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## **ENVIRONMENTAL PROTECTION**

### **DIVISION OF FISH AND WILDLIFE**

#### **Endangered and Nongame Species**

##### **Proposed Amendment: N.J.A.C. 7:25-4.17**

Authorized By: Shawn M. LaTourette, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 23:1-1 et seq., 23:2A-1 et seq., 13:1B-30 et seq., and 13:1D-1 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

DEP Docket Number: 14-24-11.

Proposal Number: PRN 2025-001.

Submit comments by March 7, 2025, electronically at <https://dep.nj.gov/rules/rule-comment-form/>. Please note that the online comment page has changed. Comments can be typed directly into the online form, or uploaded as a .pdf, .doc, or .docx file on the comment page.

The Department of Environmental Protection (Department) encourages electronic submittal of comments. In the alternative, comments may be submitted on paper to:

Attn: DEP Docket Number: 14-24-11

Office of Legal Affairs

Department of Environmental Protection

401 East State Street, 7th Floor

Mail Code 401-04L

PO Box 402

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Trenton, NJ 08625-0402

The agency proposal follows:

### **Summary**

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

When the Department undertook rulemaking to update the endangered species and nongame species lists in the notice of proposal published at 56 N.J.R. 936(a), the Department overlooked the update to the conservation status of the New Jersey Chorus Frog on the nongame species list at N.J.A.C. 7:25-4.17 from undetermined (U) to special concern (SC).

The New Jersey Chorus Frog (*Pseudacris kalmi*) is a species that relies on a variety of wetland types, including vernal pools, for breeding and adjacent forested habitats year-round. Genetic research in 2007 (Lemmon, Emily. M.; Lemmon, Alan R.; Collins, Joseph T.; Lee-Yaw, Julie A.; and Cannatella, David C. 2007. *Phylogeny-based delimitation of species boundaries and contact zones in the trilling chorus frogs (Pseudacris)*. Molecular Phylogenetics and Evolution 44: 1068–1082. <https://www.evotutor.org/LemmonLab/Pdfs/Lemmon-et-al2007b.pdf>; and Division of Fish and Wildlife unpublished data) determined that the New Jersey Chorus Frog is the only chorus frog species to occur in New Jersey and the species' global range is confined to a small geographic distribution in the Mid-Atlantic region. New Jersey may be the stronghold of the global population of this species, conferring added responsibility for its conservation in the State. Prior to the 2007 genetic research, information on the New Jersey Chorus Frog population trend and geographic distribution was poorly understood, resulting in its current classification as “unknown” on the list of regulated nongame wildlife.

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Data collected during the genetics project and through various surveys, such as the New Jersey Herp Atlas (Gessner, Jackie and Eric Stiles, *Field Guide to Reptiles and Amphibians of New Jersey*. 2001. DEP-Endangered and Nongame Species Program, <https://www.nj.gov/dep/fgw/ensp/pdf/frogs.pdf>), the Calling Amphibian Monitoring Program (the 2014-2015 New Jersey data collection initiative by Conserve Wildlife Foundation New Jersey that was a part of the U.S. Geological Services' North American Amphibian Monitoring Program, [3](https://www.usgs.gov/centers/eesc/science/north-american-amphibian-monitoring-program#:~:text=The%20North%20American%20Amphibian%20Monitoring%20Program%20%28NAAMP%29%20was,much%20of%20the%20eastern%20and%20central%20United%20States%29,the%20expert%20opinion%20by%20reviewers%20in%20the%20Department's%20status%20assessment%20(https://dep.nj.gov/wp-content/uploads/njfw/herp_status_rprt.pdf), provide the basis for the recommended classification as special concern (SC). As with all proposed status changes, the Department relies on the Delphi process and status assessment (see 56 N.J.R. 936(a) for a detailed explanation). This process makes use of the most current information which, in some cases, may be several years old. Additionally, the charge to the group of wildlife experts who review the species information is to identify and provide any and all updated information about a species. The last status assessment for amphibian and reptiles, including New Jersey Chorus Frog, was completed in 2016 and was re-reviewed in 2023 with no new information having been identified.</p></div><div data-bbox=)

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The reasons for concern for the New Jersey Chorus Frog population in the State are loss and degradation of wetlands, including vernal pools, the limited number of occurrences in the northern portion of the State, and accounts of population loss through land use change.

