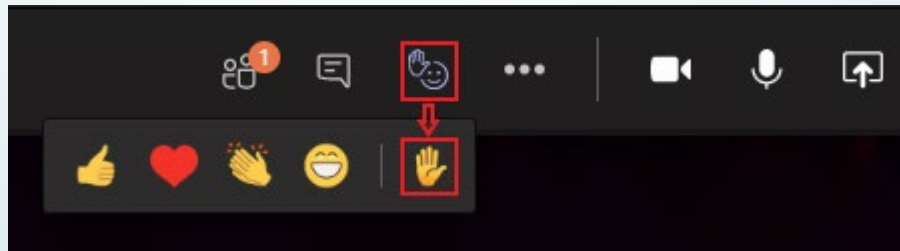


# Welcome & "Housekeeping"

Using Microsoft Teams...

- Mics will be muted for the entirety of the presentation.
- Questions & comments are welcome **after** the presentation is over.
- Please raise your hand to ask a question **or** type it in the chat box.
  - Raising your hand will put you in the queue based on the order of when a hand was raised.
  - Unmute yourself to ask a question (click on the microphone icon). Please remember to mute again when you're finished talking & lower your hand by clicking the hand icon a second time.



# NJ Department of Environmental Protection

## Fish and Wildlife

# Proposed New Rule: N.J.A.C. 7:25–4A

*Access Restriction to Tidal Waters and Adjacent Shorelines*

*for Endangered Species Protection*

**Presented by Mary E. Monteschio, Esq., Regulatory Officer, NJ Fish & Wildlife**  
With Kathy Clark, Acting Chief, NJ Fish & Wildlife's Endangered & Nongame Species Program  
Christina "Kashi" Davis and Emily Heiser, NJ Fish & Wildlife's Endangered & Nongame Species Program



Authority

- The DEP is proposing a new rule allowing the DEP to restrict tidal waters and/or the adjacent shoreline to protect threatened or endangered species of wildlife and their critical habitat areas.

The public trust right to access the water was enacted in 2019 as PL. 2019, c. 81, and codified at N.J.S.A. 13:1D-150 through 156.

- The Legislature has acknowledged that the public trust doctrine has some limitations. The Legislature recognized the Department's ability to protect "critical habitat areas from injurious uses, or threatened or endangered species or their habitat areas from injury, or injurious uses..." (N.J.S.A. 13:1D-155).
- In addition, the Department is charged with protecting wildlife pursuant to the Endangered and Nongame Species Conservation Act (ENSCA; N.J.S.A. 23:2A-1 through 13).



# Important to Note

- **“Endangered Species” is the umbrella term to describe those species with a conservation status of “endangered” and those species with a conservation status of “threatened”. There will be future rulemaking to clarify that definition by cleaning up the lists.**
- **“Adjacent shoreline” shall mean the land above the mean highwater mark, including the upland dry sand or other upland ecosystem or biome as determined by the Department.**
- **“Critical habitat area” shall mean the tidal waters, adjacent shoreline, or both that are suitable for breeding, resting, or foraging by endangered species and are essential to the conservation of the species, thereby warranting special management considerations or protection.**



# Examples of critical habitat for endangered species in shoreline areas

Need





Examples of "injurious uses" that affect critical habitat for endangered species and/or the species directly.

