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ENVIRONMENTAL PROTECTION

DIVISION OF FISH AND WILDLIFE

ENDANGERED AND NONGAME SPECIES PROGRAM

Adopted Amendments: N.J.A.C. 7:25-4.1 and 4.13

Adopted Repeal and New Rule: N.J.A.C. 7:25-4.17

Proposed: January 18, 2011 at 43 N.J.R. 87(a)

Adopted: January 18, 2012 by Bob Martin, Commissioner, Department of Environmental Protection

Filed: January 18, 2012 as R. 2012 d. 037, with substantive changes not requiring additional public notice and opportunity for comment (see N.J.A.C. 1:30-6.3)

Authority: N.J.S.A. 23:2A-1 et seq.

DEP Docket Number: 15-10-12

Proposal Number: PRN-2011-011

Effective Date: February 21, 2012

Expiration Date: July 13, 2014

The Department of Environmental Protection (Department) hereby adopts amendments to the definitions of wildlife status at N.J.A.C. 7:25-4.1, the list of endangered wildlife at N.J.A.C. 7:25-4.13, and the list of nongame wildlife at N.J.A.C. 7:25-4.17. These amendments change the set of status categories that are assigned to the list of nongame wildlife species at N.J.A.C. 7:25-4.17 to reflect the species' conservation status (the need for conservation action for the species), delete the definitions of several of the terms currently used to describe species status at N.J.A.C.

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7:25-4.1 and replace them with new terms and definitions, and update scientific (Latin) and common names of several species to reflect nomenclature changes adopted by various professional taxonomic organizations.. Additionally, the Department is adopting several amendments to the list of endangered wildlife at N.J.A.C. 7:25-4.13 and to the list and status of nongame wildlife at N.J.A.C. 7:25-4.17 to reclassify several species based upon the Department's analysis of the latest available information on the status of these species in the State. The proposal was published in the New Jersey Register on January 18, 2011 at 43 N.J.R. 87(a). The comment period closed on March 19, 2011.

This adoption document may also be viewed or downloaded from the Department's website at <http://www.nj.gov/dep/rules/adoptions.html>.

Summary of Public Comments and Agency Responses

The following persons and organizations submitted comments on the proposal:

1. Koela Anderson
2. Virginia Barta
3. Carlton Bears
4. Isabella Boyko
5. Walter Chew
6. Citizens United To Protect The Maurice River And Its Tributaries
7. Conserve Wildlife Foundation
8. Sara Crespo
9. Ciaron Cronogue
10. Marilyn Dee
11. Loretta Dunne
12. Kenneth Edwards
13. Sabina Ernst
14. Fred Fall
15. Elizabeth George-Cheniara, New Jersey Builders Assn
16. Kathy Goldberger
17. Hackensack Riverkeeper
18. Jeremy Kaya
19. Caroline Kennedy, Defenders Of Wildlife
20. Joseph Labriola

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21. Michael Mcguinness, New Jersey Chapter, NAIOP
22. John Miller
23. Michael Mistretta
24. New Jersey Environmental Lobby
25. New Jersey Highlands Coalition
26. Richard Nieuwenhuis, New Jersey Farm Bureau
27. New Jersey Audubon Society
28. New York/New Jersey Baykeeper
29. Frank Pecci
30. Pinelands Preservation Alliance
31. Jean Public
32. Amy Roe
33. Barbara Rosenblatt
34. Ketyann Salem-Rosario
35. Kathleen Schatzmann, Humane Society Of The U.S.
36. James Schmitt
37. Kathleen Shea
38. Samuel Simon
39. Amit Singh
40. Jeremy Stepansky
41. Hannah Suthers
42. Jeff Tittel, Sierra Club, New Jersey Chapter
43. Maya Van Rossum, Delaware Riverkeeper
44. Wade Wander
45. Matt Wilson
46. Anna (no Last Name Provided)
47. Keimoni (no Last Name Provided)

48. The following 181 commenters submitted identical form letters:

Diane Ali
Julia Allen
Laura Allison
Eileen Antolino
Debra Argentina
Peter Bacinski
John Bair
Alex Balboa
Nick Balla
Alf Berg
Rajdeep Bhathal
Jan Blaire
Thomas Boghosian
Harris Brown
Jayson Burg

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Dale Camwell
Gina Carola
Joseph Carragher
Glenn Carson
Patricia Chang
William Christman
Lee Cleary
Nora Connolly
Thomas Conroy
Andre Cruz
Denisee D'anne
Richard Dawson
Denisee Dee Leo
Donnae Desjardins
Ron & Mariae Destefano
Joseph Dewan
Regina Discenza
Renee Dolney
Frane Donnelly
Anthony Donnici
Phillipe Dumont
Chris Dungan
Cheryl Dzubak
Robert Eckert
Kim Edelstein
James Eitel
Renee Emerich
Jonee Erickson
Dindae Evans
Glenn Ewen
Suzannee Ficara
Brian Fink
Kimberly Flynn
Ellen Foose
Petere Ford
Glenne Foster
Zita Friedland
Anne Gaus
Carol Gay
Dorothy Gawel
Brian Gill
Susan Glaser
Coralyn Gorlicki
Irenee Grottano
Davide Guerra
Joane Haenny

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Dosier Hammond
David Hansen
Ben Harrison
June Harrison
Dante Heinrichson
Brienne Helaudais
Jeff Hoagland
Kim Hood
Cheryl Hudson
Harry Hudson
Jennifer Huserek
Sheila Jacobs-Carey
Wendy Jewell
Kenneth Johanson
Winifred Johanson
Colin Jones
Doreen Kassa
Sara Keesling
Stephen Keil
Antone Kihm
Peter Kinney
Greg Kirby
Judy Krach
Greg Krawczyk
Tina Kull-Flint
Keith Kulper
Josephe Labuda
Juliet Lamont
Dustin Lamoureux
Ron Lane
Nancy Lewis
Donna Lisi
D. Lord
T. Loveland
Sethl Lubin
Laura Lynch
Petere M.
William Macghee
Stanleye Marko
David Marks
Elizabeth Martinez
Janet Martucci
Veerle Matarazzo
Richard Maxfield
John Maxwell
Tanya McCabe

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Jamese McFarland
Joele McGreen
Bernadette McLaughlin
Vince Mendieta
Patrick Meola
William Middleton Jr.
Tony Miller
Cheryl Mosiello
A. Napolitano
Alice Neuhauser
Lorrie Ogren
Della Oliver
John Olivo
Paul Ostermayer
Patricia Panitz
Joanne Pannone
Bridget Park
Fran Perchick
Kathryn Peterson
Patriciae Phillips
Louis Piccininno
William Piper
Judy Pizarro
Lynn Porraro
Amy Prisco
Michael Protzel
Eugene Pumphrey
Nicoleee Rahman
Michaelae Redden
Gibson Reynolds
Janet Robbins
Patricia Rossi
Edward Romain
Barbara Sachau
Jennifer Salmestrelli
Ronald Sauers
Valerie Scalley
Judith Schleicher
Douglas Schleifer
Lucy Schneider
Howarde Schwartz
Kristina Schwehm
Kimberly Serdynski
Kathleene Serra
Nancye Shumate
Mark Sibley

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Anne Siebecker
Larry Siegel
David Slaperud
Scott Sobel
Alexandra Sola
Beverly Solomon
Patricia Soteropoulos
Robert Spivack
Elizabeth Stankevich
Kenneth Steinberg
Al Stokley
Laurie Stricker
Pamelae Swallow
Joseph Sweger
Robert Tallon
Jody Tatum
Dena Temple
Gaye Thormann
Kimberlye Turiano
Behrouze Vafa
Vivian Vincek
Jennifer Volpe
Walter Waldman
Catherine Weich
Carol Westerman-jones
Deborah Wills
Katherine Yvinskas
Brook Zelcer

The following 14 commenters submitted the same form letter referenced in #48, above, but made at least one additional comment within that form letter.

49. Konstantinos Belonis
50. Diane Boyd
51. Susan Buffalino
52. Jenifer Burghardt
53. Michael & Lea Cahill
54. Thomas D'angelo
55. Eva Evers
56. Stephen Knowlton
57. Laura Kushner
58. John Luard
59. Mary Jo Nutt
60. John Schofield

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- 61. Molly Weigel
- 62. Eric White

63. The following 2,535 commenters signed one letter submitted by the Defenders of Wildlife.

Colleen Aaron
George Abaunza
Kathy Abbott
Andrea Abbott
Jacqueline Abeltin
Michael Abrams
Gina Acampora
Anamarie Achitei
Judi Aciego
Caitlin Ackerman
Bonnie Acosta
Shelia Adam
Christine Adametz
George Adams Jr.
Susan Addelston
Howard Adelman
Maria Afonso
Diane Afonso-piza
Paul Agemian
Grace Agnew
Jenai Agosta
Tiffany Aguayo
Loretta Aja
Chakka Akins
Mary Aklonis
Mary Aktay
Pauline Alama
Joan Albanese
Vanessa Albanese
R Albani
Angela Albano
Sam Aldiero
Vivienne Alex
Carla Alexander
Gunta Alexander
Alyana Alfaro
Emilio Alfonso
Carla Allarde
Ed Allen
Emillia Allen
Julia Allen

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Michael Allen
Letitia Allman
Irene Almeida
B. Alterman
Eileen Althouse
Valerie Alves
Dana Amato
Rosetta Amato
Samantha Ambler
Pat Ambrose
Sallie Ammerman
Mickey Amoko
Dina Amontis
Alice Diane Anonymous
Amber Anonymous
Andrea Anonymous
Ann Anonymous
Annie Anonymous
Barbara Anonymous
Cheryl Anonymous
Elise Anonymous
Gaye Anonymous
Jean Anonymous
Jon & Donna Anonymous
L Anonymous
Laura Anonymous
Lillian Anonymous
Liz Anonymous
M Anonymous
Marc And Jil Anonymous
Marlon Green Anonymous
Mary Jane Anonymous
Michael Anonymous
Michele Anonymous
Mike Anonymous
Osiel Anonymous
Phil Anonymous
Ray Anonymous
Sadek Anonymous
Sam Anonymous
Susan Anonymous
Tucker Anonymous
Walter Anonymous
Judy Andersen
Marcy Andersen
Anne Anderson

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Nancy Anderson
Ray Andres
Lori Andrews
James Angermeier
Chris Anthony
Maryann Antinori
Eileen Antolino
Taralyn Antonucci
Nicole Antunes
Doreen Anzinger
Victoria Apadula
Genevieve Appel
Mary Archibald
Francesca Argiro
Evelyn Arlotta
Adaria Armstrong
Alison Armstrong
Barbara Arnett
Nancy Arnold
Raul Arribas
Jennifer Arruda
Deidre Asbjorn
David Ashton
Doris Atkind
Joseph Attamante
Arlene Aughey
Michael August
Evan Auster
Kenneth Austin
Barbara Avallon
Jean Avins
Albert Axelrod
Evelyne Axelrod
Danielle Ayer
Naheed Azhar
Arthur Babson
Susan Baguiao
Bridget Bak
Frank Baker
Judy Baker
Deborah Bakshiyev
Carolyn Balakas
Karl Baldwin
Susan Balik
Michael Balk
Pat Balko

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Steven Ball
Nicholas Balla
Kathy Ballantine
Judith Baller-Fabian
Gerri Ballwanz
C Balmer
Eric Baratta
Melissa Baratta
Sherrill Barbary
Byron Barclay
Paul Barish
Margaret Barker
Mercedes Barnek
Marion Barnes
Steven Barnes
Lamont Barnibus
Harry Barone
Rick Barry
Daniel Bartkewicz
Sharon Barton
Samantha Bartosh
Rober Bastian
Brooke Bates
Melba Battin
Evelyn Bau
Paul Bauer
Bernadette Bauman
Paul Bauman
Deborah Baumann
Richard Baunack
Terry Bayer
Barbara Baylie
Allison Beard
Alice Bebout
Donald Beck
John Beck
Aaron Becker
Tara Becker
Ramona Bederka
Darren Behan
Nadin Behan
Julie Behmer
Michele Beim
Markian Bek
Elizabeth Belai
Robert Bell

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Mary Bellobuona
Alice Bellotti
Evleyn Beltran
Sangeeta Benbow
Arlene Bendel
Susan Bender
Nancy Benedict
Chris Bennett
Erica Bennett
H. Bennett
Karolee Bennett
Shirley Bensetler
Rosanne Benson
Patricia Benward
James Berardi
Nick Berezansky
Emily Berger
Linda Berger
Lisa Berger
Richard Berggren
Steve Bergman
Elan Berkovits
Tami Berman
Deborah Bermanbiddle
Debra Bernath
Caleope Bernhardt
Martin Bernhardt
Nadine Berrouet
Elizabeth Bertolotti
Gerald Beyer
Amber Bialoglow
Dolares Bianchi
Catherine Biel
Anna Bielawski
Mary Biggins
Donna Bilenchi
Mary Billy
Barbara Bisch
Michael Biscottini
Michelle Biscotto
Heather Black
Robert Blackiston
Toni Blackwell
Christine Blake
Amy Blankenship
Lorraine Blaszcak

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Sam Bleecker
Victoria Blevins
Catherine Bloch
Theo Block
Ralph Bobroski
Dee Bocchino
Walter Bock
Susan Boegershausen
Ingrid Boehl
Catherine Bogdan
Madeline Bogden
Linda Boginsky
Mark Boginsky
Michael Bolles
Maryanne Bolton
Andrea Bonette
Dennis Bonner
Ken Bontejr
Alison Boor
Meredith Borden
Kathleen Bornemann
Ruth Boroshok
Emilia Borsi
Sharon Bort
Pamela Borzek
Kimberly Botsko Grasso
Patricia Boud
Laura Bouillot
Lisa Boulanger
George Bourlotos
Karen Bowker
Sharon Boxley
Michael Boyd
Paula Boyer
Kevin Boyle
Janis Bozowski
Lorraine Brabham
Corinne Brady
Michael Brailove
Kenneth Bralczyk
Kelly Brancato
Gail Brandow
Ellen Branham
Robert Braunwarth
Kristin Breen
Doug Breitbart

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Linda Brennan
Marion Brennan
Kyle Brenner
Patricia Brentano
Karen Breny
Teresa Breslin
Brian Breuel
Debra Brickel
Marvin Brickner
Marjorie Bridgers
Barbara Briemer
Joseph Brigandi
Dawn Briggs
Stanley Briggs
Frank Brincka
Nancy Bristol
Judy Brizzolara
Jessica Broderick
Kathleen Broderick
Diana Brodscholl
Seymour Brodsky
Elizabeth Bronson
Jeffrey Bronson
Barbara Brooks
Karyn Broselofsky
Lucille Brothers
Margaret Brown
Susan Brown
Tim Brown
Cassandra Browning
Jennifer Bruckler
Ada Brunner
Cathy Bryer
Bill Bryson
Joyce Bryson
Michael Brzostowski
Michele Bucci
Barbara Buchman
Michelle Budinick
Jeff Bueno
Jennifer Bulava
Sharon Bulovcsak
Roger Bultot
Tony Buontempi
Philip and Barbara Burghardt
Patricia Burke

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Chris Burley
Audrey Burns
Linda Burns
Amanda Buron
Debbie Burr
Steve Burt
Benjamin Burton
Betty Butler
Kaitlin Butler
Tom Butler
Amy Buzby
Tawny Bybee
Linda Byerley
Sharon Bykerk-Lonergan
Arthur Byrd
Bernie Byrne
James Byrne
Livea Byrne
Scott Byrne
Thomas C
Charles Cable
Lisa Caggiano
Eugene Cahill
Jennifer Cahill
Lea Cahill
Leia Cairns
Greta Calabrese
Augustine Calabro
Donna Caldwell
Lillian Callahan
Sharon Callahan
Linda Calvo
Helen Cammisa-Parks
Jennifer Campbell
Ellie Campolei
Jonathen Canales
Pat Cannone
Paul Cantello
Kathryn Caperton
Pk Caporrino
Stephanie Cappella
Joan Cappelluti
Sharon Cappuccio
Gladys Carbo Flower
Christopher Carbone
David Cardillo

