

NOTICE OF PROPOSED RULEMAKING

The State of New Mexico, Energy, Minerals and Natural Resources Department (EMNRD), Forestry Division hereby gives notice of the following proposed rulemaking. EMNRD proposes to amend its rule, 19.21.2 NMAC, Endangered Plant Species List and Collection Permits, by removing *Mammillaria wrightii* var. *wilcoxii* (Wilcox nipple cactus) from the list of state endangered plants in 19.21.2.9 NMAC and adding *Townsendia gypsophila* (Gypsum Townsend's aster), *Sclerocactus cloverae* (Clover's cactus), *Agalinis calycina* (Leoncita false-foxglove), *Hexalectris colemanii* (Coleman's coral-root), *Scrophularia macrantha* (Mimbres figwort), *Castilleja ornata* (Swale paintbrush), *Castilleja tomentosa* (Tomentose paintbrush), *Penstemon metcalfei* (Metcalfe's beardtongue), *Linum allredii* (Allred's flax), and *Cymopterus spellenbergii* (Spellenberg's springparsley).

In addition, EMNRD proposes the following name changes: *Coryphantha robustispina* ssp. *scheeri* replaces *Coryphantha scheeri* var. *scheerii*; *Argemone pinnatisecta* replaces *Argemone pleiacantha* ssp. *pinnatisecta*; and *Hexalectris arizonica* replaces *Hexalectris spicata*. EMNRD also proposes to add definitions of "department" and "state forester" in 19.21.2.7 NMAC; revise 19.21.2.2 NMAC, Scope, 19.21.2.3 NMAC, Statutory Authority, 19.21.2.6 NMAC, Objective, and 19.21.2.15, Protection and Penalties, to reflect NMSA 1978, Section 75-6-1; and make style changes in 19.21.2.8 NMAC and 19.21.2.10 through 19.21.2.14 NMAC.

Purpose of Amendment. EMNRD proposes the amendment to remove *Mammillaria wrightii* var. *wilcoxii* from the list of state endangered plants in 19.21.2.9 NMAC because threats are limited and it is more common and widespread than documented at the time of listing. Illegal collections may still occur but have not been documented. EMNRD proposes to add *Townsendia gypsophila* (Gypsum Townsend's aster), *Sclerocactus cloverae* (Clover's cactus), *Scrophularia macrantha* (Mimbres figwort), *Castilleja tomentosa* (tomentose paintbrush), *Penstemon metcalfei* (Metcalfe's beardtongue), *Cymopterus spellenbergii* (Spellenberg's springparsley), and *Linum allredii* (Allred's flax) to the list of state endangered plants because of their overall rarity and documented threats. EMNRD proposes the amendment to add *Agalinis calycina* (Leoncita false-foxglove), *Hexalectris colemanii* (Coleman's coral-root), and *Castilleja ornata* (Swale paintbrush) because of their extreme rarity and threats.

EMNRD proposes to change the botanical names of the following state endangered listed plants to reflect current taxonomy: *Coryphantha robustispina* ssp. *scheeri* replaces *Coryphantha scheeri* var. *scheerii*; *Argemone pinnatisecta* replaces *Argemone pleiacantha* ssp. *pinnatisecta*; and *Hexalectris arizonica* replaces *Hexalectris spicata*. In addition, EMNRD proposes to add definitions of "department" and "state forester" and revise 19.21.2.2, 19.21.2.3, 19.21.2.6, and 19.21.2.15 NMAC to reflect NMSA 1978, Section 75-6-1.

Legal Authority. EMNRD proposes this rule amendment under the authority of NMSA 1978, Section 75-6-1 and NMSA 1978, Section 9-1-5(E).

The full text of the proposed rule amendment is available from Daniela Roth at (505) 476-3347 or Daniela.roth@state.nm.us or can be viewed on the EMNRD, Forestry Division's website at <http://www.state.nm.us/SFD> or at the Forestry Division's offices in Santa Fe, Chama, Cimarron, Las Vegas, Rio Rancho, Socorro, Capitan, and Silver City.

Public Hearing and Comment. EMNRD will hold a public hearing on the proposed rule amendment at 9 a.m. on Monday, March 30, 2020, in the Porter Hall, Wendell Chino Building, 1220 South Saint Francis Drive, Santa Fe, New Mexico 87505.

Those wishing to comment on the proposed rule amendment may make oral or written comments or submit information at the hearing or may submit written comments by March 30, 2020 by 9 a.m. by mail or email. Please mail written comments to Daniela Roth, EMNRD, Forestry Division, 1220 South Saint Francis Drive, Santa Fe, New Mexico 87505 or submit comments by email to Daniela.Roth@state.nm.us.

