

From: [Alexander, Patrick J](#)
To: [Roth, Daniela, EMNRD](#); [Davidson, Zoe M](#); [Ramsey, Marikay A](#)
Subject: [EXTERNAL] Re: [NMRAREPLANTS-L] Notice of Proposed Rulemaking
Date: Tuesday, September 28, 2021 6:34:27 PM

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Greetings, Daniela,

I was reading through the proposed changes, and had some thoughts about the definition of “take”. In the proposed wording, following “to remove, harm, kill, destroy, possess, transport, export, sell, or offer for sale” with “from the places in the state of New Mexico where they naturally grow” seems grammatically odd. “To remove [...] from the places” is fine. Others like “to possess [...] from the places” are more difficult to interpret. It also occurred to me that if these actions are prohibited where the plants naturally grow, this could be interpreted to mean that transplanted individuals are no longer protected--they are no longer at the site where they were growing naturally. I’m assuming that the intent here is really to prohibit these actions for plants outside of cultivation without unnecessarily restricting ownership or trade in cultivated plants. With that in mind, here’s a potential rewording:

“Taking” mean to remove, harm, kill, destroy, possess, transport, export, sell, or offer for sale any endangered plant, or parts thereof, with the following exceptions: cultivated plants removed from natural populations prior to their protection under 19.21.2 NMAC, and their descendants; descendants of plants whose take was authorized by a permit under 19.21.2 NMAC. Taking does not include the incidental removal, harm, killing or destruction of endangered plants resulting from agricultural practices or removal, harm, killing, destruction, possession or transport by tribal members for religious purposes.

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Or, with the strikethroughs and whatnot:

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“Taking” means ~~[the removal, with the intent to]~~ to remove, harm, kill, destroy, possess, transport, export, sell, or offer for sale any endangered plant, or parts thereof, [listed in 19.21.2.9 NMAC, from the places in the state of New Mexico where they naturally grow] with the following exceptions: cultivated plants removed from natural populations prior to their protection under 19.21.2 NMAC, and their descendants; descendants of plants whose take was authorized by a permit under 19.21.2 NMAC. Taking does not include the incidental removal, harm, killing or destruction of endangered plants resulting from agricultural practices or removal, harm, killing, destruction, possession or transport by tribal members for religious purposes.

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I think this would establish that unpermitted ownership, trade, sale, and so on, is fine if you can trace your plants back to either a permit or a collection event prior to listing but prohibited otherwise, without creating potential loopholes. Assuming I’ve got the intent right, it might be an improvement. Or it might not. :-)

Regards,
Patrick

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From: NMRAREPLANTS-L <NMRAREPLANTS-L@LIST.UNM.EDU> on behalf of Roth, Daniela, EMNRD <Daniela.Roth@STATE.NM.US>

Date: Tuesday, 28 September, 2021 at 3:11 PM

To: NMRAREPLANTS-L@LIST.UNM.EDU <NMRAREPLANTS-L@LIST.UNM.EDU>

Subject: [EXTERNAL] [NMRAREPLANTS-L] Notice of Proposed Rulemaking

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[EXTERNAL]

Dear Interested Party:

The Energy, Minerals, and Natural Resources Department (EMNRD), Forestry Division, hereby gives notice that it is proposing to amend 19.21.2 NMAC, Endangered Plant Species List and Collection Permits. EMNRD proposes the amendments to add the American Hart's tongue fern, *Asplenium scolopendrium* var. *americanum*, to the list of state endangered plant species; amend the definition of 'take' to include harm, kill, and destroy except for incidental removal, harm, killing, or destruction resulting from agricultural practices or tribal members use for religious purposes; establish an incidental take permit process; amend the definition of state forester; add definitions of "agricultural practice", "applicant", "endangered plant", "harm", "permittee", "person", and "tribal member"; amend the provisions regarding scientific study and propagation permits for state endangered plants; establish requirements for permit amendment; amend requirements for permit approval and revocation; establish a permit term; and amend the provisions regarding penalties.

A public hearing is scheduled for November 10, 2021, at 9 AM via WebEx. A copy of the proposed amendment and the hearing notice are attached. 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 November 10, 2021, by 9 AM by mail or email.

Daniela Roth

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<https://www.emnrd.nm.gov/sfd/rare-plants/>