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Doris Carey
Sabina Carinci
Cindy Carlone
Kurt Carlson
Ron Carlson
Micheal Carney
Hugh Carola
M Caroli
Thomas Carom
Craig Carpenter
Jennifer Carpenter
Katherine Carpenter
Katherine Carrino-Bednarski
Anne Carroll
Leslie Carson
Anthony Carusone
Thomas Casal
Mary Casale
Thomas Cascio
Jo Anne Cassidy
Joyce Cassidy
Marilyn Casson
Edward Castellano
Paula Castoran
Millie Cathers
Rhonda Cauler
Jennifer Cece
Michel Celebre
Anthony Cepiel
Natalie Cerciello
Michele Cerisano
Michael Cerrato
Jay Chakraborty
Joan Chamberlain
Rebecca Chang
Leslie Chappo
Lemar Charles
Cynthia Chase
Megan Chase
Stephanie Cheatley
Christina Chen
Linda Chenoweth
Jennifer Cherece
Justin Chernailis
Marc Chiarelli
Donna Chigi

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James Chilliri
Patrick Chilliri
Deborah Chiumento
T Cho
Sandra Churney
Jennifer Ciabrone
Joy Ciesla
Josphine Ciruolo
Denise Ciresa
Claudia Citarella
Chris Clark
Martina Clark
Morgan Clark
Susan Clark
S Clarke
Patricia Clements
Michael Cloud
Nicole Coates
Patty Coates
Barbara Coe
Susan Coen
Kathleen Coffey
Roseanna Coffield
Alice Cohen
Joan Cohen
Linda Cohen
Melissa Cohen
Christine Cole
Lori Coleman
Sharon Coleman
Christopher Coles
Kenneth Coles
Roswell Coles
Peter Charles Collaso
Marie Collette
Barbara Collins
Belinda Collins
Jonh Collins
Jennifer Colombo
Gail Columbia
Laurie Comes
Tony Conforti
Kathleen Conley
Laurel Conley
Robert Conlon
Christina Conner

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Daniel Connolly
Nora Connolly
John Connor
Valerie Conrad
Bianca Constance
Jean Conti
Ann Conway
Kendall Cook
Jerry Cooke
Lisa Coons
Kay Cooper
Neil Cooper
Michelle Coraggio
Dawn Corbett-Nivison
John Corbitt
Melissa Corbo
Rick Cordo
Morgan Cormia
M Correia
Mariatute Correia
Rutocas Correia
Ann Corrigan
Jeanette Corsini
Patricia Cosenza
Thomas Cosgrove
Maureen Costello
George Costich
Albert Costill
David Couto
Ina Cox
Joan Cox
Sherrill Cox
Manuela Coyle
Sandi Craig
Barbara Cramer
Julia Cramer
Martin Cramer
Naomi Cramer
Laurie Cranston
Robert Criste-Troutman
Fran Crivellone
Frances Crocco
Barbara Cross
Rachel Crowe
Nicole Cruz
Nancy Cucurello

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Dale Cullen
Brenda Cummings
Joe Cundari
Deborah Cuoco
Cynthia Cuomo
Emily Curtis
Marie Curtis
Michael Cusano
Gail Cutler
Liz Cutler
Marzena Czajkowski
Maricela D
Liz D.
Samer Daghestani
John Dagostino
Laura Dagostino
Kevin Dail
Ambyr Daleo
Cynthia D'alessandro
Beth Dallam
Joann Dalton
Julie Dalton
Kenneth Dalton
Charles Daly
Faith D'ambrosio
Richard Danek
Cheryl D'angelica
Claire D'angelo
Darlene Daniels
Shirley Daniels
Marie Danna
Harry Danner
Elisa Dantuono
Barbara Danziger
Deena Darrah
Susan Dasch
Maureen Dauria
Catherine Davey
Jane Davidson
Theresa Davidson
Louise Davies
Margherita Davis
Trisha Davis
Jessica Davison
Margaret Davison
William Davissr

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Ed Dawson
Richard Dawson
Christopher Day
Carryl Daza
Richard De Cicco
Joanne De Cuollo
Kenneth De Koven
Jared De Leeuwark
Anita De Old
Kristina De Oliveira
Sunshine De Oliveira
Phillip De Rea
Joseph De Sanctis
Ron De Stefano
Alicia Deblasio
Paul Debraski
Timothy Decker
Mila Decosta
Andrea Decoursey
Maryanne Deery
Grace Defillipo
Mark Defillippo
Jennifer Degerolamo
Dagmar Degree
Shannon Del Negro
Pamela Delallave
Rosemary Delconte
Frank Delcorso
Denise Deleo
Mariano Delgado
Pete Delorenzo
Tony Demalio
Marie Demarco
Christi Demark
Rachel Demasi
Geraldyn Dempsey
Heather Denges
Susan Dennison
Gloria Depascalis
Josette Depasqual
Kenneth Depew
Mary Derengowski
Sean Derman
Marlene Deronde
Elizabeth Derose
Loretta Derosso

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Nancy Derrico
Mary Derstine
Christopher Desalvo
Alicia Desordi
Ann Despent
Nancy Deubel
Nora Devin
Dina Devito
Joann Devory
Suzett Dewey
Kathleen Dezottis
Nichole Diamond
Roslyn Diamond
Hortense Dias
Linda Dibenedetto
Graziano Diciaula
Beth Dierks
Arielle Digiacomo
Debbie Digianno
Phyllis Dilossi
Kathy Dimatteo
Stephanie Dimatteo
Meredith Dimeola
Colette Dineen
Frances Dinolfo
Jasper Dionisio
Anthony Dipaola
Yalanda Disalvo
Regina Discenza
Janice Dlugosz
Nicole Dobrowolski
K Dodd
Maryjane Dodd
Loretta Dolan
Meg Dolan
Merelyn Dolins
Marybeth Donahoe
Maureen Donaldson
William Donaldson
Robin Donnelly
Tony Donohoe
David Donovan
Naoma Dorety
Mitchell Dormont
Andrea Dorner
Linda Dorn-Odonnell

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The comments received and the Department's responses are summarized below. The number(s) in parentheses after each comment identify the respective commenter(s) listed above.

General support for the proposed amendments

1. COMMENT: Numerous commenters submitted comments strongly supporting the Department's proposal to update the list of threatened and endangered wildlife, including commending the DEP's approach for both listing and de-listing species using the best available science and research. Accurate identification of the species most at risk helps direct conservation efforts and funds where they are most needed. (3, 6, 7, 17, 22, 24, 25, 27, 28, 30; 1, 2, 4, 10, 12, 13, 8, 9, 11, 16, 18, 33, 34, 36, 39, 40, 41, 45, 46, 47)

RESPONSE: The Department acknowledges the comments in support for the rule amendments and the Departments approach to assessing species' status.

General opposition to the amendments

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2. COMMENT: Several commenters expressed concern about removing species from the endangered and threatened status categories because that will result in a net reduction in acreage that could be subject to other Departmental regulations, particularly land use regulations that make reference to habitat for endangered and threatened wildlife. The commenters noted that these lands serve as habitat for other wildlife, enable ecosystems to function and are important to quality of life of New Jersey citizens. (6, 7, 14, 17, 24, 25, 27, 28, 29, 30, 42, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62)

RESPONSE: The Department acknowledges the commenters' concerns for the environmental services that natural, undeveloped habitats provide, and for their value to residents' quality of life. The Department notes that many existing environmental statutes and their implementing regulations include mechanisms to maintain healthy and functioning ecosystems in New Jersey. The amendments being adopted at this time update the list of endangered species required pursuant to N.J.S.A. 23:2A-4, and the list of regulated nongame wildlife authorized pursuant to N.J.S.A. 23:2A-6. These amendments are being made so that the lists of endangered and nongame wildlife reflect the conservation status, including the extinction or extirpation risk, of wildlife species based upon the best scientific information available. Such updating of species' status provides the Department and other organizations with the best information for guiding conservation priorities. The rule provisions being amended do not contain direct requirements for habitat protection. However, the Department has acknowledged in the impact statements that updating the lists will secondarily affect implementation of Department land use regulations that provide protection to documented habitats for endangered and threatened species, and that such

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secondary impacts may include removing or reducing development restrictions in some areas of the State while adding or increasing such restrictions in other areas. As noted in the proposal, precise calculations of the number of acres that would be subject to the endangered and threatened species habitat provisions under Department land use regulations is not possible, when based entirely on estimates derived from Geographic Information Systems (GIS) analysis. Moreover, the applicability of the endangered and threatened species habitat provisions of these rules are subject to verification of actual field conditions in the context of individual applications to the Department (see 43 N.J.R. 92). New Landscape Project mapping that incorporates these list amendments, as well as updates to the Department's database of species occurrence locations and land use/land cover base map data, may result in differences from the acreage estimates made in the Department's proposal. Regardless of the actual number of acres affected by the amendments, the Department believes that updating the lists to reflect the best available scientific information to guide the additional protections to be afforded those species that are either threatened or endangered is necessary and appropriate.

3. COMMENT: The proposed amendments are inappropriate as they place opening lands to economic development before the protection of critical habitat and preservation of the biodiversity of New Jersey. (42)

4. COMMENT: The proposed amendments would promote more sprawl and overdevelopment, and jeopardize some of the most sensitive areas in the State. (48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62)

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RESPONSE TO COMMENTS 3 and 4: This rulemaking is focused on assuring that the conservation status of wildlife species in the State reflects the most current, scientifically accurate information available to the Department. The decisions to designate species as endangered, threatened or special concern and other status categories are made based on expert review and the best scientific information available about the status of those species in New Jersey. The manner in which other Department regulations make reference to the lists at N.J.A.C. 7:25-4.13 and 4.17 is not the subject of this rulemaking. The Department acknowledged in the proposal that the amendments being adopted at this time have implications in other Departmental rules, and made its best estimates of the potential secondary impacts of the amendments. The Department is making these amendments to assure that the conservation status of endangered and nongame wildlife reflect the best available science. The changes to these lists will result in certain areas no longer being considered as endangered or threatened wildlife habitat. In other areas, the changes will result in areas that previously were not considered to be endangered or threatened habitat being classified as endangered or threatened wildlife habitat. As a result, the Department's rules and other Department programs (such as the Green Acres Program) will be able to focus the highest level of protection on the areas where the protections are most necessary to safeguard the most imperiled species.

To the extent consistent with their respective statutory authority, the protections afforded under the Department's rules to areas such as freshwater wetlands, floodplains, Highlands, etc., are, in part, developed and implemented to provide habitat protection for all wildlife. The Department believes that the amendments adopted at this time to reflect those species that require additional protection are both necessary and appropriate to allow the Department to focus its limited resources on the conservation of those species of greatest conservation need.

5. COMMENT: The proposed rules fail to approach the conservation of critical species from a landscape context, instead focusing on individual species. The Department should instead be looking at preserving specific habitat types and ecosystems that are or could potentially be habitat for species of concern, threatened and endangered species. (42)

RESPONSE: As described in the response to comment 3 above, the proposed amendments update the list of endangered species required pursuant to N.J.S.A. 23:2A-4, and the list of regulated nongame wildlife authorized pursuant to N.J.S.A. 23:2A-6. The Endangered and Nongame Species Conservation Act (ENSCA) at N.J.S.A. 23:2A-7a authorizes the “acquisition of land or aquatic habitats.” The Department does protect habitat in this way through its land acquisition programs, including the Green Acres Program (Garden State Preservation Trust Act, N.J.S.A. 13:8C-1 *et seq.*, and the Green Acres, Water Supply and Floodplain Protection, and Farmland and Historic Preservation Bond Act of 2009, L. 2009, c. 117), and the New Jersey Natural Lands Trust (N.J.S.A. 13:1B-15.119 - 15.127). These statutes and their implementing rules specifically provide for acquisition of lands to protect endangered species and other wildlife habitat, and elements of natural diversity. Through these programs the Department has preserved and manages thousands of acres of land in the interest of the objectives suggested by the commenter. While the Department’s land acquisition priorities include known occurrence areas of endangered and threatened wildlife, priority is also given to improving the connectivity of habitats and conserved lands, which is a guiding principle in a landscape-scale approach to wildlife conservation.

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6. COMMENT: The proposed amendments must be stronger to ensure potential habitat is available to species, and that regulatory protections are extended to all species in serious decline. (48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62)

7. COMMENT: DEP should adopt strong rules that will not only protect existing endangered, threatened and special concern populations, but promote (wildlife) population growth by preserving critical habitat in the State. (48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62)

RESPONSE TO COMMENTS 6 and 7: The Department acknowledges the commenters' interest in habitat conservation for the rare wildlife species that are the subject of this rulemaking and in the promotion of all wildlife species population growth. The availability, condition and management of habitat (habitat conservation) are crucial to restoring rare wildlife populations in nearly all circumstances. Habitat conservation is also the cornerstone to all wildlife management and essential to the long term maintenance of healthy wildlife populations and functioning ecosystems. In recognition of this fact, the Department's regulatory review that extends to certain habitat types (for example, wetlands) and geographic areas (for example, the coastal area, the Highlands area and the Pinelands area) pursuant to several Department land use regulations currently either refer explicitly to endangered species listed at N.J.A.C. 7:25-4.13 and threatened species listed at N.J.A.C. 7:25- 4.17 or more generally to species listed as endangered or threatened pursuant to ENSCA and impose additional requirements or restrictions on applicants proposing certain regulated activities in these areas. For example, within the Coastal Zone Management rules (N.J.A.C. 7:7E) endangered and threatened species habitat are considered "special areas" and development regulated under these rules that would adversely affect these

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habitats is prohibited (N.J.A.C. 7:7E-3.38 (b)). Within Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A) filling or other regulated alteration of wetlands that would "...jeopardize or adversely modify a present or documented habitat for threatened or endangered species..." or that would "...jeopardize the continued existence of a local population of a threatened or endangered species..." is not permitted (N.J.A.C. 7:7A-2 (b) 3). Further, wetlands that provide endangered or threatened species habitat require the largest buffer or "transition area" (150 feet; see N.J.A.C. 7:7A-2.5(d) and N.J.A.C. 7:7A-6.1(a)). The Department's Water Quality Management Planning rules at N.J.A.C. 7:15-5.24(b)1 consider endangered and threatened wildlife habitat to be "environmentally sensitive areas" and require at N.J.A.C. 7:15-5.24(a) that sewer service areas avoid these areas. Similarly, provisions within the Flood Hazard Area Control Act Rules (for example, N.J.A.C. 7:13-10.6) contain requirements to avoid adverse impacts to endangered and threatened species habitats when conducting regulated activities, and the Highlands Water Protection and Planning Act Rules at N.J.A.C. 7:38-3.11 require that permitted activities not jeopardize the continued existence of, or adversely modify the habitat for, any rare, threatened or endangered species. In addition, certain Department regulations provide for protection of habitat for species other than endangered and threatened wildlife, such as migratory birds and colonial-nesting birds in the coastal zone (N.J.A.C. 7:7E-3.39), "rare" species in the Highlands Water Protection and Planning Act Rules (N.J.A.C. 7:38-3.11) and the extra protections extended to vernal pools (N.J.A.C. 7:7A-4.3), wetland buffers (N.J.A.C. 7:7E-3.28(c)) and Category 1 waters (N.J.A.C. 7:13-4.1(c)).

8. COMMENT: Instead of weakening the rules, the Governor and the Department should be proposing a law to extend protection for plants. (56)

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RESPONSE: The Department does not believe that these amendments weaken rules; rather, they update the lists of wildlife animal species at N.J.A.C. 7:25-4.13 and 4.17, and designate conservation statuses that reflect the most recent scientific information available. As such, as described in response to comments 3 and 4 above, these amendments are both necessary and appropriate for the Department to focus its limited resources on the conservation of those species of greatest conservation need. The request that the Governor and the Department propose a law to extend protection to plants is beyond the scope of this rulemaking.