Technical Information that served as a basis for the proposed rule amendments includes:

Baker, M. 2012. Current knowledge and conservation of *Hexalectris colemanii* (Orchidaceae), Coleman's coral-root. Final report. Southwest Botanical Research, Chino Valley, AZ. Bureau of Land Management (BLM) Rio Puerco Field Office, Albuquerque, NM.

BLM State Office. 2019. Monitoring summary of Brack's fishhook cactus. Excel data file on file with the EMNRD, Forestry Division, Endangered Plant Program, Santa Fe, NM.

BLM Farmington District. 2017. BLM Special Status Plant Species (SSPS) – Brack's Cactus and Aztec Gilia. Instruction Memorandum No. NMFO1210-2017-003.

Bureau of Land Management. 2008. BLM Manual 6840, Special Status Species Management.

Cervantes, S.D., P. Tonne, R. Govindarajulu, P.J. Alexander and C.D. Bailey. 2010. Population genetic analysis of *Argemone pleiacantha* subsp. *Pinnatisecta* (Sacramento prickly poppy, Papaveraceae) and re-evaluation of its taxonomic status. *Journal of the Botanical Research Institute of Texas* 4(1):261-269.

Convention on International Trade in Endangered Species of Wild Fauna and Flora. 2019. Appendices I, II, and III.

Crocker, K. and J.F. Glover. Reasonable foreseeable development scenario for oil and gas activities. 2018. Mancos-Gallup Administrative Draft Resource Management Plan Amendment and Environmental Impact Statement Vol. 2, Appendix I. Final Report U.S. Department of the Interior, Bureau of Land Management.

Egger, Mark. 1994. Report on the status and distribution of *Castilleja ornata* on the Gray Ranch. Letter to the Animas Foundation.

Egger, J.M. 2012. The status of *Castilleja tomentosa* A. Gray (Orobanchaceae) and first records for this species from the United States. *Phytoneuron* 2012-72: 1–7.

EMNRD, Forestry Division. 2017. New Mexico Rare Plant Conservation Strategy. Prepared and developed by Daniela Roth and the New Mexico Rare Plant Conservation Strategy Partnership. Santa Fe, NM.

Greenlee, E. 2015. Presumable jackrabbit and rodent predation on *Sclerocactus cloverae* ssp. *brackii*. Memorandum to Daniela Roth, EMNRD, Forestry Division, from the State of New Mexico Commissioner of Public Lands.

Miller, E. 2018. What a waste. Santa Fe Reporter. November 21- 27, 2018.

Howard, M.O. 2019. State listing nomination for Allred's flax. Unpublished report to the EMNRD, Forestry Division, Santa Fe, NM.

Institute for Applied Ecology. 2020. Draft Conservation Strategy for Clover's cactus (*Sclerocactus cloverae*) and Aztec gilia (*Aliciella formosa*). Prepared for the United States Department of the Interior (USDI), BLM New Mexico State Office, Agreement L15AC00263.

Kennedy, A.H. and L.E. Watson. 2010. Species delimitations and phylogenetic relationships with the fully myco-heterotrophic *Hexalectris* (Orchidaceae).

McIntosh, L. 1994. First report of *Castilleja ornata* (Scrophulariaceae) from the United States. *Phytologia* 76 (4): 329-332.

Muldavin, E., R. Sivinski, M. East, Y. Chauvin, and M. Horner. 2016. Brack's hardwall cactus. Distribution, habitat, and status survey 2015. Natural Heritage New Mexico Report 390 – May 2016. Unpublished report prepared for the USDI, BLM State Office, Santa Fe, NM.

New Mexico Department of Game and Fish. 2005. Recovery and Conservation Plan for Four Invertebrate Species: Noel's amphipod (*Gammarus desperatus*), Pecos assiminea (*Assimineia pecos*), Koster's springsnail (*Juturnia kosteri*), and Roswell springsnail (*Pyrgulopsis roswellensis*). Prepared by Blue Earth Consultants, Inc., Santa Fe, NM, and the New Mexico Department of Game and Fish (NMDGF) for the NMDGF, Santa Fe, NM.

New Mexico Rare Plant Technical Council. 1999. New Mexico Rare Plants. Albuquerque, NM: New Mexico Rare Plants Home Page. <http://nmrareplants.unm.edu> (latest update: 12 February 2019).

