

From: [Henkels, Max](#)
To: [Mason, Wendy, EMNRD](#)
Subject: [EXTERNAL] NMDA comment letter for proposed amendments to 19.21.2 NMAC
Date: Tuesday, November 9, 2021 4:48:01 PM
Attachments: [20211110 EMNRD ForestryDivision Endangered Plant Rulemaking.pdf](#)

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Hi Ms. Mason,

I am submitting the following comments regarding the proposed amendments to 19.21.2 NMAC (Endangered Plant Species List and Collection Permits) on behalf of the New Mexico Department of Agriculture (NMDA).

Thank you,

Max Henkels

Natural Resource Policy/Planning Analyst
New Mexico Department of Agriculture
Work Cell: 575.339.5052

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Agricultural Programs and Resources Division

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November 9, 2021

Ms. Wendy Mason
EMNRD, Forestry Division
1220 South Saint Francis Drive
Santa Fe, New Mexico 87505

RE: Proposed Amendments to 19.21.2 NMAC, Endangered Plant Species List and Collection Permits

Dear Ms. Mason:

New Mexico Department of Agriculture (NMDA) submits following comments to the State of New Mexico, Energy, Minerals and Natural Resources Department (EMNRD), Forestry Division regarding the proposed amendments to its rule 19.21.2 NMAC, Endangered Plant Species List and Collection Permits.

NMDA maintains a strategic goal to promote responsible and effective use and management of natural resources in support of agriculture. Our comments are specific to our mission within state government – dedication to the promotion and enhancement of New Mexico’s agricultural communities and the natural resources that sustain them.

NMDA appreciates the changes made from previous drafts of the proposed rule, particularly related to the definition of agricultural practices. These changes included adding the maintenance, repair or replacement of range infrastructure to agricultural practices and changing “unintentional” to “incidental” within the definition of taking.

However, there are still a couple instances where the definition could be improved for clarity of scope. NMDA proposes the following edits:

- A. “Agricultural practice” means grazing ***management practices***, ditch clearing or burning, planting, applying herbicides to ***cultivated agricultural*** fields, harvesting, mowing of hay fields or pastures, burning pastures or fields or cultivating, plowing or disking fields or similar activities and the ***construction***, maintenance, repair or replacement of fences, water tanks and troughs, wells and windmills, pumps or solar

panels powering wells, loading chutes, corrals and water pipelines. (Emphasis Added by NMDA)

NMDA provides the following rationale for the changes:

- “Grazing management practices” will add clarity by encapsulating the full suite of activities surrounding the normal management of livestock, including feeding, herding, and gathering.
- Replacing “cultivated fields” with “agricultural fields” will remove ambiguity about the term “cultivated” and expand the exception to include hayfields and permanent pasture. In addition, herbicide application in fence rows and field borders is often crucial for controlling noxious and invasive species on farms; under the narrower definition, these lands may not be considered “cultivated.”
- Adding “construction” will clarify that the definition also includes the development of new range infrastructure. Requiring incidental take permits for the construction of new fencing and water supplies would become burdensome for both livestock producers and the Forestry Division.

NMDA appreciates the opportunity to provide comments on the proposed amendment to 19.21.2 NMAC. We request to be kept informed of future rulemakings related to the Endangered Plant Program. Please contact Mr. Max Henkels at (575) 339-5052 or henkelma@nmda.nmsu.edu with questions regarding these comments.

Sincerely,



Julie Maitland
Division Director
JM/mh