9. COMMENT: Thirty years after the Endangered Species Act was passed, the State still does not have regulations to protect upland forest and grassland species. (62)

RESPONSE: While the commenter is correct that there have been no regulations promulgated under ENSCA specifically aimed at regulating adverse modification of wildlife habitat, the Department does have regulations within other land use regulatory programs that provide protection to habitats, including those for upland forest and grassland species. Several of the Department's land use regulations that include provisions to help conserve endangered and threatened species habitats provide such protections to all areas, including upland forests and grasslands, within their jurisdiction. For example, upland forests and grasslands that provide habitat to endangered or threatened wildlife are regulated in the Highlands under N.J.A.C. 7:38-3.9(e), and in the coastal area under N.J.A.C. 7:7E-3.21(c)1ii. In addition, the Pinelands Comprehensive Management Plan (N.J.A.C. 7:50) also provides protection of uplands (forests

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and grasslands) that provide habitat for endangered or threatened wildlife (see N.J.A.C. 7:50-6.33)

10. COMMENT: The proposal is hard to understand and does not meet the standard of clear writing. (31)

RESPONSE: The proposal amends two lists and removes, adds and defines terms that apply to the species included in these lists. The proposal clearly identifies the specific changes that are being made and the likely implications of these changes within the context of other Department regulations that make reference to the amended lists and terms. Specifically, the proposal documented the process by which the Department determines the conservation status of rare and nongame wildlife in the State, describing the Delphi Technique employed to build consensus among expert reviewers (43 N.J.R. 88), and citing a peer-reviewed, published article that also described the Delphi Technique as applied to species status assessment (43 N.J.R. 88). This review process facilitates the consideration of the conservation status of species in the context of the best available biological and ecological data (43 N.J.R. 88). The results of the expert review are then used by the DEP and the Endangered and Nongame Species Advisory Committee to make recommendations on the status designations. The proposal also described the changes to definitions of the status categories (43 N.J.R. 87), and explained that bird species are assigned separate statuses for the breeding and non-breeding seasons (43 N.J.R. 88). As described in the proposal, the review process and the designation of species statuses involves wildlife species experts from within and outside the DEP, and further consideration by the Department's wildlife experts and the Endangered and Nongame Species Advisory Committee in the course of public

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meetings. This rulemaking was the culmination of years of review of the conservation statuses of species. The changes to the conservation statuses and the new definitions represent changes determined to be appropriate through that review to better achieve species conservation.

11. COMMENT: The rulemaking process was not transparent: who was involved, what documents were reviewed and how were these decisions made? (21)

RESPONSE: The Department has followed the Administrative Procedure Act, N.J.S.A. 52:14b-1 et seq., and the implementing regulations at N.J.A.C. 1:30, in proposing the amendments being adopted at this time. As more fully explained in the proposal summary, the Department has employed a methodology known as the Delphi Technique to develop recommended changes to the list of endangered species at N.J.A.C. 7:25-4.13 and the list and status of nongame species at N.J.A.C. 7:25-4.17 since 1999 (see 43 N.J.R. 88). The Delphi review of species statuses includes review and analysis of information relating to populations, distribution, habitat needs and other biological and ecological data. The experts involved in this review are from within the Department as well as from academia, conservation and research organizations, and the review process includes consideration of the reviewers' varied expertise in reaching consensus of opinion. As described in the proposal, after the expert review and classification, status determinations reached through the Delphi Technique are reviewed by the Department's Endangered and Nongame Species Program and the Endangered and Nongame Species Advisory Committee, a committee of experts established pursuant to ENSCA (see N.J.S.A. 23:2A-7e) and its implementing regulations at N.J.A.C. 7:25-4.18 to advise and assist the Commissioner in carrying out the intent of ENSCA (see description of process and those

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involved at 43 N.J.R. 88). The meetings of the Endangered and Nongame Species Advisory Committee are public, with the meeting schedule posted on the Division's website at http://njfishandwildlife.com/ensac_mtgs.htm. In addition, as described below in response to comment 12, the Department held a stakeholder meeting on May 19, 2010 regarding the proposed amendments.

12. COMMENT: The commenter received no notice of a stakeholder process or invitation to participate in this process in any way. Governor Christie's Executive Order 2 is very specific about the need for common-sense regulatory practices, including the requirement for stakeholder input. (21)

RESPONSE: A stakeholder meeting was conducted on May 19, 2010 at the Division of Fish and Wildlife's Central Region Office in Upper Freehold Township prior to filing the proposal. Invited participants included a variety of stakeholder groups including those representing real estate and land development interests. Moreover, the meetings of the Endangered and Nongame Species Advisory Committee are open to the public and provide opportunity for public input. Meeting dates were provided to the New Jersey Secretary of State and published in the Newark Star Ledger and the Atlantic City Press, and meeting dates and proposed agendas were posted on the Division of Fish and Wildlife's website at http://njfishandwildlife.com/ensac_mtgs.htm. All of the changes included in the current rulemaking were discussed at meetings of this legislatively established (N.J.S.A. 23:2A-7e) advisory committee.

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13. COMMENT: Some commenters used the form letter referenced as commenter letter #48 to make additional comments. Comments received in this manner included comments advocating for preservation of habitats and New Jersey's natural resources for the benefit of people and their quality of life, for wildlife, and to preserve clean air, clean water and watershed integrity. Further, some of those commenters expressed their concern that development and corporate interests would benefit from the amendments more so than natural resource conservation that is in the public interest. (49, 50, 52, 53, 54, 57, 58, 60, 61, 62).

RESPONSE: The Department appreciates the concerns expressed for protection of New Jersey's environment, natural resources and the quality of life of its citizens. As indicated in response to comment 3 above, the amendments being adopted at this time amend the list of endangered species required pursuant to N.J.S.A. 23:2A-4, and the list of regulated nongame wildlife authorized pursuant to N.J.S.A. 23:2A-6, and additionally amend designated conservation statuses to reflect the best available scientific information. The adopted amendments include both upgrades of species status reflecting that conservation efforts have succeeded in improving the sustainability of these species' populations in the State and reclassification of species to threatened or endangered status that have been determined to be in need of increased protection based upon the most current information on their status. These amendments are made to assure that those species that are most in need of special protection receive that protection so that they can also eventually be removed from the list of endangered species as a result of their improved status. The adopted amendments do not change protections afforded to clean water or air or other environmental protections afforded by the Department's

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other rules. The Department believes that the amendments are consistent with the commenters' goal of protecting the State's environment and resources.

14. COMMENT: Protecting the habitat of these animals benefits both the species and New Jersey residents. In addition, by continuing to protect wildlife and natural habitats, the economic value of outdoor recreation and tourism in New Jersey is not compromised. (51)

RESPONSE: The Department appreciates the commenter's recognition of, and concern for, some of the additional values provided by wildlife and natural habitats. The Department similarly recognizes the value of open spaces, natural areas and wildlife to the State's residents and visitors, and is aware of studies that show the economic value of outdoor recreation and wildlife-related tourism. As further described in the response to comment 71, the Department works to fulfill its mission for open space preservation and habitat conservation through a variety of programs including the Green Acres and Natural Lands Trust programs. These programs acquire and manage lands guided, in part, by wildlife conservation priorities.

Comments on definitions

15. COMMENT: The DEP's proposed rule changes are strongly supported. In the proposed rules, revised terms describing the conservation status of species would trigger closer scrutiny of populations at risk in addition to those listed as endangered or threatened. The proposed new category of "special concern" would describe species that are rare, declining, or in need of specialized food or habitat. Wildlife in this category would benefit from additional monitoring

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and would receive special attention in DEP's land management and acquisition programs. (6, 7, 17, 24, 25, 27, 28, 30)

RESPONSE: The Department agrees that the new category of special concern will better describe the conservation status of some species, and provide better information on the threshold of conservation concern than the previous definitions that described population trends more so than conservation status.

16. COMMENT: While the commenter welcomes more precise language to differentiate between categories or levels of conservation attention, the addition of more ways to give wildlife species the conservation status of "special concern" is not supported. This would greatly broaden the definition of "rare" species included for protection in the Highlands Regional Master Plan that the commenter firmly opposed. (26)

RESPONSE: The Highlands Regional Master Plan (RMP) referenced in this comment does not include a definition of rare species. Rather, this term is defined in the Highlands Water Protection and Planning Act Rules (N.J.A.C. 7:38). The definition for "species of special concern" within the Highlands Water Protection and Planning Rules is contained within the definition of the term "rare species" at N.J.A.C. 7:38-1.4: "'Rare species' means wildlife species that are not endangered or threatened wildlife species and considered by the Department to be species of special concern as determined by a panel of experts or that are ranked S1 (critically imperiled in New Jersey because of extreme rarity), S2 (imperiled in New Jersey because of rarity), S3 (rare in New Jersey), G1(critically imperiled globally), G2 (imperiled globally

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because of rarity) or G3 (globally very rare and local throughout its range or found locally in a restricted range) in the Natural Heritage Database, and Plant Species of Concern listed pursuant to N.J.A.C. 7:5C-3.1.” In the current adoption, species of special concern are defined as “wildlife species that warrant special attention because of evidence of population decline or inherent vulnerability to environmental deterioration or habitat modification that would result in the species becoming threatened if conditions surrounding the species begin or continue to deteriorate. The term includes species for which there is little knowledge of current population status in the State.” While the definition of “special concern” being adopted at this time contains a non-inclusive list of factors that can lead to a species being classified as special concern that is not included in the Highlands Water Protection and Planning Rules definition of “species of special concern”, the two definitions are otherwise equivalent. Accordingly, this rule does not broaden the potential list of “rare species” regulated pursuant to the Highlands rules.

17. COMMENT: DEP should not classify as special concern those species “for which there is little understanding of their current population” until that information is available and the status class is recommended by the Department’s advisory groups. A status of special concern must be backed by the same careful collection and weighing of facts, because there is a tendency for municipalities to treat anything so listed as equally in need of strict regulation. There should be a deliberative process for any application of those three categories. (26)

18. COMMENT: In the definition of “special concern” the last sentence indicating that the category includes species for which there is little understanding of its current population status in

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the State should be deleted. Where the Department lacks an understanding of a species' population status, the classification should be "undetermined-unknown." (15)

RESPONSE TO COMMENTS 17 and 18: The terms and definitions the Department has developed for this amendment are an attempt to more clearly describe a species' need for conservation as opposed to the status of its population, which typically refers only to numbers and trends. The previous terms emphasized population status. Population status is one component of a species' vulnerability and need for conservation attention. The final sentence of the definition of the term "special concern" specifies that "[t]his category includes a species that meets the foregoing criteria and for which there is little understanding of its current population status in the State." Therefore, for a species for which there is a "lack of understanding of its current population status" to be assigned a status of "special concern" it must also be a species that meets the first criteria in the definition, that is, a species that "warrants special attention by the Department because of inherent vulnerability to environmental deterioration or habitat modification that would result in its becoming threatened if conditions surrounding the Species begin or continue to deteriorate." Given the difficulties of assessing population status, the Department believes that it is appropriate and consistent with the intent of ENSCA to use information to determine the conservation need or status of a species and then to assign a status of special concern to those that it judges, based on the best scientific information available, to be vulnerable. The process by which the Department determines and assigns conservation statuses to nongame wildlife is a deliberative process. The Delphi process by which the Department assesses the status of wildlife species, including special concern, is by its nature deliberative in that it involves sharing of information among species experts and reaching consensus in an

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iterative, thoughtful manner. Similarly, the Endangered and Nongame Species Advisory Committee evaluates the results of the Delphi review through a deliberative process utilizing the results of the Delphi review and other relevant information they may personally contribute as well as information provided to them by Department staff or the members of the public who attend the meetings. The proposal summary also makes clear that the Department is not subjecting this category to increased regulatory protection through this change, but is using this classification to identify those species which must be closely monitored to assure that further protection is not warranted. The Department does not exercise any control over the manner in which municipalities use or apply the status information the Department develops for these lists of wildlife that the Department regulates.

19. COMMENT: The Department does not have the statutory authority to list species as “special concern,” since that phrase is not referenced in ENSCA. Similarly, there is no statutory authority to assign species to the “threatened” category. The Department should ensure there is statutory authority for every species status and should not adopt any categories where there is no underlying statutory basis. (15)

RESPONSE: While ENSCA does not use the term “special concern,” the Department’s utilization of this classification is entirely consistent with the statutory direction and intent. For example, at N.J.S.A. 23:2A-4a, ENSCA directs the Department to “conduct investigations concerning wildlife in order to develop information relating to populations, distribution, habitat needs, limiting factors and other biological and ecological data to determine management measures necessary for their continued ability to sustain themselves successfully”, and at

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N.J.S.A. 23:2A-7a, to “...establish such programs, including acquisition of land or aquatic habitats, as are deemed necessary for the conservation and management of nongame and endangered species of wildlife” (N.J.S.A. 23:2A-7a). The Department deleted several status categories (for example, increasing and declining), which also are not terms in the statute. The Department believes the special concern category is more informative with regard to species’ conservation status, and thus supports and advances the purpose of the Endangered and Nongame Species Conservation Act, namely, “[t]hat it is the policy of this State to manage all forms of wildlife to insure their continued participation in the ecosystem[.]” N.J.S.A. 23:2A-2a. With regard specifically to the term “threatened,” this is a term contained within the statutory definition of endangered. New Jersey courts have upheld the authority of the Department to afford protection to species categorized as “threatened” under the Endangered and Nongame Species Conservation Act. The court found that, although the Act does not contain a separate definition of “threatened species,” the Act protects threatened species as well as those that are already endangered. The court additionally found that the Department’s definition of this term is consistent with the statutory intent expressed in the definition of “endangered.” (See ZRB, LLC v. New Jersey Department of Environmental Protection, 403 N.J. Super. 531, 550-54 (App. Div. 2008).

20. COMMENT: The New Jersey species lists should be limited to only those endangered species that are listed on Federal species lists. (15)

21. COMMENT: Governor Christie’s Executive Order 2 directs the Department to justify listings that go well beyond Federal listings. (21)

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RESPONSE TO COMMENTS 20 and 21: N.J.S.A. 23:2A-2 states (a) that it is the policy of this State to manage all forms of wildlife to insure their continued participation in the ecosystem, and (b) that species or subspecies of wildlife indigenous to the State which may be found to be endangered should be accorded special protection in order to maintain and, to the extent possible, enhance their numbers. The definition of “endangered” at N.J.S.A. 23:2A-3c includes that “...the term shall also be deemed to include any species or subspecies of wildlife appearing on any Federal endangered species list...” The use of the word “also” in this clause makes it clear that the legislative intent was for the list of endangered species to include species beyond those which are included in the Federal list of endangered species. Further, at N.J.S.A. 23:2A-4b, the statute directs that “on the basis of such investigations of wildlife and other available scientific and commercial data the commissioner may by regulation promulgate a list of those species and subspecies of wildlife indigenous to the State which are determined to be endangered, giving their common and scientific names by species and subspecies. The commissioner shall periodically review the State list of endangered species and may by regulation amend the list making such additions or deletions as are deemed appropriate.” Since species listed as “endangered” on “any Federal endangered species list” are considered “endangered” pursuant to N.J.S.A. 23:2A-2, there would be no need for the Department to conduct investigations and amend the lists, and the legislature would not have directed the Department to do so if it were not their intent that the list of endangered species include species beyond those listed Federally.

Governor Christie’s Executive Order 2 provides a “common sense principle” that agencies “...detail and justify every instance where a proposed rule exceeds the requirements of federal

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law or regulation,” and further that they “...shall, when promulgating proposed rules, not exceed the requirements of federal law except when required by State statute or in such circumstances where exceeding the requirements of federal law or regulation is necessary in order to achieve a New Jersey specific public policy goal.” The Federal standards analysis provided with this proposal explains at 43 N.J.R. 92 that the enabling legislation, the Endangered and Nongame Species Conservation Act (ENSCA, N.J.S.A. 23:2A) “... directs specific conservation attention to species indigenous to New Jersey” (43 N.J.R. 92). To elaborate further, ENSCA sets as it purpose (at N.J.S.A. 23:2A-2b.) “...That species or subspecies of wildlife indigenous to the State which may be found to be endangered should be accorded special protection in order to maintain and to the extent possible enhance their numbers.” Further, ENSCA at N.J.S.A. 23:2A-4.a and b provides that the Department should “...conduct investigations concerning wildlife in order to develop information relating to populations, distribution, habitat needs...” and “...on the basis of such investigations of wildlife and other available scientific and commercial data the commissioner may by regulation promulgate a list of those species and subspecies of wildlife indigenous to the State which are determined to be endangered, giving their common and scientific names by species and subspecies. The commissioner shall periodically review the State list of endangered species and may by regulation amend the list making such additions or deletions as are deemed appropriate.” This is clear direction from the legislature to list species outside of mere consideration of their Federal status. If it was the intent of the Act to only list species appearing on the Federal lists, there would be no need to conduct investigations regarding their status in New Jersey. This adoption is therefore consistent with the Governor’s Executive Order, in that the Department has demonstrated both that the statute authorizes listing species beyond those included on Federal lists, and has also demonstrated that it is necessary to

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do so to achieve a “New Jersey specific public policy goal,” that is, to maintain sustainable populations of New Jersey’s indigenous wildlife.