Porter, M.J. and A. Clifford. 2018. Genetic diversity within *Sclerocactus cloverae* Heil & Porter based on ddRAD-seq: the genetic basis for subspecies recognition. Unpublished report for the USDI, BLM State Office, Santa Fe, NM.

Roth, D. 2020. Leoncita false-foxglove (*Agalinis calycina*). Status Report. EMNRD, Forestry Division, Santa Fe, NM. In prep for the U.S. Department of the Interior, Fish and Wildlife Service (USFWS), R2, Albuquerque, NM.

Roth, D. 2018. Success log. Summary of transplant success based on monitoring reports for *Sclerocactus cloverae* ssp. *brackii* transplants. Excel data file on file with the EMNRD, Forestry Division, Endangered Plant Program, Santa Fe, NM.

Roth, D. 2018. GIS shape files on the distribution and abundance of *Scrophularia macrantha*. On file with the EMNRD, Forestry Division, Endangered Plant Program, Santa Fe, NM.

Roth, D. 2017. GIS shape files on the distribution and abundance of *Castilleja tomentosa*. On file with the EMNRD, Forestry Division, Endangered Plant Program, Santa Fe, NM.

Roth, D. 2017. Swale paintbrush (*Castilleja ornata*) Status survey report. Unpublished Section 6 report prepared by EMNRD, Forestry Division for the USFWS, R2, Albuquerque, NM.

Roth, D. 2016. Wildfire Impacts on Species of Concern in the Gila National Forest, New Mexico. Unpublished report prepared by the EMNRD, Forestry Division for the USFWS, R2, Albuquerque, NM.

Roth, D. 2015. Status Survey for Gypsum Townsend's Aster (*Townsendia gypsophila*), Sivinski's Scorpionweed (*Phacelia sivinskii*), Todilto Stickleaf (*Mentzelia todiltoensis*), and Tufted Sand Verbena (*Abronia bigelovii*) on Zia Pueblo Lands in Sandoval County, New Mexico. Unpublished report prepared by EMNRD, Forestry Division, Santa Fe, NM, for the USFWS, R2, Albuquerque, NM.

Roth, D. and R. Sivinski. 2015. Survey and status report for rare gypsophilic plants in the Ojito/White Mesa area of Sandoval County, New Mexico. Unpublished report prepared by EMNRD, Forestry Division, Santa Fe, NM, for the USDI, BLM Rio Puerco Field Office, Albuquerque, NM.

Roth, D. 2015. Brack's cactus monitoring plots – site visit. Memorandum to Andrew Frederick, EMNRD, Forestry Division, from the EMNRD, Forestry Division.

SEINet. 2019. List of specimens and general observations of *Scrophularia macrantha* in New Mexico. Accessed online on 1/2/2019 via <http://swbiodiversity.org/seinet/>

SEINet. 2019. List of specimens and general observations of *Mammillaria wrightii* var. *wilcoxii* in the United States and Mexico. Accessed online on 1/2/2019 via <http://swbiodiversity.org/seinet/>

Sivinski, R. 2017. Guadalupe Mt Rare Plant Survey, Rio Grande Del Norte National Monument, New Mexico. Unpublished report prepared by RCS Southwest for the USDI, BLM Taos Field Office, Taos, NM.

Sivinski, R.C. 2011. *Agalinis calycina* (Leoncita false-foxglove): A conservation status assessment. Section 6 Progress Report prepared by the EMNRD, Forestry Division, Santa Fe, for the USFWS, R 2, Albuquerque, NM.

Sivinski, R.C. and M.O. Howard. 2011. A new species of *Linum* from the northern Chihuahuan Desert. *Phytoneuron* 2011-33: 1-7.

Sivinski, R.C. and P. Tonne. 2011. Survey and assessment of aridland spring ciénegas in the southwest region. Section 6, Segment 25, Progress report submitted to: EMNRD, Forestry Division, Santa Fe, NM, and U.S. Department of the Interior, USFWS, R 2, Albuquerque, NM.

Zimmerman, Allan D. and Bruce D. Parfitt. 2004. Cactaceae: Coryphantha. Flora of North America, Vol. 4 pg 226.

Copies of the technical information may be obtained from Daniela Roth at (505) 476-3347 or Daniela.Roth@state.nm.us, or may be viewed on the EMNRD, Forestry Division's website at <http://www.state.nm.us/SFD>.

If you are an individual with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Daniela Roth at (505) 476-3347 or through the New Mexico Relay Network at 1-800-659-1779 one week prior to the hearing. Public documents can be provided in various accessible formats. Please contact Daniela Roth at (505) 476-3347, if a summary or other type of accessible format is needed.