995; 19.21.2.9 NMAC - Rn & A, 19 NMAC 21.2.9, 11/30/2006; A, 01/15/2019; A, x/x/20xx]

19.21.2.10 PERMITS:

A. The state forester may issue permits to take state endangered plant species for the purpose of conducting scientific studies that enhance understanding for the distribution of, or conditions required for survival of, endangered plant species; or for propagation or transplantation activities that enhance the survival of endangered plant species.

B. The state forester shall only issue permits to individuals. No one may operate under the authority of another's permit.

C. Each person applying for a permit must demonstrate sufficient expertise to carry out the permitted activities in a competent manner. The following information may be used to support the request for a permit: education in botany or related area, field experience, collection numbers, accessions into a recognized herbarium, publications and recommendations from recognized authorities.

D. The permittee's signature on the permit [~~will acknowledge~~] acknowledges willingness to comply with all applicable laws, rules or regulations and permit conditions.

E. The permittee shall carry a copy of the permit at all times during the collection and transportation of endangered species.

F. A permit does not [~~give the bearer authority~~] authorize the permittee to take federally threatened or endangered plants. Taking of these species also requires a federal permit issued by the U.S. fish and wildlife service.

G. A permit does not extend to the permittee the privilege to trespass or enter on lands without the owner's permission. The permittee should contact the appropriate management agency or landowner before beginning studies or taking specimens on federal, state or private lands.

H. A state permit to take, propagate or transplant the endangered plant species listed in 19.21.2.9 NMAC is not required for federal employees working within the lands of their jurisdiction, nor for activities within tribal reservations.

[10/29/1985, 12/23/1991, 8/31/1995; 19.21.2.10 NMAC - Rn & A, 19 NMAC 21.2.10, 11/30/2006; A, / /20xx]

19.21.2.11 SCIENTIFIC INVESTIGATIONS:

A. The state forester may issue a permit to take endangered plants for scientific studies if the studies will generate new knowledge in the genetic, anatomical, chemical, morphological, life history or in other relevant areas of research enhancing the understanding of the conditions required for the survival of the endangered species.

B. Known population sites will be provided with the permit when the permittee requires them for the permitted study. The permit will contain any special parameters for the taking.

C. If the permittee takes any specimens, the permittee shall deposit at least one voucher specimen at either the university of New Mexico herbarium or New Mexico state university herbarium.

D. When possible, the investigator shall take specimens in such a way as to not reduce the population (e.g. take a single stem from an herbaceous perennial, leaving the root intact, or other methods appropriate to the particular species).

E. The state forester may prohibit taking in [~~some~~] known locations where survival is especially precarious.

[10/29/1985, 12/23/1991, 8/31/1995; 19.21.2.11 NMAC - Rn & A, 19 NMAC 21.2.11, 11/30/2006; A / /20xx]

19.21.2.12 VOUCHER SPECIMENS:

A. The state forester may issue a permit to take endangered plant voucher specimens during botanical inventories and environmental surveys for the purposes of species verification and documentation of population sites.

B. Taking specimens for the sole purpose of exchange with other herbaria is prohibited.

C. The collection of voucher specimens shall make no long-term detrimental effect on the population. The permittee may take a maximum of three specimens, if the population is sufficient. If the population is very small and the taking of a single individual is detrimental, then the state forester may condition the permit so that the permittee may take only a fragment of an individual for voucher purposes.

D. The permittee shall deposit at least one specimen of the three taken from each locality at the university of New Mexico herbarium or New Mexico state university herbarium. The permittee may send duplicates to the western New Mexico university herbarium, government agency collections within New Mexico or herbaria in other states that are formally listed in index herbariorum. The label affixed to each specimen shall contain information on collection location, description of the habitat, collector's name, date of collection and estimated size of the population.

E. To assist in the identification and preservation of endangered plant species in New Mexico, permittees shall report all permitted collections of voucher specimens to the state forester by December 31 of each year. The report shall contain the voucher specimen label information and the place or places of deposition of specimens.

[10/29/1985, 12/23/1991, 8/31/1995; 19.21.2.12 NMAC - Rn & A, 19 NMAC 21.2.12, 11/30/2006; A, / /20xx]

19.21.2.13 PROPAGATION AND TRANSPLANTATION:

A. The state forester may issue a permit to take endangered plants to propagate or transplant when evidence is presented that the activity will enhance that ~~[particular]~~ species' survival capability.

B. The state forester may issue a permit to transplant endangered species (not including federally listed taxa) when such species occur on areas of land use conversion.

C. The state forester may issue a permit for transplantation upon approval of a proposal the applicant submits outlining the need for such transplantation, the method to be employed, the site to which the plants will be taken for transplantation and the qualifications of the person carrying out the transplantation.

[10/29/1985, 12/23/1991, 8/31/1995; 19.21.2.13 NMAC - Rn & A, 19 NMAC 21.2.13, 11/30/2006; A, / /20xx]

19.21.2.14 PERMIT REVOCATION: Prohibited activities that ~~[shall]~~ render a collection permit invalid and may ~~[cause]~~ subject the permittee ~~[to be subject]~~ to prosecution ~~[under applicable federal and state laws]~~ include: taking of specimens of endangered plant species outside the scope of the permit's provisions, failure to deposit a voucher specimen in a designated New Mexico herbarium, taking specimens under permit for commercial use, providing false information on the permit application or allowing someone else to use the permit.

[10/29/1985, 8/31/1995; 19.21.2.14 NMAC - Rn & A, 19 NMAC 21.2.14, 11/30/2006; A, / /20xx]

19.21.2.15 PROTECTION AND PENALTIES:

A. The taking, possession, transportation, exportation from the state, processing, sale or offer for sale or shipment within the state of plants listed in 19.21.2.9 NMAC, other than ~~[taking under]~~ pursuant to a valid permit issued by the state forester, is ~~[hereby]~~ prohibited.

B. Pursuant to Section 75-6-1 NMSA 1978, violation of 19.21.2 NMAC is a misdemeanor punishable by a fine of not less than ~~[\$300.00]~~ \$300, nor more than ~~[\$1000.00]~~ \$1,000 or imprisonment for a term of not more than 120 days or both.

C. Any law enforcement officer may seize any plants taken, possessed, transported, exported, processed, sold or offered for sale or shipped in violation of 19.21.2 NMAC.

[10/29/1985, 12/23/1991, 8/31/1995; 19.21.2.15 NMAC - Rn & A, 19 NMAC 21.2.15, 11/30/2006; A, / /20xx]