22. COMMENT: The proposed special concern category is not strong enough to protect populations that are declining in the State because it simply recognizes that those populations are susceptible to increased loss of habitat without affording the species any regulatory protection to prevent further decline. These species should be identified as threatened. The Department should make available the data and threshold levels used to qualify species as special concern rather than threatened. (42)

RESPONSE: The Department believes that the distinctions among the terms endangered, threatened and special concern in the proposal are well-differentiated in their respective definitions and that these distinctions assist the Department and others to allocate limited resources to the wildlife species that are deemed to be of greatest and most immediate conservation need. The status assessment for wildlife species, a process that employs the Delphi Technique to reach consensus among experts, uses the definitions of endangered, threatened, special concern, stable-secure, and unknown-undetermined to categorize the conservation status of species under consideration, as described in the proposal at 43 N.J.R. 88. The Department’s rules provide protections intended to protect all species to assure that species do not become threatened or endangered. The purpose of classification is to identify those species needing additional protection due to their imperiled status. By definition, the special concern category includes species that warrant special attention because of inherent vulnerability to environmental deterioration or habitat modification that (should those things occur) would result in it becoming

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threatened (see 43 N.J.R. 87). By contrast, the definition of threatened is “a species that may become endangered if conditions surrounding it begin or continue to deteriorate.” Thus, special concern status indicates a conservation condition better (that is, less imperiled) than threatened, and threatened indicates a conservation condition better/less imperiled than endangered. These status categories are important to discern with accuracy because they help focus limited resources. Habitat conservation is important for preventing declines in wildlife in all three categories (endangered, threatened and special concern). However, the accurate representation of wildlife conservation status is an important element of the Department’s conservation goals and mission. The assessment of species status through the Delphi review process is not based on numeric thresholds, but on consideration of available data on population size and trend, threats, and habitat conditions, as described in the response to comment 11, in the Department’s proposal (43 N.J.R. 88) and in a peer-reviewed journal article cited in the proposal and available on the Department’s website at <http://njfishandwildlife.com/ensp/pdf/literature/objective-means-status-assessment.pdf>. The Department’s rules provide protections intended to protect all species to assure that species do not become threatened or endangered. The purpose of classification is to identify those species needing additional protection due to their imperiled status.

Comments on particular species proposed statuses

23. COMMENT: New Jersey should not list the red knot as an endangered species until it is declared such by the U.S. Fish and Wildlife Service. (5)

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RESPONSE: See response to Comment 19 regarding Department's authority to list species based on its own data and objectives beyond those listed by the U.S. Fish and Wildlife Service. The Department's status determination for changing the red knot's non-breeding population status from threatened to endangered was made based upon the recommendation of experts convened using the Delphi Technique. That review panel considered background information and data collected from many sources that related to the bird's population, trends and threats. The Department determines species status relative to the species' population and threats to viability in New Jersey, whereas the U.S. Fish and Wildlife Service assigns endangered, threatened or candidate status based on the species' viability in the United States. The Department's obligation under N.J.S.A. 23:2A-2 to maintain species' populations in the State is an important factor in classifying wildlife species' statuses within the State.

24. COMMENT: The proposal to change the red knot's status from threatened to endangered is supported. (14, 19, 23, 32, 35, 37, 38, 43, 63)

RESPONSE: The Department acknowledges the commenters' support for the status change.

25. COMMENT: The breeding status of loggerhead shrike should be changed from endangered to blank, as opposed to changing it from endangered to extirpated. (44)

RESPONSE: As indicated in the summary of the proposal at 43 N.J.R. 88, the breeding population of the loggerhead shrike was proposed for amendment as this species no longer breeds in New Jersey. This was mistakenly reflected in the summary as a change of the status

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utilizing the classification of extirpated, which correctly identifies that this population is no longer in existence in the State, but which uses terminology deleted as part of this rulemaking.

As the non-breeding population of the loggerhead shrike is classified as endangered (the "E" that appeared in the proposed rule text at N.J.A.C. 7:25-4.17), and thus appears on the list of endangered species at N.J.A.C. 7:25-4.13, and there is no breeding population in the State, it is no longer appropriate to continue to list the loggerhead shrike in the nongame species list at N.J.A.C. 7:25-4.17. The Department has modified the rule on adoption by removing the unnecessary reference to this species in N.J.A.C. 7:25-4.17.

26. COMMENT: If the breeding population of loggerhead shrike is to be deleted from the list because it does not breed in the State, then, to be consistent, other species (e.g., grizzled skipper) should also be deleted as this species has not been reliably reported in the State for more than 50 years. (44)

RESPONSE: In its determination as to whether a species occurs in the State (for example, Appalachian grizzled skipper as suggested by the commenter), and the species' degree of population security, the Department relies heavily upon the findings of the experts on those species in the course of the Delphi Technique status review. The Delphi Technique analysis reviewed the bird, reptile, amphibian and insect species and identified species for status changes as identified in the proposal. The results of that expert review did not indicate that sufficient information was available to delete the Appalachian grizzled skipper or other species from the list.

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27. COMMENT: “Harris checkerspot” should be corrected to read “Harris’ checkerspot,” which is the spelling of its common name in the North American Butterfly Association’s “Checklist and English Names of North American Butterflies.” (44)

RESPONSE: The commenter’s correction was noted and included in this adoption. The adoption also includes changes to the scientific names of five other insects, so that they reflect the most current list provided by the North American Butterfly Association. Particularly, corrections are made to the scientific names of Cobra Clubtail, Green-faced Clubtail, Midland Clubtail, Rapids Clubtail, and Sable Clubtail.

28. COMMENT: It is stated that northern leopard frog (*Rana pipiens*) was recently found in the State. If this is based solely on a sight observation or photograph then this species should be deleted from the list because it is easily confused with other, similar looking species (in this case, Southern Leopard Frog). (44)

RESPONSE: The proposed addition of northern leopard frog was based on specimens collected in Morris County and identified by several experts. Those specimens are now the subject of genetic analysis. If the additional analyses indicate something other than Northern Leopard Frog, the Department will propose the appropriate adjustments in future rule amendments.

29. COMMENT: It is proposed to remove Silvery Salamander from the list because it is a subspecies of Jefferson salamander and the list does not include subspecies. However, the proposed list includes several subspecies of reptiles (midland painted turtle, northern ringneck

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snake), mammals (Tuckahoe masked shrew), and birds (Ipswich sparrow). To be consistent, these species should be removed from the list. (44)

30. COMMENT: The Department must consider including protections for rare subspecies in its regulations of nongame species to preserve genetic diversity and unique local genotypes.

Although the Silvery Salamander will be listed as special concern as a subspecies of the Jefferson salamander, this salamander has been identified as declining in the past and its information must be analyzed separately from the Jefferson salamander population. The Department must also identify any other subspecies that would potentially qualify for special concern, threatened or endangered status. (42)

RESPONSE TO COMMENTS 29 and 30: The Department’s proposal reads, “One species (Silvery Salamander) is proposed to be removed due to a taxonomic determination that it is a subspecies of Jefferson salamander and the list does not currently differentiate subspecies.” Indeed, there has been a recent taxonomic determination that supports removing the Silvery Salamander from the list at N.J.A.C. 7:25-4.17. However, ultimately the reason for the removal of this subspecies was because the major amphibian groups, including the Society for the Study of Amphibians and Reptiles (SSAR) and the Center for North American Herpetology, no longer recognize Silvery Salamander as a subspecies. The list at N.J.A.C. 7:25-7.13 does include subspecies, including those noted by the commenter, and the enabling legislation at N.J.S.A. 23:2A-2b authorizes the State’s recognition of species and subspecies.

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31. COMMENT: The non-breeding status of short-eared owl should be maintained as endangered, and the non-breeding status of northern harrier should be upgraded from endangered to threatened. Both species form ground roosts that may be abandoned if disturbed, and winter roosts of this owl are especially scarce. (44)

RESPONSE: A species' vulnerability to disturbance is among many factors that experts participating in the Delphi review consider in evaluating a species' status. The panel that reviewed bird species consisted of 15 experts who reached consensus that the short-eared owl's non-breeding status warranted the special concern classification. The short-eared owl's non-breeding status was previously classified as unknown-undetermined (not endangered). The panel also recommended the Northern Harrier's non-breeding status be special concern, with this population previously classified as unknown-undetermined. Moreover, the non-breeding (wintering and migrating) populations of both species in New Jersey are sustained by the productivity of regional populations beyond New Jersey. There is no information to suggest that such regional populations are in immediate jeopardy. Accordingly, the Department believes that the proposed, and now adopted, status for these two populations is correct.

32. COMMENT: It is proposed to upgrade the non-breeding status of northern goshawk and vesper sparrow from threatened to special concern, but there is no evidence to support the contention that their non-breeding populations have improved. The non-breeding status of both species should remain as threatened. (44)

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RESPONSE: The experts participating in Delphi review consider factors that influence a species non-breeding status, including their regional population status in areas from which New Jersey's migratory and wintering individuals originate. The 15 bird status reviewers did not reach consensus on the Northern Goshawk's non-breeding status, but the majority voted for special concern (5) or stable-secure (3), and only one reviewer voted for threatened. Moreover, the non-breeding (wintering and migrating) population of Northern Goshawk in New Jersey is sustained by the status and productivity of regional populations beyond New Jersey and there is no information to suggest that these populations are in immediate jeopardy. As a result, the Endangered and Nongame Species Advisory Committee, which reviews the Delphi results and comments, made the recommendation for a classification of special concern. The bird status review panel did reach consensus on the Vesper Sparrow's non-breeding status, recommending special concern classification after two rounds of consideration. The status of New Jersey's wintering and migratory (non-breeding) populations of Vesper Sparrow is strongly influenced by regional populations in areas outside of New Jersey and there is no evidence to suggest that such regional populations are in jeopardy.

33. COMMENT: Due to declines, the non-breeding population of rusty blackbird should be listed as threatened, and the breeding population of chimney swift should be classified as special concern, not secure-stable as proposed. (44)

RESPONSE: These two bird species were last reviewed when the Department conducted the first bird status review in the early 1990s, and were not included in the bird status reviews conducted in the last ten years. The Department agrees that their statuses should be reviewed in

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light of information available in recent years. However, amending their status prior to the completion of a status review would be inconsistent with the Department's approach of soliciting the input of several experts in making such determinations and thus, it would be inappropriate to adjust their status until a status review based on the Delphi Technique is completed. The Department expects to conduct a review of bird species statuses within the next two years. When such a review is complete, the Department will propose any amendments to their status as determined to be appropriate.

34. COMMENT: Black tern is proposed to be removed from the list because it does not, and never did, occur with "sufficient regularity" to be considered indigenous the State as breeding or non-breeding populations. This is incorrect and black tern should not be removed from the list.

(44)

RESPONSE: The Department relies upon the bird status review conducted in 2005 in which the 15 bird expert reviewers reached a consensus that the black tern did not occur with sufficient regularity and predictability to be considered indigenous. The commenter presented no specific evidence that this conclusion is incorrect.

35. COMMENT: Additional information collected since the last comprehensive review of butterfly statuses indicates that Harris' checkerspot should be classified as endangered, and that hoary elfin should be classified as threatened. (44)

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RESPONSE: The Department relies upon the review of butterflies conducted in 1998 in which eight species experts reached consensus on classifying both Harris' checkerspot and hoary elfin as special concern. The commenter presented no specific evidence to dispute these conclusions. The commenter suggests that recent information would cause the expert review to reach different conclusions, which cannot be known until a new review of butterfly species statuses is conducted. The Department agrees that a new status review is warranted for this species group, which is likely to be undertaken within the next two years.

36. COMMENT: The list at N.J.A.C. 7:25-4.17 includes New England cottontail and northern flying squirrel. Authoritative references do not include New Jersey in the range of either species. If their inclusion on the list is based solely on sight observations or photographs, both should be removed from the list because of possible confusion with the similar-looking Eastern cottontail and southern flying squirrel, respectively, both of which are common and widely distributed in the State. (44)

RESPONSE: The Department appreciates the commenter's information. The Department is currently reviewing mammal species statuses, and encourages the commenter to submit information or citations regarding the status of particular species so that it can be included in the review. In this rulemaking, the Department is assigning the status of unknown-undetermined to all mammal species not listed as endangered, while awaiting the results of a Delphi status review. The unknown-undetermined status allows that evidence may be presented during the review process that suggests that either or both species noted by the commenter should no longer be considered indigenous to New Jersey.

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37. COMMENT: The cattle egret should not be reclassified to threatened. This species does not warrant any special protection because it has been expanding its range for decades. Without any data to validate that the species is declining, and that it occupies human-influenced landscapes such as highway medians and pasture land, it is difficult for the commenter to accept the proposed status change, particularly with the land use regulatory ramifications. The Department should not move forward with that change. (15)

RESPONSE: While the cattle egret is of “Old World” (that is, Africa and Asia) origin, it became established in South and Central America in the late 19th century and in the Northeast U.S. in the mid-1900s as a result of natural colonization; it is not an introduced species (R. C. Telfair II, 2006, Cattle Egret (*Bubulcus ibis*), The Birds of North America Online (A. Poole, Ed.). Ithaca: Cornell Lab of Ornithology; Retrieved from the Birds of North America Online: <http://bna.birds.cornell.edu/bna/species/113>). The State and region support suitable habitats, grasslands and coastal marshes, which allowed the species to expand here. However, the cattle egret has experienced an alarming decline in number of nesting birds throughout the mid-Atlantic and northeast states. For example, its numbers on the coast wide aerial survey conducted by the Division of Fish and Wildlife dropped from nearly 300 in 1985 to zero in 2008 (NJDEP, Division of Fish and Wildlife report under State Wildlife Grants project T-1-4, 2008). The expert panel reviewing bird species recommended the threatened status based on the serious population declines documented in the State and the region, and the threats to the habitats on which it depends.

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38. COMMENT: The Department proposes to upgrade the non-breeding population of the bald eagle from endangered to threatened due to improvements in the non-breeding population. The breeding population will continue to be classified as endangered. Noteworthy is that the bald eagle was removed in 2007 from the Federal list of endangered species based on successful recovery programs in all areas of the county, including New Jersey. There is no justification for listing the bald eagle as threatened or endangered any longer. (15)

RESPONSE: The commenter did not provide any evidence to support their claim that the bald eagle should be not be listed as either threatened or endangered beyond removal from the Federal list. The Federal status is an independent action in which the species' status is judged on a nation-wide basis (also see responses to comments 20 and 21). There were 15 experts convened in the 2005 status review for birds, which resulted in consensus agreement on the endangered status for the breeding season and threatened status for the non-breeding season. Reviewers recognized the eagle's vulnerability to environmental contamination, continued development pressures causing habitat degradation, and the species' sensitivity to disturbance during nesting, as considerations in recommending the endangered (breeding) and threatened (non-breeding) statuses. Based upon this review, the experts determined that endangered status is warranted in New Jersey for the breeding season and threatened status for the non-breeding season. As noted in response to comment 33 above, the Department expects to conduct a status review of bird species within the next two years. All data relevant to determining the status of bald eagles will be considered in such a review. However, amending their status prior to the completion of a status review would be inconsistent with the Department's approach of soliciting the input of several experts in making such determinations and thus, it would be inappropriate to

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adjust the bald eagle status until a status review, based on the Delphi Technique, is completed.

When such a review is complete, the Department will propose any amendments to their status as determined to be appropriate.

39. COMMENT: It is proposed to change the status of all mammals to “undetermined-unknown” until completion of the Delphi review which is underway. However, there should be a way to immediately classify little brown bat and other small species of bats as endangered owing to the decimation of their populations by the fungus *Geomyces destructans*. (44)

RESPONSE: The Department acknowledges that there is a serious population decline affecting little brown bat and certain other cave bats in New Jersey and the eastern United States, mainly due to a fungal infection associated with White Nose Syndrome. The Department’s Endangered and Nongame Species Program has been active in surveying populations and researching the problem. Information from these and other surveys will be considered in the status review of mammals. The Department is in the process of conducting a mammal status assessment using the Delphi method and expects to propose revised statuses for mammals within months of the conclusion of that assessment. The Department also notes that since the current amendments were proposed, the U.S. Fish and Wildlife Service (USFWS) announced in June, 2011, that the eastern small-footed bat and northern long-eared bat may warrant Federal protection as threatened or endangered species under the Federal Endangered Species Act (ESA) and is undertaking a review of status of these species to determine whether these species should be added to the Federal list of endangered and threatened wildlife. Not only will the Department’s assessment benefit from the USFWS review, if either species is listed as endangered under the

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ESA as a result of the USFWS review, they will automatically be considered endangered pursuant to ENSCA.

