

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 33 ENDANGERED AND PROTECTED SPECIES
PART 4 CONFIDENTIAL DATA REGARDING ENDANGERED SPECIES

19.33.4.1 ISSUING AGENCY: New Mexico Department of Game and Fish.
[1-31-96; 19.33.4.1 NMAC - Rn, 19 NMAC 33.4.1, 4/14/00]

19.33.4.2 SCOPE: All persons or entities who may seek to obtain information from the Department of Game and Fish on the distribution and location of species of wildlife listed as threatened or endangered, or being investigated for possible listing as threatened or endangered. Other requirements may be found in 19.33.1 NMAC, 19.33.2 NMAC, and 19.33.3 NMAC.
[1-31-96; 19.33.4.2 NMAC – Rn & A, 19 NMAC 33.4.2, 4/14/00]

19.33.4.3 STATUTORY AUTHORITY: Section 17-2-40(H) provides the Commission with authority to create regulations protecting the confidentiality of data from an investigation. Section 17-2-45 (B) NMSA 1978 provides criminal penalties for the taking of an endangered species. Section 17-2-42 (B) NMSA 1978 provides the Director with the authority to enter into agreements. 17-2-40-H NMSA 1978 requires the State Game Commission to adopt regulations governing the confidentiality of data. 17-2-43 authorizes the commission to enact regulations necessary to carry out all the provisions and purposes of the Wildlife Conservation Act.
[1-31-96; 19.33.4.3 NMAC – Rn & A, 19 NMAC 33.4.3, 4/14/00]

19.33.4.4 DURATION: Permanent.
[1-31-96; 19.33.4.4 NMAC – Rn, 19 NMAC 33.4.4, 4/14/00]

19.33.4.5 EFFECTIVE DATE: January 31, 1996, unless a later date is cited at the end of a Section.
[1-31-96; 19.33.4.5 NMAC - Rn, 19 NMAC 33.4.5, 4/14/00]

19.33.4.6 OBJECTIVE: To prevent the inappropriate distribution of data on threatened or endangered species, or data generated by a study or investigation of species that may be listed as threatened or endangered; to clarify which data in possession of the Department are confidential, and to specify procedures and conditions for the dissemination of confidential data.
[1-31-96; 19.33.4.6 NMAC - Rn, 19 NMAC 33.4.6, 4/14/00]

19.33.4.7 DEFINITIONS:

A. “Data,” as used herein, means facts or information generated by a study or investigation of species that may be considered for listing or delisting and/or facts or information concerning a listed species.

B. “Confidential Data,” as used herein, means:
(1) Data on the distribution and location of listed or proposed species, received or obtained by the Department of Game and Fish, from individuals or agencies, under a written agreement of confidentiality.

(2) Data on the distribution and location of species, identified by the Director as data which, if publicly disseminated, may result in the taking of, or otherwise harm, a species being investigated for listing as threatened or endangered, and/or a listed species.

(3) “Confidential data regarding private property,” as used herein, means distribution and location of listed or proposed species on private property received or generated by the Department during a listing study or investigation as defined in 17-2-40 NMSA 1978. This shall include listed or proposed species distribution and locations recorded as map coordinates, maps, GPS coordinates, property owner names, property/ranch names, or other data that may identify, or lead to the identification of specific locations on private property. Stipulations in this section will apply to data collected after the section modification becomes effective.

(4) “Coded confidential data regarding private property”, as used herein means Confidential Data, as described in 19.33.4.7.B3 that is coded in a manner that allows a description of location and distribution by county or other appropriate geographic unit which does not represent a single parcel of private land. This county-wide, or other unit-wide, information may be included in reports or documents as necessary to meet reporting requirements or for management of the species.

C. “Investigation”, as used herein, means a process pursuant to Subsections B through L of Section 17-2-40 NMSA 1978.

- D.** “Listed Species”, as used herein, means any species listed as threatened or endangered pursuant to 17-2-41 (A) NMSA 1978.
- E.** “Proposed Species” as used herein, means any species for which a listing investigation has been formally initiated under the Wildlife Conservation Act as described in 17.2.40 Section A, NMSA 1978.
- F.** “Department” as used herein means, the New Mexico Department of Game and Fish.
- G.** “Director” as used herein means, the Director of the New Mexico Department of Game and Fish. [1-31-96; 19.33.4.7 NMAC – Rn & A, 19 NMAC 33.4.7, 4/14/00]

19.33.4.8 RELEASE OF CONFIDENTIAL DATA:

- A.** Subject to the restrictions applicable to private property, confidential data may only be released to persons, organizations or agencies upon submission to the Director of a written application describing a legitimate need for scientific or management purposes consistent with the objectives of the Wildlife Conservation Act.
- B.** Confidential data will not be submitted to any public repository established under the Wildlife Conservation Act, except as coded in 19.33.4.7.B4.
- C.** Confidential data regarding private property, or which would identify or lead to the identification of any private property, will not be released under any circumstances without specific written agreement from the private property owner or their designee.
- D.** The Department may use confidential data for the purpose of species management and species management planning.
- E.** Coded Confidential Data regarding private land as described in 19.33.4.7.B4 as county-wide, or other unit-wide, information may be included in reports, public repository or documents as necessary to meet reporting requirements from funding sources or for management of the listed or proposed species.
- F.** Any confidential data, which is contained in any Department documents which would otherwise be released pursuant to a request for inspection of public records, shall be redacted from those documents prior to release of those documents.
- G.** If the Department is involved with an assessment of a project proposed on private property that indicates potential impacts to a listed or proposed species covered under this regulation the Director may release that confidential data necessary to address the potential impact.
- H.** Pursuant to the New Mexico Mining Act (Chapter 69 NMSA 1978 and 19 NMAC 10.2) and Surface Coal Mining Regulations (19 NMAC 18.2) the Department may use confidential data to assess potential impacts of mining operations on private land and the Director may release that confidential data necessary to address potential impacts to listed or proposed species covered under this regulation.
- I.** The classification of data as “confidential” shall not prevent the release of data to appropriate law enforcement officials if there is reason to believe that violations of laws or regulations regarding listed species protected under this confidentiality regulation are occurring or have recently occurred. The Director or his designee will make a determination of whether to release information on a case by case basis. [1-31-96; 19.33.4.8 NMAC – Rn & A, 19 NMAC 33.4.8, 4/14/00]

HISTORY OF 19.33.4 NMAC:

NMAC History: 19.33.4 Confidential Data Regarding Endangered Species, 1-18-96.

History of Repealed Material: [RESERVED]