Need

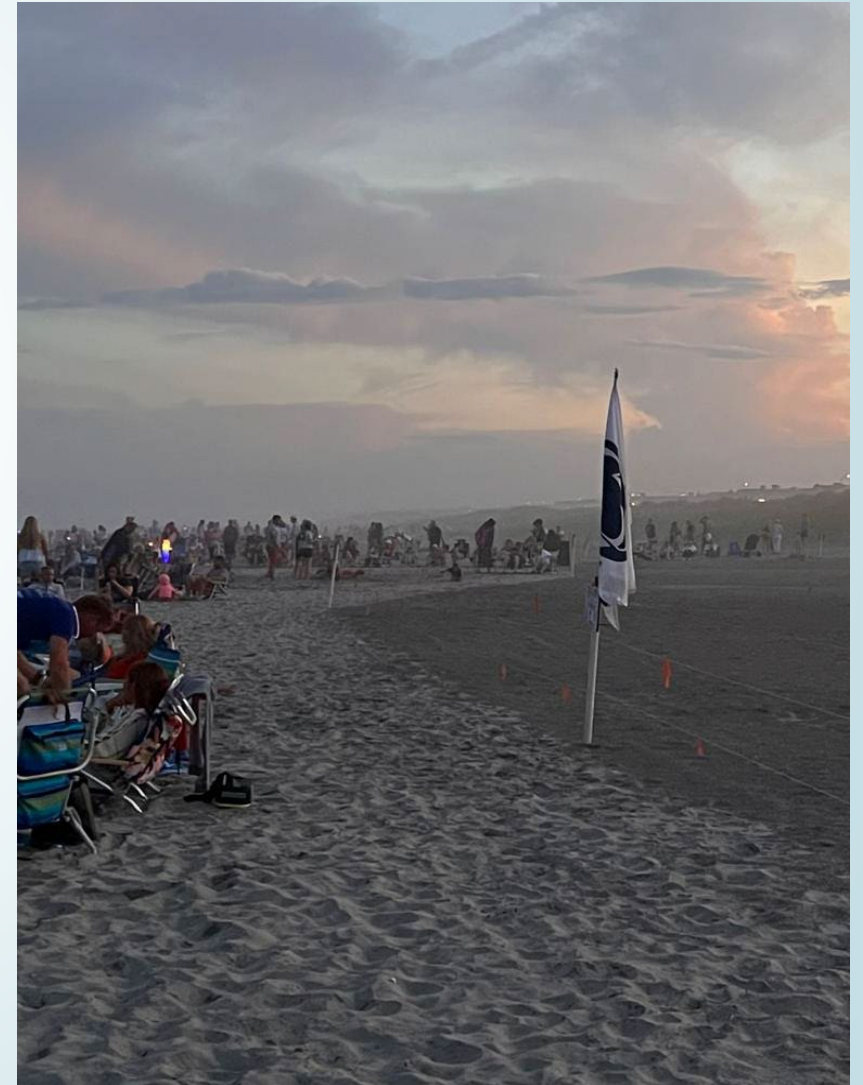




➤ Restrictions will apply to tidal waters and/or the adjacent shoreline to protect threatened or endangered species of wildlife and/or their critical habitat areas.

➤ Examples of restrictions include:

- Seasonal closures of selected beaches to protect migrating shorebirds (such as red knots), and beach-nesting birds that forage and rest in the intertidal zone.
- Seasonally-fenced beach areas to protect endangered birds (such as piping plover) or sea turtles nesting on the beach.
  - ❖ This management has been in practice for 20+ years under Beach Management Plans and some CAFRA permits.



➤ The Department would determine whether a restriction is required by confirming that 3 specific conditions are present at a site:

1. The Department must document that **an endangered species** is presently using, or is anticipated to use, tidal waters and/or the adjacent shoreline.
2. The tidal waters and/or adjacent shoreline must be demonstrated to be **a critical habitat area** for the species.
3. The Department must find that existing or anticipated **injurious uses would result** in harm, a form of “take” prohibited under the Endangered and Nongame Species Conservation Act.



## Process

- If the Department determines a restriction is required, it will determine the extent of the area and the time frame for the restriction to be in place.
- The Department will designate the minimal area and duration necessary to protect the species or the critical habitat area.
- Restrictions may re-occur as needed: annually, span multiple years, or start and end multiple times within a year or across years.

- The Department will provide advance notice of all restrictions it intends to implement by U.S. Mail (return receipt requested), or by email if preferred, to the affected landowner and the respective municipality.
- Property owners will be notified at least 30 days prior to the implementation of a restriction, allowing time for the landowner to contact the Department with questions or concerns.
- Exceptions to the 30 day notice may occur if there is an urgent need for a restriction, or if the need for the restriction was not anticipated. In those cases, notice will be made as soon as all affected property owner(s) can be identified and contacted.



- Public notice regarding access restrictions will also be made to the public via postings on the Department's website.
- Restrictions that are seasonally implemented by the Department will remain in effect each year, without additional notice, until formally revoked. Shore restrictions that are intended to reoccur annually will be described that way, such as Delaware Bay beach closures for migrating shorebirds each spring. Any such "multi-year" restrictions will be reviewed annually by DEP staff to ensure they meet the three required conditions.
- The Department will post signs, stakes, or flags, and/or fencing or ropes to mark restricted areas to the extent practicable, to notify the public physically and visually of a restricted area.

## Penalties

- The Department is proposing a minimum fine of \$250 for entering a restricted area, and \$50 for damage to or removal of the State's property, such as fencing and signage.
- Penalties may be up to \$25,000 for those who enter a restricted area and up to \$1,500 for those who cause significant damage or remove the State's property, especially where cost of replacing the item would exceed a nominal amount.





## Stays and Appeals

- Affected landowners may apply to the Department for a stay.
- Affected landowners may appeal a restriction.
- Both the stay language and appeals language are anticipated to mimic DEP regulations already in place.

## Timeline

- The Department will propose this new rule in early 2024.
- Notice of the rule proposal will be posted on the DEP website ([www.nj.gov/dep/rules](http://www.nj.gov/dep/rules)) with instructions on how to provide comments.
- Those who have received a direct email notice to this webinar will receive an email notice of the rule proposal when it is published.
- To be added to the "Shore Protection Rule" email notice list, email [Nongame@dep.nj.gov](mailto:Nongame@dep.nj.gov) with that request.



- **Comments are welcome!**
- Please email comments, questions, and suggestions to [Nongame@dep.nj.gov](mailto:Nongame@dep.nj.gov). Use "Shore Protection" in the subject line.