40. COMMENT: It is stated that American kestrel is not a wetland-dependent species.

Although this is largely true during the breeding season, it is less true during the non-breeding season; therefore more wetlands may be classified as exceptional resource value than anticipated. (44)

RESPONSE: The Department used the occurrence data of American kestrel in the Department's Biotics database, the primary repository for data on the State's rare wildlife, at the time the proposal summary was written to estimate the amount and types of habitat that would potentially fall under Department land use regulations based on the proposed list changes. The actual extent of land use regulatory changes will be based on actual species occurrences and the suitable habitats they are known to inhabit. The Department recognizes that American kestrel utilizes wetlands habitats to a larger degree during the non-breeding season than the breeding season. However, the Department determines wetland values on a case by case basis, and may consider the extent to which any local population of kestrels (breeding and non-breeding) use a particular wetland area. Thus, the Department continues to believe that this species' status change will have nominal impact under the freshwater wetlands regulations at N.J.A.C. 7:7A-2.4.

41. COMMENT: The list at N.J.A.C. 7:25-4.17 purports to include only nongame wildlife species that are indigenous to New Jersey. However, the list of amphibians includes barking

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treefrog which was introduced to southern New Jersey but is now extirpated. This species should be removed from the list. (44)

RESPONSE: The Department has no evidence to support the commenter's contention that the barking treefrog is an introduced species or that it is now extirpated, and the commenter did not submit nor cite any such evidence with their comments. The Delphi review of reptiles and amphibians, on which the Department primarily relies in assessing species status, did not include such a contention from any of the 15 participating experts.

42. COMMENT: Eastern earth snake should be changed to eastern smooth earth snake, which is the generally accepted common name. Eastern redbelly snake should be changed to eastern red-bellied snake, which is the generally accepted common name. (44)

RESPONSE: The Department appreciates the commenter's close review. The adoption reflects the corrections to these two common names, the eastern smooth earthsnake and eastern red-bellied snake. With reference to the eastern smooth earthsnake, in addition to inserting the word "smooth" the Department is changing "earth snake" to "earth snake." The corrected names follow the most current version of the names according to the Society for the Study of Amphibians and Reptiles. Similarly, the adoption makes changes to the scientific names of seven amphibian species to reflect changes that were made by the Society for the Study of Amphibians and Reptiles around the time of the Department's proposal, but that were not included in the proposal. Furthermore, the adopted list at N.J.A.C. 7:25-4.13 includes changes in the common name of one species (the right whale is changed to the North Atlantic right whale)

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and the scientific names of two species (northern goshawk and least tern). The adopted list at N.J.A.C. 7:25-4.17 includes changes to the common names of three birds, the scientific names of 23 birds, and changes to both the common and scientific names of two birds. Name changes of birds were made to keep the list consistent with prevailing taxonomic organization as provided by the American Ornithologists Union, and the whale name change follows the Society for Marine Mammalogy. The updates to the common names of two birds required that the list of birds at N.J.A.C. 7:25-4.17 be re-ordered to be in correct alphabetical order.

43. COMMENT: If “sufficient regularity” or “regularly and predictably occur,” both of which appear as phrases describing indigenous nongame wildlife in the proposed amendments, are defined as occurring annually or most years, the following species should be added to the list:

American white pelican (*Pelecanus erythrorhynchos*), ash-throated flycatcher (*Myiarchus cinerascens*), Audubon’s shearwater (*Puffinus iherminieri*), Bicknell’s thrush (*Catharus bicknelli*), cave swallow (*Petrochelidon pyrrhonota*), clay-colored sparrow (*Spizella pallida*), eared grebe (*Podiceps nigricollis*), manx shearwater (*Puffinus puffinus*), Nelson’s sharp-tailed sparrow (*Ammodramus nelsoni*), northern fulmar (*Fulmarus glacialis*), Pacific loon (*Gavia pacifica*), rufous hummingbird (*Selasphorus rufus*), sandhill crane (*Grus canadensis*), yellow-headed blackbird (*Xanthocephalus xanthocephalus*). (44)

RESPONSE: The Department appreciates the commenter’s suggestions. To be considered an indigenous species, the Department considers both temporal and geographic predictability of occurrence as well as the regularity and consistency of occurrence. That is, a species must regularly and predictably occur in roughly the same area. With the exception of the sandhill

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crane, all of the species listed by the commenter are generally considered “accidentals,” “strays” or “vagrants” for New Jersey in the ornithological literature. These species may occur with either relative temporal or geographic predictability (that is, they may occur each year, but often in widely different areas or, conversely, they may occur in similar areas but at irregular intervals or different times of year), but do not occur with sufficient combination of both geographic and temporal predictability to be considered indigenous to New Jersey. With respect to the sandhill crane, the Department has confirmed that the first recorded nesting attempts in Cumberland County involved a pair consisting of a sandhill crane mated with an escaped common crane, a species that is not native to North America, and suspects that later reported nesting attempts in other areas of the State may be of the same pair or may involve the offspring, if there were any, from this pair. Further, beyond the early report from Cumberland County, most reports of nesting sandhill cranes have not been sufficiently documented to determine if any are producing viable eggs. Additionally, the Department has not determined that they are persisting as nesting birds in the State, conditions the Department believes to be critical to considering them an established breeding population. In view of this information and the fact that sandhill cranes are not reported to have ever occurred in New Jersey or nearby states as breeders, the Department believes it is prudent to be cautious in listing them as an indigenous species. Until their origin and persistence has been more closely investigated, the Department believes it should not yet consider sandhill cranes an indigenous species.

44. COMMENT: Commenters strongly support the delisting of the Cooper’s hawk. (15, 20)

RESPONSE: The Department acknowledges the commenters’ support of this change.

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45. COMMENT: Any conservation easements on land that was Cooper's hawk habitat should be lifted. (15)

RESPONSE: The improvement in the Cooper's hawk's status, and this rulemaking that changes its status from threatened to special concern, are important milestones for this species. The Department considers conservation actions implemented to benefit rare wildlife as contributing toward the recovery of species. To reverse such actions, such as removing conservation easements on Cooper's hawk habitat, has the potential to reverse that recovery progress, and thus would be counter to the State's interests in long term recovery of rare wildlife.

46. COMMENT: The commenter is concerned with the addition of 31 species of dragonflies and butterflies to the list of indigenous, nongame species with either special concern or threatened status based upon the use of the Delphi Technique because there are a limited number of experts in the State qualified to make such determinations. (15)

RESPONSE: The Department acknowledges the concern of the commenter, but notes that the eight experts convened in the Delphi status review of butterflies and five experts on dragonflies and damselflies are highly respected and published authors in these taxa. Further, the number of species in these taxa being included on the list at N.J.A.C. 7:25-4.17 is a small fraction of the species known to be native to the State.

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47. COMMENT: Removing several species (fish crow, Eurasian widgeon, whistling duck, king eider, harlequin duck king rail, mourning dove) from protected status and listed as game species with closed seasons is opposed. Mourning dove is not overpopulated and should not be hunted.

(31)

RESPONSE: The removal of these seven species from the list of nongame wildlife is not due to any perceived overpopulation but is in recognition that they are categorized and regulated by the U.S. Fish and Wildlife Service as game species. Their removal from the nongame list transfers management responsibility within the Department to the Division of Fish and Wildlife's Bureau of Wildlife Management, which has management authority for similar game species. Their removal from the nongame list does not functionally change their "protected status" as there is currently no open season to hunt these species in New Jersey and the Department is not currently considering proposing a hunting season for any of the seven species.

48. COMMENT: The statuses of nongame mammals should not be changed to "undetermined." They should instead be listed as protected until a determination of their status is made. (31)

49. COMMENT: It is troubling that no protection will be given to species listed as "undetermined-unknown" considering the Department's decision to list all mammals under this designation. At the very least these rule changes should not be moved for adoption until the Delphi panel review for mammals is conducted and the true status of New Jersey's 55 mammalian species is determined. (42)

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RESPONSE TO COMMENTS 48 and 49: The presence of mammal species on the list at N.J.A.C. 7:25-4.17 confers the protections provided to nongame wildlife under ENSCA, primarily protection from “take,” possession, sale and transport (N.J.S.A. 23:2A-1, et seq., specifically N.J.S.A. 23:2A-6). Also, because none of the mammal species are changing from endangered or threatened to unknown-undetermined, this change will not result in any change in protection afforded through the Department’s land use regulations. The majority (61 percent) of the mammals on the previous list of nongame wildlife were categorized as undetermined-unknown. The Department believes that it would be inappropriate to re-publish an outdated list of this species group that has not yet been subject to review of their status using the Delphi Technique. The Delphi review of the status of mammal species is currently underway, and the new findings will be proposed as soon as feasible.

Comments on the organization of the list(s)

50. COMMENT: Commenter appreciates the format change for the list of New Jersey’s indigenous animal species (N.J.A.C. 7:25-4.17) to make it more understandable for those in the public. However, DEP must take steps to make it clear to municipalities that this list is simply species native to New Jersey and not that all species on this list should be protected. (26)

RESPONSE: The Department acknowledges the commenter’s support for the amendment making the list at N.J.A.C. 7:25-4.17 more easily read and referenced through reorganization of the list into an alphabetical format. As noted in the response to comment 17, the Department has no control over how municipalities use or view the list of indigenous wildlife. However, with

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this rulemaking, the terms used to describe the statuses used in the list of indigenous wildlife at N.J.A.C. 7:25-4.17 are now limited to endangered, threatened, special concern, stable-secure and unknown-undetermined. With this more limited list of status categories it may be easier for municipalities to understand the categorization of indigenous wildlife provided protections against take and possession under the Endangered and Nongame Species Conservation Act (N.J.S.A. 23:2A).

51. COMMENT: The absence on the list at N.J.A.C. 7:25-4.17 of species that, though indigenous, are in such large populations as to be classified as “pest,” is appreciated. The DEP should treat over-abundant populations of nuisance birds and mammals in the same way when the status reviews of those classes are completed. (26)

RESPONSE: The commenter does not provide any specific names of species they consider to be pests. There is no intent to exclude so-called “pest” species from the list of nongame species at N.J.A.C. 7:25-4.17. By definition, the list of “nongame” species includes all species indigenous to the State “...for which a legal hunting or trapping season has not been established or which has not been classified as an endangered species by statute or regulation of this State.” Many of the species included in the list, in fact, may be considered pest species by some parties. Regulations within this Chapter at N.J.A.C. 7:25-4.6(a)12 provide a permitting program for addressing problems caused by nuisance or pest nongame wildlife.

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52. COMMENT: It is proposed to list species alphabetically by common name within each taxonomic class to facilitate use by laypersons. It would be helpful to divide the insects into Lepidoptera and Odonata. (44)

RESPONSE: The Department has organized the list alphabetically within taxonomic class, and believes that the list should be consistent in its organization throughout. The new organization separates animals into the “class” level, and then alphabetizes common names. Making the suggested change for insects would not be consistent with this approach.

53. COMMENT: The introductory paragraph to the list of birds at N.J.A.C. 7:25:4.17 states the list does not include endangered species, yet many endangered species (loggerhead shrike) are included in the list, whereas others (Henslow’s sparrow) are not. (44)

RESPONSE: The lists at N.J.A.C. 7:25-4.13 and 4.17 are maintained as separate lists, but there is overlap in the lists with regard to birds. Most birds have two statuses, to represent breeding and non-breeding populations separately. Some bird species, including Henslow’s sparrow, have the status of endangered in both seasons, in which case the species is included in the endangered list only (at N.J.A.C. 7:25-4.13). Other bird species have an endangered status in one season and a status other than endangered in the other season, in which case they are included on both lists.

Comments on the species status assessment process

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54. COMMENT: Use of the Delphi methodology in determining the statuses of butterflies was flawed because several species already known to be rare by experienced field observers were not reviewed. (44)

RESPONSE: Part of the Delphi method of species status review employed by the Department allows any reviewer, in the first round of review, to request that additional species be included in the status review. If a butterfly species was not reviewed, it was because no review panel member asked that it be added to the list of species under review, indicating that none of the experts on the review panel considered this species to be sufficiently rare or of conservation need to warrant inclusion in the status review.

55. COMMENT: The list of butterflies has not been comprehensively reviewed since 1997/1998 and is very much outdated. To avoid this problem in the future, Delphi committees should review species lists no less than every five years, and the results should be offered for public comment within one year of review. (44)

RESPONSE: The Department recognizes that there is a delay between completing species status reviews and the rulemaking to amend the lists of endangered and nongame wildlife. The limitations of staff time and resources are the main constraints causing these delays. However, most of the amendments relative to butterflies could not be made until the Department also made rulemaking to define the status of special concern. It is the Department's goal to regularly revisit species' statuses through reviews every five years for each taxon. However, resource limitations may continue to result in less frequent review.

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56. COMMENT: The species listing and delisting processes need to be more transparent to the public through use of better defined procedures. Specifically, procedures need to be established that verify species sightings, survey the property, evaluate and quantify the population status of the species, and assess the habitat needed for the species' protection. (15, 21)

RESPONSE: The Department is responsible for the conservation of wildlife and accordingly has no interest in accepting inaccurate, unreliable or fallacious species location information. Consequently, the Department includes rigorous review procedures before it accepts information submitted by citizens regarding occurrences of rare species. These review protocols are detailed in several reports available on the Department's website:

http://www.nj.gov/dep/fgw/ensp/landscape/landscape_faqs.pdf (see Appendix III);

http://www.nj.gov/dep/fgw/ensp/landscape/lp_report_2_1.pdf (see Appendix I); and

http://www.nj.gov/dep/fgw/ensp/landscape/lp_report_3_0.pdf (see Appendix I).

Targeted surveys are conducted by Department staff and contractors in the context of species' population and habitat studies as needed when resources and property access constraints allow. Notably, among the rare species data that the Department may use in its land use regulatory process, the vast majority (82 percent) of records are from the Department's Endangered and Nongame Species Program staff or from surveys conducted by professional biologists in connection with Department-funded or Department-permitted studies or surveys submitted in support of permit applications. Only 18 percent of the records are from voluntary reports by private citizens. Of the reports by private citizens, many come from within the same geographic

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area where the species occurrence is also documented by Department staff or other professional surveys.

57. COMMENT: Given the significance of the Delphi Technique to the listing/delisting of species and in turn its land use regulatory effect, the Department should adopt rules to ensure a consistent and transparent process is in place. (15)

RESPONSE: The results of the Delphi Technique assessment are not determinative, rather, the information developed by this investigative technique is used among the “investigations concerning wildlife” that the Department is required to conduct pursuant to N.J.S.A. 23:2A-4a, in developing amendments to the list of endangered and threatened species. The Department uses the Delphi Technique as a statistically verifiable investigation process for establishing consensus of a group of experts, the results of which, as described at response to comment 11, are reviewed by the Endangered and Nongame Species Advisory Committee in developing their recommendations to the Department regarding listing of wildlife. Following review by this Committee, the Department makes the final determination regarding appropriate amendments to the list, which, consistent with the requirement of ENSCA at N.J.S.A. 23:2A-4b, are promulgated pursuant to the Department’s rule-making process under the Administrative Procedure Act and Rules for Agency Rulemaking (N.J.S.A. 52:14B-1 et seq., and N.J.A.C. 1:30, respectively). Consequently, the Department does not believe it is necessary or appropriate to promulgate rules that codify the use of the Delphi Technique. The Division of Fish and Wildlife’s Endangered and Nongame Species Program has developed a standard operating

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manual to guide its Delphi Technique assessment of wildlife species status. A copy of this manual is available by request to the Department's Division of Fish and Wildlife.

58. COMMENT: The Delphi database is out of date, so the threats to all species in New Jersey are greater than this proposal suggests. (31)

RESPONSE: The Department recognizes that there is a delay between completion of the Delphi species status reviews and the rulemaking to amend the lists of endangered and nongame wildlife. However, the commenter does not identify a specific error or problem in the proposal that resulted from the Delphi reviews allegedly being "out of date." The Department has no specific information, nor did the commenter provide any such information, regarding the status of species addressed in this rulemaking that would result in changes to the amendments adopted at this time

Comments on regulatory impacts and mapping

59. COMMENT: The Department should disclose all tools used to calculate habitat and acreage impacts; specifically, the Department should provide an interactive map of the related habitat locations so the regulated community can properly evaluate the impact to development. (15)

60. COMMENT: The rule proposal should be reissued with more information that delineates which species removals caused the change in acreage regulated by DEP land use regulations.