### **Social Impact**

The Department anticipates that the proposed conservation status update for the New Jersey Chorus Frog will have a net positive social impact. By amending the species' conservation status from undetermined (U) to special concern (SC), the Department will provide the New Jersey Chorus Frog with an enhanced protection pursuant to the Highlands Water Protection and Planning Act Rules (N.J.A.C. 7:38), which furthers the goal of species conservation, primarily through protections of habitats in which species with a conservation status of "special concern" can be found. The proposed change in the conservation status of the New Jersey Chorus Frog allows the Department to direct resources at the conservation needs of this species. This, in turn, benefits New Jersey citizens by targeting conservation actions and raising awareness of the importance of natural habitats, such as vernal pools and habitat connectedness.

### **Economic Impact**

The Department anticipates that the proposed conservation status update for the New Jersey Chorus Frog will have a nominal indirect economic impact. An analysis of the Department's "Landscape Maps of Habitat for Endangered, Threatened, and Other Priority Wildlife" (Landscape Maps) was conducted using the known occurrences of New Jersey Chorus Frog. Ninety-eight percent of occurrences were in parcels that are currently valued as rank 2, 3,

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4, or 5 in the Landscape Project map. This means that the Landscape Project map already documented other species occurring there with an Endangered and Nongame Species Conservation Act (ENSCA) conservation status of special concern (SC), “threatened,” or “endangered,” and/or a conservation status of “endangered” or “threatened” on the Federal Endangered Species Act (Endangered Species Act of 1973, 16 U.S.C. §§ 1531 et seq.) List. Therefore, there would be a nominal effect on the amount of regulated area as a result of the status change of the New Jersey Chorus Frog from undetermined (U) to special concern (SC) and a concurrent nominal economic effect.

### **Environmental Impact**

The proposed amendment to the conservation status of the New Jersey Chorus Frog will have an insignificant, indirect positive environmental impact. Two land use regulations provide special protection to species with special concern (SC) status. Those regulations are at N.J.S.A. 13:18A-1 et seq., the Highlands Water Protection and Planning Act (Highlands regulations), and at N.J.A.C. 7:13, the Flood Hazard Area Control Act Rules (Flood Hazard regulations).

The proposed amendment of the conservation status of the New Jersey Chorus Frog from undetermined (U) to special concern (SC) promotes the conservation of this species and their habitat, which are in need of protection. The proposed amendment of the New Jersey Chorus Frog’s conservation status to SC helps to promote the conservation of this species by highlighting the need for investigations to improve the understanding of this species’ population and to undertake conservation and habitat management.

As noted in the Economic Impact above, there is a high degree of overlap of lands supporting endangered and threatened wildlife and special concern species currently listed in the

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existing rules and the lands that support the New Jersey Chorus Frog. The Highlands regulations and the Flood Hazard regulations, as they relate to the proposed special concern (SC) conservation status for the New Jersey Chorus Frog, will not significantly expand the areas subject to protection.

### **Federal Standards Statement**

N.J.S.A. 52:14B-1 et seq., require State agencies that adopt, readopt, or amend State rules that exceed Federal standards or requirements to include in the rulemaking document a Federal standards analysis. The special concern (SC) conservation status proposed for the New Jersey Chorus Frog at N.J.A.C. 7:25-4.17 has no Federal equivalent. Consequently, no further analysis is required.

### **Jobs Impact**

The Department has evaluated this rulemaking to determine the impact of the proposed amendment on job creation and retention in the State. The change in conservation status of the New Jersey Chorus Frog from undetermined (U) to special concern (SC) on the nongame species list will neither create jobs nor reduce the number of jobs in the State.

### **Agriculture Industry Impact**

Pursuant to N.J.S.A. 52:14B-4(a)2, the Department has evaluated this rulemaking to determine the nature and extent of the proposed amendment's impact on the agriculture industry. The proposed amendment to the conservation status of the New Jersey Chorus Frog from

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undetermined (U) to special concern (SC) will have no direct impact upon the agriculture or aquaculture industries.

