

This rule was filed as 19 NMAC 33.5.

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 33 ENDANGERED AND PROTECTED SPECIES
PART 5 ADDING A SPECIES TO THE STATE LIST OF THREATENED AND ENDANGERED SPECIES BY ADOPTING A SPECIES ON THE FEDERAL LIST

19.33.5.1 ISSUING AGENCY: New Mexico Department of Game and Fish.
[8/15/96; Recompiled 12/31/01]

19.33.5.2 SCOPE: The director of the department of game and fish, and the New Mexico state game commission regarding procedures for adding a species to the state list of threatened and endangered species through adoption of species on the United States list of endangered fish and wildlife as set forth in the Endangered Species Act of 1973.
[8/15/96; Recompiled 12/31/01]

19.33.5.3 STATUTORY AUTHORITY: Sections 17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected species, and Sections 17-2-37 through 17-2-46, the "Wildlife Conservation Act."
[8/15/96; Recompiled 12/31/01]

19.33.5.4 DURATION: Permanent.
[8/15/96; Recompiled 12/31/01]

19.33.5.5 EFFECTIVE DATE: August 15, 1996, unless a later date is cited at the end of a Section or a Paragraph.
[8/15/96; Recompiled 12/31/01]
[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

19.33.5.6 OBJECTIVE: To provide procedures for the director and commission for developing and acting upon a recommendation to add a species to the state list of threatened and endangered species through adoption of a species from the United States list set forth under the federal Endangered Species Act.
[8/15/96; Recompiled 12/31/01]

19.33.5.7 DEFINITIONS:

- A. "Endangered" means any species listed as endangered in 19 NMAC 33.1 [now 19.33.6 NMAC].
- B. "Threatened" means any species listed as threatened in 19 NMAC 33.1 [now 19.33.6 NMAC].
- C. "Commission" means New Mexico state game commission.
- D. "Director" means the director of the New Mexico department of game and fish.

[8/15/96; Recompiled 12/31/01]

19.33.5.8 PROCEDURES:

- A. The director shall present, in writing, any recommendation to add a species to the New Mexico list of threatened and endangered species, through adoption of a species on the United States list of endangered fish and wildlife as set forth in the Endangered Species Act of 1973 (Section 17-2-40 NMSA 1978), at a properly scheduled meeting. Upon receipt of the recommendation, the commission shall establish a date and location, within six months, for a public hearing on the recommendation (Section 17-2-40 L NMSA 1978).
- B. At least 90 days before the public hearing, notice of the hearing shall be mailed to federal and state agencies, local and tribal governments, and individuals and organizations that have requested notification of department actions regarding threatened and endangered species; and a legal notice shall be published in a newspaper of general circulation in the area affected by the recommendation (Section 17-2-40 K NMSA 1978).
- C. Notice of the public hearing shall:
 - (1) include the date, time and location of the hearing (Section 17-2-40 K1 NMSA 1978);

- (2) include a statement of the recommendation (Section 17-2-40 K2 NMSA 1978);
- (3) indicate the location and availability of the public repository for the recommendation, and for the hearing record (Section 17-2-40 K3 NMSA 1978);
- (4) indicate where and by what date written comments and written testimony may be filed for inclusion in the hearing record (Section 17-2-40 K4 NMSA 1978);
- (5) indicate that written comments and testimony may address biological and ecological evidence and any economic and social impacts of the recommendation (Section 17-2-40 E 5 6 NMSA 1978);
- (6) indicate that written comments pertaining to any economic and social impacts of the listing decision shall be preserved in the repository for consideration in developing, if practicable, any recovery plan (Section 17-2-40 G NMSA 1978);
- (7) indicate that views, data and comments pertaining to the biological and ecological evidence in the recommendation may be presented orally or in writing at the hearing (Section 17-2-40 G L NMSA 1978);
- (8) specify that notice of intent to present technical and scientific testimony on the biological and ecological evidence, and a written copy of the testimony to be presented, shall be submitted to the commission not less than 30 days prior to the hearing (Section 17-2-40 K6 NMSA 1978);
- (9) and specify that the public record shall remain open for written comments for 30 days after the date of the hearing (Section 17-2-40 K7 NMSA 1978).

D. The commission shall make its decision and take action, based on the relevant and reliable evidence, to add or not to add a species to the New Mexico list of threatened and endangered species at its next regularly scheduled meeting within no more than 30 days after the close of the hearing record (Section 17-2-40 L NMSA 1978). The commission shall:

- (1) list a species as endangered in New Mexico if it finds that the species prospects for survival or recruitment within the state are in jeopardy based upon the biological and ecological evidence in the public repository and based upon biological and ecological evidence received in the public hearing (Section 17-2-40 L1 NMSA 1978); or
- (2) list a species as threatened in New Mexico if it finds that the species' prospects for survival or recruitment within the state are likely within the foreseeable future to be in jeopardy based upon the biological and ecological evidence in the public repository and biological and ecological evidence received in the public hearing (Section 17-2-40 L2 NMSA 1978); or
- (3) find that there is sufficient documented, relevant and reliable, contrary evidence, in the public repository, or received in the public hearing, regarding the biological and ecological status of the species; and instruct the director to conduct further study of the species.

E. The commission's decision on the director's recommendation to add a species to the New Mexico list of threatened and endangered species, through adoption of a species on the United States list of endangered fish and wildlife as set forth in the Endangered Species Act of 1973, shall be announced by a news release to the major newspapers of the state.

[8/15/96; Recompiled 12/31/01]

HISTORY OF 19.33.5 NMAC: [RESERVED]