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The additional information should include the species, the locations previously mapped for the species and the acreage for each of these species. More details (such as these) would allow the public to present conflicting and additional information. (56)

61. COMMENT: GIS data is discussed in terms of percentages of habitats impacted. Please provide the mapping that was reviewed so the regulated community can independently assess it. (21)

62. COMMENT: The lands that would become unregulated by T&E portions of land use rules should be delineated and set forth as part of the proposal before the proposal can be fully evaluated. (15, 31)

RESPONSE TO COMMENTS 59 through 62: To perform its analysis and derive estimates of acreage that could potentially be subject to regulations addressing species listed at N.J.A.C. 7:25-4.13 and 4.17, the Department relied upon the Landscape Project mapping, which is referenced in the rule proposal and the Department's land use regulations, and which is available on the Department's website at www.nj.gov/dep/gis. It also relied upon information not contained in publicly available mapping data at the time it performed its analysis. However, as noted in the proposal, these regulations do not, by themselves, result in the regulation or de-regulation of specific areas of land. Rather, the Department's several land use regulations applicable to certain building and development activities include limits on such activities in habitat for endangered and threatened species. There are many factors that impact the application of the Department's land use regulations, such as the type and size of proposed development and

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the presence of other sensitive resources (for example, wetlands). Further, in the context of the various land use regulations, the Department's mapping of endangered and threatened species habitat is not determinative but is used as guidance – habitat warranting protection under the Department's land use regulations is not always present in the areas mapped. Habitat suitability, and thus the applicability of regulatory restrictions on developing habitat, is determined on a case by case basis. Consequently, it is not possible to make precise predictions of the impact of the proposed rules. Accordingly, the acreages provided in the proposal analysis are estimates used to gain a general understanding of the likely direction of the indirect regulatory impacts of the proposed amendments. With the publication of the latest version of the Landscape Project maps concurrent with this adoption, there is sufficient publicly available GIS data for interested parties to conduct independent analysis similar to that which the Department carried out for this proposal. As the updated Landscape maps reflect changes in mapping methodology as well as updated information on species occurrences, such an analysis will, however, result in differences in the actual acreage calculations although not in the general magnitude or direction of the changes or in the conclusions which the Department reached in its proposal based upon its analyses.

63. COMMENT: Clarification is requested on the acreage impacts, specifically on the Department's valuation of an additional 43,400 acres that potentially can be developed with the Cooper's hawk delisting. This analysis should be re-examined because much of the area inhabited by Cooper's hawk is also habitat for other listed threatened and endangered species.

(15)

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RESPONSE: See response to comments 59-62. To arrive at its estimates of acreage impacts, the Department examined acreage valued solely by Cooper's hawk and no other known occurrences of endangered and threatened species.

64. COMMENT: Cooper's hawk habitat in Planning Areas 4 and 5 should not be considered as future developable land and included in the acreage impacts. The Department should provide a breakdown of the acreage impacts by each Planning Area. (15)

RESPONSE: The Department did provide an estimate that about 40 percent of the approximate 43,400 acres that will no longer be presumed endangered or threatened species habitat would be within Planning Areas 1 and 2 ("areas for growth"), while about 60 percent would be in areas designated for limited growth or conservation (that is, Planning Areas 3, 4 and 5). The acreages were calculated to assess the general direction of the proposed changes, that is, whether they would likely increase or decrease the amount of land subject to restrictions based on land use regulations that protect endangered or threatened wildlife species habitats. The Department made clear in the proposal language that the analyses provided were general estimates. As noted in the response to comment 2, a reliable estimate of the number of acres that would be subject to the endangered and threatened species habitat provisions under Department land use regulations is not possible using GIS analysis alone, in part because the applicability of the endangered and threatened species habitat provisions of these rules are subject to verification of actual field conditions in the context of individual applications to the Department (see 43 N.J.R. 92).

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65. COMMENT: The commenter appreciates what appears to be a thoughtful application of these rule changes to the real conditions and practices of New Jersey agriculture. The summary statement of rules under which New Jersey farm operators have special exemptions, waivers, or procedures will be very useful to landowners. We ask that the DEP and the New Jersey Department of Agriculture make a summary of these provisions available online. (26)

RESPONSE: As indicated in the proposal and in responses above, the amendments adopted at this time do not make any changes in the way that land use rules are applied to agricultural or other practices. The proposal summary was not meant to be an exhaustive description of the ways that land use regulations address agriculture. Accordingly, those interested or potentially affected by land use regulations are advised to consult the applicable land use regulations directly. The Department will take under consideration the commenter's suggestion to summarize existing land use regulations that may affect agricultural and farming practices, and making such a summary available on its website.

66. COMMENT: The commenter opposes reliance on the habitat mapping in the Landscape Project and opposes the use of the authority that these rules are based upon. The habitat mapping, as well as reference to them in other environmental regulations, is an unjustified regulation of land in this State. The mapping should be considered advisory only. (26)

RESPONSE: It is not clear specifically to what the commenter refers in their comment regarding opposition to the authority that these rules are based upon. If the commenter is referring to the Department's promulgation of the lists being amended in accordance with

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ENSCA, the proposal and responses to comments above outline the Department's duties under that Act and how the amendments adopted at this time comply with those duties. With respect to the Department's use of the Landscape Project and its associated mapping in application of the Department's land use regulations, the Department notes that such reference and use has been upheld by New Jersey courts in legal challenges (e.g., *In Re: Adopted Amendments to N.J.A.C. 7:7A-2.4*, 365 N.J. Super. 255, 262-66 (App. Div. 2003); *In Re: The Adoption of N.J.A.C. 7:15-5.24(b)* and *N.J.A.C. 7:15-5.25(e)*, 420 N.J. Super 552, 567-70 (App. Div. 2011)).

67. COMMENT: The proposed rules are not consistent with the State Plan by removing protections from 24,600 acres of land in Planning Area 3, Planning Area 4 and Planning Area 5, areas designated for limited growth and conservation. (42)

RESPONSE: The amendments do not remove protections from or add protections to land. The amendments update the lists of wildlife at N.J.A.C. 7:25-4.13 and 4.17 to more accurately reflect the current state of knowledge of conservation status of those species. It is the Department's responsibility to regularly update the lists of wildlife with the most accurate and scientific information available. The effects of those changes on land use regulations are an acknowledged secondary impact of amendments to the lists. While the recorded occurrence of endangered and threatened species on lands in Planning Areas 3, 4 and 5 may influence land designations, wildlife is not the sole factor in those designations.

68. COMMENT: The availability of the existing habitat allowed for the successful recovery of previously declining species and now the Department is inappropriately proposing to open those

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lands up to development. The Department has presented no evidence that the recovered populations will continue to be successful or that special concern species utilizing the site will survive if previous protected land is now developed. (42)

RESPONSE: The Department notes as described above in responses to comments 59 through 62 that the acreage estimates included in the proposal were estimates calculated to determine the general direction of change in land use restrictions that might result. The Department does not believe that it would be realistic to expect that the 31,000 acres referenced in the proposal will be developed as a result of these amendments. First, the 31,000 acre figure was an estimate of the net change in acreage that may no longer be considered endangered or threatened species habitat once the amendments are adopted, based upon information that was available at the time of proposal. The actual acreage that will be affected by the amendments will depend upon on-the-ground information regarding actual habitat suitability, as well as the scope of the particular applicable land use regulatory authority that provides protection to rare species habitat at the particular location. Additionally, the Department notes that the primary factor resulting in areas no longer being considered endangered or threatened species habitat was the delisting of Cooper's hawk due to the recovery of this species in the State. Cooper's hawk had become imperiled primarily due to impacts from DDT with the outlawing of this pesticide being the most important factor in its recovery. Habitat protection has played a secondary, though not insignificant role in its recovery and, as noted in response to comment 45 above, the Department has recommended the continuation of conservation easements that were specifically obtained to conserve Cooper's hawk habitat. Finally, any areas that are no longer considered habitat for endangered or threatened species may have other constraints on development such as local

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zoning, ownership, preservation status, or other environmental constraints, such as the presence of wetlands, which were not part of the Department's analysis.

69. COMMENT: Additional land (i.e., 31,000 acres) should not be made available for development due to the proposed wildlife species status changes. (31)

70. COMMENT: The Department should provide to the public the data and threshold levels considered by the Department in justifying the removal of species from the threatened and endangered list that has resulted in the opening of 31,000 acres of land to development, and urges the Department to conduct a study to determine the impacts to threatened, endangered and special concern species that will result if the 31,000 acres proposed for removal are developed. (42)

RESPONSE TO COMMENTS 69 and 70: As discussed in responses to comments 59 through 62, and response to comments 67 and 68, the Department is not proposing in these amendments to open lands to development. The amendments provide necessary updates to the lists of wildlife at N.J.A.C. 7:25-4.13 and 4.17 to more accurately reflect the conservation status of those species based upon the best and most current knowledge regarding those species. The status designation of wildlife species is a scientific undertaking by experts in each taxon through the Delphi process. Those experts rely on numerous sources of information and their own experience working with wildlife populations and evaluating the trends and threats affecting them. The Delphi status review does not rely strictly on data and threshold levels (of numbers, threats or habitat acreages, etc.), but on a combination of all factors evaluated by a panel of experts. The

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consensus of the expert panel, therefore, represents the best available integration of information pertaining to the conservation status of each species. The Department will provide, upon request, the summary results of the Delphi reviews that it used to assess species status.

71. COMMENT: There is no species restoration program prescribed in the rule proposal. The Department needs to establish habitat preservation and enhancement programs as a better way to ensure survival than just regulating land use. (21)

RESPONSE: The proposed amendments update the list of endangered species required pursuant to N.J.S.A. 23:2A-4, and the list of regulated nongame wildlife authorized pursuant to N.J.S.A. 23:2A-6. The Department uses the lists of endangered and nongame wildlife to prioritize species research and habitat management and, in fact, engages in habitat preservation through its land acquisition programs (Green Acres, N.J.S.A. 13:8A, and Natural Lands Trust, N.J.S.A. 13:1B-15.119), in part guided by wildlife conservation priorities. Management of these lands includes habitat enhancement programs and is also guided by wildlife conservation priorities. These programs are in addition to the regulation of land use through the various Department regulations (as well as other regulations administered by entities outside of the Department, for example, the Pinelands Commission) that include provisions designed to further habitat conservation priority goals.

Species and habitat comments

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72. COMMENT: The designation of certain bird species as endangered, threatened or special concern only for breeding habitat is concerning as the success of breeding pairs must be ensured by protecting the lands in which these birds forage and live as well. The Department must make available the data used to determine that critical species (for example, golden-winged warbler, black rail, red knot) will be sufficiently protected by only affording the species “endangered” status protection while breeding. (42)

RESPONSE: The Department recognizes that the habitat for wildlife must meet a species’ needs for all phases of a species’ life history. The differentiation of status for breeding versus non-breeding seasons recognizes that the State’s population of a migratory species is often comprised of different individual animals in these two time periods. Migratory and wintering individuals either replace or combine with the State’s breeding individuals during the non-breeding season. The risk of extirpation differs accordingly, and the Department’s distinction in listing bird species differently for breeding and non-breeding seasons recognizes this fact. In identifying areas of listed species’ habitat, the Department’s Landscape Project mapping considers habitats used in the normal home range area for the breeding or non-breeding period (in the case of birds, for which there are those designations). Consequently, the level of protection that species receive through the Department’s land use regulations is commensurate with the conservation need whether they are categorized as endangered, threatened or special concern, during breeding season, non-breeding season or both.

73. COMMENT: The amendments will designate a significant number of invertebrates as special concern and one dragonfly as endangered. The Department must update its mapping of

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invertebrate habitat to ensure current and potential habitat for all listed species is captured. The Department should update its mapping of presumptive habitat for these species to ensure population numbers do not continue to decline in the face of more development. (42)

RESPONSE: The Department is providing revised Landscape Project mapping concurrent with the adoption of these amendments and this mapping will reflect the adopted changes to the lists.

74. COMMENT: While the proposed regulations do add five species to the State endangered list, to what level will the protection of their habitat be a priority for the Department? The rule summary states that critical habitat will still be open to development negotiations: “a particular development proposal in such areas be reduced or altered to minimize impacts to habitats for endangered or threatened wildlife species, or in some cases, a particular development proposal may be barred.” This is not a strong enough commitment by the Department to discourage location of inappropriate projects on or near critical habitat. (42)

RESPONSE: The proposal statement referenced in this comment was in this paragraph of the proposal: “The proposed amendments, repeal and new rule would both remove and add species to the endangered species list at N.J.A.C. 7:25-4.13 and make changes to the nongame list at N.J.A.C. 7:25-4.17. Changes to the classification of species as threatened or endangered will impact the habitat areas subject to protection under the above referenced regulations.

Specifically, the above land use regulations may require that a particular development proposal in such areas be reduced or altered to minimize impacts to habitats for endangered or threatened wildlife species, or in some cases, a particular development proposal may be barred.” (43 N.J.R.

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91) The Department was providing examples of some of the ways that land use regulations may treat endangered and threatened species habitat on a particular site. However, the actual effects of a set of land use regulations to a site is determined by numerous factors, including but not limited to an evaluation of on-the-ground habitat conditions and the potential impacts of proposed activities of a particular application made to the Department pursuant to land use rules directed at regulating development of endangered and threatened species habitat. For example, if closer examination of a site reveals that only a small portion of the site provides habitat for a threatened or endangered species and the rest is not listed species habitat, the presence of the habitat would reduce or alter the development if it was proposed that the entire site be developed, but it would not prohibit other, non-habitat portions of the site from being developed. The commenter may have misinterpreted the examples provided as negotiation of the applicability of land use regulations with regard to endangered and threatened species habitat. The habitat protection within those Department Land Use rules that provide such protection for species being added to the endangered and nongame wildlife lists will be consistent with the level of protection provided to species currently listed as such. To the degree that this comment is meant to suggest that that the commenter believes that this level of protection is insufficient, the Department notes that the protection afforded endangered and threatened species within the Department's land use regulations is not the subject of the current rulemaking, but further notes that the Department believes the level of protection afforded endangered and threatened species within the Department's rules and the permits issued pursuant to those rules is consistent with each rule's associated legislative authority and intent.

Miscellaneous comments

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75. COMMENT: All permit fees (for Scientific Collecting) should be raised to \$250 to cover the costs involved in allowing such permits. (31)

RESPONSE: While permit fees are part of this subchapter, the current rulemaking is directed solely at amending the lists at N.J.A.C. 7:25-4.13 and 4.17 to reflect the best currently available scientific information and the terms that define the status of nongame wildlife defined at N.J.A.C. 7:25-4.1 and used at N.J.A.C. 7:25-4.17. The Department did not address permit fees in this proposal but may do so at some future date. That consideration would include, consistent with ENSCA at N.J.S.A. 23:2A-5, the costs involved in administering such a permit and inspection program.

76. COMMENT: A public hearing should be held on this rule proposal so that the public has the opportunity to provide meaningful comments before Department staff. (42)

RESPONSE: The commenter submitted written comments during the public comment period that outlined their concerns, which are enumerated herein in eleven other questions to which the Department has responded. Some of the commenter's issues were also raised by other commenters (largely by those who used the form letter provided by the commenter's organization). The Department provided the 60-day public comment period and accepted comments by email and post mailed letters. The Department determined that a public hearing would not be likely to result in receipt of additional comments relevant to the proposed rule, or raise issues or provided information or findings that were not previously raised or provided

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during the development of the rule amendments and during the comment period provided for submission of written comments.

The following people submitted comments after the comment period closed using the form letter referenced as commenter #48. While these commenters were not included in the list above, the issues they raised were raised by other commenters filing timely comments which are responded to above.

Margaret Barker
Robert Cunningham
Virginia Franceschi
Burt Frank
Karen Gentile
Ali Jawad
Stephen Leibrock
J. Lewis
Patricia Marino
Thomas Miller
Pamela Simmons
Jody Tatum
Aileen Vega

Federal Standards Analysis

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (as amended by P.L. 1995, c. 65) require State agencies which adopt, readopt or amend State regulations that exceed Federal standards or requirements to include in the rulemaking document a Federal standards analysis. Following are analyses for each rule that is being amended by these adopted amendments:

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These amendments do not exceed Federal standards or requirements insofar as this rule implements specific aspects of ENSCA and as that statute directs specific conservation attention to species indigenous to New Jersey. This adoption amends a State rule that lists species determined to be endangered at N.J.A.C. 7:25-4.13 and amends at N.J.A.C. 7:25-4.1 the selection of status categories used to indicate nongame wildlife species' conservation status, and assigns at N.J.A.C. 7:25-4.17 such status categories to nongame wildlife species not listed as endangered. The set of status categories includes the status of "threatened." The Federal endangered and threatened wildlife lists (see 50 C.F.R. §§ 17.11(h), 223.102(a) and 224.101(a)) established pursuant to the Endangered Species Act of 1973 (ESA, 16 U.S.C. § 1532) reflect the status of species as they occur throughout the United States. The Federal lists, which cover both endangered and threatened wildlife, and the New Jersey lists are compiled using different data and criteria to determine the status of species in two different geographical areas.

