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Subject: [EXTERNAL] Proposed Rulemaking, Amendment to 19.21.2 NMAC Threatened & Endangered Plants
Date: Tuesday, November 9, 2021 1:01:44 PM
Attachments: [Endangered plant comments NMFLC 11-9-21 final.docx](#)

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November 9, 2021

Wendy Mason
EMNRD, Forestry Division
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Wendy.mason@state.nm.us

RE: Proposed Rulemaking, Amendment to 19.21.2 NMAC Threatened & Endangered Plants

To Whom It May Concern:

On behalf of the New Mexico Federal Lands Council (NMFLC), the organization representing Federal allotment and State Trust Land lessees, I am writing to comment on the above captioned proposed rulemaking.

This rulemaking met statutory requirements of publication on September 28, 2021, legal notice was published in the *Albuquerque Journal*; however, that publication hasn't been a state-wide publication for years. There was no outreach to the agricultural community that manages the vast majority of the lands in New Mexico and to whom this rule is directed to.

Further complicating the ability of anyone without prior knowledge to comment is

finding the documents on the Forestry Division's website. Rulemakings do not appear to reach the level of importance to be anything more than a meeting and are listed only as meetings.

There were only 39 people, as of 8:30 am today, who had knowledge of the proposal and made comments. Although there is another 24 hours to comment, it is highly unlikely that there will be comments representing the entire state of New Mexico received. Those rural and lower income populations that will be hardest hit by these rules have absolutely no opportunity to address their concerns.

There appears to be little if any comment from the numerous tribes and pueblos throughout the state.

It is patently unfair to create and impose a rule with penalties "of not less than \$300, nor more than \$1,000 or imprisonment for a term of not more than 120 days or both" without thorough notification of all of those impacted.

For these reasons, **the NMFLC respectfully requests at least a 60-day extension** to the comment period so landowners and land stewards across the state have the opportunity to participate in their future.

Until we have more time to do a complete analysis of the rulemaking proposal, we submit the following areas of concern:

19.21.2.7 Definitions:

Where did the definition of "**Agricultural Practice**" come from? How does it compare with other such definitions in statute and/or rule?

Is this proposed rule limited to agriculture? Why aren't other natural resource industries included? Not that we would wish this rule on anyone else, but targeting the community least financially equipped to deal with the burden.

"Voucher Specimen" indicates that anyone acquiring a permit must also engage the services of "a botanical collector." Where do the funds come from to hire this specialist?

Incidental Take Permit

19.21.2.11- C

If an endangered plant is also listed under federal law, before applying to the State Forester, a landowner or land steward would first be required to consult with the U.S. Fish & Wildlife Service (FWS). The FWS has no jurisdiction on private land unless there is federal nexus. Additionally FWS consultation is only required of federal agencies, thus do these regulations apply only to federal agencies?

19.21.2.11- I

How does anyone monitor prior to an emergency response? Are emergencies pre-planned? Who will be tasked with this monitoring? How will emergency responders know that there are known endangered plant(s) within any given area?

Permits for Scientific Study or Propagation

19.12.2.12- C

What is "sufficient expertise to carry out permitted activities in a competent manner?"

19.12.2.12- ?? Numbering appears to be incorrect.

What are "restricted fee lands or individual trust allotments?"

19.21.2.14

Voucher Specimens

Where in the proposed rule, other than the mention in this section, is there a requirement for "taking three (3) specimens for each locality?"

1921.2.19

Penalties

Penalties "of not less than \$300, nor more than \$1,000 or imprisonment for a term of not more than 120 days or both" are excessive.

Thank you for your time and attention.

Sincerely

Don L. "Bebo" Lee

President

New Mexico Federal Land Council

Cc:

New Mexico Legislature