Indirect impacts pursuant to the Highlands regulations that provide protection to special concern species and their habitats in the Highlands Preservation Area are very limited, as are potential impacts pursuant to Flood Hazard rules affecting only situations when a bridge, culvert, or roadway is being modified. The overlap of work being completed on culverts, bridges, or roadways on agricultural lands makes this impact extremely small.

### **Regulatory Flexibility Analysis**

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has reviewed the proposed amendment for reporting, recordkeeping, or other compliance requirements on small businesses. The proposed amendment does not include reporting or recordkeeping requirements. Within N.J.A.C. 7:25-4, reporting or recordkeeping requirements apply only to those who are required to obtain a permit from the Department to collect, hold, transport, or sell species listed at N.J.A.C. 7:25-4.17. The number of individuals who would need a permit to hold New Jersey Chorus Frog is very limited and includes primarily those in academic research institutions, and, to a lesser degree, in environmental consulting businesses. The Department does not propose additional recordkeeping or reporting requirements on such individuals.

### **Housing Affordability Impact Analysis**

Pursuant to N.J.S.A. 52:14B-4, the Department has evaluated this rulemaking to determine the nature and extent of the proposed amendment on the impact to housing

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affordability. The proposed amendment to change the conservation status of the New Jersey Chorus Frog from undetermined (U) to special concern (SC) will not cause a discernable impact on housing affordability or on the average cost of housing in the State. There are a relatively small number of documented occurrences of New Jersey Chorus Frog within the Highlands Preservation Area or in certain Flood Hazard areas and there is a high degree of overlap between the occurrences of this species and the documented occurrences of other special concern, endangered, or threatened species of wildlife and/or with lands already restricted from development.

### **Smart Growth Development Impact Analysis**

Pursuant to N.J.S.A. 52:14B-4, the Department has evaluated this rulemaking to determine the nature and extent of the proposed amendment on the impact to smart growth development. The proposed amendment to the conservation status of the New Jersey Chorus Frogs is unlikely to evoke a change in housing production within Planning Areas 1 or 2, or within designated centers, pursuant to the State Development and Redevelopment Plan.

In the context of “smart growth,” areas that provide habitats for special concern species within the Highlands Preservation Area are generally located in areas outside of Planning Areas 1 or 2 and “designated centers,” pursuant to the State Development and Redevelopment Plan. Consequently, to the nominal degree that the New Jersey Chorus Frog is categorized as special concern on the nongame species list might impact housing development, such impact would mostly affect housing development considered or proposed for Planning Areas 3 and 4, and particularly, 5, while having minimal impact on development within areas designated as



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Planning Areas 1 or 2 or as “designated centers” in the State Development and Redevelopment Plan.

Where housing production requires new, upgraded, or expanded roadways, bridges, and culverts, the Flood Hazard regulations will require wildlife passages be included in the plans for the roadways, bridges, and culverts. This requirement, however, does not evoke a change in housing production within Planning Areas 1 or 2, or within designated centers, pursuant to the State Development and Redevelopment Plan.

### **Racial and Ethnic Community Criminal Justice and Public Safety Impact**

The Department has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

**Full text** of the proposal follows (addition indicated in boldface **thus**; deletion indicated in brackets [thus]):

## SUBCHAPTER 4. ENDANGERED, NONGAME, AND EXOTIC WILDLIFE

### 7:25-4.17 List of regulated nongame species

The following table sets forth the list and conservation status of the State’s nongame wildlife species 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. The list does not include marine or diadromous fish. For freshwater fish and all invertebrate classes, the list includes only those species for which the Department has determined that their

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conservation status is “special concern” (SC). The list is ordered alphabetically by species'

common names within each taxonomic class.

<u>Species</u>	<u>Scientific Name</u>	<u>Conservation Status*</u>
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## AMPHIBIANS

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New Jersey Chorus Frog	<i>Pseudacris kalmi</i>	[U] SC
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\*E means “Endangered,” S means “Secure-stable,” SC means “Special concern,” T means “Threatened,” and U means “Undetermined-unknown.” These terms are defined at N.J.A.C. 7:25-4.1