The definition of endangered at N.J.S.A. 23:2A-3 provides that the "term shall also be deemed to include any species or subspecies of wildlife appearing on any Federal endangered species list." One of the additions to the list of endangered species at N.J.A.C. 7:25-4.13 is being adopted in accordance with this requirement. That this provision in the statutory definition of "endangered" includes the word "also" indicates that the legislature intended that species beyond those listed under federal law be included in the state list of endangered species. The status of "threatened," one of the status categories assigned to species at N.J.A.C. 7:25-4.17, is similar in definition to the federal definition of threatened within the ESA.

Additional status categories assigned at N.J.A.C. 7:25-4.17 have no federal equivalent; however, these statutes do not provide any additional protection under the statute or this regulation, as all nongame species, regardless of status assigned at N.J.A.C. 7:25-4.17 are

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equally protected from “take” under ENSCA. Consequently, there is no conflict with any Federal law and no need for further analysis.

Summary of Agency-Initiated Changes:

As part of this rulemaking, the Department changed the arrangement of the list on indigenous nongame wildlife species at N.J.A.C. 7:25-4.17 from taxonomic or phylogenetic order to an alphabetic listing of species common names to make the list easier to use. The proposal identified that, in addition to the reorganization of the list, the Department was proposing to add 43 species and remove 10 species from the list, with species to be added or removed identified in the proposal summary (see 43 N.J.R. 89-90). In reorganizing the list in alphabetical order, the Department inadvertently left the Atlantic green turtle off the list. The Department has corrected this oversight on adoption and restored Atlantic green turtle to the list with no changes to its pre-proposal status.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

CHAPTER 25

DIVISION OF FISH AND WILDLIFE RULES

SUBCHAPTER 4. ENDANGERED, NONGAME AND EXOTIC WILDLIFE

7:25-4.13 List of endangered species.

(a) (No change.)

(b) In accordance therewith, the following species are determined to be endangered:

1. – 9. (No change from proposal.)
10. Northern Goshawk, *Accipiter* *[gentiles]* ***gentilis*** (Breeding population)
11. – 21. (No change from proposal.)
22. Least Tern, *[Sterna]* ***Sternula*** antillarum
23. – 32. (No change from proposal.)
33. ***Northern*** Right Whale, *Balaena glacialis*
34. – 51. (No change from proposal.)

7:25-4.17 List providing conservation status of New Jersey’s indigenous nongame wildlife species.

The following table sets forth the list and conservation status of nongame wildlife species indigenous to New Jersey in their respective taxonomic classes. For the vertebrate classes of mammals, birds, reptiles, and amphibians, the list is intended to include all indigenous nongame species, that is, all species for which a legal hunting or trapping season has not been established or that have not been classified as an endangered species and that are native to the eastern United States and regularly and predictably occur within the State or its waters. Freshwater and marine fish are not included on this list because none are currently considered “nongame.” For the invertebrate classes, the list includes only those species for which the Department has determined that their status is either “threatened” or “special concern.” The list is ordered alphabetically by species’ common names within each taxonomic class.

Species

Scientific Name

Species Status*

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BIVALVES

Creeper	<i>Strophitus undulatus</i>	SC
Eastern Lampmussel	<i>Lampsilis radiata</i>	T
Eastern Pondmussel	<i>Ligumia nasuta</i>	T
Tidewater Mucket	<i>Leptodea ochracea</i>	T
Triangle Floater	<i>Alasmidonta undulata</i>	T
Yellow Lampmussel	<i>Lampsilis cariosa</i>	T

INSECTS

Allegheny River Cruiser	<i>Macromia alleghaniensis</i>	SC
Arrowhead Spiketail	<i>Cordulegaster obliqua</i>	SC
Banner Clubtail	<i>Gomphus apomyius</i>	T
Brook Snaketail	<i>Ophiogomphus aspersus</i>	T
Brush-tipped Emerald	<i>Somatochlora walshii</i>	SC
Checkered White	<i>Pontia protodice</i>	T
Cobra Clubtail	<i>Gomphus *[(Gomphurus)]* vastus</i>	SC
Coppery Emerald	<i>Somatochlora georgiana</i>	SC
Crimson-ringed Whiteface	<i>Leucorrhinia glacialis</i>	SC
Dotted Skipper	<i>Hesperia attalus slossonae</i>	SC
Extra-striped Snaketail	<i>Ophiogomphus anomalus</i>	SC
Forcipate Emerald	<i>Somatochlora forcipata</i>	SC
Frosted Elfin	<i>Callophrys irus</i>	T
Georgia (Lakehurst) Satyr	<i>Neonympha areolatus septentrionalis</i>	SC
Golden-winged Skimmer	<i>Libellula auripennis</i>	SC
Green-faced Clubtail	<i>Gomphus *[(Hylogomphus)]* viridifrons</i>	SC
Harpoon Clubtail	<i>Gomphus descriptus</i>	T
[Harris] Harris * Checkerspot	<i>Chlosyne harrisii</i>	SC
Hessel's Hairstreak	<i>Callophrys hesseli</i>	SC
Hoary Elfin	<i>Callophrys polios</i>	SC
Hudsonian Whiteface	<i>Leucorrhinia hudsonica</i>	SC
Kennedy's Emerald	<i>Somatochlora kennedyi</i>	T
Leonard's Skipper	<i>Hesperia leonardus</i>	SC
Maine Snaketail	<i>Ophiogomphus mainensis</i>	SC
Midland Clubtail	<i>Gomphus *[(Gomphurus)]* fraternus</i>	SC
New England Bluet	<i>Enallagma laterale</i>	SC
Northern Metalmark	<i>Calephelis borealis</i>	SC
Pine Barrens Bluet	<i>Enallagma recurvatum</i>	SC
Rapids Clubtail	<i>Gomphus *[(Gomphus)]* quadricolor</i>	SC
Robust Baskettail	<i>Epitheca spinosa</i>	T
Sable Clubtail	<i>Gomphus *[(Gomphurus)]* rogersi</i>	SC
Scarlet Bluet	<i>Enallagma pictum</i>	SC
Septima's Clubtail	<i>Gomphus septima</i>	SC

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Silver-bordered Fritillary	<i>Bolaria selene myrina</i>	T
Ski-tailed Emerald	<i>Somatochlora elongata</i>	SC
Spatterdock Darner	<i>Rhionaeschna mutata</i>	SC
Subarctic Darner	<i>Aeshna subarctica</i>	SC
Superb Jewelwing	<i>Calopteryx amata</i>	T
Tiger Spiketail	<i>Cordulegaster erronea</i>	SC
Two-spotted Skipper	<i>Euphyes bimacula</i>	SC
Williamson's Emerald	<i>Somatochlora williamsoni</i>	SC
Zebra Clubtail	<i>Stylurus scudderi</i>	SC

AMPHIBIANS

Allegheny Dusky Salamander	<i>Desmognathus ochrophaeus</i>	U
Barking Treefrog	<i>Hyla gratiosa</i>	U
Carpenter Frog	*[Rana]* * Lithobates * <i>virgatipes</i> *[Bufo]* * Anaxyrus * <i>americanus</i>	SC
Eastern American Toad	<i>americanus</i>	S
Eastern Mud Salamander	<i>Pseudotriton m. montanus</i>	T
Eastern Spadefoot	<i>Scaphiopus holbrookii</i>	U
Four-toed Salamander	<i>Hemidactylium scutatum</i>	U
Fowler's Toad	*[Bufo]* * Anaxyrus * <i>fowleri</i>	SC
Jefferson Salamander	<i>Ambystoma jeffersonianum</i>	SC
Longtail Salamander	<i>Eurycea l. longicauda</i>	T
Marbled Salamander	<i>Ambystoma opacum</i>	SC
New Jersey Chorus Frog	<i>Pseudacris kalmi</i>	U
Northern Cricket Frog	<i>Acris c. crepitans</i>	S
Northern Dusky Salamander	<i>Desmognathus fuscus</i>	S
Northern Gray Treefrog	<i>Hyla versicolor</i>	S
Northern Leopard Frog	*[Rana]* * Lithobates * <i>pipiens</i>	U
Northern Red Salamander	<i>Pseudotriton r. ruber</i>	S
Northern Spring Peeper	<i>Pseudacris c. crucifer</i>	S
Northern Spring Salamander	<i>Gyrinophilus p. porphyriticus</i>	SC
Northern Two-lined Salamander	<i>Eurycea bislineata</i>	S
Pickerel Frog	*[Rana]* * Lithobates * <i>palustris</i>	S
Pine Barrens Treefrog	<i>Hyla andersonii</i>	T
Red-backed Salamander	<i>Plethodon cinereus</i>	S
Red-spotted Newt	<i>Notophthalmus v. viridescens</i>	S
Slimy Salamander	<i>Plethodon glutinosus</i> *[Rana]* * Lithobates * <i>spenocephala</i>	S
Southern Leopard Frog	<i>utricularia</i>	S
Spotted Salamander	<i>Ambystoma maculatum</i>	S
Upland Chorus Frog	<i>Pseudacris feriarum</i>	U
Wood Frog	*[Rana]* * Lithobates * <i>sylvatica</i>	S

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REPTILES

Atlantic Green Turtle	*Chelonia mydas*	*T*
Common Map Turtle	Graptemys geographica	U
Common Musk Turtle	Sternotherus odoratus	S
Eastern Box Turtle	Terrapene c. carolina	SC
Eastern *Smooth* *[Earth Snake]*		
Earthsnake	Virginia v. valeriae	U
Eastern Garter Snake	Thamnophis s. sirtalis	S
Eastern Hognose Snake	Heterodon platirhinus	S
Eastern King Snake	Lampropeltis g. getula	SC
Eastern Milk Snake	Lampropeltis t. triangulum	S
Eastern Mud Turtle	Kinosternon s. subrubrum	S
Eastern Painted Turtle	Chrysemys p. picta	S
Eastern Rat Snake	Elaphe alleghaniensis	U
Eastern Redbelly Turtle	Pseudemys rubriventris	U
Eastern Ribbon Snake	Thamnophis s. sauritus	S
Eastern Worm Snake	Carphophis a. amoenus	U
Five-lined Skink	Eumeces fasciatus	U
Ground Skink	Scincella lateralis	U
Midland Painted Turtle	Chrysemys picta marginata	U
Northern Black Racer	Coluber c. constrictor	U
Northern Brown Snake	Storeria d. dekayi	S
Northern Copperhead	Agkistrodon contortrix mokasen	SC
Northern Fence Lizard	Sceloporus undulatus hyacinthinus	S
Northern Pine Snake	Pituophis m. melanoleucus	T
Northern *[Redbelly]* *Red-bellied* Snake	Storeria o. occipitamaculata	S
Northern Ringneck Snake	Diadophis punctatus edwardsii	S
Northern Scarlet Snake	Cemophora coccinea copei	U
Northern Water Snake	Nerodia s. sipedon	S
Rough Green Snake	Opheodrys aestivus	S
Smooth Green Snake	Liochlorophis vernalis	U
Southern Ringneck Snake	Diadophis p. punctatus	S
Spotted Turtle	Clemmys guttata	SC
Wood Turtle	Glyptemys insculpta	T

<u>Species</u>	<u>Scientific Name</u>	<u>Breeding Status*</u>	<u>Non-breeding status*</u>
<u>BIRDS</u>			
Acadian Flycatcher	Empidonax virescens	S	S
Alder Flycatcher	Empidonax alnorum	S	S
American Avocet	Recurvirostra americana		S
American Bittern	Botaurus lentiginosus	E	SC

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American Golden-Plover	Pluvialis dominica		S
American Goldfinch	Spinus tristis	S	S
American Kestrel	Falco sparverius	T	T
American Oystercatcher	Haematopus palliatus	SC	SC
American Pipit	Anthus rubescens		S
American Redstart	Setophaga ruticilla	S	S
American Robin	Turdus migratorius	S	S
American Tree Sparrow	Spizella arborea		S
Baird's Sandpiper	Calidris bairdii		S
Bald Eagle	Haliaeetus leucocephalus	E	T
Baltimore Oriole	Icterus galbula	S	S
Bank Swallow	Riparia riparia	S	S
Barn Owl	Tyto alba	SC	SC
Barn Swallow	Hirundo rustica	S	S
Barred Owl	Strix varia	T	T
Bay-breasted Warbler	Dendroica castanea		S
Belted Kingfisher	*[Ceryle]* Megaceryle * alcyon	S	S
[Black and White] Black-and-white * Warbler	Mniotilta varia	S	S
Black Rail	Laterallus jamaicensis	E	T
Black Vulture	Coragyps atratus	S	S
Black-bellied Plover	Pluvialis squatarola		S
Black-billed Cuckoo	Coccyzus erythrophthalmus	SC	S
Blackburnian Warbler	Dendroica fusca	SC	S
Black-capped Chickadee	Poecile atricapillus	S	S
Black-crowned Night-Heron	Nycticorax nycticorax	T	SC
[Common] Black-headed Gull	*[Larus]* Chroicocephalus * ridibundus		S
Black-legged Kittiwake	Rissa tridactyla		S
Blackpoll Warbler	Dendroica striata		S
Black-throated Blue Warbler	Dendroica caerulescens	SC	S
Black-throated Green Warbler	Dendroica virens	SC	S
Blue Grosbeak	Passerina caerulea	S	S
Blue Jay	Cyanocitta cristata	S	S
Blue-gray Gnatcatcher	Polioptila caerulea	S	S
Blue-headed Vireo	Vireo solitarius	SC	S
Blue-winged Warbler	Vermivora *[pinus]* *cyanoptera*	S	S
Boat-tailed Grackle	Quiscalus major	S	S
Bobolink	Dolichonyx oryzivorus	T	SC
	[Larus] Chroicocephalus *		
Bonaparte's Gull	philadelphia		S
Boreal Chickadee	Poecile *[hudsonica]** hudsonicus *		S
Broad-winged Hawk	Buteo platypterus	SC	S
Brown Creeper	Certhia americana	S	S

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Brown Pelican	<i>Pelecanus occidentalis</i>		S
Brown Thrasher	<i>Toxostoma rufum</i>	SC	S
Brown-headed Cowbird	<i>Molothrus ater</i>	S	S
Buff-breasted Sandpiper	<i>Tryngites subruficollis</i>		S
Canada Warbler	<i>Wilsonia canadensis</i>	SC	S
Cape May Warbler	<i>Dendroica tigrina</i>		S
Carolina Chickadee	<i>Poecile carolinensis</i>	S	S
Carolina Wren	<i>Thryothorus ludovicianus</i>	S	S
Caspian Tern	*[<i>Sterna</i>]* *Hydroprogne* <i>caspia</i>	SC	S
Cattle Egret	<i>Bubulcus ibis</i>	T	SC
Cedar Waxwing	<i>Bombycilla cedrorum</i>	S	S
Cerulean Warbler	<i>Dendroica cerulea</i>	SC	SC
Chestnut-sided Warbler	<i>Dendroica pensylvanica</i>	S	S
Chimney Swift	<i>Chaetura pelagica</i>	S	S
Chipping Sparrow	<i>Spizella passerina</i>	S	S
Chuck-will's-widow	<i>Caprimulgus carolinensis</i>	S	S
Cliff Swallow	*[<i>Hirundo</i>]* *Petrochelidon* <i>pyrrhonota</i>	SC	S
Common Grackle	<i>Quiscalus quiscula</i>	S	S
Common Loon	<i>Gavia immer</i>		S
Common Nighthawk	<i>Chordeiles minor</i>	SC	SC
Common Raven	<i>Corvus corax</i>	S	S
Common Redpoll	<i>Acanthus flammea</i>		U
Common Tern	<i>Sterna hirundo</i>	SC	S
Common Yellowthroat	<i>Geothlypis trichas</i>	S	S
Connecticut Warbler	<i>Oporornis agilis</i>		S
Cooper's Hawk	<i>Accipiter cooperii</i>	SC	S
Cory's Shearwater	<i>Calonectris diomedea</i>		S
Curlew Sandpiper	<i>Calidris ferruginea</i>		S
Dark-eyed Junco	<i>Junco hyemalis</i>	S	S
Dickcissel	<i>Spiza americana</i>		S
Double-crested Cormorant	<i>Phalacrocorax auritus</i>	S	S
Dovekie	<i>Alle alle</i>		U
Downy Woodpecker	<i>Picoides pubescens</i>	S	S
Dunlin	<i>Calidris alpina</i>		S
Eastern Bluebird	<i>Sialia sialis</i>	S	S
Eastern Kingbird	<i>Tyrannus tyrannus</i>	S	S
Eastern Meadowlark	<i>Sturnella magna</i>	SC	SC
Eastern Phoebe	<i>Sayornis phoebe</i>	S	S
Eastern *[Screech Owl]* *Screech-Owl*	*[<i>Otus</i>]* *Megascops* <i>asio</i>	S	S
Eastern Towhee	<i>Pipilo erythrophthalmus</i>	S	S
Eastern Whip-poor-will	<i>Caprimulgus vociferus</i>	SC	U
Eastern Wood Pewee	<i>Contopus virens</i>	S	S

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	Coccothraustes *[vespertina]*		
Evening Grosbeak	*vespertinus*		S
Field Sparrow	Spizella pusilla	S	S
Forster's Tern	Sterna forsteri	S	S
Fox Sparrow	Passerella iliaca		S
Glaucous Gull	Larus hyperboreus		S
Glossy Ibis	Plegadis falcinellus	SC	S
Golden Eagle	Aquila chrysaetos		S
Golden-crowned Kinglet	Regulus satrapa	S	S
Golden-winged Warbler	Vermivora chrysoptera	E	SC
Grasshopper Sparrow	Ammodramus savannarum	T	SC
Gray Catbird	Dumetella carolinensis	S	S
Gray-cheeked Thrush	Catharus minimus		SC
Great Black-backed Gull	Larus marinus	S	S
Great Blue Heron	Ardea herodias	SC	S
Great Cormorant	Phalacrocorax carbo		S
Great Crested Flycatcher	Myiarchus crinitus	S	S
Great Egret	Ardea alba	S	S
Great Horned Owl	Bubo virginianus	S	S
Greater Shearwater	Puffinus gravis		S
Greater Yellowlegs	Tringa melanoleuca		S
Green Heron	Butorides virescens	S	S
Gull-billed Tern	*[Sterna]* *Gelocheidon* nilotica	SC	SC
Hairy Woodpecker	Picoides villosus	S	S
Hermit Thrush	Catharus guttatus	S	S
Herring Gull	Larus argentatus	S	S
Hooded Warbler	Wilsonia citrina	SC	S
Horned Grebe	Podiceps auritus		S
Horned Lark	Eremophila alpestris	T	SC
House Finch	Carpodacus mexicanus	S	S
House Wren	Troglodytes aedon	S	S
Hudsonian Godwit	Limosa haemastica		S
Iceland Gull	Larus glaucooides		S
Indigo Bunting	Passerina cyanea	S	S
Ipswich Sparrow	Passerculus sandwichensis princeps		SC
Kentucky Warbler	Oporornis formosus	SC	SC
Killdeer	Charadrius vociferus	S	S
Lapland Longspur	Calcarius lapponicus		S
Lark Sparrow	Chondestes grammacus		S
Laughing Gull	*[Larus]* *Leucophaeus* atricilla	S	S
Leach's Storm-petrel	Oceanodroma leucorhoa		U
Least Bittern	Ixobrychus exilis	SC	SC
Least Flycatcher	Empidonax minimus	SC	S

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Least Sandpiper	<i>Calidris minutilla</i>		S
Lesser Black-backed Gull	<i>Larus fuscus</i>		S
Lesser Yellowlegs	<i>Tringa flavipes</i>		S
Lincoln's Sparrow	<i>Melospiza lincolni</i>		S
Little Blue Heron	<i>Egretta caerulea</i>	SC	SC
Little Gull	*[<i>Larus</i>]* * Hydrocoloeus * minutus		S
[Loggerhead Shrike	<i>Lanius ludovicianus</i>		E]
Long-billed Dowitcher	<i>Limnodromus scolopaceus</i>		S
Long-eared Owl	<i>Asio otus</i>	T	T
Long-tailed Jaeger	<i>Stercorarius longicaudus</i>		U
Louisiana Waterthrush	*[<i>Seiurus</i>]* * Parkesia * motacilla	S	S
Magnolia Warbler	<i>Dendroica magnolia</i>	S	S
Marbled Godwit	<i>Limosa fedoa</i>		S
Marsh Wren	<i>Cistothorus palustris</i>	S	S
Merlin	<i>Falco columbarius</i>		S
Mississippi Kite	<i>Ictinia mississippiensis</i>		S
Mourning Warbler	<i>Oporornis philadelphia</i>		S
Nashville Warbler	*[<i>Vermivora</i>]* * Oreothlypis * ruficapilla	SC	S
Northern Cardinal	<i>Cardinalis cardinalis</i>	S	S
Northern *[Common]* Flicker	<i>Colaptes auratus</i>	S	S
Northern Gannet	<i>Morus bassanus</i>		S
Northern Goshawk	<i>Accipiter gentilis</i>	E	SC
Northern Harrier	<i>Circus cyaneus</i>	E	SC
Northern Mockingbird	<i>Mimus polyglottos</i>	S	S
Northern Parula	<i>Parula americana</i>	SC	S
Northern Rough-winged Swallow	<i>Stelgidopteryx serripennis</i>	S	S
Northern Saw-whet Owl	<i>Aegolius acadicus</i>	U	S
Northern Shrike	<i>Lanius</i> *[exubitor]* excubitor		S
Northern Waterthrush	*[<i>Seiurus</i>]* * Parkesia * noveboracensis	S	S
Olive-sided Flycatcher	<i>Contopus</i> *[borealis]* * cooperi *		S
Orange-crowned Warbler	*[<i>Vermivora</i>]* * Oreothlypis * celata		S
Orchard Oriole	<i>Icterus spurius</i>	S	S
Osprey	<i>Pandion haliaetus</i>	T	S
Ovenbird	<i>Seiurus aurocapilla</i>	S	S
Palm Warbler	<i>Dendroica palmarum</i>		S
Parasitic Jaeger	<i>Stercorarius parasiticus</i>		S
Pectoral Sandpiper	<i>Calidris melanotos</i>		S
Peregrine Falcon	<i>Falco peregrinus</i>	E	SC
Philadelphia Vireo	<i>Vireo philadelphicus</i>		S
Pied-billed Grebe	<i>Podilymbus podiceps</i>	E	SC
Pileated Woodpecker	<i>Dryocopus pileatus</i>	S	S
Pine Grosbeak	<i>Pinicola enucleator</i>		S

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Pine Siskin	<i>Spinus pinus</i>		S
Pine Warbler	<i>Dendroica pinus</i>	S	S
Pomarine Jaeger	<i>Stercorarius pomarinus</i>		S
Prairie Warbler	<i>Dendroica discolor</i>	S	S
Prothonotary Warbler	<i>Protonotaria citrea</i>	S	S
Purple Finch	<i>Carpodacus purpureus</i>	S	S
Purple Martin	<i>Progne subis</i>	S	S
Purple Sandpiper	<i>Calidris maritima</i>		S
Razorbill	<i>Alca torda</i>		S
Red Crossbill	<i>Loxia curvirostra</i>	U	U
Red Phalarope	<i>Phalaropus fulicarius</i>		S
Red-bellied Woodpecker	<i>Melanerpes carolinus</i>	S	S
Red-breasted Nuthatch	<i>Sitta canadensis</i>	S	S
Red-eyed Vireo	<i>Vireo olivaceus</i>	S	S
Red-headed Woodpecker	<i>Melanerpes erythrocephalus</i>	T	T
Red-necked Grebe	<i>Podiceps grisegena</i>		S
Red-necked Phalarope	<i>Phalaropus lobatus</i>		S
Red-shouldered Hawk	<i>Buteo lineatus</i>	E	SC
Red-tailed Hawk	<i>Buteo jamaicensis</i>	S	S
Red-throated Loon	<i>Gavia stellata</i>		S
Red-winged Blackbird	<i>Agelaius phoeniceus</i>	S	S
Ring-billed Gull	<i>Larus delawarensis</i>		S
Rose-breasted Grosbeak	<i>Pheucticus ludovicianus</i>	S	S
Rough-legged Hawk	<i>Buteo lagopus</i>		S
Royal Tern	*[<i>Thalasseus maximus</i>]* * Sterna maxima *		S
Ruby-crowned Kinglet	<i>Regulus calendula</i>		S
Ruby-throated Hummingbird	<i>Archilochus colubris</i>	S	S
Ruddy Turnstone	<i>Arenaria interpres</i>		S
Ruff	<i>Philomachus pugnax</i>		S
Rusty Blackbird	<i>Euphagus carolinus</i>		S
Saltmarsh Sparrow	<i>Ammodramus caudacutus</i>	SC	S
Sanderling	<i>Calidris alba</i>		SC
Savannah Sparrow	<i>Passerculus sandwichensis</i>	T	S
Scarlet Tanager	<i>Piranga olivacea</i>	S	S
Seaside Sparrow	<i>Ammodramus</i> *[<i>maritima</i>]* * maritimus *	S	S
Semipalmated Plover	<i>Charadrius semipalmatus</i>		S
Semipalmated Sandpiper	<i>Calidris pusilla</i>		SC
Sharp-shinned Hawk	<i>Accipiter striatus</i>	SC	SC
Short-billed Dowitcher	<i>Limnodromus griseus</i>		S
Short-eared Owl	<i>Asio flammeus</i>	E	SC
Snow Bunting	<i>Plectophenax nivalis</i>		S
Snowy Egret	<i>Egretta thula</i>	SC	S

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Snowy Owl	Nyctea *[scandiaca]* *scandiacus*		S
Solitary Sandpiper	Tringa solitaria		S
Song Sparrow	Melospiza melodia	S	S
Sooty Shearwater	Puffinus griseus		S
Spotted Sandpiper	Actitis macularius	SC	S
Stilt Sandpiper	Calidris himantopus		S
Summer Tanager	Piranga rubra	S	S
Swainson's Thrush	Catharus ustulatus		S
Swallow-tailed Kite	Elanoides forficatus		U
Swamp Sparrow	Melospiza georgiana	S	S
Tennessee Warbler	*[Vermivora]* *Oreothlypis* peregrina		S
Thick-billed Murre	Uria lomvia		U
Tree Swallow	Tachycineta bicolor	S	S
Tricolored Heron	Egretta tricolor	SC	SC
Tufted Titmouse	Baeolophus bicolor	S	S
Tundra Swan	Cygnus columbianus		S
Turkey Vulture	Cathartes aura	S	S
Veery	Catharus fuscescens	SC	S
Vesper Sparrow	Poocetes gramineus	E	SC
Warbling Vireo	Vireo gilvus	S	S
Western Kingbird	Tyrannus verticalis		S
Western Sandpiper	Calidris mauri		S
Whimbrel	Numenius phaeopus		SC
White-breasted Nuthatch	Sitta carolinensis	S	S
White-crowned Sparrow	Zonotrichia leucophrys		S
White-eyed Vireo	Vireo griseus	S	S
White-rumped Sandpiper	Calidris fuscicollis		S
White-throated Sparrow	Zonotrichia albicollis	S	S
White-winged Crossbill	Loxia leucoptera		U
Willet	*[Catoptrophorus semipalmatus]* *Tringa semipalmata*	S	S
Willow Flycatcher	Empidonax traillii	S	S
Wilson's Phalarope	Phalaropus tricolor		S
Wilson's Storm-petrel	Oceanites oceanicus		S
Wilson's Warbler	Wilsonia pusilla		S
Winter Wren	Troglodytes *[troglodytes]* *hiemalis*	SC	S
Wood Thrush	Hylocichla mustelina	SC	S
Worm-eating Warbler	Helmitheros *[vermivora]* *vermivorum*	SC	S
Yellow Rail	Coturnicops noveboracensis		U
Yellow Warbler	Dendroica petechia	S	S
Yellow-bellied Flycatcher	Empidonax flaviventris		S
Yellow-bellied Sapsucker	Sphyrapicus varius	S	S
Yellow-billed Cuckoo	Coccyzus americanus	S	S

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Yellow-breasted Chat	<i>Icteria virens</i>	SC	S
Yellow-crowned Night-Heron	<i>Nyctanassa violacea</i>	T	T
Yellow-rumped Warbler	<i>Dendroica coronata</i>	S	S
Yellow-throated Vireo	<i>Vireo flavifrons</i>	S	S
Yellow-throated Warbler	<i>Dendroica dominica</i>	S	S

<u>Species</u>	<u>Scientific Name</u>	<u>Species Status *</u>
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MAMMALS

Atlantic Spotted Dolphin	<i>Stenella frontalis</i>	U
Beluga Whale	<i>Delphinapterus leucas</i>	U
Big Brown Bat	<i>Eptesicus fuscus</i>	U
Blainville's Whale	<i>Mesoplodon densirostris</i>	U
Bottlenose Dolphin	<i>Tursiops truncatus</i>	U
Clymene Dolphin	<i>Stenella clymene</i>	U
Cuvier's Whale	<i>Ziphius cavirostris</i>	U
Dwarf Sperm Whale	<i>Kogia simus</i>	U
Eastern Chipmunk	<i>Tamias striatus</i>	U
Eastern Mole	<i>Scalopus aquaticus</i>	U
Gervais Beaked Whale	<i>Mesoplodon europaeus</i>	U
Gray Seal	<i>Halichoerus grypus</i>	U
Hairy-tailed Mole	<i>Parascalops breweri</i>	U
Harbor Porpoise	<i>Phocoena phocoena</i>	U
Harbor Seal	<i>Phoca vitulina</i>	U
Harp Seal	<i>Pagophilus groenlandicus</i>	U
Hoary Bat	<i>Lasiurus cinereus</i>	U
Hooded Seal	<i>Cystophora cristata</i>	U
Keen Myotis	<i>Myotis keenii</i>	U
Killer Whale	<i>Orcinus orca</i>	U
Least Shrew	<i>Cryptotis parva</i>	U
Little Brown Bat	<i>Myotis lucifugus</i>	U
Long-finned Pilot Whale	<i>Globicephala melas</i>	U
Long-tailed Shrew	<i>Sorex dispar</i>	U
Marsh Rice Rat	<i>Oryzomys palustris</i>	U
Masked Shrew	<i>Sorex cinereus</i>	U
Meadow Jumping Mouse	<i>Zapus hudsonius</i>	U
Meadow Vole	<i>Microtis pennsylvanicus</i>	U
Melon-headed Whale	<i>Peponocephala electra</i>	U
Minke Whale	<i>Balaenoptera acutorostrata</i>	U
New England Cottontail	<i>Sylvilagus transitionalis</i>	U
Northern Flying Squirrel	<i>Glaucomys sabrinus</i>	U
Northern Yellow Bat	<i>Lasiurus intermedius</i>	U
Pine Vole	<i>Pitymys pinetorum</i>	U

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Porcupine	<i>Erethizon dorsatum</i>	U
Pygmy Sperm Whale	<i>Kogia breviceps</i>	U
Red Bat	<i>Lasiurus borealis</i>	U
Red Squirrel	<i>Tamiasciurus hudsonicus</i>	U
Red-backed Mouse	<i>Clethrionomys gapperi</i>	U
Risso's Dolphin	<i>Grampus griseus</i>	U
Short-beaked Common Dolphin	<i>Delphinus delphis</i>	U
Short-finned Pilot Whale	<i>Globicephala macrorhyncus</i>	U
Short-tailed Shrew	<i>Blarina brevicauda</i>	U
Silver-haired Bat	<i>Lasionycteris noctivagans</i>	U
Small-footed Myotis	<i>Myotis subulatus</i>	U
Smokey Shrew	<i>Sorex fumeus</i>	U
Southern Bog Lemming	<i>Synaptomys cooperi</i>	U
Southern Flying Squirrel	<i>Glaucomys volans</i>	U
Star-nosed Mole	<i>Condylura cristata</i>	U
Striped Dolphin	<i>Stenella coeruleoalba</i>	U
Tri-colored Bat	<i>Perimyotis subflavus</i>	U
True's Beaked Whale	<i>Mesoplodon mirus</i>	U
Tuckahoe Masked Shrew	<i>Sorex cinereus nigriculus</i>	U
Water Shrew	<i>Sorex palustris</i>	U
White-footed Mouse	<i>Peromyscus leucopus</i>	U
Woodland Jumping Mouse	<i>Napaeozapus isignis</i>	U

* E means "Endangered;" S means "Secure-stable;" SC means "Special Concern;"

T means "Threatened;" and U means "Undetermined-unknown." These terms are defined in N.J.A.C. 7:25-4.1.

Based on consultation with staff, I hereby certify that the above statements, including the Federal Standards Statement addressing the requirements of Executive Order 27 (1994), permit the public to understand accurately and plainly the purposes and expected consequences of these amendments. I hereby authorize the adoption of these amendments.

Date

Bob Martin, Commissioner
Department of Environmental Protection